D-1.

Department of Health Services
Title 9 Chapter 25 Articles 1-4

Amend: R9-25-101, R9-25-201, R9-25-301, R9-25-302, R9-25-304, R9-25-305, R9-25-401, R9-25-403, R9-25-404, R9-25-407, R9-25-408, and R9-25-409

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: **October 21, 2024**

SUBJECT: **Department of Health Services (DHS)**
Title 9, Chapter 25, Articles 1-4

Amend: R9-25-101, R9-25-201, R9-25-301, R9-25-302, R9-25-304, R9-25-305, R9-25-401, R9-25-403, R9-25-404, R9-25-407, R9-25-408, and R9-25-409

Summary:

This regular rulemaking by the Department of Health Services (Department) seeks to amend twelve (12) rules in Title 9, Chapter 25, Articles 1-4 related to Emergency Medical Services. Specifically, this rulemaking amends rules in the following Articles:

- Article 1 - General
- Article 2 - Medical Direction; ALS Base Hospital Certification
- Article 3 - Training Programs
- Article 5 - EMCT Certification

The proposed rule amendments partially arose following the Department's Five-Year Review Report (5YRR) of its rules, which the Council approved on August 2, 2022. The proposed rule amendments also seek to implement Session Laws 2022, Ch. 381; Session Laws 2023, Ch. 43; and Session Laws 2024, Ch. 128. The amendments seek to align the Department's rules with the previous 5YRR and Session Law regarding certification and recertification of emergency medical care technicians (EMCTs).

The Department requested an immediately effective date under A.R.S. § 41-1032(A)(1) and (4), as the Department stated the proposed rules will improve public health and safety and some rules would be less stringent if enacted. Council staff believe the Department has provided adequate justification for an immediate effective date.

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

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

The Department expects to incur minimal costs but receive significant benefits from the rulemaking. Certified training programs are expected to significantly benefit from clarifications to the rules, the ability to offer new types of training courses, and the ability to offer virtual or asynchronous training with the use of a simulated patient. Certified training programs will now be required to attest their good standing with the Arizona Corporation Commission or Arizona School Boards Association or Arizona Board of Private Postsecondary Education. Programs in good standing may incur minimal costs (less than $2,000) from the time it may take to make the attestation while programs not in good standing may incur a substantial ($20,000 or more) decrease in revenue if the Department learns this and certification is affected.

The new rules also provide requirements for an Emergency Medical Responder (EMR) training course. The Department believes that these requirements may cause an individual registering for an EMR training course to incur minimal costs and may provide a significant and up-to-substantial benefit if the individual obtains employment as an EMR on the basis of requirements in the rules.

Emergency Medical Care Technicians (EMCTs) are expected to receive a significant benefit from clarifications in the rules. EMCTs may also receive a substantial benefit from the rule changes related to training received during military service. Paramedics may incur minimal costs to obtain an endorsement to provide critical care services but may receive a higher salary than a Paramedic without such an endorsement.

The Department anticipates that patients and their families and the general public may receive a significant benefit from the rule changes, which may help to ensure that EMRs

and Paramedics have the knowledge and skills to provide services within their scopes of practice.

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 that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

6. What are the economic impacts on stakeholders?

The Department is expecting to incur minimal costs for each of the following actions: reviewing applications and new training course content; providing technical assistance about the updated application requirements; implementing a method for electronic notification of name changes or email address changes; implementing an additional Paramedic training course; and adding a requirement that an Emergency Medical Care Technician's (EMCT) license revocation/suspension/surrender history be reported to the Department. The Department also expects significant benefits from these changes.

Public and private certified training programs are expected to significantly benefit from clarifications in Article 3. Programs may incur a minimal cost to attest their good standing with the Arizona Corporation Commission or Arizona Schools Board Association or Arizona Board of Private Postsecondary, while training programs not in good standing may incur a substantial decrease in revenue if the Department learns this and certification is affected. If a certified training program chooses to run one or both of the training courses that the new rules offer, the program may incur substantial costs to establish and run the course, but may also receive a substantial increase in revenue from the students enrolling in the course. The rules are also being revised to allow for virtual or asynchronous training and for the use of a simulated patient. While a certified training program that wants to use a simulated patient may incur up to substantial costs for the purchase of simulators, depending on the type and number of devices purchased, a training program that purchases such devises may also receive up to a substantial benefit from their use.

In R9-25-201, the new rules specify requirements for an administrative medical director approving an individual to function as an Emergency Medical Responder (EMR) for an emergency medical services provider to ensure competency and provide oversight. The rules include requirements related to the content of an EMR training course, providing course descriptions for an EMR training course, and specifying who can be a lead instructor or preceptor for EMR training. The Department believes that these requirements may cause an individual registering for a training course to incur minimal costs, with the current tuition rates for such training ranging from $400 to $750. The rule changes may also provide a significant and substantial benefit if the individual obtains employment as an EMR on the basis of requirements in the rules.

The Department anticipates that clarifications to the rules may provide a significant

benefit to an EMCT. Changes made to comply with Laws 2023, Ch. 43, related to training received during military service are expected to provide up to a substantial benefit to applicants for certifications as an EMCT. An EMCT may incur a minimal increased cost in time spent complying with the updated application requirements and may receive a minimal benefit from being able to electronically notify the Department of a name change or address or email address change. If an EMCT has a professional license or certification suspended, revoked, or surrender in Arizona or another state, the EMCT could sustain up to a substantial loss of revenue if the cause of the suspension, revocation, or surrender results in the revocation or suspension by the Department of the EMCT's certification as an EMCT. The Department believes that a Paramedic may incur up to minimal costs due to the requirements for applying for a critical care endorsement. A Paramedic obtaining training to prepare for national certification may also incur minimal costs for take a training course under R9-25-305(F). Similarly, a Paramedic taking a refresher course or refresher challenge examination under R9-25-305(K) or (L) may incur minimal costs. However, a Paramedic with a critical care endorsement may receive a higher salary than a Paramedic without an endorsement and, thus, receives up to a substantial benefit from the rule changes.

The Department anticipates that patients and their families may receive a significant benefit from the rules changes, which may help to ensure that EMRs and Paramedics have the knowledge and skills to provide services within their scopes of practice. The Department acknowledges that it is possible that having a Paramedic with a critical care endorsement provide transport for a patient may result in higher rates being charged for the transport.

The Department anticipates that the general public will receive a significant benefit from the rule changes, which were developed to improve the functioning of the EMS system in Arizona. Since any member of the public may become a patient or the family member of a patient, the rule changes may also provide a benefit by helping to ensure that EMRs and Paramedics have the knowledge and skills to prove services within their scopes of practice.

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 Department stated that no comments were provided on any of the proposed rules.

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

The Department believes the certification as an EMCT issued to an individual is

a general permit in that certification specifies the individual and the services the individual is authorized by certification to provide, but a certified individual is not limited to providing the services in any one location. The certification of a training program is authorized under A.R.S. § 36-2204(1) and (3), and the Department issues a specific permit under A.R.S. § 41-1037(A)(2) and (3), since the facilities at a specific location factor into the qualifications of the training Program.

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 rules are not more stringent than federal law.

11. Conclusion

This regular rulemaking by the Department seeks to amend twelve (12) rules in Title 9, Chapter 25, Article 1-4 regarding certification and recertification of EMCTs. The proposed rule amendments partially arose following the Department's 5YRR of its rules, which the Council approved on August 2, 2022. The proposed amendments also seek to implement Session Laws 2022, Ch. 381; Session Laws 2023, Ch. 43; and Session Laws 2024, Ch. 128. These amendments seek to align Department regulations with existing law and implement changes identified in the Department's most recent 5YRR.

The Department requested an immediately effective date under A.R.S. § 41-1032(A)(1) and (4), as the Department stated the proposed rules will improve public health and safety and some rules would be less stringent if enacted. Council staff believe the Department has provided adequate justification for an immediate effective date.

Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

August 23, 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. 25, Regular Rulemaking

Dear Ms. Klein:

1. The close of record date: August 12, 2024

2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 25 partially relates to a five-year-review report approved by the Council on August 2, 2022. In addition, the rulemaking adopts rules to comply with Laws 2022, Ch. 381, Laws 2023, Ch. 43, and Laws 2024, Ch. 128, and to address stakeholder concerns.

3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:
The rulemaking does not establish a new fee.

4. Whether the rulemaking contains a fee increase:
The rulemaking does not contain a fee increase.

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
The Department is requesting an effective date of December 31, 2024, for the rules to ensure that these rules go into effect before the related rule in A.A.C. R9-25-908(C)(5)(b), with a delayed effective date of January 1, 2024, goes into effect.

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 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 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 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES

EMERGENCY MEDICAL SERVICES

PREAMBLE

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

August 23, 2024

2. Article, Part or Sections Affected (as applicable)	**Rulemaking Action**
R9-25-101	Amend
R9-25-201	Amend
R9-25-301	Amend
R9-25-302	Amend
R9-25-304	Amend
R9-25-305	Amend
R9-25-401	Amend
R9-25-403	Amend
R9-25-404	Amend
R9-25-407	Amend
R9-25-408	Amend
R9-25-409	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

4. The effective date of the rule:

The Department requests an immediate effective date, according to A.R.S. § 41-1032(A)(1) and (4), to ensure that these rules go into effect before the related rule in A.A.C. R9-25-908(C)(5)(b), with a delayed effective date of January 1, 2025, goes into effect. The new rules will improve public health and safety, as well as provide a benefit to the public and regulated entities. Some aspects of the rulemaking are also less stringent than those requirements in the current rules. Once

approved, the Department plans to file the Notice so as to give regulated entities as much time as possible to prepare to implement the changes.

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. 435, March 8, 2024

Notice of Proposed Rulemaking: 30 A.A.R. 2259, July 12, 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 Ave., Suite 200
Phoenix, AZ 85007

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 requires the Arizona Department of Health Services (Department) to certify and recertify emergency medical care technicians (EMCTs). A.R.S. § 36-2204(1) and (3) require the Department to adopt statewide standardized training, certification and recertification standards, and standardized continuing education criteria for all classifications of EMCTs. The Department has adopted standards and criteria that pertain to training for EMCTs and their certification in 9 A.A.C. 25, Articles 3 and 4. After receiving rulemaking approval pursuant to A.R.S. § 41-1039, the Department is amending the rules in 9 A.A.C. 25 to address issues identified in a five-year-review report for these two Articles, as well as to address statutory

changes. To implement Laws 2022, Ch. 381, and Laws 2024, Ch. 128, the Department is revising the rules to address training requirements for Emergency Medical Responders. To implement Laws 2023, Ch. 43, changes are being made to address military reciprocity. In addition, both Articles 3 and 4 will be revised to include requirements related to critical care Paramedics, as stated in a recent rulemaking that included the rules in 9 A.A.C. 25, Article 9.

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 summary of the economic, small business, and consumer impact:

The Department anticipates that the rulemaking may affect the Department; certified training programs and their staff, including training program directors; emergency medical services providers and ambulance services, including their administrative medical directors; emergency medical care technicians (EMCTs) and applicants for certification or critical care endorsement, including students in certified training programs; individuals desiring to function as an Emergency Medical Responder (EMR), including students in certified training programs; patients and their families, and the general public. Annual costs/revenues changes are designated as minimal when more than $0 and $2,000 or less, moderate when between $2,000 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.

The Department anticipates that adding requirements for training programs for EMRs and to prepare a Paramedic to obtain a critical care endorsement from the Department may cause the Department to incur up to minimal increased costs to review the new training program course content and to provide technical assistance about the new rules. New requirements for an EMCT to notify the Department if the EMCT has had certification or licensure as a health professional, as defined in A.R.S. 36-3201, suspended or revoked may also cause the Department to incur minimal increased costs. Other changes in the new rules are expected to provide a significant benefit to the Department.

Clarification of the requirements in Article 3 is expected to provide a significant benefit to

certified training programs. A certified training program that chooses to run one or both of the new types of training courses may incur up to substantial costs to establish and run the course, but may also receive up to a substantial increase in revenue from the students enrolling in the course. Changes allowing for virtual or asynchronous training and for the use of a simulated patient are expected to provide a significant benefit to a certified training program. The new requirement to attest their good standing with the Arizona Corporation Commission or the Arizona School Boards Association or Arizona Board of Private Postsecondary Education, as applicable, may cause a training program that is in good standing to incur a minimal cost from the time it may take to make the attestation. However, a training program that is not in good standing may incur up to a substantial decrease in revenue if the Department learns this and certification is affected.

Emergency medical services providers and ambulance services are the largest employers of EMCTs, and potentially EMRs, in Arizona. The new rules specify requirements for an administrative medical director approving an individual to function as an EMR for an emergency medical services provider to ensure competency and provide oversight. The Department believes that the new requirements could cause an emergency medical services provider or their administrative medical director to incur as much as a moderate increase in costs, but may also provide a significant benefit in terms of risk reduction and liability. Having the opportunity to employ an EMR may help alleviate some staffing shortages, especially in rural areas. The new pathway for endorsement of a Paramedic to provide critical care services may increase the number of qualified individuals needed to handle critical care transports. An emergency medical services provide or ambulance service may incur as much as minimal costs, if underwriting the training or examination for an employed Paramedic, and may receive a minimal-to-substantial benefit from having a larger number of individuals qualified as EMRs or Paramedics with a critical care endorsement, depending on the use made of the opportunity. Reimbursement for transports staffed by a critical care Paramedic may also be higher.

According to A.R.S. § 36-2201(16), an individual may function as an EMR through two pathways: successfully completing an appropriated training program or through the approval by an emergency medical services provider's administrative medical director. The rules provide parameters relating to both pathways to help ensure the health and safety of patients. The Department believes that these requirements may cause an individual registering for an EMR training course to incur minimal costs and may provide a significant and up-to-substantial benefit if the individual obtains employment as an EMR on the basis of requirements in the rules.

The Department believes that clarifications in the rules may provide a significant benefit to an EMCT. Changes made to comply with Laws 2023, Ch. 43, related to training received during

military service are expected to provide up to a substantial benefit to applicants for certification as an EMCT. If an EMCT has a professional license or certification suspended, revoked, or voluntarily surrendered in Arizona or another state, the EMCT could sustain up to a substantial loss of revenue if the cause of the suspension, revocation, or surrender results in the revocation or suspension by the Department of the EMCT's certification as an EMCT. The pathway for endorsement of a Paramedic to provide critical care services may cause a Paramedic to incur minimal costs if planning to obtain the endorsement, but a Paramedic with a critical care endorsement may receive a higher salary than a Paramedic without an endorsement and, thus, receive up to a substantial benefit from the rule changes.

Patients and their families may receive a significant benefit from the rule changes, which may help to ensure that EMRs and Paramedics have the knowledge and skills to provide services within their scopes of practice. Having the potential for additional qualified individuals available for employment by emergency medical services providers and ambulance services may shorten the response time for getting to a patient. Having Paramedics with a higher level of training may also improve the care that can be provided to a patient in the pre-hospital environment. Since any member of the public may become a patient or the family member of a patient, the Department anticipates that the general public will receive a significant benefit from the rules changes, which were developed to improve the functioning of the EMS system in Arizona.

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

No changes were made 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:

No written or oral comments were received about the rulemaking since the filing of the Notice of Proposed Rulemaking. No stakeholders attended the Oral Proceeding.

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:

The Department believes the certification as an EMCT issued to an individual is a general permit in that certification specifies the individual and the services the individual is authorized by certification to provide, but a certified individual is not limited to providing the services in any one location. The certification of a training program is authorized

under A.R.S. § 36-2204(1) and (3), and the Department issues a specific permit under A.R.S. § 41-1037(A)(2) and (3), since the facilities at a specific location factor into the qualifications of the training program.

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 based on state statutes rather than 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 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. 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:

The rules were not previously made, amended, or repealed through emergency rulemaking.

16. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES

EMERGENCY MEDICAL SERVICES

ARTICLE 1. GENERAL

Section

ARTICLE 2. MEDICAL DIRECTION; ALS BASE HOSPITAL CERTIFICATION

Section

ARTICLE 3. TRAINING PROGRAMS

Section

ARTICLE 4. EMCT CERTIFICATION

Section

36-2204(1), (6), and (7), and 36-2211)

R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H), 36-2204(1), (6), and (7), and 36-2211)

ARTICLE 1. GENERAL

R9-25-101. Definitions (Authorized by A.R.S. §§ 36-2201, 36-2202, 36-2204, and 36-2205)

In addition to the definitions in A.R.S. § 36-2201, the following definitions apply in this Chapter, unless otherwise specified:

1. "Administer" or "administration" means to directly apply or the direct application of an agent to the body of a patient by injection, inhalation, ingestion, or any other means and includes adjusting the administration rate of an agent.
2. "AEMT" has the same meaning as "advanced emergency medical technician" in A.R.S. § 36-2201.
3. "Agent" means a chemical or biological substance that is administered to a patient to treat or prevent a medical condition.
4. "ALS" has the same meaning as "advanced life support" in A.R.S. § 36-2201.
5. "ALS base hospital" has the same meaning as "advanced life support base hospital" in A.R.S. § 36-2201.
6. "Applicant" means a person requesting certification, licensure, approval, or designation from the Department under this Chapter.
7. "BLS" has the same meaning as "basic life support" in A.R.S. § 36-2201.
8. "Chain of custody" means the transfer of physical control of and accountability for an item from one individual to another individual, documented to indicate the:
    a. Date and time of the transfer,
    b. Integrity of the item transferred, and
    c. Signatures of the individual relinquishing and the individual accepting physical control of and accountability for the item.
9. "Chief administrative officer" means:
    a. For a hospital, the same as in A.A.C. R9-10-101; and
    b. For a training program, an individual assigned to act on behalf of the training program by the body organized to govern and manage the training program.
10. "Clinical training" means experience and instruction in providing direct patient care in a health care institution.
11. "Controlled substance" has the same meaning as in A.R.S. § 32-1901.

12. "Course" means didactic instruction and, if applicable, hands-on practical skills training, clinical training, or field training provided by a training program to prepare an individual to become or remain EMR or an EMCT.
13. "Course session" means an offering of a course, during a period of time designated by a training program certificate holder, for a specific group of students.
14. "Current" means up-to-date and extending to the present time.
15. "Day" means a calendar day.
16. "Document" or "documentation" means signed and dated information in written, photographic, electronic, or other permanent form.
17. "Drug" has the same meaning as in A.R.S. § 32-1901.
18. "Electronic signature" has the same meaning as in A.R.S. § 44-7002.
19. "EMCT" has the same meaning as "emergency medical care technician" in A.R.S. § 36-2201.
20. "EMR" has the same meaning as "emergency medical responder" in A.R.S. § 36-2201.
~~20.~~21. "EMT" has the same meaning as "emergency medical technician" in A.R.S. § 36-2201.
~~21.~~22. "EMT-I(99)" means an individual, other than a Paramedic, who:
    a. Was certified as an EMCT by the Department before January 28, 2013 to perform ALS, and
    b. Has continuously maintained the certification.
~~22.~~23. "EMS" has the same meaning as "emergency medical services" subsections ~~(17)(a)~~ (18)(a) through (d) in A.R.S. § 36-2201.
~~23.~~24. "Field training" means emergency medical services experience and training outside of a health care institution or a training program facility.
~~24.~~25. "General hospital" has the same meaning as in A.A.C. R9-10-101.
~~25.~~26. "Health care institution" has the same meaning as in A.R.S. § 36-401.
~~26.~~27. "Hospital" has the same meaning as in A.A.C. R9-10-101.
~~27.~~28. "In use" means in the immediate physical possession of an EMCT and readily accessible for potential imminent administration to a patient.
~~28.~~29. "Infusion pump" means a device approved by the U.S. Food and Drug Administration that, when operated mechanically, electrically, or osmotically, releases a measured amount of an agent into a patient's circulatory system in a specific period of time.
~~29.~~30. "Interfacility transport" means an ambulance transport of a patient from one health care institution to another health care institution.
~~30.~~31. "IV" means intravenous.

~~31.~~32. “Locked” means secured with a key, including a magnetic, electronic, or remote key, or combination so that opening is not possible except by using the key or entering the combination.

~~32.~~33. “Medical direction” means administrative medical direction or on-line medical direction.

~~33.~~34. “Medical record” has the same meaning as in A.R.S. § 36-2201.

~~34.~~35. “Minor” means an individual younger than 18 years of age who is not emancipated.

~~35.~~36. “Monitor” means to observe the administration rate of an agent and the patient’s response to the agent and may include discontinuing administration of the agent.

~~36.~~37. “On-line medical direction” means emergency medical services guidance or information provided to an EMCT by a physician through two-way voice communication.

~~37.~~38. “Patient” means an individual who is sick, injured, or wounded and who requires medical monitoring, medical treatment, or transport.

~~38.~~39. “Pediatric” means pertaining to a child.

~~39.~~40. “Person” has the same meaning as in A.R.S. § 1-215 and includes governmental agencies.

~~40.~~41. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.

~~41.~~42. “Practical nurse” has the same meaning as in A.R.S. § 32-1601.

~~42.~~43. “Practicing emergency medicine” means acting as an emergency medicine physician in a hospital emergency department.

~~43.~~44. “Prehospital incident history report” has the same meaning as in A.R.S. § 36-2220.

~~44.~~45. “Refresher challenge examination” means a test given to an individual to assess the individual’s knowledge, skills, and competencies compared with the national education standards established for the applicable EMCT classification level.

~~45.~~46. “Refresher course” means a course intended to reinforce and update the knowledge, skills, and competencies of an individual who has previously met the national educational standards for a specific level of EMS personnel.

~~46.~~47. “Registered nurse” has the same meaning as in A.R.S. § 32-1601.

~~47.~~48. “Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.

~~48.~~49. “Scene” means the location of the patient to be transported or the closest point to the patient at which an ambulance can arrive.

~~49.~~50. “Special hospital” has the same meaning as in A.A.C. R9-10-101.

~~50.~~51. “STR skill” means “Specialty Training Requirement skill,” a medical treatment, procedure, or technique or administration of a medication for which an EMCT needs specific training beyond the training required in 9 A.A.C. 25, Article 4 in order to perform or administer.

~~51.~~52. “Transfer of care” means to relinquish to the control of another person the ongoing medical treatment of a patient.

~~52.~~53. “Transport agent” means an agent that an EMCT at a specified level of certification is authorized to administer only during interfacility transport of a patient for whom the agent’s administration was started at the sending health care institution.

ARTICLE 2. MEDICAL DIRECTION; ALS BASE HOSPITAL CERTIFICATION

R9-25-201. Administrative Medical Direction (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5), (6), and (7), 36-2204.01, and 36-2205(A) and (D))

A. An emergency medical services provider or ambulance service shall:

1. Except as specified in subsection (B) or (C), designate a physician as administrative medical director who meets one of the following:
    a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties;
    b. Has emergency medical services certification issued by the American Board of Emergency Medicine;
    c. Has emergency medicine certification issued by the American Osteopathic Board of Emergency Medicine;
    d. Has emergency medicine certification issued by the American Board of Physician Specialties;
    e. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association; or
    f. Is an emergency medicine physician in an emergency department located in Arizona and has current certification in:
        i. Advanced emergency cardiac life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
        ii. Advanced emergency trauma life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American College of Surgeons; and
        iii. Pediatric advanced emergency life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
2. If the emergency medical services provider or ambulance service designates a physician as administrative medical director according to subsection (A)(1), notify the Department in writing:
    a. Of the identity and qualifications of the designated physician within 10 days after designating the physician as administrative medical director; and

b. Within 10 days after learning that a physician designated as administrative medical director is no longer qualified to be an administrative medical director; and

3. Maintain for Department review:
   a. A copy of the policies, procedures, protocols, and documentation required in subsection (E); and
   b. Either:
      i. The name, e-mail address, telephone number, and qualifications of the physician providing administrative medical direction on behalf of the emergency medical services provider or ambulance service; or
      ii. If the emergency medical services provider or ambulance service provides administrative medical direction through an ALS base hospital or a centralized medical direction communications center, a copy of a written agreement with the ALS base hospital or centralized medical direction communications center documenting that the administrative medical director is qualified under subsection (A)(1).

B. Except as provided in R9-25-502(A)(3), if an emergency medical services provider or ambulance service provides only BLS, the emergency medical services provider or ambulance service is not required to have an administrative medical director.

C. If an emergency medical services provider or ambulance service provides administrative medical direction through an ALS base hospital or a centralized medical direction communications center, the emergency medical services provider or ambulance service shall ensure that the ALS base hospital or centralized medical direction communications center designates a physician as administrative medical director who meets one of the requirements in subsections (A)(1)(a) through (f).

D. An emergency medical services provider or ambulance service may provide administrative medical direction through an ALS base hospital certified according to R9-25-203(C), if the emergency medical services provider or ambulance service:

1. Uses the ALS base hospital for administrative medical direction only for patients who are children, and
2. Has a written agreement for the provision of administrative medical direction with an ALS base hospital that meets the requirements in R9-25-203(B)(1) or a centralized medical direction communications center.

E. An emergency medical services provider or an ambulance service shall ensure that:

1. An EMCT receives administrative medical direction as required by A.R.S. Title 36, Chapter

21.1 and this Chapter;

2. Protocols are established, documented, and implemented by an administrative medical director, consistent with A.R.S. Title 36, Chapter 21.1 and this Chapter, that include:
    a. A communication protocol for:
        i. How and from what sources an EMCT requests and receives on-line medical direction,
        ii. When and how an EMCT notifies a health care institution of the EMCT's intent to transport a patient to the health care institution, and
        iii. What procedures an EMCT follows in the event of a communications equipment failure;
    b. A triage protocol for:
        i. How an EMCT assesses and prioritizes the medical condition of a patient,
        ii. How an EMCT selects a health care institution to which a patient may be transported,
        iii. How a patient is transported to the health care institution, and
        iv. When on-line medical direction is required;
    c. A treatment protocol for:
        i. How an EMCT performs a medical treatment on a patient or administers an agent to a patient, and
        ii. When on-line medical direction is required while an EMCT is providing treatment; and
    d. A protocol for the transfer of information to the emergency receiving facility for:
        i. What information is required to be communicated to emergency receiving facility staff concurrent with the transfer of care and by what method, including the condition of the patient, the treatment provided to the patient, and the patient's response to the treatment;
        ii. What information is required to be documented on a prehospital incident history report; and
        iii. The time-frame, which is associated with the transfer of care, for completion and submission of a prehospital incident history report;
3. Policies and procedures are established, documented, and implemented by an administrative medical director, consistent with A.R.S. Title 36, Chapter 21.1 and this Chapter, that:
    a. Are consistent with an <u>EMR's or</u> EMCT's scope of practice, as specified in Table 5.1;
    b. Cover <u>for an EMCT</u>:

i. Medical recordkeeping;

ii. Medical reporting, including to whom and by what method medical reporting is accomplished;

iii. Completion and submission of prehospital incident history reports;

iv. Obtaining, storing, transferring, and disposing of agents to which an EMCT has access including methods to:

(1) Identify individuals authorized by the administrative medical director to have access to agents,

(2) Maintain chain of custody for controlled substances, and

(3) Minimize potential degradation of agents due to temperature extremes;

v. Administration, monitoring, or assisting in patient self-administration of an agent;

vi. Monitoring and evaluating an EMCT's compliance with treatment protocols, triage protocols, and communications protocols specified in subsection (E)(2);

vii. Monitoring and evaluating an EMCT's compliance with medical recordkeeping, medical reporting, and prehospital incident history report requirements;

viii. Monitoring and evaluating an EMCT's compliance with policies and procedures for agents to which the EMCT has access;

ix. Monitoring and evaluating an EMCT's competency in performing skills authorized for the EMCT by the EMCT's administrative medical director and within the EMCT's scope of practice, as specified in Table 5.1;

x. Ongoing education, training, or remediation necessary to maintain or enhance an EMCT's competency in performing skills within the EMCT's scope of practice, as specified in Table 5.1;

xi. The process by which administrative medical direction is withdrawn from an EMCT; and

xii. The process for reinstating an EMCT's administrative medical direction; ~~and~~

c. Cover for an EMR:

i. If applicable, the process and criteria for the administrative medical director to approve an individual to function as an EMR for the emergency medical services provider, according to A.R.S. § 36-2201(16), including:

(1) Verifying that the individual has documentation of hands-on training in cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations;

(2) Ensuring that the individual has competency in using an automated external defibrillator;

(3) Ensuring that the individual has competency in using noninvasive diagnostic devices; and

(4) Ensuring that the individual has competency in obtaining a patient's blood pressure, pulse, and respiratory rate,

ii. Monitoring and evaluating an EMR's competency in performing skills authorized for the EMR by the EMR's administrative medical director and within the EMR's scope of practice, as specified in Table 5.1;

iii. Ongoing education, training, or remediation necessary to maintain or enhance an EMR's competency in performing skills within the EMR's scope of practice, as specified in Table 5.1;

iv. If applicable, the process by which the administrative medical director may withdraw approval of the individual to function as an EMR; and

v. If applicable, the process for reinstating the administrative medical director's approval of the individual to function as an EMR; and

~~c.~~d. Include a quality assurance process to evaluate the effectiveness of the administrative medical direction provided to EMCTs;

4. Protocols in subsection (E)(2) and policies and procedures in subsection (E)(3) are reviewed annually by the administrative medical director and updated as necessary;

5. Requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter are reviewed annually by the administrative medical director; ~~and~~

6. The Department is notified in writing no later than ten days after the date:
   a. Administrative medical direction is withdrawn from an EMCT; or
   b. An EMCT's administrative medical direction is reinstated; and

7. If the emergency medical services provider's administrative medical director had approved an individual to function as an EMR for the emergency medical services provider, according to A.R.S. § 36-2201(16) and subsection (E)(3)(c)(i), the Department is notified no later than ten days after the date the administrative medical director:
   a. Withdraws approval of the individual to function as an EMR, or
   b. Reinstates approval of the individual to function as an EMR.

F. An administrative medical director for an emergency medical services provider or ambulance service shall ensure that:

1. An EMCT for whom the administrative medical director provides administrative medical direction:
    a. Has access to at least the minimum supply of agents required for the highest level of service to be provided by the EMCT, consistent with requirements in Article 5 of this Chapter;
    b. Administers, monitors, or assists in patient self-administration of an agent according to the requirements in policies and procedures; and
    c. Has access to a copy of the policies and procedures required in subsection (F)(2) while on duty for the emergency medical services provider or ambulance service;
2. Policies and procedures for agents to which an EMCT has access:
    a. Specify that an agent is obtained only from a person:
        i. Authorized by law to prescribe the agent, or
        ii. Licensed under A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23 to dispense or distribute the agent;
    b. Cover chain of custody and transfer procedures for each supply of agents, requiring an EMCT for whom the administrative medical director provides administrative medical direction to:
        i. Document the name and the EMCT certification number or employee identification number of each individual who takes physical control of the supply of agents;
        ii. Document the time and date that each individual takes physical control of the supply of agents;
        iii. Inspect the supply of agents for expired agents, deteriorated agents, damaged or altered agent containers or labels, and depleted, visibly adulterated, or missing agents upon taking physical control of the supply of agents;
        iv. Document any of the conditions in subsection (F)(2)(b)(iii);
        v. Notify the administrative medical director of a depleted, visibly adulterated, or missing controlled substance;
        vi. Obtain a replacement for each affected agent in subsection (F)(2)(b)(iii) for which the minimum supply is not present; and
        vii. Record each administration of an agent on a prehospital incident history report;

c. Cover mechanisms for controlling inventory of agents and preventing diversion of controlled substances; and

d. Include that an agent is kept inaccessible to all individuals who are not authorized access to the agent by policies and procedures required under subsection (E)(3)(b)(iv)(1) and, when not being administered, is:

i. Secured in a dry, clean, washable receptacle;

ii. While on a motor vehicle or aircraft registered to the emergency medical services provider or ambulance service, secured in a manner that restricts movement of the agent and the receptacle specified in subsection (F)(2)(d)(i); and

iii. If a controlled substance, in a hard-shelled container that is difficult to breach without the use of a power cutting tool and:

(1) Locked inside a motor vehicle or aircraft registered to the emergency medical services provider or ambulance service,

(2) Otherwise locked and secured in such a manner as to deter misappropriation, or

(3) On the person of an EMCT authorized access to the agent;

3. The Department is notified in writing within 10 days after the administrative medical director receives notice, as required subsection (F)(2)(b)(v), that any quantity of a controlled substance is depleted, visibly adulterated, or missing; and

4. Except when the emergency medical services provider or ambulance service obtains all agents from an ALS base hospital pharmacy, which retains ownership of the agents, agents to which an EMCT has access are obtained, stored, transferred, and disposed of according to policies and procedures; A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; 4 A.A.C. 23; and requirements of the U.S. Drug Enforcement Administration.

G. An administrative medical director may delegate responsibilities to an individual as necessary to fulfill the requirements in this Section, if the individual is:

1. Another physician,
2. A physician assistant,
3. A registered nurse practitioner,
4. A registered nurse,
5. A Paramedic, or
6. An EMT-I(99).

ARTICLE 3. TRAINING PROGRAMS

R9-25-301. Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. To apply for certification as a training program, an applicant shall submit an application to the Department, in a Department-provided format, including:

1. The applicant's name, address, and telephone number;
2. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
3. The name of each course the applicant plans to provide;
4. Attestation that the applicant has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references for the courses specified in subsection (A)(3);
5. The name, telephone number, and e-mail address of the training program medical director;
6. The name, telephone number, and e-mail address of the training program director;
7. If the applicant is a business organization, an attestation that business organization is active and in good standing with the Arizona Corporation Commission;
8. If the applicant is an educational institution, an attestation that the educational institution is in good standing with the Arizona School Boards Association or the Arizona Board of Private Postsecondary Education;
~~7.~~9. Attestation that the applicant will comply with all requirements in A.R.S. Title 36, Chapter 21.1 and 9 A.A.C. 25;
~~8.~~10. Attestation that all information required as part of the application has been submitted and is true and accurate; and
~~9.~~11. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

B. An applicant may submit to the Department a copy of an accreditation report if the applicant is currently accredited by a national accrediting organization.

C. The Department shall certify a training program if the applicant:

1. Has not operated a training program that has been decertified by the Department within five years before submitting the application,
2. Submits an application that is complete and compliant with requirements in this Article,

and

3. Has not knowingly provided false information on or with an application required by this Article.

D. The Department:

1. Shall assess a training program at least once every 24 months after certification to determine ongoing compliance with the requirements of this Article; and
2. May inspect a training program according to A.R.S. § 41-1009:
   a. As part of the substantive review time-frame required in A.R.S. §§ 41-1072 through 41-1079, or
   b. As necessary to determine compliance with the requirements of this Article.

E. The Department shall approve or deny an application under this Article according to Article 12 of this Chapter.

F. A training program certificate is valid only for the name of the training program certificate holder and the courses listed by the Department on the certificate and may not be transferred to another person.

R9-25-302. Administration (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (4), and 36-2204(1) and (3))

A. A training program certificate holder shall ensure that a training program medical director:

1. Is a physician or exempt from physician licensing requirements under A.R.S. ~~§§~~ § 32-1421(A)(7) or 32-1821(3);
2. Meets one of the following:
   a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties,
   b. Has emergency medical services certification issued by the American Board of Emergency Medicine,
   c. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association, or
   d. Is an emergency medicine physician in an emergency department located in Arizona and has current certification that meets the requirements in ~~R9-25-201(A)(1)(d)(i) through (iii)~~ R9-25-201(A)(1)(f)(i) through (iii); and
3. Before the start date of a course session, reviews the course content outline and final examinations to ensure consistency with, as applicable:
   a. ~~the~~ The national educational standards for the applicable EMCT classification

level; or

b. Either:

i. The national educational standards for an EMR, or

ii. The topics specified in A.R.S. § 36-2201(17).

B. A training program certificate holder shall ensure that a training program director:

1. Is one of the following:
   a. A physician with at least two years of experience providing emergency medical services as a physician;
   b. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services as a doctor of allopathic medicine or osteopathic medicine;
   c. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services as a registered nurse;
   d. A physician assistant with at least two years of experience providing emergency medical services as a physician assistant; or
   e. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower classification level of EMCT;
2. Has completed 24 hours of training related to instructional methodology including:
   a. Organizing and preparing materials for didactic instruction, clinical training, field training, and skills practice;
   b. Preparing and administering tests and practical examinations;
   c. Using equipment and supplies;
   d. Measuring student performance;
   e. Evaluating student performance;
   f. Providing corrective feedback; and
   g. Evaluating course effectiveness;
3. Supervises the day-to-day operation of the courses offered by the training program;
4. Supervises and evaluates the lead instructor for a course session;
5. Monitors the training provided by all preceptors providing clinical training or field training; and
6. Does not participate as a student in a course session, take a refresher challenge examination, or receive a certificate of completion for a course given by the training

program.

C. A training program certificate holder shall:

1. Maintain with an insurance company authorized to transact business in this state:
   a. A minimum single claim professional liability insurance coverage of $500,000, and
   b. A minimum single claim general liability insurance coverage of $500,000 for the operation of the training program; or
2. Be self-insured for the amounts in subsection (C)(1).

D. A training program certificate holder shall ensure that policies and procedures are:

1. Established, documented, and implemented covering:
   a. Student enrollment, including verification that a student has proficiency in reading at the 9th grade level and meets all course admission requirements;
   b. Maintenance of student records and medical records, including compliance with all applicable state and federal laws governing confidentiality, privacy, and security; and
   c. For each course offered:
      i. Student attendance requirements, including leave, absences, make-up work, tardiness, and causes for suspending or expelling a student for unsatisfactory attendance;
      ii. Grading criteria, including the minimum grade average considered satisfactory for continued enrollment and standards for suspending or expelling a student for unsatisfactory grades;
      iii. Administration of final examinations; and
      iv. Student conduct, including causes for suspending or expelling a student for unsatisfactory conduct;
2. Reviewed annually and updated as necessary; and
3. Maintained on the premises and provided to the Department at the Department's request.

R9-25-304. Course and Examination Requirements (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (4), and 36-2204(1), (2), and (3))

A. For each course provided, a training program director shall ensure that:

1. The required equipment and facilities established for the course are available for use;
2. The following are prepared and provided to course applicants before the start date of a course session:
   a. A description of requirements for admission, course content, course hours, course

fees, and course completion, including whether the course prepares a student ~~for~~:

i. ~~A~~ For a national certification organization examination for ~~the~~ a specific EMCT classification level,

ii. ~~A~~ For a statewide standardized certification test under the state certification process, ~~or~~

iii. ~~Recertification~~ For recertification at a specific EMCT classification level, or

iv. To function as an EMR;

b. A list of books, equipment, and supplies that a student is required to purchase for the course;

c. Notification of eligibility for the course as specified in ~~R9-25-305(B), (D)(1) and (2), or (F)(1) and (2)~~ R9-25-305(D), (F), (G)(1) and (2), (I)(1) and (2), or (K)(1) and (2), as applicable;

d. Notification of any specific requirements for a student to begin any component of the course, including, as applicable:

i. Prerequisite knowledge, skill, and abilities;

ii. Physical examinations;

iii. Immunizations;

iv. Documentation of freedom from infectious tuberculosis;

v. Drug screening; and

vi. The ability to perform certain physical activities; and

e. The policies for the course on student attendance, grading, student conduct, and administration of final examinations, required in R9-25-302(D)(1)(c)(i) through (iv);

3. Information is provided to assist ~~a~~ an EMCT student to:

a. Register for and take an applicable national certification organization examination;

b. Complete application forms for registration in a national certification organization; and

c. Complete application forms for certification under 9 A.A.C. 25, Article 4;

4. A lead instructor is assigned to each course session who:

a. Is one of the following:

i. A physician with at least two years of experience providing emergency medical services;

ii. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services;

iii. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services;

iv. A physician assistant with at least two years of experience providing emergency medical services; or

v. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual:

(1) ~~for~~ For certification or recertification at the same or lower EMCT classification level, or

(2) To function as an EMR;

b. Has completed training related to instructional methodology specified in R9-25-302(B)(2);

c. Except as provided in subsection (A)(4)(d), is available for student-instructor interaction during all course hours established for the course session; and

d. Designates an individual who meets the requirements in subsections (A)(4)(a) and (b) to be ~~present~~ available and act as the lead instructor when the lead instructor is not ~~present~~ available; and

5. Clinical training and field training are provided:

a. Under the supervision of a preceptor who has at least two years of experience providing emergency medical services and is one of the following:

i. An individual licensed in this or another state or jurisdiction as a doctor of allopathic medicine or osteopathic medicine;

ii. An individual licensed in this or another state or jurisdiction as a registered nurse;

iii. An individual licensed in this or another state or jurisdiction as a physician assistant; or

iv. An EMCT, only for courses to prepare an individual:

(1) ~~for~~ For certification or recertification at the same or lower EMCT classification level, or

(2) To function as an EMR;

b. Consistent with the clinical training and field training requirements established

for the course; and

c. If clinical training or field training ~~are~~ is provided by a person other than the training program certificate holder, under a written agreement with the person providing the clinical training or field training that includes a termination clause that provides sufficient time for a student to complete the training upon termination of the written agreement.

B. A training program director may combine the students from more than one course session for didactic instruction.

C. For a final examination or refresher challenge examination for each course offered, a training program director shall ensure that:

1. The final examination or refresher challenge examination for the course is completed onsite at the training program or at a facility used for course instruction;
2. Except as provided in subsection (D), the final examination or refresher challenge examination for a course includes a:
   a. Written test:
      i. With one absolutely correct answer, two incorrect answers, and one distractor, none of which is "all of the above" or "none of the above";
      ii. With 150 multiple-choice questions for the:
         (1) Final examination for a refresher course, or
         (2) Refresher challenge examination for a course;
      iii. That covers the learning objectives of the course with representation from all topics covered by the course; and
      iv. That requires a passing score of 75% or higher in no more than three attempts for a final examination and no more than one attempt for a refresher challenge examination; and
   b. Comprehensive practical skills, hands-on test:
      i. For a course preparing an individual for EMCT certification:
         (1) Evaluating the student's technical proficiency in skills consistent with the national education standards for the applicable EMCT classification level, and
         ~~ii.~~(2) Reflecting the skills necessary to pass a national certification organization examination at the applicable EMCT classification level; or
      ii. For a course preparing an individual to function as an EMR, evaluating

the student's technical proficiency in skills consistent with the topics in A.R.S. § 36-2201(17);

3. The identity of each student taking the final examination or refresher challenge examination is verified;
4. A student does not receive verbal or written assistance from any other individual or use notes, books, or documents of any kind as an aid in taking the examination;
5. A student who violates subsection (C)(4) is not permitted to complete the examination or to receive a certificate of completion for the course or refresher challenge examination; and
6. An instructor who allows a student to violate subsection (C)(4) or assists a student in violating subsection (C)(4) is no longer permitted to serve as an instructor.

D. A training program director shall ensure that a standardized certification test for a student under the state certification process includes:

1. A written test that meets the requirements in subsection (C)(2)(a); and
2. Either:
   a. A comprehensive practical skills test that meets the requirements in subsection (C)(2)(b), or
   b. An attestation of practical skills proficiency on a Department-provided form.

E. A training program director shall ensure that:

1. A student is allowed no longer than six months after the date of the last day of classroom instruction for a course session to complete all course requirements,
2. There is a maximum ratio of four students to one preceptor for the clinical training portion of a course, and
3. There is a maximum ratio of one student to one preceptor for the field training portion of a course.

F. A training program director shall:

1. For a student who completes a course, issue a certificate of completion containing:
   a. Identification of the training program,
   b. Identification of the course completed,
   c. The name of the student who completed the course,
   d. The date the student completed all course requirements,
   e. Attestation that the student has met all course requirements, and
   f. The signature or electronic signature of the training program director and the date of signature or electronic signature; and

2. For an individual who passes a refresher challenge examination, issue a certificate of completion containing:
   a. Identification of the training program,
   b. Identification of the refresher challenge examination administered,
   c. The name of the individual who passed the refresher challenge examination,
   d. The date or dates the individual took the refresher challenge examination,
   e. Attestation that the individual has passed the refresher challenge examination, and
   f. The signature or electronic signature of the training program director and the date of signature or electronic signature.

R9-25-305. Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (4), and 36-2204(1) and (3))

A. For the purposes of this Section, "contact hour" means a 60-minute period during which a student is:
1. For didactic instruction, in a classroom situation and receiving instruction, with the lead instructor for the course, as specified in R9-25-304(A)(4), or a designee, according to R9-25-304(A)(4)(d);
2. For practical skills training, in a classroom situation and receiving instruction, with the lead instructor for the course, as specified in R9-25-304(A)(4), or a designee, according to R9-25-304(A)(4)(d), present on-site; and
3. For clinical training or field training, with the student's preceptor, according to R9-25-304(A)(5)(a), and receiving supervised, one-on-one interaction with a patient or, if necessary, simulated patient.

B. A training program certificate holder shall ensure that, for a course to prepare an individual to provide services as an EMR, the course:
1. Covers the knowledge, skills, and competencies established for an emergency medical responder program, as defined in A.R.S. § 36-2201(17);
2. Has a minimum course length of 75 hours, including:
   a. A minimum of 70 contact hours of didactic instruction and practical skills training, and
   b. A minimum of five contact hours of clinical training and field training, with at least five patient or simulated patient interactions; and
3. Has no more than 24 students enrolled in each session of the course.

~~**A.**~~**C.** ~~Except as specified in subsection (B), a~~ A training program certificate holder shall ensure that a

certification course offered by the training program:

1. Covers knowledge, skills, and competencies comparable to the national education standards established for a specific EMCT classification level;
2. Prepares a student for:
    a. A national certification organization examination for the specific EMCT classification level, or
    b. A standardized certification test under the state certification process;
3. Has no more than 24 students enrolled in each session of the course; and
4. Has a minimum course length of:
    a. For an EMT certification course, 130 hours, including:
        i. A minimum of 120 contact hours of didactic instruction and practical skills training, and
        ii. A minimum of 10 contact hours of clinical training and field training, with at least 10 patient or simulated patient interactions;
    b. For an AEMT certification course, 244 hours, including:
        i. A minimum of 100 contact hours of didactic instruction and practical skills training, and
        ii. A minimum of 144 contact hours of clinical training and field training; and
    c. For a Paramedic certification course, 1000 hours, including:
        i. A minimum of 500 contact hours of didactic instruction and practical skills training, and
        ii. A minimum of 500 contact hours of clinical training and field training.

~~B.~~**D.** A training program director shall ensure that, in addition to the requirements in subsection (C), for an AEMT certification course or a Paramedic certification course, a student has one of the following:

1. Current certification from the Department as an EMT or higher EMCT classification level,
2. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program, or
3. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level.

~~C.~~**E.** A training program director shall ensure that for a course to prepare an EMT-I(99) for Paramedic

certification:

1. A student has current certification from the Department as an EMT-I(99);
2. The course covers the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references;
3. The minimum course length is 600 hours, including:
   a. A minimum of 220 contact hours of didactic instruction and practical skills training, and
   b. A minimum of 380 contact hours of clinical training and field training; and
4. A minimum of 60 contact hours of training in anatomy and physiology are completed by the student:
   a. As a prerequisite to the course,
   b. As preliminary instruction completed at the beginning of the course session before the didactic instruction required in subsection ~~(C)(34)(a)~~ (E)(3)(a) begins, or
   c. Through integration of the anatomy and physiology material with the units of instruction required in subsection ~~(C)(34)~~ (E)(3).

F. A training program director shall ensure that for a course to prepare a Paramedic for an additional endorsement to provide critical care services:

1. A student has:
   a. Current certification from the Department as a Paramedic, and
   b. Worked for at least two years as a Paramedic;
2. The course:
   a. Covers the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references;
   b. Prepares a student for a national certification organization examination in critical care paramedicine; and
   c. Has no more than 24 students enrolled in each session of the course; and
3. The minimum course length is 200 hours, including:
   a. A minimum of 135 contact hours of didactic instruction and practical skills training in:
      i. Critical care transport;
      ii. Patient assessment and safety;

iii. Advanced pharmacology;

iv. Advanced hemodynamics;

v. Neurologic, obstetric, and medical emergencies;

vi. Mechanical ventilation and airway management;

vii. Flight physiology, safety, and transport;

viii. Interpretation of laboratory values; and

ix. Sepsis; and

b. A minimum of 40 contact hours of clinical training and 25 contact hours of field training, which may include the use of high-fidelity patient simulators, life-like manikins that mimic human body functions and provide physiologically accurate reactions to procedures.

~~D.~~**G.** A training program director shall ensure that for an EMT refresher course:

1. A student has one of the following:
   a. Current certification from the Department as an EMT or higher EMCT classification level,
   b. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program,
   c. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level, or
   d. Documentation from a national certification organization requiring the student to complete the EMT refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;
3. The EMT refresher course covers the knowledge, skills, and competencies in the national education standards established at the EMT classification level;
4. No more than 32 students are enrolled in each session of the course; and
5. The minimum course length is 24 contact hours.

~~E.~~**H.** A training program authorized to provide an EMT refresher course may administer a refresher challenge examination covering materials included in the EMT refresher course to an individual eligible for admission into the EMT refresher course.

~~F.~~**I.** ~~A~~ Except as provided in subsection (K), a training program director shall ensure that for an ALS

refresher course:

1. A student has one of the following:
   a. Current certification from the Department as an AEMT, an EMT-I(99), or a Paramedic;
   b. Documentation of completion of a prior training course, at the AEMT classification level or higher, provided by a training program certified by the Department or an equivalent training program;
   c. Documentation of current registration in a national certification organization at the AEMT or Paramedic classification level; or
   d. Documentation from a national certification organization requiring the student to complete the ALS refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification, completed before beginning the ALS refresher course, in:
   a. Adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;; and
   b. For a student who has current certification as an EMT-I(99) or higher level of EMCT classification, advanced emergency cardiac life support;
3. The ALS refresher course covers:
   a. For a student who has current certification as an AEMT or documentation of completion of prior training at an AEMT classification level, the knowledge, skills, and competencies in the national education standards established for an AEMT;
   b. For a student who has current certification as an EMT-I(99), the knowledge, skills, and competencies established according to A.R.S. § 36-2204 for an EMT-I(99) ~~as of the effective date of this Section~~ and available through the Department at www.azdhs.gov/ems-regulatory-references; and
   c. For a student who has current certification as a Paramedic or documentation of completion of prior training at a Paramedic classification level, the knowledge, skills, and competencies in the national education standards established for a Paramedic; ~~and~~
4. No more than 32 students are enrolled in each session of the course; and
5. The minimum course length is 48 contact hours.

~~G.~~**J.** A training program authorized to provide an ALS refresher course may administer a refresher challenge examination covering materials included in the ALS refresher course to an individual eligible for admission into the ALS refresher course.

K. A training program director shall ensure that for a refresher course for a Paramedic with an additional endorsement to provide critical care services:

1. A student has current certification from the Department as a Paramedic with an additional endorsement to provide critical care services;
2. A student has documentation of current certification, completed before beginning the refresher course, in:
   a. Adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs; and
   b. Advanced emergency cardiac life support;
3. The refresher course covers the knowledge, skills, and competencies established according to A.R.S. § 36-2204 for a Paramedic with an additional endorsement to provide critical care services and available through the Department at www.azdhs.gov/ems-regulatory-references;
4. No more than 32 students are enrolled in each session of the course; and
5. The minimum course length is 60 contact hours and includes at least 8 contact hours on topics pertinent to providing critical care services.

L. A training program authorized to provide a refresher course for a Paramedic with an additional endorsement to provide critical care services may administer a refresher challenge examination covering materials included in the refresher course to an individual eligible for admission into the refresher course.

ARTICLE 4. EMCT CERTIFICATION

R9-25-401. EMCT General Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H) and 36-2204(1), (6), and (7))

A. In addition to the definitions in R9-25-101, the following definition applies in this Article:

1. "Moral turpitude" has the same meaning as in A.R.S. § 1-215.

~~**A.**~~**B.** Except as provided in ~~R9-25-404(E)~~ R9-25-404(G) and R9-25-405, an individual shall not act as an EMCT unless the individual has current certification or recertification from the Department.

~~**B.**~~**C.** An EMCT shall act as an EMCT only:

1. As authorized under the EMCT's scope of practice as specified in Article 5 of this Chapter; and
2. For an EMCT required to have medical direction according to A.R.S. Title 36, Chapter 21.1 and R9-25-502, as authorized by the EMCT's administrative medical director under:
   a. Treatment protocols, triage protocols, and communication protocols approved by the EMCT's administrative medical director as specified in R9-25-201(E)(2); and
   b. Medical recordkeeping, medical reporting, and prehospital incident history report requirements approved by the EMCT's administrative medical director as specified in R9-25-201(E)(3)(b).

~~**C.**~~**D.** Except as provided in A.R.S. § 36-2211, the Department shall certify or recertify an individual as an EMCT for a period of two years.

~~**D.**~~**E.** An individual whose EMCT certificate is expired shall not apply for recertification, except as provided in R9-25-404(A).

~~**E.**~~**F.** The Department shall comply with the confidentiality requirements in A.R.S. §§ 36-2220(E) and 36-2245(M).

R9-25-403. Application Requirements for EMCT Certification or Paramedic Endorsement for Providing Critical Care Services (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (H) and 36-2204(1) and (6))

A. An individual may apply for initial EMCT certification if:

1. The individual is at least 18 years of age;
2. The individual complies with the requirements in A.R.S. § 41-1080;
3. The individual is not ineligible under R9-25-402; and
4. One of the following applies to the individual:
   a. The individual has not previously applied for certification from the Department

or has withdrawn an application for certification;

b. An application for certification submitted by the individual was denied by the Department two or more years before the present date;

c. Except as provided in R9-25-404(A)(2) or (3), the individual's certification as an EMCT is expired;

d. The individual's certification as an EMCT was revoked by the Department five or more years before the present date; or

e. The individual has current certification as an EMCT and is applying for certification at a different classification level of EMCT.

B. An applicant for initial EMCT certification shall submit to the Department an application ~~in a Department-provided format~~, including:

1. ~~A form containing~~ The following information in a Department-provided format:

a. The applicant's name, address, telephone number, email address, date of birth, gender, and Social Security number;

b. The level of EMCT certification being requested;

c. Responses to questions addressing the applicant's criminal history according to R9- 25-402(A)(1) through (3) and (C);

d. Whether the applicant has within the five years before the date of the application had:

i. EMCT certification or recertification revoked in Arizona; ~~or~~

ii. Certification, recertification, or licensure at an EMCT classification level revoked, suspended, or voluntarily surrendered in another state or jurisdiction; or

iii. Certification or licensure as a health professional, as defined in A.R.S. § 36-3201, revoked, suspended, or voluntarily surrendered in Arizona or in another state or jurisdiction;

e. Attestation that all information required as part of the application has been submitted and is true and accurate; and

f. The applicant's signature or electronic signature and date of signature;

2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation ~~on a Department-provided form~~ in a Department-provided format and supporting documentation;

3. For each affirmative response to subsection (B)(1)(d), a detailed explanation ~~on a Department-provided form~~ in a Department-provided format and supporting

documentation;

4. If applicable, a copy of certification, recertification, or licensure at an EMCT classification level issued to the applicant in another state or jurisdiction;

5. ~~A copy of one of the following for the applicant:~~ Documentation for the applicant that complies with A.R.S. § 41-1080;

   ~~a. U.S. passport, current or expired;~~

   ~~b. Birth certificate;~~

   ~~c. Naturalization documents; or~~

   ~~d. Documentation of legal resident alien status~~; and

6. One of the following:

   ~~a. Either:~~

      ~~i. A certificate of completion showing that within two years before the date of the application, the applicant completed statewide standardized training; and~~

      ~~ii. A statewide standardized certification test; or~~

   ~~b.~~a. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification~~.~~;

   b. Documentation of completion of training and testing by a branch of the U.S. Armed Forces that is comparable to requirements of a national certification organization for the applicable or higher level of EMCT classification; or

   c. A certificate of completion showing that, within the two years before the date of the application, the applicant completed statewide standardized training and a statewide standardized certification test.

C. A Paramedic applying for endorsement for providing critical care services shall submit to the Department an application, including:

1. The following information in a Department-provided format:

   a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;

   b. The applicant's current certification number as a Paramedic;

   c. Attestation that all information required as part of the application has been submitted and is true and accurate; and

   d. The applicant's signature or electronic signature and date of signature; and

2. Documentation of passing a critical care examination given by a national certification organization.

~~B.~~**D.** The Department shall approve or deny an application for initial EMCT certification according to Article 12 of this Chapter.

~~C.~~**E.** If the Department denies an application for initial EMCT certification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-404. Application Requirements for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), (B), and (H) and 36-2204(1), (4), and (6))

A. An individual may apply for recertification at the same classification level of EMCT certification held or at a lower classification level of EMCT certification:

1. Within 90 days before the expiration date of the individual's current EMCT certification;
2. Within the 30-day period after the expiration date of the individual's EMCT certification, as provided in subsection ~~(E)~~ (G); or
3. Within the extension time period granted under R9-25-405.

B. To apply for recertification, an applicant shall submit to the Department an application, ~~in a Department-provided format,~~ including:

1. ~~A form containing~~ The following information in a Department-provided format:
   a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;
   b. The applicant's current certification number;
   c. Responses to questions addressing the applicant's criminal history according to R9-25-402(B), (D), and (E);
   d. Whether the applicant has within the five years before the date of the application had:
      i. EMCT certification or recertification revoked in Arizona; ~~or~~
      ii. Certification, recertification, or licensure at an EMCT classification level revoked, suspended, or voluntarily surrendered in another state or jurisdiction; or
      iii. Certification or licensure as a health professional, as defined in A.R.S. § 36-3201, revoked, suspended, or voluntarily surrendered in Arizona or in another state or jurisdiction;
   e. An indication of the classification level of EMCT certification held currently or within the past 30 days and of the classification level of EMCT certification for which recertification is requested;
   f. If the applicant is employed, the name of the employer;
   ~~f.~~g. Attestation that all information required as part of the application has been

submitted and is true and accurate; and

~~g.~~h. The applicant's signature or electronic signature and date of signature;

2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation ~~on a Department-provided form~~ in a Department-provided format and supporting documentation;

3. For an affirmative response to subsection (B)(1)(d), a detailed explanation ~~on a Department-provided form~~ in a Department-provided format; and

4. For an application submitted within 30 days after the expiration date of EMCT certification, a nonrefundable certification extension fee of $150.

C. In addition to the application in subsection (B), an applicant for EMCT recertification shall submit one of the following to the Department:

1. A certificate of course completion issued by the training program director under R9-25-304(F) showing that within two years before the date of the application, the applicant completed either:

   a. ~~the applicable~~ The refresher course in R9-25-305(G), (I), or (K), as applicable; or

   b. ~~applicable~~ The refresher challenge examination in R9-25-305(H), (J), or (L), as applicable;

2. Documentation of;

   a. ~~current~~ Current registration in a national certification organization at the applicable or higher classification level of EMCT classification; and

   b. For a recertifying Paramedic applying for continued endorsement for providing critical care services, current certification in critical care paramedicine by a national certification organization; or

3. Attestation ~~on a Department-provided form~~ in a Department-provided format that the applicant:

   a. Has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;

   b. For EMT-I(99) recertification or Paramedic recertification, has documentation of current certification in advanced emergency cardiac life support;

   c. Has documentation of having completed within the previous two years the following number of hours of continuing education in topics that are consistent with the content of the applicable refresher course:

i. For EMT recertification, a minimum of 24 hours;

ii. For AEMT recertification, EMT-I(99) recertification, or Paramedic recertification without endorsement for providing critical care services, a minimum of 48 hours;

iii. For Paramedic recertification and continuing endorsement for providing critical care services, a minimum of 60 hours, with at least 8 hours on topics pertinent to providing critical services; and

~~iii.~~iv. Included in the hours required in subsections (C)(3)(c)(i), ~~or (ii)~~ (ii), or (iii), as applicable, a minimum of 5 hours in pediatric emergency care; and

d. For EMT recertification, has functioned in the capacity of an EMT for at least 240 hours during the previous two years.

D. An applicant who submits an attestation under subsection (C)(3) shall maintain the applicable documentation for at least three years after the date of the application.

E. If an individual submits an application for recertification, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:

1. Was authorized to act as an EMCT during the period between the expiration date of the individual's EMCT certification and the date the application was submitted, and
2. Is authorized to act as an EMCT until the Department makes a final determination on the individual's application for recertification.

F. If an individual does not submit an application for recertification before the expiration date of the individual's EMCT certification or, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:

1. Is not an EMCT,
2. Was not authorized to act as an EMCT during the 30-day period after the expiration date of the individual's EMCT certification, and
3. May submit an application to the Department for initial EMCT certification according to R9-25-403.

G. The Department shall approve or deny an application for recertification according to Article 12 of this Chapter.

H. If the Department denies an application for recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

I. The Department may deny, based on failure to meet the standards for recertification in A.R.S. Title 36, Chapter 21.1 and this Article, an application submitted with a certification extension fee.

R9-25-407. Notification Requirements (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6), and 36-2211)

A. No later than 30 days after the date an EMCT's name legally changes, the EMCT shall submit to the Department:

1. ~~A completed form provided by the Department containing~~ The following information in a Department-provided format:
   a. The name under which the EMCT is currently certified by the Department;
   b. The EMCT's address, telephone number, and Social Security number; and
   c. The EMCT's new name; and
2. Documentation showing that the name has been legally changed.

B. No later than 30 days after the date an EMCT's address or email address changes, the EMCT shall submit to the Department ~~a completed form provided by the Department containing~~ the following information in a Department-provided format:

1. The EMCT's name, telephone number, and Social Security number; and
2. The EMCT's new address or email address.

C. An EMCT shall notify the Department in writing no later than 10 days after the date the EMCT:

1. Is incarcerated or is placed on parole, supervised release, or probation for any criminal conviction;
2. Is convicted of:
   a. A crime specified in R9-25-402(A)(2),
   b. A misdemeanor involving moral turpitude,
   c. A felony in this state or any other state or jurisdiction, or
   d. A misdemeanor specified in R9-25-402(E);
3. Has registration revoked or suspended by a national certification organization; ~~or~~
4. Has certification, recertification, or licensure at an EMCT classification level revoked~~, or~~ suspended, or voluntarily surrendered in another state or jurisdiction; or
5. Has certification or licensure as a health professional, as defined in A.R.S. § 36-3201, revoked, suspended, or voluntarily surrendered in Arizona or in another state or jurisdiction.

R9-25-408. Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H), 36-2204(1), (6), and (7), and 36-2211)

A. For purposes of A.R.S. § 36-2211(A)(1), unprofessional conduct is an act or omission made by an EMCT that is contrary to the recognized standards or ethics of the Emergency Medical

Technician profession or that may constitute a danger to the health, welfare, or safety of a patient or the public, including:

1. Impersonating an EMCT of a higher classification level of certification or impersonating a health professional as defined in A.R.S. § 32-3201;
2. Permitting or allowing another individual to use the EMCT's certification for any purpose;
3. Aiding or abetting an individual who is not certified according to this Chapter in acting as an EMCT or in representing that the individual is certified as an EMCT;
4. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, with a patient while acting as an EMCT;
5. Physically or verbally harassing, abusing, threatening, or intimidating a patient or another individual while acting as an EMCT;
6. Making false or materially incorrect entries in a medical record or wilful destruction of a medical record;
7. Failing or refusing to maintain adequate records on a patient;
8. Soliciting or obtaining monies or goods from a patient by fraud, deceit, or misrepresentation;
9. Aiding or abetting an individual in fraud, deceit, or misrepresentation in meeting or attempting to meet the application requirements for EMCT certification or EMCT recertification contained in this Article, including the requirements established for:
    a. Completing and passing a course provided by a training program; and
    b. The national certification organization examination process and national certification organization registration process;
10. Providing false information or making fraudulent or untrue statements to the Department or about the Department during an investigation conducted by the Department;
11. Being incarcerated or being placed on parole, supervised release, or probation for any criminal conviction;
12. Being convicted of a ~~misdemeanor identified in R9-25-402(E)~~ crime specified in R9-25-407(C)(2), which has not been ~~absolutely discharged~~ set aside, pardoned, sealed, included on a certificate of second chance, expunged, or vacated;
13. Having national certification organization registration revoked or suspended by the national certification organization for material noncompliance with national certification organization rules or standards; ~~and~~
14. Having certification, recertification, or licensure at an EMCT classification level revoked

or suspended in another state or jurisdiction.; and

15. Continuing to provide services as an EMCT without notifying the Department of having certification or licensure as a health professional, as defined in A.R.S. § 36-3201, revoked, suspended, or voluntarily surrendered in Arizona or in another state or jurisdiction.

B. Under A.R.S. § 36-2211, physical or mental incompetence of an EMCT is the EMCT's lack of physical or mental ability to provide emergency medical services as required under this Chapter.

C. Under A.R.S. § 36-2211 gross incompetence or gross negligence is an EMCT's wilful act or wilful omission of an act that is made in disregard of an individual's life, health, or safety and that may cause death or injury.

R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H), 36-2204(1), (6), and (7), and 36-2211)

A. If the Department determines that an applicant or EMCT is not in substantial compliance with applicable laws and rules, under A.R.S. ~~§§~~ § 36-2204 or 36-2211, the Department may:

1. Take the following action against an applicant or EMCT:
   a. After notice is provided according to A.R.S. § 36-2211 and, if applicable, A.R.S. Title 41, Chapter 6, Article 10, issue:
      i. A decree of censure to the EMCT, or
      ii. An order of probation to the EMCT; or
   b. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
      i. Deny an application,
      ii. Suspend the EMCT's certificate, or
      iii. Revoke the EMCT's certificate; and
2. Assess civil penalties against the EMCT.

B. In determining which action in subsection (A) is appropriate, the Department shall consider:

1. Prior disciplinary actions;
2. The time interval since a prior disciplinary action, if applicable;
3. The applicant's or EMCT's motive;
4. The applicant's or EMCT's pattern of conduct;
5. The number of offenses;
6. Whether the applicant or EMCT failed to comply with instructions from the Department;
7. Whether interim rehabilitation efforts were made by the applicant or EMCT;
8. Whether the applicant or EMCT refused to acknowledge the wrongful nature of the

misconduct;

9. Whether the applicant or EMCT made timely and good-faith efforts to rectify the consequences of the misconduct;
10. The submission of false evidence, false statements, or other deceptive practices during an investigation or disciplinary process;
11. The vulnerability of a patient or other victim of the applicant's or EMCT's conduct, if applicable; and
12. How much control the applicant or EMCT had over the processes or situation leading to the misconduct.

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES - EMERGENCY MEDICAL SERVICES

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

August 2024

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH PROGRAM SERVICES– EMERGENCY MEDICAL SERVICES

1. An identification of the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-2202 requires the Arizona Department of Health Services (Department) to certify and recertify emergency medical care technicians (EMCTs). A.R.S. § 36-2204(1) and (3) require the Department to adopt statewide standardized training, certification and recertification standards, and standardized continuing education criteria for all classifications of EMCTs. The Department has adopted standards and criteria that pertain to training for EMCTs and their certification in 9 A.A.C. 25, Articles 3 and 4. After receiving rulemaking approval pursuant to A.R.S. § 41-1039, the Department is amending the rules in 9 A.A.C. 25 to address issues identified in a five-year-review report for these two Articles, as well as to address statutory changes. To implement Laws 2022, Ch. 381, the Department is revising the rules to address training and approval requirements for Emergency Medical Responders, which require revisions in A.A.C. R9-25-101 and R9-25-201. In addition, both Articles 3 and 4 will be revised to include requirements related to critical care Paramedics, as stated in a recent rulemaking that included the rules in 9 A.A.C. 25, Article 9. The Department believes that making these changes will eliminate confusion, increase the effectiveness of the rules, and improve the health and safety of patients receiving care from an EMCT.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

- The Department
- Certified training programs and their staff
- Training program directors
- Emergency medical services providers and ambulance services
- Administrative medical directors for an emergency medical services provider

or ambulance service

- Emergency Medical Care Technicians (EMCTs) and applicants for certification or critical care endorsement, including students in certified training programs
- Individuals desiring to function as an Emergency Medical Responder (EMR), including students in certified training programs
- Patients and their families
- General public

3. Cost/Benefit Analysis

This analysis covers costs and benefits associated with the rule changes and does not describe the effects imposed by statutes. No new FTEs will be required due to this rulemaking. The annual cost and revenue changes are designated as minimal when $2,000 or less, moderate when between $2,000 and $20,000, and substantial when $20,000 or greater in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the sections immediately following.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
The Department	Clarifies requirements in the current rules	None-to-minimal	Significant
	Updates application requirements	Minimal	Significant
	Allows for electronic notification of a name change or address or email address changes	Minimal	Significant
	Establishes requirements for Paramedic endorsement in critical care and renewal of endorsement	Minimal	Significant
	Adds to what is considered unprofessional conduct	None-to-minimal	Significant

Publicly owned emergency medical services providers and ambulance services and their administrative medical directors	Clarifies requirements in the current rules	None	Significant
	Adds requirements related to approval of an individual as an EMR, according to A.R.S. § 36-2201(16)	Minimal-to-moderate	Significant
	Provides requirements for training related to the content and provision of courses for EMRs and Paramedics wanting an additional endorsement to provide critical care services	None-to-minimal	Minimal-to-substantial
	Provides a pathway for endorsement of a Paramedic to provide critical care services	None-to-minimal	Minimal-to-substantial
Publicly owned training programs and their program directors	Clarifies requirements in the current rules	None	Significant
	Adds an attestation of good standing with the Arizona School Boards Association	Minimal/substantial	None
	Adds requirements related to the content and provision of an EMR training course and for a course to prepare a Paramedic for an additional endorsement to provide critical care services	Up to substantial	Up to substantial
	Makes changes to allow for virtual or asynchronous training and for use of a simulated patient	None-to-substantial	Up to substantial
B. Privately Owned Businesses			

Privately owned emergency medical services providers and ambulance services and their administrative medical directors	Clarifies requirements in the current rules	None	Significant
	Adds requirements related to approval of an individual as an EMR, according to A.R.S. § 36-2201(16)	Minimal-to-moderate	Significant
	Provides requirements for training related to the content and provision of courses for EMRs and Paramedics wanting an additional endorsement to provide critical care services	None-to-minimal	Minimal-to-substantial
	Provides a pathway for endorsement of a Paramedic to provide critical care services	None-to-minimal	Minimal-to-substantial
Privately owned training programs and their program directors	Clarifies requirements in the current rules	None	Significant
	Adds an attestation of good standing with the Arizona Corporation Commission or Arizona Board of Private Postsecondary Education	Minimal/substantial	None
	Adds requirements related to the content and provision of an EMR training course and for a course to prepare a Paramedic for an additional endorsement to provide critical care services	Up to substantial	Up to substantial
	Makes changes to allow for virtual or asynchronous training and for use of a simulated patient	None-to-substantial	Up to substantial
C. Consumers			

Individuals desiring to function as an EMR or be certified as an EMCT; EMCTs, including Paramedics	Clarifies requirements in the current rules	None	Significant
	Makes changes to comply with Laws 2023, Ch. 43, related to training received during military service	None	Up to substantial
	Requires applicants for recertification, if employed, to provide the name of an employer	Minimal	None
	Allows for electronic notification of a name change or an address or email address change	None	Significant; minimal
	Clarifies requirements related to revocation or suspension of a professional license or certification from another state	Up to substantial	None
	Provides a pathway for endorsement of a Paramedic to provide critical care services	None-to-minimal	Up to substantial
	Provides requirements for training related to the content and provision of courses for Paramedics wanting an additional endorsement to provide critical care services	Minimal	Up to substantial
Individuals desiring to function as an EMR	Adds requirements related to approval of an individual as an EMR, according to A.R.S. § 36-2201(16)	None	Significant
	Provides requirements for training related to the content and provision of courses for EMRs	Minimal	Up to substantial
Patients and their families	Helps ensure that EMRs and Paramedics have the knowledge and skills to provide services within their scopes of practice	None; possibly up to moderate	Significant
General public	Helps ensure that EMRs and Paramedics have the knowledge and skills to provide services within their scopes of practice	None	Significant

- **The Department**

The Department uses the rules in 9 A.A.C. 25, Articles 3 and 4, to regulate approximately 105 certified training programs in Arizona and approximately 22,500

EMCTs to protect the interests of students and the health and safety of patients. In this rulemaking, the Department is clarifying many requirements, consistent with the content of a five-year review report approved by the Governor's Regulatory Review Council on August 2, 2022. These include clarifying the meaning of "contact hour" and "moral turpitude," what requirements in R9-25-201 and R9-25-304 are specific to EMCTs, and the definition of "EMR." The new rules also add requirements for training programs for EMRs, referred to in A.R.S. § 36-2201(16) and consistent with A.R.S. § 36-2201(17). The Department anticipates that these changes may cause the Department to incur up to minimal increased costs when reviewing applications and the new training program course content. The Department also believes that the Department may incur minimal increased costs for providing technical assistance about the updated application requirements and for implementing a method to allow for electronic notification of a name change or address or email address changes. These changes are also expected to provide a significant benefit to the Department.

There is a growing national trend for Paramedics to obtain additional training and take on duties beyond the base scope of practice for a Paramedic. The Department has heard from stakeholders that there is a need for some acknowledgement of this additional trainings to enable more appropriate billing for services. As part of a recent rulemaking, critical care Paramedics were included as being able to provide critical care services. In this rulemaking, the Department is adding both training requirements for a course to prepare a Paramedic to take a national examination leading to national certification to provide critical care services and a process for a Paramedic to obtain a critical care endorsement on their Paramedic certificate from the Department. The Department estimates that these changes may cause the Department to incur up to minimal increase costs to implement.

Currently, an EMCT who had a license revoked as a health professional, as defined in A.R.S. 36-3201 (i.e. nurse, doctor, etc.), does not have to report that enforcement action to the Department, as would an EMCT who has had an EMCT license revoked in another state. Nor does an EMCT who voluntarily surrendered a license in lieu of revocation have to let the Department know. To help protect the health and safety of patients, the Department believes that it would be beneficial for any license revocation/suspension/surrender history to be reported to the Department with an explanation as to why the license was revoked, suspended. or surrendered. In this

rulemaking, a change is being made to the rules adding a requirement for providing such notification and specifying that it is unprofessional conduct to continue to provide services as an EMCT without notifying the Department of having certification, recertification, or licensure as a health professional revoked, suspended, or surrendered in another state or jurisdiction. The Department believes there may be at most minimal increased costs to the Department for this change, which may provide a significant benefit to the Department.

- **Certified training programs (both public and private)**

  There are currently approximately 105 certified training programs in Arizona. Of these, 30 are associated with community colleges, three are associated with a high school program, 44 are governmental, six are associated with hospitals, and 22 are other private businesses. Some training programs, especially those associated with smaller fire departments or with fire districts, provide courses to 10 or fewer students per year, while others, especially those associated with community colleges, may provide training to 100 or more students per year and offer multiple courses running concurrently. The rules in Article 3 regulate these training programs. Clarification of the requirements in Article 3 is expected to provide a significant benefit to certified training programs. The new requirement to attest their good standing with the Arizona Corporation Commission or the Arizona School Boards Association or Arizona Board of Private Postsecondary Education, as applicable, may cause a training program that is in good standing to incur a minimal cost from the time it may take to make the attestation. However, a training program that is not in good standing may incur up to a substantial decrease in revenue if the Department learns this and certification is affected.

  The new rules add potential courses that a certified training program may offer, with the requirements related to the content and provision of an EMR training course and for a course to prepare a Paramedic for an additional endorsement to provide critical care services specified in the new rules. A certified training program that chooses to run one or both of these training courses may incur up to substantial costs to establish and run the course, but may also receive up to a substantial increase in revenue from the students enrolling in the course.

  Based on requests from stakeholders, the rules for training programs are also being revised to allow for virtual or asynchronous training and for the use of a simulated

patient. Since the current rules were adopted, there has been a tremendous change in the way training at all levels is or can be done. Much of this change was fueled by constraints on gatherings during the COVID pandemic, which led to innovative methods to communicate and meet remotely. Today, distance learning is a very common and acceptable methodology. Although some EMS-related training, especially hands-on skills training, would still need to be done in-person, communication modalities have advanced to the point that much of a training course could be provided virtually. In R9-25-304 and R9-25-305, the new rules allow for didactic instruction to be provided virtually and in an asynchronous manner, with the lead instructor available to interact with a student, which may provide a significant benefit to a lead instructor and to a training program. Technology has also advanced so that devices are available that can simulate a patient's reaction to an action taken by a student. While interaction with a real patient is preferable in some situations, the use of one of these devices is safer and more practical in others. While a certified training program that wants to use a simulated patient may incur up to substantial costs for the purchase of simulators, depending on the type and number of devices purchased, a training program that purchases such devices may also receive up to a substantial benefit from their use instead of using other methodologies to satisfy training requirements.

- **Emergency medical services providers and ambulance services (both public and private) and their administrative medical directors**

  The largest employers of EMCTs, and potentially EMRs, in Arizona are emergency medical services providers and ambulance services, both public and private. As of July 2024, there were 103 ground ambulance services operating in Arizona under 9 A.A.C. 25, Article 9. Of these, 23 are private, for-profit businesses; five are private, non-profit businesses; 23 are municipal ground ambulance services; 47 are fire districts established under A.R.S. Title 48, Chapter 5; one is operated under tribal authority; two are operated by hospitals; and two are operated by a county. As of July 2024, the Department licenses 13 entities as air ambulance services. Therefore, they may be greatly affected by the changes being made through this rulemaking.

  As for other groups, the Department anticipates that emergency medical services providers and ambulance services may receive a significant benefit from the clarifications being made to the rules, both due to their own understanding of requirements that affect them and due to the EMCTs and EMRs they employ or will employ better understanding

the rules. Since A.R.S. § 36-2201(16), as amended by Laws 2022, Ch. 381, allows the administrative medical director of an emergency medical services provider to approve an individual to function as an EMR, the new provisions in R9-25-201 affect both administrative medical directors and emergency medical services providers. The new rules specify requirements for an administrative medical director approving an individual to function as an EMR for an emergency medical services provider to ensure competency and provide oversight. Since an EMCT or EMR may be functioning under the auspices of the administrative medical director, some administrative medical directors have told the Department that these requirements are likely what would occur as good practice, even without the rules. The Department believes that the new requirements could cause an emergency medical services provider or their administrative medical director to incur as much as a moderate increase in costs, but may also provide a significant benefit in terms of risk reduction and liability.

Because the new rules provide requirements for training related to the content and provision of courses for EMRs and Paramedics wanting an additional endorsement to provide critical care services, they may encourage individuals to take the courses and to become eligible for employment as an EMR or critical care Paramedic. In rural areas, there may not be enough EMCTs to staff the number of ambulances needed to adequately serve an area. Having the opportunity to employ an EMR may help alleviate some shortages. For some transports, including some air ambulance transports or interfacility transports of critically ill or injured patients, the skills required to monitor or treat the patient during transport are beyond the scope of practice of Paramedics without additional training, and require staffing the ambulance vehicle with a nurse. The new requirements related to training courses to prepare a Paramedic to take a national examination in critical care services and the new pathway for endorsement of a Paramedic to provide critical care services may increase the number of qualified individuals with the skills, knowledge, and credentials needed to handle such transports. These new requirements may cause an emergency medical services provider or ambulance service to incur as much as minimal costs, if underwriting the training or examination for an employed Paramedic, and may receive a minimal-to-substantial benefit from having a larger number of individuals qualified as EMRs or Paramedics with a critical care endorsement, depending on the use made of the opportunity.

Since the payment rate through Medicare is higher for transports staffed by

individuals with credentials indicating a higher skill level, known as "specialty care transports," reimbursement for a critical care transport staffed with a Paramedic with a critical care endorsement may be higher than for the same transport staffed by a Paramedic without the endorsement. In addition, the rules in 9 A.A.C. 25, Article 11, related to rates and charges, specify the requirements for evaluating a proposed critical care rate and require that the critical care rate is at least as high as the amount for a specialty care transport and greater than that for an ALS base rate. Therefore, an ambulance service may receive as much as a substantial benefit from these rule changes, and could possibly experience a minimal cost due to becoming familiar with them.

- **Emergency Medical Responders (EMRs)**

  There are currently 96 individuals in Arizona who have received appropriate training and have national certification as an EMR. According to A.R.S. § 36-2201(16), an individual may function as an EMR through two pathways: successfully completing an appropriate training program or through the approval by an emergency medical services provider's administrative medical director. The rules provide parameters relating to both pathways to help ensure the health and safety of patients. In R9-25-201, the new rules specify requirements for an administrative medical director approving an individual to function as an EMR for an emergency medical services provider to ensure competency and provide oversight. In Article 3, the rules include requirements related to the content of an EMR training course, providing course descriptions for an EMR training course, and specifying who can be a lead instructor or preceptor for EMR training. The Department believes that these requirements may cause an individual registering for a training course to incur minimal costs, with the current tuition rates for such training ranging from $400 to $750. The rule changes may also provide a significant and up-to-substantial benefit if the individual obtains employment as an EMR on the basis of requirements in the rules.

- **Emergency Medical Care Technicians (EMCTs), including Paramedics**

  As of June 2024, approximately 22,500 EMCTs had active certifications. Of these, approximately 8,700 are Paramedics. With the addition of requirements for EMRs, the rules required clarifications as to what requirements were specific to EMCTs. The new rules also clarify the breakout of EMT certification course hours, to specify the number of hours of didactic instruction and practical skills training and of clinical

training and field training. In addition, they clarify that CPR and, if applicable, ACLS training must be completed before refresher training and remove obsolete language related to refresher training for an EMT-I(99). The Department believes that these clarifications may provide a significant benefit to an EMCT. Changes made to comply with Laws 2023, Ch. 43, related to training received during military service are expected to provide up to a substantial benefit to applicants for certification as an EMCT.

As mentioned above, the new rules update application requirements, including requiring applicants for recertification, if employed, to provide the name of an employer. The Department currently requires this of other individuals applying for renewal of a professional license or certification issued by the Department. The new rules also allow for electronic notification of a name change or address or email address change and clarify requirements related to revocation or suspension of a professional license or certification from another state. The Department anticipates that an EMCT may incur a minimal increased cost in time spent complying with the updated application requirements and may receive a minimal benefit from being able to electronically notify the Department of a name change or address or email address change. If an EMCT has a professional license or certification suspended, revoked, or surrendered in Arizona or another state, the EMCT could sustain up to a substantial loss of revenue if the cause of the suspension, revocation, or surrender results in the revocation or suspension by the Department of the EMCT's certification as an EMCT.

The new rules provide a pathway for endorsement of a Paramedic to provide critical care services. As stated above, there is a need for Paramedics who have additional training that enable them to provide critical care services. In this rulemaking, the Department is acknowledging the need and providing a mechanism by which a Paramedic may obtain the endorsement. In Article 3, requirements have been added for training related to the content and provision of courses for Paramedics wanting to prepare to take a national examination leading to national certification to provide critical care services. In Article 4, the new rules include requirements for a Paramedic applying for endorsement for providing critical care services and for renewing a Paramedic certification with a critical care endorsement. The Department believes that a Paramedic may incur up to minimal costs due to the requirements for applying for a critical care endorsement, depending on whether the Paramedic wants to obtain an endorsement. A Paramedic obtaining training to prepare for national certification may also incur minimal

costs for taking a training course under R9-25-305(F). For example, the current tuition for a critical care course from Mesa Community College is $1,730, with $1,345 for the class and $385 for the test. Similarly, a Paramedic taking a refresher course or refresher challenge examination under R9-25-305(K) or (L) may incur minimal costs. However, a Paramedic with a critical care endorsement may receive a higher salary than a Paramedic without an endorsement and, thus, receive up to a substantial benefit from the rule changes.

- **Patients and their families**

  The Department anticipates that patients and their families may receive a significant benefit from the rules changes, which may help to ensure that EMRs and Paramedics have the knowledge and skills to provide services within their scopes of practice. Having the potential for additional qualified individuals available for employment by emergency medical services providers and ambulance services may shorten the response time for getting to a patient. Having Paramedics with a higher level of training may also improve the care that can be provided to a patient in the pre-hospital environment. It is possible that having a Paramedic with a critical care endorsement provide transport for a patient may result in higher rates being charged for the transport.

- **General public**

  The Department anticipates that the general public will receive a significant benefit from the rules changes, which were developed to improve the functioning of the EMS system in Arizona. Since any member of the public may become a patient or the family member of a patient, the rule changes may also provide a benefit by helping to ensure that EMRs and Paramedics have the knowledge and skills to provide services within their scopes of practice.

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 rulemaking:

The Department does not expect the rules to have a negative impact on employment for private and public businesses, agencies, or political subdivisions. Rather, the Department is optimistic that employment may increase due to expanding opportunities for individuals to be employed as EMRs and the addition of a critical care endorsement for Paramedics.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules:

Small businesses affected by the rulemaking may include privately run certified training programs or ambulance services.

b. The administrative and other costs required for compliance with the rules:

A summary of the administrative effects of the rulemaking is given in the cost and benefit analysis in Paragraph 3. The administrative costs to amend rules for training programs and EMCT certification is expected to be minimal.

c. A description of the methods that the agency may use to reduce the impact on small businesses:

The new rules provide more flexibility for certified training programs to implement the training courses. The Department knows of no other methods to further reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules:

A summary of the effects of the rulemaking on private persons and consumers is given in the cost and benefit analysis Paragraph 3.

6. A statement of the probable effect on state revenues:

The rulemaking does not include any fees, so the Department does not expect the rules to affect state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:

Not applicable

TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES - EMERGENCY MEDICAL SERVICES

ARTICLE 1. GENERAL

Section

ARTICLE 2. MEDICAL DIRECTION; ALS BASE HOSPITAL CERTIFICATION

Section

ARTICLE 3. TRAINING PROGRAMS

Section

ARTICLE 4. EMCT CERTIFICATION

Section

ARTICLE 1. GENERAL

R9-25-101. Definitions (Authorized by A.R.S. §§ 36-2201, 36-2202, 36-2204, and 36-2205)

In addition to the definitions in A.R.S. § 36-2201, the following definitions apply in this Chapter, unless otherwise specified:

1. "Administer" or "administration" means to directly apply or the direct application of an agent to the body of a patient by injection, inhalation, ingestion, or any other means and includes adjusting the administration rate of an agent.
2. "AEMT" has the same meaning as "advanced emergency medical technician" in A.R.S. § 36-2201.
3. "Agent" means a chemical or biological substance that is administered to a patient to treat or prevent a medical condition.
4. "ALS" has the same meaning as "advanced life support" in A.R.S. § 36-2201.
5. "ALS base hospital" has the same meaning as "advanced life support base hospital" in A.R.S. § 36-2201.
6. "Applicant" means a person requesting certification, licensure, approval, or designation from the Department under this Chapter.
7. "Chain of custody" means the transfer of physical control of and accountability for an item from one individual to another individual, documented to indicate the:
    a. Date and time of the transfer,
    b. Integrity of the item transferred, and
    c. Signatures of the individual relinquishing and the individual accepting physical control of and accountability for the item.
8. "Chief administrative officer" means:
    a. For a hospital, the same as in A.A.C. R9-10-101; and
    b. For a training program, an individual assigned to act on behalf of the training program by the body organized to govern and manage the training program.
9. "Clinical training" means experience and instruction in providing direct patient care in a health care institution.
10. "Controlled substance" has the same meaning as in A.R.S. § 32-1901.
11. "Course" means didactic instruction and, if applicable, hands-on practical skills training, clinical training, or field training provided by a training program to prepare an individual to become or remain an EMCT.
12. "Course session" means an offering of a course, during a period of time designated by a training program certificate holder, for a specific group of students.
13. "Current" means up-to-date and extending to the present time.
14. "Day" means a calendar day.
15. "Document" or "documentation" means signed and dated information in written,

photographic, electronic, or other permanent form.

16. "Drug" has the same meaning as in A.R.S. § 32-1901.
17. "Electronic signature" has the same meaning as in A.R.S. § 44-7002.
18. "EMCT" has the same meaning as "emergency medical care technician" in A.R.S. § 36-2201.
19. "EMT" has the same meaning as "emergency medical technician" in A.R.S. § 36-2201.
20. "EMT-I(99)" means an individual, other than a Paramedic, who:
    a. Was certified as an EMCT by the Department before January 28, 2013 to perform ALS, and
    b. Has continuously maintained the certification.
21. "EMS" has the same meaning as "emergency medical services" subsections (17)(a) through (d) in A.R.S. § 36-2201.
22. "Field training" means emergency medical services experience and training outside of a health care institution or a training program facility.
23. "General hospital" has the same meaning as in A.A.C. R9-10-101.
24. "Health care institution" has the same meaning as in A.R.S. § 36-401.
25. "Hospital" has the same meaning as in A.A.C. R9-10-101.
26. "In use" means in the immediate physical possession of an EMCT and readily accessible for potential imminent administration to a patient.
27. "Infusion pump" means a device approved by the U.S. Food and Drug Administration that, when operated mechanically, electrically, or osmotically, releases a measured amount of an agent into a patient's circulatory system in a specific period of time.
28. "Interfacility transport" means an ambulance transport of a patient from one health care institution to another health care institution.
29. "IV" means intravenous.
30. "Locked" means secured with a key, including a magnetic, electronic, or remote key, or combination so that opening is not possible except by using the key or entering the combination.
31. "Medical direction" means administrative medical direction or on-line medical direction.
32. "Medical record" has the same meaning as in A.R.S. § 36-2201.
33. "Minor" means an individual younger than 18 years of age who is not emancipated.
34. "Monitor" means to observe the administration rate of an agent and the patient's response to the agent and may include discontinuing administration of the agent.
35. "On-line medical direction" means emergency medical services guidance or information provided to an EMCT by a physician through two-way voice communication.
36. "Patient" means an individual who is sick, injured, or wounded and who requires medical monitoring, medical treatment, or transport.
37. "Pediatric" means pertaining to a child.
38. "Person" has the same meaning as in A.R.S. § 1-215 and includes governmental agencies.

39. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.
40. “Practical nurse” has the same meaning as in A.R.S. § 32-1601.
41. “Practicing emergency medicine” means acting as an emergency medicine physician in a hospital emergency department.
42. “Prehospital incident history report” has the same meaning as in A.R.S. § 36-2220.
43. “Refresher challenge examination” means a test given to an individual to assess the individual’s knowledge, skills, and competencies compared with the national education standards established for the applicable EMCT classification level.
44. “Refresher course” means a course intended to reinforce and update the knowledge, skills, and competencies of an individual who has previously met the national educational standards for a specific level of EMS personnel.
45. “Registered nurse” has the same meaning as in A.R.S. § 32-1601.
46. “Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.
47. “Scene” means the location of the patient to be transported or the closest point to the patient at which an ambulance can arrive.
48. “Special hospital” has the same meaning as in A.A.C. R9-10-101.
49. “STR skill” means “Specialty Training Requirement skill,” a medical treatment, procedure, or technique or administration of a medication for which an EMCT needs specific training beyond the training required in 9 A.A.C. 25, Article 4 in order to perform or administer.
50. “Transfer of care” means to relinquish to the control of another person the ongoing medical treatment of a patient.
51. “Transport agent” means an agent that an EMCT at a specified level of certification is authorized to administer only during interfacility transport of a patient for whom the agent’s administration was started at the sending health care institution.

R9-25-102. Individuals to Act for a Person Regulated Under This Chapter (Authorized by A.R.S. § 36-2202)

When a person regulated under this Chapter is required by this Chapter to provide information on or sign an application form or other document, the following individual shall satisfy the requirement on behalf of the person regulated under this Chapter:

1. If the person regulated under this Chapter is an individual, the individual; or
2. If the person regulated under this Chapter is a business organization, political subdivision, government agency, or tribal government, the individual who the business organization, political subdivision, government agency, or tribal government has designated to act on behalf of the business organization, political subdivision, government agency, or tribal government and who:
    a. Is a U.S. citizen or legal resident, and
    b. Has an Arizona address.

ARTICLE 2. MEDICAL DIRECTION; ALS BASE HOSPITAL CERTIFICATION

R9-25-201. Administrative Medical Direction (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5), (6), and (7), 36-2204.01, and 36-2205(A) and (D))

A. An emergency medical services provider or ambulance service shall:

1. Except as specified in subsection (B) or (C), designate a physician as administrative medical director who meets one of the following:
   a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties;
   b. Has emergency medical services certification issued by the American Board of Emergency Medicine;
   c. Has emergency medicine certification issued by the American Osteopathic Board of Emergency Medicine;
   d. Has emergency medicine certification issued by the American Board of Physician Specialties;
   e. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association; or
   f. Is an emergency medicine physician in an emergency department located in Arizona and has current certification in:
      i. Advanced emergency cardiac life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
      ii. Advanced emergency trauma life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American College of Surgeons; and
      iii. Pediatric advanced emergency life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
2. If the emergency medical services provider or ambulance service designates a physician as administrative medical director according to subsection (A)(1), notify the Department in writing:
   a. Of the identity and qualifications of the designated physician within 10 days after designating the physician as administrative medical director; and
   b. Within 10 days after learning that a physician designated as administrative medical director is no longer qualified to be an administrative medical director; and
3. Maintain for Department review:

a. A copy of the policies, procedures, protocols, and documentation required in subsection (E); and
b. Either:
i. The name, e-mail address, telephone number, and qualifications of the physician providing administrative medical direction on behalf of the emergency medical services provider or ambulance service; or
ii. If the emergency medical services provider or ambulance service provides administrative medical direction through an ALS base hospital or a centralized medical direction communications center, a copy of a written agreement with the ALS base hospital or centralized medical direction communications center documenting that the administrative medical director is qualified under subsection (A)(1).

B. Except as provided in R9-25-502(A)(3), if an emergency medical services provider or ambulance service provides only BLS, the emergency medical services provider or ambulance service is not required to have an administrative medical director.

C. If an emergency medical services provider or ambulance service provides administrative medical direction through an ALS base hospital or a centralized medical direction communications center, the emergency medical services provider or ambulance service shall ensure that the ALS base hospital or centralized medical direction communications center designates a physician as administrative medical director who meets one of the requirements in subsections (A)(1)(a) through (f).

D. An emergency medical services provider or ambulance service may provide administrative medical direction through an ALS base hospital certified according to R9-25-203(C), if the emergency medical services provider or ambulance service:
1. Uses the ALS base hospital for administrative medical direction only for patients who are children, and
2. Has a written agreement for the provision of administrative medical direction with an ALS base hospital that meets the requirements in R9-25-203(B)(1) or a centralized medical direction communications center.

E. An emergency medical services provider or an ambulance service shall ensure that:
1. An EMCT receives administrative medical direction as required by A.R.S. Title 36, Chapter 21.1 and this Chapter;
2. Protocols are established, documented, and implemented by an administrative medical director, consistent with A.R.S. Title 36, Chapter 21.1 and this Chapter, that include:
a. A communication protocol for:
i. How and from what sources an EMCT requests and receives on-line medical direction,
ii. When and how an EMCT notifies a health care institution of the EMCT's intent to transport a patient to the health care institution, and

iii. What procedures an EMCT follows in the event of a communications equipment failure;

b. A triage protocol for:
   i. How an EMCT assesses and prioritizes the medical condition of a patient,
   ii. How an EMCT selects a health care institution to which a patient may be transported,
   iii. How a patient is transported to the health care institution, and
   iv. When on-line medical direction is required;

c. A treatment protocol for:
   i. How an EMCT performs a medical treatment on a patient or administers an agent to a patient, and
   ii. When on-line medical direction is required while an EMCT is providing treatment; and

d. A protocol for the transfer of information to the emergency receiving facility for:
   i. What information is required to be communicated to emergency receiving facility staff concurrent with the transfer of care and by what method, including the condition of the patient, the treatment provided to the patient, and the patient's response to the treatment;
   ii. What information is required to be documented on a prehospital incident history report; and
   iii. The time-frame, which is associated with the transfer of care, for completion and submission of a prehospital incident history report;

3. Policies and procedures are established, documented, and implemented by an administrative medical director, consistent with A.R.S. Title 36, Chapter 21.1 and this Chapter, that:
   a. Are consistent with an EMCT's scope of practice, as specified in Table 5.1;
   b. Cover:
      i. Medical recordkeeping;
      ii. Medical reporting, including to whom and by what method medical reporting is accomplished;
      iii. Completion and submission of prehospital incident history reports;
      iv. Obtaining, storing, transferring, and disposing of agents to which an EMCT has access including methods to:
         (1) Identify individuals authorized by the administrative medical director to have access to agents,
         (2) Maintain chain of custody for controlled substances, and
         (3) Minimize potential degradation of agents due to temperature extremes;
      v. Administration, monitoring, or assisting in patient self-administration of an agent;

vi. Monitoring and evaluating an EMCT's compliance with treatment protocols, triage protocols, and communications protocols specified in subsection (E)(2);
vii. Monitoring and evaluating an EMCT's compliance with medical recordkeeping, medical reporting, and prehospital incident history report requirements;
viii. Monitoring and evaluating an EMCT's compliance with policies and procedures for agents to which the EMCT has access;
ix. Monitoring and evaluating an EMCT's competency in performing skills authorized for the EMCT by the EMCT's administrative medical director and within the EMCT's scope of practice, as specified in Table 5.1;
x. Ongoing education, training, or remediation necessary to maintain or enhance an EMCT's competency in performing skills within the EMCT's scope of practice, as specified in Table 5.1;
xi. The process by which administrative medical direction is withdrawn from an EMCT; and
xii. The process for reinstating an EMCT's administrative medical direction; and

c. Include a quality assurance process to evaluate the effectiveness of the administrative medical direction provided to EMCTs;

4. Protocols in subsection (E)(2) and policies and procedures in subsection (E)(3) are reviewed annually by the administrative medical director and updated as necessary;
5. Requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter are reviewed annually by the administrative medical director; and
6. The Department is notified in writing no later than ten days after the date:
   a. Administrative medical direction is withdrawn from an EMCT; or
   b. An EMCT's administrative medical direction is reinstated.

F. An administrative medical director for an emergency medical services provider or ambulance service shall ensure that:

1. An EMCT for whom the administrative medical director provides administrative medical direction:
   a. Has access to at least the minimum supply of agents required for the highest level of service to be provided by the EMCT, consistent with requirements in Article 5 of this Chapter;
   b. Administers, monitors, or assists in patient self-administration of an agent according to the requirements in policies and procedures; and
   c. Has access to a copy of the policies and procedures required in subsection (F)(2) while on duty for the emergency medical services provider or ambulance service;
2. Policies and procedures for agents to which an EMCT has access:
   a. Specify that an agent is obtained only from a person:
      i. Authorized by law to prescribe the agent, or
      ii. Licensed under A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4

A.A.C. 23 to dispense or distribute the agent;

b. Cover chain of custody and transfer procedures for each supply of agents, requiring an EMCT for whom the administrative medical director provides administrative medical direction to:
   i. Document the name and the EMCT certification number or employee identification number of each individual who takes physical control of the supply of agents;
   ii. Document the time and date that each individual takes physical control of the supply of agents;
   iii. Inspect the supply of agents for expired agents, deteriorated agents, damaged or altered agent containers or labels, and depleted, visibly adulterated, or missing agents upon taking physical control of the supply of agents;
   iv. Document any of the conditions in subsection (F)(2)(b)(iii);
   v. Notify the administrative medical director of a depleted, visibly adulterated, or missing controlled substance;
   vi. Obtain a replacement for each affected agent in subsection (F)(2)(b)(iii) for which the minimum supply is not present; and
   vii. Record each administration of an agent on a prehospital incident history report;
c. Cover mechanisms for controlling inventory of agents and preventing diversion of controlled substances; and
d. Include that an agent is kept inaccessible to all individuals who are not authorized access to the agent by policies and procedures required under subsection (E)(3)(b)(iv)(1) and, when not being administered, is:
   i. Secured in a dry, clean, washable receptacle;
   ii. While on a motor vehicle or aircraft registered to the emergency medical services provider or ambulance service, secured in a manner that restricts movement of the agent and the receptacle specified in subsection (F)(2)(d)(i); and
   iii. If a controlled substance, in a hard-shelled container that is difficult to breach without the use of a power cutting tool and:
      (1) Locked inside a motor vehicle or aircraft registered to the emergency medical services provider or ambulance service,
      (2) Otherwise locked and secured in such a manner as to deter misappropriation, or
      (3) On the person of an EMCT authorized access to the agent;

3. The Department is notified in writing within 10 days after the administrative medical director receives notice, as required subsection (F)(2)(b)(v), that any quantity of a controlled substance is depleted, visibly adulterated, or missing; and
4. Except when the emergency medical services provider or ambulance service obtains all agents from an ALS base hospital pharmacy, which retains ownership of the agents,

agents to which an EMCT has access are obtained, stored, transferred, and disposed of according to policies and procedures; A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; 4 A.A.C. 23; and requirements of the U.S. Drug Enforcement Administration.

G. An administrative medical director may delegate responsibilities to an individual as necessary to fulfill the requirements in this Section, if the individual is:

1. Another physician,
2. A physician assistant,
3. A registered nurse practitioner,
4. A registered nurse,
5. A Paramedic, or
6. An EMT-I(99).

R9-25-202. On-line Medical Direction (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5), (6), and (7), 36-2204.01, and 36-2205(A) and (D))

A. In this Section, "physician" means an individual licensed:

1. According to A.R.S. Title 32, Chapter 13 or 17; or
2. When working in a health care institution operating under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation, by a similar licensing board in another state.

B. An emergency medical services provider or ambulance service shall:

1. Except as provided in R9-25-203(C)(3), ensure that a physician provides on-line medical direction to EMCTs on behalf of the emergency medical services provider or ambulance service only if the physician meets one of the following:
   a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties;
   b. Has emergency medical services certification issued by the American Board of Emergency Medicine;
   c. Has emergency medicine certification issued by the American Osteopathic Board of Emergency Medicine;
   d. Has emergency medicine certification issued by the American Board of Physician Specialties;
   e. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association; or
   f. Is an emergency medicine physician in an emergency department located in Arizona and has current certification that meets the requirements in R9-25-201(A)(1)(f)(i) through (iii);
2. For each physician providing on-line medical direction on behalf of the emergency medical services provider or ambulance service, maintain for Department review either:

a. The name, e-mail address, telephone number, and qualifications of the physician providing on-line medical direction on behalf of the emergency medical services provider or ambulance service; or
b. If the emergency medical services provider or ambulance service provides on-line medical direction through an ALS base hospital or a centralized medical direction communications center, a copy of a written agreement with the ALS base hospital or centralized medical direction communications center documenting that the physician providing on-line medical direction is qualified under subsection (B)(1);

3. Ensure that the on-line medical direction provided to an EMCT on behalf of the emergency medical services provider or ambulance service is consistent with:
   a. The EMCT's scope of practice, as specified in Table 5.1; and
   b. Communication protocols, triage protocols, treatment protocols, and protocols for prehospital incident history reports, specified in R9-25-201(E)(2); and
4. Ensures that a physician providing on-line medical direction on behalf of the emergency medical services provider or ambulance service relays on-line medical direction only through one of the following individuals, under the supervision of the physician and consistent with the individual's scope of practice:
   a. Another physician,
   b. A physician assistant,
   c. A registered nurse practitioner,
   d. A registered nurse,
   e. A Paramedic, or
   f. An EMT-I(99).

C. An emergency medical services provider or ambulance service may provide on-line medical direction through an ALS base hospital certified according to R9-25-203(C), if the emergency medical services provider or ambulance service:
1. Uses the ALS base hospital for on-line medical direction only for patients who are children, and
2. Has an additional written agreement for the provision of on-line medical direction with an ALS base hospital that meets the requirements in R9-25-203(B)(1) or a centralized medical direction communications center.

D. An emergency medical services provider or ambulance service shall ensure that the emergency medical services provider or ambulance service, or an ALS base hospital or a centralized medical direction communications center providing on-line medical direction on behalf of the emergency medical services provider or ambulance service, has:
1. Operational and accessible communication equipment that will allow on-line medical direction to be given to an EMCT;
2. A written plan for alternative communications with an EMCT in the event of a disaster, communication equipment breakdown or repair, power outage, or malfunction; and

3. A physician qualified under subsection (B)(1) available to give on-line medical direction to an EMCT 24 hours a day, seven days a week.

R9-25-203. ALS Base Hospital General Requirements (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5), (6), and (7))

A. A person shall not operate as an ALS base hospital without certification from the Department.

B. The Department shall certify an ALS base hospital if the applicant:

1. Is:
   a. Licensed as a general hospital under 9 A.A.C. 10, Article 2; or
   b. A facility operated as a hospital in this state by the United States federal government or by a sovereign tribal nation;
2. Maintains at least one current written agreement described in A.R.S. § 36-2201(4);
3. Has not been decertified as an ALS base hospital by the Department within five years before submitting the application;
4. Submits an application that is complete and compliant with the requirements in this Article; and
5. Has not knowingly provided false information on or with an application required by this Article.

C. The Department may certify as an ALS base hospital a special hospital, which is licensed under 9 A.A.C. 10, Article 2 and provides surgical services and emergency services only to children, if the applicant:

1. Meets the requirements in subsection (B)(2) through (5);
2. Provides administrative medical direction or on-line medical direction only for patients who are children; and
3. Ensures that:
   a. Administrative medical direction is provided by a physician who meets the requirements in R9-25-201(A)(1); and
   b. On-line medical direction is provided by a physician who meets one of the following:
      i. Meets the requirements in R9-25-202(B)(1),
      ii. Has board certification in pediatric emergency medicine from either the American Board of Pediatrics or the American Board of Emergency Medicine, or
      iii. Is board eligible in pediatric emergency medicine.

D. An ALS base hospital certificate is valid only for the name and address listed by the Department on the certificate.

E. At least every 36 months after certification, the Department shall assess an ALS base hospital to determine ongoing compliance with the requirements of this Article.

F. The Department may inspect an ALS base hospital according to A.R.S. § 41-1009:

1. As part of the substantive review time-frame required in A.R.S. §§ 41-1072 through 41-1079; or
2. As necessary to determine compliance with the requirements of this Article.

G. If the Department determines that an ALS base hospital is not in compliance with the requirements in this Article, the Department may:

1. Take an enforcement action as described in R9-25-207; or
2. Require that an ALS base hospital submit to the Department, within 15 days after written notice from the Department, a corrective action plan to address issues of compliance that do not directly affect the health or safety of a patient that:
   a. Describes how each identified instance of non-compliance will be corrected and reoccurrence prevented, and
   b. Includes a date for correcting each instance of non-compliance that is appropriate to the actions necessary to correct the instance of non-compliance.

R9-25-204. Application Requirements for ALS Base Hospital Certification (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5))

A. An applicant for ALS base hospital certification shall submit to the Department an application, including:

1. The following information in a Department-provided format:
   a. The applicant's name, address, and telephone number;
   b. The name, email address, and telephone number of the applicant's chief administrative officer;
   c. The name, email address, and telephone number of the applicant's chief administrative officer's designee if the chief administrative officer will not be the liaison between the ALS base hospital and the Department;
   d. Whether the applicant is applying for certification of a:
      i. General hospital licensed under 9 A.A.C. 10, Article 2;
      ii. Special hospital licensed under 9 A.A.C. 10, Article 2, that provides surgical services and emergency services only to children; or
      iii. Facility operating as a federal or tribal hospital;
   e. The name of each emergency medical services provider or ambulance service for which the applicant has a proposed written agreement described in A.R.S. § 36-2201(4) to provide administrative medical direction or on-line medical direction;
   f. The name, address, email address, and telephone number of each administrative medical director;
   g. The name of each physician providing on-line medical direction;
   h. Attestation that the applicant meets the requirements in R9-25-202(D);
   i. Attestation that the applicant will comply with all requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter;
   j. Attestation that all information required as part of the application has been submitted and is true and accurate; and
   k. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or

electronic signature;

2. A copy of the applicant's current hospital license issued under 9 A.A.C. 10, Article 2, if applicable; and
3. A copy of each executed written agreement described in A.R.S. § 36-2201(4), including all attachments and exhibits.

B. The Department shall approve or deny an application under this Section according to Article 12 of this Chapter.

R9-25-205. Changes Affecting an ALS Base Hospital Certificate (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5) and (6))

A. No later than 30 days after the date of a change in the name listed on the ALS base hospital certificate, an ALS base hospital certificate holder shall notify the Department of the change, in a Department-provided format, including:

1. The current name of the ALS base hospital;
2. The ALS base hospital's certificate number;
3. The new name and the effective date of the name change;
4. Documentation supporting the name change;
5. Documentation of compliance with the requirements in A.A.C. R9-10-109(A), if applicable;
6. Attestation that all information submitted to the Department is true and correct; and
7. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

B. No later than 48 hours after changing the information provided according to R9-25-204(A)(1)(e) by terminating, adding, or amending a written agreement required in R9-25-203(B)(2), an ALS base hospital certificate holder shall notify the Department of the change, including:

1. The following information in a Department-provided format:
   a. The name of the ALS base hospital;
   b. The ALS base hospital's certificate number; and
   c. As applicable, the name of the emergency medical services provider or ambulance service for which the ALS base hospital:
      i. Has a newly executed or amended written agreement described in A.R.S. § 36-2201(4), or
      ii. Is no longer providing administrative medical direction or on-line medical direction under a written agreement described in A.R.S. § 36-2201(4); and
2. If applicable, a copy of the newly executed or amended written agreement described in A.R.S. § 36-2201(4), including all attachments and exhibits.

C. No later than 10 days after the date of a change in an administrative medical director provided according to R9-25-204(A)(1)(f), an ALS base hospital certificate holder shall notify the Department of the change, in a Department-provided format, including:

1. The name of the ALS base hospital,
2. The ALS base hospital's certificate number,
3. The name of the new administrative medical director and the effective date of the change,
4. Attestation that the new administrative medical director meets the requirements in R9-25-201(A)(1),
5. Attestation that all information submitted to the Department is true and correct, and
6. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

D. No later than 30 days after the date of a change in the address listed on an ALS base hospital certificate or a change in ownership, as defined in A.A.C. R9-10-101, an ALS base hospital certificate holder shall submit to the Department an application required in R9-25-204(A).

R9-25-206. ALS Base Hospital Authority and Responsibilities (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5) and (6), 36-2208(A), and 36-2209(A)(2))

A. An ALS base hospital certificate holder shall:

1. Have the capability of providing both administrative medical direction and on-line medical direction;
2. Provide administrative medical direction and on-line medical direction to an EMCT according to:
   a. A written agreement described in A.R.S. § 36-2201(4);
   b. The requirements in R9-25-201 for administrative medical direction; and
   c. The requirements in R9-25-202 for on-line medical direction;
3. Ensure that personnel are available to provide administrative medical direction and on-line medical direction; and
4. Establish, document, and implement policies and procedures, consistent with A.R.S. Title 36, Chapter 21.1 and this Chapter, that include a quality assurance process to evaluate the effectiveness of the on-line medical direction provided to EMCTs.

B. An ALS base hospital certificate holder shall notify in writing:

1. The Department no later than 24 hours after:
   a. Ceasing to meet a requirement in R9-25-203(B)(1) or (2); or
   b. For a special hospital, ceasing to be licensed under 9 A.A.C. 10, Article 2, as a special hospital or to meet the requirement in R9-25-203(B)(2); and
2. Each emergency medical services provider or ambulance service with which the ALS base hospital has a current written agreement to provide administrative medical direction or on-line medical direction no later than seven days before ceasing to provide administrative medical direction or on-line medical direction or as specified in the written agreement, whichever is earlier.

C. An ALS base hospital may act as a training program without training program certification from the Department, if the ALS base hospital:

1. Is eligible for training program certification as provided in R9-25-301(C); and
2. Complies with the requirements in R9-25-301(D), R9-25-302, R9-25-303(B), (C), and (F), and R9-25-304 through R9-25-306.

D. If an ALS base hospital's pharmacy provides all of the agents for an emergency medical services provider or ambulance service, and the ALS base hospital owns the agents provided, the ALS base hospital's certificate holder shall ensure that:

1. Except as stated in subsections (D)(2) and (3), the policies and procedures for agents to which an EMCT has access that are established by the administrative medical director for the emergency medical services provider or ambulance service comply with requirements in R9-25-201(F)(2);
2. The emergency medical services provider or ambulance service requires an EMCT for the emergency medical services provider or ambulance service to notify the pharmacist in charge of the hospital pharmacy of a missing, visibly adulterated, or depleted controlled substance; and
3. The pharmacist in charge of the hospital pharmacy notifies the Department, as specified in R9-25-201(F)(3), of a missing, visibly adulterated, or depleted controlled substance.

R9-25-207. ALS Base Hospital Enforcement Actions (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(7))

A. Except as provided in subsection (C), the Department may take an action listed in subsection (B) against an ALS base hospital certificate holder who:

1. Does not meet the certification requirements:
   a. In R9-25-203(B)(1) or (2); or
   b. For a special hospital, in R9-25-203(B)(2) and being licensed under 9 A.A.C. 10, Article 2, as a special hospital;
2. Violates the requirements in A.R.S. Title 36, Chapter 21.1 or 9 A.A.C. 25;
3. Does not submit a corrective action plan, as provided in R9-25-203(G)(2), that is acceptable to the Department;
4. Does not complete a corrective action plan submitted according to R9-25-203(G)(2); or
5. Knowingly or negligently provides false documentation or information to the Department.

B. The Department may take the following action against an ALS base hospital certificate holder:

1. After notice is provided according to A.R.S. Title 41, Chapter 6, Article 10, issue a letter of censure,
2. After notice is provided according to A.R.S. Title 41, Chapter 6, Article 10, issue an order of probation,
3. After notice and an opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10, suspend the ALS base hospital certificate, or
4. After notice and an opportunity to be heard is provided according to A.R.S. Title 41,

Chapter 6, Article 10, decertify the ALS base hospital.

C. An ALS base hospital operated as a hospital in this state by the United States federal government or by a sovereign tribal nation is under federal or tribal government jurisdiction.

ARTICLE 3. TRAINING PROGRAMS

R9-25-301. Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. To apply for certification as a training program, an applicant shall submit an application to the Department, in a Department-provided format, including:

1. The applicant's name, address, and telephone number;
2. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
3. The name of each course the applicant plans to provide;
4. Attestation that the applicant has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references for the courses specified in subsection (A)(3);
5. The name, telephone number, and e-mail address of the training program medical director;
6. The name, telephone number, and e-mail address of the training program director;
7. Attestation that the applicant will comply with all requirements in A.R.S. Title 36, Chapter 21.1 and 9 A.A.C. 25;
8. Attestation that all information required as part of the application has been submitted and is true and accurate; and
9. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

B. An applicant may submit to the Department a copy of an accreditation report if the applicant is currently accredited by a national accrediting organization.

C. The Department shall certify a training program if the applicant:

1. Has not operated a training program that has been decertified by the Department within five years before submitting the application,
2. Submits an application that is complete and compliant with requirements in this Article, and
3. Has not knowingly provided false information on or with an application required by this Article.

D. The Department:

1. Shall assess a training program at least once every 24 months after certification to determine ongoing compliance with the requirements of this Article; and
2. May inspect a training program according to A.R.S. § 41-1009:
   a. As part of the substantive review time-frame required in A.R.S. §§ 41-1072 through 41-1079, or
   b. As necessary to determine compliance with the requirements of this Article.

E. The Department shall approve or deny an application under this Article according to Article 12 of this Chapter.

F. A training program certificate is valid only for the name of the training program certificate holder and the courses listed by the Department on the certificate and may not be transferred to another person.

R9-25-302. Administration (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. A training program certificate holder shall ensure that a training program medical director:

1. Is a physician or exempt from physician licensing requirements under A.R.S. §§ 32-1421(A)(7) or 32-1821(3);
2. Meets one of the following:
   a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties,
   b. Has emergency medical services certification issued by the American Board of Emergency Medicine,
   c. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association, or
   d. Is an emergency medicine physician in an emergency department located in Arizona and has current certification that meets the requirements in R9-25-201(A)(1)(d)(i) through (iii); and
3. Before the start date of a course session, reviews the course content outline and final examinations to ensure consistency with the national educational standards for the applicable EMCT classification level.

B. A training program certificate holder shall ensure that a training program director:

1. Is one of the following:

a. A physician with at least two years of experience providing emergency medical services as a physician;
b. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services as a doctor of allopathic medicine or osteopathic medicine;
c. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services as a registered nurse;
d. A physician assistant with at least two years of experience providing emergency medical services as a physician assistant; or
e. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower level of EMCT;

2. Has completed 24 hours of training related to instructional methodology including:
   a. Organizing and preparing materials for didactic instruction, clinical training, field training, and skills practice;
   b. Preparing and administering tests and practical examinations;
   c. Using equipment and supplies;
   d. Measuring student performance;
   e. Evaluating student performance;
   f. Providing corrective feedback; and
   g. Evaluating course effectiveness;
3. Supervises the day-to-day operation of the courses offered by the training program;
4. Supervises and evaluates the lead instructor for a course session;
5. Monitors the training provided by all preceptors providing clinical training or field training; and
6. Does not participate as a student in a course session, take a refresher challenge examination, or receive a certificate of completion for a course given by the training program.

C. A training program certificate holder shall:

1. Maintain with an insurance company authorized to transact business in this state:
   a. A minimum single claim professional liability insurance coverage of $500,000, and
   b. A minimum single claim general liability insurance coverage of $500,000 for the

operation of the training program; or

2. Be self-insured for the amounts in subsection (C)(1).

D. A training program certificate holder shall ensure that policies and procedures are:

1. Established, documented, and implemented covering:
   a. Student enrollment, including verification that a student has proficiency in reading at the 9th grade level and meets all course admission requirements;
   b. Maintenance of student records and medical records, including compliance with all applicable state and federal laws governing confidentiality, privacy, and security; and
   c. For each course offered:
      i. Student attendance requirements, including leave, absences, make-up work, tardiness, and causes for suspending or expelling a student for unsatisfactory attendance;
      ii. Grading criteria, including the minimum grade average considered satisfactory for continued enrollment and standards for suspending or expelling a student for unsatisfactory grades;
      iii. Administration of final examinations; and
      iv. Student conduct, including causes for suspending or expelling a student for unsatisfactory conduct;
2. Reviewed annually and updated as necessary; and
3. Maintained on the premises and provided to the Department at the Department's request.

R9-25-303. Changes Affecting a Training Program Certificate (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. No later than 10 days after a change in the name, address, or e-mail address of the training program certificate holder listed on a training program certificate, the training program certificate holder shall notify the Department of the change, in a Department-provided format, including:

1. The current name, address, and e-mail address of the training program certificate holder;
2. The certificate number for the training program;
3. The new name, new address, or new e-mail address and the date of the name, address, or e-mail address change;
4. If applicable, attestation that the training program certificate holder has insurance required in R9-25-302(C) that is valid for the new name or new address;
5. Attestation that all information submitted to the Department is true and correct; and

6. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

B. No later than 10 days after a change in the training program medical director or training program director, a training program certificate holder shall notify the Department, in a Department-provided format, including:

1. The name and address of the training program certificate holder;
2. The certificate number for the training program;
3. The name, telephone number, and e-mail address of the new training program medical director or training program director and the date of the change; and
4. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

C. A training program certificate holder that intends to add a course shall submit to the Department a request for approval, in a Department-provided format, including:

1. The name and address of the training program certificate holder;
2. The certificate number for the training program;
3. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
4. The name of each course the training program certificate holder plans to add;
5. Attestation that the training program certificate holder has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references for the courses specified in subsection (C)(4);
6. Attestation that all information required as part of the request is true and accurate; and
7. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

D. For notification made under subsection (A) of a change in the name or address of a certificate holder, the Department shall issue an amended certificate to the training program certificate holder that incorporates the new name or address but retains the date on the current certificate.

E. The Department shall approve or deny a request for the addition of a course in subsection (C)

according to Article 12 of this Chapter.

F. A training program certificate holder shall not conduct a course until an amended certificate is issued by the Department.

R9-25-304. Course and Examination Requirements (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1), (2), and (3))

A. For each course provided, a training program director shall ensure that:

1. The required equipment and facilities established for the course are available for use;
2. The following are prepared and provided to course applicants before the start date of a course session:
    a. A description of requirements for admission, course content, course hours, course fees, and course completion, including whether the course prepares a student for:
        i. A national certification organization examination for the specific EMCT classification level,
        ii. A statewide standardized certification test under the state certification process, or
        iii. Recertification at a specific EMCT classification level;
    b. A list of books, equipment, and supplies that a student is required to purchase for the course;
    c. Notification of eligibility for the course as specified in R9-25-305(B), (D)(1) and (2), or (F)(1) and (2), as applicable;
    d. Notification of any specific requirements for a student to begin any component of the course, including, as applicable:
        i. Prerequisite knowledge, skill, and abilities;
        ii. Physical examinations;
        iii. Immunizations;
        iv. Documentation of freedom from infectious tuberculosis;
        v. Drug screening; and
        vi. The ability to perform certain physical activities; and
    e. The policies for the course on student attendance, grading, student conduct, and administration of final examinations, required in R9-25-302(D)(1)(c)(i) through (iv);
3. Information is provided to assist a student to:
    a. Register for and take an applicable national certification organization examination;
    b. Complete application forms for registration in a national certification organization; and

c. Complete application forms for certification under 9 A.A.C. 25, Article 4;

4. A lead instructor is assigned to each course session who:
   a. Is one of the following:
      i. A physician with at least two years of experience providing emergency medical services;
      ii. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services;
      iii. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services;
      iv. A physician assistant with at least two years of experience providing emergency medical services; or
      v. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower EMCT classification level;
   b. Has completed training related to instructional methodology specified in R9-25-302(B)(2);
   c. Except as provided in subsection (A)(4)(d), is available for student-instructor interaction during all course hours established for the course session; and
   d. Designates an individual who meets the requirements in subsections (A)(4)(a) and (b) to be present and act as the lead instructor when the lead instructor is not present; and
5. Clinical training and field training are provided:
   a. Under the supervision of a preceptor who has at least two years of experience providing emergency medical services and is one of the following:
      i. An individual licensed in this or another state or jurisdiction as a doctor of allopathic medicine or osteopathic medicine;
      ii. An individual licensed in this or another state or jurisdiction as a registered nurse;
      iii. An individual licensed in this or another state or jurisdiction as a physician assistant; or
      iv. An EMCT, only for courses to prepare an individual for certification or recertification at the same or lower EMCT classification level;
   b. Consistent with the clinical training and field training requirements established for

the course; and

c. If clinical training or field training are provided by a person other than the training program certificate holder, under a written agreement with the person providing the clinical training or field training that includes a termination clause that provides sufficient time for a student to complete the training upon termination of the written agreement.

B. A training program director may combine the students from more than one course session for didactic instruction.

C. For a final examination or refresher challenge examination for each course offered, a training program director shall ensure that:

1. The final examination or refresher challenge examination for the course is completed onsite at the training program or at a facility used for course instruction;
2. Except as provided in subsection (D), the final examination or refresher challenge examination for a course includes a:
   a. Written test:
      i. With one absolutely correct answer, two incorrect answers, and one distractor, none of which is "all of the above" or "none of the above";
      ii. With 150 multiple-choice questions for the:
         (1) Final examination for a refresher course, or
         (2) Refresher challenge examination for a course;
      iii. That covers the learning objectives of the course with representation from all topics covered by the course; and
      iv. That requires a passing score of 75% or higher in no more than three attempts for a final examination and no more than one attempt for a refresher challenge examination; and
   b. Comprehensive practical skills test:
      i. Evaluating the student's technical proficiency in skills consistent with the national education standards for the applicable EMCT classification level, and
      ii. Reflecting the skills necessary to pass a national certification organization examination at the applicable EMCT classification level;
3. The identity of each student taking the final examination or refresher challenge examination is verified;
4. A student does not receive verbal or written assistance from any other individual or use

notes, books, or documents of any kind as an aid in taking the examination;

5. A student who violates subsection (C)(4) is not permitted to complete the examination or to receive a certificate of completion for the course or refresher challenge examination; and
6. An instructor who allows a student to violate subsection (C)(4) or assists a student in violating subsection (C)(4) is no longer permitted to serve as an instructor.

D. A training program director shall ensure that a standardized certification test for a student under the state certification process includes:

1. A written test that meets the requirements in subsection (C)(2)(a); and
2. Either:
   a. A comprehensive practical skills test that meets the requirements in subsection (C)(2)(b), or
   b. An attestation of practical skills proficiency on a Department-provided form.

E. A training program director shall ensure that:

1. A student is allowed no longer than six months after the date of the last day of classroom instruction for a course session to complete all course requirements,
2. There is a maximum ratio of four students to one preceptor for the clinical training portion of a course, and
3. There is a maximum ratio of one student to one preceptor for the field training portion of a course.

F. A training program director shall:

1. For a student who completes a course, issue a certificate of completion containing:
   a. Identification of the training program,
   b. Identification of the course completed,
   c. The name of the student who completed the course,
   d. The date the student completed all course requirements,
   e. Attestation that the student has met all course requirements, and
   f. The signature or electronic signature of the training program director and the date of signature or electronic signature; and
2. For an individual who passes a refresher challenge examination, issue a certificate of completion containing:
   a. Identification of the training program,
   b. Identification of the refresher challenge examination administered,

c. The name of the individual who passed the refresher challenge examination,
d. The date or dates the individual took the refresher challenge examination,
e. Attestation that the individual has passed the refresher challenge examination, and
f. The signature or electronic signature of the training program director and the date of signature or electronic signature.

R9-25-305. Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. Except as specified in subsection (B), a training program certificate holder shall ensure that a certification course offered by the training program:
1. Covers knowledge, skills, and competencies comparable to the national education standards established for a specific EMCT classification level;
2. Prepares a student for:
   a. A national certification organization examination for the specific EMCT classification level, or
   b. A standardized certification test under the state certification process;
3. Has no more than 24 students enrolled in each session of the course; and
4. Has a minimum course length of:
   a. For an EMT certification course, 130 hours;
   b. For an AEMT certification course, 244 hours, including:
      i. A minimum of 100 contact hours of didactic instruction and practical skills training, and
      ii. A minimum of 144 contact hours of clinical training and field training; and
   c. For a Paramedic certification course, 1000 hours, including:
      i. A minimum of 500 contact hours of didactic instruction and practical skills training, and
      ii. A minimum of 500 contact hours of clinical training and field training.

B. A training program director shall ensure that, for an AEMT certification course or a Paramedic certification course, a student has one of the following:
1. Current certification from the Department as an EMT or higher EMCT classification level,
2. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program, or

3. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level.

C. A training program director shall ensure that for a course to prepare an EMT-I(99) for Paramedic certification:

1. A student has current certification from the Department as an EMT-I(99);
2. The course covers the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references;
3. The minimum course length is 600 hours, including:
   a. A minimum of 220 contact hours of didactic instruction and practical skills training, and
   b. A minimum of 380 contact hours of clinical training and field training; and
4. A minimum of 60 contact hours of training in anatomy and physiology are completed by the student:
   a. As a prerequisite to the course,
   b. As preliminary instruction completed at the beginning of the course session before the didactic instruction required in subsection (C)(3)(a) begins, or
   c. Through integration of the anatomy and physiology material with the units of instruction required in subsection (C)(3).

D. A training program director shall ensure that for an EMT refresher course:

1. A student has one of the following:
   a. Current certification from the Department as an EMT or higher EMCT classification level,
   b. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program,
   c. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level, or
   d. Documentation from a national certification organization requiring the student to complete the EMT refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart

Association recommendations for emergency cardiovascular care by EMCTs;

3. The EMT refresher course cover the knowledge, skills, and competencies in the national education standards established at the EMT classification level;
4. No more than 32 students are enrolled in each session of the course; and
5. The minimum course length is 24 contact hours.

E. A training program authorized to provide an EMT refresher course may administer a refresher challenge examination covering materials included in the EMT refresher course to an individual eligible for admission into the EMT refresher course.

F. A training program director shall ensure that for an ALS refresher course:

1. A student has one of the following:
   a. Current certification from the Department as an AEMT, EMT-I(99), or Paramedic;
   b. Documentation of completion of a prior training course, at the AEMT classification level or higher, provided by a training program certified by the Department or an equivalent training program;
   c. Documentation of current registration in a national certification organization at the AEMT or Paramedic classification level; or
   d. Documentation from a national certification organization requiring the student to complete the ALS refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification in:
   a. Adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs, and
   b. For a student who has current certification as an EMT-I(99) or higher level of EMCT classification, advanced emergency cardiac life support;
3. The ALS refresher course covers:
   a. For a student who has current certification as an AEMT or documentation of completion of prior training at an AEMT classification level, the knowledge, skills, and competencies in the national education standards established for an AEMT;
   b. For a student who has current certification as an EMT-I(99), the knowledge, skills, and competencies established according to A.R.S. § 36-2204 for an EMT-I(99) as of the effective date of this Section and available through the Department at www.azdhs.gov/ems-regulatory-references;

and

c. For a student who has current certification as a Paramedic or documentation of completion of prior training at a Paramedic classification level, the knowledge, skills, and competencies in the national education standards established for a Paramedic;

4. No more than 32 students are enrolled in each session of the course; and
5. The minimum course length is 48 contact hours.

G. A training program authorized to provide an ALS refresher course may administer a refresher challenge examination covering materials included in the ALS refresher course to an individual eligible for admission into the ALS refresher course.

R9-25-306. Training Program Notification and Recordkeeping (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. At least 10 days before the start date of a course session, a training program certificate holder shall submit to the Department the following information in a Department-provided format:

1. Identification of the training program;
2. Identification of the course;
3. The name of the training program medical director;
4. The name of the training program director;
5. The name of the course session's lead instructor;
6. The course session start date and end date;
7. The physical location at which didactic training and practical skills training will be provided;
8. The days of the week and times of each day during which didactic training and practical skills training will be provided;
9. The number of clock hours of didactic training and practical skills training;
10. If applicable, the number of hours of clinical training and field training included in the course session;
11. The date, start time, and location of the final examination for the course;
12. Attestation that the lead instructor is qualified under R9-25-304(A)(4)(a); and
13. The name and signature of the chief administrative officer or program director and the date signed.

B. The Department shall review the information submitted according to subsection (A) and, within five days after receiving the information:

1. Approve a course session, issue an identifying number to the course session, and notify the training program certificate holder of the approval and identifying number; or
2. Disapprove a course session that does not comply with requirements in this Article and notify the training program certificate holder of the disapproval.

C. A training program certificate holder shall ensure that:

1. No later than 10 days after the date a student completes all course requirements, the training program director submits to the Department the following information in a Department-provided format:
    a. Identification of the training program;
    b. The name of the training program director;
    c. Identification of the course and the start date and end date of the course session completed by the student;
    d. The name, date of birth, and mailing address of the student who completed the course;
    e. The date the student completed all course requirements;
    f. The score the student received on the final examination;
    g. Attestation that the student has met all course requirements;
    h. Attestation that all information submitted is true and accurate; and
    i. The signature of the training program director and the date signed; and
2. No later than 10 days after the date an individual passes a refresher challenge examination administered by the training program, the training program director submits to the Department the following information in a Department-provided format;
    a. Identification of the training program;
    b. Identification of the:
        i. Refresher challenge examination administered, and
        ii. Course for which the refresher challenge examination substitutes;
    c. The name of the training program medical director;
    d. The name of the training program director;
    e. The name, date of birth, and mailing address of the individual who passed the refresher challenge examination;
    f. The date and location at which the refresher challenge examination was administered;
    g. The score the individual received on the refresher challenge examination;
    h. Attestation that the individual:

i. Met the requirements for taking the refresher challenge examination, and
ii. Passed the refresher challenge examination;

i. Attestation that all information submitted is true and accurate; and

j. The name and signature of the training program director and the date signed.

D. A training program certificate holder shall ensure that:

1. A record is established for each student enrolled in a course session, including;
   a. The student's name and date of birth;
   b. A copy of the student's enrollment agreement or contract;
   c. Identification of the course in which the student is enrolled;
   d. The start date and end date for the course session;
   e. Documentation supporting the student's eligibility to enroll in the course;
   f. Documentation that the student meets prerequisites for the course, established as specified in R9-25-304(A)(2)(d)(i);
   g. The student's attendance records;
   h. The student's clinical training records, if applicable;
   i. The student's field training records, if applicable;
   j. The student's grades;
   k. Documentation of the final examination for the course, including:
      i. A copy of each scored written test attempted or completed by the student, and
      ii. All forms used as part of the comprehensive practical skills test attempted or completed by the student; and
   l. A copy of the student's certificate of completion required in R9-25-304(F)(1);
2. A student record required in subsection (D)(1) is maintained for at least three years after the end date of a student's course session and provided to the Department at the Department's request;
3. A record is established for each individual to whom a refresher challenge examination is administered, including:
   a. The individual's name and date of birth;
   b. Identification of the refresher challenge examination administered to the individual;
   c. Documentation supporting the individual's eligibility for a refresher challenge examination;
   d. The date the refresher challenge examination was administered;
   e. Documentation of the refresher challenge examination, including:

i. A copy of the scored written test attempted or completed by the individual, and
ii. All forms used as part of the comprehensive practical skills test attempted or completed by the individual; and

f. A copy of the individual's certificate of completion required in R9-25-304(F)(2); and

4. A record required in subsection (D)(3) is maintained for at least three years after the date the refresher challenge examination was administered and provided to the Department at the Department's request.

R9-25-307. Training Program Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. The Department may take an action listed in subsection (B) against a training program certificate holder who:

1. Violates the requirements in A.R.S. Title 36, Chapter 21.1 or 9 A.A.C. 25; or
2. Knowingly or negligently provides false documentation or information to the Department.

B. The Department may take the following action against a training program certificate holder:

1. After notice is provided according to A.R.S. Title 41, Chapter 6, Article 10, issue:
   a. A letter of censure, or
   b. An order of probation; or
2. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
   a. Suspend the training program certificate, or
   b. Decertify the training program.

ARTICLE 4. EMCT CERTIFICATION

R9-25-401. EMCT General Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H) and 36-2204(1), (6), and (7))

A. Except as provided in R9-25-404(E) and R9-25-405, an individual shall not act as an EMCT unless the individual has current certification or recertification from the Department.

B. An EMCT shall act as an EMCT only:

1. As authorized under the EMCT's scope of practice as specified in Article 5 of this Chapter; and
2. For an EMCT required to have medical direction according to A.R.S. Title 36, Chapter 21.1 and R9-25-502, as authorized by the EMCT's administrative medical director under:
   a. Treatment protocols, triage protocols, and communication protocols approved by the EMCT's administrative medical director as specified in R9-25-201(E)(2); and
   b. Medical recordkeeping, medical reporting, and prehospital incident history report requirements approved by the EMCT's administrative medical director as specified in R9-25-201(E)(3)(b).

C. Except as provided in A.R.S. § 36-2211, the Department shall certify or re-certify an individual as an EMCT for a period of two years.

D. An individual whose EMCT certificate is expired shall not apply for recertification, except as provided in R9-25-404(A).

E. The Department shall comply with the confidentiality requirements in A.R.S. §§ 36-2220(E) and 36-2245(M).

R9-25-402. EMCT Certification and Recertification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H) and 36-2204(1), (6), and (7))

A. The Department shall not certify an EMCT if the applicant:

1. Is currently:
   a. Incarcerated for a criminal conviction,
   b. On parole for a criminal conviction,
   c. On supervised release for a criminal conviction, or
   d. On probation for a criminal conviction;
2. Within 10 years before the date of filing an application for certification required by this

Article, has been convicted of any of the following crimes, or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated:

a. 1st or 2nd degree murder;
b. Attempted 1st or 2nd degree murder;
c. Sexual assault;
d. Attempted sexual assault;
e. Sexual abuse of a minor;
f. Attempted sexual abuse of a minor;
g. Sexual exploitation of a minor;
h. Attempted sexual exploitation of a minor;
i. Commercial sexual exploitation of a minor;
j. Attempted commercial sexual exploitation of a minor;
k. Molestation of a child;
l. Attempted molestation of a child; or
m. A dangerous crime against children as defined in A.R.S. § 13-705;

3. Within five years before the date of filing an application for certification required by this Article, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than a misdemeanor involving moral turpitude or a felony listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated;
4. Within five years before the date of filing an application for certification required by this Article, has had EMCT certification or recertification revoked in this state or certification, recertification, or licensure at an EMCT classification level revoked in any other state or jurisdiction; or
5. Knowingly provides false information in connection with an application required by this Article.

B. The Department shall not re-certify an EMCT, if:

1. While certified, the applicant has been convicted of a crime listed in subsection (A)(2), or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. The applicant knowingly provides false information in connection with an application required by this Article.

C. The Department shall make probation a condition of EMCT certification if, within two years before the date of filing an application under R9-25-403, an applicant has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:

1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.

D. Except as provided in subsection (E), the Department shall make probation a condition of EMCT recertification if an applicant:

1. Is currently:
   a. Incarcerated for a criminal conviction,
   b. On parole for a criminal conviction,
   c. On supervised release for a criminal conviction, or
   d. On probation for a criminal conviction; or
2. Within five years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than those listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated.

E. As specified in R9-25-409, the Department may make probation a condition of EMCT recertification if an applicant, within two years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:

1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.

F. If the Department makes probation a condition of EMCT certification or recertification, the Department shall fix the period and terms of probation that will:

1. Protect the public health and safety, and

2. Rehabilitate and educate the applicant.

R9-25-403. Application Requirements for EMCT Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (H) and 36-2204(1) and (6))

A. An individual may apply for initial EMCT certification if:

1. The individual is at least 18 years of age;
2. The individual complies with the requirements in A.R.S. § 41-1080;
3. The individual is not ineligible under R9-25-402; and
4. One of the following applies to the individual:
   a. The individual has not previously applied for certification from the Department or has withdrawn an application for certification;
   b. An application for certification submitted by the individual was denied by the Department two or more years before the present date;
   c. Except as provided in R9-25-404(A)(2) or (3), the individual's certification as an EMCT is expired;
   d. The individual's certification as an EMCT was revoked by the Department five or more years before the present date; or
   e. The individual has current certification as an EMCT and is applying for certification at a different classification level of EMCT.

B. An applicant for initial EMCT certification shall submit to the Department an application in a Department-provided format, including:

1. A form containing:
   a. The applicant's name, address, telephone number, email address, date of birth, gender, and Social Security number;
   b. The level of EMCT certification being requested;
   c. Responses to questions addressing the applicant's criminal history according to R9-25-402(A)(1) through (3) and (C);
   d. Whether the applicant has within the five years before the date of the application had:
      i. EMCT certification or recertification revoked in Arizona; or
      ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
   e. Attestation that all information required as part of the application has been submitted and is true and accurate; and
   f. The applicant's signature or electronic signature and date of signature;

2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;
3. For each affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form and supporting documentation;
4. If applicable, a copy of certification, recertification, or licensure at an EMCT classification level issued to the applicant in another state or jurisdiction;
5. A copy of one of the following for the applicant:
   a. U.S. passport, current or expired;
   b. Birth certificate;
   c. Naturalization documents; or
   d. Documentation of legal resident alien status; and
6. One of the following:
   a. Either:
      i. A certificate of completion showing that within two years before the date of the application, the applicant completed statewide standardized training; and
      ii. A statewide standardized certification test; or
   b. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification.

B. The Department shall approve or deny an application for initial EMCT certification according to Article 12 of this Chapter.

C. If the Department denies an application for initial EMCT certification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-404. Application Requirements for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), (B), and (H) and 36-2204(1), (4), and (6))

A. An individual may apply for recertification at the same level of EMCT certification held or at a lower level of EMCT certification:
1. Within 90 days before the expiration date of the individual's current EMCT certification;
2. Within the 30-day period after the expiration date of the individual's EMCT certification, as provided in subsection (E); or
3. Within the extension time period granted under R9-25-405.

B. To apply for recertification, an applicant shall submit to the Department an application, in a Department-provided format, including:

1. A form containing:
    a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;
    b. The applicant's current certification number;
    c. Responses to questions addressing the applicant's criminal history according to R9-25-402(B), (D), and (E);
    d. Whether the applicant has within the five years before the date of the application had:
        i. EMCT certification or recertification revoked in Arizona; or
        ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
    e. An indication of the level of EMCT certification held currently or within the past 30 days and of the level of EMCT certification for which recertification is requested;
    f. Attestation that all information required as part of the application has been submitted and is true and accurate; and
    g. The applicant's signature or electronic signature and date of signature;
2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;
3. For an affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form; and
4. For an application submitted within 30 days after the expiration date of EMCT certification, a nonrefundable certification extension fee of $150.

C. In addition to the application in subsection (B), an applicant for EMCT recertification shall submit one of the following to the Department:

1. A certificate of course completion issued by the training program director under R9-25-304(F) showing that within two years before the date of the application, the applicant completed either the applicable refresher course or applicable refresher challenge examination;
2. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification; or
3. Attestation on a Department-provided form that the applicant:
    a. Has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart

Association recommendations for emergency cardiovascular care by EMCTs;

b. For EMT-I(99) recertification or Paramedic recertification, has documentation of current certification in advanced emergency cardiac life support;

c. Has documentation of having completed within the previous two years the following number of hours of continuing education in topics that are consistent with the content of the applicable refresher course:

i. For EMT recertification, a minimum of 24 hours;

ii. For AEMT recertification, EMT-I(99) recertification, or Paramedic recertification, a minimum of 48 hours; and

iii. Included in the hours required in subsections (C)(3)(c)(i) or (ii), as applicable, a minimum of 5 hours in pediatric emergency care; and

d. For EMT recertification, has functioned in the capacity of an EMT for at least 240 hours during the previous two years.

D. An applicant who submits an attestation under subsection (C)(3) shall maintain the applicable documentation for at least three years after the date of the application.

E. If an individual submits an application for recertification, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:

1. Was authorized to act as an EMCT during the period between the expiration date of the individual's EMCT certification and the date the application was submitted, and
2. Is authorized to act as an EMCT until the Department makes a final determination on the individual's application for recertification.

F. If an individual does not submit an application for recertification before the expiration date of the individual's EMCT certification or, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:

1. Is not an EMCT,
2. Was not authorized to act as an EMCT during the 30-day period after the expiration date of the individual's EMCT certification, and
3. May submit an application to the Department for initial EMCT certification according to R9-25-403.

G. The Department shall approve or deny an application for recertification according to Article 12 of this Chapter.

H. If the Department denies an application for recertification, the applicant may request a

hearing according to A.R.S. Title 41, Chapter 6, Article 10.

I. The Department may deny, based on failure to meet the standards for recertification in A.R.S. Title 36, Chapter 21.1 and this Article, an application submitted with a certification extension fee.

R9-25-405. Extension to File an Application for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H) and 36-2204(1), (4), (5), and (7))

A. Before the expiration of a current certificate, an EMCT who is unable to meet the recertification requirements in R9-25-404 because of personal or family illness, military service, or authorized federal or state emergency response deployment may apply to the Department in writing for an extension of time to file for recertification by submitting:

1. The following information in a Department-provided format:
   a. The EMCT's name, address, telephone number, and email address;
   b. The EMCT's current certification number;
   c. The reason for requesting the extension; and
   d. The EMCT's signature or electronic signature and date of signature; and
2. For an exemption based on military service or authorized federal or state emergency response deployment, a copy of the EMCT's military orders or documentation of authorized federal or state emergency response deployment.

B. The Department may grant an extension of time to file for recertification:

1. For personal or family illness, for no more than 180 days; or
2. For each military service or authorized federal or state emergency response deployment, for the term of service or deployment plus 180 days.

C. An individual applying for or granted an extension of time to file for recertification:

1. Remains certified according to A.R.S. § 41-1092.11 during the extension period, and
2. Shall submit an application for recertification according to R9-25-404.

D. An individual who does not meet the recertification requirements in R9-25-404 within the extension period or has the application for recertification denied by the Department:

1. Is not an EMCT, and
2. May submit an application to the Department for initial EMCT certification according to R9-25-403.

E. The Department shall approve or deny a request for an extension to file for EMCT recertification according to Article 12 of this Chapter.

F. If the Department denies a request for an extension to file for EMCT recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-406. Requirements for Downgrading of Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (H) and 36-2204(1) and (6))

An individual who holds current EMCT certification at a classification level higher than EMT and who is not under investigation according to A.R.S. § 36-2211 may apply for:

1. Continued certification at a lower EMCT classification level for the remainder of the certification period by submitting to the Department:
    a. A written request containing:
        i. The EMCT's name, address, email address, telephone number, date of birth, and Social Security number;
        ii. The lower EMCT classification level requested;
        iii. Attestation that the applicant has not committed an act or engaged in conduct that would warrant revocation of a certificate under A.R.S. § 36-2211;
        iv. Attestation that all information submitted is true and accurate; and
        v. The applicant's signature or electronic signature and date of signature; and
    b. Either:
        i. A written statement from the EMCT's administrative medical director attesting that the EMCT is able to perform at the lower EMCT classification level requested; or
        ii. If applying for continued certification as an EMT, an Arizona EMT refresher certificate of completion or an Arizona EMT refresher challenge examination certificate of completion signed by the training program director designated for the Arizona EMT refresher course; or
2. Recertification at a lower EMCT classification level according to R9-25-404.

R9-25-407. Notification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6), and 36-2211)

A. No later than 30 days after the date an EMCT's name legally changes, the EMCT shall submit to the Department:

1. A completed form provided by the Department containing:
    a. The name under which the EMCT is currently certified by the Department;
    b. The EMCT's address, telephone number, and Social Security number; and
    c. The EMCT's new name; and

2. Documentation showing that the name has been legally changed.

B. No later than 30 days after the date an EMCT's address or email address changes, the EMCT shall submit to the Department a completed form provided by the Department containing:

1. The EMCT's name, telephone number, and Social Security number; and
2. The EMCT's new address or email address.

C. An EMCT shall notify the Department in writing no later than 10 days after the date the EMCT:

1. Is incarcerated or is placed on parole, supervised release, or probation for any criminal conviction;
2. Is convicted of:
   a. A crime specified in R9-25-402(A)(2),
   b. A misdemeanor involving moral turpitude,
   c. A felony in this state or any other state or jurisdiction, or
   d. A misdemeanor specified in R9-25-402(E);
3. Has registration revoked or suspended by a national certification organization; or
4. Has certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.

R9-25-408. Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H), 36-2204(1), (6), and (7), and 36-2211)

A. For purposes of A.R.S. § 36-2211(A)(1), unprofessional conduct is an act or omission made by an EMCT that is contrary to the recognized standards or ethics of the Emergency Medical Technician profession or that may constitute a danger to the health, welfare, or safety of a patient or the public, including:

1. Impersonating an EMCT of a higher level of certification or impersonating a health professional as defined in A.R.S. § 32-3201;
2. Permitting or allowing another individual to use the EMCT's certification for any purpose;
3. Aiding or abetting an individual who is not certified according to this Chapter in acting as an EMCT or in representing that the individual is certified as an EMCT;
4. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, with a patient while acting as an EMCT;
5. Physically or verbally harassing, abusing, threatening, or intimidating a patient or another

individual while acting as an EMCT;

6. Making false or materially incorrect entries in a medical record or willful destruction of a medical record;
7. Failing or refusing to maintain adequate records on a patient;
8. Soliciting or obtaining monies or goods from a patient by fraud, deceit, or misrepresentation;
9. Aiding or abetting an individual in fraud, deceit, or misrepresentation in meeting or attempting to meet the application requirements for EMCT certification or EMCT recertification contained in this Article, including the requirements established for:
   a. Completing and passing a course provided by a training program; and
   b. The national certification organization examination process and national certification organization registration process;
10. Providing false information or making fraudulent or untrue statements to the Department or about the Department during an investigation conducted by the Department;
11. Being incarcerated or being placed on parole, supervised release, or probation for any criminal conviction;
12. Being convicted of a misdemeanor identified in R9-25-402(E), which has not been absolutely discharged, expunged, or vacated;
13. Having national certification organization registration revoked or suspended by the national certification organization for material noncompliance with national certification organization rules or standards; and
14. Having certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.

B. Under A.R.S. § 36-2211, physical or mental incompetence of an EMCT is the EMCT's lack of physical or mental ability to provide emergency medical services as required under this Chapter.

C. Under A.R.S. § 36-2211 gross incompetence or gross negligence is an EMCT's willful act or willful omission of an act that is made in disregard of an individual's life, health, or safety and that may cause death or injury.

R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H), 36-2204(1), (6), and (7), and 36-2211)

A. If the Department determines that an applicant or EMCT is not in substantial compliance with applicable laws and rules, under A.R.S. §§ 36-2204 or 36-2211, the Department may:

1. Take the following action against an applicant or EMCT:
    a. After notice is provided according to A.R.S. § 36-2211 and, if applicable, A.R.S. Title 41, Chapter 6, Article 10, issue:
        i. A decree of censure to the EMCT, or
        ii. An order of probation to the EMCT; or
    b. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
        i. Deny an application,
        ii. Suspend the EMCT's certificate, or
        iii. Revoke the EMCT's certificate; and
2. Assess civil penalties against the EMCT.

B. In determining which action in subsection (A) is appropriate, the Department shall consider:

1. Prior disciplinary actions;
2. The time interval since a prior disciplinary action, if applicable;
3. The applicant's or EMCT's motive;
4. The applicant's or EMCT's pattern of conduct;
5. The number of offenses;
6. Whether the applicant or EMCT failed to comply with instructions from the Department;
7. Whether interim rehabilitation efforts were made by the applicant or EMCT;
8. Whether the applicant or EMCT refused to acknowledge the wrongful nature of the misconduct;
9. Whether the applicant or EMCT made timely and good-faith efforts to rectify the consequences of the misconduct;
10. The submission of false evidence, false statements, or other deceptive practices during an investigation or disciplinary process;
11. The vulnerability of a patient or other victim of the applicant's or EMCT's conduct, if applicable; and
12. How much control the applicant or EMCT had over the processes or situation leading to the misconduct.

Statutory Authority

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. <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. Definitions

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 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. Duties of the director; qualifications of medical director

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. Medical control

The medical director of the statewide emergency medical services and trauma system, the emergency medical services council and the medical direction commission shall recommend to the director the following standards and criteria that pertain to the quality of emergency

patient care:

1. Statewide standardized training, certification and recertification standards for all classifications of emergency medical care technicians.

2. A standardized and validated testing procedure for all classifications of emergency medical care technicians.

3. Medical standards for certification and recertification of training programs for all classifications of emergency medical care technicians.

4. Standardized continuing education criteria for all classifications of emergency medical care technicians.

5. Medical standards for certification and recertification of certified emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.

6. Standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.

7. Objective criteria and mechanisms for decertification of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and for disapproval of physicians providing medical control or medical direction for any classification of emergency care technicians who are required to be under medical control or medical direction.

8. Medical standards for nonphysician prehospital treatment and prehospital triage of patients requiring emergency medical services.

9. Standards for emergency medical dispatcher training, including prearrival instructions. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.

10. Standards for a quality assurance process for components of the statewide emergency medical services and trauma system, including standards for maintaining the confidentiality of the information considered in the course of quality assurance and the records of the quality assurance activities pursuant to section 36-2403.

11. Standards for ambulance service and medical transportation that give consideration to the differences between urban, rural and wilderness areas.

12. Standards to allow an ambulance to transport a patient to a health care institution that is licensed as a special hospital and that is physically connected to an emergency receiving

facility.

D-2.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 9

New Subchapter: Subchapter 9A, Subchapter 9B

New Article: Article 1, Article 2, Article 3

New Section: R9-9A-101, R9-9A-102, R9-9A-103, R9-9A-104, R9-9A-105, R9-9A-106, R9-9A-107, R9-9A-108, R9-9A-109, Table 1.1, R9-9A-201, R9-9A-202, R9-9A-203, R9-9A-301, R9-9A-302, R9-9A-303

Repeal: Article 1, Article 2, Article 3, Article 4, Table 1.1, R9-9-101, R9-9-102, R9-9-103, R9-9-104, R9-9-105, R9-9-106, R9-9-107, R9-9-108, R9-9-201, R9-9-202, R9-9-203, R9-9-204, R9-9-205, R9-9-301, R9-9-302, R9-9-303, R9-9-304, R9-9-305, R9-9-401, R9-9-402, R9-9-403

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: October 8, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 9

New Subchapter: Subchapter 9A, Subchapter 9B

New Article: Article 1, Article 2, Article 3

New Section: R9-9A-101, R9-9A-102, R9-9A-103, R9-9A-104, R9-9A-105, R9-9A-106, R9-9A-107, R9-9A-108, R9-9A-109, Table 1.1, R9-9A-201, R9-9A-202, R9-9A-203, R9-9A-301, R9-9A-302, R9-9A-303

Repeal: Article 1, Article 2, Article 3, Article 4, Table 1.1, R9-9-101, R9-9-102, R9-9-103, R9-9-104, R9-9-105, R9-9-106, R9-9-107, R9-9-108, R9-9-201, R9-9-202, R9-9-203, R9-9-204, R9-9-205, R9-9-301, R9-9-302, R9-9-303, R9-9-304, R9-9-305, R9-9-401, R9-9-402, R9-9-403

Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to reorganize and update the rules in Title 9, Chapter 9 related to Procurement Organizations.

Specifically, Laws 2023, Ch. 194, amended A.R.S. § 32-1307(A)(4), and transferred the authority, powers, duties, and responsibilities of the State Board of Funeral Directors and Embalmers for regulating funeral establishments, crematories, funeral directors, and embalmers to the Department. The Board of Funeral Directors and Embalmers had established rules to comply with statutory requirements in Title 4, Chapter 12. The Department had adopted rules for procurement organizations, pursuant to A.R.S. § 36-851.01, in Title 9, Chapter 9. With this rulemaking the Department is moving and amending the rules currently in Title 4, Chapter 12 into Title 9, Chapter 9, consistent with the statutory changes made by Laws 2023, Ch. 194.

In addition, the Department plans to incorporate requirements for transportation protection agreements that are related to preparing human remains or cremated remains, according to requirements added by Laws 2023, Ch. 95. As part of this rulemaking, existing requirements for procurement organizations in Title 9, Chapter 9 are being consolidated, clarified, and reorganized. However, the Department indicates the substantive content of the rules will remain the same, except for some minor changes being made at the request of regulated persons to reduce the regulatory burden. To ensure that the rules for procurement organizations and for the funeral industry remain distinct, so as to avoid confusion on the part of regulated persons, the Department is splitting Title 9, Chapter 9 into two Subchapters, Title 9, Chapter 9A being used for the revised rules for procurement organizations, and Chapter 9B being used for the rules governing the funeral industry.

In this first phase of the rulemaking, the current rules in Title 9, Chapter 9 are being repealed, new Subchapters 9A and 9B are being adopted, and revised rules for procurement organizations are being adopted in Subchapter 9A.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this portion of the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons; but reduces or consolidates procedures or processes, amends rules that are outdated, and clarifies language of rules without changing their effects, while protecting health and safety.

Council staff believes the current rulemaking satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(5), (6), and (8) in that the rulemaking reduces or consolidates steps, procedures or processes in the rules, amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government, and adopts, without material change, rules of another agency of this state that has been or imminently will be consolidated into the agency, respectively.

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.

4. 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.

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

The Department indicates between the Notice of Proposed Expedited Rulemaking published in the Administrative Register on July 5, 2024 and the Notice of Final Rulemaking now before the Council for consideration, grammatical corrections were made to the following rules:

- R9-9A-105(B)(1)(b), (C)(1), and (G)(1);
- R9-9A-109(B)(1)(c)(i);
- R9-9A-201(A)(2)(a);
- R9-9A-203(D)(2); and
- R9-9A-303(B)(2).

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.

6. 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 are no corresponding federal laws.

7. 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, according to A.R.S. § 36-851.01, it is required to grant a procurement organization license to a person if the procurement organization is accredited by a nationally recognized accrediting agency approved by the Department or meets the requirements prescribed in rules adopted by the Department. The Department states, a license is issued to a specific person at a specific location, so a general permit is not applicable, under A.R.S. § 41-1037(A)(2) in that the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.

8. 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.

9. Conclusion

This expedited rulemaking from the Department of Health Services (Department) seeks to reorganize and update the rules in Title 9, Chapter 9 related to Procurement Organizations. With this rulemaking the Department is moving and amending the rules currently in Title 4, Chapter 12 regulating funeral establishments, crematories, funeral directors, and embalmers into Title 9, Chapter 9, consistent with the statutory changes made by Laws 2023, Ch. 194. In addition, the Department plans to incorporate requirements for transportation protection agreements that are related to preparing human remains or cremated remains, according to requirements added by Laws 2023, Ch. 95. As part of this rulemaking, existing requirements for procurement organizations in Title 9, Chapter 9 are being consolidated, clarified, and reorganized. However, the Department indicates the substantive content of the rules will remain the same, except for some minor changes being made at the request of regulated persons to reduce the regulatory burden. To ensure that the rules for procurement organizations and for the funeral industry remain distinct, so as to avoid confusion on the part of regulated persons, the Department is splitting Title 9, Chapter 9 into two Subchapters, Title 9, Chapter 9A being used for the revised rules for procurement organizations, and Chapter 9B being used for the rules governing the funeral industry.

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

August 22, 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. 9 and 9A, Expedited Rulemaking

Dear Ms. Klein:

1. The close of record date: July 15, 2024

2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The rulemaking consolidates, clarifies, and reorganizes the current rules for procurement organizations, without changing the substantive content of the rules, except for some minor changes being made at the request of regulated persons to be consistent with industry standards and reduce the regulatory burden. Thus, the rulemaking meets the requirements in A.R.S. § 41-1027(A)(5) and (6).

3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
This rulemaking does not relate to a five-year-review report.

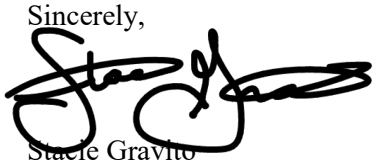
4. A list of all items enclosed:
   a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
   b. Statutory authority
   c. Current rule

The Department is requesting that the rules be heard at the Council meeting on November 5, 2024.

I certify 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 9. DEPARTMENT OF HEALTH SERVICES

~~PROCUREMENT ORGANIZATIONS~~ HUMAN REMAINS

PREAMBLE

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

August 22, 2024

2. Article, Part or Sections Affected (as applicable)	**Rulemaking Action**
Article 1	Repeal
R9-9-101	Repeal
R9-9-102	Repeal
R9-9-103	Repeal
R9-9-104	Repeal
R9-9-105	Repeal
R9-9-106	Repeal
R9-9-107	Repeal
R9-9-108	Repeal
Table 1.1	Repeal
Article 2	Repeal
R9-9-201	Repeal
R9-9-202	Repeal
R9-9-203	Repeal
R9-9-204	Repeal
R9-9-205	Repeal
Article 3	Repeal
R9-9-301	Repeal
R9-9-302	Repeal
R9-9-303	Repeal
R9-9-304	Repeal
R9-9-305	Repeal

Article 4	Repeal
R9-9-401	Repeal
R9-9-402	Repeal
R9-9-403	Repeal
Subchapter 9A	New Subchapter
Article 1	New Article
R9-9A-101	New Section
R9-9A-102	New Section
R9-9A-103	New Section
R9-9A-104	New Section
R9-9A-105	New Section
R9-9A-106	New Section
R9-9A-107	New Section
R9-9A-108	New Section
R9-9A-109	New Section
Table 1.1	New Section
Article 2	New Article
R9-9A-201	New Section
R9-9A-202	New Section
R9-9A-203	New Section
Article 3	New Article
R9-9A-301	New Section
R9-9A-302	New Section
R9-9A-303	New Section
Subchapter 9B	New Subchapter

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) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-851.01, 36-851.02, and 36-581.03

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: 29 A.A.R. 3639, November 24, 2023

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 2210, July 5, 2024

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

Name: Megan McMinn, Bureau Chief

Address: Arizona Department of Health Services
Bureau of Special Licensing
150 N. 18th Ave., Suite 410
Phoenix, AZ 85007

Telephone: (602) 364-3052

E-mail: megan.mcminn@azdhs.gov

or

Name: Stacie Gravito, Office Chief

Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

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:

Laws 2023, Ch. 194, amended Arizona Revised Statutes (A.R.S.) § 32-1307(A)(4), which transferred the authority, powers, duties, and responsibilities of the State Board of Funeral Directors and Embalmers for regulating funeral establishments, crematories, funeral directors, and embalmers to the Arizona Department of Health Services ("Department"). The Board of Funeral Directors and Embalmers had established rules to comply with statutory requirements in Arizona Administrative Code (A.A.C.) Title 4, Chapter 12. The Department had adopted rules for procurement organizations, pursuant to A.R.S. § 36-851.01, in A.A.C. Title 9, Chapter 9. After receiving rulemaking approval pursuant to A.R.S. § 41-1039(A), the Department is moving and amending the rules

currently in 4 A.A.C. 12 into 9 A.A.C. 9, consistent with the statutory changes made by Laws 2023, Ch. 194. In addition, the Department plans to incorporate requirements for transportation protection agreements that are related to preparing human remains or cremated remains, according to requirements added by Laws 2023, Ch. 95. As part of this rulemaking, existing requirements for procurement organizations in 9 A.A.C. 9 are being consolidated, clarified, and reorganized. However, the substantive content of the rules will remain the same, except for some minor changes being made at the request of regulated persons to reduce the regulatory burden. To ensure that the rules for procurement organizations and for the funeral industry remain distinct, so as to avoid confusion on the part of regulated persons, the Department is splitting 9 A.A.C. 9 into two Subchapters, with 9 A.A.C. 9A being used for the revised rules for procurement organizations, and 9 A.A.C. 9B being used for the rules governing the funeral industry. In this first phase of the rulemaking, the current rules in 9 A.A.C. 9 are being repealed, new Subchapters 9A and 9B are being adopted, and revised rules for procurement organizations are being adopted in Subchapter 9A. The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this portion of the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce a procedural right of regulated persons; but reduces or consolidates procedures or processes, amends rules that are outdated, and clarifies language of rules without changing their effects, while protecting health and safety.

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:

Between the proposed expedited rulemaking and the final expedited rulemaking, grammatical corrections were made to R9-9A-105(B)(1)(b), (C)(1), and (G)(1); R9-9A-109(B)(1)(c)(i); R9-9A-201(A)(2)(a); R9-9A-203(D)(2); and R9-9A-303(B)(2).

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:

According to A.R.S. § 36-851.01, the Department is required to grant a procurement organization license to a person if the procurement organization is accredited by a nationally recognized accrediting agency approved by the Department or meets the requirements prescribed in rules adopted by the Department. A license is issued to a specific person at a specific location, so a general permit is not applicable, under A.R.S. § 41-1037(A)(2).

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 law is applicable to the subject of the rule.

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 9. DEPARTMENT OF HEALTH SERVICES

~~PROCUREMENT ORGANIZATIONS~~ HUMAN REMAINS

ARTICLE 1. ~~PROCUREMENT ORGANIZATION LICENSURE~~ REPEALED

Section

ARTICLE 2. ~~ADMINISTRATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION~~ REPEALED

Section

ARTICLE 3. ~~PHYSICAL PLANT; TRANSPORTATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION~~ REPEALED

Section

ARTICLE 4. ~~ADMINISTRATION FOR AN ACCREDITED PROCUREMENT~~

~~ORGANIZATION~~ REPEALED

Section

R9-9-401. ~~General Responsibilities~~ Repealed

R9-9-402. ~~Donor Consent; NTAD and NAM Identification~~ Repealed

R9-9-403. ~~Tissue End-Users~~ Repealed

SUBCHAPTER 9A. PROCUREMENT ORGANIZATIONS

ARTICLE 1. PROCUREMENT ORGANIZATION LICENSURE

Section

ARTICLE 2. ADMINISTRATION AND OPERATIONS FOR A PROCUREMENT ORGANIZATION

Section

ARTICLE 3. ENVIRONMENTAL AND PHYSICAL PLANT STANDARDS FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION

Section

R9-9A-303. Security Standards; Inventory Controls

SUBCHAPTER 9B. RESERVED

ARTICLE 1. ~~PROCUREMENT ORGANIZATION LICENSURE~~ REPEALED

R9-9-101. ~~Definitions~~ Repealed

~~In addition to the definitions in A.R.S. § 36-841, the following apply in this Chapter unless otherwise specified:~~

~~1. "Acceptability assessment" means the evaluation of available, if applicable, medical information about a donor to determine whether the donor meets qualifications as established by SOPs specified in R9-9-201(E)(4).~~

~~2. "Accrediting body" means a nationally recognized agency, approved by the Department, that provides certification for a person operating a procurement organization.~~

~~3. "Acquisition" means activities required to obtain a NTAD that is intended for use in education or research.~~

~~4. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.~~

~~5. "Administrator" means the individual responsible for the services and activities provided by a procurement organization.~~

~~6. "Applicant" means an individual or business organization requesting approval to operate a procurement organization.~~

~~7. "Application packet" means the information, documents, and fees required by the Department for licensure of a procurement organization.~~

~~8. "Authorization" means permission given for NTAD acquisition by a donor or individual authorized by law.~~

~~9. "Business organization" means the same as "entity" in A.R.S. § 10-140.~~

~~10. "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.~~

~~11. "Controlling person" means an individual 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 individual 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.

12. "Contracted services" means functions pertaining to the acquisition, screening, testing, preparing, storage, and distribution of NAM that another establishment agrees to perform.

13. "Department" means the Arizona Department of Health Services.

14. "Distribution" means a process that includes selection and evaluation of intended use of NAM for release to another procurement organization, an education facility, or a research facility.

15. "Donor consent form" means the same as "document of gift" defined A.R.S. § 36-841.

16. "Environmental services" means activities such as housekeeping, laundry, facility maintenance, or equipment maintenance.

17. "Exceptional release" means NAM that is approved for usage before a donor acceptability assessment or by a researcher requesting NAM that would not normally meet the established acceptability criteria.

18. "Final disposition" means the disposal of NAM through incineration, cremation, bio-cremation, burial, fully depleted by virtue of a particular use, or by another legal means.

19. "Licensee" means a person to whom the Department has issued a license to operate a non-transplant procurement organization or person designated by the licensee.

20. "Medical director" means a physician licensed in this state pursuant to A.R.S. Title 32, Chapter 13 or 17 who provides medical guidance for a licensed procurement organization according to A.R.S. § 36-851.03 or person designated by the medical director.

21. "Misuse" means to use NTAD and NAM for purposes other than for:
    a. Education or research, and
    b. Uses specified on a donor consent form.
22. "Modification" means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a procurement organization.
23. "Non-transplant anatomical donation" or "NTAD" means a donation of a whole body, organs or tissues authorized and used for education and research prior to release to distribution inventory.
24. "Non-transplant anatomical material" or "NAM" means a whole body or parts of a body donated for use in education or research that has been prepared, packaged, labeled, and released to distribution inventory.
25. "Overall time-frame" means the same as in A.R.S. § 41-1072.
26. "Person" means the same as in A.R.S. § 36-841.
27. "Personnel member" means individuals identified as employees, students, or volunteer who provides services and activities for a procurement organization.
28. "Pest control" means activities that minimize the presence of insects and vermin in a procurement organization to ensure the quality of NTAD and NAM and the health and safety of persons occupying or visiting.
29. "Physical assessment" means a postmortem documented evaluation of a deceased donor's body that may identify evidence of: high-risk behaviors, signs of HIV infection or hepatitis infection, other viral or bacterial infections, and trauma.
30. "Premises" mean a facility and surrounding grounds that are:
    a. Designated by an applicant or a licensee;
    b. Used for providing procurement organization services and activities; and
    c. Licensed by the Department as a procurement organization.
31. "Preparation" means any activity performed other than donor screening, donor testing, acquisition, storage, distribution, or dispensing functions to enable the use of NAM for education or research. It includes, but is not limited to, cleaning, preservation, disarticulation, dissection, skeletonization, plastination, packaging, and labeling of NAM.
32. "Procurement organization" means the same as "non-transplant anatomical donation organization" as defined in A.R.S. § 36-841 and may be either

~~accredited by an accrediting body or non-accredited.~~

33. ~~"Quality management program" means ongoing activities designed and implemented by a procurement organization to improve the delivery of services and activities related to NAM.~~

34. ~~"Quarantine" means the identification of NTAD or NAM as not acceptable or yet to be determined as eligible for use in education or research, including NTAD or NAM whose suitability has not been determined.~~

35. ~~"Release" means NAM approved by a procurement organization in accordance with criteria established by the medical director for transfer to an approved education and research facility.~~

36. ~~"Risk assessment" means collecting and evaluating relevant medical history and social behavior obtained from an individual or individuals who have knowledge about the donor.~~

37. ~~"Standard operating policies and procedures" or "SOPs" means a group of documents detailing the specific purposes and services provided by a licensed procurement organization including activities and methods by staff and personnel members in support of conducting business operations.~~

38. ~~"Storage" means a designated area that contains equipment, instruments, and supplies to maintain NTAD or NAM until distribution or final disposition.~~

39. ~~"Substantive review time-frame" means the same as in A.R.S. § 41-1072.~~

40. ~~"Traceability" means the method to locate NTAD and NAM during any step of NTAD including obtaining authorization, acquisition, transport, assessing donor acceptability, preparation, packaging, labeling, storage, release, evaluation intended use, distribution, and final disposition.~~

41. ~~"Transfer" means the conveyance or relocation of NAM to:~~

    a. ~~An education facility,~~

    b. ~~A research facility,~~

    c. ~~Another procurement organization, or~~

    d. ~~A distribution inventory.~~

42. ~~"Transport" means a method for relocating NAM from one place to another in a manner that provides conditions necessary to maintain the quality of the NAM for its intended use.~~

43. ~~"Universal precautions" means the same as in A.R.S. § 32-1301.~~

~~44. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.~~

R9-9-102. ~~Licensure Requirements; Accreditation; Exemptions~~ Repealed

~~**A.** A person may not act as a procurement organization in this state unless the person is licensed by the Department as a procurement organization.~~

~~**B.** A procurement organization shall provide a designated area for tissue recovery that does not operate in a funeral establishment specified in A.R.S. § 32-1301, for the recovery of whole bodies for medical research and education according to A.R.S. §§ 36-851.02(3) and 36-851.03(A)(5)(b).~~

~~**C.** A non-accredited procurement organization is subject to inspection by the Department at any time to evaluate compliance with A.R.S. Title 36, Chapter 7, Article 3 and this Chapter according to A.R.S. § 36-851.03(A)(5)(a) and (C).~~

~~**D.** An accredited procurement organization is subject to inspection by the Department at any time to evaluate compliance with requirements in A.R.S. § 36-851.02(2) and the rules adopted pursuant to A.R.S. § 36-851.02(2).~~

~~**E.** An accredited procurement organization whose certificate of accreditation has expired or is revoked, suspended, or denied by the accrediting body, shall provide written notification to the Department within ten working days of expiration or receipt of a revocation, suspension, or denial.~~

~~**F.** This Chapter does not apply to a procurement organization identified in A.R.S. § 36-851.01(F).~~

R9-9-103. ~~Individuals to Act for an Applicant or Licensee~~ Repealed

~~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.~~

R9-9-104. ~~Application for Licensure~~ Repealed

~~A.~~ ~~An applicant applying for a procurement organization license shall submit an application packet that contains:~~

~~1.~~ ~~An application, in a Department-provided format, according to A.R.S. § 36-851.01(A) that includes:~~

~~a.~~ ~~The applicant's name, mailing address, email address, and telephone number;~~

~~b.~~ ~~The name or proposed name of the procurement organization, including the:~~

~~i.~~ ~~Business street address;~~

~~ii.~~ ~~Business mailing address, if different from the street address;~~

~~iii.~~ ~~Telephone number;~~

~~iv.~~ ~~Email address; and~~

~~v.~~ ~~Tax ID number;~~

~~c.~~ ~~If part of a business institution, the institution's:~~

~~i.~~ ~~Name;~~

~~ii.~~ ~~Street address;~~

~~iii.~~ ~~Mailing address, if different from the street address;~~

~~iv.~~ ~~Telephone number; and~~

~~v.~~ ~~Email address;~~

~~d.~~ ~~Whether the procurement organization is ready for a licensing inspection by the Department, if applicable;~~

~~e.~~ ~~If the procurement organization is not ready for a licensing inspection specified in subsection (A)(1)(d), the date the Department may perform a licensing inspection, if applicable;~~

~~f.~~ ~~The name and contact information of an individual acting on behalf of the applicant specified in R9-9-103, if applicable;~~

~~g.~~ ~~If applicable, the medical director's:~~

~~i.~~ ~~Name,~~

~~ii~~ ~~Telephone number,~~

~~iii.~~ ~~Email address, and~~

~~iv.~~ ~~License number;~~

~~h.~~ ~~Whether the applicant complies with local zoning ordinances, building codes, and fire codes;~~

~~i. Whether the applicant agrees to allow the department to submit supplemental requests for information under R9-9-108; and~~

~~j. The applicant's signature and the date signed;~~

~~2. A copy of the procurement organization's current certificate of accreditation from an accrediting body, if applicable;~~

~~3. Documentation for the applicant that complies with A.R.S. § 41-1080;~~

~~4. A copy of the procurement organization labeled floor plan, including technical and administrative function areas, if applicable; and~~

~~5. A licensing fee of $2,000.~~

~~**B.** Upon receipt of the application packet in subsection (A), the Department shall conduct an inspection of the procurement organization, if applicable.~~

~~**C.** The Department shall issue or deny a license to an applicant as specified in R9-9-108.~~

R9-9-105. ~~Application for License Renewal~~ Repealed

~~**A.** A license is valid for two years from the date of issuance or renewal as specified in A.R.S. § 36-851.01(C).~~

~~**B.** At least 30 calendar days before the expiration date indicated on a procurement organization's license to operate 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, mailing address, email address, and telephone number;~~

~~b. The procurement organization's licensing number; and~~

~~c. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-9-108;~~

~~2. If applicable, documentation of the most recent certificate of accreditation from an accrediting body; and~~

~~3. A licensing renewal fee of $2,000.~~

~~**C.** The Department shall renew or deny renewal of a license to operate as specified in R9-9-108.~~

R9-9-106. ~~Changes Affecting a License~~ Repealed

~~**A.** A licensee shall notify the Department in writing at least 30 calendar days before the effective date of:~~

~~1. Termination of operation, including:~~

a. The proposed termination date; and

b. The address and contact information for the location where the procurement organization records will be retained as required in R9-9-205;

2. A proposed modification, if applicable;

3. A change in the legal name of a procurement organization;

4. A change in the legal name of a licensee including the licensee's new name; and

5. A change in the address of a procurement organization, including the new address.

B. A licensee shall notify the Department in writing at least 30 calendar days after the effective date of a change in:

1. The email address or mailing address of a procurement organization including the new email address or mailing address;

2. The email address or telephone number of a licensee, including the new email address or telephone number;

3. An administrator, including the name, telephone number, and email address;

4. A medical director, including the name and email address; and

5. The name, telephone number, and email address of an individual acting on behalf of the licensee specified in R9-9-103.

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 procurement organization as of the termination date specified by the licensee.

D. If the Department receives a notification in subsection (A)(2) of a proposed modification, the Department:

1. May conduct an inspection of the premises as allowed by A.R.S. § 36-851.03(C); and

2. Shall issue to the licensee an amended license that incorporates the modification and retains the expiration date of the existing license, if the procurement organization is compliant with A.R.S. Title 36, Chapter 7, Article 3 and this Chapter.

E. If the Department receives a notification in subsection (A)(3) of a legal name change for a procurement organization, the Department shall issue to the licensee an amended license showing the licensee's legal name.

~~**F.** If the Department receives notice for a change in the legal name of a licensee in subsection (A)(4), the Department shall void licensee's license to operate upon issuance of a new license to operate.~~

~~**G.** If the Department receives the notice for a change in the address of a procurement organization in subsection (A)(5), the Department shall review the application for a new license, submitted consistent with R9-9-104.~~

~~**H.** An individual or business organization planning to take ownership of an existing procurement organization shall obtain a new license before beginning operation.~~

R9-9-107. ~~Denial, Suspension, Revocation, Enforcement~~ Repealed

~~**A.** The Department may:~~

~~1. Deny a license as specified in subsection (B);~~

~~2. Suspend or revoke a license under A.R.S. § 36-851.01(E) and subsection (B); or~~

~~3. Assess or impose a civil penalty under A.R.S. § 36-851.01(E) and subsection (B).~~

~~**B.** The Department may impose civil penalties, deny an application or suspend or revoke a license to operate a procurement organization, if:~~

~~1. An applicant or licensee does not meet the application requirements contained in R9-9-104 and R9-9-105, as applicable;~~

~~2. A licensee does not comply with requirements in A.R.S. §§ 36-851.01 through 36-851.03 and this Chapter, if applicable;~~

~~3. A licensee does not correct the deficiencies identified during an inspection according to the plan of correction;~~

~~4. An applicant or licensee provides false or misleading information to the Department; or~~

~~5. The nature or number of violations revealed by any type of inspection or investigation of a procurement organization poses a direct risk to the life, health, or safety of individuals on the premises.~~

~~**C.** In determining which action in subsection (A) is appropriate, the Department shall consider:~~

~~1. Repeated violations of statutes or rules,~~

~~2. Pattern of violations,~~

~~3. Severity of violations, and~~

~~4. Number of violations.~~

~~**D.** The Department may suspend or revoke an accredited procurement organization's license~~

~~if the Department receives notice that the accredited procurement organization's accreditation has expired or has been suspended or revoked by the accrediting body.~~

~~**E.** An applicant or licensee may appeal the Department's determination in this Section according to A.R.S. Title 41, Chapter 6, Article 10.~~

R9-9-108. ~~Time-frames~~ Repealed

~~**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; and~~

~~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. § 36-851.03(C) 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, and the procurement organization, including the premises are not in substantial compliance with A.R.S. Title 36, Chapter 7, Article 3 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; and
    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 procurement organization, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 7, Article 3 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 and 41-1092.03.~~

Table 1.1. ~~**Time-frames (in calendar days)**~~ **Repealed**

~~**Type of Approval**~~	~~**Statutory Authority**~~	~~**Overall Time-Frame**~~	~~**Administrative Completeness Review Time-Frame**~~	~~**Substantive Review Time-Frame**~~
~~Application for Licensure~~	~~A.R.S. § 36-851.01~~	~~90~~	~~30~~	~~60~~
~~Application for License Renewal~~	~~A.R.S. § 36-851.01~~	~~30~~	~~10~~	~~20~~
~~Modification Change Request Affecting License~~	~~A.R.S. § 36-851.01~~	~~60~~	~~30~~	~~30~~

ARTICLE 2. ~~ADMINISTRATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION~~ REPEALED

R9-9-201. ~~Administration~~ Repealed

~~A. A licensee for a non-accredited procurement organization:~~

~~1. Is responsible for all issues of liability, ethical considerations, fiduciary issues, and compliance with applicable laws and regulations;~~

~~a. SOPs for all activities and services the procurement organization provides;~~

~~b. The qualifications for an administrator:~~

~~i. Who has at least a bachelor's degree in a health science or other science related field, and~~

~~ii. Is responsible for all services and activities at a procurement organization; and~~

~~c. The qualifications for a medical director:~~

~~i. Who is licensed pursuant to A.R.S. Title 32, Chapter 13 or 17; and~~

~~ii. Provides medical guidance to determine donor eligibility;~~

~~2. Shall adopt a quality management program; and~~

~~3. Shall review and evaluate the effectiveness of the quality management program in R9-9-202 at least once every 12 months.~~

~~B. An administrator of a non-accredited procurement organization:~~

~~1. Is directly accountable to the licensee for the operation, including all services and activities, provided by or at the procurement organization;~~

~~2. Has the authority and responsibility to manage the procurement organization as specified in SOPs;~~

~~3. Designates, in writing, an individual who is on the procurement organization's premises and is available when the administrator is not present on the premises.~~

~~C. A medical director of a non-accredited procurement organization:~~

~~1. Shall provide medical guidance to determine and establish donor eligibility as established in R9-9-204; and~~

~~2. May be the same individual as the administrator, if the individual's qualifications include management for all services and activities provided at a procurement~~

organization.

D. A licensee of a non-accredited procurement organization shall ensure that the following programs at the procurement organization are established and maintained in compliance with state and federal laws and regulations:

1. A safety awareness and blood-borne pathogen training program; and
2. A cleaning program that mitigates potential cross-contamination between NTAD.

E. A licensee of a non-accredited procurement organization shall ensure that:

1. The procurement organization complies with vital records requirements in A.R.S. § 36-325;
2. An identification system according to A.R.S. § 36-851.03(A)(3)(b) for donors:
    a. Is established and maintained, and
    b. Assigns a unique identification number according to A.R.S. § 36-851.03(A)(6)(a);
        i. For each donor, and
        ii. Used to identify all NAM from a donor that is recovered and distributed;
3. SOPs are established, documented, and implemented that includes:
    a. Job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for technicians and personnel members;
    b. Orientation and in-service education for technicians and personnel members;
    c. How a technician may submit a complaint related to services provided;
    d. Donor records, including electronic records;
    e. A quality management program, including incident reports;
    f. Ethical practices;
    g. An infectious control program;
    h. Security, including evacuation procedures in the event of fire or disaster;
    i. NTAD and NAM inventory controls; and
    j. Contracted services;
4. SOPs for all services and activities are established, documented, and implemented for:
    a. The proper use and maintenance of a donor consent form according to

A.R.S. § 36-851.03(A)(3)(a);

b. Protocols and materials used to screen end-users prior to release and transfer of NAM according to A.R.S. § 36-851.03(A)(3)(c);

c. Donor screening and testing plan, including:

i. Acceptability assessment,

ii. Donor risk assessment,

iii. Medical records review,

iv. Donor eligibility, and

v. Infectious disease testing;

d. Acquisition of NTAD;

i. Donor verification;

ii. Donor identity;

iii. Acquisition records;

iv. Packaging, including packaging insert form that discloses disease status of tissue to the end-user;

v. Labeling;

vi. Transport; and

vii. Storage;

e. Preparation methods, including:

i. Receipt of NAM;

ii. Prevent airborne transmission, and

iii. Quarantine and storage, if applicable;

f. Release and transfer, including:

i. End-user eligibility review;

ii. Quality control review;

iii. Release of NAM;

iv. Exceptional release;

v. Failing review process; and

vi. Transfer to distribution for use, including out-of-state and international shipping;

g. Final disposition of donation according to A.R.S. § 36-851.03(A)(3)(f) and consistent with:

i. Board of Funeral Directors and Embalmers specified in 4 A.A.C.

12, Articles 3, 5, and 6;

ii. Vital Records and Public Health Statistics specified in A.R.S. Title 36, Chapter 3;

iii. Vital Records and Statistics specified in 9 A.A.C. 19;

iv. Health menaces specified in A.R.S. Title 36, Chapter 6, Article 1;

v. Disposition of Human Bodies specified in A.R.S. Title 36, Chapter 7; and

vi. Communicable Diseases and Infestations specified in 9 A.A.C. 6;

5. SOPs that all NTAD acquired by the procurement organization shall bear a label that:

a. Is written, printed, or graphic material used to identify NTAD/NAM, blood specimens, or other donor specimens; and

b. States according to A.R.S. § 36-851.03(A)(6)(b):

i. The NTAD or NAM is not for transplant or clinical use;

ii. Any condition and any limitation regarding the use of the NTAD or NAM;

iii. That universal precautions shall be used; and

iv. The contact information for the procurement organization;

6. SOPs are:

a. Maintained at the procurement organization and copies available to the Department for review upon request;

b. Reviewed at least once every three years and updated as needed; and

c. Available to technicians and personnel members; and

7. A loss or theft of NTAD or NAM is documented and reported to the appropriate law enforcement agency within 24 hours of discovery.

F. An administrator of a non-accredited procurement organization shall immediately report suspected misuse of NTAD or NAM.

G. An administrator of a non-accredited procurement organization shall ensure that a report specified in subsection (F) is documented and maintained in the donor's record as specified in R9-9-205(E).

H. A licensee of a non-accredited procurement organization shall ensure that the following

~~information or documents are conspicuously posted on the premises:~~

~~1. The procurement organization's current license,~~

~~2. The name of the administrator and medical director,~~

~~3. The hours of operation, and~~

~~4. The evacuation plan listed in R9-9-302.~~

R9-9-202. ~~Quality Management~~ Repealed

~~A licensee of a non-accredited procurement organization shall ensure that:~~

~~1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:~~

~~a. A method to identify, document, and evaluate incidents;~~

~~b. A method to collect data to evaluate procurement organization services provided;~~

~~c. A method to evaluate the data collected to identify a concern about the delivery of procurement organization services;~~

~~d. A method to make changes or take action as a result of the identification of a concern about the delivery of procurement organization services; and~~

~~e. The frequency of submitting a documented report required in subsection (2) to the licensee.~~

~~2. A documented report is submitted to the licensee that includes:~~

~~a. An identification of each concern about the delivery of procurement organization services; and~~

~~b. Any changes made or actions taken as a result of the identification of a concern about the delivery of procurement organization services.~~

~~3. The report required in subsection (2) and the supporting documentation for the report is maintained for 12 months by the procurement organization after the date the report is submitted to the licensee.~~

R9-9-203. ~~Contracted Services~~ Repealed

~~A licensee of a non-accredited procurement organization shall ensure that:~~

~~1. Contracted services are documented by agreement specified in SOPs.~~

~~2. If a procurement organization contracts with a laboratory for infectious disease testing of NAM, the contracted laboratory is registered with the Food and Drug Administration as a tissue establishment, specified in 21 C.F.R. § 1271.3, for~~

~~testing and is either:~~

~~a. Certified to perform such testing on human specimens in accordance with Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. § 263a) and 42 C.F.R. Part 493; or~~

~~b. Meets equivalent requirements as determined by the Centers for Medicare and Medicaid Services.~~

~~3. A list of contracted service providers is maintained and includes a description of the specific services provided.~~

R9-9-204. ~~Medical Director, Administrator, Technicians, and Personnel Members~~

Repealed

~~**A.** A licensee of a non-accredited procurement organization shall ensure that the medical director:~~

~~1. Establishes, reviews, and approves all SOPs of a medical nature, including:~~

~~a. Donor eligibility related to:~~

~~i. Screenings,~~

~~ii. Testing plans,~~

~~iii. Acceptability assessment;~~

~~b. Sampling plan and methods verifying NTAD release;~~

~~c. Exceptional release criteria and processes of NAM; and~~

~~d. Pre-established release criteria;~~

~~2. Reviews all SOPs of a medical nature at least every three years;~~

~~3. Approves a designee having training and education for performing tasks and functions assigned by the medical director;~~

~~4. Has oversight and performs review of designee activities according to procedures established by the licensee;~~

~~5. Makes a determination regarding the eligibility criteria of each donor based on a comparison with predetermined donor criteria;~~

~~6. Prior to release for use or distribution, signs the donor eligibility statement and NAM disposition or release statement; and~~

~~7. Establish a criteria that ensures all appropriate parties are notified of confirmed positive infectious disease test results.~~

~~**B.** A licensee of a non-accredited procurement organization shall ensure that the administrator:~~

1. Has at least three years of experience in tissue banking or other related fields;
2. Shall define NTAD or NAM activities that a technician may provide;
3. Shall define the methods used to provide clinical oversight and training including when clinical oversight and training is provided to an individual or a group; and
4. Shall ensure a technician's personnel record includes:
    a. Documentation of all completed training and education; and
    b. A written job description, including all primary duties.

C. A licensee of a non-accredited procurement organization shall ensure that a technician:
1. Has the educational background, experience, and training sufficient to assure assigned tasks will be performed in accordance with the established SOPs;
2. Provides a copy of a transcript or diploma in health science or other field of science for which the technician received a degree or certificate, if applicable;
3. Demonstrates competency to perform assigned tasks; and
4. Has duties required by the technician described in a written job description.

D. A licensee of a non-accredited procurement organization shall ensure that:
1. The qualifications, skill, and knowledge required for each type of technician and personnel member is based on the activities and services a personnel member may provide as established in the personnel job description; and
2. A personnel member's qualifications, skills, and knowledge are verified and documented:
    a. Before the personnel member provides procurement organization services and
    b. According to SOPs.

E. A licensee of a non-accredited procurement organization shall ensure that a personnel member does not have direct interaction with NTAD and NAM unless specifically authorized by the licensee or administrator.

F. A licensee of a non-accredited procurement organization shall ensure a personnel record is established for the administrator, technicians, and personnel members that includes:
1. The individual's name, date of birth, home address, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation applicable to an individual's duties, as required by SOPs,

~~including the individual's:~~

~~a. Education and experience;~~

~~b. In service education and continuing education, if applicable; and~~

~~c. Evidence of Hepatitis B vaccination or refusal of Hepatitis B vaccine for individuals whose job-related responsibilities involve the potential exposure to blood-borne pathogens, if applicable.~~

~~**G.** A licensee of a non-accredited procurement organization shall ensure that a personnel record is:~~

~~1. Maintained throughout an individual's period of employment or volunteer service in or for the procurement organization;~~

~~2. Maintained for at least three years after the last date that an individual's employment or volunteer service in or for the procurement organization; and~~

~~3. Provided to the Department when requested.~~

R9-9-205. ~~Donor Records~~ Repealed

~~**A.** A non-accredited procurement organization shall maintain a legible, reproducible record for each donor from whom it obtains NAM for at least 10 years beyond the date of final disposition according to A.R.S. § 36-851.03(A)(7).~~

~~**B.** To ensure traceability of NTAD and NAM, a non-accredited procurement organization shall:~~

~~1. Document each procedure performed on a NTAD and NAM related to processing and storing NAM;~~

~~2. For each document created in subsection (B)(1), include:~~

~~a. The date and time for each procedure completed; and~~

~~b. The name of the technician who performed the procedure; and~~

~~3. Submit information required to register the death of a NTAD within seven calendar days after receiving the NTAD according to A.R.S. § 36-325.~~

~~**C.** A non-accredited procurement organization shall ensure a donor record is:~~

~~1. Confidential and kept in a location with controlled access,~~

~~2. Stored in a manner to prevent unauthorized access, and~~

~~3. Maintained in a manner to preserve the donor record's completeness and accuracy.~~

~~**D.** A non-accredited procurement organization shall ensure a donor record shall include the following donor information:~~

1. The donor's name;
2. The donor's unique identifying number specified in A.R.S. § 36-851.03(A)(6);
3. The donor's date of birth and date of death; and
4. The name and contact information of the person responsible for a donor's anatomical gift; if applicable.

E. A non-accredited procurement organization shall include the following donor records, as applicable:

1. Donor consent form or documentation of authorization for an anatomical gift includes:
   a. The intended use of the NAM;
   b. How the NAM may be used;
   c. A statement that the NAM will be treated with dignity at all times; and
   d. A statement that the NAM may require international export to an end-user;
2. Document of authorization – a legal record of the gift, to take place postmortem, permitting and defining the scope of the postmortem acquisition and use of NAM for education and research, signed or otherwise recorded by the authorizing person, pursuant to law;
3. Documentation of gift – the donor's legal record of the gift of NAM permitting and defining the scope of the postmortem acquisition and use of NAM for education and research. It must be signed or otherwise recorded by the donor or individual authorized under law to make a gift during the donor's lifetime;
4. Donor's death record specified in A.A.C. R9-19-303;
5. Human remains release form specified in A.A.C. R9-19-301;
6. Information for a death record specified in A.A.C. R9-19-302 for transporting human remains into the state;
7. Disposition-transit permit specified in A.A.C. R9-19-308;
8. Medical examiner's release of information specified in A.R.S. § 36-861;
9. All documents and permits that establish the chain of custody and identifies the individuals and organizations that had physical custody of the NAM;
10. Medical records, including:
    a. Donor's physical assessment;
    b. Risk assessment questionnaire;

c. Pathology and laboratory testing and reports;

d. Physician summaries;

e. Transfusion or infusion information; and

f. Plasma dilution calculations;

11. Information from the donor referral source;

12. Donor eligibility;

13. Donor acceptability assessment;

14. Physical assessment questionnaire;

15. Documentation related to distribution;

16. Serological results, when applicable;

17. Cremation authorization document;

18. Documentation related to NAM recovery, storage, and distribution activities;

19. Final disposition documentation, including all records demonstrating chain of custody; and

20. Documentation of the report in R9-9-201(F) and (G).

F. A donor's consent form shall be accessible to the donor's known consenter.

G. Upon demonstration of a legal right to acquire a donor's record, a non-accredited procurement organization shall provide access to:

1. An agent legally authorized or other individual designated at the time a donor gives consent;

2. An individual appointed by a court or authorized by state laws;

3. An individual of a procurement organization as identified by SOPs;

4. An individual from an approving accrediting body, if applicable; and

5. An individual from the Department or other regulatory agency authorized by state and federal laws or regulations.

H. Except for a donor record specified in subsection (A), a non-accredited procurement organization shall maintain documentation required by this Chapter for at least three years after the date of the documentation and provide copies of the documentation to the Department for review upon request.

ARTICLE 3. ~~PHYSICAL PLANT; TRANSPORTATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION~~ REPEALED

R9-9-301. ~~General Plant Standards; Environmental Services~~ Repealed

~~A.~~ ~~A licensee of a non-accredited procurement organization shall ensure that a procurement organization facility:~~

~~1.~~ ~~Is in a building that:~~

~~a.~~ ~~Has a commercial occupancy according to the local zoning jurisdiction;~~

~~b.~~ ~~Is free of any plumbing, electrical, ventilation, mechanical, or structural hazard that may jeopardize the security and quality of the NTAD, NAM, and the health or safety of the public;~~

~~c.~~ ~~Has equipment and supplies to maintain NTAD and NAM in a safe and temperature-controlled state; and~~

~~d.~~ ~~Provides a separate and designated area for tissue recovery.~~

~~2.~~ ~~Has premises that are:~~

~~a.~~ ~~Sufficient to provide for a procurement organization's services and activities;~~

~~b.~~ ~~Cleaned and disinfected according to the procurement organization's SOPs to prevent, minimize, and control illness and infection and mitigate potential cross-contamination between NTAD and NAM;~~

~~c.~~ ~~Clean and free from accumulations of dirt, garbage, and rubbish; and~~

~~d.~~ ~~Free from a condition or situation that may cause an individual to suffer physical injury;~~

~~3.~~ ~~Provides a restroom for clients:~~

~~a.~~ ~~Free from contamination and cross-contamination of NAM; and~~

~~b.~~ ~~Does not contain any items, materials, or devices associated with the preparation activities or technicians and personnel members;~~

~~4.~~ ~~Implements and documents a pest control program that:~~

~~a.~~ ~~Requires a pest control service that uses certified applicators as specified in 3 A.A.C. 8, Article 2; and~~

~~b.~~ ~~Retains annual pest control service records for at least 12 months from date of service; and~~

~~5.~~ ~~Does not maintain a public health nuisance or engage in any act, condition, or~~

~~thing, specified in A.R.S. § 36-601, or any practice contrary to the health laws of this state.~~

~~B.~~ ~~A licensee of a non-accredited procurement organization shall ensure that a procurement organization:~~

~~1.~~ ~~Has preparation rooms that:~~

~~a.~~ ~~Are maintained in a clean and sanitary condition at all times;~~

~~b.~~ ~~Are only used for examining and preparing NTAD;~~

~~c.~~ ~~Contain equipment, instruments, and supplies necessary for examining and preparing NTAD and are disinfected or sterilized, as applicable, after each use to protect the health and safety of technicians and personnel members;~~

~~d.~~ ~~Have sanitary flooring, drainage, and ventilation;~~

~~e.~~ ~~Have proper and convenient receptacles for refuse, bandages, and all other waste materials; and~~

~~f.~~ ~~Are thoroughly cleansed and disinfected with a 1% solution of chlorinated soda, or other suitable and effective disinfectant:~~

~~i.~~ ~~Immediately after obvious spill of blood or other potentially infectious materials, and~~

~~ii.~~ ~~At the end of each shift or on a regular basis that provides equivalent safety for all work surfaces;~~

~~2.~~ ~~Has refrigeration equipment used to store NTAD and NAM that:~~

~~a.~~ ~~Is only used for NTAD and NAM;~~

~~b.~~ ~~Is maintained in working order and kept in a clean and sanitary condition;~~

~~c.~~ ~~If a walk-in cooler, maintains a temperature between 36°F and 45°F;~~

~~d.~~ ~~If a freezer, maintains a temperature at or below 32°F;~~

~~e.~~ ~~Is monitored by a temperature sensor system that:~~

~~i.~~ ~~Measures temperatures continuously and document when a unit is out of the required temperature range, and~~

~~ii.~~ ~~Alert technicians or other designated individuals when temperatures are outside of the acceptable limits; and~~

~~3.~~ ~~Has equipment at the procurement organization that is:~~

~~a.~~ ~~Sufficient to support the service;~~

~~b. Maintained in working condition;~~

~~c. Maintained in a clean and sanitary condition;~~

~~d. Used according to the manufacturer's recommendations;~~

~~e. If used during an examination or preparation of NTAD, cleaned and sanitized specified in subsection (B)(1)(f)(ii); and~~

~~f. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in SOPs.~~

~~**C.** A licensee of a non-accredited procurement organization shall maintain documentation of equipment tests, calibrations, and repairs for at least 12 months after the date of testing, calibration, or repair.~~

~~**D.** A licensee of a non-accredited procurement organization shall ensure that:~~

~~1. Biohazardous material or medical waste and other potentially hazardous materials are removed and disposed by a facility licensed by the Arizona Department of Environmental Quality pursuant to 18 A.A.C. 8 and 13; and~~

~~2. Combustible or flammable liquids are stored in a labeled containers or safety containers in a secured area and properly identified to ensure individuals health and safety.~~

R9-9-302. ~~Emergency and Safety Standards~~ Repealed

~~**A.** An administrator of a non-accredited procurement organization shall ensure:~~

~~1. SOPs for emergency transfer of NTAD and NAM to a designated back-up storage facility with an acceptable coolant and monitoring system in the event of mechanical failure or loss of coolant, including:~~

~~a. Tolerance limits or temperatures and time limits;~~

~~b. Methods and actions to be taken; and~~

~~c. Specific labeling indicating that the transported NTAD and NAM shall remain untouched until returned to the licensed non-accredited procurement facility after the mechanical failure or loss of coolant has been restored;~~

~~2. There is a first aid kit available at a procurement organization;~~

~~3. There are smoke detectors installed according to building size and local zoning jurisdiction;~~

~~4. A smoke detector required in subsection (A)(3):~~

~~a. Is maintained in an operable condition; and~~

~~b. Is battery operated or, if hard-wired into the electrical system of a procurement organization, has a back-up battery;~~

~~5. A procurement organization has a portable fire extinguisher that is labeled 2A-10-BC by the Underwriters Laboratory and is readily available for use;~~

~~6. A portable fire extinguisher required in subsection (A)(5) is:~~

~~a. If a disposable fire extinguisher, replaced when the fire extinguisher's indicator reaches the red zone; or~~

~~b. Serviced at least every 12 months and has a tag attached to the fire extinguisher that includes the date of service; and~~

~~7. A written fire and evacuation plan is established and maintained.~~

~~**B.** An administrator of a non-accredited procurement organization shall:~~

~~1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal;~~

~~2. Make any repairs or corrections stated on the fire inspection report; and~~

~~3. Maintain documentation of a current fire inspection for at least two years.~~

R9-9-303. ~~Security Standards; NTAD/NAM Inventory Controls~~ Repealed

~~**A.** A licensee of a non-accredited procurement organization shall ensure that access to the enclosed locked areas where NTAD and NAM is located is limited to individuals authorized by the licensee or administrator.~~

~~**B.** To prevent unauthorized access to NTAD and NAM inventory, an administrator of a non-accredited procurement organization shall:~~

~~1. Have personnel or security equipment to deter and prevent unauthorized entrance into limited access areas that includes:~~

~~a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic devices;~~

~~b. Exterior lighting to facilitate surveillance; and~~

~~c. Electronic monitoring using video cameras shall provide coverage of:~~

~~i. Entrances to and exits from limited access areas;~~

~~ii. Entrances to and exits from the buildings; and~~

~~iii. Entrances and exits capable of identifying any activity occurring~~

~~within the limited access area.~~

~~2. Maintain video recordings from the video cameras for at least 30 calendar days.~~

~~3. Have a failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system.~~

~~4. Have battery backup for video cameras and recording equipment to support in the event of a power outage.~~

~~5. SOPs:~~

~~a. That restricts access to the areas of the building that contain NTAD and NAM inventory and donor records;~~

~~b. That provides for identification of authorized individuals; and~~

~~c. For conducting electronic monitoring.~~

~~**C.** A licensee of a non-accredited procurement organization shall establish and implement a NTAD and NAM inventory tracking system that:~~

~~1. Contains all NTAD received and NAM released for distribution;~~

~~2. Lists release documentation verified for each NAM prior to transferring NAM to inventory;~~

~~3. Documents the date, time, and location for NAM transferred for use, including the name of the individual performing the transfer;~~

~~4. Documents the date, time, and location for NAM that is moved between locations controlled by the procurement organization, including the name of the individual overseeing the move; and~~

~~5. Ensures NAM that can no longer be used is removed from inventory and disposed according to applicable SOPs.~~

R9-9-304. ~~Transportation Standards~~ Repealed

~~**A.** If a non-accredited procurement organization owns and maintains a vehicle for transporting NAM, an administrator shall ensure the vehicle is:~~

~~1. Not used for a purpose other than transporting NTAD and NAM or conducting procurement organization business;~~

~~2. Only operated by a procurement organization technician or designated individual authorized to transport NTAD or NAM;~~

~~3. Maintained in clean and sanitary condition; and~~

~~4. Locked and secured at all times during transport of NTAD or NAM.~~

~~**B.** If using another vehicle or type of transport for NTAD or NAM, an administrator of a~~

~~non-accredited procurement organization shall ensure that another vehicle or type of transport:~~

~~1. Is properly equipped for the transportation of NTAD or NAM;~~

~~2. Is compliant with all state laws and rules pertaining to transporting human remains; and~~

~~3. If transport is by air, complies with applicable standards established by the International Air Transport Association and Transport Security Administration.~~

~~**C.** An administrator of a non-accredited procurement organization shall ensure that NTAD and NAM transported into the state has information of death documentation specified in A.A.C. R9-19-302 prior to transport.~~

R9-9-305. ~~Sanitation Standards and Reporting~~ Repealed

~~**A.** A licensee of a non-accredited procurement organization shall ensure that:~~

~~1. Areas used to receive, prepare, label, package, and store NAM are:~~

~~a. Properly ventilated, and~~

~~b. Protected from dust, dirt, flies, and other contamination.~~

~~2. All refuse and waste products produced from receiving, preparing, packaging, distributing, and transporting NAM are removed from the premises as needed.~~

~~3. All transport vehicles, trays, other receptacles, racks, tables, shelves, knives, saws, other utensils, or machinery used to move, handle, separate, package or other processes be cleaned as specified in SOPs and this Article.~~

~~**B.** A technician or personnel member of a non-accredited procurement organization shall report to the administrator or medical director:~~

~~1. Any concern related to receiving, preparing, packaging, distributing, or transporting NTAD or NAM that may adversely affect the health and safety of others.~~

~~2. Any personal health condition experienced related to receiving, preparing, packaging, distributing, or transporting NTAD or NAM.~~

~~**C.** If an administrator or medical director of a non-accredited procurement organization determines a health condition in subsection (B)(1) has occurred, the administrator or medical director shall:~~

~~1. Follow SOPs to secure the area and eliminate exposure to others;~~

~~2. Notify appropriate health and law enforcement agencies, as applicable; and~~

~~3. Report the incident to the Department within five working days of determination~~

~~that a health condition in subsection (B)(2) has occurred.~~

~~**D.** A licensee, administrator, or medical director of a non-accredited procurement organization shall report a health condition experienced by a technician or personnel member to the Department within five calendar days of determination that the individual has a personal health condition specified in subsection (B)(1).~~

ARTICLE 4. ~~ADMINISTRATION FOR AN ACCREDITED PROCUREMENT ORGANIZATION~~ REPEALED

R9-9-401. ~~General Responsibilities~~ Repealed

~~A. A licensee of an accredited procurement organization shall provide a copy of a renewed accreditation to the Department within 30 calendar days from the date of issuance.~~

~~B. A licensee of an accredited procurement organization shall ensure that a procurement organization facility is in a building that provides a separate and designated area for tissue recovery according to A.R.S. § 36-851.02(3).~~

~~C. A licensee of an accredited procurement organization shall ensure SOPs are established, documented, and implemented that cover:~~

~~1. Labeling;~~

~~2. Packaging, including a packaging insert form that discloses disease status of tissue to end-user according to A.R.S. § 36-851.02(2)(d);~~

~~3. Transport;~~

~~4. Distribution; and~~

~~5. Final disposition.~~

R9-9-402. ~~Donor Consent; NTAD and NAM Identification~~ Repealed

~~In addition to the requirements in Article 1, a licensee of an accredited procurement organization shall ensure that:~~

~~1. A donor consent form includes:~~

~~a. The intended use of the NAM,~~

~~b. How the NAM may be used,~~

~~c. A statement that the NAM will be treated with dignity at all times, and~~

~~d. A statement that the NAM may require international export to an end-user.~~

~~2. A donor consent form is maintained in the donor's record and retained for at least 10 years beyond the date of final disposition.~~

~~3. An electronic identification system for donors is established and maintained for NTAD or NAM;~~

~~a. Assigns a unique identification number according to A.R.S. § 36-851.03(A)(6)(a);~~

~~b. Tracks the complete history of all NAM; and~~

~~c. Records the date and staff member involved in each significant step of the operation from the time of NTAD acquisition through final disposition.~~

~~4. The information required to register the death of a NTAD is submitted within seven calendar days after receiving the NTAD according to A.R.S. § 36-325.~~

R9-9-403. ~~Tissue End-Users~~ Repealed

~~**A.** A licensee of an accredited procurement organization shall establish, document, and implement SOPs to properly screen an end-user that includes:~~

~~1. A written request for NAM, including:~~

~~a. The name, address and affiliation of educator and research accepting responsibility for the acceptance, use, and disposition of the NAM;~~

~~b. A description of the intended use;~~

~~c. The date and the approximate duration of NAM use;~~

~~d. A description of the venue in which the NAM will be used and the security measures for the safe and ethical utilization of the venue;~~

~~e. An assurance that universal precautions will be used when handling NAM;~~

~~f. The proposed final disposition of the NAM;~~

~~g. An agreement to comply with procurement organization's policies, as applicable;~~

~~h. An outline of proposed promotional materials to be disseminated in connection with the use of NAM; and~~

~~i. Other supporting documentation that is relevant to the request; and~~

~~2. The criteria for approving requested NAM for use, including:~~

~~a. The acceptability of the educator and researcher for NAM utilization;~~

~~b. The appropriateness of the intended use;~~

~~c. Type of venue in which the NAM will be used;~~

~~d. Proposed final disposition of the NAM unless returned to the procurement organization; and~~

~~e. Proposed promotional materials.~~

~~**B.** A licensee of an accredited procurement organization shall establish, document, and implement a procedure that allows an end-users to request an exceptional release of NAM.~~

SUBCHAPTER 9A. PROCUREMENT ORGANIZATIONS

ARTICLE 1. PROCUREMENT ORGANIZATION LICENSURE

R9-9A-101. Applicability

This Subchapter does not apply to a procurement organization identified in A.R.S. § 36-851.01(F).

R9-9A-102. Definitions

In addition to the definitions in A.R.S. § 36-841, the following apply in this Subchapter, unless otherwise specified:

1. "Acceptability assessment" means the evaluation by a procurement organization of available medical and social information about a donor to determine whether the donor meets criteria for making a non-transplant anatomical donation.
2. "Accredited" means having a current and valid certificate of accreditation as a procurement organization from a nationally recognized agency that is approved by the Department.
3. "Acquisition" means activities required to obtain a non-transplant anatomical donation.
4. "Administrator" means the individual responsible for the provision by a procurement organization of services and related activities.
5. "Applicant" means an individual or business organization requesting approval to operate a procurement organization.
6. "Application" means the information, documents, and fees required by the Department for licensure of a procurement organization.
7. "Business organization" means the same as "entity" in A.R.S. § 10-140.
8. "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.
9. "Department" means the Arizona Department of Health Services.
10. "Distribution" means the process for release and transfer of non-transplant anatomical material to another procurement organization, an education facility, or

a research facility, including the selection and evaluation of non-transplant anatomical material for the intended use.

11. "Donor consent form" means the same as "document of gift" as defined in A.R.S. § 36-841.

12. "Exceptional release" means the distribution of non-transplant anatomical material that:

    a. Has been approved for usage before a donor acceptability assessment has been completed; or

    b. Would not normally meet the established acceptability criteria, at the request of a researcher.

13. "Final disposition" means the same as in A.R.S. § 36-301.

14. "Licensee" means a person to whom the Department has issued a license to operate a procurement organization.

15. "Medical director" means a physician who meets the requirements in A.R.S. § 36-851.03.

16. "Non-transplant anatomical donation" means an anatomical gift intended to be used for education or research.

17. "Non-transplant anatomical material" means a non-transplant anatomical donation that has been prepared, packaged, labeled, and released to distribution inventory.

18. "Personnel member" means an individual who is identified as an employee, student, or volunteer for a procurement organization and performs activities directly related to acquisition, evaluation of a non-transplant anatomical donation, preparation, or distribution of non-transplant anatomical material.

19. "Physical assessment" means a postmortem evaluation of a non-transplant anatomical donation to determine whether there is evidence of a condition, such as a viral or bacterial infection, that may affect the suitability of the non-transplant anatomical donation for use in education or research.

20. "Premises" mean a facility and surrounding grounds that are designated by an applicant or a licensee and licensed by the Department as part of a procurement organization.

21. "Preparation" means an activity:

    a. Performed to make a non-transplant anatomical donation ready for distribution; and

b. Includes cleaning, preservation, disarticulation, dissection, skeletonization, plastination, packaging, and labeling of the non-transplant anatomical donation.

22. "Procurement organization" means the same as "non-transplant anatomical donation organization," as defined in A.R.S. § 36-841, and includes both accredited and non-accredited facilities.

23. "Quality management program" means ongoing activities designed and implemented by a procurement organization to improve acquisition, evaluation of a non-transplant anatomical donation, preparation, or distribution of non-transplant anatomical material.

24. "Standard operating procedure" means a documented process for carrying on business, providing services, or performing activities, with instructions for performing routine or repetitive tasks.

25. "Storage" means the process of maintaining non-transplant anatomical donations and non-transplant anatomical material in a designated area that contains relevant equipment, instruments, and supplies until distribution or final disposition.

26. "Transfer" means to convey responsibility and oversight for non-transplant anatomical material to another person.

R9-9A-103. Individuals to Act for an Applicant or a Licensee

When an applicant or a licensee is required by this Subchapter 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 Subchapter and who:

   a. Is a U.S. citizen or legal resident;

   b. Has an Arizona address; and

   c. Meets one of the following, as applicable:

      i. 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;

      ii. 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 individual who owns or controls at least 10% of the voting securities; or

iii. Holds a beneficial interest in 10% or more of the liabilities of the business organization.

R9-9A-104. Application for Licensure

A. A person may not act as a procurement organization in this state unless the person is licensed by the Department as a procurement organization.

B. An applicant for a procurement organization license shall submit to the Department an application that contains:

1. The following, according to A.R.S. § 36-851.01(A), in a Department-provided format:
   a. The applicant's name, mailing address, email address, and telephone number;
   b. The name or proposed name of the procurement organization, including the:
      i. Physical address;
      ii. Mailing address, if different from the physical address;
      iii. Telephone number;
      iv. Email address; and
      v. Tax ID number;
   c. Whether the applicant is a business organization and, if so, the type of business organization;
   d. Whether the applicant is accredited as a procurement organization;
   e. If the applicant is not accredited as a procurement organization, the name, email address, telephone number, and professional license number of the medical director;
   f. Whether the facility is ready for a licensing inspection by the Department;
   g. If the facility is not ready for a licensing inspection specified in subsection (B)(1)(f), the date the facility will be ready for a licensing inspection;
   h. The name, title, and contact information of an individual acting on behalf

of the applicant, as specified in R9-9A-103;

i. Whether the applicant complies with local zoning ordinances, building codes, and fire codes;

j. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-9A-109; and

k. The applicant's signature and the date signed;

2. If applicable, documentation that the procurement organization is accredited;

3. A floor plan, drawn to scale, of each building where the procurement organization will be located, showing the function of each room;

4. Documentation for the applicant that complies with A.R.S. § 41-1080;

5. Documentation that shows that the applicant is in good standing with the Arizona Corporation Commission; and

6. An application fee of $2,000.

C. Upon receipt of the application in subsection (B), the Department shall conduct an inspection of the procurement organization, if applicable.

D. The Department shall issue or deny a license to an applicant as specified in R9-9A-109.

R9-9A-105. Application for License Renewal

A. A license is valid for two years from the date of issuance or renewal as specified in A.R.S. § 36-851.01(C).

B. At least 30 calendar days before the expiration date indicated on a procurement organization's license, a licensee shall submit to the Department an application for renewal that contains:

1. The following, in a Department-provided format:

a. The licensee's name, mailing address, email address, and telephone number;

b. The procurement organization's license number;

c. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-9A-109; and

d. The licensee's signature and the date signed;

2. If applicable, documentation that the procurement organization is accredited; and

3. An application fee of $2,000.

C. The Department shall renew or deny renewal of a license as specified in R9-9A-109.

R9-9A-106. Changes Affecting a License

A. A licensee shall notify the Department in writing at least 30 calendar days before the effective date of termination of procurement organization operations, including the following information, in a Department-provided format:

1. The name and license number of the licensee;
2. The name, email address, and telephone number of an individual who may be contacted by the Department;
3. The proposed termination date; and
4. The address and contact information for the location where the procurement organization records will be retained, according to R9-9A-201(B)(1)(b).

B. A licensee of an accredited procurement organization, whose certificate of accreditation has expired or has been revoked, suspended, or denied, shall notify the Department in writing no later than 14 calendar days after expiration or the receipt of a revocation, suspension, or denial.

C. A licensee shall:

1. Notify the Department in writing at least 30 calendar days before a change in the legal name of a procurement organization that does not affect the structure or ownership of the business organization, including the following information:
   a. The name and license number of the licensee;
   b. The current name of the procurement organization;
   c. The proposed name of the procurement organization; and
   d. The name, email address, and telephone number of an individual who may be contacted by the Department; and
2. Within seven calendar days after the effective date of the name change, submit to the Department documentation of the name change from the Arizona Corporation Commission that indicates no change in structure or ownership of the procurement organization.

D. A licensee shall:

1. Notify the Department in writing at least 30 calendar days before a change in the legal name of the licensee, which does not affect the structure or ownership of the business organization if the licensee is a business organization, including the following information:
   a. The current name and license number of the licensee,
   b. The proposed name of the licensee, and

c. The name, email address, and telephone number of an individual who may be contacted by the Department; and

2. Within seven calendar days after the effective date of the name change, submit to the Department either:

a. If the licensee is an individual, documentation of the individual's legal name change; or

b. If the licensee is a business organization, documentation of the name change from the Arizona Corporation Commission that indicates no change in structure or ownership of the business organization.

E. A licensee shall notify the Department in writing no later than 30 calendar days after a change in any of the following, including the name and license number of the procurement organization:

1. The email address or mailing address of the procurement organization, including the new email address or mailing address;

2. The email address or telephone number of the licensee, including the new email address or telephone number;

3. An administrator, including the name, telephone number, and email address of the new administrator;

4. A medical director, including the name, email address, and professional license number of the new medical director; or

5. The name, telephone number, and email address of the individual acting on behalf of the licensee specified in R9-9A-103.

F. A licensee shall notify the Department in writing at least 30 calendar days before the effective date of a proposed modification, which includes a substantial improvement, enlargement, reduction, alteration, or other substantial change in the facility or another structure on the premises at the procurement organization, including;

1. The following information:

a. The name and license number of the licensee;

b. A description of the proposed modification;

c. Whether the modification will comply with local zoning ordinances, building codes, and fire codes;

d. The estimated date of completion of the modification;

e. The date the facility will be ready for a licensing inspection; and

f. The name, email address, and telephone number of an individual who may be contacted by the Department;

2. A floor plan, drawn to scale, of each building in which a change will be made:

a. Showing the function of each room, and

b. Indicating the changes to be made; and

3. A plan for ensuring the quality and security of non-transplant anatomical donations and non-transplant anatomical material are maintained during the modification.

G. For an anticipated change in the address of a procurement organization, a licensee shall:

1. Notify the Department in writing at least 30 calendar days before the anticipated change in the address, including;

a. The name and license number of the licensee;

b. The new address of the procurement organization;

c. The estimated date that the procurement organization plans to suspend acquisition, preparation, and distribution at the current address in anticipation of the change of address; and

d. The estimated date that the procurement organization plans to be ready to begin operations at the new address;

2. Submit to the Department:

a. The application information, documentation, and fee required in R9-9A-104(B);

b. A plan for ensuring the quality and security of non-transplant anatomical donations and non-transplant anatomical material are maintained during the change of location; and

c. Documentation from the Arizona Corporation Commission that shows the change of address and indicates no change in structure or ownership of the procurement organization;

3. Ensure that the quality and security of non-transplant anatomical donations and non-transplant anatomical material are maintained during the change of address; and

4. Not begin procurement organization activities at the new address until a new license has been issued according to subsection (M).

H. For an anticipated change of ownership of a procurement organization:

1. A licensee shall:
   a. Notify the Department in writing at least 30 calendar days before the anticipated change of ownership, including the following information, in a Department-provided format:
      i. The name and license number of the licensee;
      ii. The name, email address, and telephone number of the person who is anticipated to assume ownership of the procurement organization;
      iii. The estimated date that the procurement organization plans to suspend acquisition, preparation, and distribution in anticipation of the change of ownership;
      iv. The estimated date that the change of ownership will occur;
      v. The address and contact information for the location where the procurement organization records will be retained, according to R9-9A-201(B)(1)(b); and
      vi. The name, email address, and telephone number of an individual who may be contacted by the Department;
   b. If the licensee anticipates that any non-transplant anatomical donations or non-transplant anatomical material in the possession of the licensee will be transferred to the new owner, submit to the Department a plan for ensuring that the quality and security of the non-transplant anatomical donations and non-transplant anatomical material are maintained during the change of ownership; and
   c. If the licensee anticipates that any non-transplant anatomical donations or non-transplant anatomical material in the possession of the licensee will not be transferred to the new owner, submit to the Department a plan for final disposition of the non-transplant anatomical donations and non-transplant anatomical material, consistent with the standard operating procedure for the final disposition of non-transplant anatomical donations and non-transplant anatomical material, according to R9-9A-201(B)(8); and
2. The person identified in subsection (H)(1)(b) shall:
   a. Submit to the Department the application information, documentation,

and fee required in R9-9A-104(B);

b. Ensure that the quality and security of non-transplant anatomical donations and non-transplant anatomical material transferred from the licensee are maintained during the change of ownership; and

c. Not begin procurement organization activities until a license has been issued by the Department to the person according to R9-9A-109(C)(4).

I. If the Department receives the notification of termination of operation in subsection (A) or notice of a change in ownership in subsection (H)(1), the Department shall void the licensee's license to operate a procurement organization as of the termination date specified by the licensee.

J. If the Department receives a notification in subsection (B) of a procurement organization's loss of accreditation, the Department may conduct an inspection of the procurement organization to ensure compliance with the requirements in A.R.S. § 36-851.03 and this Subchapter.

K. If the Department receives a notification in subsection (C) or (D) of a change in the legal name of the procurement organization or licensee, the Department shall:

1. Determine whether the change affects the structure or ownership of the business organization;
2. If the change does not affect the structure or ownership of the business organization, issue to the licensee an amended license showing the new legal name of the procurement organization or licensee and keeping the current license expiration date; and
3. If the change affects the structure or ownership of the business organization:
   a. Notify the licensee that the procurement organization is required to suspend acquisition, preparation, and distribution as of the date of the documentation required in subsection (C)(2) or (D)(2)(b), as applicable;
   b. Require the licensee to specify the address and contact information for the location where the procurement organization records will be retained, according to R9-9A-201(B)(1)(b);
   c. Notify the licensee that the licensee is responsible for ensuring that the quality and security of non-transplant anatomical donations and non-transplant anatomical material are maintained until:
      i. A new license is issued under the new structure or ownership of

the business organization; or

ii. The licensee no longer possesses any non-transplant anatomical donations or non-transplant anatomical material;

d. If the procurement organization plans to continue operations under the new structure or ownership of the business organization:

i. Require the submission of the application information, documentation, and fee required in R9-9A-104(B);

ii. Conduct an inspection of the procurement organization if appropriate; and

iii. Specify that procurement organization activities may not resume until a new license has been issued by the Department according to R9-9A-109(C)(4); and

e. Terminate the licensee's current license when the Department:

i. Issues a new license to the procurement organization under the new structure or ownership of the business organization, or

ii. Receives notification that the licensee no longer possesses any non-transplant anatomical donations or non-transplant anatomical material.

L. If the Department receives a notification in subsection (F) of a proposed modification, the Department:

1. May conduct an inspection of the premises; and

2. If the procurement organization is compliant with A.R.S. Title 36, Chapter 7, Article 3, and this Subchapter, shall issue to the licensee an amended license that incorporates the modification and retains the expiration date of the existing license.

M. If the Department receives a notification, information, and documentation in subsection (G) for a change of address, regardless of whether the change affects the structure or ownership of the business organization, or a notification in subsection (H) that indicates a change in ownership, the Department:

1. Shall notify the licensee that:

a. The procurement organization is required to suspend acquisition, preparation, and distribution as of the date specified in subsection (G)(1)(c) or (H)(1)(a)(iii), as applicable;

b. The licensee is responsible for ensuring that the quality and security of non-transplant anatomical donations and non-transplant anatomical material are maintained until:

i. A new license is issued to the licensee at the new address or to the new owner, as applicable; or

ii. The licensee no longer possesses any non-transplant anatomical donations or non-transplant anatomical material; and

c. Procurement organization activities may not occur after the date specified in subsection (G)(1)(c) or (H)(1)(a)(iii), as applicable, until a new license has been issued by the Department according to R9-9A-109(C)(4);

2. May conduct an inspection of the procurement organization;

3. If the application is compliant with A.R.S. Title 36, Chapter 7, Article 3, and this Subchapter, shall issue a new license to the applicant according to R9-9A-109(C)(4); and

4. Shall terminate the licensee's current license when the Department:

a. Issues a new license to the procurement organization at the new address or to the new owner, as applicable; or

b. Receives notification that the licensee no longer possesses any non-transplant anatomical donations or non-transplant anatomical material.

R9-9A-107. Inspections

A. A non-accredited procurement organization is subject to inspection by the Department at any time to evaluate compliance with A.R.S. Title 36, Chapter 7, Article 3, and this Subchapter according to A.R.S. § 36-851.03(A)(5)(a) and (C).

B. An accredited procurement organization is subject to inspection by the Department at any time to evaluate compliance with requirements in A.R.S. § 36-851.02(2) and the rules adopted pursuant to A.R.S. § 36-851.02(2).

C. If the Department determines that a procurement organization is not in compliance with the applicable requirements in A.R.S. Title 36, Chapter 7, Article 3, and the rules in this Subchapter, the Department may:

1. Take an enforcement action as described in R9-9A-108; or

2. Require that the licensee submit to the Department, within 30 calendar days after written notice from the Department, a plan of correction acceptable to the

Department to address issues of compliance that:

a. Describes how each identified instance of noncompliance will be corrected and reoccurrence prevented,

b. Includes a date for correcting each instance of noncompliance that is appropriate to the actions necessary to correct the instance of noncompliance, and

c. Includes the signature of the individual acting for the licensee according to R9-9A-102 and date signed.

R9-9A-108. Denial, Suspension, Revocation, Enforcement

A. The Department may:

1. Deny a license as specified in subsection (B),
2. Suspend or revoke a license under A.R.S. § 36-851.01(E) and subsection (B), or
3. Assess or impose a civil penalty under A.R.S. § 36-851.01(E) and subsection (B).

B. The Department may impose civil penalties, deny an application, or suspend or revoke a license to operate a procurement organization, if:

1. An applicant or a licensee does not meet the application requirements contained in R9-9A-104 or R9-9A-105, as applicable;
2. A licensee does not comply with applicable requirements in A.R.S. §§ 36-851.01 through 36-851.03 and this Subchapter;
3. A licensee does not correct the deficiencies identified during an inspection according to the plan of correction;
4. An applicant or a licensee provides false or misleading information to the Department; or
5. The nature or number of violations revealed by any type of inspection or investigation of a procurement organization poses a direct risk to the life, health, or safety of a personnel member or member of the public.

C. In determining which action in subsection (A) is appropriate, the Department shall consider:

1. Repeated violations of statutes or rules,
2. The pattern of violations,
3. The severity of violations, and
4. The number of violations.

D. If the Department receives notice that a previously accredited procurement organization's accreditation has expired or has been suspended or revoked, the Department may suspend or revoke the procurement organization's license if the procurement organization does not comply with A.R.S. § 36-851.03 and this Subchapter.

E. An applicant or a licensee may appeal the Department's determination in this Section according to A.R.S. Title 41, Chapter 6, Article 10.

R9-9A-109. Time-frames

A. The overall time-frame, as defined in A.R.S. § 41-1072, for a license granted by the Department under this Subchapter 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, as defined in A.R.S. § 41-1072, 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, as defined in A.R.S. § 41-1072, for a license granted by the Department under this Subchapter is set forth in Table 1.1 and begins on the date that the Department receives an application from an applicant or a licensee.

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; and
   c. If an applicant or a licensee fails to submit to the Department all of the information or items listed in the notice of deficiencies within the time-frame in Table 1.1 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:
      i. Consider the application withdrawn, and
      ii. Send to the applicant or licensee a written notice setting forth the

information required by A.R.S. § 41-1092.03.

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 that may require more than one visit to complete.
2. The Department shall issue a license or send 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 a licensee, or the procurement organization, including the premises, are not in substantial compliance with A.R.S. Title 36, Chapter 7, Article 3, or this Subchapter;
   b. An applicant or a 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 the time-frame in Table 1.1 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; and

d. If an applicant or a 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-frame in Table 1.1, the Department shall:

i. Deny the license, and

ii. 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 and 41-1092.03.

4. The Department shall issue a license if the Department determines that the applicant or licensee and the procurement organization, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 7, Article 3, and this Subchapter.

Table 1.1. Time-frames (in calendar days)

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame	Time-frame for applicant to complete application	Administrative Completeness Time-frame	Substantive Review Time-frame	Response Time for Request in R9-9A-603(X)
Application for an initial procurement organization license	A.R.S. § 36-851.01 and R9-9A-104	90	90	30	60	30
Renewal of a procurement organization license	A.R.S. § 36-851.01 and R9-9A-105	30	30	10	20	30
Application for a facility or licensee name change	A.R.S. § 36-851.01 and R9-9A-106(C)	60	30	30	30	30
Application for another change affecting licensure	A.R.S. § 36-851.01 and R9-9A-106(C)	90	90	30	60	30

ARTICLE 2. ADMINISTRATION AND OPERATIONS FOR A PROCUREMENT ORGANIZATION

R9-9A-201. General Administration Requirements for a Procurement Organization

A. A licensee of a procurement organization:

1. Is responsible for all issues of liability, ethical considerations, fiduciary issues, and compliance with applicable laws and regulations;
2. Shall comply with:
   a. A.R.S. § 36-325 and, as applicable, A.A.C. R9-19-303 or A.A.C. R9-19-304 related to death certificate registration; and
   b. A.R.S. § 36-326, A.A.C. R9-19-301, A.A.C. R9-19-308, and, if applicable, A.A.C. R9-19-311 related to the movement of non-transplant anatomical donations and non-transplant anatomical material; and
3. Shall adopt, maintain, and implement standard operating procedures, as applicable to the procurement organization.

B. A licensee of a procurement organization shall ensure that standard operating procedures are established, documented, and implemented that cover:

1. The proper use and maintenance of donor consent forms, including that a donor consent form:
   a. Includes:
      i. The intended use of the non-transplant anatomical material,
      ii. How the non-transplant anatomical material may be used,
      iii. A statement that the non-transplant anatomical material will be treated with dignity at all times, and
      iv. A statement that the non-transplant anatomical material may require international export to an end-user; and
   b. Is maintained in the donor's record and retained for at least 10 years beyond the date of final disposition;
2. An electronic identification system for donors, which is established and maintained for non-transplant anatomical donations and non-transplant anatomical material, that:
   a. Assigns a unique identification number to the donor and the associated non-transplant anatomical donation and non-transplant anatomical

material,

b. Tracks the complete history of all non-transplant anatomical material, and

c. Records the date and staff member involved in each significant step of the operation from the time of acquisition of the non-transplant anatomical donation through final disposition;

3. The screening of end-users prior to release and transfer of non-transplant anatomical material that:

a. Require a written request for non-transplant anatomical material, containing:

i. The name and address of the educational or research establishment making the request;

ii. The name, title, and contact information of the individual at the educational or research establishment who will be accepting responsibility for the receipt, use, and disposition of the non-transplant anatomical material;

iii. A description of the intended use;

iv. The date and the approximate duration of use of the non-transplant anatomical material;

v. A description of the venue in which the non-transplant anatomical material will be used and the environmental and security measures of the venue to ensure the safe and ethical utilization of the non-transplant anatomical material;

vi. An assurance that universal precautions will be used when handling the non-transplant anatomical material;

vii. The proposed final disposition of the non-transplant anatomical material;

viii. An outline of proposed descriptive materials to be disseminated in connection with the use of the non-transplant anatomical material; and

ix. Other supporting documentation that is relevant to the request; and

b. Include the criteria for approving requested non-transplant anatomical

material for use, including:

i. The standards for acceptability of the educator or researcher for the use of non-transplant anatomical material;

ii. The appropriateness of the intended use;

iii. The types of venues in which the non-transplant anatomical material may be used;

iv. What final disposition of the non-transplant anatomical material may be proposed, unless the non-transplant anatomical material is returned to the procurement organization; and

v. The suitability of the proposed descriptive materials;

4. The process for requesting and criteria for approving the exceptional release of non-transplant anatomical material;

5. The labeling of non-transplant anatomical donations and non-transplant anatomical material with:

a. The unique identification number specified in subsection (B)(2)(a),

b. That the non-transplant anatomical donation or non-transplant anatomical material is not for transplant or clinical use,

c. Any condition or limitation regarding the use of the non-transplant anatomical donation or non-transplant anatomical material,

d. That universal precautions must be used in handling the non-transplant anatomical donation or non-transplant anatomical material,

e. A disclosure of any disease state in the non-transplant anatomical donation or non-transplant anatomical material, and

f. The name and contact information for the procurement organization;

6. The packaging and transport of non-transplant anatomical donations and non-transplant anatomical material to:

a. Preserve the quality of the non-transplant anatomical donation or non-transplant anatomical material,

b. Prevent potential cross-contamination between non-transplant anatomical donations or non-transplant anatomical material, and

c. Protect the health and safety of personnel members and the public;

7. The distribution of non-transplant anatomical donations and non-transplant anatomical material, including methods for:

a. Ensuring the quality and suitability of non-transplant anatomical donations and non-transplant anatomical material;

b. Handling non-transplant anatomical donations and non-transplant anatomical material that do not meet quality control standards;

c. Ensuring the eligibility of an end-user or other person to which non-transplant anatomical donations and non-transplant anatomical material may be transferred;

d. Handling an end-user request that does not meet the criteria in subsection (B)(3)(b);

e. The release of:

i. Non-transplant anatomical donations to use, and

ii. Non-transplant anatomical material to an end-user or other person to which non-transplant anatomical material may be transferred; and

f. The exceptional release of the non-transplant anatomical material; and

8. The final disposition of non-transplant anatomical donations or non-transplant anatomical material, consistent with requirements in:

a. A.R.S. Title 32, Chapter 12; A.R.S. Title 36, Chapter 7; and Subchapter B, related to funeral arrangements, cremation, or other final dispositions;

b. A.R.S. Title 36, Chapter 3, and 9 A.A.C. 19, related to the movement of non-transplant anatomical donations or non-transplant anatomical material and reporting of the final disposition; and

c. A.R.S. Title 36, Chapter 6, Articles 1, 2, and 4, related to non-transplant anatomical donations or non-transplant anatomical material infected with an agent causing a communicable disease.

C. A licensee of a procurement organization shall ensure that copies of standard operating procedures are:

1. Maintained at the procurement organization, and

2. Available for review by the Department within two hours of the Department's request.

R9-9A-202. Additional Administrative Requirements for an Accredited Procurement Organization

A. A licensee of an accredited procurement organization shall provide a copy of a renewed

accreditation to the Department within 30 calendar days after the date of issuance.

B. A licensee of an accredited procurement organization shall ensure that a procurement organization facility is in a building that provides a separate and designated area for tissue recovery, according to A.R.S. § 36-851.02(3).

R9-9A-203. Additional Administrative Requirements for a Non-accredited Procurement Organization

A. A licensee of a non-accredited procurement organization shall:

1. Appoint an administrator who:
   a. Has at least a bachelor's degree in a health science or other science-related field,
   b. Has at least three years of experience in tissue banking or other related fields, and
   c. Is responsible for all services and activities at the procurement organization;
2. Appoint a medical director who:
   a. Is licensed under A.R.S. Title 32, Chapter 13 or 17;
   b. Provides medical guidance to determine donor eligibility; and
   c. May be the same individual as the administrator, if the individual's qualifications satisfy the requirements in both subsections (A)(1) and (2)(a);
3. Adopt a quality management program that, at a minimum, includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate the provision of procurement organization services;
   c. A method to evaluate the data collected to identify a concern about the provision of procurement organization services;
   d. A method to make changes or take action as a result of the identification of a concern about the provision of procurement organization services; and
   e. The frequency of submitting a documented report required in subsection (A)(4) to the licensee;
4. Ensure that a documented report of quality management program activities is:
   a. Submitted to the licensee that includes:

i. An identification of each concern about the provision of procurement organization services, and

ii. Any changes made or actions taken as a result of the identification of a concern about the provision of procurement organization services; and

b. Maintained by the procurement organization for at least 12 months after the date of the report;

5. Review and evaluate the effectiveness of the quality management program in subsection (A)(3) at least once every 12 months;

6. If any instance of use of a non-transplant anatomical donation or non-transplant anatomical material for a purpose other than for research, education, or another use specified in the donor consent form is detected:

a. Report the incident to the Department within seven calendar days after the incident is detected,

b. Maintain documentation of the report in a donor record, and

c. Ensure that the incident is reviewed through the quality assurance process with any steps taken to prevent a reoccurrence;

7. Unless otherwise specified in this Subchapter, ensure that any records or documentation required by this Subchapter are maintained for at least three years after the latest date entered on the report or document; and

8. Ensure that the following information is conspicuously posted on the premises:

a. The procurement organization's current license,

b. The names of the administrator and medical director,

c. The hours of operation, and

d. The evacuation plan listed in R9-9A-302(A)(5).

B. An administrator of a non-accredited procurement organization:

1. Is directly accountable to the licensee for the operations of the procurement organization, including all services and activities provided by or at the procurement organization;

2. Has the authority and responsibility to manage the procurement organization, as specified in standard operating procedures; and

3. Shall designate, in writing, an individual who is on the procurement organization's premises and is available and responsible for procurement

organization operations when the administrator is not present on the premises.

C. A licensee of a non-accredited procurement organization shall ensure that the medical director:

1. Establishes, reviews, and approves standard operating procedures related to:
   a. Donor eligibility, including:
      i. The content and conducting of an acceptability assessment;
      ii. The content and conducting of a physical assessment; and
      iii. Screening for a condition, such as a viral or bacterial infection, that may affect the suitability of the non-transplant anatomical donation for use in education or research;
   b. The criteria for and methods of verifying the suitability of a non-transplant anatomical donation for release for preparation;
   c. The criteria and processes for the exceptional release of non-transplant anatomical material; and
   d. Pre-established criteria for release of non-transplant anatomical material to an end-user;
2. Reviews and, if necessary, revises all standard operating procedures of a medical nature at least every three years;
3. Establishes a process for determining the eligibility of a donor, based on a comparison of the non-transplant anatomical donation with predetermined donor criteria;
4. Prior to release for use or distribution, signs the donor eligibility statement and non-transplant anatomical material disposition or release statement;
5. If designating another individual to perform tasks or functions assigned by the medical director, ensures that the individual:
   a. Has the required training and education for performing the tasks or functions;
   b. Has oversight when performing the tasks or functions assigned by the medical director; and
   c. Performs the tasks or functions assigned by the medical director according to standard operating procedures, including, if applicable, the functions described in subsections (C)(3) and (4);
6. Reviews activities performed by a designee at least once every three months

according to standard operating procedures established by the licensee; and

7. Establishes the criteria for ensuring that all appropriate parties are notified of confirmed positive infectious disease test results.

D. A licensee of a non-accredited procurement organization shall ensure that:

1. The following are established, maintained, and implemented in compliance with applicable state and federal laws and regulations:
   a. A safety awareness and blood-borne pathogen training program, and
   b. A cleaning program that mitigates potential cross-contamination between non-transplant anatomical donations; and
2. The medical director reviews and approves standard operating procedures related to the programs in subsections (D)(1)(a) and (b).

E. A licensee of a non-accredited procurement organization shall ensure that the administrator:

1. Specifies activities involving non-transplant anatomical donations and non-transplant anatomical material that a technician may provide;
2. Specifies the methods used to provide clinical oversight and training to personnel members, including when clinical oversight and training are provided to an individual or a group; and
3. Creates and maintains a technician's personnel record that includes:
   a. Documentation of all completed training and education; and
   b. A written job description, including all primary duties.

F. A licensee of a non-accredited procurement organization shall ensure that a technician:

1. Is only assigned duties described in a written job description;
2. Has the educational background, experience, and training sufficient to ensure that assigned tasks will be performed in accordance with the applicable standard operating procedures;
3. Provides a copy of a transcript or diploma in health science or other field of science for which the technician received a degree or certificate, if applicable; and
4. Demonstrates competency to perform assigned tasks.

G. A licensee of a non-accredited procurement organization shall ensure that:

1. The qualifications, skill, and knowledge required for each type of personnel member is based on the activities and services the personnel member may

provide, as established in the personnel member's job description; and

2. A personnel member's qualifications, skills, and knowledge are verified and documented:

a. Before the personnel member provides procurement organization services, and

b. According to standard operating procedures.

H. A licensee of a non-accredited procurement organization shall ensure that a personnel member does not have direct interaction with non-transplant anatomical donations or non-transplant anatomical material unless specifically authorized by the licensee or administrator.

I. A licensee of a non-accredited procurement organization shall ensure a personnel record is established for the administrator, technicians, and other personnel members that includes:

1. The individual's name, date of birth, home address, and contact telephone number;

2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and

3. Documentation applicable to an individual's duties, as required by standard operating procedures, including the individual's:

a. Education and experience;

b. In-service education and continuing education, if applicable; and

c. Evidence of Hepatitis B vaccination or refusal of Hepatitis B vaccine for individuals whose job-related responsibilities involve the potential exposure to blood-borne pathogens.

J. A licensee of a non-accredited procurement organization shall ensure that a personnel record is:

1. Maintained throughout an individual's period of employment or volunteer service in or for the procurement organization,

2. Maintained for at least three years after the last date that an individual's employment or volunteer service in or for the procurement organization, and

3. Provided to the Department when requested.

K. A licensee of a non-accredited procurement organization shall ensure that a donor record:

1. Includes:

a. A copy of the donor consent form and any amendment to the consent form;

b. The name and contact information of the person responsible for the donor's anatomical gift; if applicable;

c. The donor's unique identifying number specified in R9-9A-201(B)(2)(a);

d. Documentation for registering the donor's death, as specified in A.A.C. R9-19-303 or A.A.C. R9-19-304, as applicable;

e. A disposition-transit permit specified in A.A.C. R9-19-308;

f. Any information from the donor referral source, including, as applicable:

i. Donor acceptability assessment, and

ii. Donor eligibility;

g. All documents and permits that establish the chain of custody and identification of the individuals and organizations that had physical custody of the non-transplant anatomical donation or non-transplant anatomical material;

h. Medical records, including as applicable:

i. The donor's physical assessment,

ii. Pathology and laboratory testing and reports,

iii. Physician summaries,

iv. Serological results,

v. Transfusion or infusion information, and

vi. Plasma dilution calculations;

i. Documentation related to activities involved in:

i. Recovery of the non-transplant anatomical donation,

ii. Preparation and storage of the non-transplant anatomical material, and

iii. Distribution of the non-transplant anatomical material; and

j. Final disposition documentation, including all records related to chain of custody;

2. Includes, if applicable:

a. A human remains release form specified in A.A.C. R9-19-301;

b. Information for transporting human remains, as defined in A.R.S. § 36-301, into the state, as specified in A.A.C. R9-19-311;

c. The release of information by a medical examiner, as specified in A.R.S. § 36-861;

d. Cremation authorization documents; and

e. Documentation related to the use of the non-transplant anatomical donation or non-transplant anatomical material for a purpose other than for research, education, or another use specified in the donor consent form; and

3. Is:

a. Confidential and kept in a location with controlled access;

b. Stored in a manner to prevent unauthorized access;

c. Maintained in a manner to preserve the donor record's completeness and accuracy; and

d. Made available to:

i. The donor's known consenter;

ii. An agent legally authorized by the donor or other individual designated at the time a donor gives consent;

iii. An individual appointed by a court or authorized by state laws;

iv. An individual of a procurement organization as identified by standard operating procedures;

v. An individual from an approving accrediting body, if applicable; and

vi. An individual from the Department or other regulatory agency authorized by state and federal laws or regulations.

L. A technician or other personnel member of a non-accredited procurement organization shall report to the administrator or medical director:

1. Any concern related to receiving, preparing, packaging, distributing, or transporting non-transplant anatomical donations or non-transplant anatomical material that may adversely affect the health and safety of others; and

2. Any personal health condition experienced by the technician or other personnel member related to receiving, preparing, packaging, distributing, or transporting non-transplant anatomical donations or non-transplant anatomical material.

M. If an administrator or medical director of a non-accredited procurement organization receives a report specified in subsection (L), the administrator or medical director shall:

1. Follow standard operating procedures to secure the area and eliminate exposure to others;
2. Notify appropriate health and law enforcement agencies, as applicable; and
3. Report the incident to the Department within seven calendar days after determining that a health condition in subsection (L) has occurred.

N. If a non-accredited procurement organization owns or maintains a vehicle for transporting non-transplant anatomical donations and non-transplant anatomical material, an administrator shall ensure the vehicle is:

1. Not used for a purpose other than transporting non-transplant anatomical donations and non-transplant anatomical material or conducting procurement organization business, and
2. Only operated by a procurement organization technician or designated and authorized individual when transporting non-transplant anatomical donations or non-transplant anatomical material.

O. If using another vehicle or type of transport for non-transplant anatomical donations or non-transplant anatomical material, an administrator of a non-accredited procurement organization shall ensure that the other vehicle or type of transport:

1. Is properly equipped for the transportation of non-transplant anatomical donations or non-transplant anatomical material;
2. Is compliant with all state laws and rules pertaining to transporting human remains; and
3. If transport is by air, complies with applicable standards established by the International Air Transport Association and Transport Security Administration.

ARTICLE 3. ENVIRONMENTAL AND PHYSICAL PLANT STANDARDS FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION

R9-9A-301. Environmental and Physical Plant Standards

A. A licensee of a non-accredited procurement organization shall ensure that the procurement organization:

1. Is in a building that:
   a. Has a commercial occupancy according to the local zoning jurisdiction;
   b. Is free of any plumbing, electrical, ventilation, mechanical, or structural hazard that may jeopardize:
      i. The security or quality of non-transplant anatomical donations or non-transplant anatomical material, or
      ii. The health or safety of a personnel member or the public; and
   c. Provides a separate and designated area for tissue recovery;
2. Has premises that are:
   a. Sufficient to provide for a procurement organization's services and activities;
   b. Cleaned and disinfected according to the procurement organization's standard operating procedures to prevent, minimize, and control illness and infection and mitigate potential cross-contamination between non-transplant anatomical donations and non-transplant anatomical material;
   c. Clean and free from accumulations of dirt, garbage, and rubbish; and
   d. Free from a condition or situation that may cause an individual to suffer physical injury;
3. Provides a restroom for clients that:
   a. Is free from contamination from a non-transplant anatomical donation or non-transplant anatomical material;
   b. Does not contain any items, materials, or devices associated with the preparation of non-transplant anatomical donations or non-transplant anatomical material; and
   c. Is not used by technicians or other personnel members unless personal protective equipment is removed before entering; and
4. If the non-accredited procurement organization owns or maintains a vehicle for

transporting non-transplant anatomical donations and non-transplant anatomical material:

a. Maintains the vehicle in a clean and sanitary condition,

b. Ensures that the floor of the vehicle or other locations on which non-transplant anatomical donations and non-transplant anatomical material are placed during transport have a surface capable of being cleaned and sanitized or disinfected, and

c. Requires that the vehicle is locked and secured at all times during transport of non-transplant anatomical donations or non-transplant anatomical material.

B. A licensee of a non-accredited procurement organization shall ensure that:

1. A pest control program is implemented and documented that requires:

a. A pest control service that uses certified applicators as specified in 3 A.A.C. 8, Article 2; and

b. Annual pest control service records to be retained for at least 12 months after the date of service; and

2. The procurement organization does not engage in any practice or create any condition that would constitute a public health nuisance, as specified in A.R.S. § 36-601, or is contrary to the health laws of this state.

C. A licensee of a non-accredited procurement organization shall ensure that:

1. Areas used to receive or prepare non-transplant anatomical donations or to label or package non-transplant anatomical material:

a. Are properly ventilated;

b. Have sanitary flooring and drainage;

c. Are protected from dust, dirt, flies, and other contamination;

d. Are only used, as applicable, for examining and preparing non-transplant anatomical donations or for labeling or packaging non-transplant anatomical material;

e. Are thoroughly cleansed and disinfected with a 1% solution of chlorinated soda, or other suitable and effective disinfectant, immediately after an obvious spill of blood or other potentially infectious bodily fluid or material;

f. Contain the equipment, instruments, and supplies necessary for

accomplishing the tasks for which the areas are used that are:

i. Sufficient to accomplish the tasks;

ii. Maintained in working condition;

iii. Maintained in a clean and sanitary condition and disinfected or sanitized, as applicable, after each use;

iv. Used according to the manufacturer's recommendations; and

v. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in standard operating procedures;

g. Are disinfected after each use to protect the health and safety of technicians and other personnel members;

h. Are maintained in a clean and sanitary condition at all times; and

i. Have proper and convenient receptacles for refuse, bandages, and all other waste materials; and

2. All refuse and waste products produced from receiving, preparing, packaging, distributing, and transporting non-transplant anatomical donations or non-transplant anatomical material are removed from the premises as needed.

D. A licensee of a non-accredited procurement organization shall ensure that the procurement organization has refrigerated areas for storing non-transplant anatomical donations and non-transplant anatomical material that:

1. Are only used for non-transplant anatomical donations or non-transplant anatomical material;

2. Are maintained in working order;

3. Are kept in a clean and sanitary condition;

4. If a walk-in cooler, maintains a temperature between 36°F and 45°F;

5. If a freezer, maintains a temperature at or below 32°F; and

6. Are monitored by a temperature sensor system that:

a. Measures temperatures continuously and documents when a unit is out of the required temperature range, and

b. Alerts technicians or other designated individuals when temperatures are outside of the acceptable limits.

E. A licensee of a non-accredited procurement organization shall maintain documentation of

equipment tests, calibrations, and repairs for at least 12 months after the date of testing, calibration, or repair.

F. A licensee of a non-accredited procurement organization shall ensure that:

1. Biohazardous material or medical waste and other potentially hazardous materials are removed and disposed of by a facility licensed by the Arizona Department of Environmental Quality pursuant to 18 A.A.C. 8 and 13; and
2. Combustible or flammable liquids are stored in labeled containers or safety containers in a secured area and properly identified to ensure the health and safety of personnel members and the public.

R9-9A-302. Emergency and Safety Standards

A. An administrator of a non-accredited procurement organization shall ensure that:

1. Standard operating procedures are developed, documented, and maintained for the emergency transfer of non-transplant anatomical donations and non-transplant anatomical material to a designated back-up storage facility when the quality or security of non-transplant anatomical donations or non-transplant anatomical material may be compromised, including:
   a. The situations that would require an emergency transfer, including time limits and temperature tolerance for loss of refrigeration capability;
   b. The location of the back-up storage facility;
   c. The actions to be taken by the administrator and personnel members;
   d. The methods to be used for the emergency transfer;
   e. Specific labeling indicating that the transported non-transplant anatomical donations and non-transplant anatomical material must remain untouched until returned to the licensed non-accredited procurement facility after the situation has been resolved; and
   f. Requirements for the situation that resulted in an emergency transfer to be reviewed through the quality management program in R9-9A-203(A)(3) to prevent a recurrence;
2. A first aid kit is available at the procurement organization;
3. Smoke detectors are:
   a. Installed according to building size and the requirements of the local zoning jurisdiction;
   b. Maintained in an operable condition; and

c. Either battery operated or, if hard-wired into the electrical system of the procurement organization, have a back-up battery;

4. A portable fire extinguisher that is labeled 2A-10-BC by the Underwriters Laboratory:

a. Is readily available for use;

b. For a disposable fire extinguisher, is replaced when the fire extinguisher's indicator reaches the red zone; and

c. For a non-disposable fire extinguisher, is serviced at least every 12 months and has a tag attached to the fire extinguisher that includes the date of service; and

5. A written fire and evacuation plan is established and maintained.

B. An administrator of a non-accredited procurement organization shall:

1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,

2. Make any repairs or corrections stated on the fire inspection report, and

3. Maintain documentation of a current fire inspection.

R9-9A-303. Security Standards; Inventory Controls

A. A licensee of a non-accredited procurement organization shall ensure that access to the enclosed-locked areas where non-transplant anatomical donations and non-transplant anatomical material are located is limited to individuals authorized by the licensee or administrator.

B. An administrator of a non-accredited procurement organization shall ensure that:

1. Standard operating procedures are developed, documented, and maintained to prevent unauthorized access to non-transplant anatomical donation or non-transplant anatomical material inventory that:

a. Restricts access to the areas of the building that contain non-transplant anatomical donations or non-transplant anatomical material inventory and donor records,

b. Provides for identification of authorized individuals, and

c. Specifies the methods for conducting electronic monitoring;

2. Personnel or security equipment to deter and prevent unauthorized entrance into limited access areas are present and operational and include:

a. Devices or a series of devices to detect unauthorized intrusion, which

may include a signal system interconnected with a radio-frequency device or other mechanical or electronic devices;

b. Exterior lighting to facilitate surveillance; and

c. Electronic monitoring using video cameras to provide coverage of:

i. Entrances to and exits from limited access areas, and

ii. Entrances to and exits from the buildings;

3. Video recordings from the video cameras required in subsection (B)(2)(c) are retained for at least 30 calendar days;

4. The electronic monitoring system in subsection (B)(2)(c) has a failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and

5. Battery backup is present and operational to ensure the functioning of video cameras and recording equipment in the event of a power outage.

C. A licensee of a non-accredited procurement organization shall establish and implement an inventory tracking system for non-transplant anatomical donations and non-transplant anatomical material that:

1. Contains information about all non-transplant anatomical donations received and non-transplant anatomical material released for distribution;

2. Includes release documentation related to requirements in R9-9A-201(B), and R9-9A-203(C) and (K), for each item of non-transplant anatomical material prior to transferring the item of non-transplant anatomical material to inventory;

3. Documents the date, time, and location for non-transplant anatomical material transferred for use, including:

a. The name of the individual performing the transfer, and

b. The name and contact information for an end-user or other person to which non-transplant anatomical material may be transferred;

4. Documents the date, time, and location for items of non-transplant anatomical material that are moved between locations controlled by the procurement organization, including the name of the individual overseeing the move; and

5. Ensures non-transplant anatomical material that can no longer be used is removed from inventory and disposed of according to applicable standard operating procedures for final disposition.

TITLE 9. HEALTH SERVICES

CHAPTER 9. DEPARTMENT OF HEALTH SERVICES - PROCUREMENT ORGANIZATIONS

ARTICLE 1. PROCUREMENT ORGANIZATION LICENSURE

ARTICLE 2. ADMINISTRATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION

ARTICLE 3. PHYSICAL PLANT; TRANSPORTATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION

ARTICLE 4. ADMINISTRATION FOR AN ACCREDITED PROCUREMENT ORGANIZATION

Section

ARTICLE 1. PROCUREMENT ORGANIZATION LICENSURE

R9-9-101. Definitions

In addition to the definitions in A.R.S. § 36-841, the following apply in this Chapter unless otherwise specified:

1. "Acceptability assessment" means the evaluation of available, if applicable, medical information about a donor to determine whether the donor meets qualifications as established by SOPs specified in R9-9-201(E)(4).
2. "Accrediting body" means a nationally recognized agency, approved by the Department, that provides certification for a person operating a procurement organization.
3. "Acquisition" means activities required to obtain a NTAD that is intended for use in education or research.
4. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
5. "Administrator" means the individual responsible for the services and activities provided by a procurement organization.
6. "Applicant" means an individual or business organization requesting approval to operate a procurement organization.
7. "Application packet" means the information, documents, and fees required by the Department for licensure of a procurement organization.
8. "Authorization" means permission given for NTAD acquisition by a donor or individual authorized by law.
9. "Business organization" means the same as "entity" in A.R.S. § 10-140.
10. "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.
11. "Controlling person" means an individual 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 individual 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.

12. "Contracted services" means functions pertaining to the acquisition, screening, testing, preparing, storage, and distribution of NAM that another establishment agrees to perform.

13. "Department" means the Arizona Department of Health Services.

14. "Distribution" means a process that includes selection and evaluation of intended use of NAM for release to another procurement organization, an education facility, or a research facility.

15. "Donor consent form" means the same as "document of gift" defined A.R.S. § 36-841.

16. "Environmental services" means activities such as housekeeping, laundry, facility maintenance, or equipment maintenance.

17. "Exceptional release" means NAM that is approved for usage before a donor acceptability assessment or by a researcher requesting NAM that would not normally meet the established acceptability criteria.

18. "Final disposition" means the disposal of NAM through incineration, cremation, bio-cremation, burial, fully depleted by virtue of a particular use, or by another legal means.

19. "Licensee" means a person to whom the Department has issued a license to operate a non-transplant procurement organization or person designated by the licensee.

20. "Medical director" means a physician licensed in this state pursuant to A.R.S. Title 32, Chapter 13 or 17 who provides medical guidance for a licensed procurement organization according to A.R.S. § 36-851.03 or person designated

by the medical director.

21. "Misuse" means to use NTAD and NAM for purposes other than for:
    a. Education or research, and
    b. Uses specified on a donor consent form.
22. "Modification" means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a procurement organization.
23. "Non-transplant anatomical donation" or "NTAD" means a donation of a whole body, organs or tissues authorized and used for education and research prior to release to distribution inventory.
24. "Non-transplant anatomical material" or "NAM" means a whole body or parts of a body donated for use in education or research that has been prepared, packaged, labeled, and released to distribution inventory.
25. "Overall time-frame" means the same as in A.R.S. § 41-1072.
26. "Person" means the same as in A.R.S. § 36-841.
27. "Personnel member" means individuals identified as employees, students, or volunteer who provides services and activities for a procurement organization.
28. "Pest control" means activities that minimize the presence of insects and vermin in a procurement organization to ensure the quality of NTAD and NAM and the health and safety of persons occupying or visiting.
29. "Physical assessment" means a postmortem documented evaluation of a deceased donor's body that may identify evidence of: high-risk behaviors, signs of HIV infection or hepatitis infection, other viral or bacterial infections, and trauma.
30. "Premises" mean a facility and surrounding grounds that are:
    a. Designated by an applicant or a licensee;
    b. Used for providing procurement organization services and activities; and
    c. Licensed by the Department as a procurement organization.
31. "Preparation" means any activity performed other than donor screening, donor testing, acquisition, storage, distribution, or dispensing functions to enable the use of NAM for education or research. It includes, but is not limited to, cleaning, preservation, disarticulation, dissection, skeletonization, plastination, packaging, and labeling of NAM.
32. "Procurement organization" means the same as "non-transplant anatomical

donation organization" as defined in A.R.S. § 36-841 and may be either accredited by an accrediting body or non-accredited.

33. "Quality management program" means ongoing activities designed and implemented by a procurement organization to improve the delivery of services and activities related to NAM.
34. "Quarantine" means the identification of NTAD or NAM as not acceptable or yet to be determined as eligible for use in education or research, including NTAD or NAM whose suitability has not been determined.
35. "Release" means NAM approved by a procurement organization in accordance with criteria established by the medical director for transfer to an approved education and research facility.
36. "Risk assessment" means collecting and evaluating relevant medical history and social behavior obtained from an individual or individuals who have knowledge about the donor.
37. "Standard operating policies and procedures" or "SOPs" means a group of documents detailing the specific purposes and services provided by a licensed procurement organization including activities and methods by staff and personnel members in support of conducting business operations.
38. "Storage" means a designated area that contains equipment, instruments, and supplies to maintain NTAD or NAM until distribution or final disposition.
39. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.
40. "Traceability" means the method to locate NTAD and NAM during any step of NTAD including obtaining authorization, acquisition, transport, assessing donor acceptability, preparation, packaging, labeling, storage, release, evaluation intended use, distribution, and final disposition.
41. "Transfer" means the conveyance or relocation of NAM to:
    a. An education facility,
    b. A research facility,
    c. Another procurement organization, or
    d. A distribution inventory.
42. "Transport" means a method for relocating NAM from one place to another in a manner that provides conditions necessary to maintain the quality of the NAM for its intended use.

43. "Universal precautions" means the same as in A.R.S. § 32-1301.

44. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.

R9-9-102. Licensure Requirements; Accreditation; Exemptions

A. A person may not act as a procurement organization in this state unless the person is licensed by the Department as a procurement organization.

B. A procurement organization shall provide a designated area for tissue recovery that does not operate in a funeral establishment specified in A.R.S. § 32-1301, for the recovery of whole bodies for medical research and education according to A.R.S. §§ 36-851.02(3) and 36-851.03(A)(5)(b).

C. A non-accredited procurement organization is subject to inspection by the Department at any time to evaluate compliance with A.R.S. Title 36, Chapter 7, Article 3 and this Chapter according to A.R.S. § 36-851.03(A)(5)(a) and (C).

D. An accredited procurement organization is subject to inspection by the Department at any time to evaluate compliance with requirements in A.R.S. § 36-851.02(2) and the rules adopted pursuant to A.R.S. § 36-851.02(2).

E. An accredited procurement organization whose certificate of accreditation has expired or is revoked, suspended, or denied by the accrediting body, shall provide written notification to the Department within ten working days of expiration or receipt of a revocation, suspension, or denial.

F. This Chapter does not apply to a procurement organization identified in A.R.S. § 36-851.01(F).

R9-9-103. Individuals to Act for an 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.

R9-9-104. Application for Licensure

A. An applicant applying for a procurement organization license shall submit an application packet that contains:

1. An application, in a Department-provided format, according to A.R.S. § 36-851.01(A) that includes:
   a. The applicant's name, mailing address, email address, and telephone number;
   b. The name or proposed name of the procurement organization, including the:
      i. Business street address;
      ii. Business mailing address, if different from the street address;
      iii. Telephone number;
      iv. Email address; and
      v. Tax ID number;
   c. If part of a business institution, the institution's:
      i. Name;
      ii. Street address;
      iii. Mailing address, if different from the street address;
      iv. Telephone number; and
      v. Email address;
   d. Whether the procurement organization is ready for a licensing inspection by the Department, if applicable;
   e. If the procurement organization is not ready for a licensing inspection specified in subsection (A)(1)(d), the date the Department may perform a licensing inspection, if applicable;
   f. The name and contact information of an individual acting on behalf of the applicant specified in R9-9-103, if applicable;
   g. If applicable, the medical director's:
      i. Name,
      ii Telephone number,

iii. Email address, and

iv. License number;

h. Whether the applicant complies with local zoning ordinances, building codes, and fire codes;

i. Whether the applicant agrees to allow the department to submit supplemental requests for information under R9-9-108; and

j. The applicant's signature and the date signed;

2. A copy of the procurement organization's current certificate of accreditation from an accrediting body, if applicable;

3. Documentation for the applicant that complies with A.R.S. § 41-1080;

4. A copy of the procurement organization labeled floor plan, including technical and administrative function areas, if applicable; and

5. A licensing fee of $2,000.

B. Upon receipt of the application packet in subsection (A), the Department shall conduct an inspection of the procurement organization, if applicable.

C. The Department shall issue or deny a license to an applicant as specified in R9-9-108.

R9-9-105. Application for License Renewal

A. A license is valid for two years from the date of issuance or renewal as specified in A.R.S. § 36-851.01(C).

B. At least 30 calendar days before the expiration date indicated on a procurement organization's license to operate 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, mailing address, email address, and telephone number;

b. The procurement organization's licensing number; and

c. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-9-108;

2. If applicable, documentation of the most recent certificate of accreditation from an accrediting body; and

3. A licensing renewal fee of $2,000.

C. The Department shall renew or deny renewal of a license to operate as specified in

R9-9-108.

R9-9-106. 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, including:
   a. The proposed termination date; and
   b. The address and contact information for the location where the procurement organization records will be retained as required in R9-9-205;
2. A proposed modification, if applicable;
3. A change in the legal name of a procurement organization;
4. A change in the legal name of a licensee including the licensee's new name; and
5. A change in the address of a procurement organization, including the new address.

B. A licensee shall notify the Department in writing at least 30 calendar days after the effective date of a change in:

1. The email address or mailing address of a procurement organization including the new email address or mailing address;
2. The email address or telephone number of a licensee, including the new email address or telephone number;
3. An administrator, including the name, telephone number, and email address;
4. A medical director, including the name and email address; and
5. The name, telephone number, and email address of an individual acting on behalf of the licensee specified in R9-9-103.

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 procurement organization as of the termination date specified by the licensee.

D. If the Department receives a notification in subsection (A)(2) of a proposed modification, the Department:

1. May conduct an inspection of the premises as allowed by A.R.S. § 36-851.03(C); and
2. Shall issue to the licensee an amended license that incorporates the modification

and retains the expiration date of the existing license, if the procurement organization is compliant with A.R.S. Title 36, Chapter 7, Article 3 and this Chapter.

E. If the Department receives a notification in subsection (A)(3) of a legal name change for a procurement organization, the Department shall issue to the licensee an amended license showing the licensee's legal name.

F. If the Department receives notice for a change in the legal name of a licensee in subsection (A)(4), the Department shall void licensee's license to operate upon issuance of a new license to operate.

G. If the Department receives the notice for a change in the address of a procurement organization in subsection (A)(5), the Department shall review the application for a new license, submitted consistent with R9-9-104.

H. An individual or business organization planning to take ownership of an existing procurement organization shall obtain a new license before beginning operation.

R9-9-107. Denial, Suspension, Revocation, Enforcement

A. The Department may:

1. Deny a license as specified in subsection (B);
2. Suspend or revoke a license under A.R.S. § 36-851.01(E) and subsection (B); or
3. Assess or impose a civil penalty under A.R.S. § 36-851.01(E) and subsection (B).

B. The Department may impose civil penalties, deny an application or suspend or revoke a license to operate a procurement organization, if:

1. An applicant or licensee does not meet the application requirements contained in R9-9-104 and R9-9-105, as applicable;
2. A licensee does not comply with requirements in A.R.S. §§ 36-851.01 through 36-851.03 and this Chapter, if applicable;
3. A licensee does not correct the deficiencies identified during an inspection according to the plan of correction;
4. An applicant or licensee provides false or misleading information to the Department; or
5. The nature or number of violations revealed by any type of inspection or investigation of a procurement organization poses a direct risk to the life, health, or safety of individuals on the premises.

C. In determining which action in subsection (A) is appropriate, the Department shall consider:

1. Repeated violations of statutes or rules,
2. Pattern of violations,
3. Severity of violations, and
4. Number of violations.

D. The Department may suspend or revoke an accredited procurement organization's license if the Department receives notice that the accredited procurement organization's accreditation has expired or has been suspended or revoked by the accrediting body.

E. An applicant or licensee may appeal the Department's determination in this Section according to A.R.S. Title 41, Chapter 6, Article 10.

R9-9-108. 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; and

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. § 36-851.03(C) 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, and the procurement organization, including the premises are not in substantial compliance with A.R.S. Title 36, Chapter 7, Article 3 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; and

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 procurement organization, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 7, Article 3 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 and 41-1092.03.

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 Licensure	A.R.S. § 36-851.01	90	30	60
Application for License Renewal	A.R.S. § 36-851.01	30	10	20
Modification Change Request Affecting License	A.R.S. § 36-851.01	60	30	30

ARTICLE 2. ADMINISTRATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION

R9-9-201. Administration

A. A licensee for a non-accredited procurement organization:

1. Is responsible for all issues of liability, ethical considerations, fiduciary issues, and compliance with applicable laws and regulations;
    a. SOPs for all activities and services the procurement organization provides;
    b. The qualifications for an administrator:
        i. Who has at least a bachelor's degree in a health science or other science related field, and
        ii. Is responsible for all services and activities at a procurement organization; and
    c. The qualifications for a medical director:
        i. Who is licensed pursuant to A.R.S. Title 32, Chapter 13 or 17; and
        ii. Provides medical guidance to determine donor eligibility;
2. Shall adopt a quality management program; and
3. Shall review and evaluate the effectiveness of the quality management program in R9-9-202 at least once every 12 months.

B. An administrator of a non-accredited procurement organization:

1. Is directly accountable to the licensee for the operation, including all services and activities, provided by or at the procurement organization;
2. Has the authority and responsibility to manage the procurement organization as specified in SOPs;
3. Designates, in writing, an individual who is on the procurement organization's premises and is available when the administrator is not present on the premises.

C. A medical director of a non-accredited procurement organization:

1. Shall provide medical guidance to determine and establish donor eligibility as established in R9-9-204; and
2. May be the same individual as the administrator, if the individual's qualifications include management for all services and activities provided at a procurement

organization.

D. A licensee of a non-accredited procurement organization shall ensure that the following programs at the procurement organization are established and maintained in compliance with state and federal laws and regulations:

1. A safety awareness and blood-borne pathogen training program; and
2. A cleaning program that mitigates potential cross-contamination between NTAD.

E. A licensee of a non-accredited procurement organization shall ensure that:

1. The procurement organization complies with vital records requirements in A.R.S. § 36-325;
2. An identification system according to A.R.S. § 36-851.03(A)(3)(b) for donors:
    a. Is established and maintained, and
    b. Assigns a unique identification number according to A.R.S. § 36-851.03(A)(6)(a);
        i. For each donor, and
        ii. Used to identify all NAM from a donor that is recovered and distributed;
3. SOPs are established, documented, and implemented that includes:
    a. Job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for technicians and personnel members;
    b. Orientation and in-service education for technicians and personnel members;
    c. How a technician may submit a complaint related to services provided;
    d. Donor records, including electronic records;
    e. A quality management program, including incident reports;
    f. Ethical practices;
    g. An infectious control program;
    h. Security, including evacuation procedures in the event of fire or disaster;
    i. NTAD and NAM inventory controls; and
    j. Contracted services;
4. SOPs for all services and activities are established, documented, and implemented for:
    a. The proper use and maintenance of a donor consent form according to

A.R.S. § 36-851.03(A)(3)(a);

b. Protocols and materials used to screen end-users prior to release and transfer of NAM according to A.R.S. § 36-851.03(A)(3)(c);

c. Donor screening and testing plan, including:
   i. Acceptability assessment,
   ii. Donor risk assessment,
   iii. Medical records review,
   iv. Donor eligibility, and
   v. Infectious disease testing;

d. Acquisition of NTAD;
   i. Donor verification;
   ii. Donor identity;
   iii. Acquisition records;
   iv. Packaging, including packaging insert form that discloses disease status of tissue to the end-user;
   v. Labeling;
   vi. Transport; and
   vii. Storage;

e. Preparation methods, including:
   i. Receipt of NAM;
   ii. Prevent airborne transmission, and
   iii. Quarantine and storage, if applicable;

f. Release and transfer, including:
   i. End-user eligibility review;
   ii. Quality control review;
   iii. Release of NAM;
   iv. Exceptional release;
   v. Failing review process; and
   vi. Transfer to distribution for use, including out-of-state and international shipping;

g. Final disposition of donation according to A.R.S. § 36-851.03(A)(3)(f) and consistent with:
   i. Board of Funeral Directors and Embalmers specified in 4 A.A.C.

12, Articles 3, 5, and 6;

ii. Vital Records and Public Health Statistics specified in A.R.S. Title 36, Chapter 3;

iii. Vital Records and Statistics specified in 9 A.A.C. 19;

iv. Health menaces specified in A.R.S. Title 36, Chapter 6, Article 1;

v. Disposition of Human Bodies specified in A.R.S. Title 36, Chapter 7; and

vi. Communicable Diseases and Infestations specified in 9 A.A.C. 6;

5. SOPs that all NTAD acquired by the procurement organization shall bear a label that:

a. Is written, printed, or graphic material used to identify NTAD/NAM, blood specimens, or other donor specimens; and

b. States according to A.R.S. § 36-851.03(A)(6)(b):

i. The NTAD or NAM is not for transplant or clinical use;

ii. Any condition and any limitation regarding the use of the NTAD or NAM;

iii. That universal precautions shall be used; and

iv. The contact information for the procurement organization;

6. SOPs are:

a. Maintained at the procurement organization and copies available to the Department for review upon request;

b. Reviewed at least once every three years and updated as needed; and

c. Available to technicians and personnel members; and

7. A loss or theft of NTAD or NAM is documented and reported to the appropriate law enforcement agency within 24 hours of discovery.

F. An administrator of a non-accredited procurement organization shall immediately report suspected misuse of NTAD or NAM.

G. An administrator of a non-accredited procurement organization shall ensure that a report specified in subsection (F) is documented and maintained in the donor's record as specified in R9-9-205(E).

H. A licensee of a non-accredited procurement organization shall ensure that the following

information or documents are conspicuously posted on the premises:

1. The procurement organization's current license,
2. The name of the administrator and medical director,
3. The hours of operation, and
4. The evacuation plan listed in R9-9-302.

R9-9-202. Quality Management

A licensee of a non-accredited procurement organization shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate procurement organization services provided;
   c. A method to evaluate the data collected to identify a concern about the delivery of procurement organization services;
   d. A method to make changes or take action as a result of the identification of a concern about the delivery of procurement organization services; and
   e. The frequency of submitting a documented report required in subsection (2) to the licensee.
2. A documented report is submitted to the licensee that includes:
   a. An identification of each concern about the delivery of procurement organization services; and
   b. Any changes made or actions taken as a result of the identification of a concern about the delivery of procurement organization services.
3. The report required in subsection (2) and the supporting documentation for the report is maintained for 12 months by the procurement organization after the date the report is submitted to the licensee.

R9-9-203. Contracted Services

A licensee of a non-accredited procurement organization shall ensure that:

1. Contracted services are documented by agreement specified in SOPs.
2. If a procurement organization contracts with a laboratory for infectious disease

testing of NAM, the contracted laboratory is registered with the Food and Drug Administration as a tissue establishment, specified in 21 C.F.R. § 1271.3, for testing and is either:

a. Certified to perform such testing on human specimens in accordance with Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. § 263a) and 42 C.F.R. Part 493; or

b. Meets equivalent requirements as determined by the Centers for Medicare and Medicaid Services.

3. A list of contracted service providers is maintained and includes a description of the specific services provided.

R9-9-204. Medical Director, Administrator, Technicians, and Personnel Members

A. A licensee of a non-accredited procurement organization shall ensure that the medical director:

1. Establishes, reviews, and approves all SOPs of a medical nature, including:
   a. Donor eligibility related to:
      i. Screenings,
      ii. Testing plans,
      iii. Acceptability assessment;
   b. Sampling plan and methods verifying NTAD release;
   c. Exceptional release criteria and processes of NAM; and
   d. Pre-established release criteria;
2. Reviews all SOPs of a medical nature at least every three years;
3. Approves a designee having training and education for performing tasks and functions assigned by the medical director;
4. Has oversight and performs review of designee activities according to procedures established by the licensee;
5. Makes a determination regarding the eligibility criteria of each donor based on a comparison with predetermined donor criteria;
6. Prior to release for use or distribution, signs the donor eligibility statement and NAM disposition or release statement; and
7. Establish a criteria that ensures all appropriate parties are notified of confirmed positive infectious disease test results.

B. A licensee of a non-accredited procurement organization shall ensure that the administrator:

1. Has at least three years of experience in tissue banking or other related fields;
2. Shall define NTAD or NAM activities that a technician may provide;
3. Shall define the methods used to provide clinical oversight and training including when clinical oversight and training is provided to an individual or a group; and
4. Shall ensure a technician's personnel record includes:
    a. Documentation of all completed training and education; and
    b. A written job description, including all primary duties.

C. A licensee of a non-accredited procurement organization shall ensure that a technician:

1. Has the educational background, experience, and training sufficient to assure assigned tasks will be performed in accordance with the established SOPs;
2. Provides a copy of a transcript or diploma in health science or other field of science for which the technician received a degree or certificate, if applicable;
3. Demonstrates competency to perform assigned tasks; and
4. Has duties required by the technician described in a written job description.

D. A licensee of a non-accredited procurement organization shall ensure that:

1. The qualifications, skill, and knowledge required for each type of technician and personnel member is based on the activities and services a personnel member may provide as established in the personnel job description; and
2. A personnel member's qualifications, skills, and knowledge are verified and documented:
    a. Before the personnel member provides procurement organization services and
    b. According to SOPs.

E. A licensee of a non-accredited procurement organization shall ensure that a personnel member does not have direct interaction with NTAD and NAM unless specifically authorized by the licensee or administrator.

F. A licensee of a non-accredited procurement organization shall ensure a personnel record is established for the administrator, technicians, and personnel members that includes:

1. The individual's name, date of birth, home address, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if

applicable, the ending date; and

3. Documentation applicable to an individual's duties, as required by SOPs, including the individual's:
   a. Education and experience;
   b. In service education and continuing education, if applicable; and
   c. Evidence of Hepatitis B vaccination or refusal of Hepatitis B vaccine for individuals whose job-related responsibilities involve the potential exposure to blood-borne pathogens, if applicable.

G. A licensee of a non-accredited procurement organization shall ensure that a personnel record is:

1. Maintained throughout an individual's period of employment or volunteer service in or for the procurement organization;
2. Maintained for at least three years after the last date that an individual's employment or volunteer service in or for the procurement organization; and
3. Provided to the Department when requested.

R9-9-205. Donor Records

A. A non-accredited procurement organization shall maintain a legible, reproducible record for each donor from whom it obtains NAM for at least 10 years beyond the date of final disposition according to A.R.S. § 36-851.03(A)(7).

B. To ensure traceability of NTAD and NAM, a non-accredited procurement organization shall:

1. Document each procedure performed on a NTAD and NAM related to processing and storing NAM;
2. For each document created in subsection (B)(1), include:
   a. The date and time for each procedure completed; and
   b. The name of the technician who performed the procedure; and
3. Submit information required to register the death of a NTAD within seven calendar days after receiving the NTAD according to A.R.S. § 36-325.

C. A non-accredited procurement organization shall ensure a donor record is:

1. Confidential and kept in a location with controlled access,
2. Stored in a manner to prevent unauthorized access, and
3. Maintained in a manner to preserve the donor record's completeness and

accuracy.

D. A non-accredited procurement organization shall ensure a donor record shall include the following donor information:

1. The donor's name;
2. The donor's unique identifying number specified in A.R.S. § 36-851.03(A)(6);
3. The donor's date of birth and date of death; and
4. The name and contact information of the person responsible for a donor's anatomical gift; if applicable.

E. A non-accredited procurement organization shall include the following donor records, as applicable:

1. Donor consent form or documentation of authorization for an anatomical gift includes:
    a. The intended use of the NAM;
    b. How the NAM may be used;
    c. A statement that the NAM will be treated with dignity at all times; and
    d. A statement that the NAM may require international export to an end-user;
2. Document of authorization – a legal record of the gift, to take place postmortem, permitting and defining the scope of the postmortem acquisition and use of NAM for education and research, signed or otherwise recorded by the authorizing person, pursuant to law;
3. Documentation of gift – the donor's legal record of the gift of NAM permitting and defining the scope of the postmortem acquisition and use of NAM for education and research. It must be signed or otherwise recorded by the donor or individual authorized under law to make a gift during the donor's lifetime;
4. Donor's death record specified in A.A.C. R9-19-303;
5. Human remains release form specified in A.A.C. R9-19-301;
6. Information for a death record specified in A.A.C. R9-19-302 for transporting human remains into the state;
7. Disposition-transit permit specified in A.A.C. R9-19-308;
8. Medical examiner's release of information specified in A.R.S. § 36-861;
9. All documents and permits that establish the chain of custody and identifies the individuals and organizations that had physical custody of the NAM;

10. Medical records, including:
    a. Donor's physical assessment;
    b. Risk assessment questionnaire;
    c. Pathology and laboratory testing and reports;
    d. Physician summaries;
    e. Transfusion or infusion information; and
    f. Plasma dilution calculations;
11. Information from the donor referral source;
12. Donor eligibility;
13. Donor acceptability assessment;
14. Physical assessment questionnaire;
15. Documentation related to distribution;
16. Serological results, when applicable;
17. Cremation authorization document;
18. Documentation related to NAM recovery, storage, and distribution activities;
19. Final disposition documentation, including all records demonstrating chain of custody; and
20. Documentation of the report in R9-9-201(F) and (G).

F. A donor's consent form shall be accessible to the donor's known consenter.

G. Upon demonstration of a legal right to acquire a donor's record, a non-accredited procurement organization shall provide access to:

1. An agent legally authorized or other individual designated at the time a donor gives consent;
2. An individual appointed by a court or authorized by state laws;
3. An individual of a procurement organization as identified by SOPs;
4. An individual from an approving accrediting body, if applicable; and
5. An individual from the Department or other regulatory agency authorized by state and federal laws or regulations.

H. Except for a donor record specified in subsection (A), a non-accredited procurement organization shall maintain documentation required by this Chapter for at least three years after the date of the documentation and provide copies of the documentation to the Department for review upon request.

ARTICLE 3. PHYSICAL PLANT; TRANSPORTATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION

R9-9-301. General Plant Standards; Environmental Services

A. A licensee of a non-accredited procurement organization shall ensure that a procurement organization facility:

1. Is in a building that:
   a. Has a commercial occupancy according to the local zoning jurisdiction;
   b. Is free of any plumbing, electrical, ventilation, mechanical, or structural hazard that may jeopardize the security and quality of the NTAD, NAM, and the health or safety of the public;
   c. Has equipment and supplies to maintain NTAD and NAM in a safe and temperature-controlled state; and
   d. Provides a separate and designated area for tissue recovery.
2. Has premises that are:
   a. Sufficient to provide for a procurement organization's services and activities;
   b. Cleaned and disinfected according to the procurement organization's SOPs to prevent, minimize, and control illness and infection and mitigate potential cross-contamination between NTAD and NAM;
   c. Clean and free from accumulations of dirt, garbage, and rubbish; and
   d. Free from a condition or situation that may cause an individual to suffer physical injury;
3. Provides a restroom for clients:
   a. Free from contamination and cross-contamination of NAM; and
   b. Does not contain any items, materials, or devices associated with the preparation activities or technicians and personnel members;
4. Implements and documents a pest control program that:
   a. Requires a pest control service that uses certified applicators as specified in 3 A.A.C. 8, Article 2; and
   b. Retains annual pest control service records for at least 12 months from date of service; and
5. Does not maintain a public health nuisance or engage in any act, condition, or

thing, specified in A.R.S. § 36-601, or any practice contrary to the health laws of this state.

B. A licensee of a non-accredited procurement organization shall ensure that a procurement organization:

1. Has preparation rooms that:
    a. Are maintained in a clean and sanitary condition at all times;
    b. Are only used for examining and preparing NTAD;
    c. Contain equipment, instruments, and supplies necessary for examining and preparing NTAD and are disinfected or sterilized, as applicable, after each use to protect the health and safety of technicians and personnel members;
    d. Have sanitary flooring, drainage, and ventilation;
    e. Have proper and convenient receptacles for refuse, bandages, and all other waste materials; and
    f. Are thoroughly cleansed and disinfected with a 1% solution of chlorinated soda, or other suitable and effective disinfectant:
        i. Immediately after obvious spill of blood or other potentially infectious materials, and
        ii. At the end of each shift or on a regular basis that provides equivalent safety for all work surfaces;
2. Has refrigeration equipment used to store NTAD and NAM that:
    a. Is only used for NTAD and NAM;
    b. Is maintained in working order and kept in a clean and sanitary condition;
    c. If a walk-in cooler, maintains a temperature between 36°F and 45°F;
    d. If a freezer, maintains a temperature at or below 32°F;
    e. Is monitored by a temperature sensor system that:
        i. Measures temperatures continuously and document when a unit is out of the required temperature range, and
        ii. Alert technicians or other designated individuals when temperatures are outside of the acceptable limits; and
3. Has equipment at the procurement organization that is:
    a. Sufficient to support the service;

b. Maintained in working condition;

c. Maintained in a clean and sanitary condition;

d. Used according to the manufacturer's recommendations;

e. If used during an examination or preparation of NTAD, cleaned and sanitized specified in subsection (B)(1)(f)(ii); and

f. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in SOPs.

C. A licensee of a non-accredited procurement organization shall maintain documentation of equipment tests, calibrations, and repairs for at least 12 months after the date of testing, calibration, or repair.

D. A licensee of a non-accredited procurement organization shall ensure that:

1. Biohazardous material or medical waste and other potentially hazardous materials are removed and disposed by a facility licensed by the Arizona Department of Environmental Quality pursuant to 18 A.A.C. 8 and 13; and
2. Combustible or flammable liquids are stored in a labeled containers or safety containers in a secured area and properly identified to ensure individuals health and safety.

R9-9-302. Emergency and Safety Standards

A. An administrator of a non-accredited procurement organization shall ensure:

1. SOPs for emergency transfer of NTAD and NAM to a designated back up storage facility with an acceptable coolant and monitoring system in the event of mechanical failure or loss of coolant, including:
   a. Tolerance limits or temperatures and time limits;
   b. Methods and actions to be taken; and
   c. Specific labeling indicating that the transported NTAD and NAM shall remain untouched until returned to the licensed non-accredited procurement facility after the mechanical failure or loss of coolant has been restored;
2. There is a first aid kit available at a procurement organization;
3. There are smoke detectors installed according to building size and local zoning jurisdiction;

4. A smoke detector required in subsection (A)(3):
    a. Is maintained in an operable condition; and
    b. Is battery operated or, if hard-wired into the electrical system of a procurement organization, has a back-up battery;
5. A procurement organization has a portable fire extinguisher that is labeled 2A-10-BC by the Underwriters Laboratory and is readily available for use;
6. A portable fire extinguisher required in subsection (A)(5) is:
    a. If a disposable fire extinguisher, replaced when the fire extinguisher's indicator reaches the red zone; or
    b. Serviced at least every 12 months and has a tag attached to the fire extinguisher that includes the date of service; and
7. A written fire and evacuation plan is established and maintained.

B. An administrator of a non-accredited procurement organization shall:
1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal;
2. Make any repairs or corrections stated on the fire inspection report; and
3. Maintain documentation of a current fire inspection for at least two years.

R9-9-303. Security Standards; NTAD/NAM Inventory Controls

A. A licensee of a non-accredited procurement organization shall ensure that access to the enclosed-locked areas where NTAD and NAM is located is limited to individuals authorized by the licensee or administrator.

B. To prevent unauthorized access to NTAD and NAM inventory, an administrator of a non-accredited procurement organization shall:
1. Have personnel or security equipment to deter and prevent unauthorized entrance into limited access areas that includes:
    a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic devices;
    b. Exterior lighting to facilitate surveillance; and
    c. Electronic monitoring using video cameras shall provide coverage of:
        i. Entrances to and exits from limited access areas;

ii. Entrances to and exits from the buildings; and

iii. Entrances and exits capable of identifying any activity occurring within the limited access area.

2. Maintain video recordings from the video cameras for at least 30 calendar days.

3. Have a failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system.

4. Have battery backup for video cameras and recording equipment to support in the event of a power outage.

5. SOPs:

a. That restricts access to the areas of the building that contain NTAD and NAM inventory and donor records;

b. That provides for identification of authorized individuals; and

c. For conducting electronic monitoring.

C. A licensee of a non-accredited procurement organization shall establish and implement a NTAD and NAM inventory tracking system that:

1. Contains all NTAD received and NAM released for distribution;

2. Lists release documentation verified for each NAM prior to transferring NAM to inventory;

3. Documents the date, time, and location for NAM transferred for use, including the name of the individual performing the transfer;

4. Documents the date, time, and location for NAM that is moved between locations controlled by the procurement organization, including the name of the individual overseeing the move; and

5. Ensures NAM that can no longer be used is removed from inventory and disposed according to applicable SOPs.

R9-9-304. Transportation Standards

A. If a non-accredited procurement organization owns and maintains a vehicle for transporting NAM, an administrator shall ensure the vehicle is:

1. Not used for a purpose other than transporting NTAD and NAM or conducting procurement organization business;

2. Only operated by a procurement organization technician or designated individual authorized to transport NTAD or NAM;

3. Maintained in clean and sanitary condition; and
4. Locked and secured at all times during transport of NTAD or NAM.

B. If using another vehicle or type of transport for NTAD or NAM, an administrator of a non-accredited procurement organization shall ensure that another vehicle or type of transport:

1. Is properly equipped for the transportation of NTAD or NAM;
2. Is compliant with all state laws and rules pertaining to transporting human remains; and
3. If transport is by air, complies with applicable standards established by the International Air Transport Association and Transport Security Administration.

C. An administrator of a non-accredited procurement organization shall ensure that NTAD and NAM transported into the state has information of death documentation specified in A.A.C. R9-19-302 prior to transport.

R9-9-305. Sanitation Standards and Reporting

A. A licensee of a non-accredited procurement organization shall ensure that:

1. Areas used to receive, prepare, label, package, and store NAM are:
   a. Properly ventilated, and
   b. Protected from dust, dirt, flies, and other contamination.
2. All refuse and waste products produced from receiving, preparing, packaging, distributing, and transporting NAM are removed from the premises as needed.
3. All transport vehicles, trays, other receptacles, racks, tables, shelves, knives, saws, other utensils, or machinery used to move, handle, separate, package or other processes be cleaned as specified in SOPs and this Article.

B. A technician or personnel member of a non-accredited procurement organization shall report to the administrator or medical director:

1. Any concern related to receiving, preparing, packaging, distributing, or transporting NTAD or NAM that may adversely affect the health and safety of others.
2. Any personal health condition experienced related to receiving, preparing, packaging, distributing, or transporting NTAD or NAM.

C. If an administrator or medical director of a non-accredited procurement organization

determines a health condition in subsection (B)(1) has occurred, the administrator or medical director shall:

1. Follow SOPs to secure the area and eliminate exposure to others;
2. Notify appropriate health and law enforcement agencies, as applicable; and
3. Report the incident to the Department within five working days of determination that a health condition in subsection (B)(2) has occurred.

D. A licensee, administrator, or medical director of a non-accredited procurement organization shall report a health condition experienced by a technician or personnel member to the Department within five calendar days of determination that the individual has a personal health condition specified in subsection (B)(1).

ARTICLE 4. ADMINISTRATION FOR AN ACCREDITED PROCUREMENT ORGANIZATION

R9-9-401. General Responsibilities

A. A licensee of an accredited procurement organization shall provide a copy of a renewed accreditation to the Department within 30 calendar days from the date of issuance.

B. A licensee of an accredited procurement organization shall ensure that a procurement organization facility is in a building that provides a separate and designated area for tissue recovery according to A.R.S. § 36-851.02(3).

C. A licensee of an accredited procurement organization shall ensure SOPs are established, documented, and implemented that cover:

1. Labeling;
2. Packaging, including a packaging insert form that discloses disease status of tissue to end-user according to A.R.S. § 36-851.02(2)(d);
3. Transport;
4. Distribution; and
5. Final disposition.

R9-9-402. Donor Consent; NTAD and NAM Identification

In addition to the requirements in Article 1, a licensee of an accredited procurement organization shall ensure that:

1. A donor consent form includes:
   a. The intended use of the NAM,
   b. How the NAM may be used,
   c. A statement that the NAM will be treated with dignity at all times, and
   d. A statement that the NAM may require international export to an end-user.
2. A donor consent form is maintained in the donor's record and retained for at least 10 years beyond the date of final disposition.
3. An electronic identification system for donors is established and maintained for NTAD or NAM; **[that?]**

a. Assigns a unique identification number according to A.R.S. § 36-851.03(A)(6)(a); or **[not in current NFER]**

b. Tracks the complete history of all NAM; and

c. Records the date and staff member involved in each significant step of the operation from the time of NTAD acquisition through final disposition.

4. The information required to register the death of a NTAD is submitted within seven calendar days after receiving the NTAD according to A.R.S. § 36-325.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1517 (July 1, 2022), with an immediate effective date of June 8, 2022 (Supp. 22-2). At the request of the Department a clerical error was corrected under subsection (3)(a); "and" was changed to "or" under file number R22-220 (Supp. 22-3).

R9-9-403. Tissue End-Users

A. A licensee of an accredited procurement organization shall establish, document, and implement SOPs to properly screen an end-user that includes:

1. A written request for NAM, including: **[Requiring a written request?]**

a. The name, address and affiliation of educator and research accepting responsibility for the acceptance, use, and disposition of the NAM;

b. A description of the intended use;

c. The date and the approximate duration of NAM use;

d. A description of the venue in which the NAM will be used and the security measures for the safe and ethical utilization of the venue;

e. An assurance that universal precautions will be used when handling NAM;

f. The proposed final disposition of the NAM;

g. An agreement to comply with procurement organization's policies, as applicable;

h. An outline of proposed promotional materials to be disseminated in connection with the use of NAM; and

i. Other supporting documentation that is relevant to the request; and

2. The criteria for approving requested NAM for use, including:

a. The acceptability of the educator and researcher for NAM utilization;

b. The appropriateness of the intended use;

c. Type of venue in which the NAM will be used;

d. Proposed final disposition of the NAM unless returned to the procurement organization; and **[no criteria? could the end user throw the NAM in medical waste? the trash?]**

e. Proposed promotional materials. **[no criteria?]**

B. A licensee of an accredited procurement organization shall establish, document, and implement a procedure that allows an end-users to request an exceptional release of NAM.

Authorizing Statutes

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 such 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 for the promotion of 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 education of 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 the coordination of 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 the enforcement of 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 for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall 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.

36-851.01. Procurement organizations; licensure; renewal; fees; penalties; exceptions

A. A person may not act as a procurement organization in this state unless the person is licensed by the department of health services as a procurement organization. The person shall apply in writing to the director of the department on a form specified by the director, shall include all information requested in the application and shall pay the fees prescribed by the director.

B. The director shall grant a procurement organization license to a person if the organization either is accredited by a nationally recognized accrediting agency that is approved by the department of

health services and maintains full accreditation with the accrediting agency or meets the requirements prescribed in section 36-851.03 and the rules adopted by the department.

C. A license under this section is valid for two years and must be renewed every two years. A person shall file an application for renewal at least thirty days before the expiration of the current license.

D. Each procurement organization applying for licensure or license renewal under this section shall pay all applicable fees as prescribed by the director. All fees collected pursuant to this section for the licensure and license renewal of procurement organizations shall be deposited in the health services licensing fund established by section 36-414.

E. The director may sanction, impose civil penalties on or, pursuant to title 41, chapter 6, article 10, suspend or revoke, in whole or in part, the license of any procurement organization if any person who is an owner, officer, agent or employee of the procurement organization is in or continues to be in violation of this article or the rules of the department of health services adopted pursuant to this article.

F. This section does not apply to any of the following:

1. An organ procurement organization as described by 42 United States Code section 273 that is designated for this state by the secretary of the United States department of health and human services pursuant to 42 United States Code section 1320b-8.

2. A procurement organization that is regulated by the United States food and drug administration in connection with the recovery of human tissue intended for transplantation pursuant to 21 Code of Federal Regulations part 1270.

3. A procurement organization as defined in section 36-841, paragraph 27, subdivision (d).

4. A procurement organization that is affiliated with an accredited educational institution in connection with the education of students enrolled in a degree-granting program for health professionals.

5. A procurement organization that recovers anatomical gifts for research or education, including for quality improvement or quality assurance, and that is affiliated with a hospital that is licensed pursuant to chapter 4 of this title.

6. A hospital that is licensed pursuant to chapter 4 of this title.

36-851.02. Procurement organizations; deemed status; requirements; inspection

A procurement organization that is licensed pursuant to section 36-851.01 by virtue of its accreditation status:

1. Is deemed to meet health and safety requirements that are equivalent to those set forth in section 36-851.03 and is not required to meet the requirements prescribed in section 36-851.03 except as specified in paragraph 2 of this section if the procurement organization maintains its accredited status with the accrediting agency.

2. Shall comply with all of the following as adopted in rule by the department of health services:

(a) The proper use and maintenance of donor consent forms.

(b) The implementation and maintenance of proper identification systems for bodies and disarticulated items.

(c) The implementation and maintenance of protocols and materials for procedures used by the procurement organization to properly screen end users.

(d) The proper documentation and disclosure of the disease status of tissue specimens to end users.

(e) Labeling, packaging, transport and distribution policies and procedures.

(f) Final disposition procedures.

3. Shall provide a designated area for tissue recovery that does not operate in a funeral establishment for the recovery of whole bodies for medical research and education.

4. Is subject to inspection by the department of health services at any time with respect to compliance with the requirements of paragraph 2 of this section.

36-851.03. Procurement organizations; requirements; records; rules; inspection

A. Except as provided in section 36-851.02, each procurement organization that is required to be licensed pursuant to section 36-851.01 shall do all of the following:

1. Designate a medical director who is a physician licensed pursuant to title 32, chapter 13 or 17 and who provides medical guidance to determine donor eligibility.

2. Employ a director who holds at least a bachelor's degree in a related science from an accredited university and who is responsible for all licensed activities of the organization.

3. Comply with all of the following as adopted in rule by the department of health services:

(a) The proper use and maintenance of donor consent forms.

(b) The implementation and maintenance of proper identification systems for bodies and disarticulated items.

(c) The implementation and maintenance of protocols and materials for procedures used by the procurement organization to properly screen end users.

(d) The proper documentation and disclosure of the disease status of tissue specimens to end users.

(e) Labeling, packaging, transport and distribution policies and procedures.

(f) Final disposition procedures.

4. Implement and maintain all of the following:

(a) Standard operating procedures for all licensed functions of the organization.

(b) A safety awareness and blood-borne pathogen training program that complies with state and federal law.

(c) A cleaning program that mitigates potential cross-contamination between donors.

5. Provide a designated area for tissue recovery that:

(a) Is open to inspection by the department of health services with or without notice.

(b) Does not operate in a funeral establishment for the recovery of whole bodies for medical research and education.

6. Properly track donors and label tissue by doing both of the following:

(a) Assigning a unique identifying number to each donor and using this number for all tissue from that donor that is recovered and distributed.

(b) Affixing labels with the following information on all nontransplant tissue specimens:

(i) A statement that universal precautions will be used.

(ii) A statement that the specimen is not for transplant or clinical use.

(iii) Any condition or limitation regarding the use of the specimen.

(iv) Contact information for the procurement organization.

7. Maintain the following records for ten years after the last date of tissue distribution:

(a) A copy or recorded consent of the donation authorization.

(b) A copy of the donor's death certificate and transit permit issued by the state where the death occurred.

(c) A copy of the donor's physical assessment and risk assessment questionnaire.

(d) A copy of the donor's serological results, when applicable.

(e) A copy of all documentation relating to tissue recovery, storage and distribution activities.

B. The department of health services shall adopt rules that follow, as nearly as practicable, the requirements on equivalent subjects specified in subsection A of this section that are set forth in the accreditation requirements of a nationally recognized accrediting agency that is approved by the department.

C. A procurement organization that is subject to the requirements of this section is subject to inspection by the department of health services at any time to evaluate the compliance by the procurement organization with the requirements of this article and the rules adopted by the department.

D-3.

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: November 5, 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).

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.

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

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.

D-4.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 7

Amend: R17-7-101, R17-7-201, R17-7-202, R17-7-203, R17-7-204, R17-7-301, R17-7-302, R17-7-303, R17-7-401, R17-7-601, R17-7-603, R17-7-604, R17-7-605, R17-7-606, R17-7-702, R17-7-703, R17-7-704, R17-7-705

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: October 8, 2024

SUBJECT: **DEPARTMENT OF TRANSPORTATION**
Title 17, Chapter 7

Amend: R17-7-101, R17-7-201, R17-7-202, R17-7-203, R17-7-204, R17-7-301, R17-7-302, R17-7-303, R17-7-401, R17-7-601, R17-7-603, R17-7-604, R17-7-605, R17-7-606, R17-7-702, R17-7-703, R17-7-704, R17-7-705

Summary:

This expedited rulemaking from the Department of Transportation (Department) seeks to amend eighteen (18) rules in Title 17, Chapter 7, Articles 1-4, 6, and 7 regarding Third-Party Programs. Specifically, these Articles relates to the following:

- Article 1 - Definitions
- Article 2 - Authorization
- Article 3 - Certification
- Article 4 - Audits and Inspection
- Article 6 - Commercial Driver License Examination Program
- Article 7 - Driver License Training Provider Program

Pursuant to A.R.S. § 41-1027(A)(7), the Department engages in this expedited rulemaking to incorporate the changes proposed in the Department's recent Five-Year Review

Report on these rules, which was approved by the Council on November 7, 2023. The Department determined that there were rules throughout this Chapter that should be updated and improved to better reflect the Department's processes, to include updates for recent legislation that allows authorized third-party driver license providers to perform functions related to the issuance and renewal of commercial driver licenses (CDLs), and to ensure consistency with proper formatting and grammar, including ensuring conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

The rules are being amended to improve clarity, conciseness, and to be up to date with current program verbiage and needs. These changes include updates to definitions, streamlining the verbiage and requirements of some of the applications and forms, streamlining the fingerprint requirement verbiage to be more in accordance with the statute as the process is handled outside of the Department, clarifying the age requirements of applicants, consolidating and merging some subsections, removing language that indicates items being required by mail since many may now be mailed or electronically submitted, clarifying notification timelines, clarifying the good standing requirement, clarifying a certified individual's personnel file requirements, clarifying solicitation restrictions, removing and replacing the outdated monthly reconciliation report process with voided score sheets, extending the validity of score sheets from 30 days to one year, clarifying the Department-approved curriculum requirement, and removing the provision that driver license trainer certificates are nontransferable. In addition, the Department is adding a requirement for CDL applicants to successfully complete the entry-level driver training as required under 49 CFR 383 and 384. Also, to ensure driver license trainers are current, the Department is adding a requirement that if a trainer is not employed by a professional driver license training school for a period of at least one year, the trainer must reapply and satisfy all the driver license training requirements.

To further promote the additional CDL capability, the Department is adding CDL verbiage to the definition of "driver license processor," removing the three-year minimum CDL driving experience requirement, adding the requirement for a CDL record for CDL holders as a more appropriate driving record type, and adding clarifying CDL verbiage as necessary.

1. Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?

The Department indicates this rulemaking seeks to implement its proposed course of action in the last Five-Year Review Report for these rules, which was approved by the Council on November 7, 2023. If a rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated and implements, without material change, a course of action that is proposed in a Five-Year Review Report approved by the Council pursuant to A.R.S. § 41-1056, it qualifies for expedited rulemaking. Council staff believes the Department's rulemaking satisfies the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7).

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.

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

The Department indicates it did not receive any comments regarding the proposed rules but did receive one comment seeking clarity on whether the rules will apply to all Department programs or just driver license programs and how more information on the changes will be shared. The Department states it informed the commenter that the rules would be for all third-party programs with some specific changes to the commercial driver license examination program and the driver license training provider program. The Department stated it shares information on its rulemaking in a current rulemaking activity document that is posted to its website. Council staff believes the Department has adequately addressed public comments related to this rulemaking.

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

The Department indicates there were minor grammatical and non-substantive technical changes for better flow and clarity made between the Notice of Proposed Expedited Rulemaking published in the Administrative Register on May 3, 2024 and the Notice of Final Expedited Rulemaking now before the Council. Council staff does not believe these changes make the rules substantially different pursuant to A.R.S. § 41-1025.

6. 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 federal regulations, 49 CFR 383.75, Third Party Testing, and 49 CFR 384.228, Examiner Training and Record Checks are applicable to the rules. However, the Department indicates the rules are not more stringent than this corresponding federal law.

7. 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, pursuant to A.R.S. §§ 28-5101 and 28-5102, the Department authorizes third parties and certifies third-party employees or agents to perform specific functions. The Department states these authorizations and certifications do fall under the requirements of general permits since the activities and practices authorized are substantially similar in nature for entities authorized or certified to perform that specified activity or function. As such, Council staff believes the Department is in compliance with A.R.S. § 41-1037.

8. 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 or rely on any study for this rulemaking.

9. Conclusion

This expedited rulemaking from the Department of Transportation (Department) seeks to amend eighteen (18) rules in Title 17, Chapter 7, Articles 1-4, 6, and 7 regarding Third-Party Programs. The Department previously determined that there were rules throughout this Chapter that should be updated and improved to better reflect the Department's processes, to include updates for recent legislation that allows authorized third-party driver license providers to perform functions related to the issuance and renewal of CDLs and to ensure consistency with proper formatting and grammar, including ensuring conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

The rules are being amended to improve clarity, conciseness, and to be up to date with current program verbiage and needs. These changes include updates to definitions, streamlining the verbiage and requirements of some of the applications and forms, streamlining the fingerprint requirement verbiage to be more in accordance with the statute as the process is handled outside of the Department, clarifying the age requirements of applicants, consolidating and merging some subsections, removing language that indicates items being required by mail since many may now be mailed or electronically submitted, clarifying notification timelines, clarifying the good standing requirement, clarifying a certified individual's personnel file requirements, clarifying solicitation restrictions, removing and replacing the outdated monthly reconciliation report process with voided score sheets, extending the validity of score sheets from 30 days to one year, clarifying the Department-approved curriculum requirement, and removing the provision that driver license trainer certificates are nontransferable. In addition, the Department is adding a requirement for CDL applicants to successfully complete the entry-level driver training as required under 49 CFR 383 and 384. Also, to ensure driver license trainers are current, the Department is adding a requirement that if a trainer is not employed by a professional driver license training school for a period of at least one year, the trainer must reapply and satisfy all the driver license training requirements.

To further promote the additional CDL capability, the Department is adding CDL verbiage to the definition of "driver license processor," removing the three-year minimum CDL driving experience requirement, adding the requirement for a CDL record for CDL holders as a more appropriate driving record type, and adding clarifying CDL verbiage as necessary.

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.

August 14, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 305
Phoenix, AZ 85007

Re: Department of Transportation, 17 A.A.C. 7, Third-party Programs, Notice of Final Expedited Rulemaking

Dear Chairperson Klein:

The Arizona Department of Transportation submits the accompanying final expedited rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-202(A)(1):

a. The rulemaking record closed on May 22, 2024, and a written public comment was received on this rulemaking but was not specific to the proposed rule language;

b. The Department is engaged in this expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7), in order to incorporate the changes proposed in the Department's recent five-year review report on 17 A.A.C. Chapter 7;

c. The rulemaking activity does relate to a five-year review report, approved by the Governor's Regulatory Review Council on November 7, 2023;

d. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;

e. Documents included in this final expedited rule package are as follows:
   1. Signed cover letter;
   2. Notice of Final Expedited Rulemaking, including the preamble, table of contents, and text of each rule;
   3. Copy of the written comment received with the Department's response;
   4. General and specific statutes authorizing the rules, including relevant statutory definitions;
   5. Definitions of terms; and
   6. Request for, and approvals of initial and final rulemaking from the Governor's Office.

Sincerely,

Jennifer Toth
Director

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 7. DEPARTMENT OF TRANSPORTATION

THIRD-PARTY PROGRAMS

PREAMBLE

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

July 25, 2024

2. Article, Part, or Section Affected (as applicable)	**Rulemaking Action**
R17-7-101	Amend
R17-7-201	Amend
R17-7-202	Amend
R17-7-203	Amend
R17-7-204	Amend
R17-7-301	Amend
R17-7-302	Amend
R17-7-303	Amend
R17-7-401	Amend
R17-7-601	Amend
R17-7-603	Amend
R17-7-604	Amend
R17-7-605	Amend
R17-7-606	Amend
R17-7-702	Amend
R17-7-703	Amend
R17-7-704	Amend
R17-7-705	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. § 28-366

Implementing statute: A.R.S. §§ 28-5101, 28-5101.01, 28-5101.02, 28-5101.03, 28-5102, 28-5103, 28-5105, 28-5106, and 41-1009

4. The effective date of the rule:

This expedited rulemaking becomes effective immediately the date the notice is filed under 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 current record of the final expedited rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 908, Issue Date: May 3, 2024, Issue Number: 18, File number: R24-79

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 895, Issue Date: May 3, 2024, Issue Number: 18, File number: R24-75

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

Name: Candace Olson

Title: Senior Rules Analyst

Office: Government Relations and Rules

Address: Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007

Telephone: (480) 267-6610

Email: COlson2@azdot.gov

Website: https://azdot.gov/about/government-relations

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. § 41-1027(A)(7), the Department engages in this expedited rulemaking to incorporate the changes proposed in the Department's recent five-year review report on 17 A.A.C. Chapter 7, Third-Party Programs, approved by the Governor's Regulatory Review Council on November 7, 2023. The Department determined that there were rules throughout this Chapter that should be updated and improved to better reflect the Department's processes, to include updates for recent legislation that allows authorized third-party driver license providers to perform functions related to the issuance and renewal of commercial driver licenses (CDLs), and to ensure consistency with proper formatting and grammar, including ensuring conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

The rules are being amended to improve clarity, conciseness, and to be up to date with current program verbiage and needs. These changes include updates to definitions, streamlining the verbiage and requirements of some of the applications and forms, streamlining the fingerprint requirement verbiage to be more in accordance with the statute as the process is handled outside of the Department, clarifying the age requirements of applicants, consolidating and merging some subsections, removing language that indicates items being required by mail since many may now be mailed or electronically submitted, clarifying notification timelines, clarifying the good standing requirement, clarifying a certified individual's personnel file requirements, clarifying solicitation restrictions, removing and replacing the outdated monthly reconciliation report process with voided score sheets, extending the validity of score sheets from 30 days to one year, clarifying the

Department-approved curriculum requirement, and removing the provision that driver license trainer certificates are nontransferable. In addition, the Department is adding a requirement for CDL applicants to successfully complete the entry-level driver training as required under 49 CFR 383 and 384. Also, to ensure driver license trainers are current, the Department is adding a requirement that if a trainer is not employed by a professional driver license training school for a period of at least one year, the trainer must reapply and satisfy all the driver license training requirements.

To further promote the additional CDL capability, the Department is adding CDL verbiage to the definition of "driver license processor," removing the three-year minimum CDL driving experience requirement, adding the requirement for a CDL record for CDL holders as a more appropriate driving record type, and adding clarifying CDL verbiage as necessary.

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 Department did not review or rely on any study relevant to the rules.

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 summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

11. A description of any change between the proposed expedited rulemaking, to include a supplemental proposed notice, and the final rulemaking:

Minor grammatical and non-substantive technical changes for better flow and clarity were made upon review.

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

The Department did not receive any comments regarding the proposed rules but did receive one comment seeking clarity on whether the rules will apply to all ADOT programs or just driver license and how more information on the changes will be shared. The Department informed the commenter that the rules would be for all third party programs with some specific changes to the commercial driver license examination program and the driver license training provider program. The Department shares information on its rulemaking in a current rulemaking activity document that is posted to its website.

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 to the Department or to any specific rule or class of rules.

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:

Pursuant to A.R.S. §§ 28-5101 and 28-5102, the Department authorizes third parties and certifies third party employees or agents to perform specific functions. These authorizations and certifications do fall under the requirements of general permits since the activities and practices authorized are substantially similar in nature for entities authorized or certified to perform that specified activity or function.

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 regulations, 49 CFR 383.75, Third Party Testing, and 49 CFR 384.228, Examiner Training and Record Checks, are applicable to the rules. The rules are no more stringent than federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

No analysis was submitted to the Department.

14. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

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) state where the text was changed between the emergency and the final expedited rulemaking package:

These rules were not previously made as an emergency rule.

16. The full text of the rules follows:

Rule text begins on the next page.

TITLE 17. TRANSPORTATION
CHAPTER 7. DEPARTMENT OF TRANSPORTATION
THIRD-PARTY PROGRAMS

ARTICLE 1. DEFINITIONS

Section

R17-7-101. Definitions

ARTICLE 2. AUTHORIZATION

Section

R17-7-201. Authorization Application Requirements

R17-7-202. Notification of Authorization Approval or Denial and Hearing

R17-7-203. Authorization Agreement

R17-7-204. Authorized Third-party Requirements

ARTICLE 3. CERTIFICATION

Section

R17-7-301. Certification Application Requirements

R17-7-302. Notification of Certification Approval or Denial and Hearing

R17-7-303. General Requirements of a Certified Individual

ARTICLE 4. AUDITS AND INSPECTION

Section

R17-7-401. Audits and Inspection

ARTICLE 6. COMMERCIAL DRIVER LICENSE EXAMINATION PROGRAM

Section

R17-7-601. Definitions

R17-7-603. Additional Authorization Application Requirements for CDLE Program

R17-7-604. Additional Certification Application Requirements for Commercial Driver License Examiners

R17-7-605. Additional Authorized CDLE Program Requirements

R17-7-606. Certified Commercial Driver License Examiner Requirements

ARTICLE 7. DRIVER LICENSE TRAINING PROVIDER PROGRAM

Section

R17-7-702. Additional Authorization Application Requirements for Driver License Training Providers

R17-7-703. Additional Certification Application Requirements for Driver License Trainers

R17-7-704. Additional Authorized Driver License Training Provider Program Requirements

R17-7-705. Certified Driver License Trainer Requirements

ARTICLE 1. DEFINITIONS

R17-7-101. Definitions

The following definitions apply to this Chapter unless otherwise specified:

"Accountable inventory" means an item that is reproduced by the Department in a consecutively numbered series for:

Recording the number of a completed, issued, or voided item in a log; and

Reporting the number of a completed, issued, or voided item to the Department.

"Activity" means a function or service that is provided by an authorized third party pursuant to A.R.S. Title 28, Chapter 13 and that is performed by a certified individual as defined in this Article.

"Agency head" or "political subdivision head" means the chief officer of an agency or political subdivision or another individual with authority to act for the agency head or political subdivision head.

"Application ~~Date~~ date" means the date an application is received by the Department.

"Authorized third party" means an entity that:

Has written permission from the Department to operate a business under A.R.S. Title 28, Chapter 13; and

Employs or contracts with at least one certified individual to provide a third-party activity.

"Branch" means an authorized third party's business location that is an additional established place of business.

"Certified individual" means an individual who is certified by the Department under A.R.S. Title 28, Chapter 13 to perform specified activities for an authorized third party as an employee or contractor. The Department may certify an individual as:

A commercial driver license examiner,

A dealer license processor,

A driver license processor,

A driver license trainer,

An office personnel member,

A tax report processor,

A title and registration processor,

A vehicle inspector, or

A vehicle permit processor.

"Commercial driver license examiner" means an individual certified by the Department to administer class A, B, or C driver license skills tests.

"Concentration Banking System" means a ~~type of state bank account, established by the Arizona State Treasurer's office, for deposit of monies collected by an authorized third party~~ depository eligible to be a servicing bank for the State of Arizona.

"Contact individual" means a principal or designated individual of an authorized third party who communicates with the Department on behalf of the authorized third party.

"Convenience fee" means the amount exceeding the statutorily prescribed fees and taxes that an authorized third party collects ~~and retains~~ for its services.

"Department" means the Arizona Department of Transportation.

"Dealer license processor" means an individual certified by the Department to:

Review applications for vehicle dealer licenses;

Enter information related to the applications in the Department's database; and

Issue vehicle dealer licenses under A.R.S. Title 28, Chapter 10.

"Driver license processor" means an individual certified by the Department to perform any one or a combination of driver license, including commercial driver license, processing functions under A.R.S. Title 28 as specified in the authorization agreement between the Department and an authorized third party who has engaged the individual to perform those functions.

"Driver license trainer" means an individual certified by the Department to:

Educate and train persons, either practically or theoretically, or both, to operate or drive motor vehicles;

Prepare applicants for an examination given by the Department or an authorized third party driver license provider for a driver license or instruction permit; and

Charge a consideration or tuition for these services.

"Established place of business" means an authorized third party's business location that is:

Approved by the Department,

Located in Arizona,

Not used as a residence, and

Where the authorized third party performs authorized activities.

"Floor plan" means a Department-approved diagram of a building's interior, as seen from above, that shows the interior dimensions and the location of doors, windows, and equipment.

"Good standing" means an authorized third party applicant or an applicant seeking certification:

Has not had a similar business license or certification issued suspended, revoked, canceled, or denied within the previous ~~three~~ five years of the application date;

Does not owe delinquent fees, taxes, or unpaid balances to the Department;

Has not had any substantiated derogatory information relevant to the requested authorization or certification reported to the Department about the applicant from any state agency or from any consumer protection agency contacted by the Department; or

If the applicant is a former Department employee, a former authorized third party, or a former employee of an authorized third party, has not been dismissed or resigned from a position for cause, including:

Committing a serious violation, as defined in A.R.S. § 28-5108;

Misconduct~~,~~; or

Resignation from position:

In lieu of dismissal, or

By mutual agreement following allegations of misconduct or committing a serious violation.

"Log" means a complete, chronological record of accountable inventories ~~and~~ or activities or both performed and kept by the authorized third party as prescribed by the Department.

"Motor vehicle inspection" means vehicle verification as prescribed in A.R.S. § 28-2011.

"Office personnel member" means an individual who does not perform any other of the activities requiring certification under this Chapter and who is certified by the Department as an employee who performs functions that:

Have exposure to protected personal information, or

Has complete oversight and responsibility for all day-to-day operations necessary to ensure full compliance with all applicable program requirements.

"Principal" means any of the following:

If a sole proprietorship, the sole proprietor;

If a partnership, limited partnership, limited liability partnership, limited liability company, or corporation, the:

Partner;

Manager;

Member;

Officer;

Director;

Agent; or

If a limited liability company or corporation, each stockholder owning 20 percent or more of the limited liability company or corporation; or

If a political subdivision or government agency, the political subdivision or agency head.

"Principal place of business" means an authorized third party's administrative headquarters, which shall not be used as a residence.

"SAAM" means the State of Arizona Accounting Manual.

"Skills test" means a set of tests, authorized and approved by the Department and administered by the Department or by an authorized third party commercial driver license examiner or driver license processor to determine whether the applicant possesses the required skills for the type of license for which the applicant applies.

"Skills test route" means a public road or highway driving course, identified by an authorized third party and approved by the Department, for administering skills tests to driver license applicants.

"Tax report processor" means an individual certified by the Department to:

Process fuel tax reports and interstate user fuel tax reports from fuel suppliers, fuel vendors, and motor carriers; and

File the reports with the Department.

"Test site" means a location, identified by an authorized third party, for administering skills tests to driver license applicants that is:

Approved by the Department,

Permanently marked, and

Off the public road or highway.

"Title and registration processor" means an individual certified by the Department to:

Review applications for vehicle certificates of title or registrations under A.R.S. Title 28, Chapter 7;

Enter information related to applications for vehicle certificates of title or registrations into the Department's database; and

Issue or deny vehicle certificates of title or registrations.

"Vehicle inspector" means an individual certified by the Department to perform motor vehicle inspections.

"Vehicle permit processor" means an individual certified by the Department to:

Review applications for permits or registrations under A.R.S. Title 28, Chapter 3, Articles 18 and 19, and Chapter 7;

Enter information related to the applications in the Department's database; and

Issue or deny permits or registrations.

"Vicinity" means the area adjacent to, or in the immediate proximity of, any authorized third party's places of business.

ARTICLE 2. AUTHORIZATION

R17-7-201. Authorization Application Requirements

A. An applicant, who must be at least 18 years of age, for third-party authorization shall provide to the Department on request:

1. The applicant's ~~name, business name, and federal employer identification number~~ identifying information;
2. The applicant's bond status as exempt or nonexempt under A.R.S. Title 28, Chapter 13~~.~~, ~~If~~ if exempt, the applicant must complete a bond exemption form, which must be submitted annually unless an exemption has been granted by the Department~~.~~, ~~If~~ and if nonexempt, the applicant must provide proof of a surety bond pursuant to A.R.S. Title 28, Chapter 13;
3. The name of the person who is the applicant's principal;
4. The ~~name, title, e-mail address, and telephone number~~ identifying information of the applicant's contact individual;
5. The activities for which the applicant seeks third-party authorization;
6. The address of the applicant's principal place of business and each established place of business;
7. A statement that the applicant is in good standing;
8. The signature of all applicable principles~~:~~
   ~~a. The sole proprietor,~~
   ~~b. All partners,~~
   ~~c. A corporate officer,~~
   ~~d. A limited liability company manager, or~~

~~e. The political subdivision head or agency head~~;

9. The following documents relating to the applicant's business if the applicant is a:
   a. Corporation:
      i. A copy of the articles of incorporation, including any amendments filed with the Arizona Corporation Commission; and
      ii. Any other official documents, including copies of board meeting minutes and annual reports, that reflect the most recent change to the corporate name, structure, or officers;
   b. Limited liability company:
      i. A copy of the articles of organization, including any amendments filed with the Arizona Corporation Commission; or
      ii. A copy of the application for registration as a foreign limited liability company filed with the Arizona Corporation Commission and a copy of the certificate of registration issued by the Arizona Corporation Commission to a foreign limited liability company;
   c. Limited partnership, or a limited liability partnership:
      i. A copy of a valid certificate of existence issued by the Arizona Secretary of State;
      ii. A copy, stamped "Filed" by the Arizona Secretary of State, of a Certificate of Limited Partnership, Certificate of Foreign Limited Partnership, Limited Liability Partnership form, Foreign Limited Liability Partnership form, or Statement of Qualification for Conversion of Limited Partnership or Limited Liability Partnership; or
      iii. A copy of a valid trade name certificate issued by the Arizona Secretary of State; or
   d. Sole Proprietor:
      i. A copy of a valid certificate of existence issued by the Arizona Secretary of State, or
      ii. A copy of a valid trade name certificate issued by the Arizona Secretary of State;
10. A floor plan for each place of business that includes:
   a. A computer-generated graphic,
   b. A blueprint or other photographic reproduction of an architectural plan or technical drawing, or
   c. A nontechnical drawing made by hand using a straightedge;
11. A map~~,~~ or drawing, ~~or~~ and a narrative description of each skills test route and a photograph or drawing of each test site; and
12. Unless exempt ~~pursuant to A.R.S. § 28-5105~~, a full set of fingerprints ~~for~~ from a criminal records check in accordance with A.R.S. § 28-5105 of each principal ~~who must be at least 18 years of age. The applicant is responsible for the cost of the fingerprinting and criminal records check. Each full set of fingerprints shall be impressed on a fingerprint card:~~
   ~~a. Supplied by the Department, and~~
   ~~b. Completed by a law enforcement agency~~.

B. Unless exempt pursuant to A.R.S. § 28-5105, an applicant for a third-party authorization shall submit, for each principal, ~~a statement on~~ a properly signed personal history and authorization to release information form

provided by the Department ~~with the following~~ which includes identifying information and notification of any history of fraud, felony, or a business license withdrawal action as indicated on the form~~:~~

~~1. Name, including other names and birth dates used;~~

~~2. Residence address;~~

~~3. Any suspension, cancellation, revocation, or denial of any similar business license issued by the Department within five years before the application date; and~~

~~4. The individual's signature witnessed by a notary public or a Department agent designated under A.R.S. § 28-370(A)~~.

C. The authorization application, as provided under ~~subsection~~ subsections (A) and (B), is received within 30 days of application date.

R17-7-202. Notification of Authorization Approval or Denial and Hearing

A. Notification. The Department shall send a written and dated notification of approval or denial of third-party authorization application, in accordance with A.R.S. § 28-5107~~, by regular mail to the mailing address provided on the application~~.

B. Administrative Hearing. An applicant whose application for third-party authorization is denied by the Department may request a hearing from the Department on the denial pursuant to A.R.S. § 28-5107 and 17 A.A.C. ~~R17-1-501 through R17-1-514~~ 1, Article 5.

R17-7-203. Authorization Agreement

A. An applicant whose third-party authorization application has been approved must sign an authorization agreement with the Department which specifies the terms and conditions of the third-party authorization before performing any third party program activities.

B. The third-party authorization agreement may include ~~an addendum~~ exhibits identifying ~~the~~ specific requirements unique to each third party program activity.

R17-7-204. Authorized Third-party Requirements

A. An authorized third party shall maintain compliance with all state and federal laws, Department rules, and authorization agreement provisions.

B. While holding a third-party authorization, any principal or certified individual of an authorized third party shall ~~not have a~~:

1. ~~Suspension~~ Not have a suspension, cancellation, revocation, or denial of another similar business license or agreement issued by the Department; ~~or~~
2. ~~Delinquent~~ Not have delinquent fees, taxes, or unpaid balance owed to the Department~~.~~; and
3. Remain in good standing with the Department.

C. Until returned to the Department, an authorized third party shall retain the following records at an established place of business or at the principal place of business:

1. All logs and copies of completed, issued, or voided accountable inventory;
2. All unused accountable inventory; and
3. All other paper and electronic records, including all supporting documents, relating to the activities provided by the authorized third party.

D. On the request of the Department, an authorized third party shall produce and deliver to the Department the records listed in subsection (C).

E. An authorized third party shall maintain a copy of the certificate issued by the Department relating to each type of authorized activity that a certified individual performs at the principal place of business ~~location where the certified individual works~~.

F. An authorized third party shall retain a certified individual's personnel file for a minimum of one year after the certified individual's last day of work. The personnel file of the certified individual shall include the ~~certified individual's~~ following:

1. Dates of employment,
2. All computer access forms (if applicable), ~~and~~
3. Computer access termination form (if applicable)~~.~~, and
4. All relevant Department correspondence.

G. An authorized third party shall comply with the audit and inspection requirements of A.R.S. § 28-5102 and R17-7-401.

H. An authorized third party shall provide a safe work area adequate in size and otherwise suitable to accommodate all authorized activities.

I. An authorized third party shall:

1. Have facilities, including the vicinity and equipment, preapproved or prescribed by the Department;
2. Have one or more established places of business as approved by the Department; and
3. Conduct all authorized activities only at the approved established places of business.

J. An authorized third party shall obtain the Department's written approval before:

1. Changing the location or floor plan of each established place of business,
2. Changing a skills test route or test site,
3. Performing any additional authorized activity,
4. Conducting any other businesses at an established place of business, or
5. Using or adopting a name different from the name specified on its authorization agreement.

K. An authorized third party shall provide written notice to the Department, within ~~five~~ two business days, of any changes, including full name and address, to the list of certified individuals or the contact individual.

L. An authorized third party that is open to the public shall post at each place of business the sign required by A.R.S. § 28-5101(J), and a sign provided by the Department that states the business:

1. Is a Department-authorized third-party provider, and
2. May charge the customer a convenience fee when applicable.

M. An authorized third party shall comply with the application requirements of R17-7-201 and provide the required information ~~30~~ 60 days before making any ownership changes.

N. An authorized third party shall attend all ongoing Department-approved training within the time-frames established by the Department in its authorization agreement.

O. An authorized third party shall not employ, contract with, or otherwise engage a current Department employee.

P. An authorized third party shall:

1. Submit all documents and corrections, according to state laws, rules, and the terms and conditions of its authorization agreement;
2. Immediately notify the Department of any unlawful actions relating to motor vehicle transactions that become known to the authorized third party;
3. Require that a customer submit all supporting documentation prescribed by the Department relating to a transaction before updating the Department databases;
4. Provide ~~written~~ notice ~~to the Department~~ on the form provided by the Department within 24 hours if a certified individual's:
   a. Driver license is suspended, revoked, canceled, or disqualified by the Department, including a commercial driver license medical suspension under A.A.C. R17-4-508;
   b. Vehicle certificate of title is canceled by the Department; or
   c. Vehicle registration is suspended or canceled by the Department;
5. Conduct skills tests, if applicable, only on test routes approved by the Department; and
6. Maintain all minimum required surety bond and insurance coverage as prescribed in the authorization agreement.

Q. An authorized third party shall not solicit an individual ~~for any purpose~~ or another business on ~~premises rented, leased, or owned by the~~ Department property or any other business authorized under this Chapter unless approved by the Department.

ARTICLE 3. CERTIFICATION

R17-7-301. Certification Application Requirements

A. A certification applicant shall provide to the Department the following:

1. The applicant's ~~name, residence address, mailing address, telephone number, and date of birth~~ identifying information and contact information;
2. The activities for which the applicant seeks certification;
3. ~~The dates of any employment of the applicant by the Department~~ Information related to any previous employment with the Department;
4. ~~Whether the Department previously denied an application for any certification of the applicant;~~
5. ~~The activity the applicant was certified to perform for each previous certification issued to the applicant by the Department;~~

~~6. Whether the Department suspended or canceled any certification listed under subsection (A)(5);~~

~~7.~~4. ~~If the applicant previously worked as a certified individual, the names of the last three authorized third parties and professional driving schools that employed or contracted with the applicant, and the dates of the employment or contract work~~ Information related to any previous certification of the applicant by the Department;

~~8.~~5. The applicant's signature;

~~9.~~6. A statement that the applicant is in good standing;

~~10.~~7. A full set of fingerprints~~, on a fingerprint card supplied by the Department and completed by a law enforcement agency, for a criminal records check~~ from a criminal records check in accordance with A.R.S. § 28-5105;

~~11.~~8. The applicant's driving record for the past 39 months before the application date or commercial driver license record, which has the same meaning as a CDLIS motor vehicle record as defined in 49 CFR 384.105, if the applicant holds a commercial driver license, which must be dated within ~~30~~ seven days of the application date; and

~~12.~~9. The official name of the authorized third party at which the applicant will be employed.

~~**B.** The applicant is responsible for the cost of the finger printing and criminal records check.~~

~~**C.**~~**B.** An applicant for a certification shall submit to the Department a ~~statement with the information listed~~ properly signed personal history and authorization to release information form as required under R17-7-201(B).

~~**D.**~~**C.** An applicant may be eligible for certification if the applicant:

1. Is at least 18 years of age on the application date or 21 years of age, if the applicant requests certification as a commercial driver license examiner, driver license trainer, or a driver license processor who will be performing driver license skills tests;
2. Is employed by or under contract for an employer applying for authorization or is authorized as an authorized third party;

~~2.~~3. Is in good standing;

4. Does not have any driver license suspensions, revocations, or cancellations within 39 months of the application date, including convictions related to:
   a. Driving under the influence of intoxicating liquor or drugs,
   b. Reckless driving,
   c. Racing upon the highway, or
   d. Leaving the scene of an accident;

~~3.~~5. Successfully completes all training courses required by the Department; and

~~4.~~6. Submits the certification application as provided in subsections (A) through (C) to the Department within 30 days of the application date.

~~**E.** An applicant for certification shall:~~

~~1. Be employed or under contract for an employer applying for authorization or authorized as an authorized third party.~~

2. ~~Not have any driver license suspensions, revocations, or cancellations within 39 months of the application date, including convictions related to:~~

~~a. Driving under the influence of intoxicating liquor or drugs,~~

~~b. Reckless driving,~~

~~c. Racing upon the highway, or~~

~~d. Leaving the scene of an accident.~~

R17-7-302. Notification of Certification Approval or Denial and Hearing

A. Notification. The Department shall send a written and dated notification of certification approval or denial to an address provided on the application and in accordance with A.R.S. § 28-5107~~:~~

~~1. By regular mail,~~

~~2. To the mailing address provided on the application, and~~

~~3. According to A.R.S. § 28-5107~~.

B. Administrative Hearing. An applicant whose application to become a certified individual is denied by the Department may request a hearing from the Department on the denial pursuant to A.R.S. § 28-5107 and 17 A.A.C. 1, Article 5.

R17-7-303. General Requirements of a Certified Individual

A. A certified individual shall:

1. Submit all documents and corrections, according to all state laws and rules and the authorization agreement between the Department and the authorized third party;
2. Immediately notify the authorized third party of unlawful actions relating to motor vehicle transactions;
3. Require that a customer submit all supporting documentation relating to a transaction before updating the Department databases;
4. Provide notification within 24 hours to the authorized third party if the certified individual's:
   a. Driver license is suspended, revoked, canceled, or disqualified by the Department;
   b. Vehicle certificate of title is canceled by the Department; or
   c. Vehicle registration is suspended or canceled by the Department;
5. Provide notification within ~~5~~ five business days to the authorized third party of any changes to the certified individual's name or address; and
6. Attend ongoing Department-approved training, including, if applicable, a commercial driver license refresher training course, before each renewal of the authorization agreement.

B. A certified individual shall not:

1. Witness or notarize signatures on documents relating to a transaction unless the customer submits appropriate identification; or
2. Solicit an individual ~~for any purpose~~ or another business on ~~the premises rented, leased, or owned by the~~ Department property or any other business authorized under this Chapter unless approved by the Department.

ARTICLE 4. AUDITS AND INSPECTION

R17-7-401. Audits and Inspection

A. During an onsite audit or inspection, employees or agents of the Department, any law enforcement agency, or the Federal Motor Carrier Safety Administration may:

1. Request, review, audit, inspect, copy, or seize all paper, photographic, audio, and electronic records generated in the performance of any activities under this Chapter, whether in the possession of a current or former authorized third party or a certified individual;
2. Examine the site of any places of business or other location where any of the materials in subsection (A)(1) are kept or may be found, or where any activities under this Chapter are or have been conducted during current or previous periods of authorization or certification; and
3. Interview all or any of the authorized third party's:
   a. Current or former employees or contractors,
   b. Current or former certified individuals, and
   c. Customers during current or previous periods of authorization or certification.

B. If Department personnel or the Department's representative conducts an onsite audit outside Arizona under A.R.S. § 28-5102(B)(3), the Department shall charge, and the authorized third party shall timely pay, for the costs of the audit, as well as any fees authorized under A.R.S. § 28-5102. The audit charge and payment shall include the Arizona Department of Administration reimbursement amounts for out-of-state travel authorized by A.R.S. Title 38, Chapter 4, Article 2 and stated in ~~Section II D of the Arizona Accounting Manual~~ SAAM 5055, Travel Claims, prepared by the Arizona Department of Administration, which is available on the Arizona General Accounting Office ~~web site~~ website at www.gao.az.gov.

ARTICLE 6. COMMERCIAL DRIVER LICENSE EXAMINATION PROGRAM

R17-7-601. Definitions

The following definitions apply to this Article, unless otherwise specified:

"CDL" means commercial driver license.

"CDLE" means commercial driver license examination.

"CDLE coach or transit bus" means the program activity for administering examinations for a Passenger (P) endorsement on a CDL.

"CDLE school bus" means the program activity for administering examinations for a School Bus (S) endorsement on a CDL.

"CDLE truck" means the program activity for administering examinations for a Class A, B, or C license.

~~"Monthly reconciliation report" means an authorized third party CDLE program's report of accountable inventory.~~

R17-7-603. Additional Authorization Application Requirements for CDLE Program

In addition to satisfying the requirements of R17-7-201, an applicant for third-party authorization as a CDLE provider shall:

1. Submit the following:
   a. Photographs and a floor plan of the principal place of business that shows the location of the accountable inventory storage,
   b. Photographs and a floor plan of each established place of business,
   c. A test route that complies with the specifications provided by the Department, and
   d. Photographs and a diagram with the dimensions of any proposed CDL test site. The physical dimensions of the site shall comply with the specifications provided by the Department. The test site shall provide sufficient room to perform all skill maneuvers, be obstacle free and be off the roadway.
2. Provide to the Department a copy of the current lease or other written agreement for the use of the land if the applicant does not own the land on which the place of business or test site is located.
3. Ensure that each place of business and test site:
   a. Meets all local zoning requirements, and
   b. Is not used as a residence.

R17-7-604. Additional Certification Application Requirements for Commercial Driver License Examiners

A. In addition to satisfying the ~~requirement~~ requirements of R17-7-301, an applicant for certification as a commercial driver license examiner shall:

1. Possess a valid Arizona driver license of the class and endorsement representative of the examinations to be administered by the commercial driver license examiner; and
2. Not have a driver license suspension, cancellation, revocation, or disqualification within 39 months of the application date, including a CDL medical suspension under A.A.C. R17-4-508, or a conviction or finding of responsibility for any violation under A.R.S. § 28-3312 within five years of the application date~~; and~~
3. ~~Have a minimum of three years of driving experience pertaining to the operation of a commercial vehicle representative of the type and class for which the applicant is seeking certification~~.

B. An authorized third party that has entered into an authorization agreement may withdraw a certification application if the examiner applicant has failed to meet certification requirements.

R17-7-605. Additional Authorized CDLE Program Requirements

In addition to satisfying the requirements of R17-7-204, the authorized third party shall:

1. Ensure all vehicles used for examination:
   a. Are representative of the class and type for which the individual is seeking a commercial driver license;
   b. Are maintained in a safe operating condition;

c. Comply with registration and insurance requirements set forth in A.R.S. Title 28, Chapters 7, 9, 15, and 16; and

d. Comply with applicable Federal Motor Carrier Safety Regulations;

2. Maintain compliance with applicable federal rules and the federal rules as adopted by the Department under 17 A.A.C. ~~Chapter~~ 5, Article 2;

3. Allow employees or agents of the Department, any law enforcement agency, or the Federal Motor Carrier Safety Administration without prior notice to do any of the following:

a. Take the tests administered by the authorized third party as if the employee or agent is a test applicant,

b. Co-score along with the commercial driver license examiner during skills tests to compare pass or fail results,

c. Retest a sample of drivers who were examined by the authorized third party, or

d. Provide access to a vehicle for use under this subsection;

4. Maintain the following records at the authorized third party's principal place of business:

a. A copy of its current authorization agreement with the Department,

b. A copy of the current commercial driver license examiner's certificate for each examiner,

c. A copy of each completed skills test score sheet for the current calendar year and the past two calendar years,

d. A copy of the authorized third party's approved skills test routes and test sites, and

e. A copy of each commercial driver license examiner's training record;

5. Submit to the Department by the fifth day of each month, a list of all voided score sheets or an indication if none of the score sheets have been voided ~~monthly reconciliation report If the authorized third party fails to timely submit a monthly reconciliation report, the Department may:~~

~~a. Give an oral or written warning for the first untimely report,~~

~~b. Send a letter of concern for the second untimely report in a 12-month period, or~~

~~c. Suspend or cancel the authorization for the third untimely report in a 12-month period~~; and

6. Verify each CDL applicant:

a. Possesses a valid Arizona driver license with a photograph and a valid Department-issued commercial instruction permit for the class and endorsement of the vehicle to be used in the skills test, ~~and~~

b. Has successfully completed the CDL written tests~~.~~, and

c. Has successfully completed the entry-level driver training from a certified organization on the national registry of entry-level driver training providers as prescribed in subpart F of 49 CFR 380.

R17-7-606. Certified Commercial Driver License Examiner Requirements

A. In addition to satisfying the requirements of R17-7-303, a certified commercial driver license examiner shall:

1. Comply with all state and federal laws, rules, and the terms and conditions of the authorization agreement requirements between the Department and the authorized third party;

2. Maintain compliance with all certification requirements as prescribed in R17-7-301;

3. Not administer any examination unless the CDL applicant meets the requirements of all statutes, rules and policies relating to driver licensing;
4. Conduct skills tests only on Department-approved test routes; and
5. Complete, in the presence of the CDL applicant, the score sheet at the time of the skills test. The score sheet is valid for ~~30 calendar days~~ one year from the day the CDL applicant completes the skills test.

B. If the commercial driver license examiner's CDL is suspended, revoked, canceled, or disqualified, the certified commercial driver license examiner shall not administer any CDLE.

C. A commercial driver license examiner shall not accompany an applicant into any office or testing location rented, leased, or owned by the Department.

ARTICLE 7. DRIVER LICENSE TRAINING PROVIDER PROGRAM

R17-7-702. Additional Authorization Application Requirements for Driver License Training Providers

In addition to satisfying the requirements of R17-7-201, an applicant for third-party authorization as a driver license training provider shall:

1. Submit the following:
   a. The specified course of instruction which will be offered, and
   b. Sample copies of the contracts that will be offered to prospective students or given to enrolled students.
2. Provide a certified statement that the applicant will meet the minimum professional training standards as set forth by the Department. The minimum professional training standards will be provided to the applicant and included in the authorization agreement.
3. Provide a copy of any current leases or agreements for the use of the land or buildings on which the applicant's places of business and training sites are located.
4. Ensure that all places of business and training sites:
   a. Meet all local zoning requirements, and
   b. Are not used as a residence.

R17-7-703. Additional Certification Application Requirements for Driver License Trainers

In addition to satisfying the requirements of R17-7-301, an applicant for certification as a driver license trainer shall satisfy all of the following:

1. Pass an examination given by the Department consisting of an actual demonstration or a written test, or both, covering:
   a. Traffic laws;
   b. Safe driving practices;
   c. Operation of motor vehicles;
   d. Knowledge of teaching methods, techniques, and practices; and

e. Authorized third-party statutes and rules, business ethics, office procedures, and elementary recordkeeping;

2. Have at least a high school diploma or its equivalent;
3. Hold a valid ~~Arizona~~ driver license;
4. Be physically and mentally able to safely operate a motor vehicle and to train others in the operation of motor vehicles~~.~~, ~~To~~ to substantiate this requirement, the Department may require a properly signed and completed certificate of medical examination conducted by a person qualified and licensed to practice medicine in this state; and
5. Provide other information the Department deems pertinent for determining the applicant's good moral character.

R17-7-704. Additional Authorized Driver License Training Provider Program Requirements

In addition to satisfying the requirements of R17-7-204, the authorized third party shall comply with the following:

1. ~~The director shall approve, and may modify, in writing the minimum professional training standards that each authorized third party driver license training provider shall teach to its students. Those minimum professional training standards shall be included in the authorization agreement.~~ The authorized third party driver license training provider shall comply with the Department's approved curriculum.
2. The established place of business of each authorized third party driver license training provider must be used only for activities authorized by the Department.
3. Each established place of business shall meet all requirements of state law, local ordinances, and the accessibility requirements of the Americans with Disability Act of 1990 (42 U.S.C. 12101 et seq.). The Department may require proof of compliance with local zoning ordinances.
4. An authorized third party driver license training provider must post its office hours in a conspicuous place clearly visible to the public within that location and be open to the public during the posted hours. The person left in charge of the office during the posted office hours must be fully trained to give pertinent information to the public as well as give information to any representative of the Department or to any law enforcement agency.
5. The authorized third party driver license training provider shall provide adequate facilities for any student being given instruction in other than behind-the-wheel driver training.
6. An authorized third party driver license training provider shall maintain the following records at an established place of business or at the principal place of business and make them available for audit and inspection during normal business hours:
   a. All records setting forth the name, address, contract number, and terms of payment with respect to every person receiving training of any kind, or any other service relating to the operation of a motor vehicle. These records must also contain the date, type, and duration of all training, including the name of the certified individual giving the lessons and the license plate number, make, and model of the vehicle used to conduct the training.

b. A record of all receipts and disbursements.

c. A record of all training vehicle maintenance and repairs.

7. If an authorized third party driver license training provider enters into a written contract with any person or group of persons receiving training relating to the operation of a motor vehicle, the training provider shall give the original contract to the student or the student's agent who executes the contract and shall retain a copy of the contract in its records.

8. An authorized third party driver license training provider shall equip each motor vehicle used for driver training with at least the following that enables an accompanying driver license trainer to bring the motor vehicle under control in case of emergency:

   a. ~~If the motor vehicle is equipped with an automatic transmission, at least a~~ A dual braking device ~~that enables an accompanying driver license trainer to bring the motor vehicle under control in case of emergency; and~~ if the motor vehicle is equipped with an automatic transmission, or

   b. ~~If the motor vehicle is equipped with a standard transmission, at least a~~ A dual clutch and braking device ~~that enables an accompanying driver license trainer to bring the motor vehicle under control in case of emergency~~ if the motor vehicle is equipped with a standard transmission.

9. An authorized third party driver license training provider must maintain all motor vehicles in safe operating condition at all times.

10. An authorized third party driver license training provider shall conduct training only on test routes approved by the Department.

11. An authorized third party driver license training provider shall not:

    a. Indicate or represent in any advertisement that the training provider can issue or guarantee issuance of a driver license in any jurisdiction,

    b. Imply or represent that the training provider can in any way influence the Department or an authorized third party in the issuance of a driver license, or

    c. Imply or represent that preferential or advantageous treatment from the Department or an authorized third party can be obtained.

12. An authorized third party driver license training provider or a certified trainer shall not accompany any student into any examining office or testing location rented, leased, or owned by the Department or an authorized third party for the purpose of taking a driver license examination.

13. In case of loss or mutilation, a duplicate authorization certificate may be issued by the Department on submission of a properly signed and completed application accompanied by an affidavit setting forth the circumstances. The affidavit must show the date the previously-issued authorization certificate was lost, mutilated, or destroyed, and the circumstances involving its loss, mutilation, or destruction.

14. An authorization for a driver training provider is nontransferable.

R17-7-705. Certified Driver License Trainer Requirements

A. In addition to satisfying the requirements of R17-7-303, a certified driver license trainer shall maintain compliance with all certification requirements as prescribed in R17-7-301.

B. In case of loss or mutilation, a duplicate certification may be issued by the Department on submission of a properly signed and completed application accompanied by an affidavit setting forth the circumstances. The affidavit must show the date the previously-issued certification was lost, mutilated, or destroyed, and the circumstances involving its loss, mutilation, or destruction.

C. ~~A driver license trainer certification is nontransferable.~~ If a certified driver license trainer is not employed by an authorized driver license training provider for a period of at least one year, the trainer must reapply and satisfy all the driver license training requirements.

Gmail

Candace Olson <colson2@azdot.gov>

Fwd: PLS Questions for DL Meeting 05222024

1 message

Candace Olson <colson2@azdot.gov> Wed, May 29, 2024 at 12:15 PM
To: grrccomments@azdoa.gov

Good Afternoon,

The Department is conducting expedited rulemaking to update the rules in 17 A.A.C. Chapter 7. The following is a written comment that the Department received after the oral proceeding and the Department's response.

Have a good day,
Candace Olson
Senior Rules Analyst
MD 180A, Room 105
206 S. 17th Ave.
Phoenix, AZ 85007
480.267.6610
azdot.gov
ADOT
Government Relations and Rules

---------- Forwarded message ---------
From: **Candace Olson** <colson2@azdot.gov>
Date: Wed, May 22, 2024 at 2:59 PM
Subject: Re: PLS Questions for DL Meeting 05222024
To: Edgar Luna <eluna@plsemail.com>
Cc: Palmina Trombetta <ptrombetta@plsemail.com>, Kevin Smith <ksmith@plsemail.com>, Briceyda Velarde <bvelarde@plsemail.com>

Good Afternoon Edgar,

Thank you for your email and for using the speaker slip/comment form.

There are proposed rule changes that would be for all the third party programs with some specific changes to the CDLE and Driver License Training Provider program. The proposed future rule changes are all detailed in the Notice of Proposed Expedited Rulemaking (https://apps.azsos.gov/public_services/register/2024/18/contents.pdf#page=61).

After today, the Department reviews any comments that have been received and drafts a Notice of Final Expedited Rulemaking. Any comments the Department receives and any changes the Department determines to make from what was proposed in the Notice of Proposed Expedited Rulemaking are then provided in the Notice of Final Expedited Rulemaking. At this moment there are no plans for additional group emails, except to communicate directly to anyone who has a comment about the rulemaking and to communicate when the rules have been approved and finalized. In addition, there are no current plans for any additional public hearings.

The final draft of the Notice of Final Expedited Rulemaking is then submitted to the Governor's Office for approval. Once approved, that notice is then filed with the Governor's Regulatory Review Council. The Council will review the final rule package to ensure that the rules are necessary, consistent with legislative intent, within the agency's statutory authority, and has obtained both approvals from the Governor. Once the Council has completed its review there are two meetings; one meeting when they can ask for additional information and the second meeting is to take a vote on whether they approve the rulemaking. Once the rulemaking is approved the rules will become effective immediately on filing the notice.

The Department has a Current Rulemaking Activity document that is posted here: https://azdot.gov/about/government-relations and here: https://azdot.gov/about/government-relations/contact-us-government-relations.

When the notices are filed with the Governor's Regulatory Review Council or the Office of the Secretary of State or published in the Arizona Administrative Register, that information is added to the Current Rulemaking Document.

If you would like me to notify you when the Notice of Final Expedited Rulemaking has been filed with the Governor's Regulatory Review Council and when the Council meeting will be held, please let me know.

I hoped that helped. If you have any additional questions or comments on the proposed rulemaking, please let me know.

Thank you,
Candace Olson
Senior Rules Analyst
MD 180A, Room 105
206 S. 17th Ave.
Phoenix, AZ 85007
480.267.6610
azdot.gov
ADOT
Government Relations and Rules

On Wed, May 22, 2024 at 1:25 PM Edgar Luna <eluna@plsemail.com> wrote:

> Hi Candace
>
> I have a question regarding the *Third-Party Programs Rules Updates Oral Proceeding* meeting we attended today. Based on today's review, it appears there will be future changes regarding Third-Party Program rules. For clarity, will the changes apply to all ADOT programs or just Driver License? As the ADOT team completes the rules enhancements, will you be sharing more information on the changes via email or through the Google Classroom? Thank you in advance.
>
> Thank you
>
> Edgar Luna
>
> MVS District Manager
>
> District6
>
> 9014 N 23rd Ave
>
> Phoenix AZ 85021
>
> 480-492-9070

17 A.A.C. 7 Supp. 19-2

Arizona Administrative CODE

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2019 through June 30, 2019

Title 17

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 17. TRANSPORTATION

CHAPTER 7. DEPARTMENT OF TRANSPORTATION - THIRD-PARTY PROGRAMS

The table of contents on the first page contains quick 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*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

Questions about these rules? Contact:

Department: Arizona Department of Transportation
Rules and Policy Development
Name: Katy Proctor, Rules Administrator
Address: 206 S. 17th Ave., MD 180A
Phoenix, AZ 85007
Telephone: (602) 712-7543
Website: https://azdot.gov/about/government-relations

The release of this Chapter in Supp. 19-2 replaces Supp. 14-2, 1-11 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), accepts state agency rule 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 2019 is cited as Supp. 19-1.

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. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative 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, 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.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 17. TRANSPORTATION

CHAPTER 7. DEPARTMENT OF TRANSPORTATION - THIRD-PARTY PROGRAMS

Editor's Note: 17 A.A.C. 7, consisting of Articles 1 through 4, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R17-7-101, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

Section

ARTICLE 2. AUTHORIZATION

Article 2, consisting of Sections R17-7-201 through R17-7-204, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

Section

ARTICLE 3. CERTIFICATION

Article 3, consisting of Sections R17-7-301 and R17-7-302, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

Section

ARTICLE 4. AUDITS AND INSPECTION

Article 4, consisting of Section R17-7-401, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

Section

ARTICLE 5. EXPIRED

Article 5, consisting of Sections R17-7-501 through R17-7-502, made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2).

Section

ARTICLE 6. COMMERCIAL DRIVER LICENSE EXAMINATION PROGRAM

Article 6, consisting of Sections R17-7-601 through R17-7-609, made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2).

Section

ARTICLE 7. DRIVER LICENSE TRAINING PROVIDER PROGRAM

Article 7, consisting of Sections R17-7-701 through R17-7-707, made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2).

Section

ARTICLE 8. REPEALED

Article 8, consisting of Sections R17-7-801 through R17-7-802, repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

Article 8, consisting of Sections R17-7-801 through R17-7-802, made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2).

Section

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R17-7-101, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

R17-7-101. Definitions

The following definitions apply to this Chapter unless otherwise specified:

"Accountable inventory" means an item that is reproduced by the Department in a consecutively numbered series for:

Recording the number of a completed, issued, or voided item in a log; and

Reporting the number of a completed, issued, or voided item to the Department.

"Activity" means a function or service that is provided by an authorized third party pursuant to A.R.S. Title 28, Chapter 13 and that is performed by a certified individual as defined in this Article.

"Agency head" or "political subdivision head" means the chief officer of an agency or political subdivision or another individual with authority to act for the agency head or political subdivision head.

"Application Date" means the date an application is received by the Department.

"Authorized third party" means an entity that:

Has written permission from the Department to operate a business under A.R.S. Title 28, Chapter 13; and

Employs or contracts with at least one certified individual to provide a third-party activity.

"Branch" means an authorized third party's business location that is an additional established place of business.

"Certified individual" means an individual who is certified by the Department under A.R.S. Title 28, Chapter 13 to perform specified activities for an authorized third party as an employee or contractor. The Department may certify an individual as:

A commercial driver license examiner,

A dealer license processor,

A driver license processor,

A driver license trainer,

An office personnel member,

A tax report processor,

A title and registration processor,

A vehicle inspector, or

A vehicle permit processor.

"Commercial driver license examiner" means an individual certified by the Department to administer class A, B, or C driver license skills tests.

"Concentration Banking System" means a type of state bank account, established by the Arizona State Treasurer's office, for deposit of monies collected by an authorized third party.

"Contact individual" means a principal or designated individual of an authorized third party who communicates with the Department on behalf of the authorized third party.

"Convenience fee" means the amount exceeding the statutorily prescribed fees and taxes that an authorized third party collects and retains for its services.

"Department" means the Arizona Department of Transportation.

"Dealer license processor" means an individual certified by the Department to:

Review applications for vehicle dealer licenses;

Enter information related to the applications in the Department's database; and

Issue vehicle dealer licenses under A.R.S. Title 28, Chapter 10.

"Driver license processor" means an individual certified by the Department to perform any one or a combination of driver license processing functions under A.R.S. Title 28 as specified in the authorization agreement between the Department and an authorized third party who has engaged the individual to perform those functions.

"Driver license trainer" means an individual certified by the Department to:

Educate and train persons, either practically or theoretically, or both, to operate or drive motor vehicles;

Prepare applicants for an examination given by the Department or an authorized third party driver license provider for a driver license or instruction permit; and

Charge a consideration or tuition for these services.

"Established place of business" means an authorized third party's business location that is:

Approved by the Department,

Located in Arizona,

Not used as a residence, and

Where the authorized third party performs authorized activities.

"Floor plan" means a Department-approved diagram of a building's interior, as seen from above, that shows the interior dimensions and the location of doors, windows, and equipment.

"Good standing" means an authorized third party applicant or an applicant seeking certification:

Has not had a similar business license or certification issued suspended, revoked, canceled, or denied within the previous three years of the application date;

Does not owe delinquent fees, taxes, or unpaid balances to the Department;

Has not had any substantiated derogatory information relevant to the requested authorization or certification reported to the Department about the applicant from any state agency or from any consumer protection agency contacted by the Department; or

If the applicant is a former Department employee, a former authorized third party, or a former employee of an authorized third party, has not been dismissed or resigned from a position for cause, including:

Misconduct, or

Resignation from position:

In lieu of dismissal, or

By mutual agreement following allegations of misconduct.

"Log" means a complete, chronological record of accountable inventories and activities performed and kept by the authorized third party as prescribed by the Department.

"Motor vehicle inspection" means vehicle verification as prescribed in A.R.S. § 28-2011.

"Office personnel member" means an individual who does not perform any other of the activities requiring certification under this Chapter and who is certified by the Department as an employee who performs functions that:

Have exposure to protected personal information, or

Has complete oversight and responsibility for all day-to-day operations necessary to ensure full compliance with all applicable program requirements.

"Principal" means any of the following:

If a sole proprietorship, the sole proprietor;

If a partnership, limited partnership, limited liability partnership, limited liability company, or corporation, the:

Partner;

Manager;

Member;

Officer;

Director;

Agent; or

If a limited liability company or corporation, each stockholder owning 20 percent or more of the limited liability company or corporation; or

If a political subdivision or government agency, the political subdivision or agency head.

"Principal place of business" means an authorized third party's administrative headquarters, which shall not be used as a residence.

"Skills test" means a set of tests, authorized and approved by the Department and administered by the Department or by an authorized third party commercial driver license examiner or driver license processor to determine whether the applicant possesses the required skills for the type of license for which the applicant applies.

"Skills test route" means a public road or highway driving course, identified by an authorized third party and approved by the Department, for administering skills tests to driver license applicants.

"Tax report processor" means an individual certified by the Department to:

Process fuel tax reports and interstate user fuel tax reports from fuel suppliers, fuel vendors, and motor carriers; and

File the reports with the Department.

"Test site" means a location, identified by an authorized third party, for administering skills tests to driver license applicants that is:

Approved by the Department,

Permanently marked, and

Off the public road or highway.

"Title and registration processor" means an individual certified by the Department to:

Review applications for vehicle certificates of title or registrations under A.R.S. Title 28, Chapter 7;

Enter information related to applications for vehicle certificates of title or registrations into the Department's database; and

Issue or deny vehicle certificates of title or registrations.

"Vehicle inspector" means an individual certified by the Department to perform motor vehicle inspections.

"Vehicle permit processor" means an individual certified by the Department to:

Review applications for permits or registrations under A.R.S. Title 28, Chapter 3, Articles 18 and 19, and Chapter 7;

Enter information related to the applications in the Department's database; and

Issue or deny permits or registrations.

"Vicinity" means the area adjacent to, or in the immediate proximity of, any authorized third party's places of business.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

ARTICLE 2. AUTHORIZATION

Article 2, consisting of Sections R17-7-201 through R17-7-204, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

R17-7-201. Authorization Application Requirements

A. An applicant for third-party authorization shall provide to the Department on request:

1. The applicant's name, business name, and federal employer identification number;
2. The applicant's bond status as exempt or nonexempt under A.R.S. Title 28, Chapter 13. If exempt, the applicant must complete a bond exemption form. If nonexempt, the applicant must provide proof of a surety bond pursuant to A.R.S. Title 28, Chapter 13;
3. The name of the person who is the applicant's principal;
4. The name, title, e-mail address, and telephone number of the applicant's contact individual;
5. The activities for which the applicant seeks third-party authorization;
6. The address of the applicant's principal place of business and each established place of business;
7. A statement that the applicant is in good standing;
8. The signature of:
   a. The sole proprietor,
   b. All partners,
   c. A corporate officer,
   d. A limited liability company manager, or
   e. The political subdivision head or agency head;
9. The following documents relating to the applicant's business if the applicant is a:
   a. Corporation:

i. A copy of the articles of incorporation, including any amendments filed with the Arizona Corporation Commission; and
ii. Any other official documents, including copies of board meeting minutes and annual reports, that reflect the most recent change to the corporate name, structure, or officers;

b. Limited liability company:
i. A copy of the articles of organization, including any amendments filed with the Arizona Corporation Commission; or
ii. A copy of the application for registration as a foreign limited liability company filed with the Arizona Corporation Commission and a copy of the certificate of registration issued by the Arizona Corporation Commission to a foreign limited liability company;

c. Limited partnership, or a limited liability partnership:
i. A copy of a valid certificate of existence issued by the Arizona Secretary of State;
ii. A copy, stamped "Filed" by the Arizona Secretary of State, of a Certificate of Limited Partnership, Certificate of Foreign Limited Partnership, Limited Liability Partnership form, Foreign Limited Liability Partnership form, or Statement of Qualification for Conversion of Limited Partnership or Limited Liability Partnership; or
iii. A copy of a valid trade name certificate issued by the Arizona Secretary of State; or

d. Sole Proprietor:
i. A copy of a valid certificate of existence issued by the Arizona Secretary of State, or
ii. A copy of a valid trade name certificate issued by the Arizona Secretary of State;

10. A floor plan for each place of business that includes:
a. A computer-generated graphic,
b. A blueprint or other photographic reproduction of an architectural plan or technical drawing, or
c. A nontechnical drawing made by hand using a straightedge;
11. A map, drawing, or narrative description of each skills test route and a photograph or drawing of each test site; and
12. Unless exempt pursuant to A.R.S. § 28-5105, a full set of fingerprints for a criminal records check of each principal who must be at least 18 years of age. The applicant is responsible for the cost of the fingerprinting and criminal records check. Each full set of fingerprints shall be impressed on a fingerprint card:
a. Supplied by the Department, and
b. Completed by a law enforcement agency.

B. Unless exempt pursuant to A.R.S. § 28-5105, an applicant for a third-party authorization shall submit, for each principal, a statement on a form provided by the Department with the following information:
1. Name, including other names and birth dates used;
2. Residence address;
3. Any suspension, cancellation, revocation, or denial of any similar business license issued by the Department within five years before the application date; and
4. The individual's signature witnessed by a notary public or a Department agent designated under A.R.S. § 28-370(A).

C. The authorization application, as provided under subsection (A) and (B), is received within 30 days of application date.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-202. Notification of Authorization Approval or Denial and Hearing

A. Notification. The Department shall send a written and dated notification of approval or denial of third-party authorization application, in accordance with A.R.S. § 28-5107, by regular mail to the mailing address provided on the application.

B. Administrative Hearing. An applicant whose application for third-party authorization is denied by the Department may request a hearing from the Department on the denial pursuant to A.R.S. § 28-5107 and A.A.C. R17-1-501 through R17-1-514.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-203. Authorization Agreement

A. An applicant whose third-party authorization application has been approved must sign an authorization agreement with the Department which specifies the terms and conditions of the third-party authorization before performing any third party program activities.

B. The third-party authorization agreement may include an addendum identifying the specific requirements unique to each third party program activity.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-204. Authorized Third-party Requirements

A. An authorized third party shall maintain compliance with all state and federal laws, Department rules, and authorization agreement provisions.

B. While holding a third-party authorization, any principal or certified individual of an authorized third party shall not have a:
1. Suspension, cancellation, revocation, or denial of another similar business license or agreement issued by the Department; or
2. Delinquent fees, taxes, or unpaid balance owed to the Department.

C. Until returned to the Department, an authorized third party shall retain the following records at an established place of business or at the principal place of business:
1. All logs and copies of completed, issued, or voided accountable inventory;
2. All unused accountable inventory; and
3. All other paper and electronic records, including all supporting documents, relating to the activities provided by the authorized third party.

D. On the request of the Department, an authorized third party shall produce and deliver to the Department the records listed in subsection (C).

E. An authorized third party shall maintain a copy of the certificate issued by the Department relating to each type of authorized activity that a certified individual performs at the business location where the certified individual works.

F. An authorized third party shall retain a certified individual's personnel file for a minimum of one year after the certified individual's last day of work. The personnel file shall include the certified individual's:
1. Dates of employment,
2. All computer access forms (if applicable), and
3. Computer access termination form (if applicable).

G. An authorized third party shall comply with the audit and inspection requirements of A.R.S. § 28-5102 and R17-7-401.

H. An authorized third party shall provide a safe work area adequate in size and otherwise suitable to accommodate all authorized activities.

I. An authorized third party shall:
1. Have facilities, including the vicinity and equipment, preapproved or prescribed by the Department;
2. Have one or more established places of business as approved by the Department; and
3. Conduct all authorized activities only at the approved established places of business.

J. An authorized third party shall obtain the Department's written approval before:
1. Changing the location or floor plan of each established place of business,
2. Changing a skills test route or test site,
3. Performing any additional authorized activity,
4. Conducting any other businesses at an established place of business, or
5. Using or adopting a name different from the name specified on its authorization agreement.

K. An authorized third party shall provide written notice to the Department, within five business days, of any changes, including full name and address, to the list of certified individuals or the contact individual.

L. An authorized third party that is open to the public shall post at each place of business the sign required by A.R.S. § 28-5101(J), and a sign provided by the Department that states the business:
1. Is a Department-authorized third-party provider, and
2. May charge the customer a convenience fee when applicable.

M. An authorized third party shall comply with the application requirements of R17-7-201 and provide the required information 30 days before making any ownership changes.

N. An authorized third party shall attend all ongoing Department-approved training within the time-frames established by the Department in its authorization agreement.

O. An authorized third party shall not employ, contract with, or otherwise engage a current Department employee.

P. An authorized third party shall:
1. Submit all documents and corrections, according to state laws, rules, and the terms and conditions of its authorization agreement;
2. Immediately notify the Department of any unlawful actions relating to motor vehicle transactions that become known to the authorized third party;
3. Require that a customer submit all supporting documentation prescribed by the Department relating to a transaction before updating the Department databases;
4. Provide written notice to the Department within 24 hours if a certified individual's:
   a. Driver license is suspended, revoked, canceled, or disqualified by the Department, including a commercial driver license medical suspension under A.A.C. R17-4-508;
   b. Vehicle certificate of title is canceled by the Department; or
   c. Vehicle registration is suspended or canceled by the Department;
5. Conduct skills tests, if applicable, only on test routes approved by the Department; and
6. Maintain all minimum required insurance coverage as prescribed in the authorization agreement.

Q. An authorized third party shall not solicit an individual for any purpose on premises rented, leased, or owned by the Department or any other business authorized under this Chapter.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-205. Financial Requirements
If an authorized third party collects monies required to be remitted to the Department under A.R.S. § 28-5101, the authorized third party shall deposit those monies by the next business day following the transaction date in the designated:
1. Concentration Banking System account, or
2. Account through an electronic method preapproved by the Department.

Historical Note
New Section R17-7-205 renumbered from R17-7-705 and amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-206. Expired

Historical Note
New Section R17-7-206 renumbered from R17-7-706 and amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

R17-7-207. Expired

Historical Note
New Section R17-7-207 renumbered from R17-7-609 and amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

ARTICLE 3. CERTIFICATION

Article 3, consisting of Sections R17-7-301 and R17-7-302, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

R17-7-301. Certification Application Requirements

A. A certification applicant shall provide to the Department the following:
1. The applicant's name, residence address, mailing address, telephone number, and date of birth;
2. The activities for which the applicant seeks certification;
3. The dates of any employment of the applicant by the Department;
4. Whether the Department previously denied an application for any certification of the applicant;

5. The activity the applicant was certified to perform for each previous certification issued to the applicant by the Department;
6. Whether the Department suspended or canceled any certification listed under subsection (A)(5);
7. If the applicant previously worked as a certified individual, the names of the last three authorized third parties and professional driving schools that employed or contracted with the applicant, and the dates of the employment or contract work;
8. The applicant's signature;
9. A statement that the applicant is in good standing;
10. A full set of fingerprints, on a fingerprint card supplied by the Department and completed by a law enforcement agency, for a criminal records check;
11. The applicant's driving record for the 39 months before the application date, which must be dated within 30 days of the application date; and
12. The official name of the authorized third party at which the applicant will be employed.

B. The applicant is responsible for the cost of the finger printing and criminal records check.

C. An applicant for a certification shall submit to the Department a statement with the information listed under R17-7-201(B).

D. An applicant may be eligible for certification if the applicant:
1. Is at least 18 years of age on the application date or 21 years of age, if the applicant requests certification as a commercial driver license examiner, driver license trainer, or a driver license processor who will be performing driver license skills tests;
2. Is in good standing;
3. Successfully completes all training courses required by the Department; and
4. Submits the certification application as provided in subsections (A) through (C) to the Department within 30 days of the application date.

E. An applicant for certification shall:
1. Be employed or under contract for an employer applying for authorization or authorized as an authorized third party.
2. Not have any driver license suspensions, revocations, or cancellations within 39 months of the application date, including convictions related to:
   a. Driving under the influence of intoxicating liquor or drugs,
   b. Reckless driving,
   c. Racing upon the highway, or
   d. Leaving the scene of an accident.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-302. Notification of Certification Approval or Denial and Hearing

A. Notification. The Department shall send a written and dated notification of certification approval or denial:
1. By regular mail,
2. To the mailing address provided on the application, and
3. According to A.R.S. § 28-5107.

B. Administrative Hearing. An applicant whose application to become a certified individual is denied by the Department may request a hearing from the Department on the denial pursuant to A.R.S. § 28-5107 and 17 A.A.C. 1, Article 5.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-303. General Requirements of a Certified Individual

A. A certified individual shall:
1. Submit all documents and corrections, according to all state laws and rules and the authorization agreement between the Department and the authorized third party;
2. Immediately notify the authorized third party of unlawful actions relating to motor vehicle transactions;
3. Require that a customer submit all supporting documentation relating to a transaction before updating the Department databases;
4. Provide notification within 24 hours to the authorized third party if the certified individual's:
   a. Driver license is suspended, revoked, canceled, or disqualified by the Department;
   b. Vehicle certificate of title is canceled by the Department; or
   c. Vehicle registration is suspended or canceled by the Department;
5. Provide notification within 5 business days to the authorized third party of any changes to the certified individual's name or address; and
6. Attend ongoing Department-approved training, including, if applicable, a commercial driver license refresher training course, before each renewal of the authorization agreement.

B. A certified individual shall not:
1. Witness or notarize signatures on documents relating to a transaction unless the customer submits appropriate identification; or
2. Solicit an individual for any purpose on the premises rented, leased, or owned by the Department or any other business authorized under this Chapter.

Historical Note
New Section R17-7-303 renumbered from R17-7-704 and amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-304. Expired

Historical Note
New Section R17-7-304 made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

R17-7-305. Expired

Historical Note
New Section R17-7-305 made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

ARTICLE 4. AUDITS AND INSPECTION

Article 4, consisting of Section R17-7-401, made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2).

R17-7-401. Audits and Inspection

A. During an onsite audit or inspection, employees or agents of the Department, any law enforcement agency, or the Federal Motor Carrier Safety Administration may:

1. Request, review, audit, inspect, copy, or seize all paper, photographic, audio, and electronic records generated in the performance of any activities under this Chapter, whether in the possession of a current or former authorized third party or a certified individual;
2. Examine the site of any places of business or other location where any of the materials in subsection (A)(1) are kept or may be found, or where any activities under this Chapter are or have been conducted during current or previous periods of authorization or certification; and
3. Interview all or any of the authorized third party's:
   a. Current or former employees or contractors,
   b. Current or former certified individuals, and
   c. Customers during current or previous periods of authorization or certification.

B. If Department personnel or the Department's representative conducts an onsite audit outside Arizona under A.R.S. § 28-5102(B)(3), the Department shall charge, and the authorized third party shall timely pay, for the costs of the audit, as well as any fees authorized under A.R.S. § 28-5102. The audit charge and payment shall include the Arizona Department of Administration reimbursement amounts for out-of-state travel authorized by A.R.S. Title 38, Chapter 4, Article 2 and stated in Section II-D of the Arizona Accounting Manual prepared by the Arizona Department of Administration, which is available on the Arizona General Accounting Office web site at www.gao.az.gov.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1630, effective July 5, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

ARTICLE 5. EXPIRED

R17-7-501. Expired

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

R17-7-502. Expired

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 1736, effective December 4, 2018 (Supp. 19-2).

ARTICLE 6. COMMERCIAL DRIVER LICENSE EXAMINATION PROGRAM

R17-7-601. Definitions
The following definitions apply to this Article, unless otherwise specified:

"CDL" means commercial driver license.

"CDLE" means commercial driver license examination.

"CDLE coach or transit bus" means the program activity for administering examinations for a Passenger (P) endorsement on a CDL.

"CDLE school bus" means the program activity for administering examinations for a School Bus (S) endorsement on a CDL.

"CDLE truck" means the program activity for administering examinations for a Class A, B, or C license.

"Monthly reconciliation report" means an authorized third party CDLE program's report of accountable inventory.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-602. Activities
The authorized and certified activities for the CDLE Program are:
1. CDLE coach or transit bus,
2. CDLE school bus, or
3. CDLE truck.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-603. Additional Authorization Application Requirements for CDLE Program
In addition to satisfying the requirements of R17-7-201, an applicant for third-party authorization shall:
1. Submit the following:
   a. Photographs and a floor plan of the principal place of business that shows the location of the accountable inventory storage,
   b. Photographs and a floor plan of each established place of business,
   c. A test route that complies with the specifications provided by the Department, and
   d. Photographs and a diagram with the dimensions of any proposed CDL test site. The physical dimensions of the site shall comply with the specifications provided by the Department. The test site shall provide sufficient room to perform all skill maneuvers, be obstacle free and be off the roadway.
2. Provide to the Department a copy of the current lease or other written agreement for the use of the land if the applicant does not own the land on which the place of business or test site is located.
3. Ensure that each place of business and test site:
   a. Meets all local zoning requirements, and
   b. Is not used as a residence.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-604. Additional Certification Application Requirements for Commercial Driver License Examiners

A. In addition to satisfying the requirement of R17-7-301, an applicant for certification as a commercial driver license examiner shall:
1. Possess a valid Arizona driver license of the class and endorsement representative of the examinations to be administered by the commercial driver license examiner;
2. Not have a driver license suspension, cancellation, revocation, or disqualification within 39 months of the appli-

cation date, including a CDL medical suspension under A.A.C. R17-4-508, or a conviction or finding of responsibility for any violation under A.R.S. § 28-3312 within five years of the application date; and

3. Have a minimum of three years of driving experience pertaining to the operation of a commercial vehicle representative of the type and class for which the applicant is seeking certification.

B. An authorized third party that has entered into an authorization agreement may withdraw a certification application if the examiner applicant has failed to meet certification requirements.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-605. Additional Authorized CDLE Program Requirements

In addition to satisfying the requirements of R17-7-204, the authorized third party shall:

1. Ensure all vehicles used for examination:
   a. Are representative of the class and type for which the individual is seeking a driver license;
   b. Are maintained in a safe operating condition;
   c. Comply with registration and insurance requirements set forth in A.R.S. Title 28, Chapters 7, 9, 15, and 16; and
   d. Comply with applicable Federal Motor Carrier Safety Regulations;
2. Maintain compliance with applicable federal rules and the federal rules as adopted by the Department under 17 A.A.C. Chapter 5, Article 2;
3. Allow employees or agents of the Department, any law enforcement agency, or the Federal Motor Carrier Safety Administration without prior notice to do any of the following:
   a. Take the tests administered by the authorized third party as if the employee or agent is a test applicant,
   b. Co-score along with the commercial driver license examiner during skills tests to compare pass or fail results,
   c. Retest a sample of drivers who were examined by the authorized third party, or
   d. Provide access to a vehicle for use under this subsection;
4. Maintain the following records at the authorized third party's principal place of business:
   a. A copy of its current authorization agreement with the Department,
   b. A copy of the current commercial driver license examiner's certificate for each examiner,
   c. A copy of each completed skills test score sheet for the current calendar year and the past two calendar years,
   d. A copy of the authorized third party's approved skills test routes and test sites, and
   e. A copy of each commercial driver license examiner's training record;
5. Submit to the Department by the fifth day of each month, a monthly reconciliation report. If the authorized third party fails to timely submit a monthly reconciliation report, the Department may:
   a. Give an oral or written warning for the first untimely report,
   b. Send a letter of concern for the second untimely report in a 12-month period, or
   c. Suspend or cancel the authorization for the third untimely report in a 12-month period; and
6. Verify each CDL applicant:
   a. Possesses a valid Arizona driver license with a photograph and a valid Department-issued commercial instruction permit for the class and endorsement of the vehicle to be used in the skills test, and
   b. Has successfully completed the CDL written tests.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-606. Certified Commercial Driver License Examiner Requirements

A. In addition to satisfying the requirements of R17-7-303, a certified commercial driver license examiner shall:

1. Comply with all state and federal laws, rules, and the terms and conditions of the authorization agreement requirements between the Department and the authorized third party;
2. Maintain compliance with all certification requirements as prescribed in R17-7-301;
3. Not administer any examination unless the CDL applicant meets the requirements of all statutes, rules and policies relating to driver licensing;
4. Conduct skills tests only on Department-approved test routes; and
5. Complete, in the presence of the CDL applicant, the score sheet at the time of the skills test. The score sheet is valid for 30 calendar days from the day the CDL applicant completes the skills test.

B. If the commercial driver license examiner's CDL is suspended, revoked, canceled, or disqualified, the certified commercial driver license examiner shall not administer any CDLE.

C. A commercial driver license examiner shall not accompany an applicant into any office or testing location rented, leased, or owned by the Department.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-607. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-608. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-609. Renumbered

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section

R17-7-609 renumbered to R17-7-207 by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

ARTICLE 7. DRIVER LICENSE TRAINING PROVIDER PROGRAM

R17-7-701. Definitions

The following definitions apply to this Article unless otherwise specified:

"Driver license training provider" means a business enterprise conducted by an individual, association, partnership, or corporation that educates and trains persons, either practically or theoretically, or both, to operate or drive motor vehicles; that prepares applicants for an examination given by the state for a driver license or instruction permit; and that charges a consideration or tuition for these services.

"Minimum professional training standards" means the Department's approved basic content of material to be presented to and understood by the student through evaluation.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Amended by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-702. Additional Authorization Application Requirements for Driver License Training Providers

In addition to satisfying the requirements of R17-7-201, an applicant for third-party authorization shall:

1. Submit the following:
   a. The specified course of instruction which will be offered, and
   b. Sample copies of the contracts that will be offered to prospective students or given to enrolled students.
2. Provide a certified statement that the applicant will meet the minimum professional training standards as set forth by the Department. The minimum professional training standards will be provided to the applicant and included in the authorization agreement.
3. Provide a copy of any current leases or agreements for the use of the land or buildings on which the applicant's places of business and training sites are located.
4. Ensure that all places of business and training sites:
   a. Meet all local zoning requirements, and
   b. Are not used as a residence.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-703. Additional Certification Application Requirements for Driver License Trainers

In addition to satisfying the requirements of R17-7-301, an applicant for certification as a driver license trainer shall satisfy all of the following:

1. Pass an examination given by the Department consisting of an actual demonstration or a written test, or both, covering:
   a. Traffic laws;
   b. Safe driving practices;
   c. Operation of motor vehicles;
   d. Knowledge of teaching methods, techniques, and practices; and
   e. Authorized third-party statutes and rules, business ethics, office procedures, and elementary record-keeping;
2. Have at least a high school diploma or its equivalent;
3. Hold a valid Arizona driver license;
4. Be physically and mentally able to safely operate a motor vehicle and to train others in the operation of motor vehicles. To substantiate this requirement, the Department may require a properly signed and completed certificate of medical examination conducted by a person qualified and licensed to practice medicine in this state; and
5. Provide other information the Department deems pertinent for determining the applicant's good moral character.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-704. Additional Authorized Driver License Training Provider Program Requirements

In addition to satisfying the requirements of R17-7-204, the authorized third party shall comply with the following:

1. The director shall approve, and may modify, in writing the minimum professional training standards that each authorized third party driver license training provider shall teach to its students. Those minimum professional training standards shall be included in the authorization agreement.
2. The established place of business of each authorized third party driver license training provider must be used only for activities authorized by the Department.
3. Each established place of business shall meet all requirements of state law, local ordinances, and the accessibility requirements of the Americans with Disability Act of 1990 (42 U.S.C. 12101 et seq.). The Department may require proof of compliance with local zoning ordinances.
4. An authorized third party driver license training provider must post its office hours in a conspicuous place clearly visible to the public within that location and be open to the public during the posted hours. The person left in charge of the office during the posted office hours must be fully trained to give pertinent information to the public as well as give information to any representative of the Department or to any law enforcement agency.
5. The authorized third party driver license training provider shall provide adequate facilities for any student being given instruction in other than behind-the-wheel driver training.
6. An authorized third party driver license training provider shall maintain the following records at an established place of business or at the principal place of business and make them available for audit and inspection during normal business hours:
   a. All records setting forth the name, address, contract number, and terms of payment with respect to every person receiving training of any kind, or any other service relating to the operation of a motor vehicle. These records must also contain the date, type, and duration of all training, including the name of the certified individual giving the lessons and the license plate number, make, and model of the vehicle used to conduct the training.
   b. A record of all receipts and disbursements.

c. A record of all training vehicle maintenance and repairs.

7. If an authorized third party driver license training provider enters into a written contract with any person or group of persons receiving training relating to the operation of a motor vehicle, the training provider shall give the original contract to the student or the student's agent who executes the contract and shall retain a copy of the contract in its records.
8. An authorized third party driver license training provider shall equip each motor vehicle used for driver training with:
   a. If the motor vehicle is equipped with an automatic transmission, at least a dual braking device that enables an accompanying driver license trainer to bring the motor vehicle under control in case of emergency; and
   b. If the motor vehicle is equipped with a standard transmission, at least a dual clutch and braking device that enables an accompanying driver license trainer to bring the motor vehicle under control in case of emergency.
9. An authorized third party driver license training provider must maintain all motor vehicles in safe operating condition at all times.
10. An authorized third party driver license training provider shall conduct training only on test routes approved by the Department.
11. An authorized third party driver license training provider shall not:
   a. Indicate or represent in any advertisement that the training provider can issue or guarantee issuance of a driver license in any jurisdiction,
   b. Imply or represent that the training provider can in any way influence the Department or an authorized third party in the issuance of a driver license, or
   c. Imply or represent that preferential or advantageous treatment from the Department or an authorized third party can be obtained.
12. An authorized third party driver license training provider or a certified trainer shall not accompany any student into any examining office or testing location rented, leased, or owned by the Department or an authorized third party for the purpose of taking a driver license examination.
13. In case of loss or mutilation, a duplicate authorization certificate may be issued by the Department on submission of a properly signed and completed application accompanied by an affidavit setting forth the circumstances. The affidavit must show the date the previously-issued authorization certificate was lost, mutilated, or destroyed, and the circumstances involving its loss, mutilation, or destruction.
14. An authorization for a driver training provider is nontransferable.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-704 renumbered to R17-7-303; new Section R17-7-704 made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-705. Certified Driver License Trainer Requirements

A. In addition to satisfying the requirements of R17-7-303, a certified driver license trainer shall maintain compliance with all certification requirements as prescribed in R17-7-301.

B. In case of loss or mutilation, a duplicate certification may be issued by the Department on submission of a properly signed and completed application accompanied by an affidavit setting forth the circumstances. The affidavit must show the date the previously-issued certification was lost, mutilated, or destroyed, and the circumstances involving its loss, mutilation, or destruction.

C. A driver license trainer certification is nontransferable.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-705 renumbered to R17-7-205; new Section R17-7-705 made by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-706. Renumbered

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-706 renumbered to R17-7-206 by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-707. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-707 repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

ARTICLE 8. REPEALED

R17-7-801. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-801 repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

R17-7-802. Repealed

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2418, effective August 5, 2006 (Supp. 06-2). Section R17-7-801 repealed by exempt rulemaking at 20 A.A.R. 1138, effective May 1, 2014 (Supp. 14-2).

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 7. DEPARTMENT OF TRANSPORTATION

THIRD-PARTY PROGRAMS

Statutory Authority Including Relevant Statutory Definitions

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

Specific Authority for Rulemaking

A.R.S. § 28-5101. Third party authorization

A. The director may authorize third parties to perform certain of the following functions:

1. Title and registration.
2. Motor carrier licensing and tax reporting.
3. Dealer licensing.
4. Driver licensing as prescribed in sections 28-5101.01, 28-5101.02 and 28-5101.03.

B. The director may authorize a person to be a third party electronic service provider or to be a third party electronic service partner. An authorized third party electronic service provider shall meet all of the requirements established by the department. The written agreement between the department and the authorized third party electronic service provider may be for a limited number of services and may limit the persons that may receive the services. An authorized third party electronic service partner shall meet the requirements established by the department and shall be selected through a competitive bid process.

C. A person shall not engage in any business pursuant to this article unless the director authorizes the person to engage in the business.

D. The director may furnish necessary documents or license plates subject to this article.

E. Except as provided in subsection F of this section, an authorized third party or an authorized third party electronic service provider shall submit to the department all statutorily prescribed fees and taxes it collects. In addition to the statutorily prescribed fees and taxes, an authorized third party or an authorized third party electronic service provider may collect and retain a reasonable and commensurate fee for its services.

F. In addition to payment pursuant to section 28-374, the department shall reimburse the authorized third party or third party electronic service provider as follows:

1. One dollar of each initial, renewal, replacement or duplicate registration fee for a vehicle or an aircraft.
2. One dollar of each initial, duplicate or transfer certificate of title fee for a vehicle or an aircraft.
3. An amount equal to two percent of each vehicle license tax payment or aircraft license tax payment the authorized third party collects and submits to the department or four dollars for each registration year or part of a registration year, whichever is more. The reimbursement amount shall not exceed the amount of vehicle license tax or aircraft license tax collected.
4. Four dollars for each initial, renewal, replacement or duplicate application that the third party processes and that relates to driver licenses, nonoperating identification licenses or permits. An authorized third party may add the cost for expedited processing of renewal, replacement or duplicate applications if requested by the applicant.
5. An amount equal to two percent of each overweight or excess size vehicle registration or permit fee the third party collects and submits to the department or one dollar for each overweight or excess size vehicle registration or permit processed, whichever is more.
6. One dollar for each motor vehicle or special motor vehicle record, excluding motor vehicle records released to commercial recipients, including insurers and their authorized agents.
7. Five dollars or one-fourth of one percent of the fuel taxes reported, whichever is greater, for each fuel tax report filed electronically. The maximum annual amount retained each year shall not exceed four hundred eighty thousand dollars.
8. One dollar for each fuel tax permit.
9. One dollar for each nonsufficient funds or dishonored check payment.
10. One dollar for each abandoned vehicle report processed, except for applications for crushed vehicles.
11. One dollar for each abandoned vehicle payment.
12. Two dollars for each initial special or personalized license plate application.
13. One dollar for each initial, renewal or replacement vehicle dealer license plate.
14. Five dollars for each application for an initial vehicle dealer license or continuation of a vehicle dealer license.
15. One dollar of each twelve dollar fee paid pursuant to section 28-2356.
16. One dollar for each traffic survival school application and one dollar for each certificate of completion processed.
17. One dollar for each replacement license plate or tab.

G. For authorized third party electronic service partners, the amount of compensation and the amount of reimbursements for transactions shall be negotiated by the department and the authorized third party electronic service partner and shall be set forth in the written agreement authorizing the third party electronic service partner. If reimbursement is made for individual transactions, the reimbursements shall not exceed the amounts specified in subsections F, H and I of this section. Other forms of compensation or reimbursements for services may be specified in the written agreement. Compensation and reimbursements provided for by the written agreement may include the development and implementation of information technology and other automated systems and any necessary support for these systems.

H. The department's authorized third party electronic service provider may retain two dollars for processing documents electronically when the statutory fee pursuant to this title is two dollars or more.

I. The director may authorize the third party electronic service provider to process electronic fund transfers to the department for payment of motor vehicle taxes and fees. The third party electronic service provider may add a two dollar processing fee for each electronic funds transfer.

J. Each authorized third party that holds itself out as providing services to the general public shall post a sign in a conspicuous location in each facility of the authorized third party that contains all of the following:

1. The amount charged for each transaction performed by the authorized third party.
2. The amount charged by the department for the same transaction.
3. How to file a complaint or concern with the department about the authorized third party.

A.R.S. § 28-5101.01. Authorized third party driver license providers; requirements

A. Except as provided in section 28-5101.03, an authorized third party driver license provider must perform both of the following:

1. Driver license skills and written testing.
2. Driver license processing.

B. A person who is a third party driver license provider authorized pursuant to this section may also be authorized pursuant to this article to perform certain title and registration functions.

C. A person who applies for authorization pursuant to this section shall submit with the application all of the following:

1. A bond in a form to be approved by the director and in an amount of at least $300,000 for an initial application for authorization pursuant to this section and an additional $100,000 for each additional location providing driver license functions prescribed in subsection A of this section, except that if the authorized third party is also authorized pursuant to this article to perform certain title and registration functions at the same location only a single $100,000 bond is required for that location. The total bond amount required by this paragraph shall not exceed $1,000,000. The bond requirements of this paragraph do not apply to government entities prescribed in section 28-5104, subsection E, paragraphs 1, 2, 3, 5 and 11.
2. Documentation that the applicant satisfies all of the following:
   (a) Has been an authorized third party pursuant to this chapter for at least the immediately preceding three years.
   (b) Has conducted an average of at least one thousand retention transactions per month for the previous calendar year.
   (c) Is in good standing with the department.
   (d) Has a facility plan for each location that shows adequate space and equipment necessary to perform the functions prescribed in subsection A of this section.
3. Documentation that the applicant has during business hours at least one certified processor qualified to perform at a minimum all of the following at each location:

(a) Fraudulent document recognition.

(b) Ignition interlock requirements.

(c) Driver license reinstatements.

D. A third party driver license provider authorized pursuant to this section must comply with all quality control requirements prescribed by the department.

E. A third party driver license provider authorized pursuant to subsection A of this section may perform administrative and testing functions for the issuance and renewal of commercial driver licenses as authorized by the director and pursuant to federal law.

A.R.S. § 28-5101.02. Authorized third party driver license training providers; requirements; applicability

A. Beginning July 1, 2014, a person must be an authorized third party driver license training provider to perform driver license training.

B. A person who applies for authorization pursuant to this section is not required to submit a bond with the application.

C. A third party driver license training provider authorized pursuant to this section must comply with all quality control requirements prescribed by the department.

D. This section does not apply to any professional driver training school licensed pursuant to title 32, chapter 23.

A.R.S. § 28-5101.03. Authorized third party commercial driver license examiners; requirements

A. Beginning July 1, 2014, a person must be a separately authorized third party commercial driver license examiner to perform commercial driver license skills testing.

B. A third party commercial driver license examiner authorized pursuant to this section must comply with all quality control requirements prescribed by the department.

A.R.S. § 28-5102. Powers and duties of director

A. The director shall:

1. Supervise and regulate all persons required by this article to obtain authorization.
2. Establish minimum quality standards of service and a quality assurance program for authorized third parties to ensure that an authorized third party is complying with the minimum standards.
3. Adopt rules to administer and enforce this chapter.

B. The director may:

1. Conduct investigations the director deems necessary.
2. Conduct audits.
3. Make on-site inspections during regular business hours and at locations as the director deems appropriate to determine compliance by an authorized third party with this article. If an inspection is conducted at a place located outside this state, the director may charge a fee to the authorized third party.
4. Require that an authorized third party or employees or agents of an authorized third party be certified to perform the functions prescribed in this article.

5. Require authorized third parties and authorized third party electronic service providers to reimburse the department for mutually agreed on costs.

A.R.S. § 28-5103. Application procedure

A. A person may apply for authorization or certification, or both, pursuant to this article to the director in writing on a form prescribed and furnished by the director. The person shall include with the application all documents and fees prescribed by the director.

B. The application shall be verified and shall contain:

1. The name and residence address of the applicant, the name and residence address of each partner if the applicant is a partnership or the name and residence address of each principal officer if the applicant is a corporation.
2. The principal place of business of the applicant.
3. The established place of business at or from which the business is to be conducted.
4. Other information the director requires.

A.R.S. § 28-5105. Criminal records check; denial of application; immunity from costs

A. Except as provided by subsection B of this section, each applicant who owns twenty percent or more of an entity, each partner or stockholder who owns twenty percent or more of an entity and each person who is an employee of an authorized third party who has access to personal information as defined in section 28-440 obtained from the department or a customer of the department or monies collected on behalf of this state, and who seeks authorization or certification, or both, pursuant to this article shall provide:

1. A full set of fingerprints to the department of transportation for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
2. A nonrefundable fee to be paid to the department of public safety for the criminal records check.

B. Each employee of an authorized third party who conducts vehicle inspections on behalf of this state shall provide:

1. A full set of fingerprints to the department of transportation for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
2. A nonrefundable fee to be paid to the department of public safety for the criminal records check.

C. The director may deny an application for authorization or certification, or both, if any individual included in the application has either:

1. Made a misrepresentation or misstatement in the application to conceal a matter that would cause the application to be denied.
2. Been convicted of fraud or an auto-related felony in any state, territory or possession of the United States or any foreign country within the ten years immediately preceding the date the criminal records check is complete.

3. Been convicted of a felony, other than a felony described in paragraph 2 of this subsection, in a state, territory or possession of the United States or a foreign country within the five years immediately preceding the date the criminal records check is complete.
4. Violated a rule or policy of the department.
5. Been involved in any activity that the director determines to be inappropriate in relation to the authority granted.

D. The director may approve an application for provisional authorization or certification, or both, pending completion of the criminal records check if the applicant meets all other requirements of this article. The director may revoke a provisional authorization or certification, or both, for a violation of this title. A provisional authorization or certification, or both, is valid unless revoked by the director or until the applicant receives approval or denial of the application for authorization or certification, or both.

E. Within twenty days of completion of the criminal records check, the director shall approve or deny the application. If the application is denied, the director shall advise the applicant in writing of the denial and the grounds for denial. The department or its employees are not liable for any costs incurred by an applicant seeking authorization or certification, or both, under this article.

F. Within thirty days after receipt of the notice of denial, the applicant may petition the director in writing for a hearing on the application pursuant to section 28-5107.

G. If the authorized third party adds a partner or stockholder who owns twenty percent or more of the entity and who was not included in the criminal records check on a prior application, the authorized third party shall notify the department within thirty days of the change.

H. At the time of notification pursuant to subsection G of this section, the third party shall submit to the department of transportation an application and, if applicable, a full set of fingerprints and the fee to be paid to the department of public safety for a criminal records check. On completion of the investigation if the individual added or changed by the authorized third party is found to be ineligible pursuant to subsection C of this section, the director of the department of transportation shall advise the authorized third party and the individual in writing of the grounds for the action and that the authorization will be revoked unless the individual is removed from the position.

I. The requirement for a criminal records check does not apply to an applicant who is seeking third-party authorization and who is:

1. A department, agency or political subdivision of this state.
2. A court of this state.
3. A law enforcement agency or department of this state.
4. A financial institution or enterprise under the jurisdiction of the department of insurance and financial institutions or a federal monetary authority.
5. The federal government or any of its agencies.
6. A motor vehicle dealer that is licensed and bonded by the department of transportation or a state organization of licensed and bonded motor vehicle dealers.
7. A manufacturer, importer, factory branch or distributor licensed by the department of transportation.

8. An insurer under the jurisdiction of the department of insurance and financial institutions.
9. An owner or registrant of a fleet of one hundred or more vehicles.
10. A public utility.
11. A tribal government.
12. An employer or association that has at least five hundred employees or members.

J. For the purposes of this section, personal information does not include information received pursuant to section 28-872.

A.R.S. § 28-5106. Records

A third party who is authorized pursuant to this article shall:

1. Maintain records in a form and manner prescribed by the director.
2. Allow access to the records during regular business hours to authorized representatives of the director or any law enforcement agency to ensure compliance with all applicable statutes and rules.

41-1009. Inspections and audits; applicability; exceptions

A. An agency inspector, auditor or regulator who enters any premises of a regulated person for the purpose of conducting an inspection or audit shall, unless otherwise provided by law:

1. Present photo identification on entry of the premises.
2. On initiation of the inspection or audit, state the purpose of the inspection or audit and the legal authority for conducting the inspection or audit.
3. Disclose any applicable inspection or audit fees. Notwithstanding any other law, a regulated person being inspected or audited is responsible for only the direct and reasonable costs of the inspection or audit and is entitled to receive a detailed billing statement as described in paragraph 5, subdivision (e) of this subsection.
4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector, auditor or regulator on the premises, except during confidential interviews.
5. Provide notice of the right to have on request:
   (a) Copies of any original documents taken by the agency during the inspection or audit if the agency is allowed by law to take original documents.
   (b) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.
   (c) Copies of any analysis performed on samples taken during the inspection.
   (d) Copies of any documents to be relied on to determine compliance with licensure or regulatory requirements if the agency is otherwise allowed by law to do so.
   (e) A detailed billing statement that provides reasonable specificity of the inspection or audit fees imposed pursuant to paragraph 3 of this subsection and that cites the statute or rule that authorizes the fees being charged.

6. Inform each person whose conversation with the agency inspector, auditor or regulator during the inspection or audit is tape recorded that the conversation is being tape recorded.
7. Inform each person who is interviewed during the inspection or audit that:
   (a) Statements made by the person may be included in the inspection or audit report.
   (b) Participation in an interview is voluntary, unless the person is legally compelled to participate in the interview.
   (c) The person is allowed at least twenty-four hours to review and revise any written witness statement that is drafted by the agency inspector, auditor or regulator and on which the agency inspector, auditor or regulator requests the person's signature.
   (d) The agency inspector, auditor or regulator may not prohibit the regulated person from having an attorney or any other experts in their field present during the interview to represent or advise the regulated person.
8. At the end of the inspection, offer to review, with an authorized representative of the regulated person, the findings of the inspection and what agency actions the regulated person can expect.

B. On initiation of an audit or an inspection of any premises of a regulated person, an agency inspector, auditor or regulator shall provide the following in writing:

1. The rights described in subsection A of this section and section 41-1001.01, subsection C.
2. The name and telephone number of a contact person who is available to answer questions regarding the inspection or audit.
3. The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection or audit, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.
4. A statement that the agency inspector, auditor or regulator may not take any adverse action, treat the regulated person less favorably or draw any inference as a result of the regulated person's decision to be represented by an attorney or advised by any other experts in their field.
5. A notice that if the information and documents provided to the agency inspector, auditor or regulator become a public record, the regulated person may redact trade secrets and proprietary and confidential information unless the information and documents are confidential pursuant to statute.
6. The time limit or statute of limitations applicable to the right of the agency inspector, auditor or regulator to file a compliance action against the regulated person arising from the inspection or audit, which applies to both new and amended compliance actions.

C. An agency inspector, auditor or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, and is notified of the regulated person's or on-site representative of the regulated person's inspection or audit and due process rights. The agency inspector, auditor or regulator may provide an electronic document of the writing prescribed in subsection B of this section and section 41-1001.01, subsection

C and, at the request of the regulated person or on-site representative, obtain a receipt in the form of an electronic signature. The agency shall maintain a copy of this signature with the inspection or audit report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, the agency inspector, auditor or regulator shall note that fact on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable.

D. An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:

1. At the time of the inspection.
2. Notwithstanding any other state law, within thirty working days after the inspection.
3. As otherwise required by federal law.

E. The inspection report shall contain alleged deficiencies identified during an inspection. Unless otherwise provided by state or federal law, the agency shall provide the regulated person an opportunity to correct the alleged deficiencies unless the agency documents in writing as part of the inspection report that the alleged deficiencies are:

1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance as demonstrated by alleged deficiencies previously identified in an inspection report or other written notice at the same premises.
4. A significant risk to any person, the public health, safety or welfare or the environment.

F. If the agency is unsure whether a regulated person meets the exemptions in subsection E of this section, the agency shall provide the regulated person with an opportunity to correct the alleged deficiencies.

G. If the agency allows the regulated person an opportunity to correct the alleged deficiencies pursuant to subsection E of this section, the regulated person shall notify the agency when the alleged deficiencies have been corrected. Within thirty days after receipt of notification from the regulated person that the alleged deficiencies have been corrected, the agency shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance. If the regulated person fails to correct the alleged deficiencies or the agency determines the alleged deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the alleged deficiencies.

H. If the agency does not allow the regulated person an opportunity to correct alleged deficiencies pursuant to subsection E of this section, on the request of the regulated person, the agency shall provide a detailed written explanation of the reason that an opportunity to correct was not allowed.

I. An agency decision pursuant to subsection E or G of this section is not an appealable agency action.

J. At least once every month after the commencement of the inspection, an agency shall provide a regulated person with an update on the status of any agency action resulting from an inspection of the regulated person.

An agency is not required to provide an update after the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.

K. For agencies with authority under title 49, if, as a result of an inspection or any other investigation, an agency alleges that a regulated person is not in compliance with licensure or other applicable regulatory requirements, the agency shall provide written notice of that allegation to the regulated person. The notice shall contain the following information:

1. A citation to the statute, regulation, license or permit condition on which the allegation of deficiency is based, including the specific provisions in the statute, regulation, license or permit condition that are alleged to be violated.
2. Identification of any documents relied on when determining the allegation of deficiency.
3. An explanation stated with reasonable specificity of the regulatory and factual basis for the allegation of deficiency.
4. Instructions for obtaining a timely opportunity to discuss the alleged deficiencies with the agency.

L. Subsection K of this section applies only to inspections or any other investigations necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements. Subsection K of this section does not apply to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under subsection K of this section is not a prerequisite to otherwise lawful agency actions seeking an injunction or issuing an order if the agency determines that the action is necessary on an expedited basis to abate an imminent and substantial endangerment to public health or the environment and documents the basis for that determination in the documents initiating the action.

M. This section does not authorize an inspection or any other act that is not otherwise authorized by law.

N. Except as otherwise provided in subsection L of this section, this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements applicable to a licensee and audits pursuant to enforcement of title 23, chapters 2 and 4. This section does not apply:

1. To criminal investigations, investigations under tribal state gaming compacts and undercover investigations that are generally or specifically authorized by law.
2. If the agency inspector, auditor or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.
3. To the Arizona peace officer standards and training board established by section 41-1821.
4. To certificates of convenience and necessity that are issued by the corporation commission pursuant to title 40, chapter 2.

O. If an agency inspector, auditor or regulator gathers evidence in violation of this section, the violation may be a basis to exclude the evidence in a civil or administrative proceeding.

P. Failure of an agency, board or commission employee to comply with this section:

1. May subject the employee to disciplinary action or dismissal.
2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.

Q. An agency may make rules to implement subsection A, paragraph 5 of this section.

R. Nothing in this section shall be used to exclude evidence in a criminal proceeding.

S. Subsection A, paragraph 7, subdivision (c) and subsection E of this section do not apply to the department of health services for the purposes of title 36, chapters 4 and 7.1.

T. Subsection B, paragraph 5 and subsection E of this section do not apply to the corporation commission for the purposes of title 44, chapters 12 and 13.

U. Except as otherwise prescribed by this section and notwithstanding any other law:

1. This section applies to all state agencies that conduct inspections and audits.
2. If a conflict arises between the rights afforded a regulated person pursuant to this section and the rights afforded a regulated person pursuant to another statute, this section governs.

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 7. DEPARTMENT OF TRANSPORTATION

THIRD-PARTY PROGRAMS

Definitions of Terms

A.R.S. § 28-2011. Vehicle inspections

A. The department may conduct the following levels of motor vehicle inspections:

1. Level one. A level one inspection consists of matching the public vehicle identification number and a secondary vehicle identification number to the vehicle ownership documents to determine the identity of the vehicle.
2. Level two. A level two inspection consists of matching the public vehicle identification number, a secondary vehicle identification number and the confidential vehicle identification number to the vehicle ownership documents to determine the identity of the vehicle.
3. Level three. A level three inspection consists of a level two inspection plus verification of vehicle identification numbers on, at the discretion of the inspector, some or all component parts to determine the identity of the vehicle and that the vehicle is properly equipped for highway use.

B. A person who submits a motor vehicle to the department for inspection shall pay the following fees:

1. For a level two inspection, twenty dollars.
2. For a level three inspection, fifty dollars.

C. The department shall deposit the inspection fees in the vehicle inspection and certificate of title enforcement fund established by section 28-2012.

D. An inspection fee is not required for an inspection of a motor vehicle owned by a foreign government, by a consul or any other representative of a foreign government, by the United States, by a state or political subdivision of a state or by an Indian tribal government.

A.R.S. § 28-5108. Cancellation or suspension of authorization or certification; hearing; appeal

A. The director may suspend or cancel an authorization or certification, or both, granted pursuant to this article if the director determines that the third party or certificate holder has done any of the following:

1. Made a material misrepresentation or misstatement in the application for authorization or certification.
2. Violated a law of this state.
3. Violated a rule or policy adopted by the department.
4. Failed to keep and maintain records required by this article.
5. Allowed an unauthorized person to engage in any business pursuant to this article.
6. Been involved in any activity that the director determines to be inappropriate in relation to the authority granted.

B. The director may suspend or cancel an authorization or certification, or both, granted pursuant to this chapter if the director determines that an individual included in the application for authorization or certification:

1. Made a misrepresentation, omission or misstatement in the application to conceal a matter that may cause the application to be denied.
2. Has been convicted of fraud or an auto related felony in a state, territory or possession of the United States or a foreign country within the ten years immediately preceding the date a criminal records check is complete.
3. Has been convicted of a felony, other than a felony described in paragraph 2 of this subsection, in a state, territory or possession of the United States or a foreign country within the five years immediately preceding the date a criminal records check is complete.

C. The director shall suspend or cancel an authorization of a third party granted pursuant to this article if the director determines that the third party failed to maintain the bond required pursuant to section 28-5104.

D. If the director has reasonable grounds to believe that a certificate holder or other person employed by an authorized third party has committed a serious violation, the director may order a summary suspension of the third party's authorization granted pursuant to this chapter pending formal suspension or cancellation proceedings. For the purposes of this subsection, "serious violation" means:

1. Title or registration fraud.
2. Driver license or identification license fraud.
3. Improper disclosure of personal information as defined in section 28-440.
4. Bribery.
5. Theft.

E. On determining that grounds for suspension or cancellation of an authorization or certification, or both, exist, the director shall give written notice to the third party or certificate holder to appear at a hearing before the director to show cause why the authorization or certification should not be suspended or canceled.

F. After consideration of the evidence presented at the hearing, the director shall serve notice of the director's finding and order to the third party or certificate holder.

G. If a third party authorization or a certification is suspended or canceled, the third party or certificate holder may appeal the decision pursuant to title 12, chapter 7, article 6.

49 CFR § 384.105. Definitions

(a) The definitions in part 383 of this title apply to this part, except where otherwise specifically noted.

(b) As used in this part:

CDLIS motor vehicle record (CDLIS MVR) means a report generated from the CDLIS driver record meeting the requirements for access to CDLIS information and provided by States to users authorized in § 384.225(e)(3) and (4), subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721-2725.

Issue and issuance means the initial issuance, renewal or upgrade of a CLP or Non-domiciled CLP and the initial issuance, renewal, upgrade or transfer of a CDL or Non-domiciled CDL, as described in § 383.73 of this subchapter.

Licensing entity means the agency of State government that is authorized to issue drivers' licenses.

Year of noncompliance means any Federal fiscal year during which—

(1) A State fails to submit timely certification as prescribed in subpart C of this part; or

(2) The State does not meet one or more of the standards of subpart B of this part, based on a final determination by the FMCSA under § 384.307(c) of this part.

D-5.

Department of Insurance and Financial Institutions
Title 4 Chapter 46

Amend: R4-46-201.01, R4-46-403, and R4-46-406

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: **October 22, 2024**

SUBJECT: **Arizona Department of Insurance and Financial Institutions (DIFI)**
Title 4, Chapter 46

Amend: R4-46-201.01, R4-46-403, and R4-46-406

Summary:

This regular rulemaking by the Arizona Department of Insurance and Financial Institutions (Department) seeks to amend three (3) rules in Title 4, Chapter 46 regarding Real Estate Appraisal. Specifically, this rulemaking seeks to update R4-46-201.01 to allow Director discretion when a designated supervisor fails to comply with subsection (C)(4) and to update R4-46-403 and R4-46-406 to comply with federal law. Both R4-46-403 and R4-46-406 currently allow for persons with a 10% or more ownership interest which is incompatible with the federal requirement. The federal regulations prohibits the registration of an Appraisal Management Company ("AMC") if the AMC is owned in whole or in part, directly or indirectly, by a person who has had an appraiser license or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked by any state. In addition, other proposed changes to R4-46-406 (Appeal for Waiver) better reflect the language of the federal rule.

The proposed rule amendment did not arise from a previous Five Year Review Report (5YRR).

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 did not rely on any study to develop the proposed rulemaking.

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

The Department indicates that this regulation applies to Registered Trainee Appraiser and Appraisal Management Companies subject to Title 32, Chapter 36 (A.R.S. §§ 32-3601 through 32-3680) and A.A.C. R4-46-101 through R4-46-601. A recent review of the Department's appraisal management regulatory program by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") revealed that two of the Department's Sections did not align with the corresponding federal law and regulations (12 U.S.C. 3353(d); 12 CFR 34.214). The update to the rules would better reflect the language of the federal rule. The Department states that most costs are imposed by the correlate Arizona statutes (A.R.S. §§ 32-3601 through 32-3680) and the existing federal laws and regulations (12 U.S.C. 3353(d); 12 CFR 34.214), not the three rules being amended.

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 that the current rulemaking, specifically the changes to R4-46-403 and R4-46-406, offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking which is to effectively regulate Appraisal Management Companies.

6. What are the economic impacts on stakeholders?

The Department states that the changes proposed to R4-46-201.01 is a grant of discretion to the Director in order to avoid an unfair result to a registered trainee when their designated supervisory appraiser fails to comply with subsection (C)(4) of the rule. The change has no cost. The Department indicates that the changes in Sections R4-46-403 and R4-46-406 are to bring the Department's rules in line with the requirements that already exist in the federal statutes and regulations. Because an appraisal management company must already comply with federal requirements, no additional compliance costs are anticipated to these entities.

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 no comments were received.

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 the rule does not require a permit. Nevertheless, the Department states the issuance of a general permit would not be technically feasible and would not meet the applicable statutory requirements pursuant to A.R.S. § 41-1037(A)(3).

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 Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("Appraisal Subcommittee") monitors the requirements established by the Department for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions and for the registration and supervision of the operations and activities of appraisal management companies. 12 U.S.C. § 3332(a)(1). The Appraisal Subcommittee also maintains a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions and a national registry of appraisal management companies that are registered with and subject to supervision of a State appraiser certifying and licensing agency. 12 U.S.C. §§ 3332(a)(2) and (6).

Accordingly, the Department is required to transmit to the Appraisal Subcommittee an annual roster of individuals who have received a state certification or license to perform appraisals in federally related transactions, and to report on the issuance and renewal of licenses and certifications, sanctions, and disciplinary actions (including license or certification revocations and suspensions). The Department is also required to transmit reports of supervisory activities involving appraisal management companies, including investigations resulting in disciplinary action being taken. It also collects and transmits the fees established by the Appraisal Subcommittee. 12 U.S.C. § 3338(a). AMCs are also governed by 12 U.S.C. 3353(d) which requires, in part: "An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked in any State." The corresponding federal regulation has similar language. *See* 12 CFR 34.214.

Sections R4-46-403(D) and R4-46-406(A) impermissibly limit the population of persons who must report to 10% or more owners. This limit is being removed. As amended, the rules comport with the federal requirements and are not more stringent than the federal law or regulation. Section R4-46-201.01 is not subject to federal law according to the Department. The change being proposed would merely grant the Director discretion in granting experience credits to a registered trainee appraiser.

11. Conclusion

This regular rulemaking by the Department seeks to amend three (3) rules in Title 4, Chapter 46 regarding Real Estate Appraisal to allow additional Director discretion when a designated supervisor fails to comply with subsection (C)(4) and to update R4-46-403 and R4-46-406 to comply with federal law. Both R4-46-403 and R4-46-406 currently allow for persons with a 10% or more ownership interest which is incompatible with the federal requirement. The federal regulations prohibit the registration of an AMC if the AMC is owned in whole or in part, directly or indirectly, by a person who has had an appraiser license or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked by any state.

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 Insurance and Financial Institutions
100 N 15th Avenue, Suite 261, Phoenix, Arizona 85007
(602) 364-3100 | difi.az.gov

Katie Hobbs
Governor

Barbara D. Richardson
Director

September 26, 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
Real Estate Appraisal Final Rulemaking

Dear Chairperson Klein:

Please find enclosed the Final Rulemaking for Real Estate Appraisal being submitted by the Arizona Department of Insurance and Financial Institutions, Financial Institutions 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 August 25, 2024.
b. This rulemaking does not relate to a five-year review report. Instead, the Department initiated this rulemaking to grant discretion to the Director to avoid an unfair result to registered trainee appraisers and to bring two Appraisal Management Company ("AMC") rules in line with the Federal statutes and regulations governing AMCs.
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;
   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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – FINANCIAL INSTITUTIONS DIVISION - REAL ESTATE APPRAISAL

PREAMBLE

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

September 26, 2024

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

R4-46-201.01	Amend
R4-46-403	Amend
R4-46-406	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. § 32-3605(A)
Implementing statute: A.R.S. §§ 32-3614.01, 32-3615, and 32-3680

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. 2444, July 26, 2024, Issue 30, File # R24-136

Notice of Proposed Rulemaking: 30 A.A.R. 2401, July 26, 2024, Issue 30, File # R24-132

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, Division of Financial Institutions, Real Estate Appraisal ("Department") seeks to update one rule to allow the Director discretion under subsection R4-46-201.01(C)(5)(b) when a designated supervisor appraiser fails to comply with subsection (C)(4) of the rule, and to update two rules governing ownership of an Appraisal Management Company (A.A.C. R4-46-203 and R4-46-206).

The Department seeks to grant the Director discretion when a designated supervisor appraiser fails to document to the Department the reports required under subsection R4-46-201.01(C)(4). Subsection (C)(5)(b) unfairly dictates a mandatory denial of experience credits to a registered trainee appraiser for a failure on the part of the designated supervisor appraiser. Allowing the Director some discretion in this area will remedy this unfair result.

A recent review of the Department's appraisal management regulatory program by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") revealed that two of the Department's Sections did not align with the corresponding federal law and regulation. (12 U.S.C. 3353(d); 12 CFR 34.214) The federal authority prohibits the registration of an Appraisal

Management Company ("AMC") if the AMC is owned in whole or in part, directly or indirectly, by a person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked by any state. Sections R4-46-403 and R4-46-406 limit the inquiry to persons with a 10% or more ownership interest which is incompatible with the federal requirement and must be removed. In addition, other proposed changes to R4-46-406 (Appeal for Waiver) better reflect the language of the federal rule.
None of the changes being proposed relate to a Five-Year Review Report.

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 appraisers, or appraisal management companies. Instead, it is designed to avoid an unfair result to a registered trainee appraiser when a supervisory appraiser fails to file certain reports and to bring the current rules in line with the federal statutes and rules for appraisal management companies.
- The rulemaking expands the pool of owners of Appraisal Management Companies ("AMCs") from only those owning a 10% or more interest to all for consideration of whether the owner has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked by any state. (A.A.C. R4-46-403 and R4-46-406)

Pursuant to A.R.S. § 41-1055(A)(2):

- No additional costs are anticipated to be imposed on appraisers in association with the grant of discretion to the Director. In addition, no additional costs are anticipated to AMCs because the requirements are already in federal statutes and rules.
- The costs incurred by the reporting requirements for additional AMC owners are unknown at this time. Licensees were encouraged to submit this information to the Department during the public comment period but no one submitted this information. The Department

believes these costs will be minimal because this reporting requirement is already a federal requirement.

Pursuant to A.R.S. § 41-1055(A)(3):

- An economic, small business and consumer impact summary accompanies the submission of the 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:

The rule does not require a permit. The issuance of a general permit is not technically feasible and would not meet the applicable statutory requirements.

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 Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("Appraisal Subcommittee") monitors the requirements established by the Department for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions and for the registration and supervision of the operations and activities of appraisal management companies. 12 U.S.C. § 3332(a)(1). The Appraisal Subcommittee also maintains a national registry of State certified and licensed appraisers who are eligible to perform appraisals in federally related transactions and a national registry of appraisal

management companies that are registered with and subject to supervision of a State appraiser certifying and licensing agency. 12 U.S.C. §§ 3332(a)(2) and (6).

Accordingly, the Department is required to transmit to the Appraisal Subcommittee an annual roster of individuals who have received a state certification or license to perform appraisals in federally related transactions, and to report on the issuance and renewal of licenses and certifications, sanctions, and disciplinary actions (including license or certification revocations and suspensions). The Department is also required to transmit reports of supervisory activities involving appraisal management companies, including investigations resulting in disciplinary action being taken. It also collects and transmits the fees established by the Appraisal Subcommittee. 12 U.S.C. § 3338(a).

AMCs are also governed by 12 U.S.C. 3353(d) which requires, in part: "An appraisal management company shall not be registered by a State or included on the national registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State." The corresponding federal regulation has similar language. *See,* 12 CFR 34.214.

Sections R4-46-403(D) and R4-46-406(A) impermissibly limit the population of persons who must report to 10% or more owners. This limit is being removed. As amended, the rules comport with the federal requirements and are not more stringent than the federal law or regulation.

Section R4-46-201.01 is not subject to a federal law. The change being proposed merely grants the Director discretion in granting experience credits to a registered trainee appraiser.

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – FINANCIAL INSTITUTIONS DIVISION - REAL ESTATE APPRAISAL

ARTICLE 2. REGISTRATION, LICENSURE, AND CERTIFICATION AS AN APPRAISER

Section

R4-46-201.01. Application for Designation as a Supervisory Appraiser; Supervision of a Registered Trainee Appraiser

ARTICLE 4. APPRAISAL MANAGEMENT COMPANIES

Section

R4-46-403. Change in Controlling Person or Agent for Service of Process; Notice of Adverse Action

R4-46-406. Appeal for Waiver

ARTICLE 2. REGISTRATION, LICENSURE, AND CERTIFICATION AS AN APPRAISER

R4-46-201.01. Application for Designation as a Supervisory Appraiser; Supervision of a Registered Trainee Appraiser

A. An individual who wishes to act as a supervisory appraiser for a registered trainee appraiser shall:

1. Apply for and obtain designation as a supervisory appraiser before providing supervision to a registered trainee appraiser,
2. Have been state certified for at least three years, and
3. Apply for designation under A.R.S. § 32-3614.02.

B. To apply for designation as a supervisory appraiser, a certified appraiser shall submit to the Department:

1. An application for designation;
2. A statement whether the applicant for designation has been disciplined in any jurisdiction in the last three years in a manner that affects the applicant's eligibility to engage in appraisal practice and if so, the name of the jurisdiction, date of the discipline, circumstances leading to the discipline, and date when the discipline was completed;
3. Evidence that the applicant for designation completed a training course that complies with the course content established by the AQB and that is specifically oriented to the requirements and responsibilities of supervisory and trainee appraisers;
4. A signed affirmation that the applicant for designation will comply with the USPAP Competency Rule for the property type and geographic location in which the supervision will be provided; and
5. Any other information and documentation that is necessary to meet the qualification criteria established and updated by the AQB.

C. Supervision requirements:

1. A registered trainee appraiser may have more than one designated supervisory appraiser.
2. A designated supervisory appraiser shall not supervise more than three registered trainee appraisers at any one time.
3. A registered trainee appraiser shall maintain a separate appraisal log for each designated supervisory appraiser and, at a minimum, include the following in each log for each appraisal:
   a. Type of property,
   b. Date of report,
   c. Address of appraised property,
   d. Description of work performed by the registered trainee appraiser,
   e. Scope of review and supervision provided by the designated supervisory appraiser,
   f. Number of actual work hours worked by the registered trainee appraiser on the assignment, and
   g. Signature and state certificate number of the designated supervisory appraiser.
4. A designated supervisory appraiser shall provide to the Department in writing the name and address of each registered trainee appraiser within 10 days of engagement and notify the Department in writing within 10 days when the engagement ends.
5. If a registered trainee appraiser or designated supervisory appraiser fails to comply with the applicable requirements of this Section:
   a. The registered trainee appraiser or the designated supervisory appraiser may be subject to disciplinary action under A.R.S. § 32-3631(A)(8), and
   b. ~~The registered trainee appraiser shall not receive experience credit for hours logged during the period that the registered trainee appraiser or designated supervisory appraiser failed to comply with the applicable requirements of this Section.~~
      The Director may decline the experience credit hours logged during any period that the registered trainee appraiser or designated supervisory appraiser failed to comply with this Section. The registered trainee appraiser and designated supervisory appraiser shall provide documentation and justification of the non-compliance for review by the Director.

ARTICLE 4. APPRAISAL MANAGEMENT COMPANIES

R4-46-403. Change in Controlling Person or Agent for Service of Process; Notice of Adverse Action

A. If any of the information submitted under R4-46-401(B)(2) changes, the controlling person of the registered AMC shall provide to the Department written notice of the change within 10 business days.

B. If an individual becomes the controlling person of a registered AMC and the information required under R4-46-401(B)(3) was not previously submitted for the individual, the new controlling person shall ensure that the required information is submitted to the Department within 10 business days after the change in controlling person.

C. If a registered AMC is required under A.R.S. § 32-3662(B)(4) to provide the name and contact information for an agent for service of process in this state, the controlling person of the AMC shall provide the Department written notice of any change in the information within 10 business days.

D. If the regulated entity, the responsible person, any controlling person, or any ~~person who owns 10% or more~~ direct or indirect owner of the firm has ever been, or is currently, the subject of any complaint, investigation, or disciplinary action against a license, certificate, registration, or membership by any

state regulatory agency, or any professional or occupational credentialing authority that resulted in an adverse judgment against them, including any denial, or voluntary surrender, withdrawal, or resignation of a credential in lieu of disciplinary action, the controlling person of the AMC shall provide the Department with written notice of such action within 10 business days after such action has been finalized.

R4-46-406. Appeal for Waiver

A. Under A.R.S. §§ 32-3668 and 32-3669, an AMC for which registration is sought under R4-46-401 may not have an owner, controlling person, officer, or other individual with a ~~10% or greater~~ financial interest in the AMC who has ever had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, ~~revoked, or~~ voluntarily surrendered in lieu of revocation, or revoked in any state.

B. ~~The requirement in subsection (A) may be waived, at the discretion of the Director, when~~ When an appeal is made by the individual who has had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, ~~revoked, or~~ voluntarily surrendered~~.~~ in lieu of revocation, or revoked in any state for a non-substantive cause and reinstated by the state that revoked the license or certificate, the Director has discretion to grant the appeal.

C. To make an appeal for waiver under subsection (B), the individual ~~who has had a financial, real estate, or mortgage lending industry license or certificate refused, denied, canceled, revoked, or voluntarily surrendered~~ shall submit an appeal for waiver form, which is available from the Department and on its website.

D. In deciding whether to waive the requirement under subsection ~~(A),~~ (B), the Director shall consider the following factors:

1. Whether the refusal, denial, cancellation, ~~revocation, or~~ voluntary surrender in lieu of revocation, or revocation of a license or certificate was based on a finding of fraud, dishonesty, misrepresentation, or deceit on the part of the appellant;
2. The amount of time that has elapsed since the refusal, denial, cancellation, ~~revocation, or~~ voluntary surrender in lieu of revocation, or revocation of ~~a~~ the license or certificate;
3. Whether the act leading to the refusal, denial, cancellation, ~~revocation, or~~ voluntary surrender in lieu of revocation, or revocation of ~~a~~ the license or certificate was an isolated occurrence or part of a pattern of conduct;
4. Whether the act leading to the refusal, denial, cancellation, ~~revocation, or~~ voluntary surrender in lieu of revocation, or revocation of ~~a~~ the license or certificate appears to have been done for a self-serving purpose;
5. The harm caused to victims, if any;
6. Efforts at rehabilitation, if any, undertaken by the appellant and evidence regarding whether the rehabilitation efforts were successful;
7. Restitution made by the appellant to victims, if any; and
8. Other factors in mitigation or aggravation that the Director determines are relevant.

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement
Title 4. Professions and Occupations
Chapter 46. Department of Financial Institutions – Real Estate Appraisal

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

The Arizona Department of Insurance and Financial Institutions, Division of Financial Institutions, Real Estate Appraisal ("Department") seeks to update one rule to allow the Director discretion under subsection R4-46-201.01(C)(5)(b) when a designated supervisor appraiser fails to comply with subsection (C)(4) of the rule, and to update two rules governing ownership of an Appraisal Management Company (A.A.C. R4-46-203 and R4-46-206).

The Department seeks to grant the Director discretion when a designated supervisor appraiser fails to document to the Department the reports required under subsection R4-46-201.01(C)(4). Subsection (C)(5)(b) unfairly dictates a mandatory denial of experience credits to a registered trainee appraiser for a failure on the part of the designated supervisor appraiser. Allowing the Director some discretion in this area will remedy this unfair result.

A recent review of the Department's appraisal management regulatory program by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") revealed that two of the Department's Sections did not align with the corresponding federal law and regulation. (12 U.S.C. 3353(d); 12 CFR 34.214) The federal authority prohibits the registration of an Appraisal Management Company ("AMC") if the AMC is owned in whole or in part, directly or indirectly, by a person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked by any state. Sections R4-46-403 and R4-46-406 limit the inquiry to persons with a 10% or more ownership interest which is incompatible with the federal requirement and must be removed. In addition, other proposed changes to R4-46-406 (Appeal for Waiver) better reflect the language of the federal rule.

None of the changes being proposed relate to a Five-Year Review Report.

Questions about this Economic Impact Statement may be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

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.
This regulation applies to Registered Trainee Appraisers and Appraisal Management Companies subject to Title 32, Chapter 36 (A.R.S. §§ 32-3601 through 32-3680) and A.A.C. R4-46-101 through R4-46-601.

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.

No additional costs are anticipated to be imposed on appraisers or appraisal management companies. The change being proposed to R4-46-201.01 is a grant of discretion to the Director in order to avoid an unfair result to a registered

trainee appraiser when their designated supervisory appraiser fails to comply with subsection (C)(4) of the rule. This change has no cost.

The changes to Sections R4-46-403 and R4046-406 are to bring the Department's rules in line with the requirements that already exist in the federal statutes and regulations. Because an appraisal management company must already comply with the federal requirements, no additional compliance costs are anticipated for these entities.

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 appraisers except to allow more registered trainee appraisers to obtain experience credit when the Director exercises the discretion to grant it.

The Department does not anticipate any impact on the private employment of appraisal management companies because the rulemaking brings the rules in alignment with existing federal requirements.

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.

Appraisers and Appraisal Management Companies are potentially small businesses subject to the proposed rulemaking.

(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. Most costs are imposed by the correlate Arizona statutes (A.R.S. §§ 32-3601 through 32-

3680) and the existing federal laws and regulations (12 U.S.C. 3353(d); 12 CFR 34.214), not the three rules being amended.

(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 does not believe that any of the methods listed at A.R.S. § 41-1035 are useful to reduce the impact of the rulemaking on small businesses, specifically Appraisal Management Companies, because they are already required to comply with federal requirements. The current rulemaking simply aligns the federal and state requirements.

(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, specifically the changes to R4-46-403 and R4-46-406, offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking which is to effectively regulate Appraisal Management Companies.

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.

Real Estate Appraisal

Authorizing Statute

32-3605. Deputy director; duties; powers; immunity

A. The deputy director shall adopt rules in aid or in furtherance of this chapter.

B. The deputy director shall:

1. Adopt standards for appraisal practice that is regulated by this chapter. The standards at a minimum shall be equivalent to the standards of professional appraisal practice.

2. In prescribing criteria for certification, adopt criteria that at a minimum are equal to the minimum criteria for certification adopted by the appraiser qualifications board.

3. In prescribing criteria for licensing and registration, adopt criteria that at a minimum are equal to the minimum criteria for licensing and registration adopted by the appraiser qualifications board.

4. Further define by rule with respect to state-licensed or state-certified appraisers appropriate and reasonable educational experience, appraisal experience and equivalent experience that meets the statutory requirement of this chapter.

5. Adopt the national examination as approved by the appraiser qualifications board for state-certified appraisers.

6. Adopt the national examination as approved by the appraiser qualifications board for state-licensed appraisers.

7. Establish administrative procedures for:

(a) Processing applications for licenses and certificates, including registration certificates.

(b) Approving or disapproving applications for registration, licensure and certification.

(c) Issuing licenses and certificates, including registration certificates.

8. Define by rule, with respect to registered trainee appraisers and state-licensed and state-certified appraisers, the continuing education requirements for the renewal of licenses or certificates that satisfy the statutory requirements provided in this chapter.

9. Periodically review the requirements for the development and communication of appraisals provided in this chapter and adopt rules explaining and interpreting the requirements.

10. Define and explain by rule each stage and step associated with the administrative procedures for the disciplinary process pursuant to this chapter, including:

(a) Prescribing minimum criteria for accepting a complaint against a registered trainee appraiser or a licensed or certified appraiser. The deputy director may not consider a complaint for administrative action if the complaint either:

(i) Relates to an appraisal that was completed more than five years before the complaint was submitted to the deputy director or more than two years after final disposition of any judicial proceeding in which the appraisal was an issue, whichever period of time is greater.

(ii) Is filed against a person who is a staff person of the department and the person is a licensed or certified appraiser and the complaint is against the person's license or certificate and relates to the person's performance of duties. This item applies to a contract investigator who is under contract with the department for the performance of an appraisal review as defined by the uniform standards of professional appraisal practice.

(b) Defining the process and procedures used in investigating the allegations of the complaint. The deputy director shall consolidate complaints that are filed within a six-month period of time if the complaints are against the same appraiser, relate to the same appraisal and property and are filed by an entity that is subject to the mandatory reporting provisions of the Dodd-Frank Wall Street reform and consumer protection act (P.L. 111-203; 124 Stat. 1376). Complaints that are consolidated pursuant to this subdivision must be considered and adjudicated as one complaint.

(c) Defining the process and procedures used in hearings on the complaint, including a description of the rights of the deputy director and any person who is alleged to have committed the violation.

(d) Establishing criteria to be used in determining the appropriate actions for violations.

11. Communicate information that is useful to the public and appraisers relating to actions for violations.

12. Issue decrees of censure, fix periods and terms of probation and suspend and revoke licenses and certificates pursuant to the disciplinary proceedings provided for in section 32-3631.

13. At least monthly transmit to the appraisal subcommittee a listing of all appraisal management companies that have received a state certificate of registration in accordance with this chapter.

14. Investigate and assess potential law or order violations and discipline, suspend, terminate or deny registration renewals of appraisal management companies that violate laws or orders. The deputy director shall report violations of appraisal-related laws or orders and disciplinary and enforcement actions to the appraisal subcommittee.

15. Transmit the national registry fee collected pursuant to section 32-3607 to the appraisal subcommittee.

16. Establish the fees in accordance with section 32-3607.

17. Receive applications for state licenses and certificates.

18. Maintain a registry of the names and addresses of persons who are registered, licensed or certified under this chapter.

19. Retain records and all application materials submitted to the deputy director.

20. Publish on the department's website a current list of supervisory appraisers and registered trainee appraisers.

21. Perform such other functions and duties as may be necessary to carry out this chapter.

C. The deputy director may accept and spend federal monies and grants, gifts, contributions and devises from any public or private source to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of the fiscal year.

D. The deputy director may impose civil penalties pursuant to section 32-3631.

Real Estate Appraisal

Implementing Statutes

32-3614.01. Application for registered trainee appraiser certificates

An application for a registered trainee appraiser certificate shall be made on a form prescribed by the deputy director and be accompanied by the fees prescribed by section 32-3607. An applicant must complete education requirements as outlined by the appraiser qualifications board. The applicant must submit proof that the applicant has successfully passed the required courses that are specifically oriented to the requirements and responsibilities of supervisory appraisers and trainee appraisers and that comply with the specifications established by the appraiser qualifications board.

32-3615. Experience requirement for licensure or certification

A. Each applicant for licensure or certification shall have experience that was acquired within ten years immediately preceding the filing of the application for licensure or certification.

B. Each applicant for licensure or certification shall furnish under oath a detailed listing of the real estate or other appraisal reports, review reports or filed memoranda for each year for which experience is claimed by the applicant. On request, the applicant shall make available to the deputy director for examination copies of appraisal reports that the applicant has prepared in the course of the applicant's appraisal experience.

32-3680. Rulemaking authority

The deputy director shall adopt rules that are reasonably necessary to implement, administer and enforce this article, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with this article and rules requiring a surety bond to be posted with each application.

D-6.

Department of Insurance and Financial Institutions
Title 20 Chapter 6

Amend: R20-6-1902, R20-6-1906, and R20-6-1912

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: **October 22, 2024**

SUBJECT: **Arizona Department of Insurance and Financial Institutions (DIFI)**
Title 20, Chapter 6, Article 19

Amend: R20-6-1902, R20-6-1906, and R20-6-1912

Summary:

This regular rulemaking by the Department of Insurance and Financial Institutions (Department) seeks to amend three (3) rules in Title 20, Chapter 6, Article 19 regarding Health Care Service Organizations (HCSOs). Specifically, the proposed rules would remove redundant definitions and update certain definitions to align with existing statutes, eliminate the requirement that HCSOs maintain a central place of business, and eliminate the requirement that HCSOs produce a current paper network except when requested by an enrollee or prospective enrollee.

The proposed rule amendments partially arose following the Department's 2020 Five-Year Review Report (5YRR) for Sections R20-6-1906 and R20-6-1912. The changes proposed for Section R20-6-1902 are not related to any 5YRR.

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

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

The Department indicates that this regulation applies to Health Care Service Organizations (HCSO) regulated by the Department and subject to Title 20, Chapter 4, Article 9 (A.R.S. § 20-1051 through 20-1079) and A.A.C. R20-6-1901 through R20-6-1921. The Department states that the primary purpose of this rulemaking is to address proposed changes in the Department's 2020 Five-Year Review Report and to clean up the rule containing definitions. The Department indicates that no additional costs are anticipated to be imposed upon HCSOs. The Department anticipates that an HCSO may realize savings as a result of relaxing the requirements to maintain a central place of business within the major geographical area served, no longer requiring the CEO to be based at the HCSO's central place of business and eliminating paper network directory unless requested.

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 that the current rulemaking offers the least intrusive and least costly alternative method of achieving the purpose of the proposed rulemaking, which is to relax some of the requirements currently imposed on HCSOs.

6. What are the economic impacts on stakeholders?

The Department does not anticipate any additional cost to be imposed upon licensees. The Department anticipates some minimal benefits to licensees due to the relaxation of some prior requirements in the current rulemaking. No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking. The Department does not expect any appreciable increase in either costs or benefits to private persons and consumers by this rulemaking.

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 Department stated that no comments were provided on any of the proposed rules.

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

The Department indicates that the rule does not require a permit, stating that the issuance of a general permit is not technically feasible and would not meet the applicable statutory requirements. The Department further stated that an insurer wishing to do business in Arizona as an HCSO must obtain a Certificate of Authority from the Department pursuant to A.R.S. § 20-1052.

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 cites a federal regulation, 45 CFR 156.230(b), concerning "Network adequacy standards" that correspond with R20-6-1912. The Department indicated that the rule is not more stringent than federal law. No other federal statutes or regulations were cited as corresponding with R20-6-1902 and R20-6-1906.

11. Conclusion

This regular rulemaking by the Department seeks to amend three (3) rules in Title 20, Chapter 6, Article 19 regarding HCSOs. The proposed rule amendments partially arose following the Department's 2020 5YRR for Sections R20-6-1906 and R20-6-1912. The changes proposed for Section R20-6-1902 are not related to any 5YRR.

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

Council staff recommends approval of this rulemaking.

Arizona Department of Insurance and Financial Institutions
100 N 15th Avenue, Suite 261, Phoenix, Arizona 85007
(602) 364-3100 | difi.az.gov

Katie Hobbs
Governor

Barbara D. Richardson
Director

October 1, 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
Health Care Services Organizations Oversight ("HCSO") Rulemaking

Dear Chairperson Klein:

Please find enclosed the Final Rulemaking for the HCSO 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 2020 Five-Year Review Report for Sections R20-6-1906 and R20-6-1912. The changes proposed for Section R20-6-1902 are not related to any 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;
    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 26, 2024

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

R20-6-1902	Amend
R20-6-1906	Amend
R20-6-1912	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. § 20-1078

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 # R24-143

Notice of Proposed Rulemaking: 30 A.A.R. 2490, August 2, 2024, Issue 31, File # R24-139

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 19: Health Care Services Organizations Oversight. The rules augment the statutory sections regulating these types of insurers found at Title 20, Chapter 4, Article 9, A.R.S. §§ 20-1051 through 20-1079. This rulemaking fulfills a commitment made by the Department in its 2020 Five-Year Review Report for Sections R20-6-1906 (eliminate the publication of a paper directory) and R20-6-1912 (eliminate the requirement to have the CEO of the organization reside in Arizona). These changes are intended to reduce regulatory burdens on licensees.
Three rules in Article 19 (Health Care Services Organizations Oversight) are amended as follows:

- R20-6-1902 (Definitions) will be amended to either eliminate redundant definitions already contained in statute or to align existing definitions with statute, to update the name of the Department, to add a definition for "Director," and to add numbers for easier reference.
- R20-6-1906 (Chief Executive Officer) will be amended to eliminate the requirements for the Health Care Services Organization ("HCSO") to maintain a central place of business within the major geographic area served, and for the Chief Executive Officer ("CEO") of the HCSO to be based at the HCSO's central place of business.
- R20-6-1912 (Network Directories) will be amended to eliminate the requirement for an HCSO to produce a current paper network directory except when requested

by an enrollee or perspective enrollee.

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 HCSOs. Instead, its purpose is to address changes proposed in the Department's 2020 Five-Year Review Report and to clean up the rule containing definitions.

Pursuant to A.R.S. § 41-1055(A)(2):

- No additional costs are anticipated to be imposed upon HCSOs. Instead, the Department anticipates that an HCSO may realize savings as a result of relaxing the requirement to maintain a central place of business within the major geographic area served, no longer requiring the CEO to be based at the HCSO's central place of business, and eliminating the paper network directory unless requested.

- 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:

The Department added an underline to the subsection label at R20-6-1902(25)(b) which was omitted in the Notice of Proposed Rulemaking (label (a) was underlined). The Department created two subsections to the existing rule definition for "Network exception" for readability only. The Department did not add any new text and the Department does not consider this a substantial change within the meaning of A.R.S. § 41-1025.

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:**

The rule does not require a permit. The issuance of a general permit is not technically feasible and would not meet the applicable statutory requirements. An insurer wishing to do business in Arizona as an HCSO must obtain a Certificate of Authority from the Department pursuant to A.R.S. § 20-1052.

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 Regulation 45 CFR 156.230(b), "Network adequacy standards" corresponds to Section R20-6-1912. The 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 19. health care services organizations oversight

Section

ARTICLE 19. health care services organizations oversight

R20-6-1902. Definitions

~~In this Article, the following definitions apply:~~ In addition to the definitions provided in A.R.S. § 20-1051, the following terms apply to this Article:

1. "Access" or "accessibility" means the extent to which an enrollee can obtain timely covered services from a contracted provider at the appropriate level of care, and appropriate location.
2. "Adult" means an enrollee in the age group the HCSO has designated for an adult.
3. "Adult PCP" means a primary care provider practicing in any specialty the HCSO designates as adult primary care.
4. "Ancillary provider" means a provider of laboratory, radiology, pharmacy or rehabilitative services, physical therapy, occupational therapy, or speech therapy, home health services, dialysis, and durable medical equipment or medical supplies dispensed by order or prescription of a provider with the appropriate prescribing authority.
5. "Available" or "availability" means the extent to which the plan has contracted providers of the appropriate type and numbers at geographic locations to afford members access to timely covered services.
6. "Chief executive officer" or "CEO" means the person who has the authority and responsibility for the operation of the health care services organization according to applicable legal requirements and policies approved by the governing authority.

7. "Child" means an enrollee in the age group the HCSO has designated for children.
8. "Contracted" means a provider has a current written agreement or an employment arrangement with an HCSO to provide covered services to an enrollee, or a current written agreement or an employment arrangement with a contracted provider to provide covered services to an enrollee.
9. "Covered" or "covered services" means the health care services described as covered benefits in the HCSO's evidence of coverage.
10. "Day" means calendar day unless specified otherwise.
11. "Department" means the Department of Insurance~~.~~ and Financial Institutions.
12. "Director" has the meaning stated at A.R.S. § 20-102.
13. "Effective process" means written policies and procedures that:
a. Outline the steps that the HCSO implements and consistently follows internally,
b. The HCSO subjects to internal quality improvement, and
c. The HCSO communicates to providers when established or changed.
14. "Emergency services" has the meaning ~~in~~ stated at A.R.S. § 20-2801(3).

~~"Enrollee" means an individual who is enrolled in a health plan operated by an HCSO.~~

15. "Facility" means an institution that is licensed or authorized to furnish health care services in this state, including general hospitals, special hospitals, residential treatment centers, residential rehabilitation centers, skilled nursing facilities, urgent care centers, and ambulatory surgical treatment centers.
16. "Governing authority" means a person or body such as a board of trustees or board of directors in whom the ultimate authority and responsibility for the direction of the HCSO is vested.
17. "HCSO" means a health care services organization.

~~"Health care services" has the meaning in A.R.S. § 20-1051(6).~~

18. "High profile" means one of no fewer than four specialties designated by the HCSO, and does not include obstetrics-gynecology. An HCSO may designate a specialty as high profile on the basis of high volume or other basis the HCSO reasonably determines is directly related to providing covered services to a member.

19. "Hospital" means a facility that provides inpatient care, medical services, and continuous nursing services for the diagnosis and treatment of patients.

20. "Inpatient care" means the covered services that an enrollee who is admitted to a hospital receives for at least 24 consecutive hours.

21. "Inpatient emergency care" means covered services that would be emergency services if provided in a licensed hospital emergency facility.

22. "License" means documented authorization issued by the appropriate state of Arizona agency to operate a facility in Arizona, or to practice a health care profession in Arizona.

23. "Medically necessary" has the meaning set forth in the HCSO's evidence of coverage.

24. "Network" means the group of providers contracted with an HCSO to provide covered services to an enrollee covered under the HCSO's health benefit plan.

25. "Network exception" means an enrollee receives covered services from a non-contracted provider either:

    a. Because there is no contracted provider accessible or available that can provide the enrollee timely covered services, or

    b. For any reason the HCSO determines it is in the enrollee's best interests to receive care from a non-contracted provider.

26. "Non-contracted" means a provider that does not have a contract with an HCSO to provide services to an enrollee.

27. "Normal business hours" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state or national holidays.

28. "Outpatient care" means covered services that an enrollee who is not an inpatient receives.

29. "Pediatric primary care provider" means a physician or practitioner practicing in any specialty the HCSO designates as pediatric primary care.

30. "Physician" means a licensed doctor of allopathic, chiropractic, optometric, osteopathic, or podiatric medicine.

31. "Practitioner" means any individual other than a physician who is licensed to furnish health care services, including behavioral health care services, in this state.

32. "Preventive care" means health maintenance care the HCSO provides or arranges to prevent illness and to improve the general health of an enrollee, including:
    a. Immunizations,
    b. Health education,
    c. Health evaluation and follow-up,
    d. Early disease detection,
    e. Screening tests appropriate for a person's age and gender, and
    f. Periodic health care examinations.
33. "Primary care" means any specialty the HCSO designates as primary care.
34. "Primary care physician" or "PCP" means a physician or practitioner practicing in a specialty the HCSO designates as primary care.

    ~~"Provider" means any physician, practitioner, ancillary provider, or facility.~~
35. "Quality improvement" means an HCSO's system for assessing and improving the level of performance of key process and outcomes.
36. "Routine care" means covered primary care for an enrollee's non-urgent, symptomatic condition.
37. "Rural" means a zip code area with fewer than 1,000 persons per square mile as calculated annually by a population data gathering service designated by the Director.
38. "Service area" means any geographic area designated by any HCSO and approved by the Director under A.R.S. § 20-1053(A)(11).
39. ~~"Specialty care provider" or "SCP" means a physician or practitioner who has education, training, or qualifications in a specialty, other than primary care, beyond the education or qualifications required for the license.~~ "Special hospital" means a hospital that is licensed to provide hospital services within a specific area of medicine, or limits patient admission according to age, gender, type of disease, or medical condition.
40. "Specialty" or "specialty care" means a specific area of medicine practiced by a physician or practitioner who has education, training, or qualifications in that specific area of medicine in addition to the education or qualifications required for the physician's or practitioner's license.

41. ~~"Special hospital" means a hospital that is licensed to provide hospital services within a specific area of medicine, or limits patient admission according to age, gender, type of disease, or medical condition.~~ "Specialty care provider" or "SCP" means a physician or practitioner who has education, training, or qualifications in a specialty, other than primary care, beyond the education or qualifications required for the license.
42. "Suburban area" means any zip code area with 1,000-3,000 persons per square mile, as calculated annually by a population data gathering service designated by the Director.
43. "Telemedicine" ~~means diagnostic, consultation, and treatment services that occur in the physical presence of an enrollee on a real-time basis through interactive audio, video, or data communication.~~ has the same meaning as "telehealth" found at A.R.S. § 20-1057(G).
44. "Timely" means services are provided at the time when medically necessary.
45. "Travel expenses" has the meaning set forth in writing by an HCSO.
46. "Urban area" means a zip code with more than 3,000 persons per square mile as calculated annually by a population data gathering service designated by the Director.
47. "Urgent care" means unscheduled services for an enrollee's condition that requires medical attention not amenable to scheduling in order to avoid a serious risk of harm.

R20-6-1906. Chief Executive Officer

A. The governing authority shall appoint a CEO who has appropriate education and experience to manage the HCSO. The governing authority shall define the authority and duties of the CEO in writing. The CEO is the appointed representative of the governing authority and is the executive officer of the HCSO.

B. The CEO shall have at least the following duties and responsibilities:

1. Manage the HCSO;
2. Establish and implement policies, procedures, and effective processes of the HCSO;
3. Act as liaison between the governing authority and the providers of healthcare and other services to the HCSO; and
4. Establish a written plan of authority that will be in place in the CEO's absence.

C. When there is a change of CEO, the governing authority shall notify Department within 10 days after the effective date of change.

D. The HCSO shall ensure that all HCSO employees and contracted providers are knowledgeable about and qualified to perform the duties assigned to them through employment or by contract.

E. The HCSO shall designate a central place of business ~~within the major geographic area served at which the CEO shall be based and~~ from which the HCSO shall direct administrative activities.

R20-6-1912. Network Directories

A. An HCSO shall publish a provider network directory as follows:

1. An HCSO shall list the name, address, telephone number, specialty, and hospital affiliation for all in-area contracted physicians or practitioners~~.~~ ;
2. An HCSO may list ancillary providers by corporate or group name and is not required to list individual physicians or practitioners~~.~~ ;
3. An HCSO is not required to list physicians or practitioners in the following areas of specialties or areas of practice:
   a. Emergency medicine;
   b. Anesthesiology, except anesthesiologists who provide pain management services;
   c. Hospital-based pathology;
   d. Hospital-based radiology; and
   e. Hospitalists~~.~~ ;
4. An HCSO that lists any of the physicians or practitioners in subsections R20-6-1912(A)(3)(a) through (A)(3)(e) may list by corporate or group name and is not required to list individual physicians or practitioners~~.~~ ;
5. An HCSO that uses hospitalists is not required to list the hospital affiliations of PCPs who do not admit or attend hospitalized members~~.~~ ;
6. An HCSO shall publish a provider network directory that lists all its contracted facilities and contains:

a. The name, address, and telephone number of each facility;
b. For each hospital at which the HCSO uses hospitalists, if any, a statement that the HCSO uses hospitalists at that hospital; and
c. For an HCSO that uses hospitalists and does not list them in the directory, information on how an enrollee can find out what hospitalists or group of hospitalists it uses at each hospital~~;~~ .

B. The network directory shall conspicuously state in the directory the following:

1. Changes occur in the network after the directory is published and some providers listed in the directory may no longer be contracted,
2. Enrollee coverage may depend on the contract status of the provider,
3. Where the enrollee can obtain more recent directory information,
4. The effective date of the network directory, and
5. The method for an enrollee or prospective enrollee to find out which PCPs are accepting new enrollees from the HCSO.

C. Each HCSO shall make its current network directory available on paper to enrollees or prospective enrollees ~~requesting it.~~ upon request. ~~The HCSO shall:~~

~~1. Publish the paper directory at least once a year;~~

~~2. Update or supplement the information in the paper directory at least every six months;~~

~~3. Explain in the paper directory how an enrollee or prospective enrollee can use or get assistance using the HCSO's online or telephone directories, if any; and~~

~~4. Have discretion to list physicians' or practitioners' hospital affiliations in its paper directory.~~

D. Each HCSO that has an online network directory shall:

1. Update the online directory at least monthly~~;~~ and in conformance with A.R.S. § 20-3455;
2. Make the online directory easy to use and user friendly; and
3. Explain, in the online directory, how an enrollee or prospective enrollee can ~~obtain~~ request a paper directory.

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 19: Health Care Services Organizations Oversight. The rules augment the statutory sections regulating these types of insurers found at Title 20, Chapter 4, Article 9, A.R.S. §§ 20-1051 through 20-1079.

This rulemaking amends the following 3 rules in Article 19 (Health Care Services Organizations Oversight) as follows:

- R20-6-1902 (Definitions) will be amended to either eliminate redundant definitions already contained in statute or to align existing definitions with statute, to update the name of the Department, to add a definition for "Director," and to add labels for easier reference.
- R20-6-1906 (Chief Executive Officer) will be amended to eliminate the requirements for the HCSO to maintain a central place of business within the major geographic area served, and for the CEO of the HCSO to be based at the HCSO's central place of business.
- R20-6-1912 (Network Directories) will be amended to eliminate the requirement for an HCSO to produce a current paper network directory except when requested by an enrollee or perspective enrollee.

This rulemaking fulfills a commitment made by the Department in its 2020 Five-Year Review Report for Sections R20-6-1906 and R20-6-1912.

Questions about this Economic Impact Statement may be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

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.

This regulation applies to Health Care Service Organizations regulated by the Department and subject to Title 20, Chapter 4, Article 9 (A.R.S. §§ 20-1051 through 20-1079) and A.A.C. R20-6-1901 through R20-6-1921.

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 does not anticipate any additional costs to be imposed upon licensees. The Department anticipates some minimal benefits to licensees due to the relaxation of some prior requirements in the current rulemaking. 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 HCSO. 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. An HCSO 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 or non-existent.

(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 relax some of the requirements currently imposed on HCSOs.

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.

HCSO Oversight

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.

HCSO Oversight

Implementing Statute

20-1078. Rules

The director may adopt rules pursuant to title 41, chapter 6 to carry out this article.

D-7.

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

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

FROM: Council Staff

DATE: October 22, 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

Summary:

This regular rulemaking from the Department of Water Resources (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. 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 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. 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 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. 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.

11. Conclusion

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
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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.

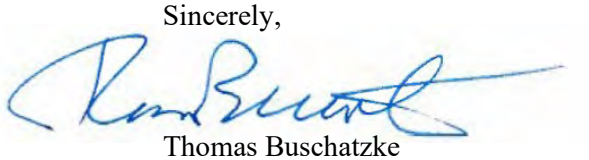
e) Additionally, the following documents are included in this rule package as required by A.A.C. R1-6-202(A)(1)(e) in the following order:

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
Telephone:	(602) 771-8472
Fax:	(602) 771-8686
Email:	epstrick@azwater.gov
Website:	www.azwater.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:

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

b. For an application for a designation of adequate water supply according to A.R.S. § 45-108(D), the area of land actually being served water for a nonirrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider's operating distribution system for the delivery of water for a non-irrigation use; or

c. For an application for a certificate or designation of assured water supply, "service area" has the same meaning as prescribed in A.R.S. § 45-402.

~~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.

~~4~~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

PINAL PARTNERSHIP
Uniting the Vision for Pinal County

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, 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

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JRose@RoseLawGroup.com
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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

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

DISCOVERY BUILDING COMPANIES INC.

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:

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 / 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.

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,

Matt McCormick
President, Coolidge Chamber of Commerce

Copper Butte, 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 Superior, AZ, ("0" S Richard Ave 6) 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
Copper Butte, LLC

DAYBREAK PECAN CO.

September 10, 2024

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:

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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.

September 10, 2024

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:

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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,

Craig D. Cardon
Managing Member

1223 S Clearview Avenue • Suite 105 • Mesa, Arizona 85209
Phone: (480) 222-5800 • Fax: (480) 222-5801

September 10, 2024

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

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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,

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.

September 10, 2024

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

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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,

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

September 10, 2024

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

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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,

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

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 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

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**

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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,

David Sabow
Manager
Franklin 643, LLC

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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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
Franklin 643, LLC

LAVIGNA INVESTMENTS CORPORATION

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 developer 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,

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

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,

Elijah T. Cardon
Secretary

1223 S. CLEARVIEW AVENUE, SUITE #105 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

LAVIGNA INVESTMENTS CORPORATION

September 10, 2024

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Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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Sincerely,

Craig D Cardon

Craig D. Cardon
Treasurer

1223 S. CLEARVIEW AVENUE, SUITE #105 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

LAVIGNA INVESTMENTS CORPORATION

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
President

1223 S. CLEARVIEW AVENUE, SUITE #105 - MESA, AZ 85209 - PHONE: (480) 222.5800 - FAX: (480) 222.5801

MT. OLYMPUS INVESTMENTS, L.L.C.

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,

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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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,

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

September 4, 2024

Sharon Scantlebury
Arizona Department of Water Resources
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

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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

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

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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,

Mayor Mila Besich
Town of Superior

VIEL GLUCK, LLC

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
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

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

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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

Commercial DIVISION WestUSA REALTY

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

ATTESA

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:

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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

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:

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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.

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.

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
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

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

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

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,

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

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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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.

25% Groundwater Offset

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.

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

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.

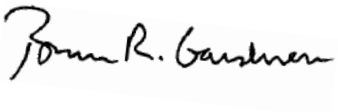
Agriculture to Urban Conversion Incentive

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

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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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

communities southwest

September 4, 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 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,

Greg Lehmann
Executive Vice President
Communities Southwest

communities southwest

September 4, 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:

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As a 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, without touching the existing water system. Under an 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,

Michael Markakis
Vice President
Communities Southwest

communities southwest

September 4, 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:

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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,

Luka Vignjevic
Chief Financial Officer
Communities Southwest

communities southwest

September 4, 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:

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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

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

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,

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

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

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

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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

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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

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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

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>
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: inf@podiumclub.com

Fri, Sep 20, 2024 at 1:52 PM

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> Fri, Sep 20, 2024 at 2:03 PM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

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

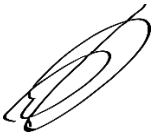
Dear Ms. Scantlebury:

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> Fri, Sep 20, 2024 at 4:03 PM
To: Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

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:

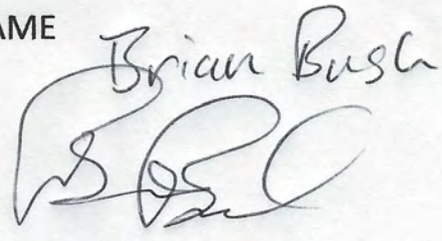
I am writing in staunch support of your proposed new rules regarding an Assured Water Supply for Pinal County.

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 Busch



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

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> Sat, Sep 21, 2024 at 2:24 PM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

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> Sat, Sep 21, 2024 at 11:04 AM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

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> Sat, Sep 21, 2024 at 11:44 AM
To: docketsupervisor@azwater.gov
Cc: Podium Club <info@podiumclub.com>

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> Sat, Sep 21, 2024 at 2:17 PM
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>
Cc: Podium Club <info@podiumclub.com>

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
15K

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

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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.

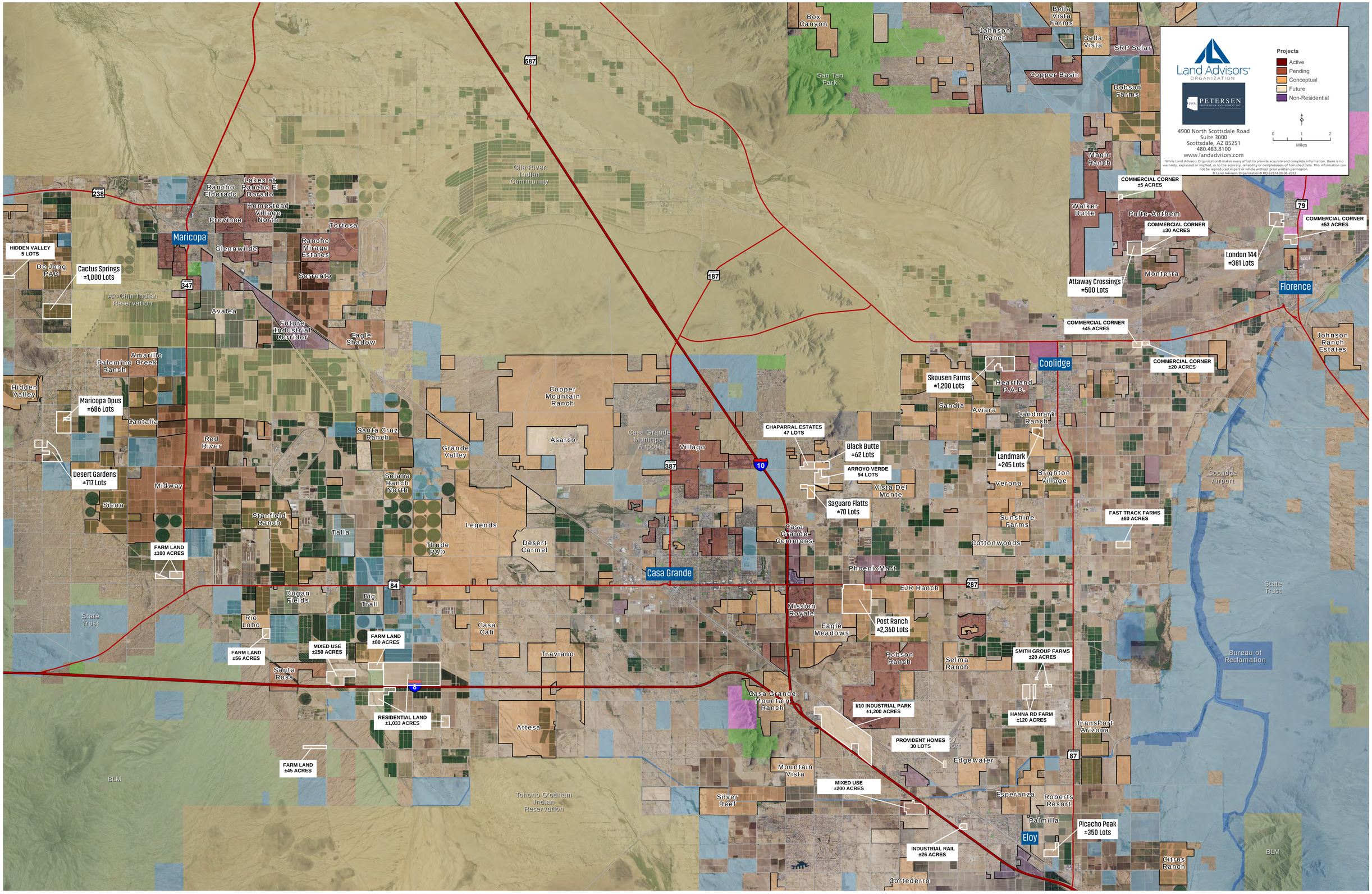
Sincerely,

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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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
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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

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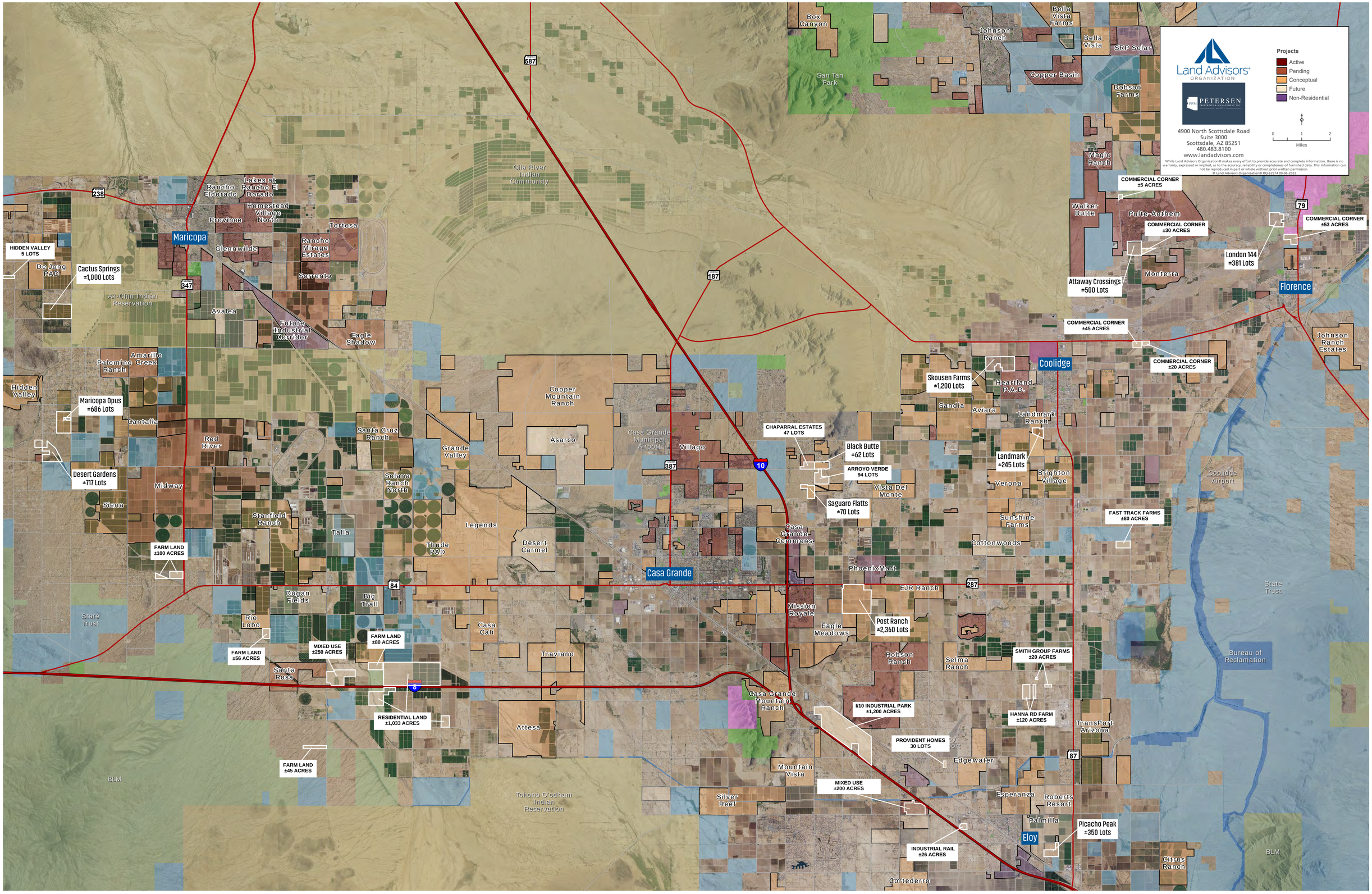
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Arroyo Verde 35, LLC
9.22.24

Sharon Scantlebury
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Arizona Department of Water Resources
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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

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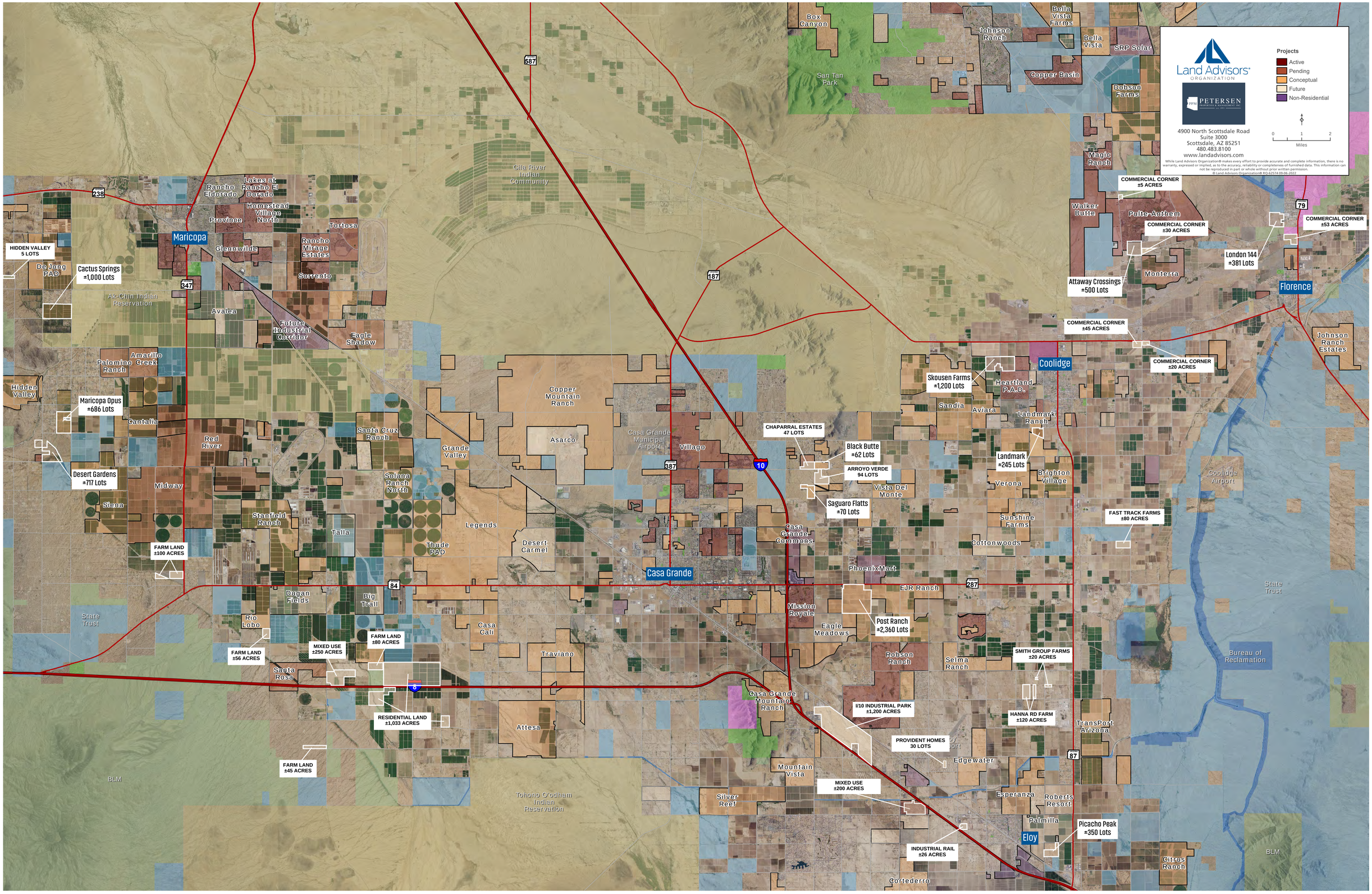
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Attaway & 287, LLC
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On behalf of **Attaway & 287, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Attaway & 287, LLC

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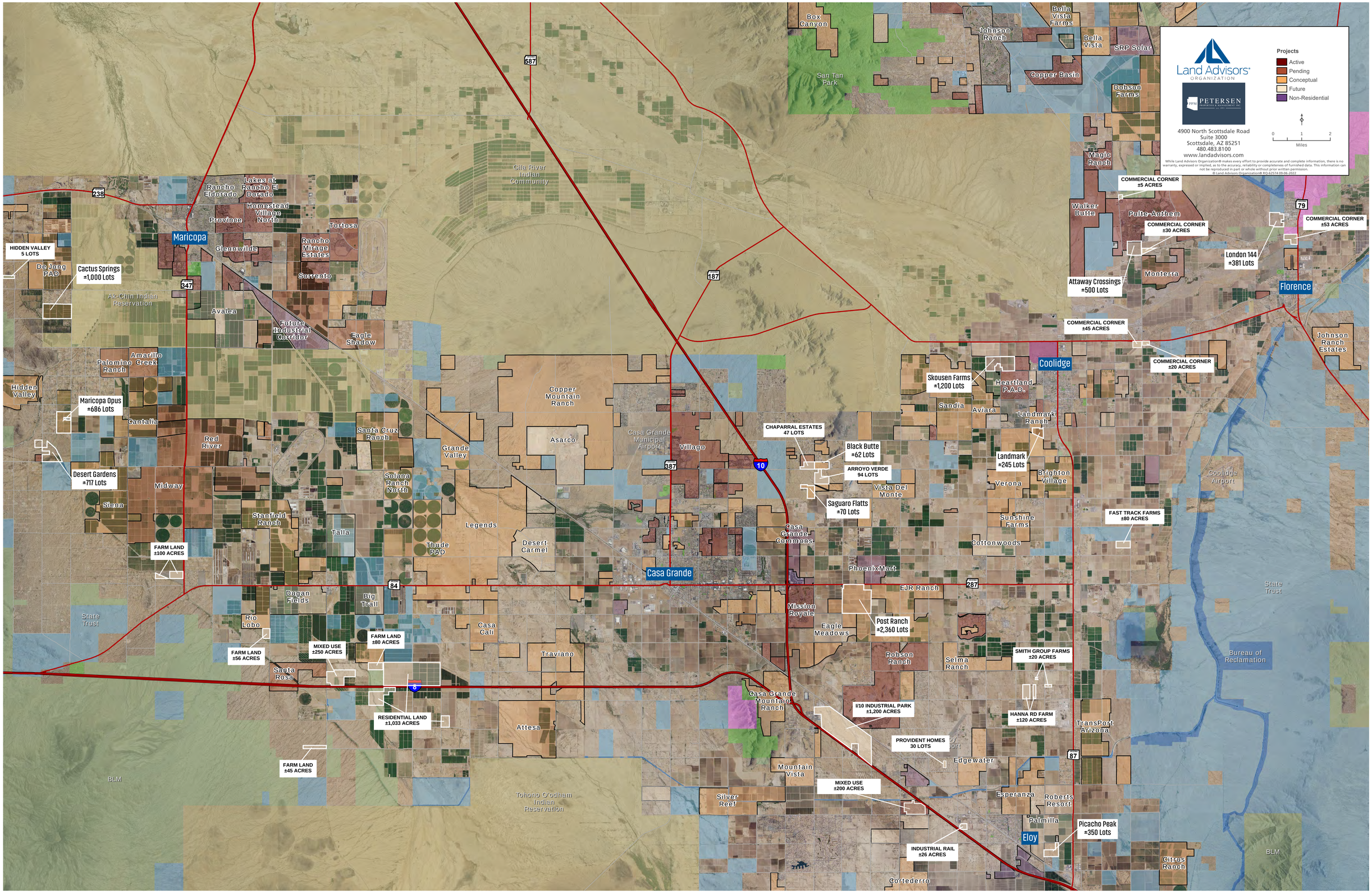
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On behalf of **ATTAWAY CROSSINGS 147, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
ATTAWAY CROSSINGS 147, LLC

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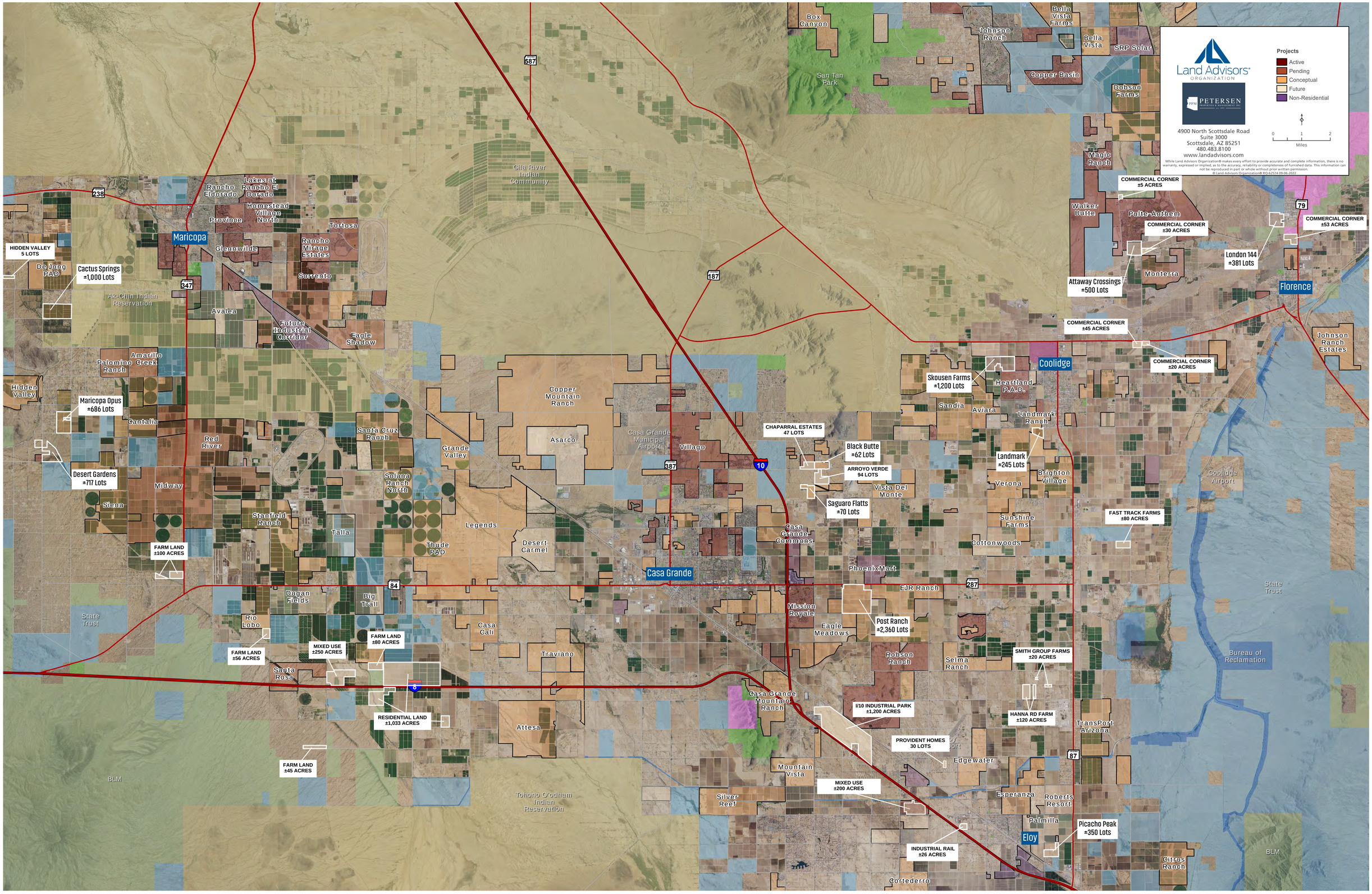
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CHAPARRAL ESTATES 47 LOTS
Black Butte ±62 Lots
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EJR Ranch
Mission Royale
Eagle Meadows
Post Ranch ±2,360 Lots
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Selma Ranch
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Black Butte 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

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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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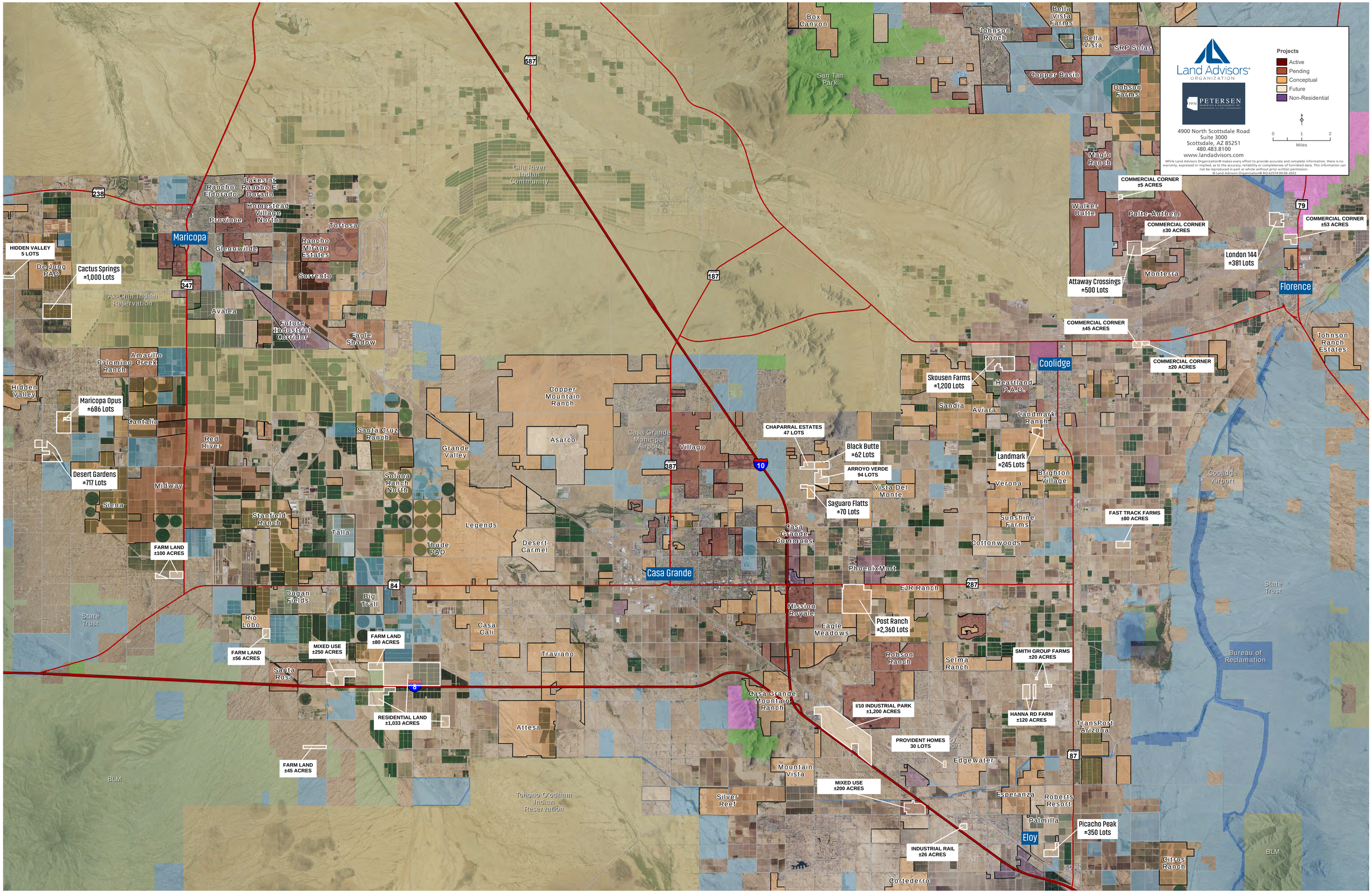
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Cactus Springs, LLC
9.22.24

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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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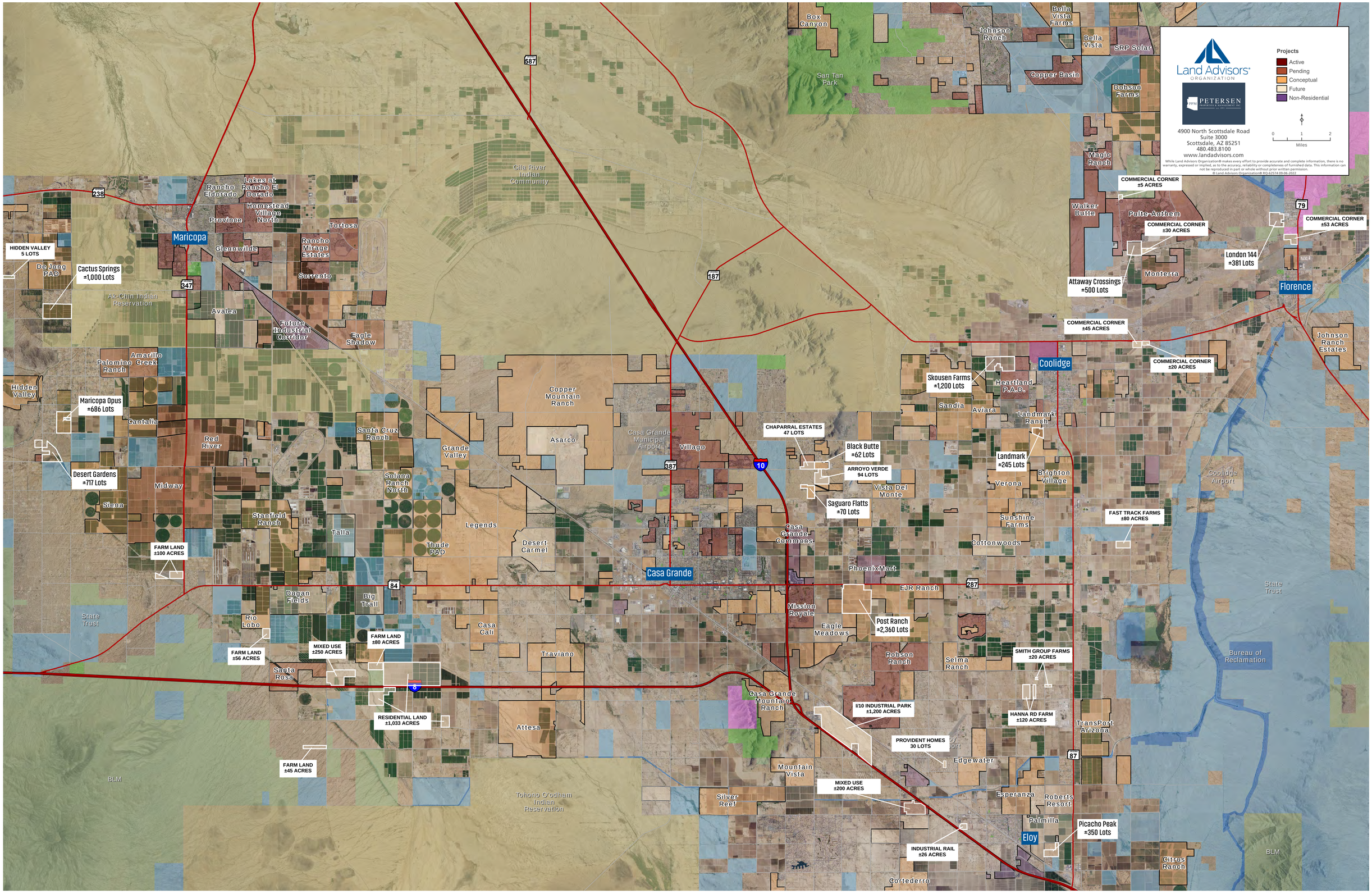
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Chaparral 13, LLC
9.22.24

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1110 W. Washington St. Suite 310
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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

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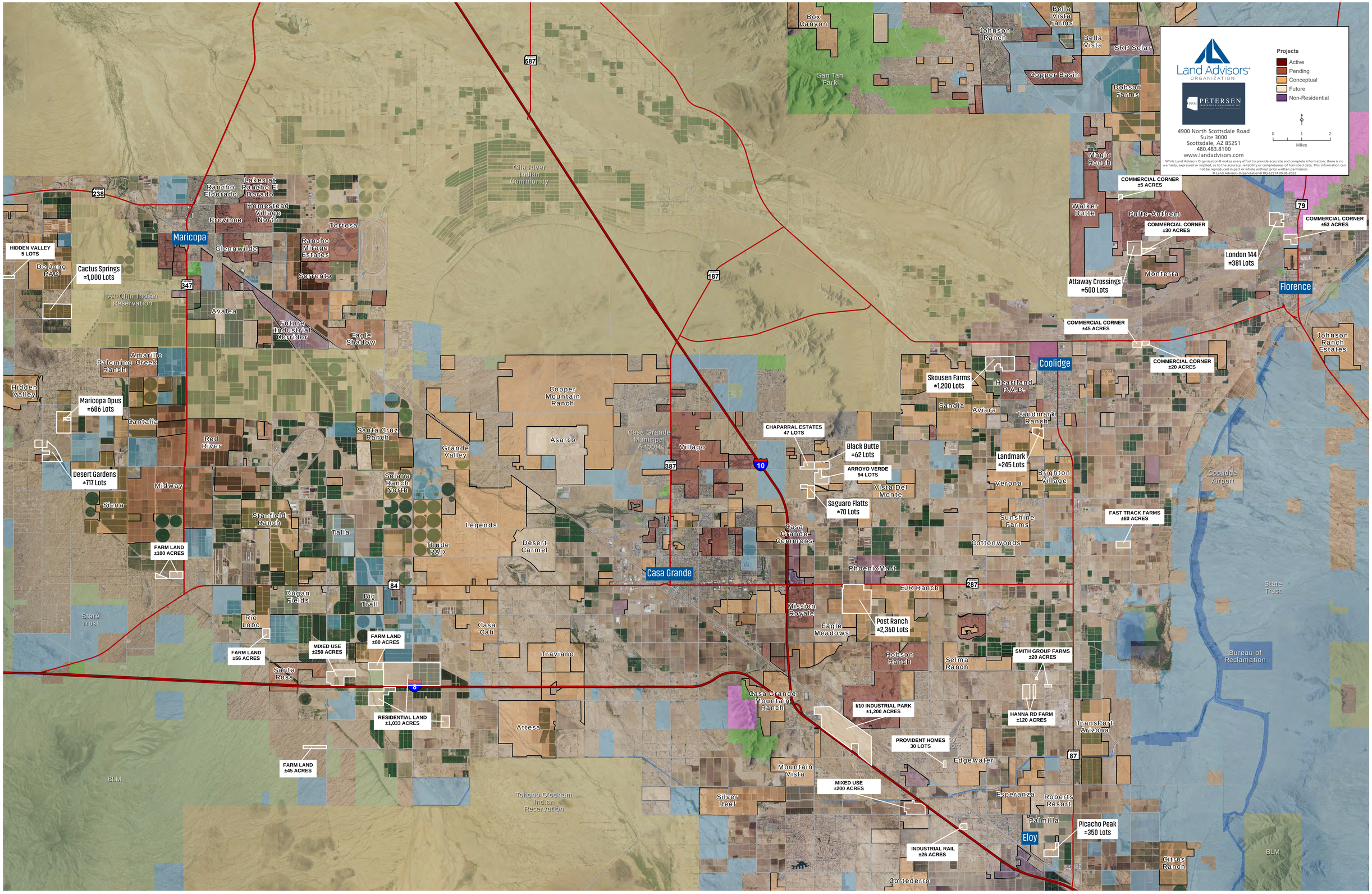
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PODIUM CLUB MEMBER

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.
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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

(o) 480.545.2208
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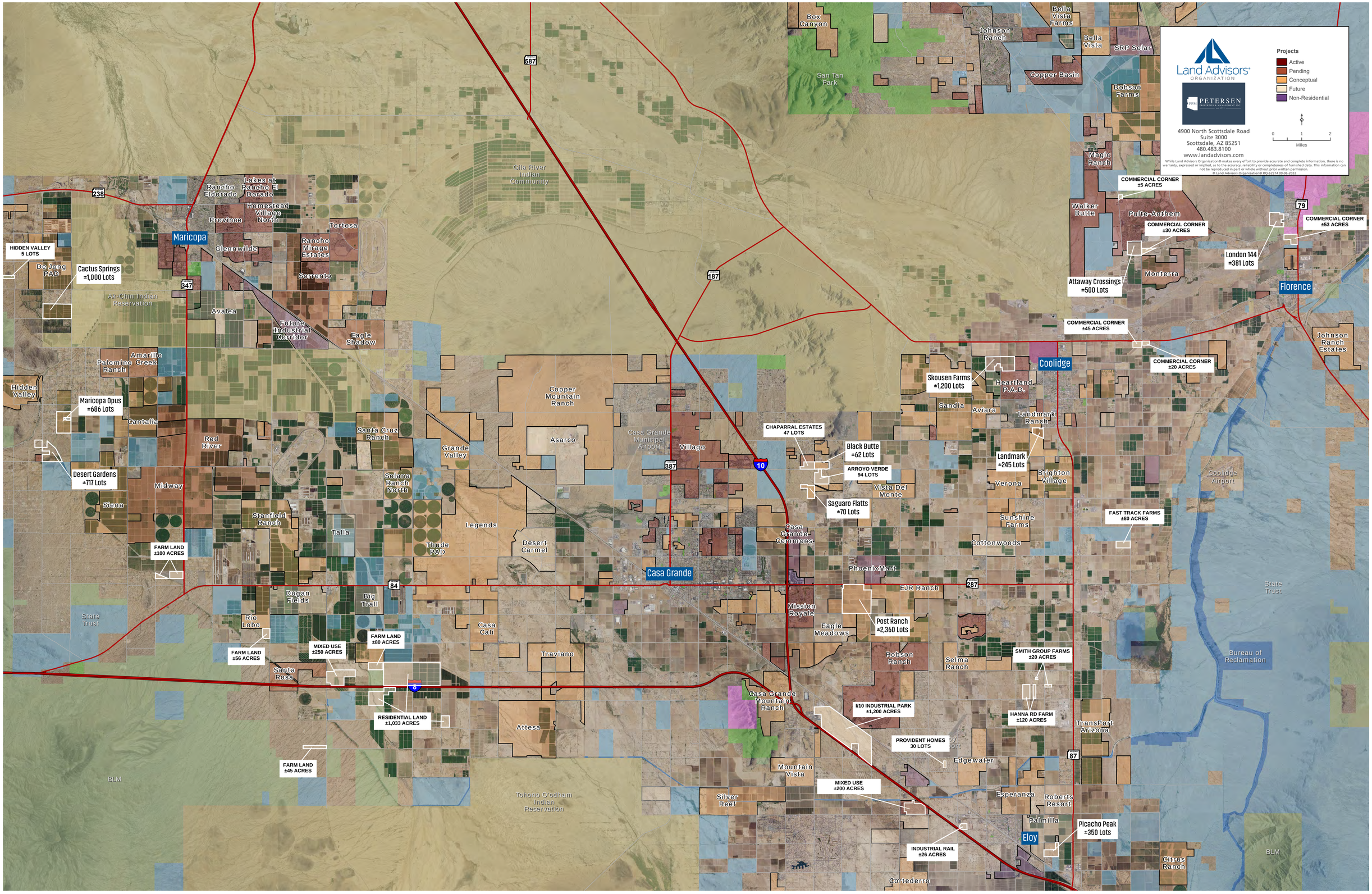
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On behalf of **Florence PG 53, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
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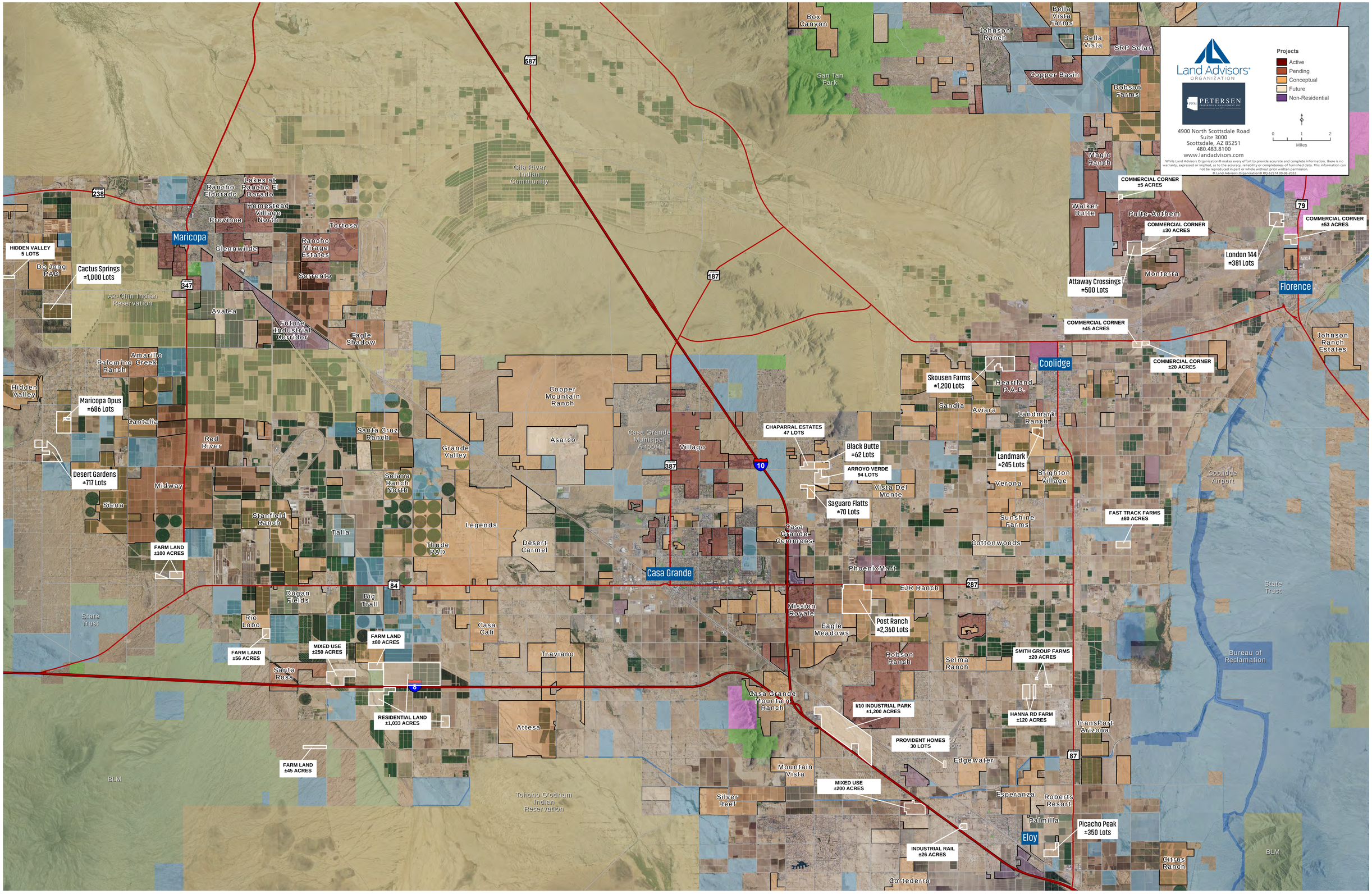
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Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

Gray Fowler <gray_fowler@yahoo.com>
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Sun, Sep 22, 2024 at 9:19 AM

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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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 **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

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3369 E. Queen Creek Rd, Ste 101
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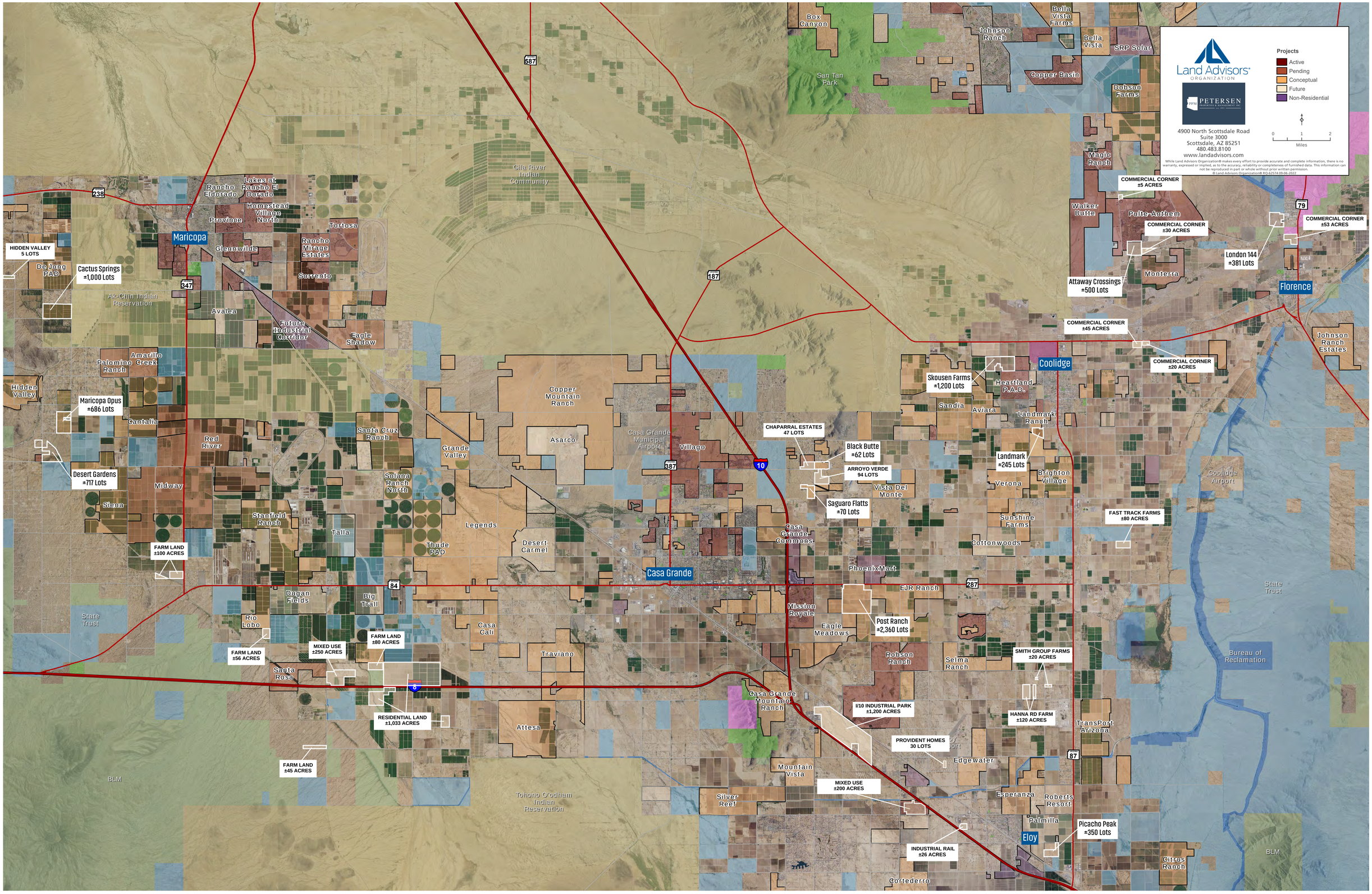
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PROPERTIES & MANAGEMENT INC.
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Heritage Creek 141, LLC
9.22.24

Sharon Scantlebury
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Arizona Department of Water Resources
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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

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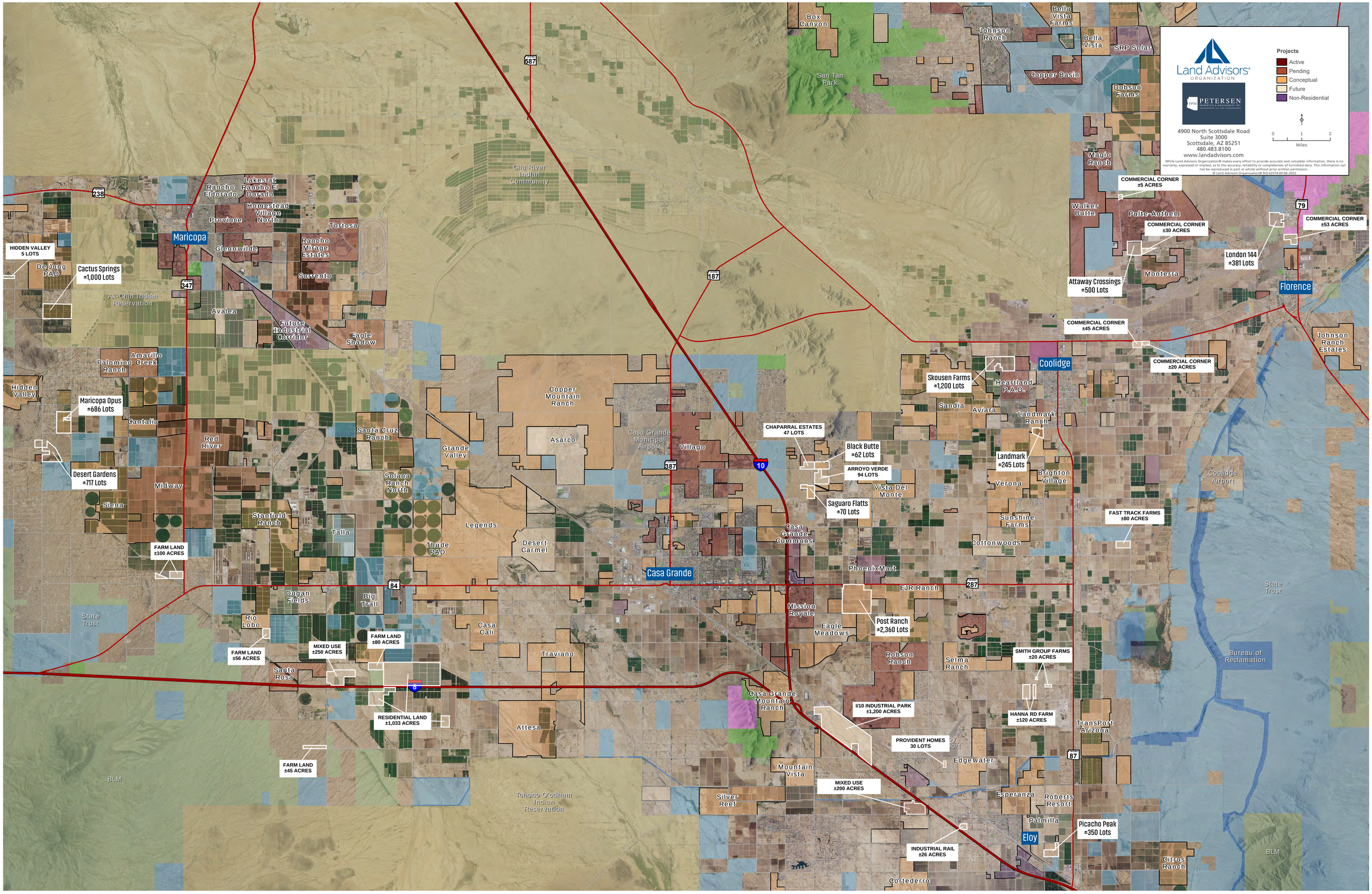
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Hidden Valley Rd 30, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
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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

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(c) 602.540.8151
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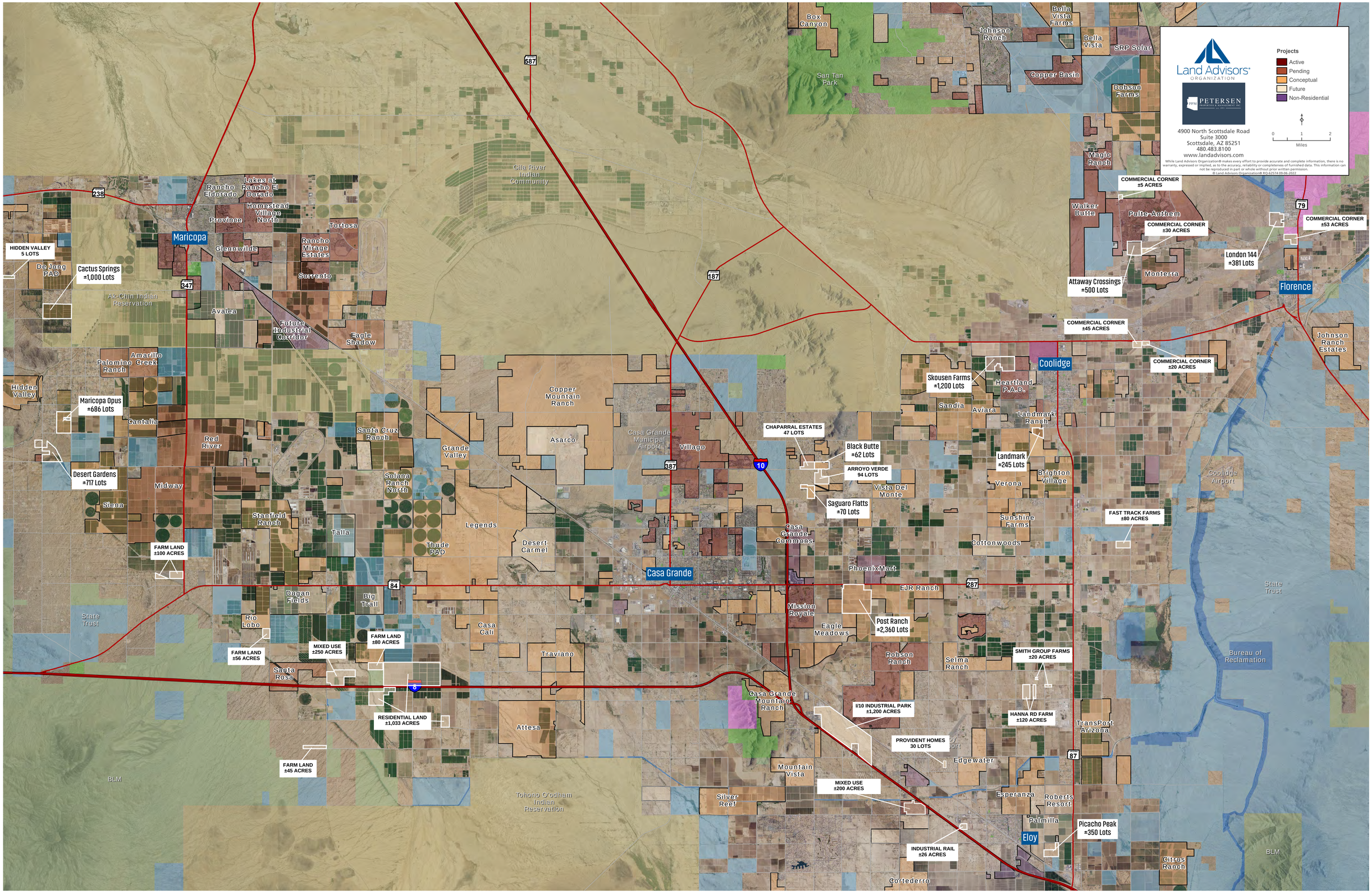
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On behalf of **HUNT EAST 30, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

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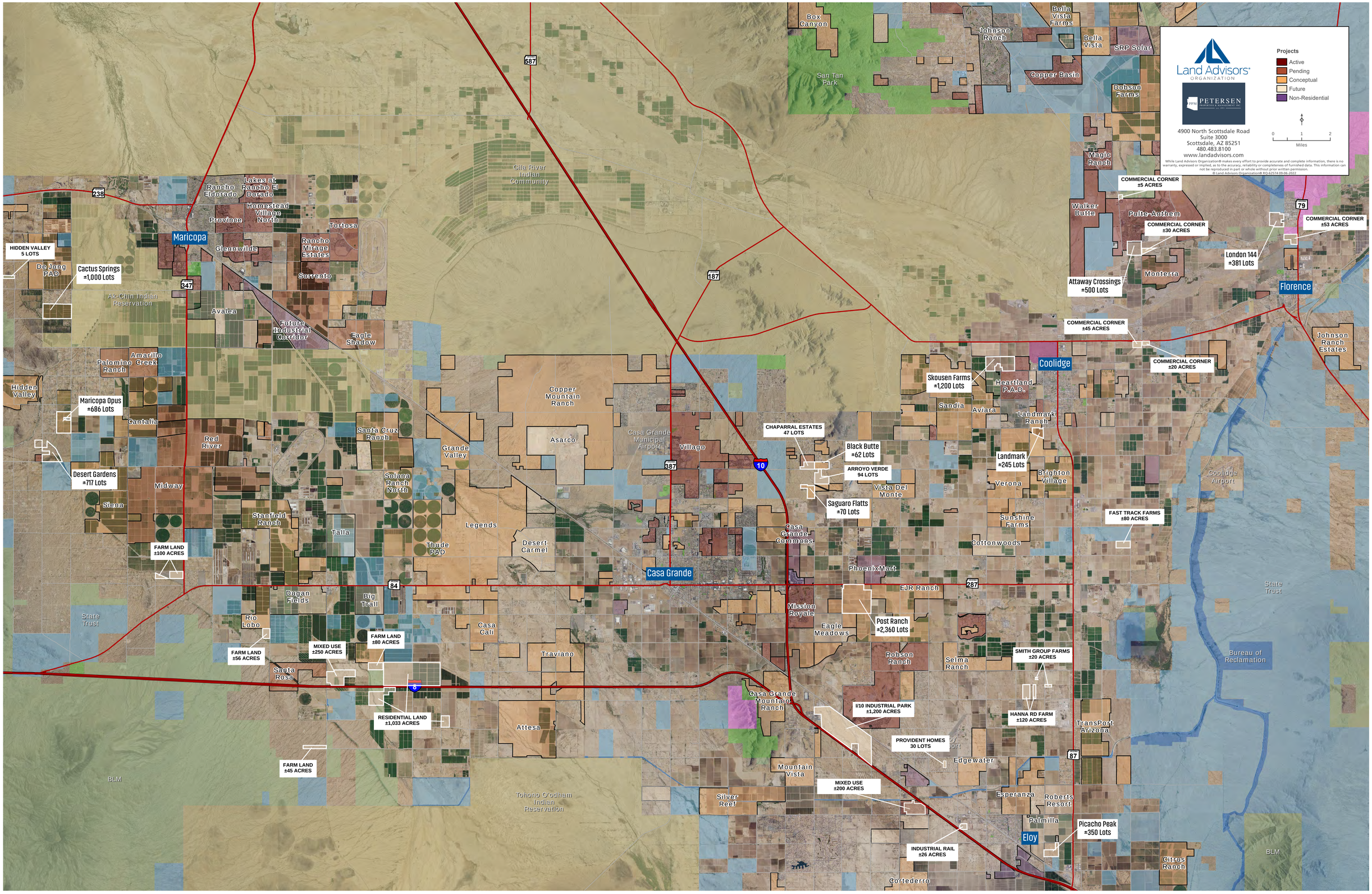
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

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

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 **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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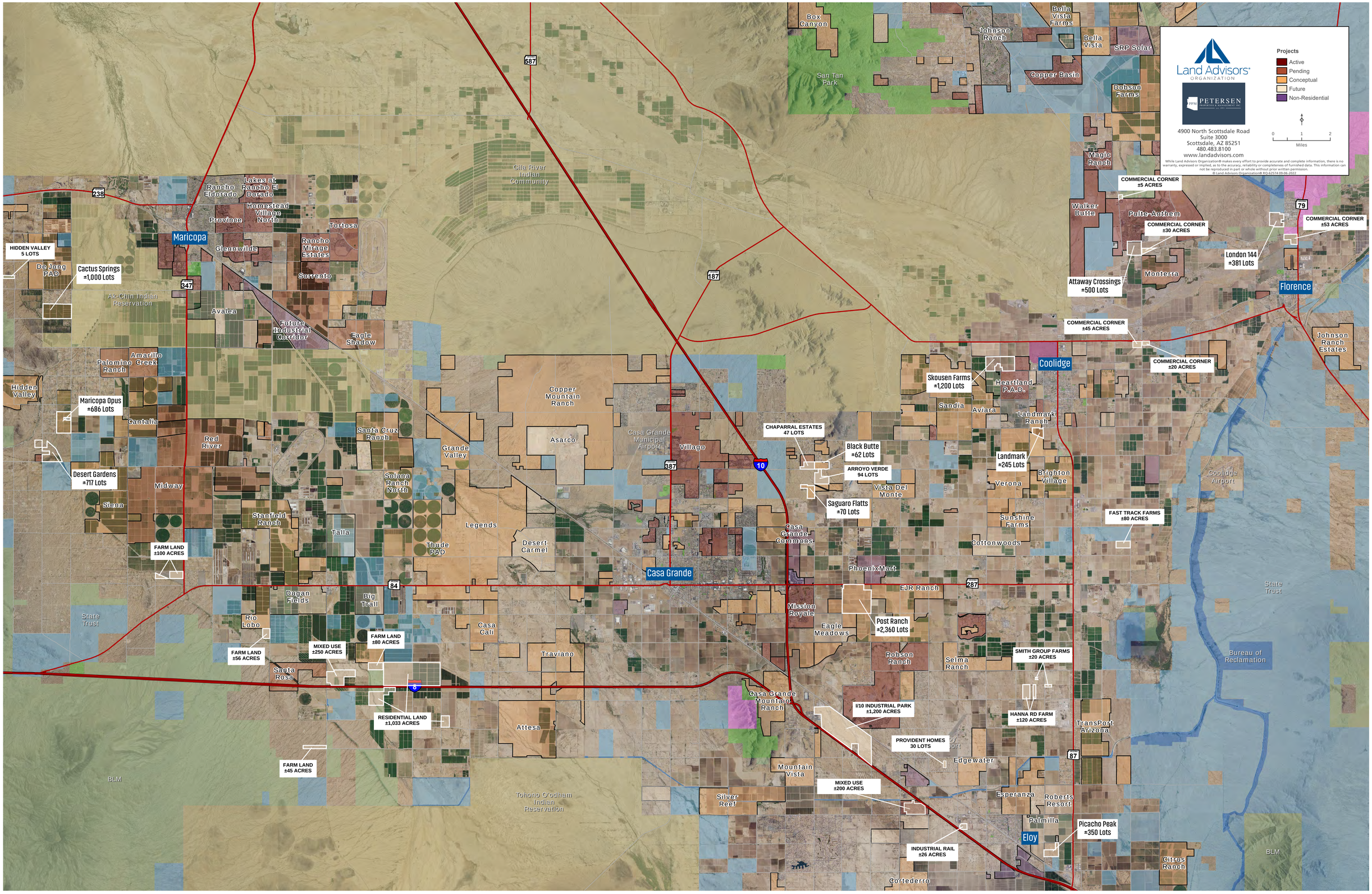
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PODIUM CLUB MEMBER

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> Sun, Sep 22, 2024 at 9:22 AM
To: "\"docketsupervisor@azwater.gov\"" <docketsupervisor@azwater.gov>
Cc: "\"info@podiumclub.com\"" <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,
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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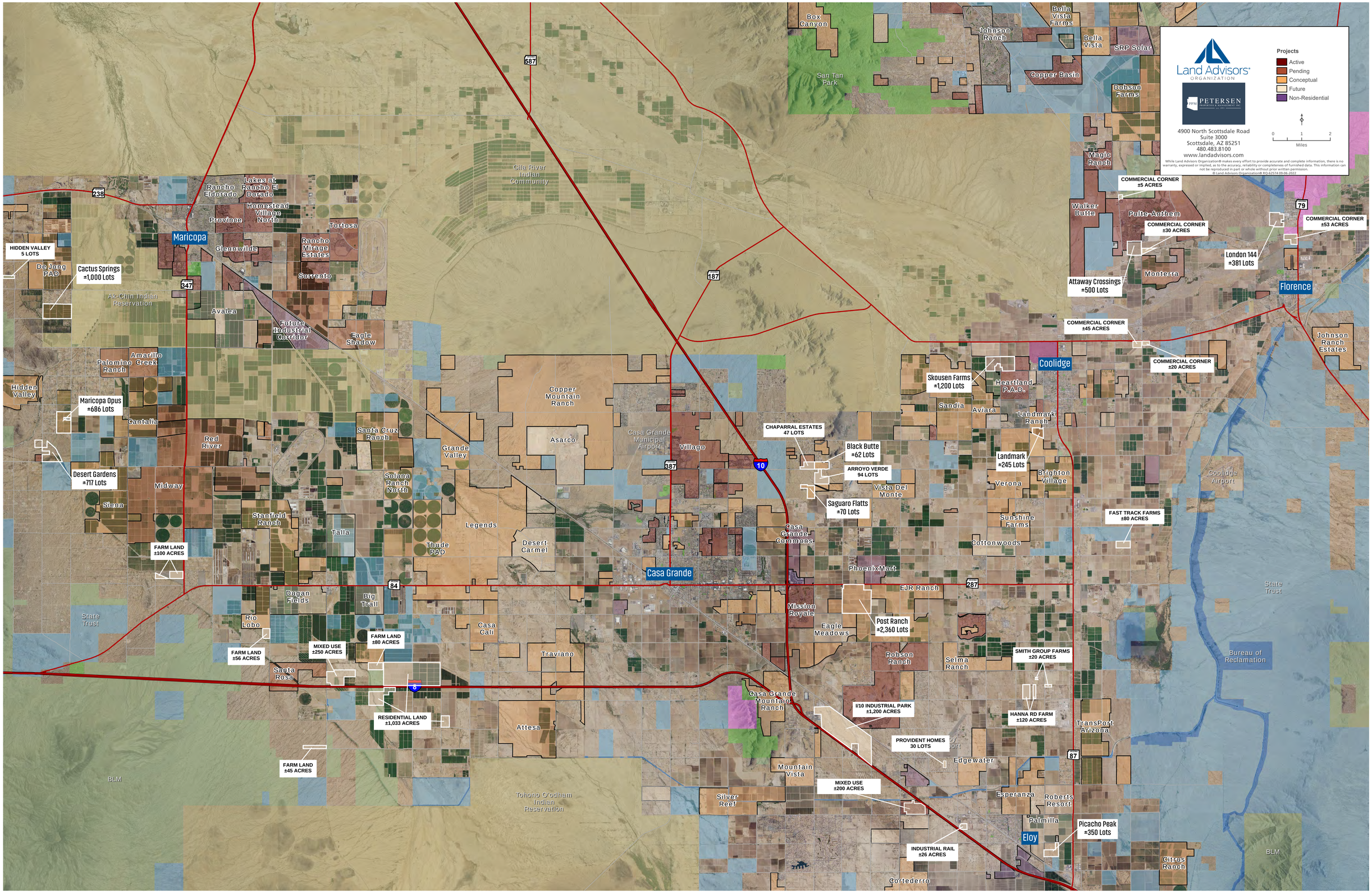
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Maricopa Opus 226, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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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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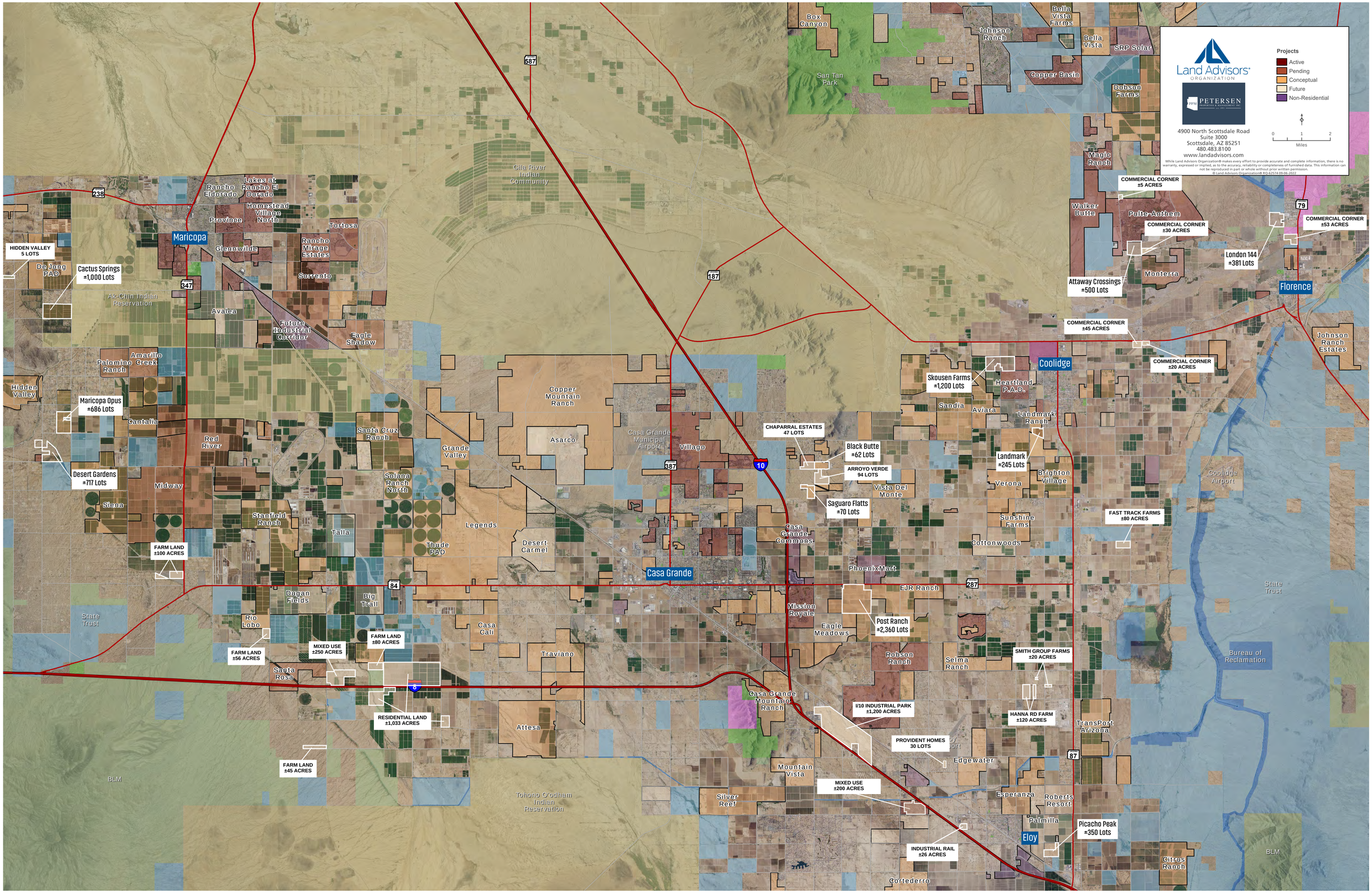
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On behalf of **Nuttall 89, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Nuttall 89, LLC

(o) 480.545.2208
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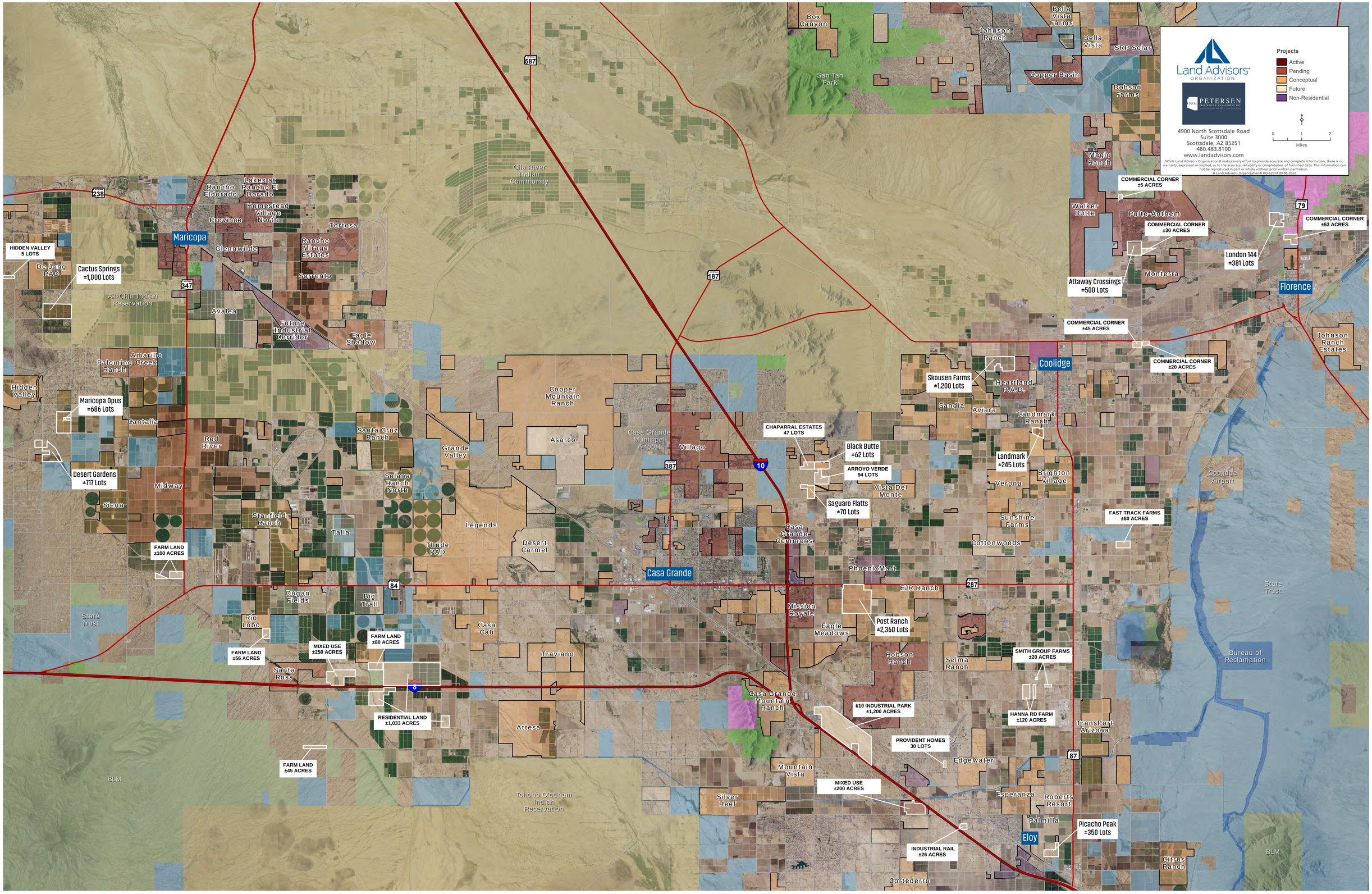
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On behalf of **Petersen Arizona Land & Entitlement Fund, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Petersen Arizona Land & Entitlement Fund, LLC

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(c) 602.540.8151
Kevin@PPMLand.com

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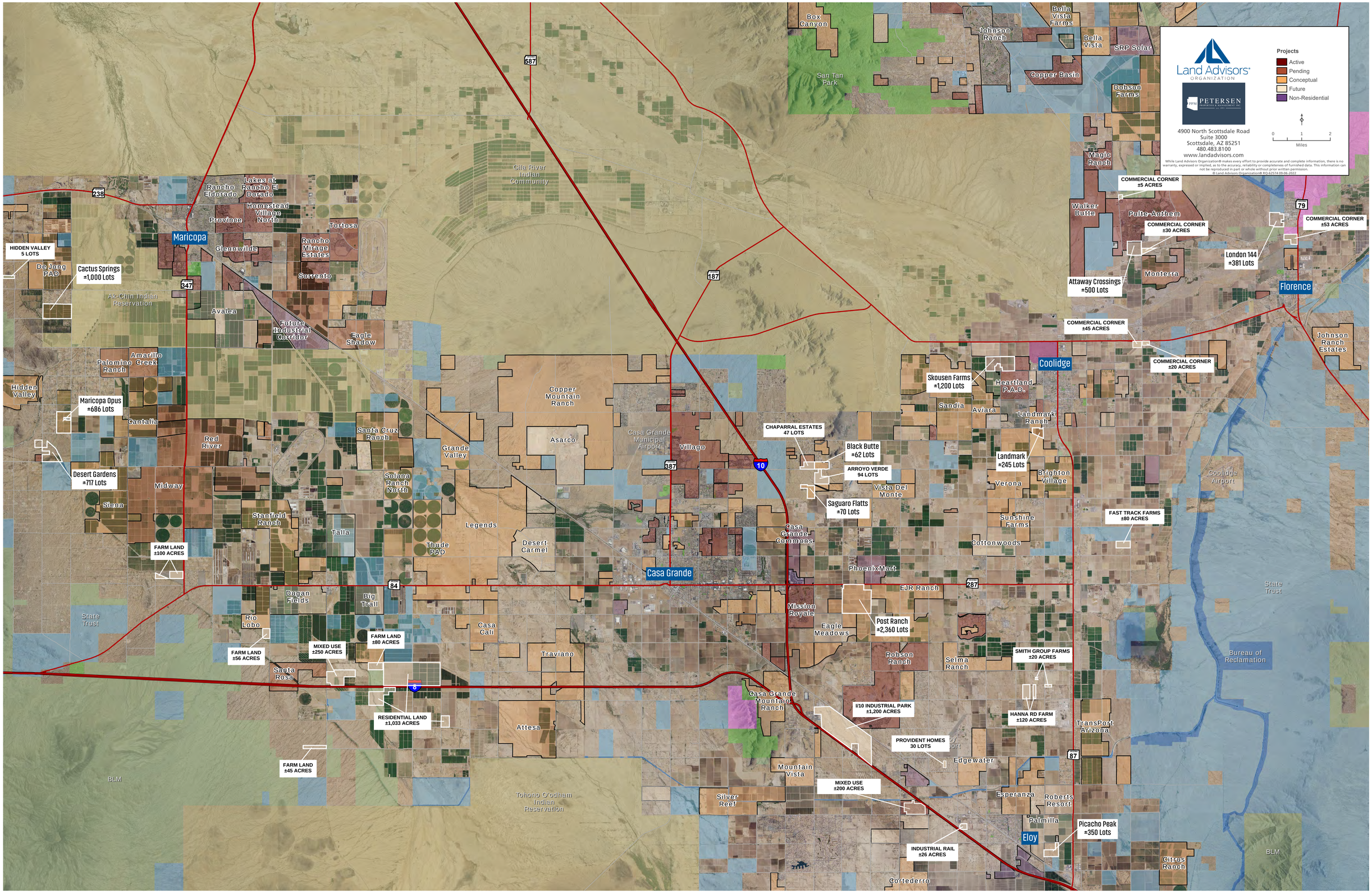
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

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

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 **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

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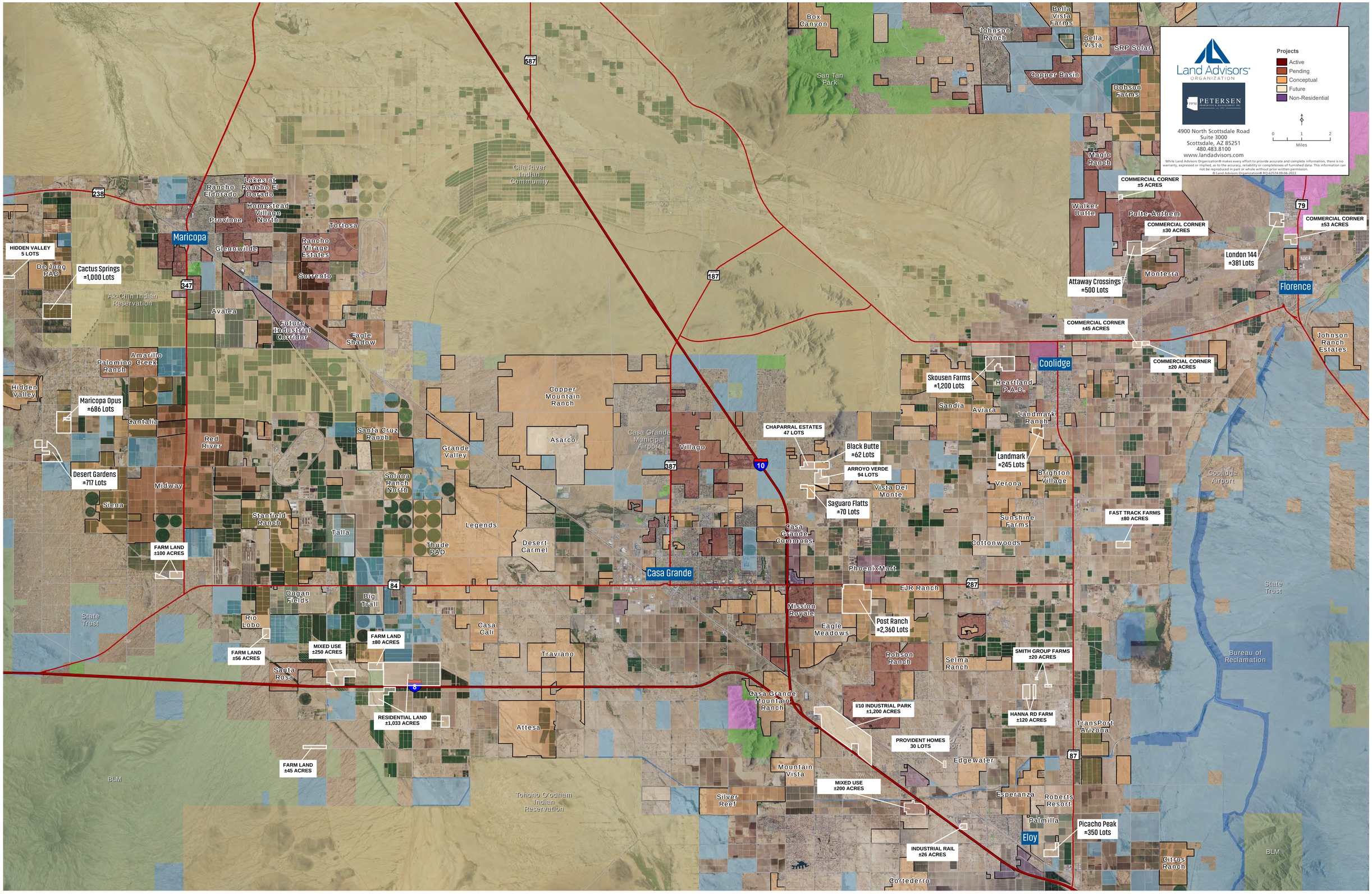
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On behalf of **Petersen Vekol Group, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
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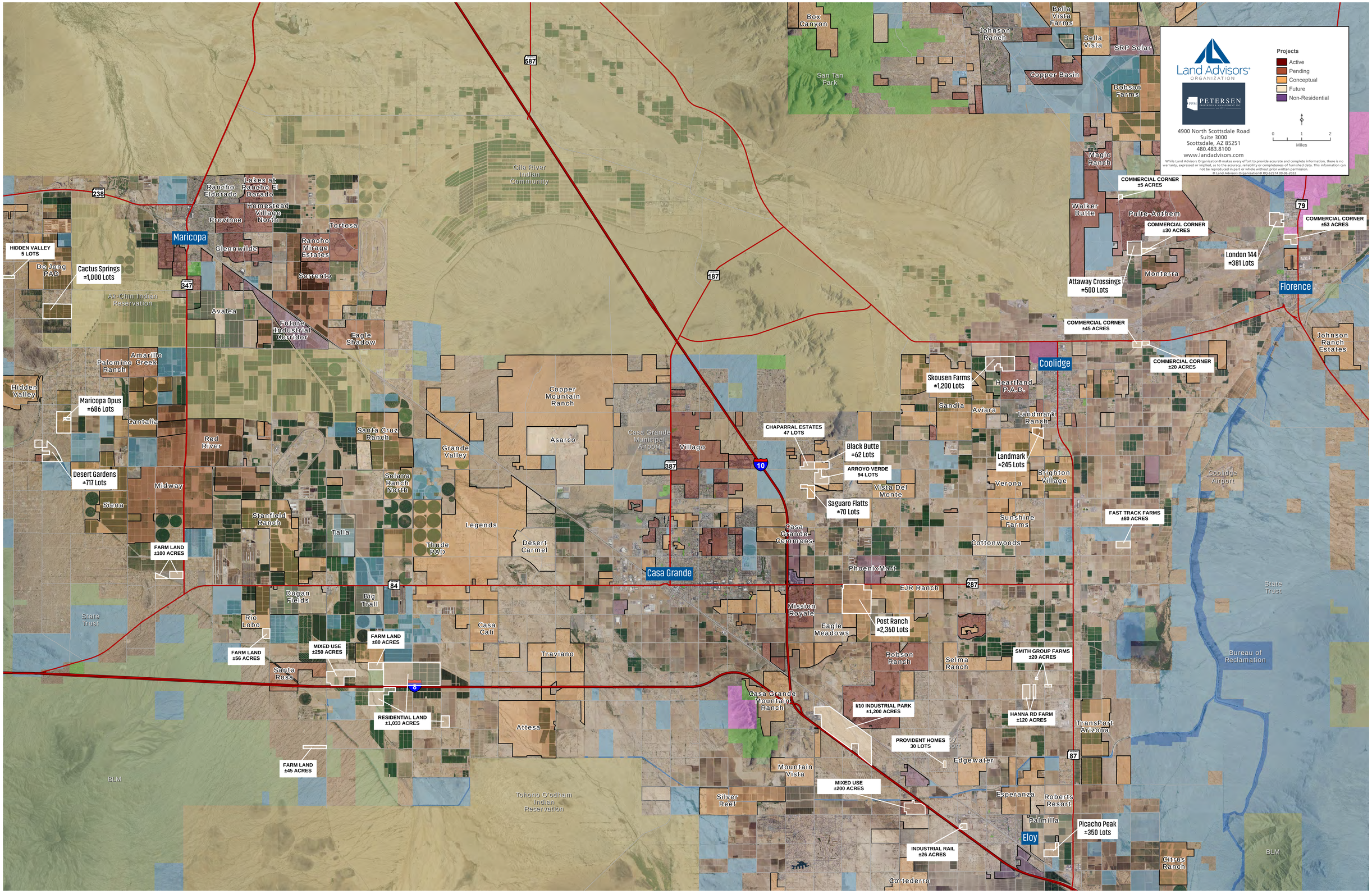
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Picacho Peak, LLC
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On behalf of **Picacho Peak, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

Thank you once again for your dedication to this important issue.

Sincerely,

Tanner Petersen
Manager
Picacho Peak, LLC

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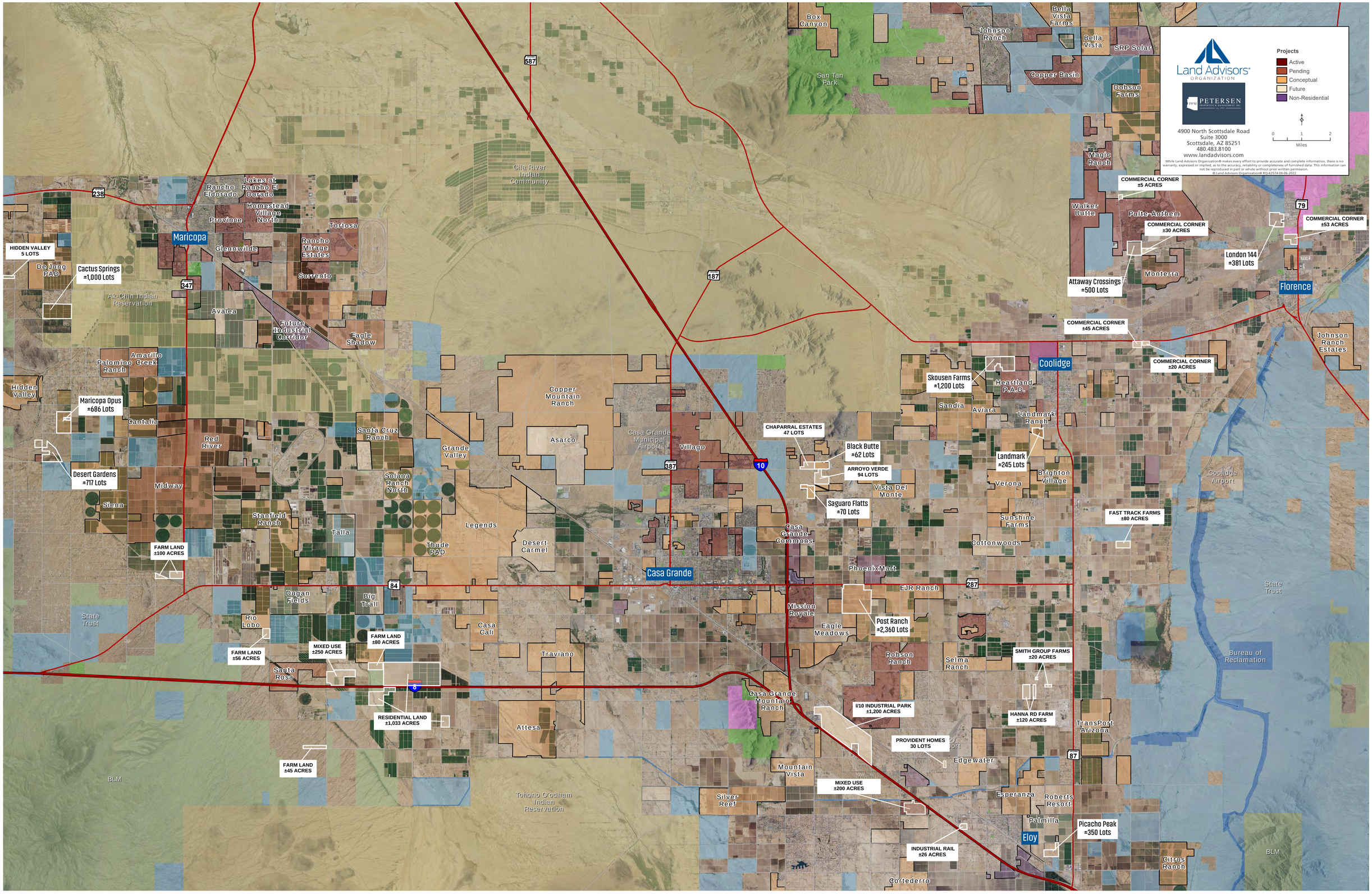
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On behalf of **Post Ranch 589, LLC**, I wholeheartedly support the adoption of these new rules and encourage their swift implementation to benefit all stakeholders in Pinal County.

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Sincerely,

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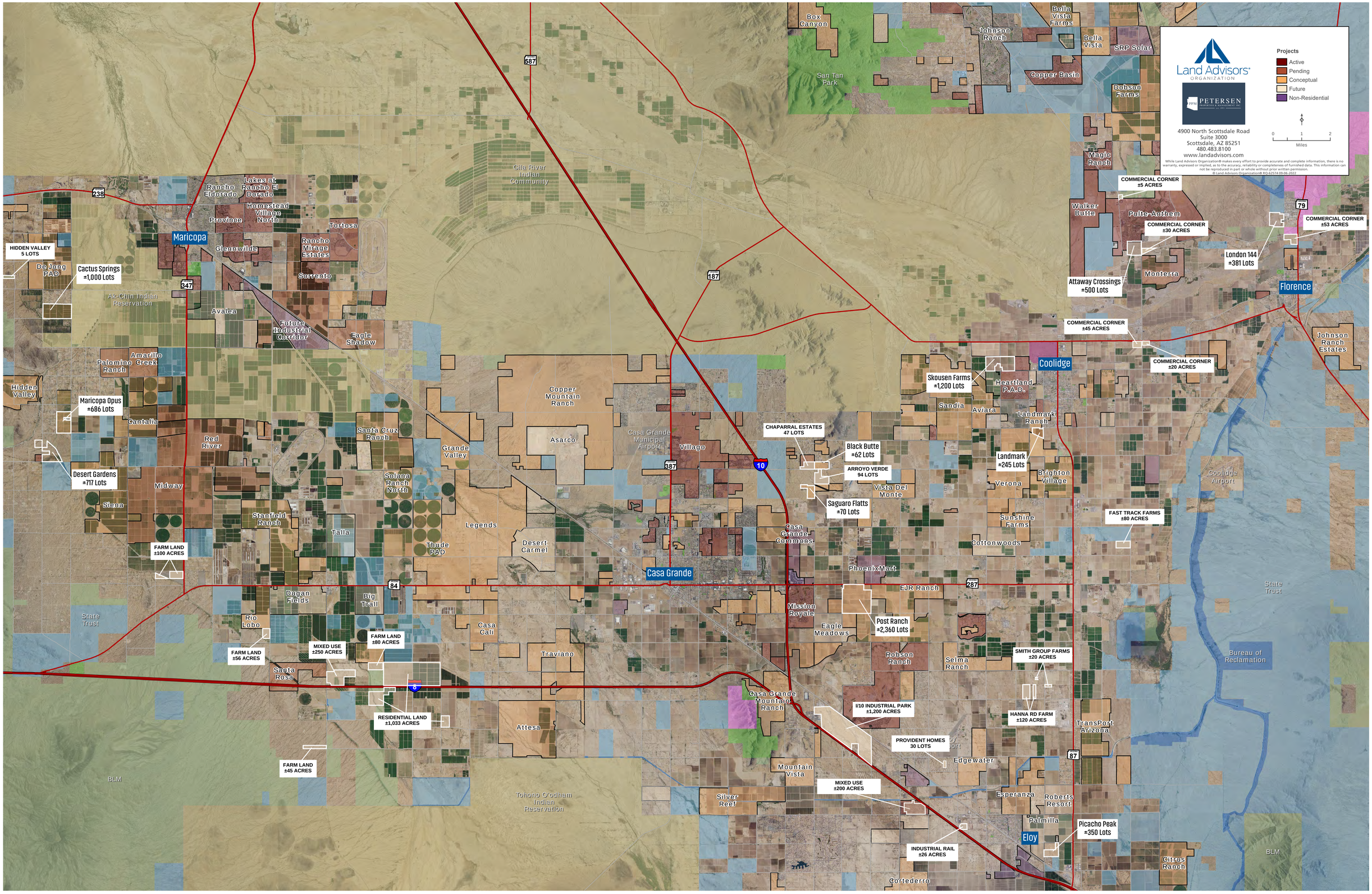
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Gmail Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

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.

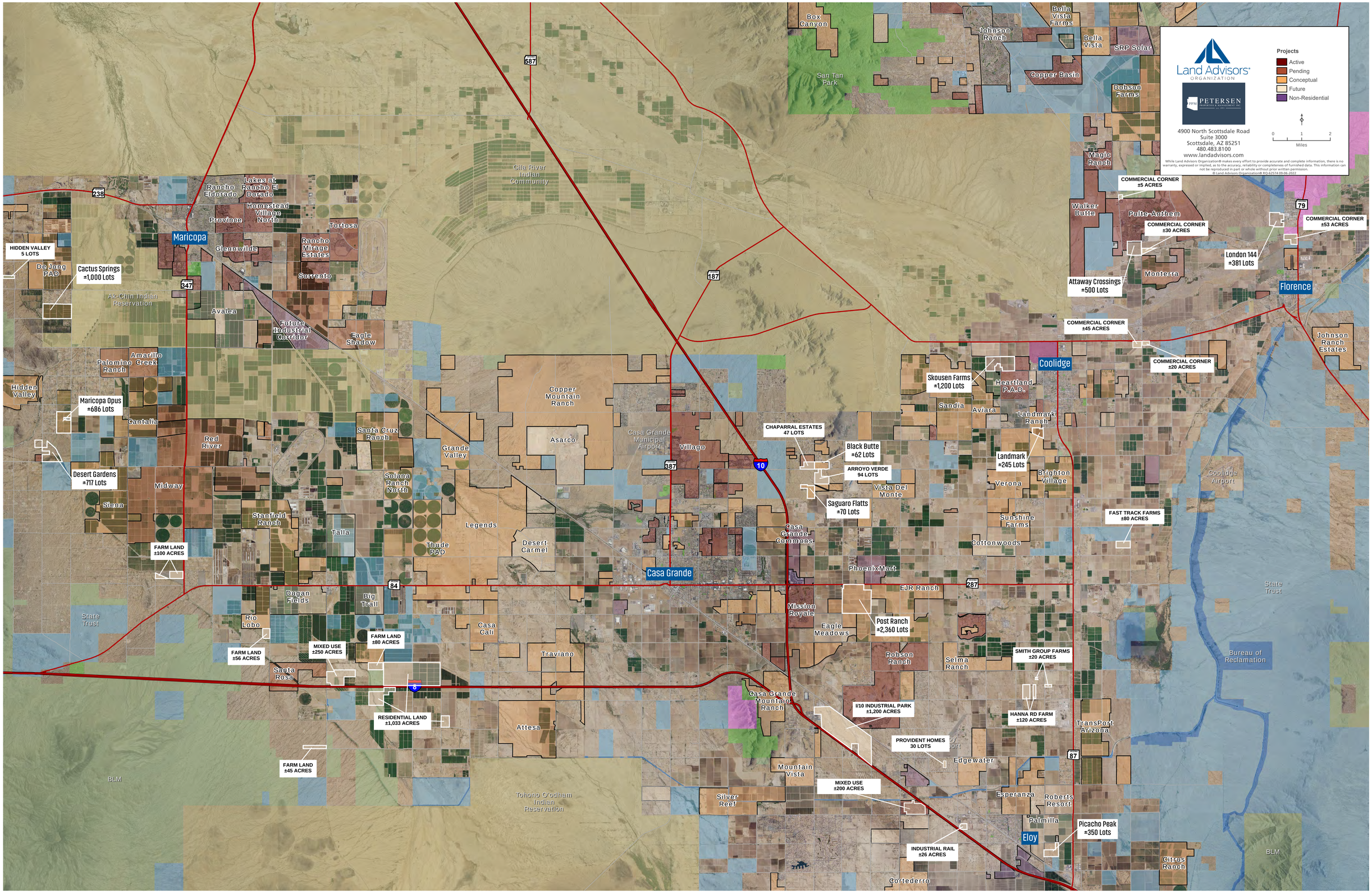
Sincerely,

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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PROPERTIES & MANAGEMENT INC.
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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

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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

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Gilbert, AZ 85297
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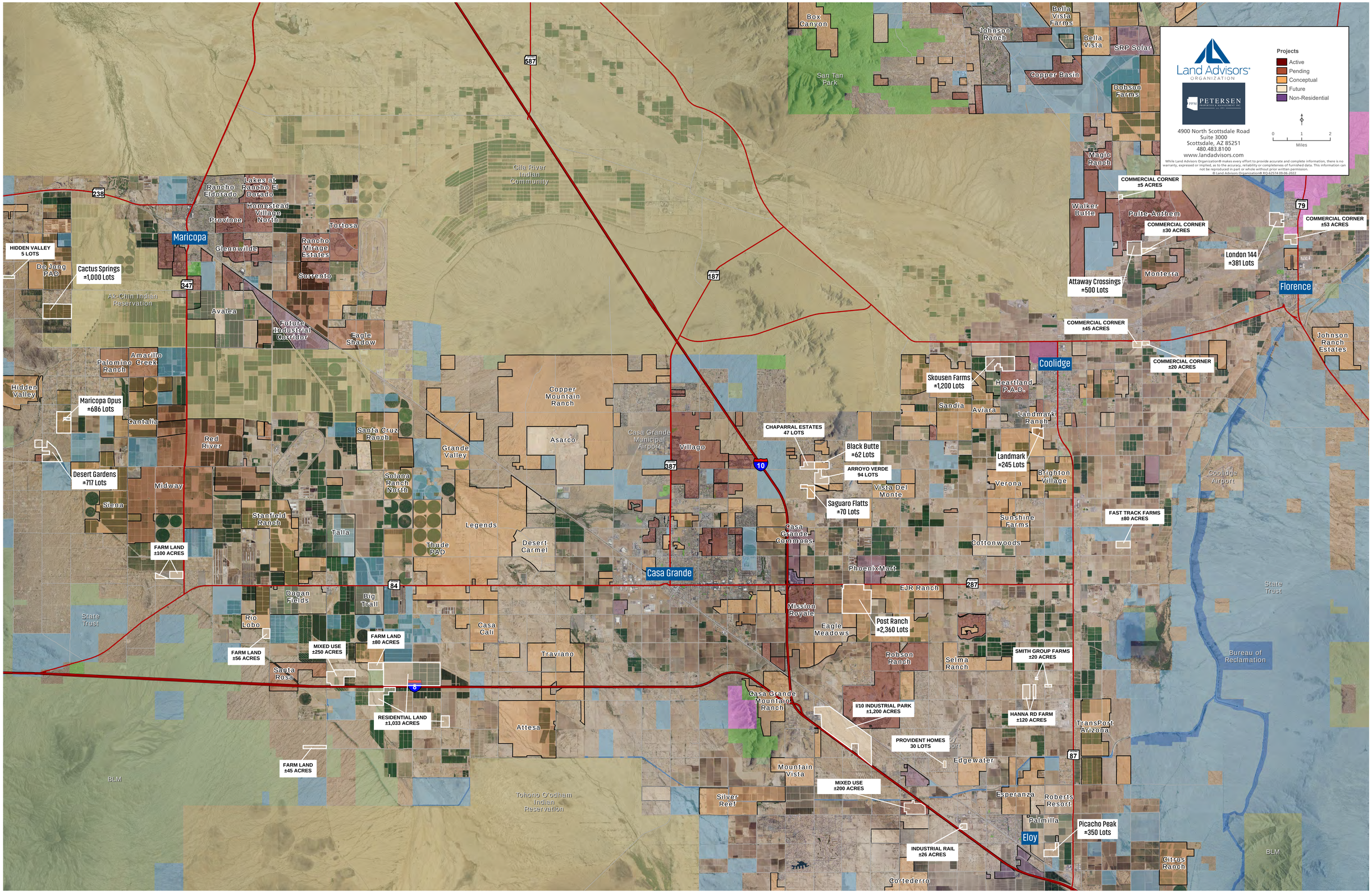
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Vickie L Hayes 56, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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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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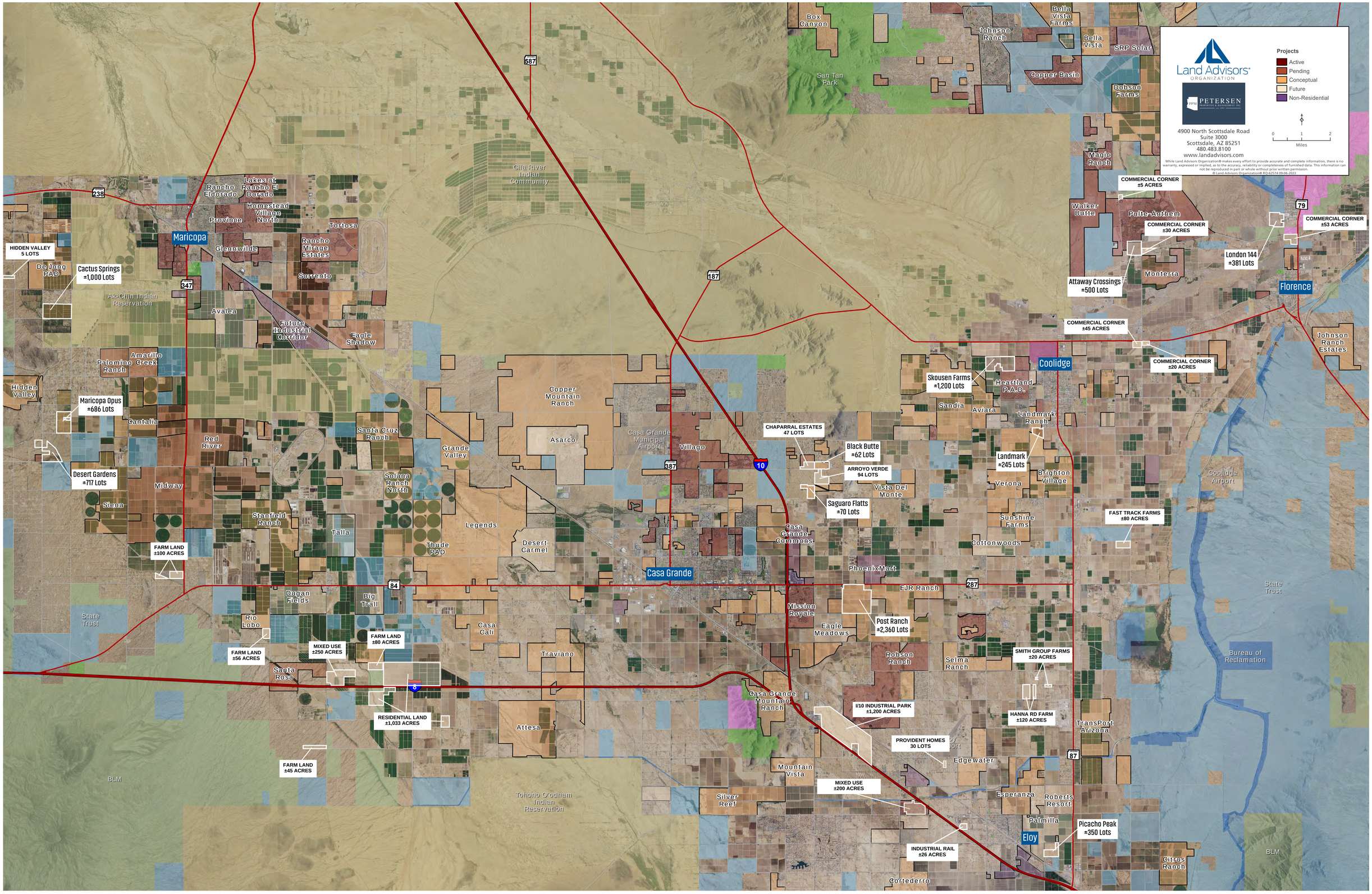
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Warren Rd 187, LLC
9.22.24

Sharon Scantlebury
Docket Supervisor
Arizona Department of Water Resources
1110 W. Washington St. Suite 310
Phoenix, AZ 85007

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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

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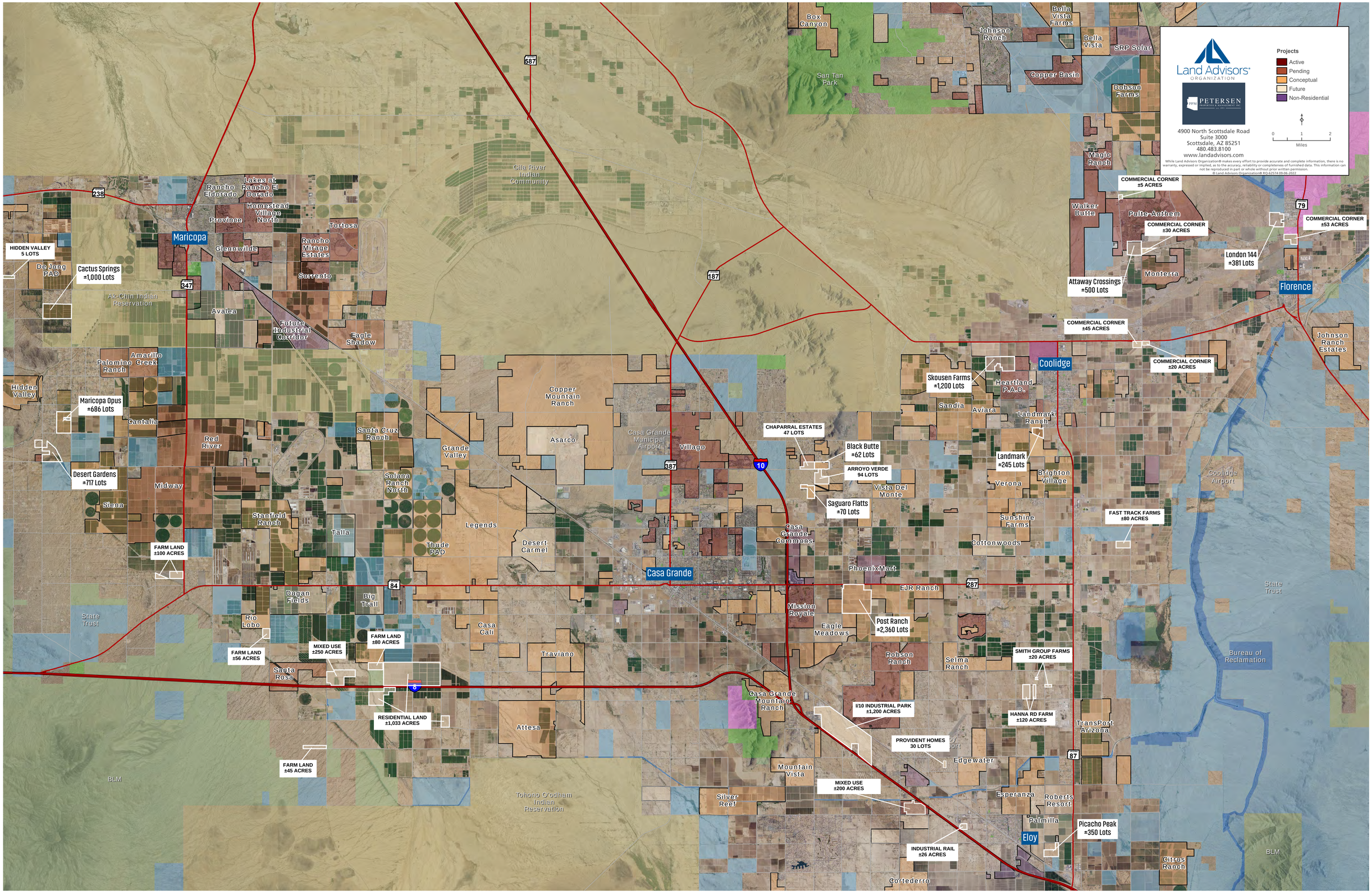
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Gmail

Docket Supervisor - ADWR <docketsupervisor@azwater.gov>

Comments pertaining to ADAWS and Commingling Rules Notice of Proposed Rulemaking

1 message

Scot Dietz <scot@3blindmiceusa.com>
To: "docketsupervisor@azwater.gov" <docketsupervisor@azwater.gov>

Mon, Sep 23, 2024 at 11:35 AM

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> Mon, Sep 23, 2024 at 10:08 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,

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

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> Mon, Sep 23, 2024 at 3:45 PM
To: Sharon Scantlebury <sscantlebury@azwater.gov>
Cc: Nicole Klobas <ndklobas@azwater.gov>, Emily Petrick <epetrick@azwater.gov>

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

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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Website | Write a review

Guild mortgage

– 2023 –
President's Club

Caution: Wire transfer fraud is on the rise. If you receive an email or text message containing wire instructions, **call the closing agent or attorney at a verified phone number immediately to confirm the information prior to sending the funds.** You will never receive wire instructions or changes to previously provided wire instructions from Guild Mortgage Company. Any such communications should be considered suspicious and reported to your Loan Officer. For more information, visit our wire fraud webpage: https://www.guildmortgage.com/tips-protect-wire-fraud/

HBACA

Home Builders Association of Central Arizona

September 23, 2024

Sent via Email

Sharon Scantlebury, Docket Supervisor
Arizona Department of Water Resources
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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.

The 25% Tax Is Compounded by the Need to "Gross Up" the Alternative Supply

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.

The 25% Tax on is Further Compounded on Effluent

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

Economic and Real Estate Consulting

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, but only as to the incorporation of extinguishment credits and groundwater allowances associated with member lands into a designation of assured water supply. (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> 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

1 message

Jim Donna Madsen <phxmadsens@gmail.com>
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

Mon, Sep 23, 2024 at 6:33 AM

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> Mon, Sep 23, 2024 at 11:56 AM
To: docketsupervisor@azwater.gov
Cc: info@podiumclub.com

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

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

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.

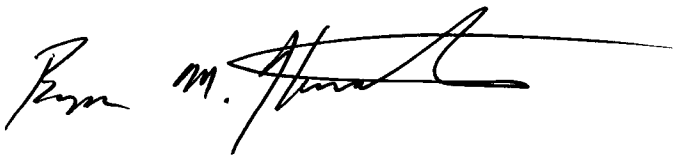
As a part of the agricultural economy, these rules are important to me because they provide me with the freedom to transition my land from agricultural to urban use when it is the right time for me and my family. These rules will provide a more natural progression from agriculture to municipal consistent 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

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, but only as to the incorporation of extinguishment credits and groundwater allowances associated with member lands into a designation of assured water supply. (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. 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 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. 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 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

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

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 3. STOCKPOND AND OTHER SURFACE WATER RULES

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ARTICLE 4. LICENSING TIME-FRAMES

Article 4, consisting of Sections R12-15-401 and Table A, adopted effective December 31, 1998; filed in the Office of the Secretary of State July 28, 1998 (Supp. 98-3).

Section

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Article 7, consisting of Sections R12-15-701 through R12-15-725, adopted effective February 7, 1995.

Section

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

Article 8, consisting of Sections R12-15-801 through R12-15-821, adopted effective March 5, 1984.

84	Application for letter stating that owner is not required to obtain a certificate of assured water supply	A.C.C. R12-15-704(M)	60	30	90
85	Application for extinguishment of grandfathered right for extinguishment credits	A.C.C. R12-15-723(A)	60	30	90
86	Application for conveyance of extinguishment credits	A.C.C. R12-15-723(G)	60	30	90
87	Application for exemption from adequate water supply requirements based on substantial capital investment	A.R.S. § 45-108.02	90	30	120
88	Application for exemption from adequate water supply requirements based on an adequate water supply within twenty years	A.R.S. § 45-108.03	90	30	120
89	Application for re-issuance of drill card to new driller	A.R.S. § 45-596	10	0	10
90	Application for equipment license for weather control or cloud modification	A.R.S. § 45-1605	15	60	75

* 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.

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 Twenty-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).

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
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.

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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

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
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John Sundt, Council Member
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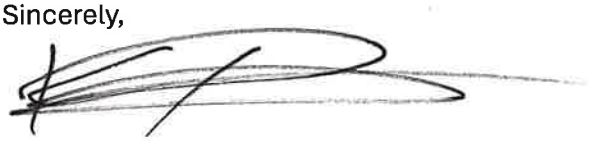
Sincerely,



Kenneth Reycraft
Insight Land & 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
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John Sundt, Council Member
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Sincerely,

Haydn Reycraft

Insight Land & 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
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John Sundt, Council Member
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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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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,

Kyle Root

Insight Land & Investments

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 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

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 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

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 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

Dear Members of the Governor's Regulatory Review Council,

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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
1C32DCD4E7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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 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

Dear Members of the Governor's Regulatory Review Council,

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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

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 HEARTLAND 255, LLLP 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 HEARTLAND 255, 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

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 HC COOLIDGE & KENWORTHY, 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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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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REAL ESTATE | INVESTMENTS

October 21, 2024

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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)

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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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REAL ESTATE | INVESTMENTS

October 21, 2024

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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 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:
By: Augustine H. Gomez
1C32DCD4F7234D8...
Name: Augustine H. Gomez
Its: Authorized Officer

VAULTER
REAL ESTATE | INVESTMENTS

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
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: 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.

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,

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:
By: Augustine H. Gomez
1C32DCD4F7234D8...
Name: Augustine H. Gomez
Its: Authorized Officer

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 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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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 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

VAULTER
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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 MARABELLA, LLLP 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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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 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

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 MARABELLA, LLLP 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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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 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

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 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

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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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 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

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 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

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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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 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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October 21, 2024

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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 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,

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,

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
1C32DCD4F7234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

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: 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,

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,

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:
By: Augustine H. Gomez
1C32DGD4F7234D8...
Name: Augustine H. Gomez
Its: Authorized Officer

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 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.

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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 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
1C32DCD4EZ234D8...

By: _____
Name: Augustine H. Gomez
Its: Authorized Officer

VAULTER
REAL ESTATE | INVESTMENTS

October 21, 2024

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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.

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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

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.

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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 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:
By: Augustine H. Gomez
1C32DCD4F7234D0...
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

communities southwest

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

7001 N. Scottsdale Road | Suite 1015 | Scottsdale, AZ 85253 | p 480.315.2600 | f 480.315.2699

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
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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
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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

LAUNCH
DEVELOPMENT FINANCE ADVISORS

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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

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DEVELOPMENT FINANCE ADVISORS

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LinkedIn profile
Helping our clients achieve more since 1994.

FORESTAR

Silvia Rico
Director of Entitlements
Direct: 480.801.2419
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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: 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
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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

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85286

Public Works & Utilities Department
Environmental Resources/Water Conservation
Telephone (480) 782-3580
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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
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
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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
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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

JR Carlson 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:

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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.

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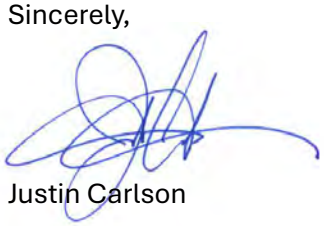
Based on current conditions on the Colorado River and record heat, Arizona's Assured Water Supply program is more important than ever in demonstrating that Arizona is a safe place to invest. The proposed rules package is an important step in resolving the recent groundwater modeling issues that have 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
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,

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

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,

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.

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

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
Phone 480-894-1286 • Fax 480-968-4826
State of Arizona B-01 General Contractor License No. ROC072969

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.

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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,

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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Earnhardt Ranches, LLC | 7300 W. Orchid Ln, Chandler, AZ 85226
480-783-4620

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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,

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
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 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.

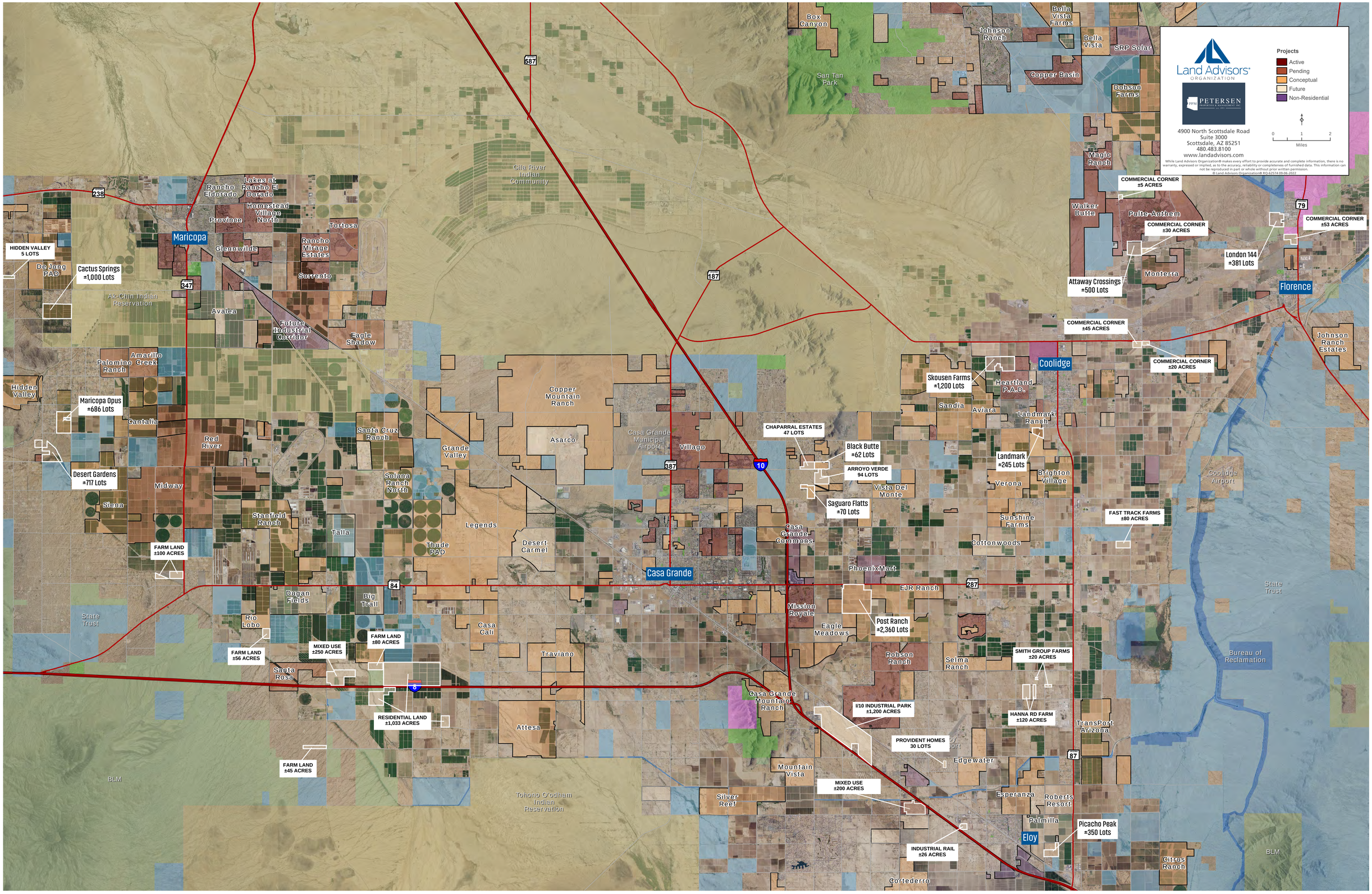
Sincerely,

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
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Projects
Active
Pending
Conceptual
Future
Non-Residential
0 1 2
Miles
Box Canyon
San Tan Park
Johnson Ranch
Bella Vista Farms
Bella Vista
SRP Solar
Copper Basin
Dobson Farms
Magic Ranch
Walker Butte
Pulte-Anthem
COMMERCIAL CORNER ±5 ACRES
COMMERCIAL CORNER ±30 ACRES
COMMERCIAL CORNER ±53 ACRES
London 144 ±381 Lots
Attaway Crossings ±500 Lots
Monterra
Florence
COMMERCIAL CORNER ±45 ACRES
COMMERCIAL CORNER ±20 ACRES
Johnson Ranch Estates
Coolidge
Skousen Farms ±1,200 Lots
Heartland P.A.D.
Sandia
Aviara
Landmark Ranch
Landmark ±245 Lots
Brighton Village
Verona
Coolidge Airport
Vista Del Monte
Sunshine Farms
FAST TRACK FARMS ±80 ACRES
Cottonwoods
Gila River Indian Community
Rancho Eldorado
Lakes at Rancho El Dorado
Homestead Village North
Province
Tortosa
Maricopa
Rancho Mirage Estates
Glennwilda
Sorrento
HIDDEN VALLEY 5 LOTS
De Jong PAD
Cactus Springs ±1,000 Lots
Ak-Chin Indian Reservation
Avalea
Future Industrial Corridor
Eagle Shadow
Amarillo
Palomino Creek Ranch
Hidden Valley
Maricopa Opus ±686 Lots
Cantalia
Desert Gardens ±717 Lots
Red River
Santa Cruz Ranch
Midway
Siena
Solana Ranch North
Grande Valley
Stanfield Ranch
Talla
Legends
Thude PAD
Desert Carmel
FARM LAND ±100 ACRES
Copper Mountain Ranch
Asarco
Casa Grande Municipal Airport
Villago
CHAPARRAL ESTATES 47 LOTS
Black Butte ±62 Lots
ARROYO VERDE 94 LOTS
Saguaro Flatts ±70 Lots
Casa Grande Commons
Casa Grande
PhoenixMart
EJR Ranch
Mission Royale
Eagle Meadows
Post Ranch ±2,360 Lots
Robson Ranch
Selma Ranch
SMITH GROUP FARMS ±20 ACRES
HANNA RD FARM ±120 ACRES
I/10 INDUSTRIAL PARK ±1,200 ACRES
Casa Grande Mountain Ranch
TransPort Arizona
PROVIDENT HOMES 30 LOTS
Edgewater
Mountain Vista
MIXED USE ±200 ACRES
Esperanza
Roberts Resort
Palmilla
Picacho Peak ±350 Lots
Eloy
INDUSTRIAL RAIL ±26 ACRES
Cortederra
Citrus Ranch
Dugan Fields
Big Trail
Rio Lobo
Casa Cali
Traviano
Santa Rosa
FARM LAND ±56 ACRES
MIXED USE ±250 ACRES
FARM LAND ±80 ACRES
RESIDENTIAL LAND ±1,033 ACRES
Attesa
FARM LAND ±45 ACRES
Tohono O'odham Indian Reservation
Silver Reef
BLM
State Trust
Bureau of Reclamation
587
238
347
187
387
10
84
8
287
79
87

PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Arroyo Verde 35, 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

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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.

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 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.

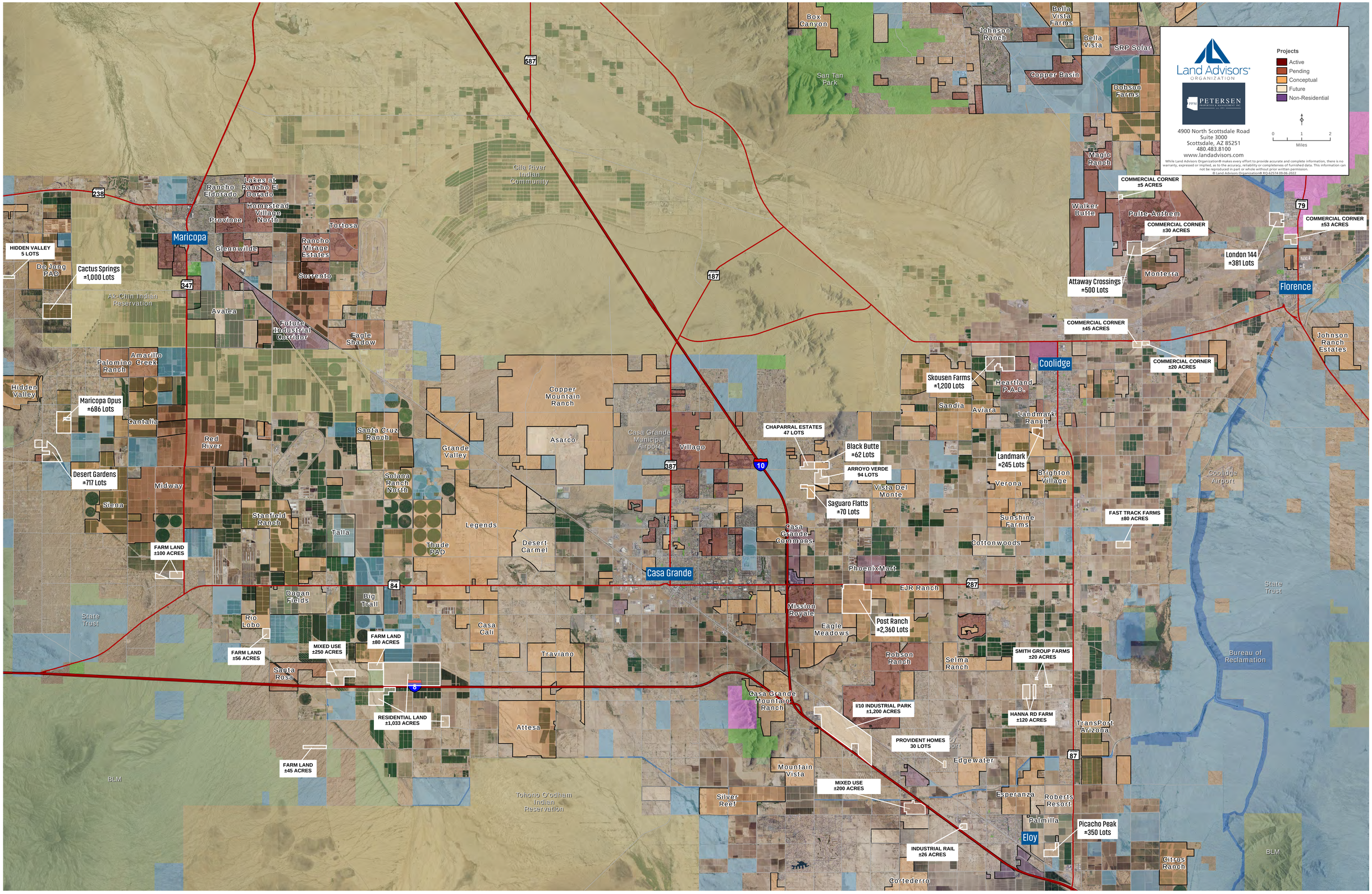
Sincerely,

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
Gilbert, AZ 85297
www.PPMLand.com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Projects
Active
Pending
Conceptual
Future
Non-Residential
0 1 2
Miles
Box Canyon
San Tan Park
Johnson Ranch
Bella Vista Farms
Bella Vista
SRP Solar
Copper Basin
Dobson Farms
Magic Ranch
Walker Butte
Pulte-Anthem
COMMERCIAL CORNER ±5 ACRES
COMMERCIAL CORNER ±30 ACRES
COMMERCIAL CORNER ±53 ACRES
London 144 ±381 Lots
Attaway Crossings ±500 Lots
Monterra
Florence
COMMERCIAL CORNER ±45 ACRES
COMMERCIAL CORNER ±20 ACRES
Johnson Ranch Estates
Coolidge
Skousen Farms ±1,200 Lots
Heartland P.A.D.
Sandia
Aviara
Landmark Ranch
Landmark ±245 Lots
Brighton Village
Verona
Coolidge Airport
Vista Del Monte
Sunshine Farms
FAST TRACK FARMS ±80 ACRES
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Gila River Indian Community
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Homestead Village North
Province
Tortosa
Maricopa
Rancho Mirage Estates
Glennwilda
Sorrento
HIDDEN VALLEY 5 LOTS
De Jong PAD
Cactus Springs ±1,000 Lots
Ak-Chin Indian Reservation
Avalea
Future Industrial Corridor
Eagle Shadow
Amarillo
Palomino Creek Ranch
Hidden Valley
Maricopa Opus ±686 Lots
Cantalia
Desert Gardens ±717 Lots
Red River
Santa Cruz Ranch
Midway
Siena
Solana Ranch North
Grande Valley
Stanfield Ranch
Talla
Legends
Thude PAD
Desert Carmel
FARM LAND ±100 ACRES
Copper Mountain Ranch
Asarco
Casa Grande Municipal Airport
Villago
CHAPARRAL ESTATES 47 LOTS
Black Butte ±62 Lots
ARROYO VERDE 94 LOTS
Saguaro Flatts ±70 Lots
Casa Grande Commons
Casa Grande
PhoenixMart
EJR Ranch
Mission Royale
Eagle Meadows
Post Ranch ±2,360 Lots
Robson Ranch
Selma Ranch
SMITH GROUP FARMS ±20 ACRES
HANNA RD FARM ±120 ACRES
I/10 INDUSTRIAL PARK ±1,200 ACRES
Casa Grande Mountain Ranch
TransPort Arizona
PROVIDENT HOMES 30 LOTS
Edgewater
Mountain Vista
MIXED USE ±200 ACRES
Esperanza
Roberts Resort
Palmilla
Picacho Peak ±350 Lots
Eloy
INDUSTRIAL RAIL ±26 ACRES
Cortederra
Citrus Ranch
Dugan Fields
Big Trail
Rio Lobo
Casa Cali
Traviano
Santa Rosa
FARM LAND ±56 ACRES
MIXED USE ±250 ACRES
FARM LAND ±80 ACRES
RESIDENTIAL LAND ±1,033 ACRES
Attesa
FARM LAND ±45 ACRES
Tohono O'odham Indian Reservation
Silver Reef
BLM
State Trust
Bureau of Reclamation
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Attaway & 287, LLC
10.21.24

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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 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
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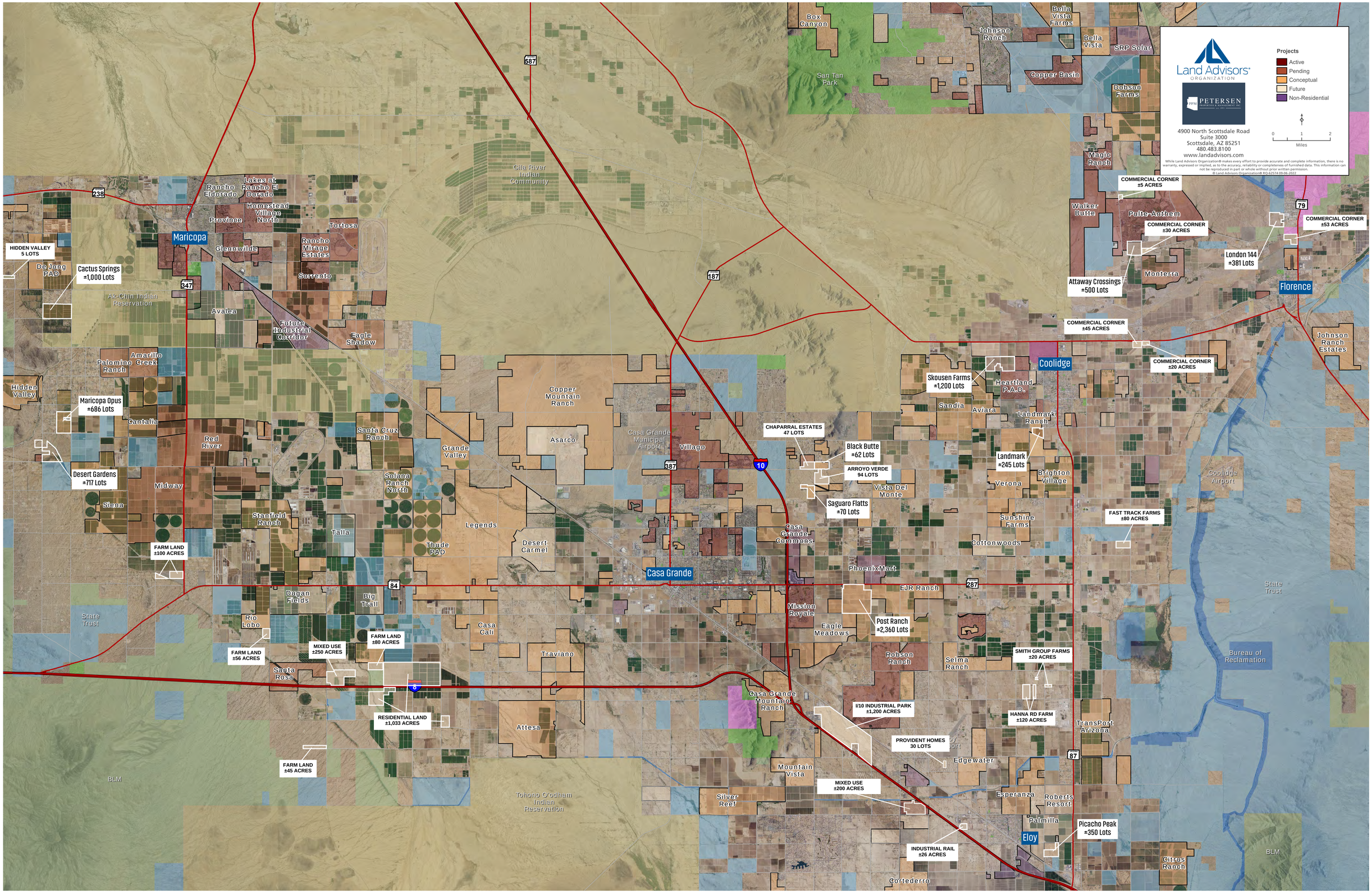
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Attaway Crossings 147, LLC
10.21.24

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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 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 Attaway Crossings 147, 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 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

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(c) 602.540.8151
Kevin@PPMLand.com

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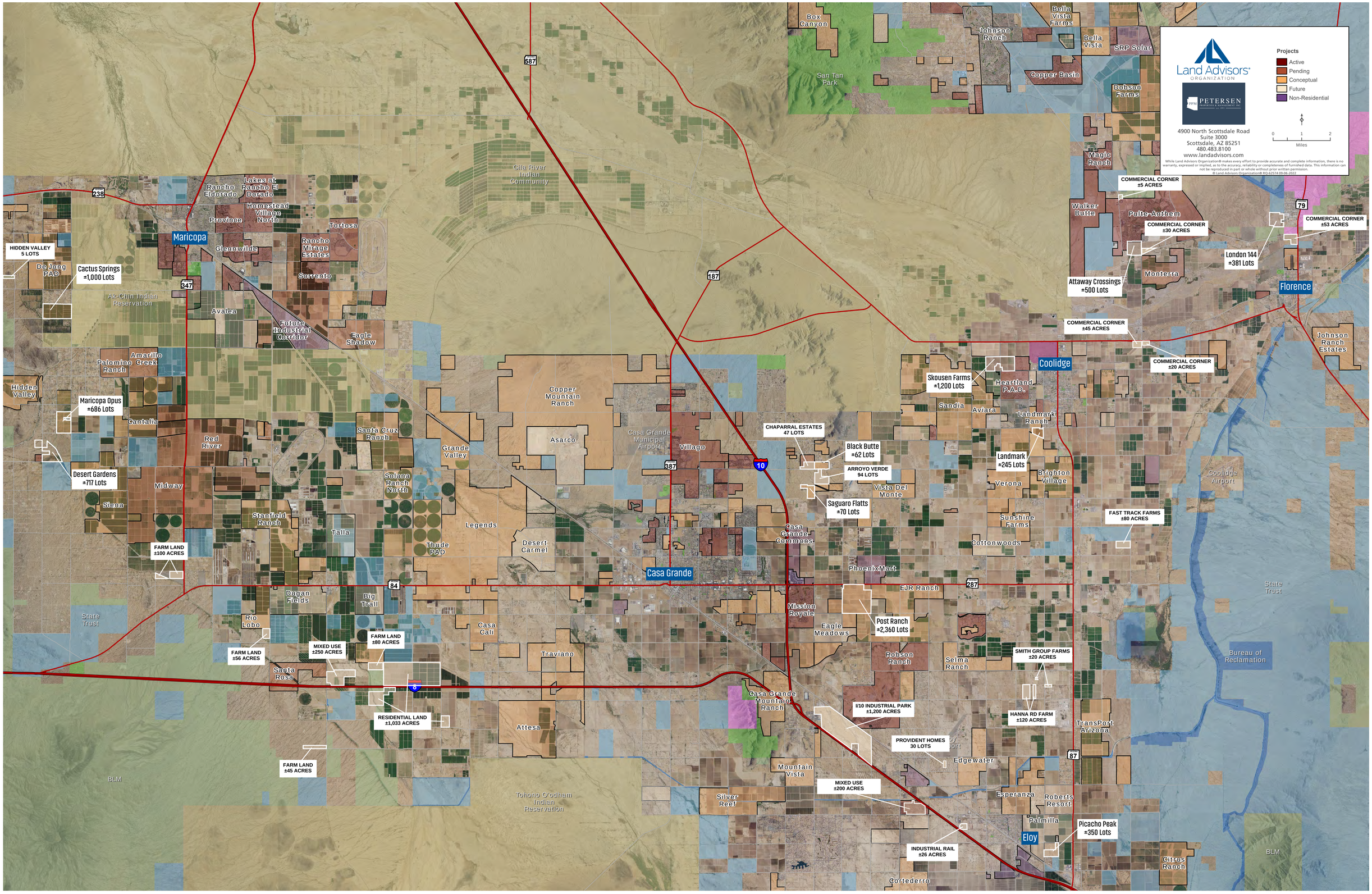
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On behalf of Black Butte 80, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's 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

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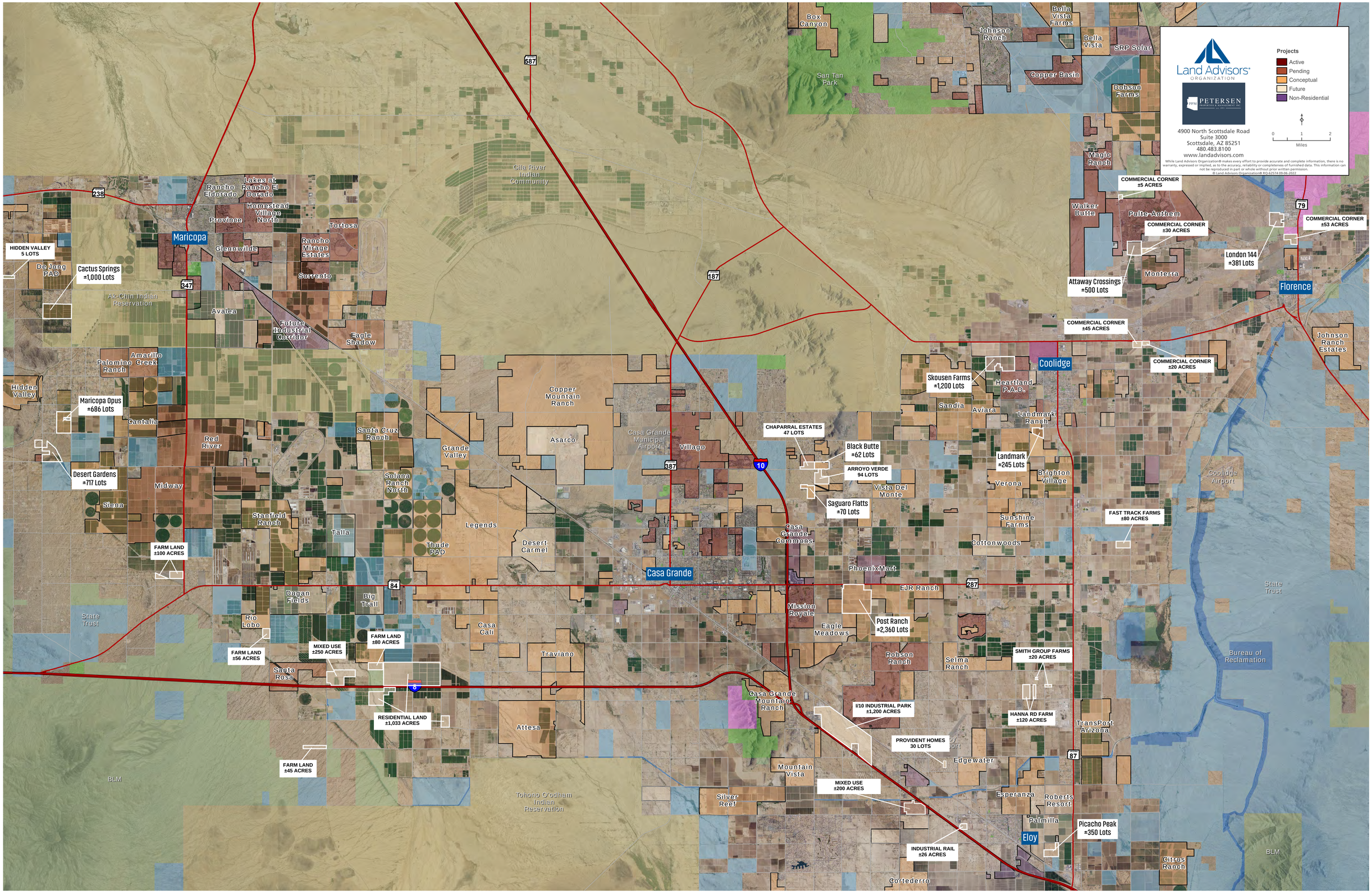
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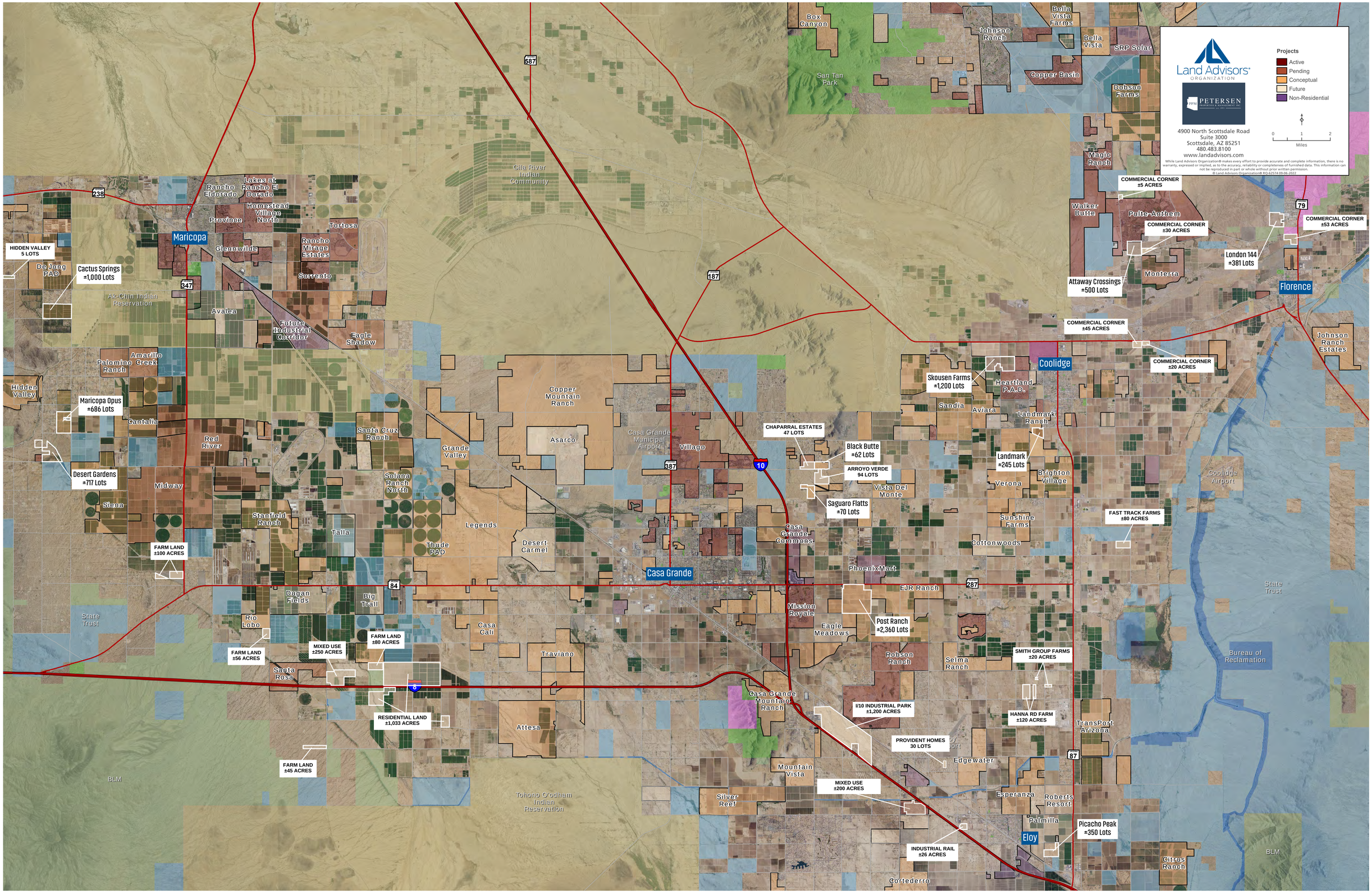
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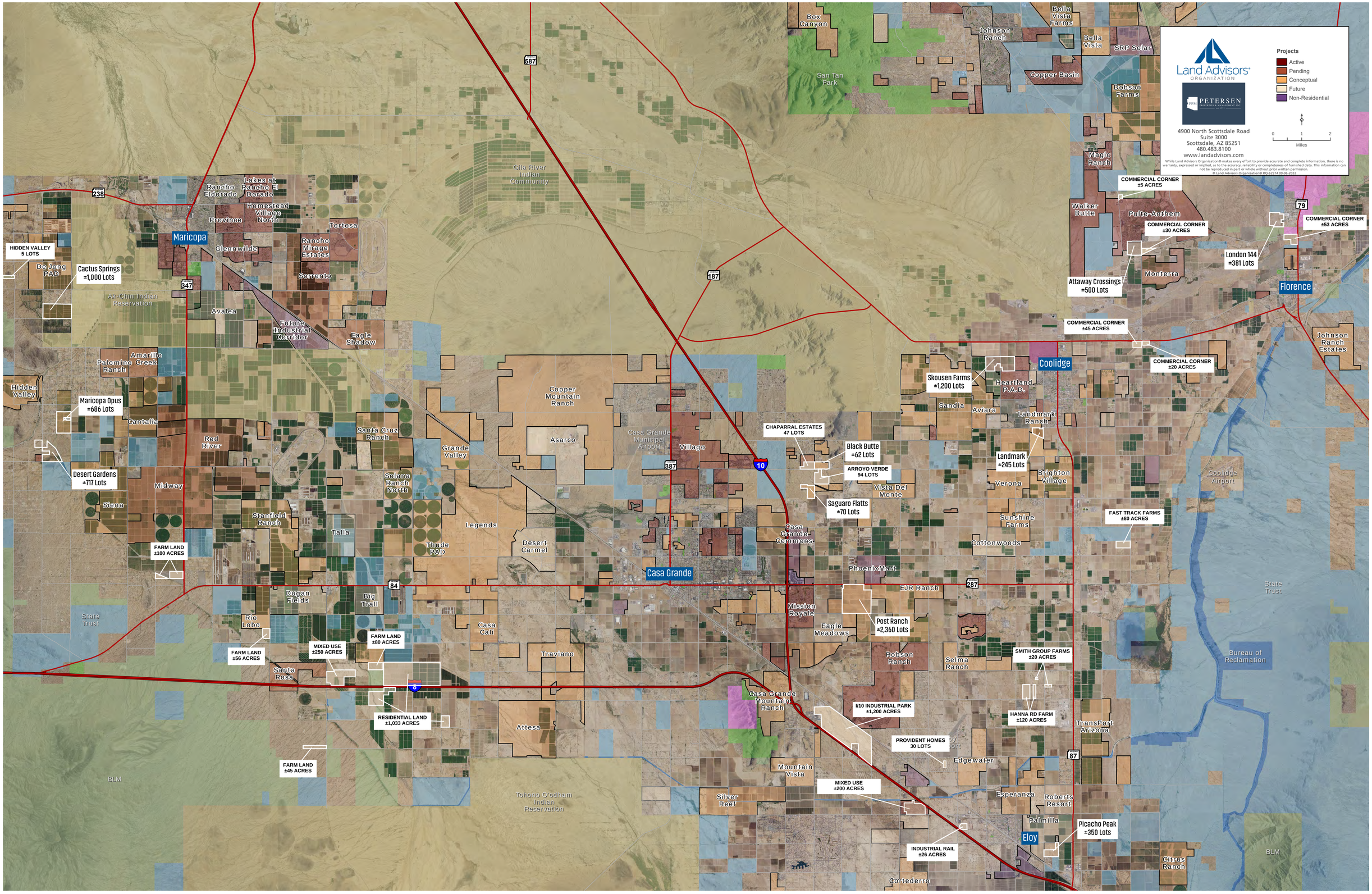
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PROPERTIES & MANAGEMENT INC.
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Fast Track Rd 80, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

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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

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Gilbert, AZ 85297
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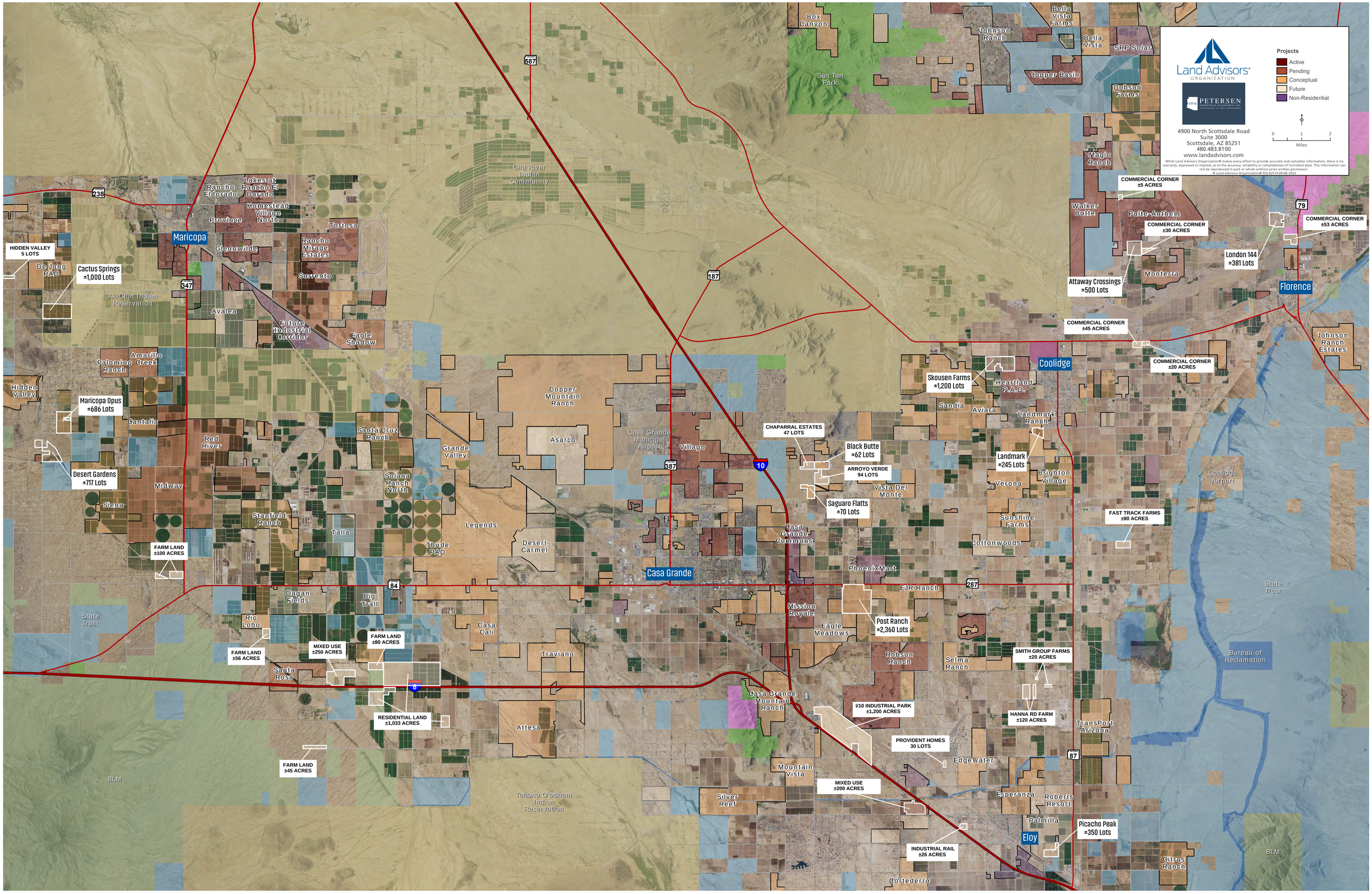
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Florence PG 53, LLC
10.21.24

Governor's Regulatory Review Council
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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 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

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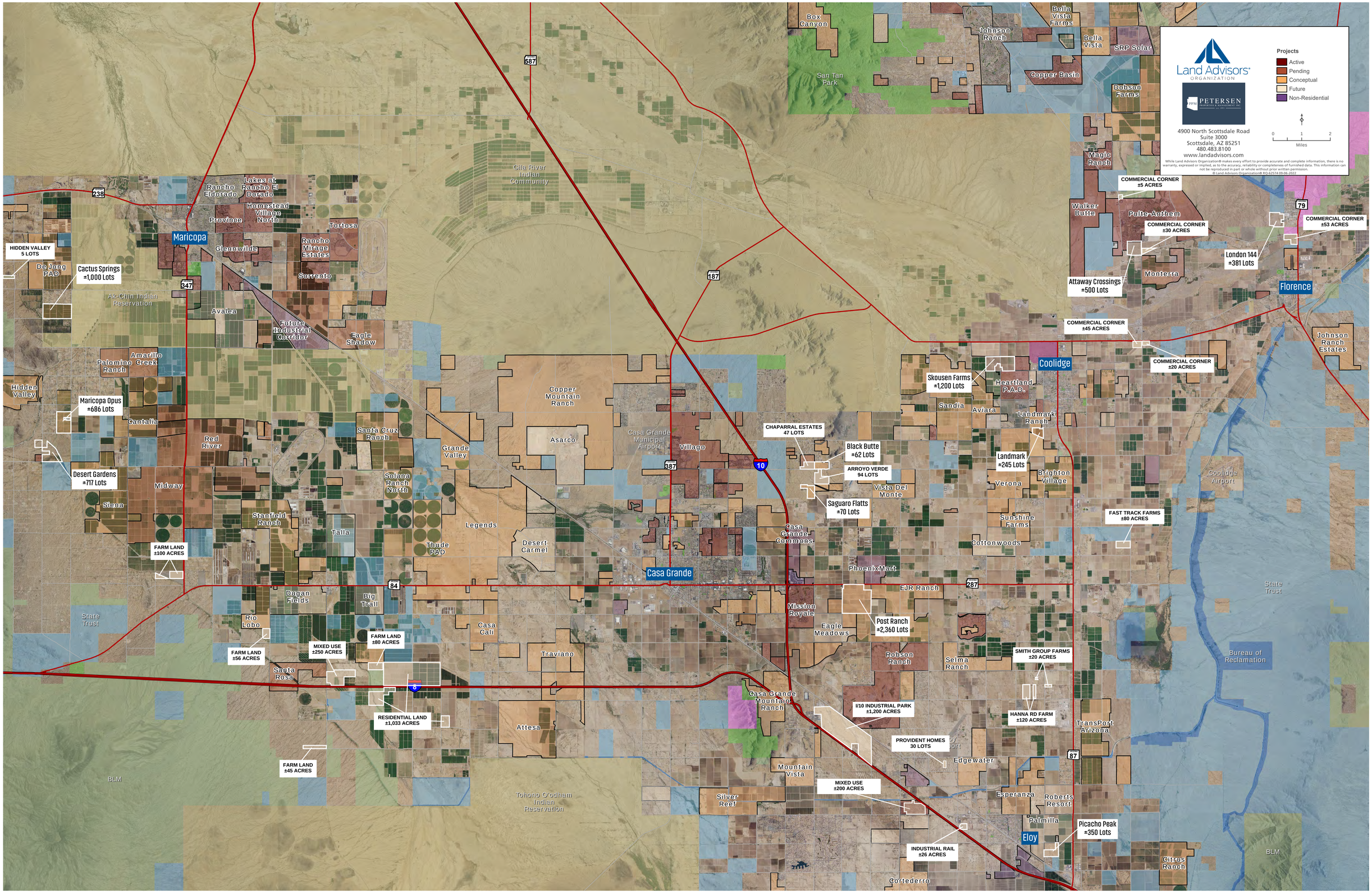
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Hanna Rd 120, LLC
10.21.24

Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
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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 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

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Gilbert, AZ 85297
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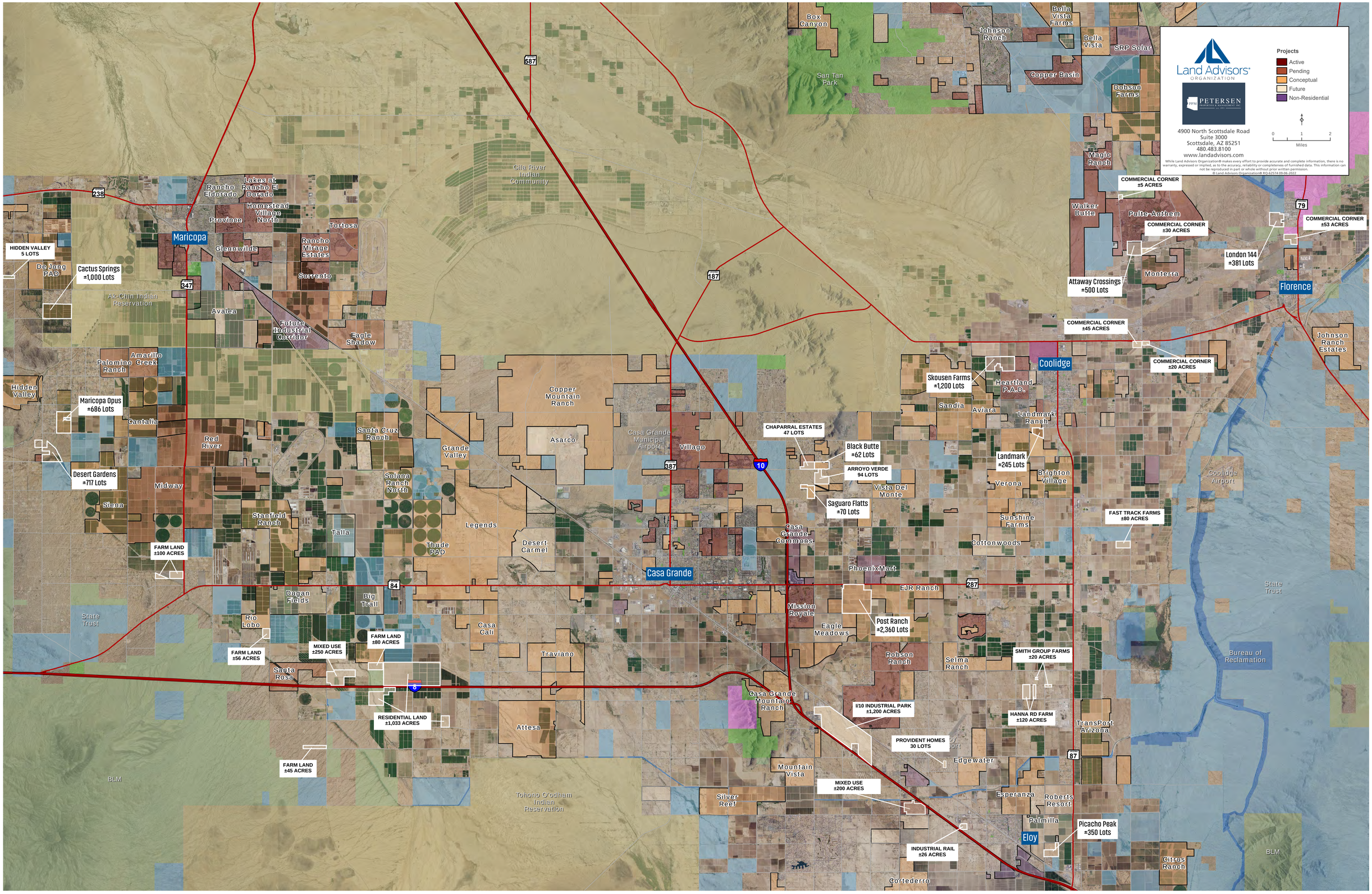
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Heritage Creek 141, LLC
10.21.24

Governor's Regulatory Review Council
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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

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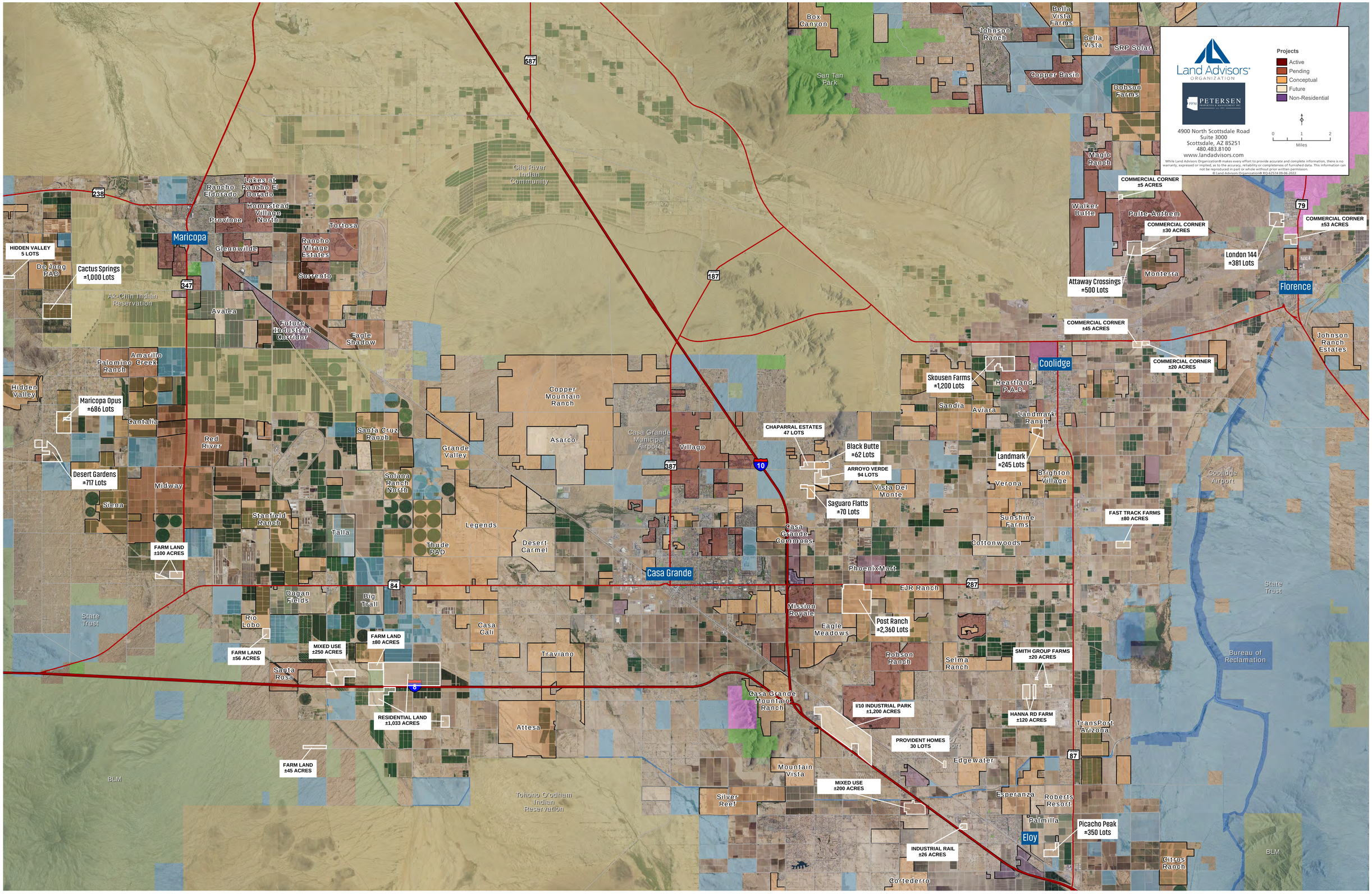
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Hidden Valley Rd 30, LLC
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On behalf of Hidden Valley Rd 30, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal 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

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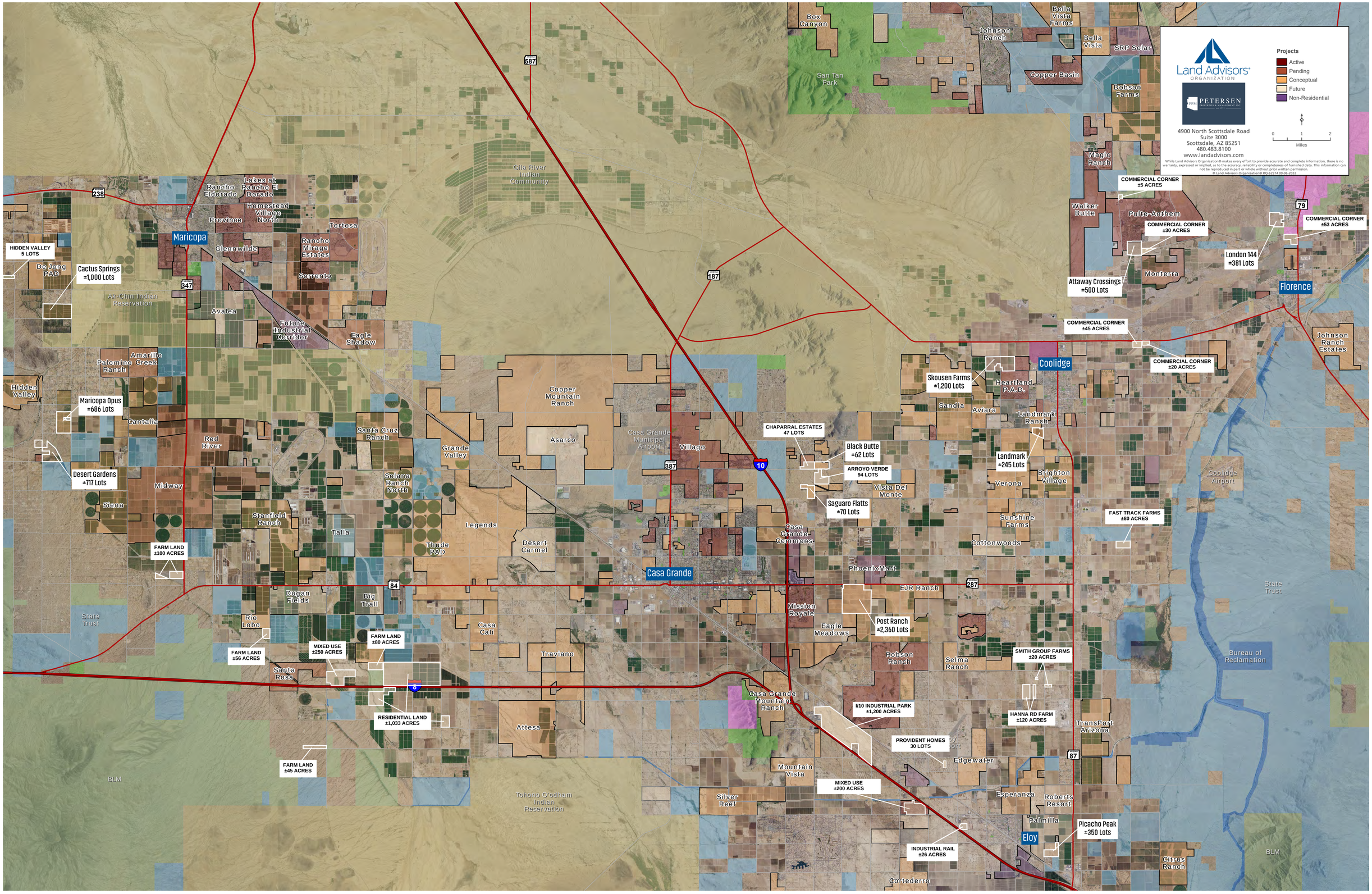
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Hunt East 30, LLC
10.21.24

Governor's Regulatory Review Council
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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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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,

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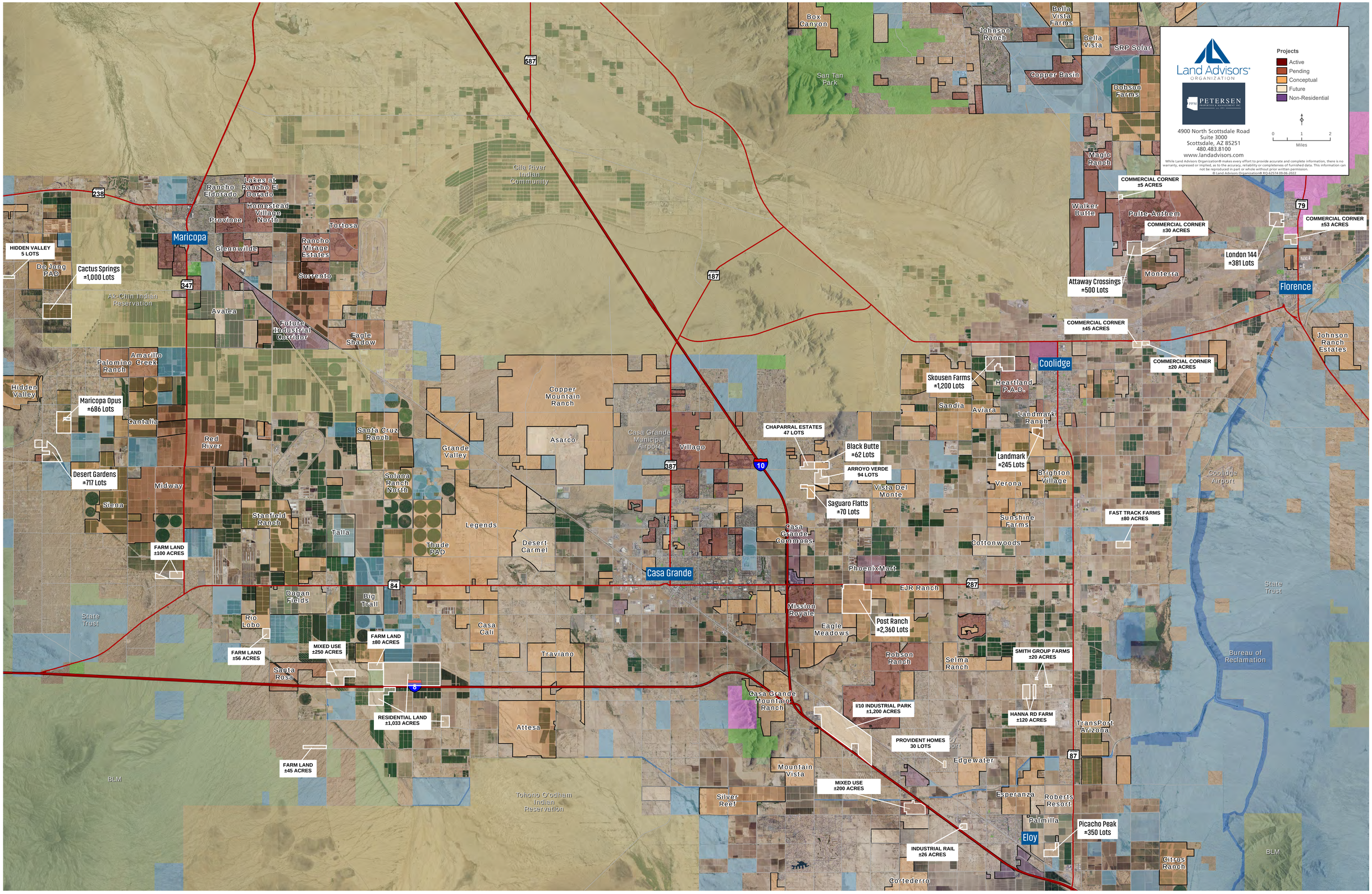
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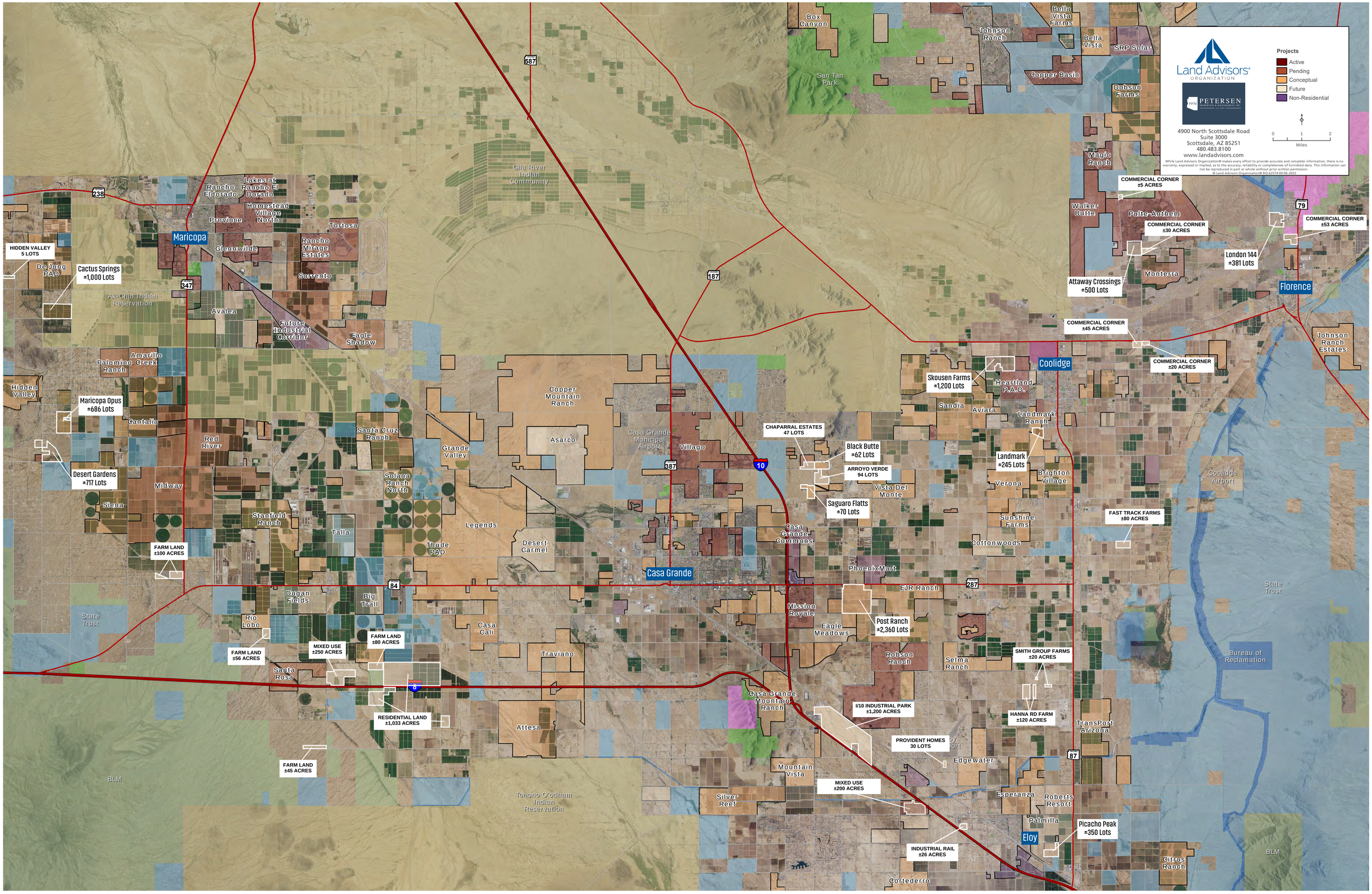
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Landmark 65, LLC
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On behalf of Landmark 65, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you 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.

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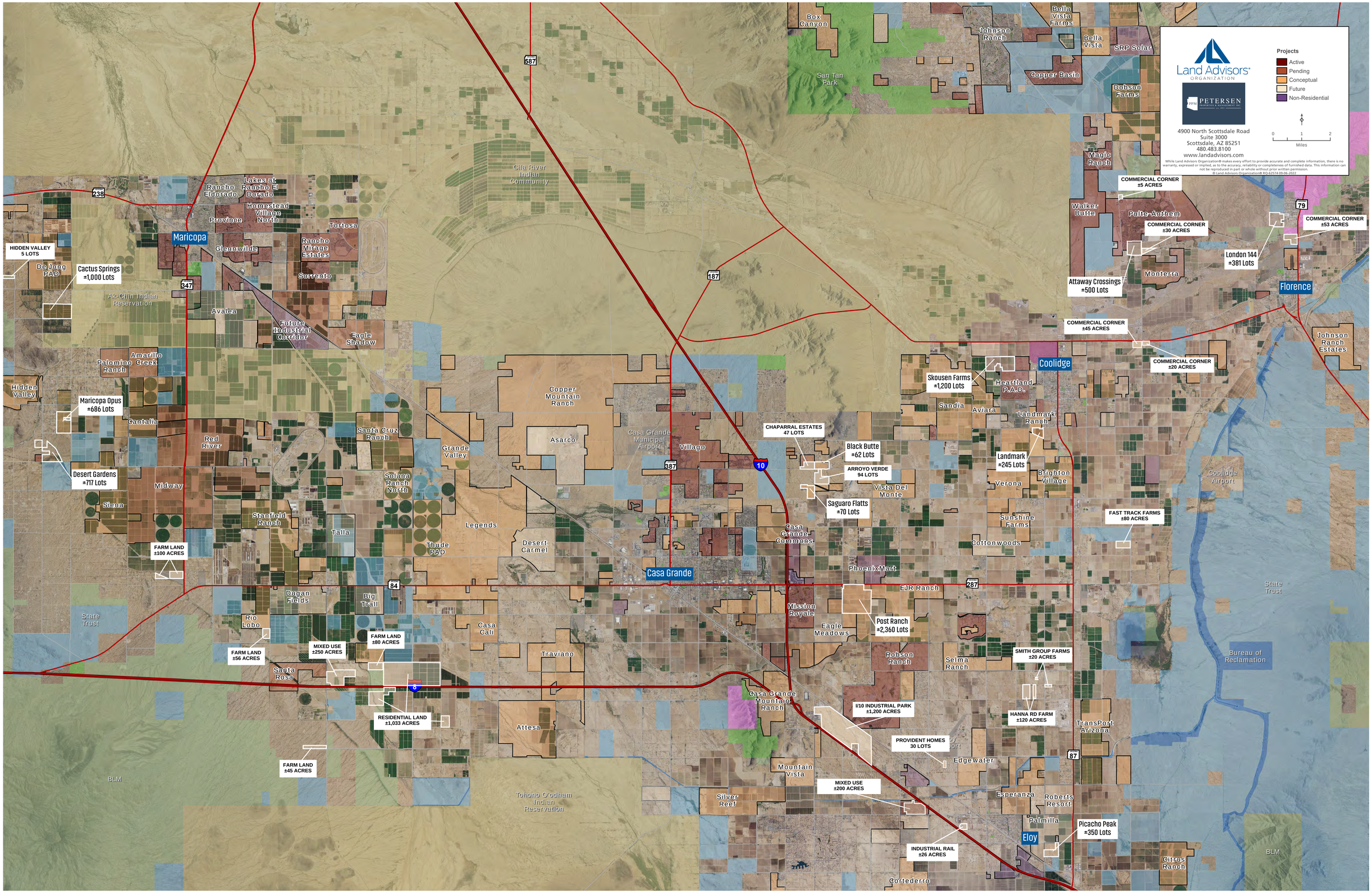
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On behalf of Maricopa Opus 226, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's 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.

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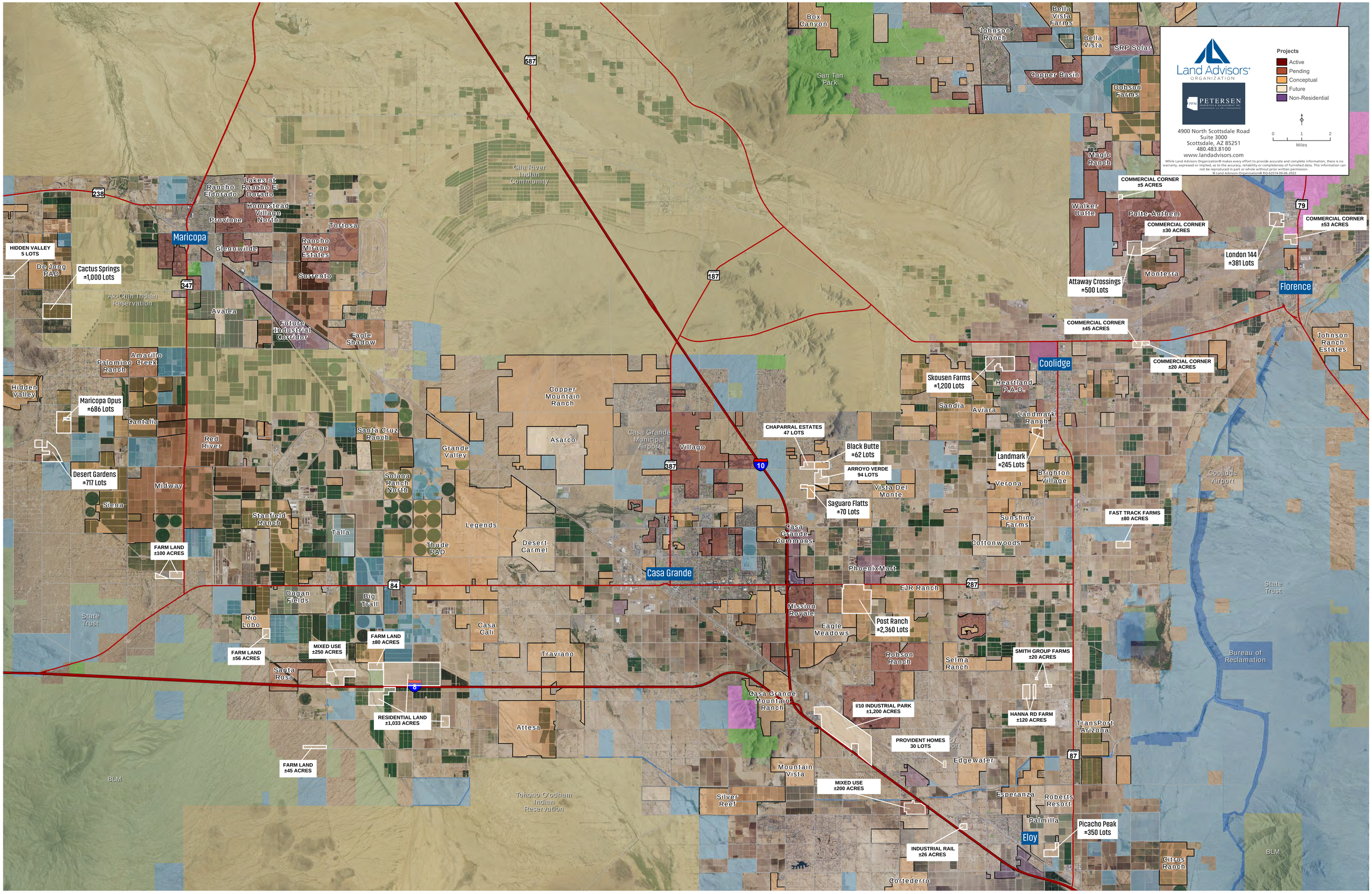
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On behalf of Nuttall 89, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's 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,

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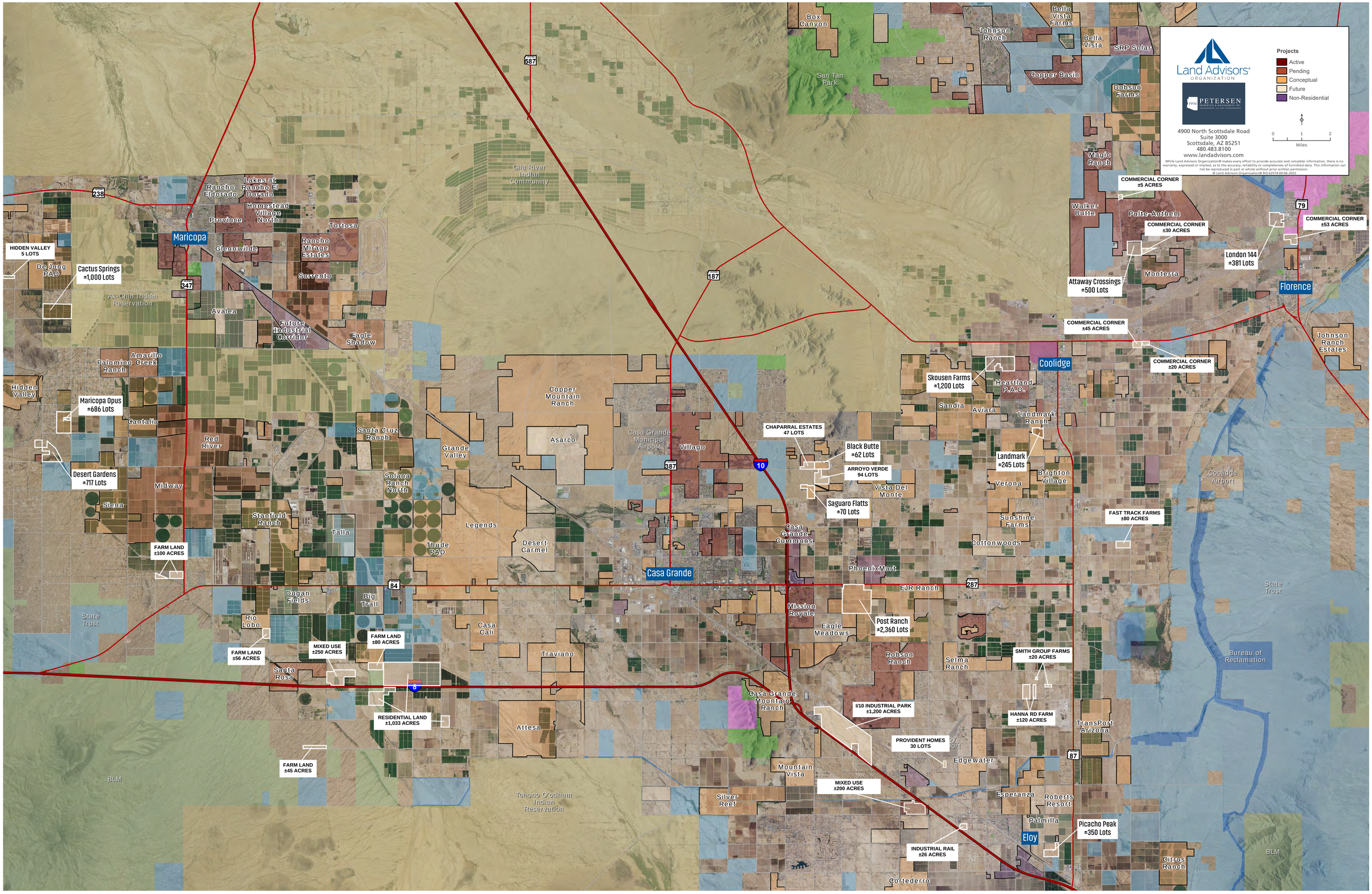
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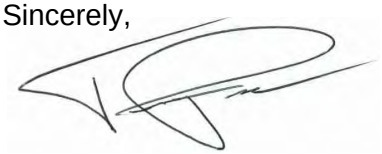

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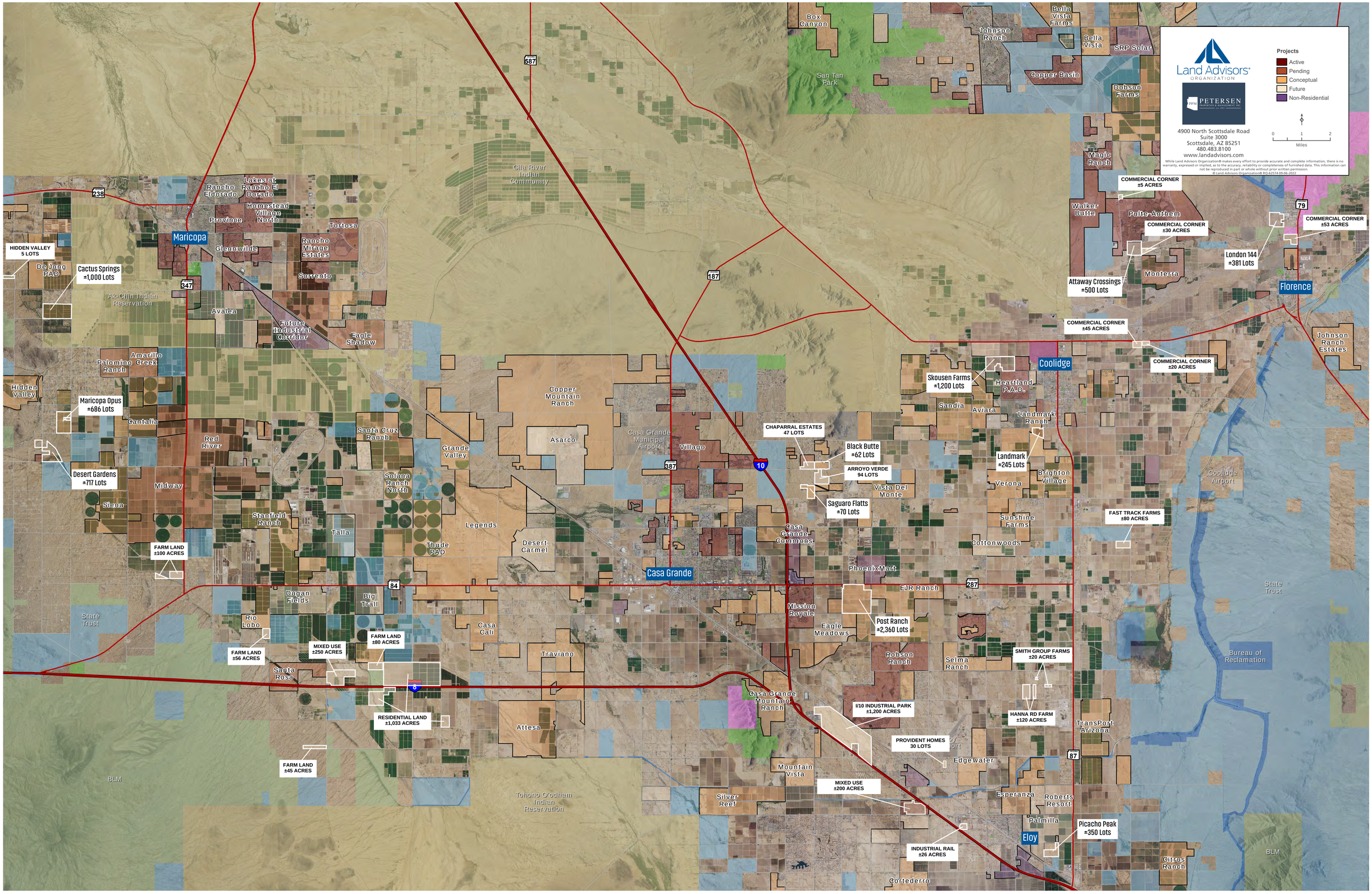
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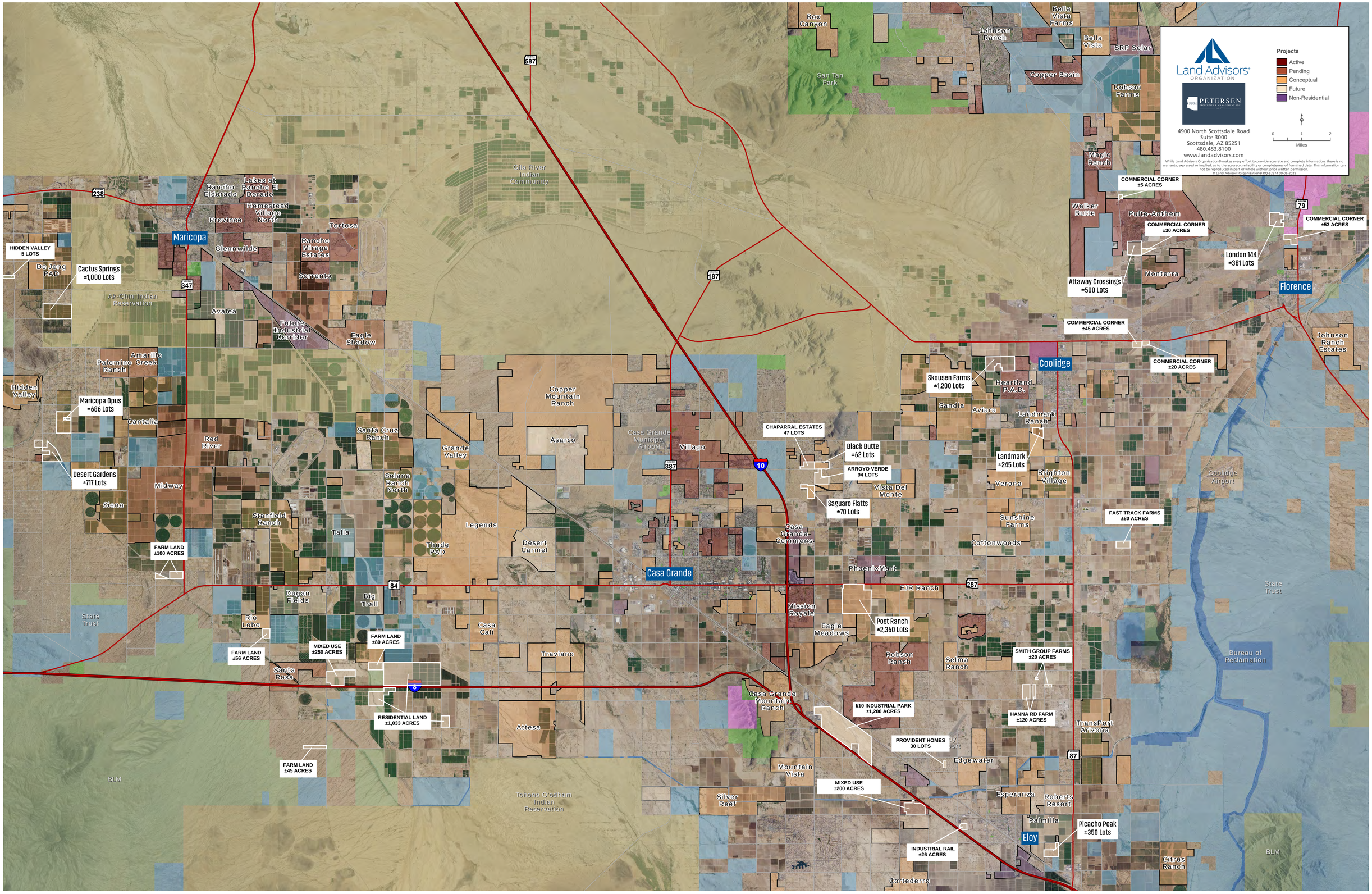
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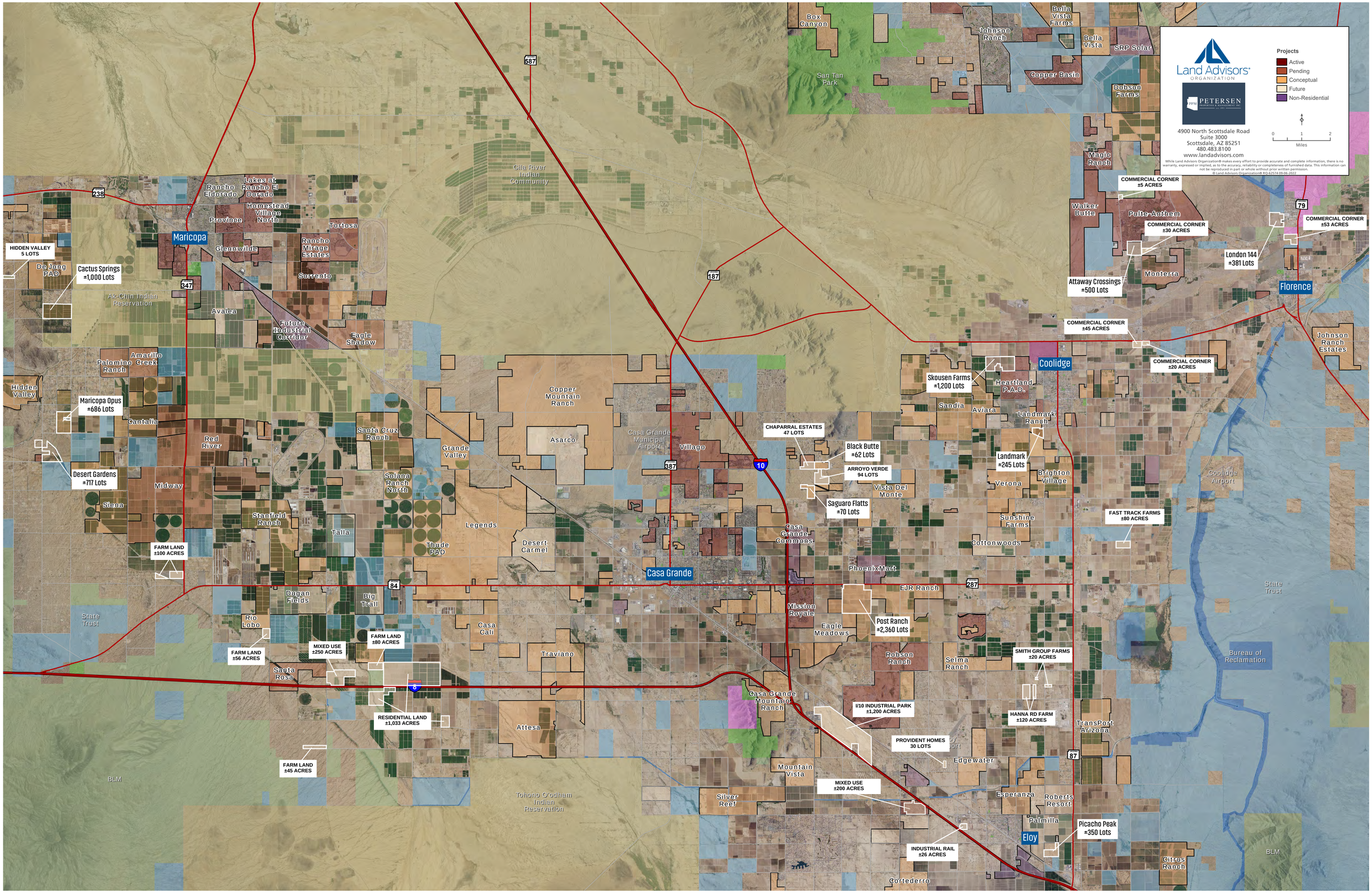
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On behalf of Picacho Peak, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank you for your attention to this important matter. I appreciate the Council's 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

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(c) 602.540.8151
Kevin@PPMLand.com

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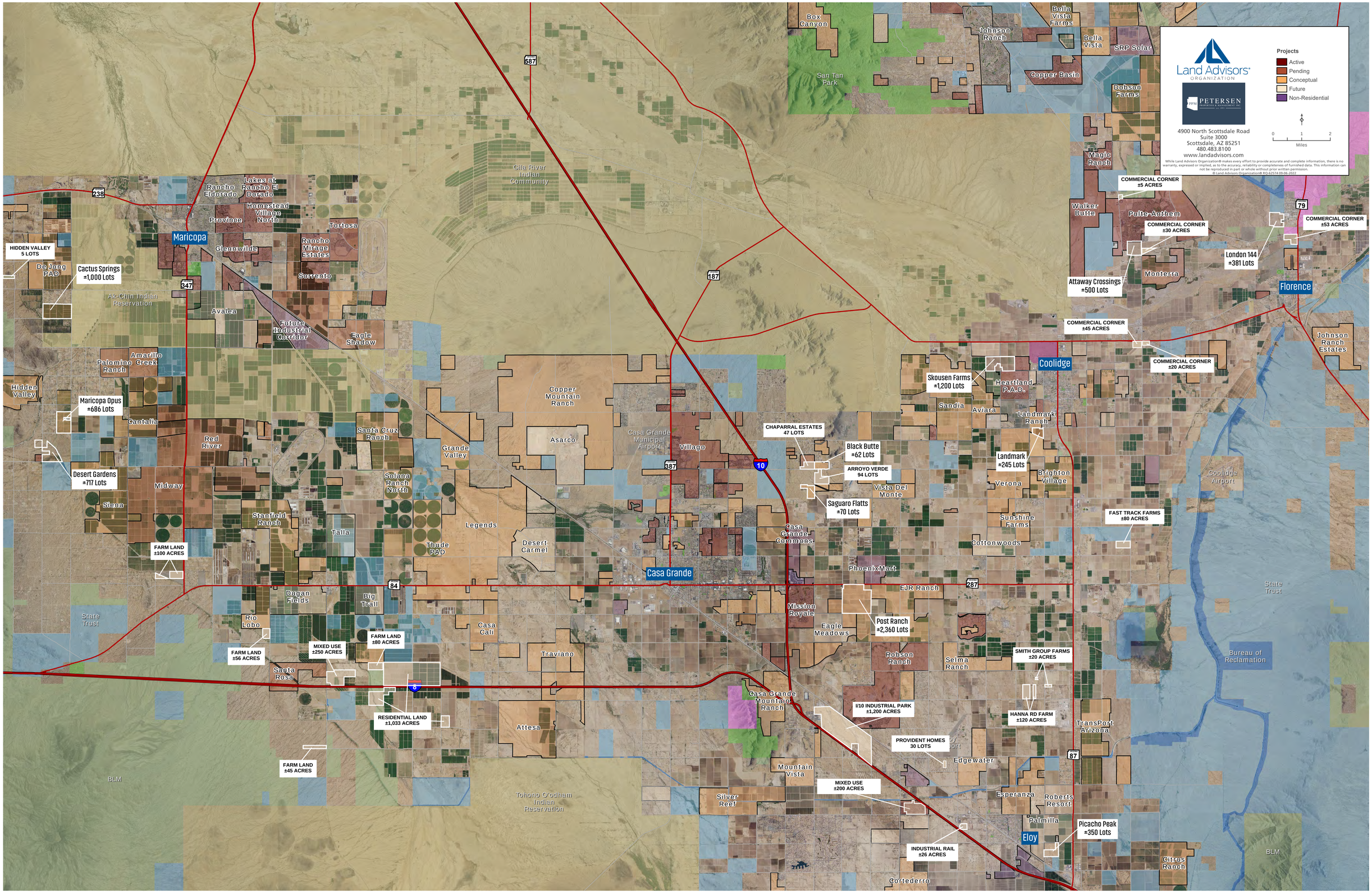
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Post Ranch 589, 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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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 Post Ranch 589, 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 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,

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Manager, Post Ranch 589, LLC

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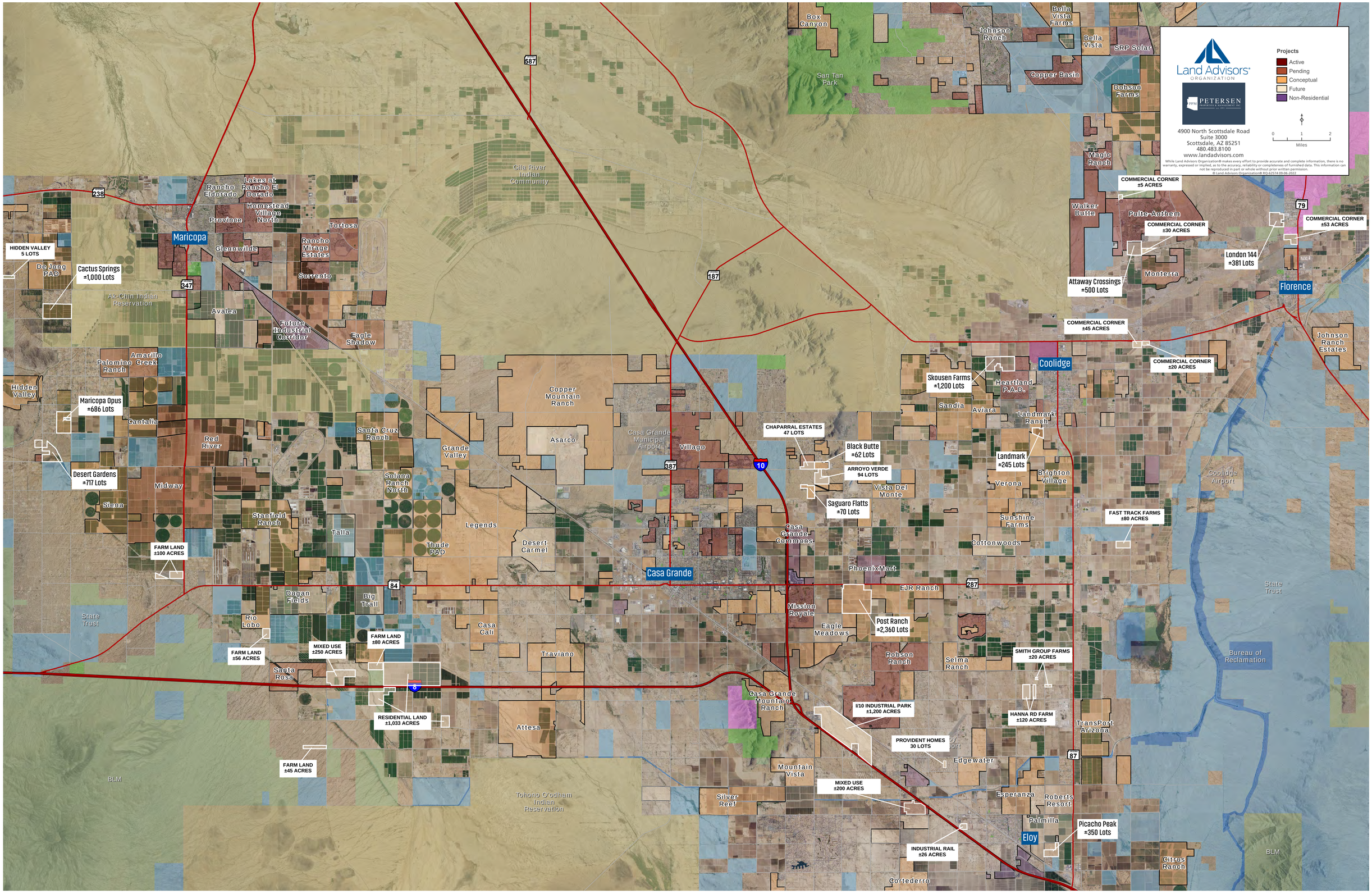
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Skousen Farms LF, LLC
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On behalf of Skousen Farms LF, LLC, I wholeheartedly support the adoption of these rules and encourage their swift implementation to benefit all stakeholders in Pinal County.Thank 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

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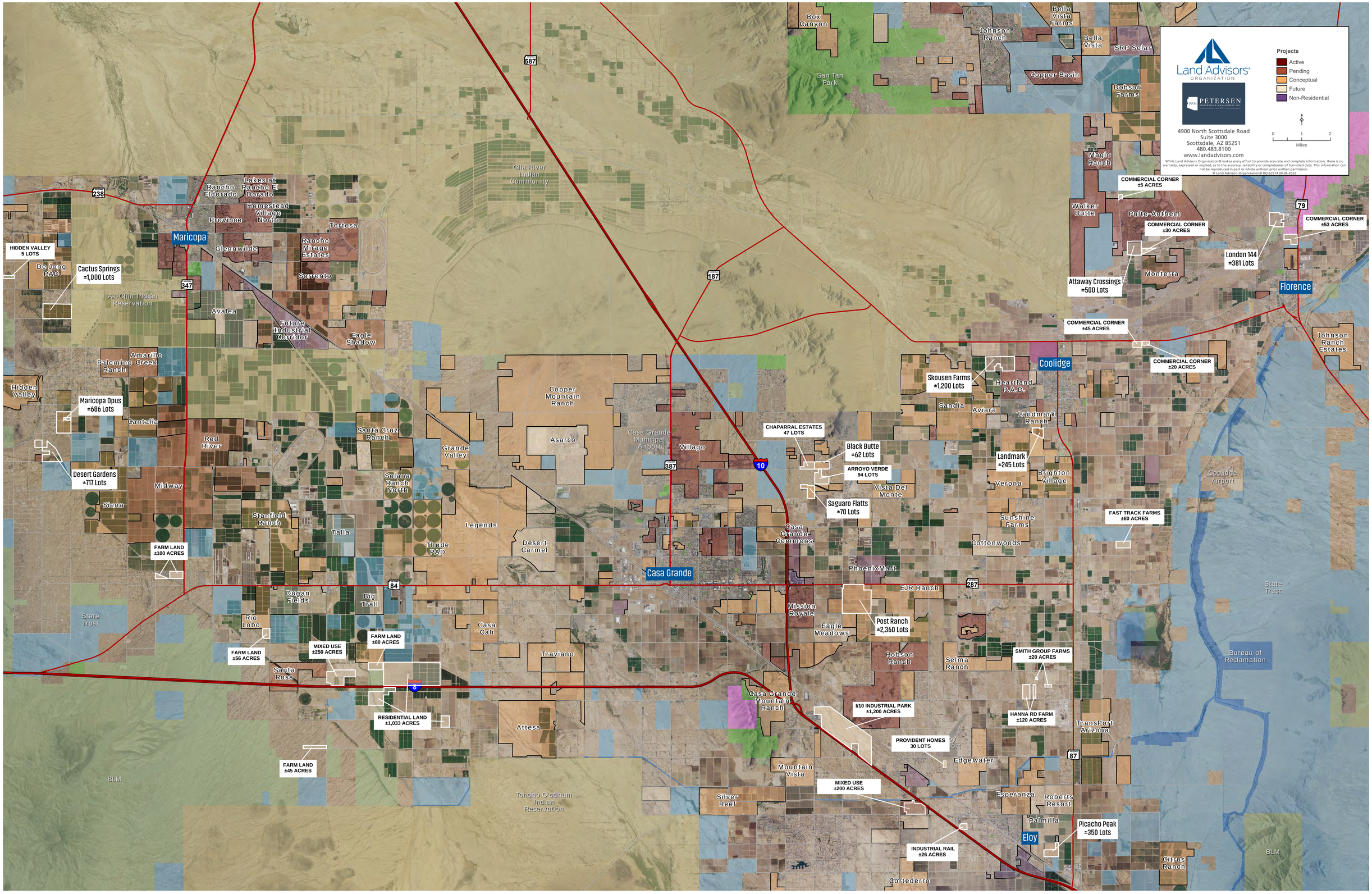
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Smith Group 20, LLC
10.21.24

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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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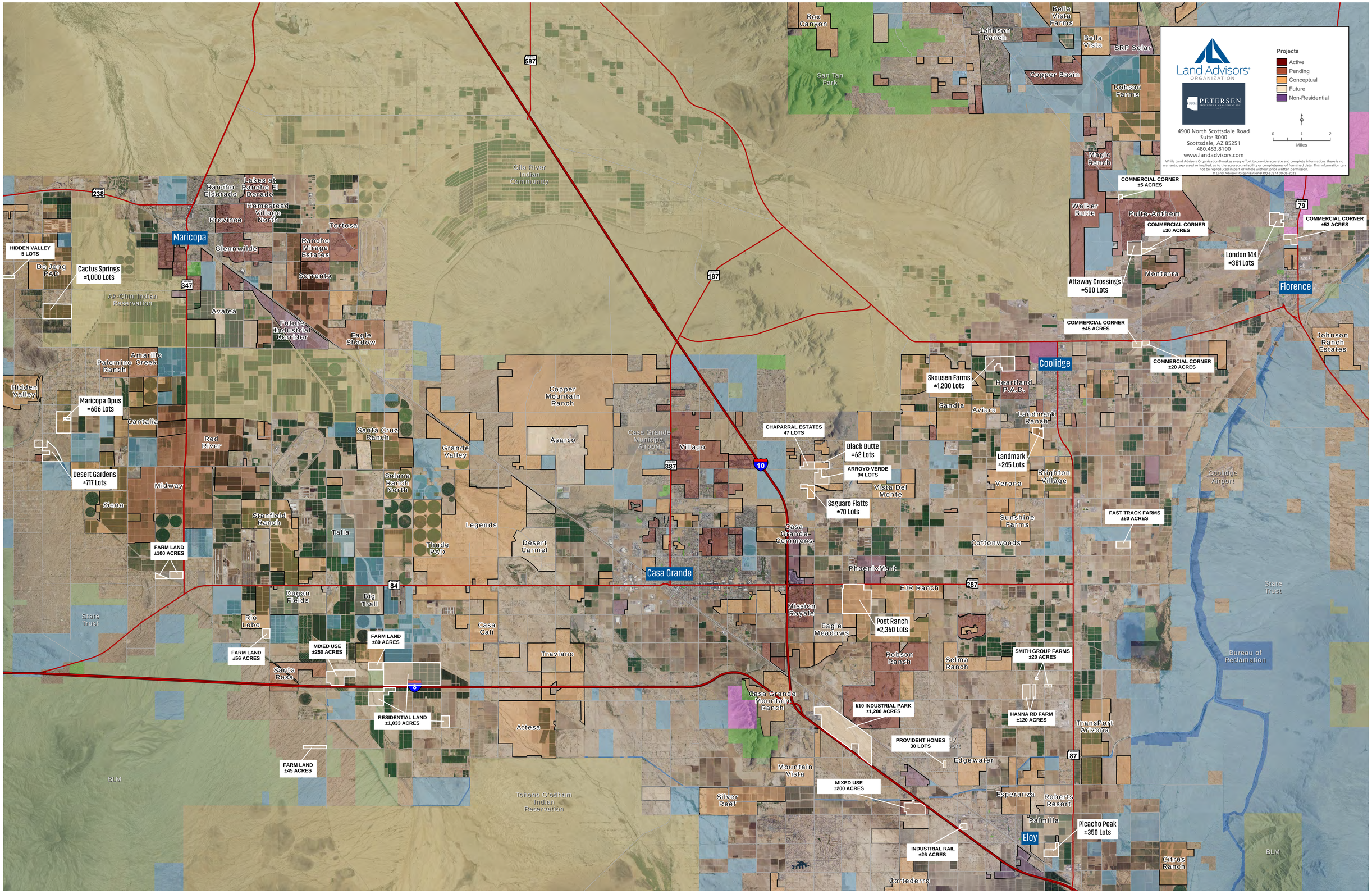
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RE: Comments pertaining to ADAWS and Commingling Rules (file number R24-156) Submitted to Governor's Regulatory Review Council on October 7th, 2024

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,

Trey Smith
480.544.5588

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Vickie L Hayes 56, LLC
10.21.24

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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 Vickie L Hayes 56, 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 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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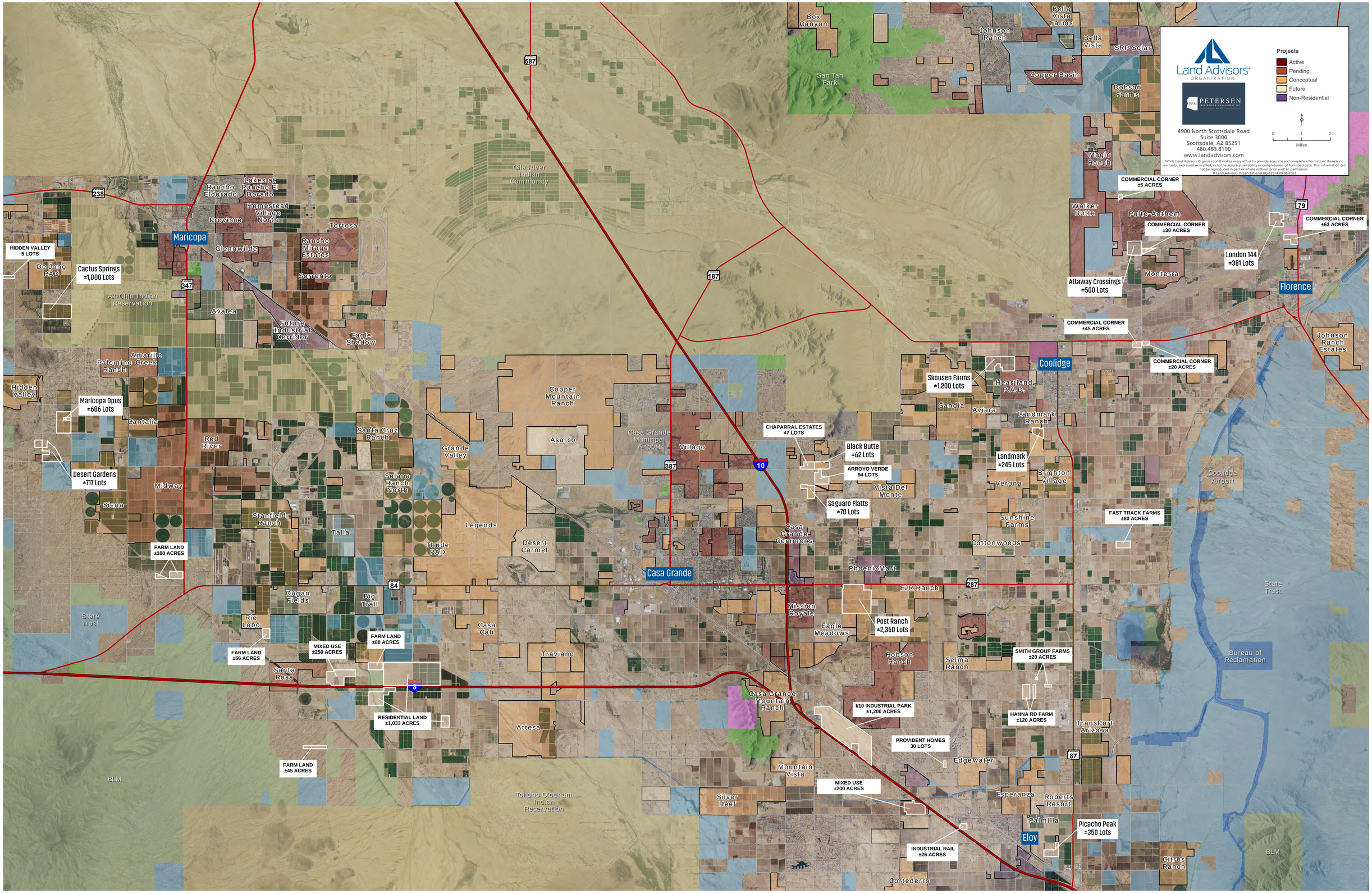
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Projects
Active
Pending
Conceptual
Future
Non-Residential
0 1 2
Miles
Maricopa
Florence
Coolidge
Casa Grande
Eloy
Gila River Indian Community
Ak-Chin Indian Reservation
Tohono O'odham Indian Reservation
BLM
State Trust
Bureau of Reclamation
Box Canyon
San Tan Park
Johnson Ranch
Bella Vista Farms
Bella Vista
SRP Solar
Copper Basin
Dobson Farms
Magic Ranch
Walker Butte
Pulte-Anthem
Monterra
Johnson Ranch Estates
Coolidge Airport
Rancho Eldorado
Lakes at Rancho El Dorado
Homestead Village North
Province
Tortosa
Rancho Mirage Estates
Glennwilda
Sorrento
Avalea
Future Industrial Corridor
Eagle Shadow
Amarillo
Palomino Creek Ranch
Hidden Valley
Cantalia
Red River
Santa Cruz Ranch
Grande Valley
Asarco
Casa Grande Municipal Airport
Villago
Copper Mountain Ranch
Solana Ranch North
Midway
Siena
Stanfield Ranch
Talla
Thude PAD
Legends
Desert Carmel
Dugan Fields
Big Trail
Rio Lobo
Casa Cali
Traviano
Santa Rosa
Attesa
Casa Grande Mountain Ranch
Casa Grande Commons
Mission Royale
Eagle Meadows
PhoenixMart
EJR Ranch
Robson Ranch
Selma Ranch
Vista Del Monte
Sunshine Farms
Cottonwoods
Verona
Brighton Village
Landmark Ranch
Sandia
Aviara
Heartland P.A.D.
Skousen Farms
Edgewater
Mountain Vista
Silver Reef
Esperanza
Roberts Resort
Palmilla
Cortederra
Citrus Ranch
TransPort Arizona
HIDDEN VALLEY
5 LOTS
De Jong PAD
Cactus Springs
±1,000 Lots
Maricopa Opus
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Desert Gardens
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FARM LAND
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FARM LAND
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MIXED USE
±250 ACRES
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RESIDENTIAL LAND
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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
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INDUSTRIAL RAIL
±26 ACRES
COMMERCIAL CORNER
±5 ACRES
COMMERCIAL CORNER
±30 ACRES
Attaway Crossings
±500 Lots
COMMERCIAL CORNER
±45 ACRES
COMMERCIAL CORNER
±20 ACRES
Skousen Farms
±1,200 Lots
Landmark
±245 Lots
SMITH GROUP FARMS
±20 ACRES
HANNA RD FARM
±120 ACRES
London 144
±381 Lots
COMMERCIAL CORNER
±53 ACRES
FAST TRACK FARMS
±80 ACRES
Picacho Peak
±350 Lots
238
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187
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PETERSEN
PROPERTIES & MANAGEMENT INC.
est. 1991

Warren Rd 187, LLC
10.21.24

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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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.

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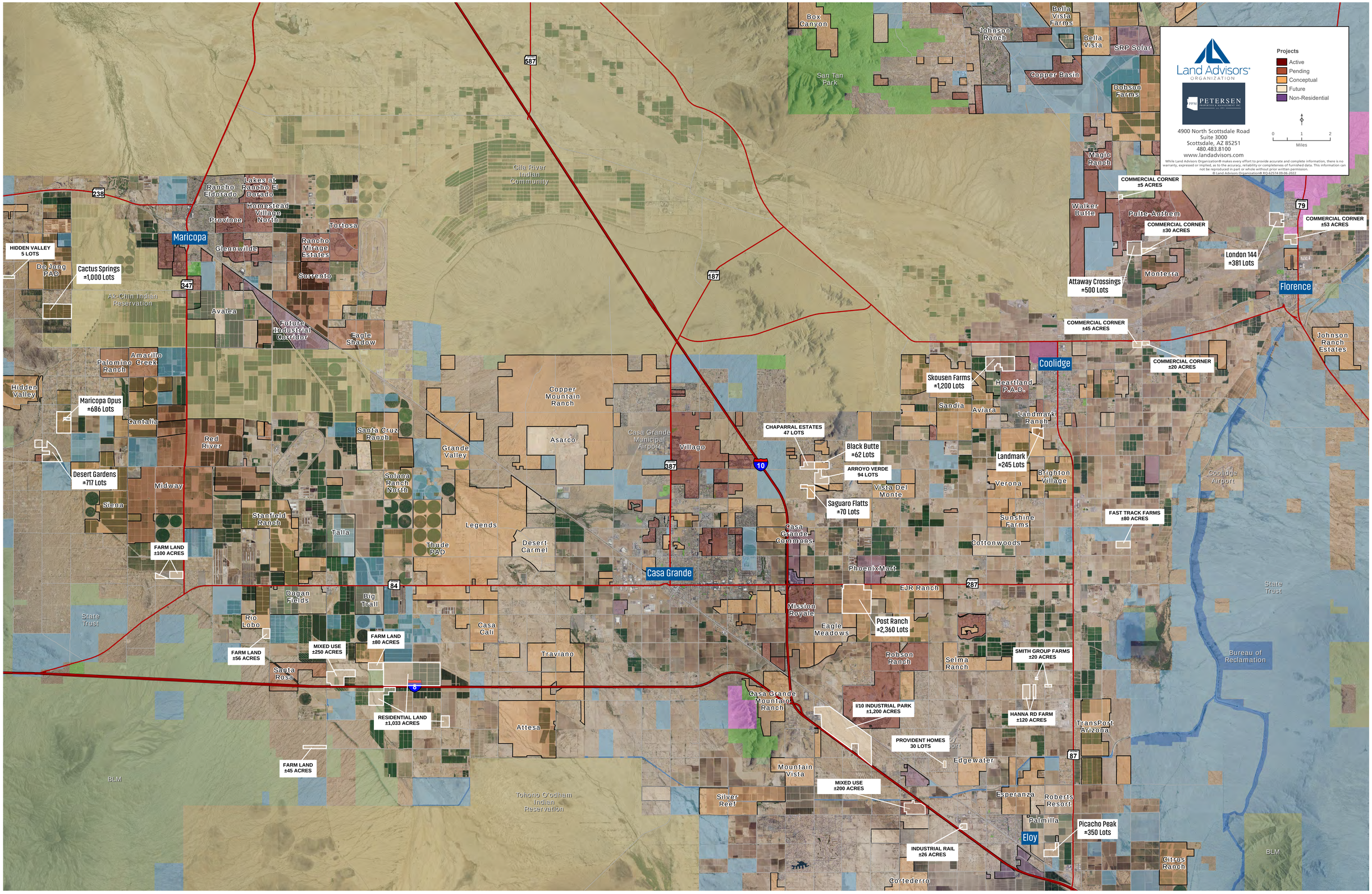
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Non-Residential
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Miles
Maricopa
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Coolidge
Casa Grande
Eloy
Gila River Indian Community
Ak-Chin Indian Reservation
Tohono O'odham Indian Reservation
BLM
State Trust
Bureau of Reclamation
Box Canyon
San Tan Park
Johnson Ranch
Bella Vista Farms
Bella Vista
SRP Solar
Copper Basin
Dobson Farms
Magic Ranch
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Pulte-Anthem
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Lakes at Rancho El Dorado
Homestead Village North
Province
Tortosa
Rancho Mirage Estates
Glennwilda
Sorrento
Avalea
Future Industrial Corridor
Eagle Shadow
Amarillo
Palomino Creek Ranch
Hidden Valley
Cantalia
Red River
Santa Cruz Ranch
Grande Valley
Asarco
Casa Grande Municipal Airport
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Copper Mountain Ranch
Solana Ranch North
Midway
Siena
Stanfield Ranch
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Thude PAD
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Desert Carmel
Dugan Fields
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Rio Lobo
Casa Cali
Traviano
Santa Rosa
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Casa Grande Mountain Ranch
Casa Grande Commons
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PhoenixMart
EJR Ranch
Robson Ranch
Selma Ranch
Vista Del Monte
Sunshine Farms
Cottonwoods
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Sandia
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PHONE: (602) 240-6860 • FAX: (602) 240-6874 • TOLL FREE: (800) 533-6023 • www.azwater.com

October 21, 2024

Governor's Regulatory Review Council
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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:

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.

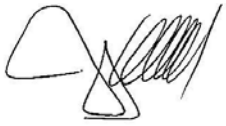
I am writing to express my support for the ADAWS and Commingling rules package submitted by ADWR on October 7th, 2024.

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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100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

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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

ARIZONA WATER COMPANY

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PHONE: (602) 240-6860 • FAX: (602) 240-6874 • TOLL FREE: (800) 533-6023 • www.azwater.com

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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.

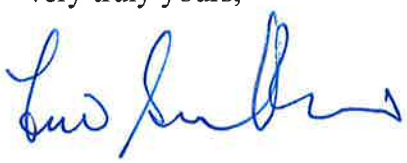
Under the ADAWS, Arizona Water Company will employ a three-part strategy to implement the ADAWS. Arizona Water Company will use its current Central Arizona Project (CAP) water to offset existing unreplenished groundwater by recharging its CAP water in nearby groundwater savings facilities. In addition, 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 Lee

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
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John Sundt, Council Member
Rana Lashgari, Council Member (at-large)

Dear Chair and Council Members:

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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.

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

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
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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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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.

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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
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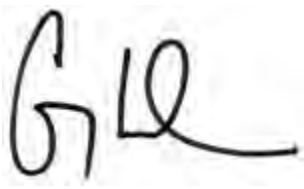

Greg Lehmann
Executive Vice President
Communities Southwest

October 15, 2024

Governor's Regulatory Review Council
100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
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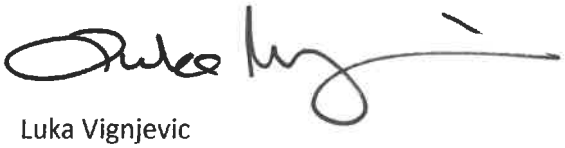

Luka Vignjevic

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)

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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
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Sincerely,

Brent Grizzle, CEO

October 21, 2024

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100 N. 15th Avenue Suite 302
Phoenix, AZ 85007

Jessica Klein, Chair
Frank Thorwald, Council Member
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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
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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
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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

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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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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,

M. Yerger

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
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
John Sundt, Council Member
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

SCOTTSDALE WATER

9379 E San Salvador Drive
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
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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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

Jessica Klein, Chair

Frank Thorwald, Council Member

Jay Spector, 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,

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)

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,
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
Frank Thorwald, Council Member
Jay Spector, Council Member
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Sincerely,
Annette Richmond

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 9:40 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
Jeff Wilmer, Council Member
Jenna Bentley, Council Member (at-large)
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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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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

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,

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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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)

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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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>**

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: 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
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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

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>**

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: 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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Rana Lashgari, Council Member (at-large)

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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

Jessica Klein, Chair
Frank Thorwald, Council Member
Jay Spector, Council Member
Jeff Wilmer, Council Member
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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.

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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

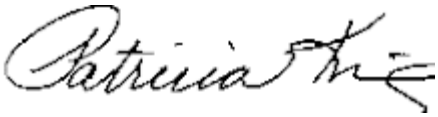
17235 N. 75th Avenue, Suite D-145

Glendale, Arizona 85308

520-836-6868 | Mobile: 602-790-0310

www.pinalalliance.org

6 attachments



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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

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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.

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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.

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,

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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.

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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,

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

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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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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

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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,

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
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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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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,

Matt Hollander

(805) 286-7410

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: 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>

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Sincerely,
Shane DeBrock

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: 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>**

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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>

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Sincerely,

Alan Chook
602-492-7575

The AppleXchange

alan@theapplexchange.com

Gmail **Simon Larscheidt <simon.larscheidt@azdoa.gov>**

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:40 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>

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Sincerely,

Jayson Citron

480-229-9084

Gmail **Simon Larscheidt <simon.larscheidt@azdoa.gov>**

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1 message

Simon Larscheidt <simon.larscheidt@azdoa.gov> Mon, Oct 21, 2024 at 9:36 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>

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Sincerely,
Chris Thompson

310.462.1140

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

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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>**

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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: 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>

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Sincerely,
Holly Oneal

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: 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>

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To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

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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>
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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,

Dylan Hatch

ProAutoSports Track Days

Marketing & Communications Director

480-664-3872

www.proautosports.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 9:31 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)

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.

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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:

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 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
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

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
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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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.

The 25% Tax Is Compounded by the Need to "Gross Up" the Alternative Supply

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.

The 25% Tax on is Further Compounded on Effluent

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

Economic and Real Estate Consulting

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 other water users throughout the basin.[1]

[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. **The Proposed Rule is an Unauthorized New and Disproportionate Tax on Subdividers**. 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.

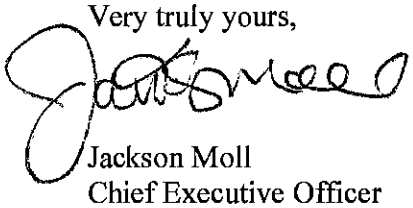
4. **There is No Reasonable Basis for the Date Restriction in the Rule**. We are confused why the rule contains a date limitation. Subdividers will still be able to obtain Certificates under A.R.S. § 45-576 without using the new rule without a date limitation. The end date for the proposed new rule language 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

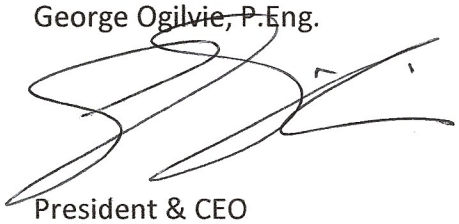
ARIZONA SONORAN
COPPER COMPANY

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,

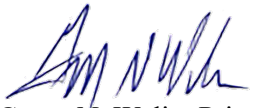
I appreciate the Council's ongoing commitment to balance the needs of Arizona's citizens and stakeholders while ensuring effective regulations. Your role in reviewing agency regulations, particularly the Alternative Designation of Assured Water Supply (ADAWS) rules developed by the Arizona Department 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.

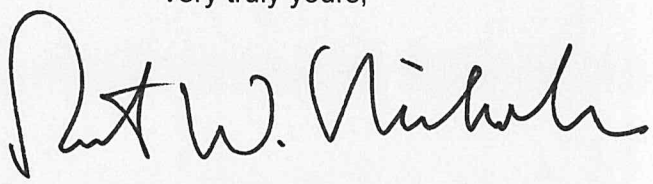
Given the current conditions on the Colorado River and increasing concerns regarding record heat, it is more important than ever that Arizona's Assured Water Supply program reflects our commitment to sustainable practices and demonstrates that Arizona remains a safe and attractive place for investment. 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

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)

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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

We Love Referrals! $100 Paid for Every New Referral!

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)

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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,

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>

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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>**

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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: 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

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Sincerely,

Chris Corso

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 <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
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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

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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

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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
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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

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Jeffrey Kriner

102 E Linger Ln

Phoenix, AZ 85020

Gmail **Simon Larscheidt <simon.larscheidt@azdoa.gov>**

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1 message

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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>

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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,

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)

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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.

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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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

Jeffrey.Parks@mattamycorp.com

Mattamy Homes USA

Division Office: 9200 E. Pima Center Pkwy, Suite 160, Scottsdale, AZ 85258

Connect with us:

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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

Connect with us:

Gmail

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

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 FORTUNE 100 BEST COMPANIES TO WORK FOR 2024 BUILT TO HONOR PULTEGROUP

Michelle Gregorec

Division President : Arizona Division

Michelle.Gregorec@pultegroup.com

Phone: 480-391-6190

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.

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

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

4900 North Scottsdale Road, Suite 1600, Scottsdale, AZ 85251
www.atwell.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.

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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,

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

www.chandleraz.gov

Location
975 East Armstrong Way
Building L
Chandler, AZ

CHANDLER
arizona
Community of Innovation

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

www.chandleraz.gov

Location
975 East Armstrong Way
Building L
Chandler, AZ

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 usir unreplenished groundwater w continue to deplete local aquif While this solution might not 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. Thes companies could begin to dive themselves of operations in Ar and relocate to states where w 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 r 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 be 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

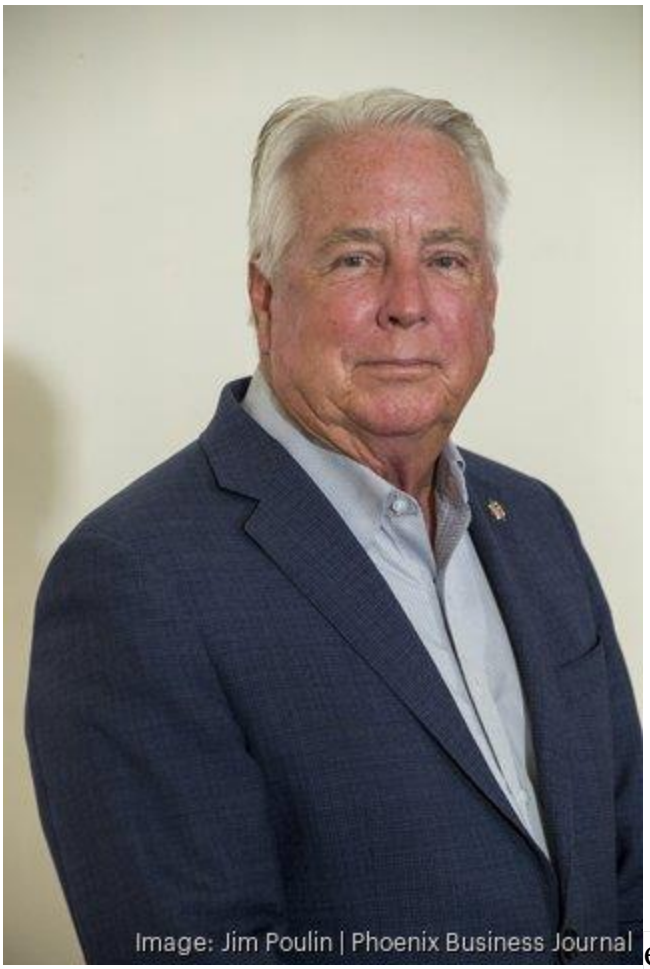
concern. In turn, this could lead to negative economic impacts to Arizona that the assured water supply rules were designed to prevent.

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

Direct 480-429-4862

Mobile 602-791-7957

Marc.Osborn@kutakrock.com

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—particularly 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 Department's admission that the Proposed Rules represent "the only feasible path" for many builders. Indeed, the Proposed Rules *could add thousands or tens of thousands of dollars* to the cost of every new home built 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,

Patrick Brown

Vice President of Operations

D.R. HORTON – PHOENIX WEST DIVISION

7689 E. Pinnacle Peak Rd, Suite 200, Scottsdale, AZ 85255

O: (480) 368-1065 **C:** (480)622-0665

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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@TriP
ointeHomes.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 Constr
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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

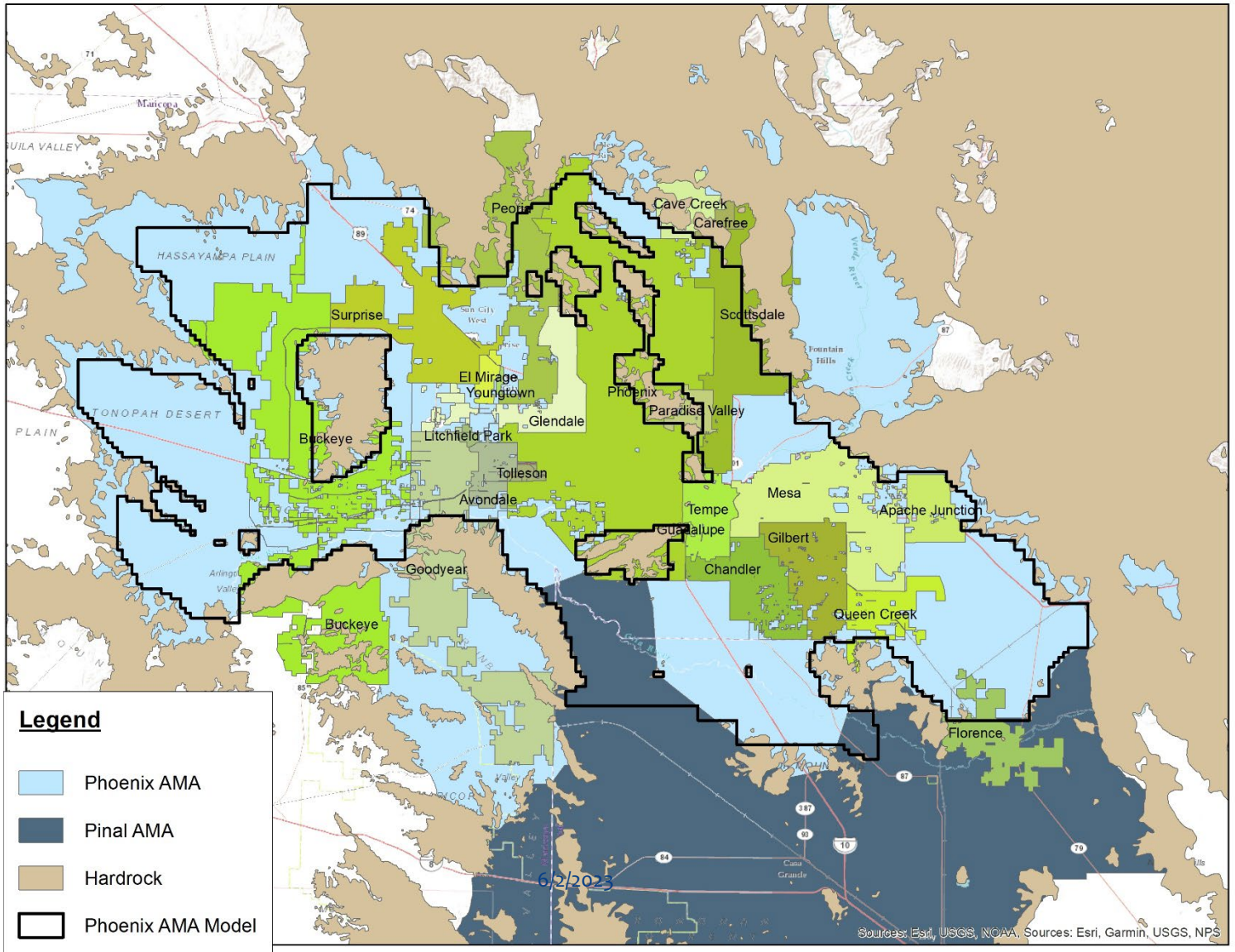
AWS Criteria

- 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

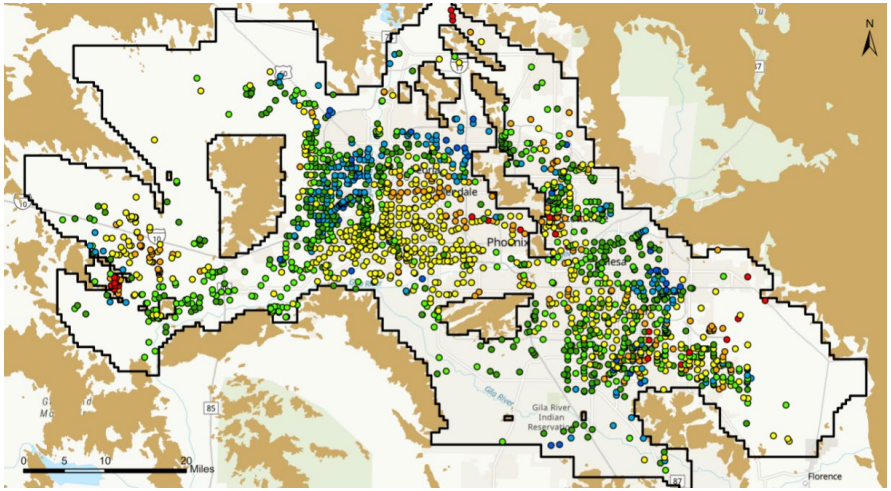
- 1990s ADWR created a MODFLOW model of the Salt River Valley (ESRV and WSRV)
- Most recently updated in 2009
- Brown and Caldwell 2006 Lower Hassayampa model
- ADWR updated/recalibrated the 2023 Lower Hassayampa model and 100-year AWS projection
- 2023 release of Phoenix AMA model, which combines the 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)

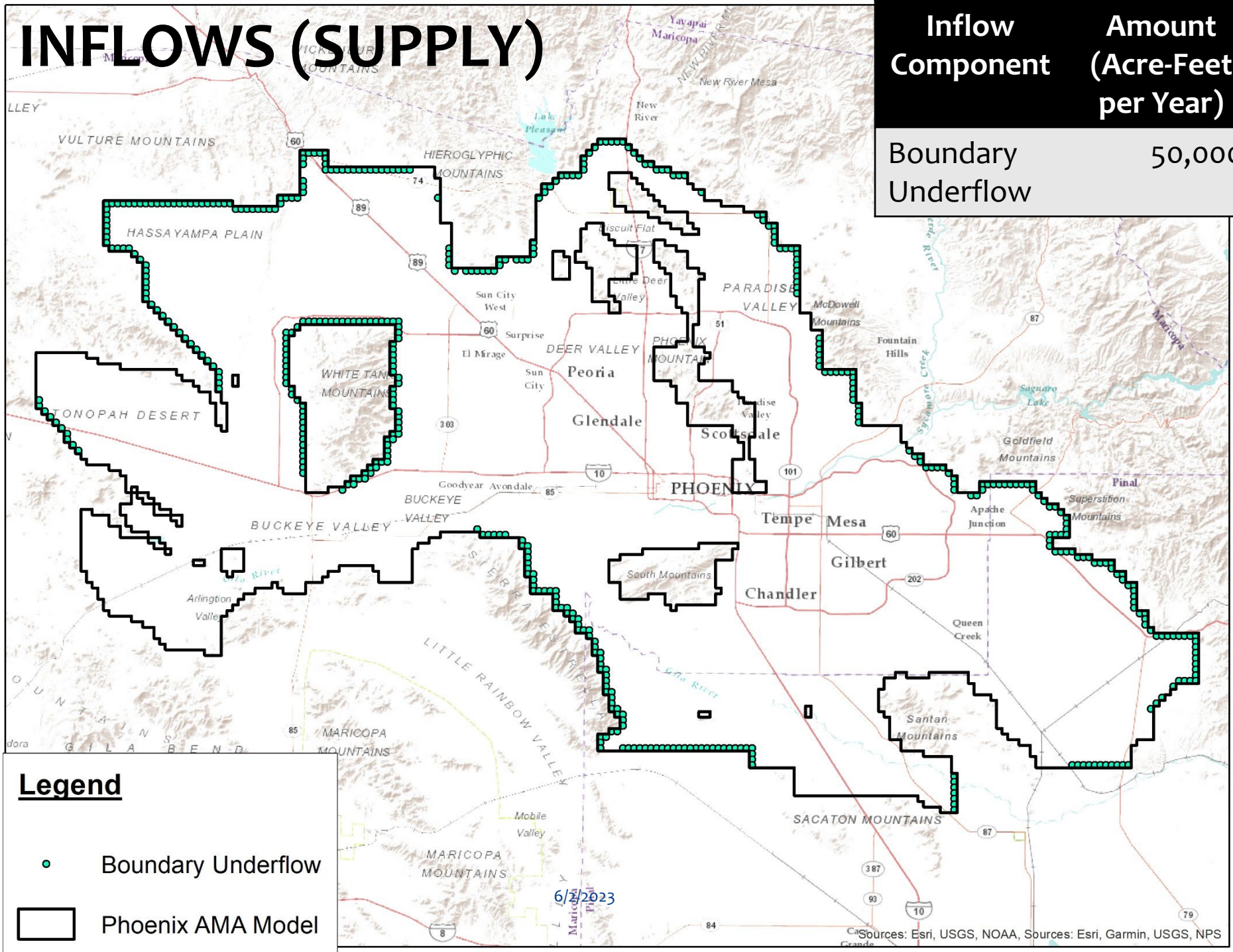
- -148 to -100
- -100 to -50
- -50 to -10
- -10 to 10
- 10 to 50
- 50 to 100
- 100 to 230
- Active Model Domain
- Bedrock

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

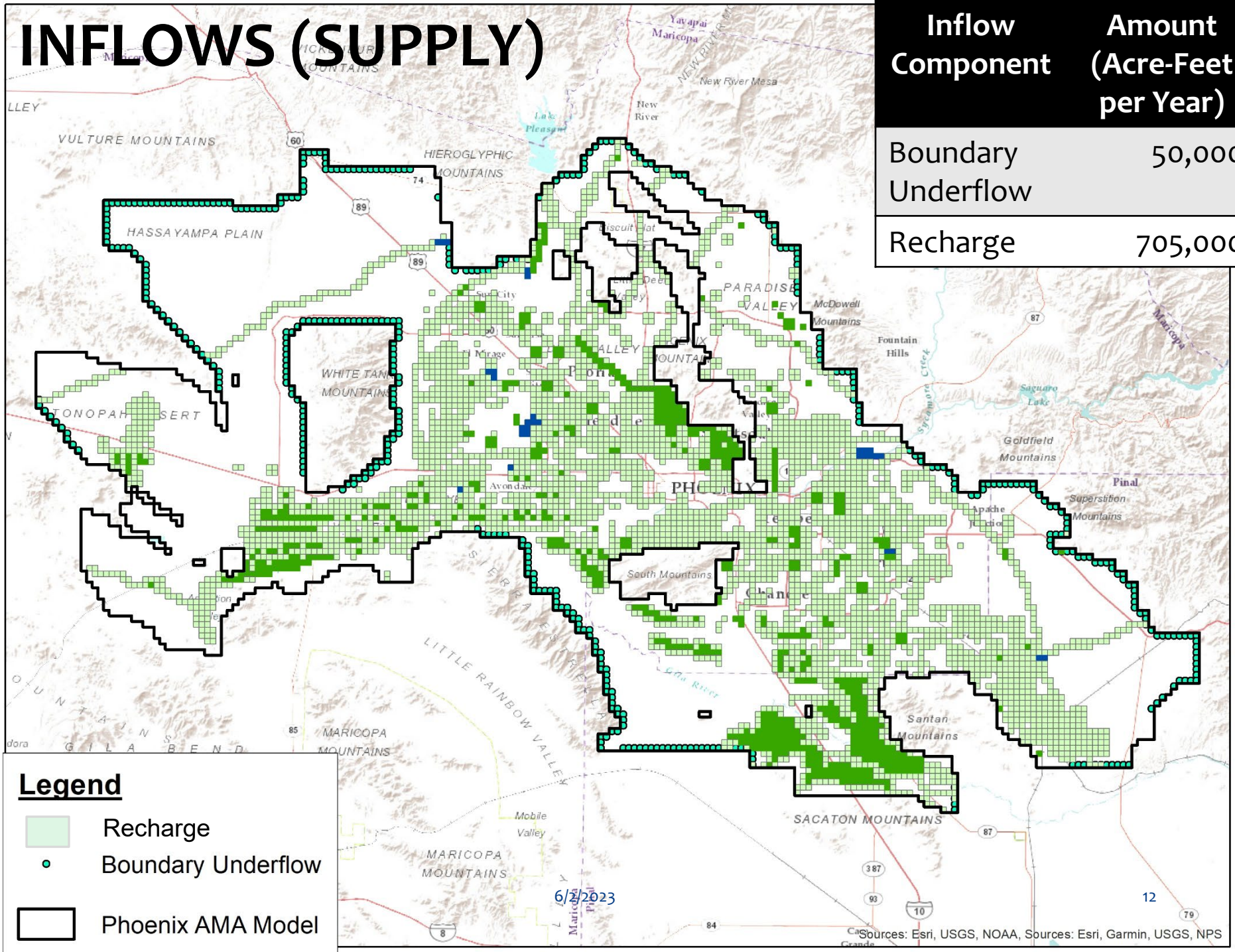


Legend

- Boundary Underflow
- Phoenix AMA Model

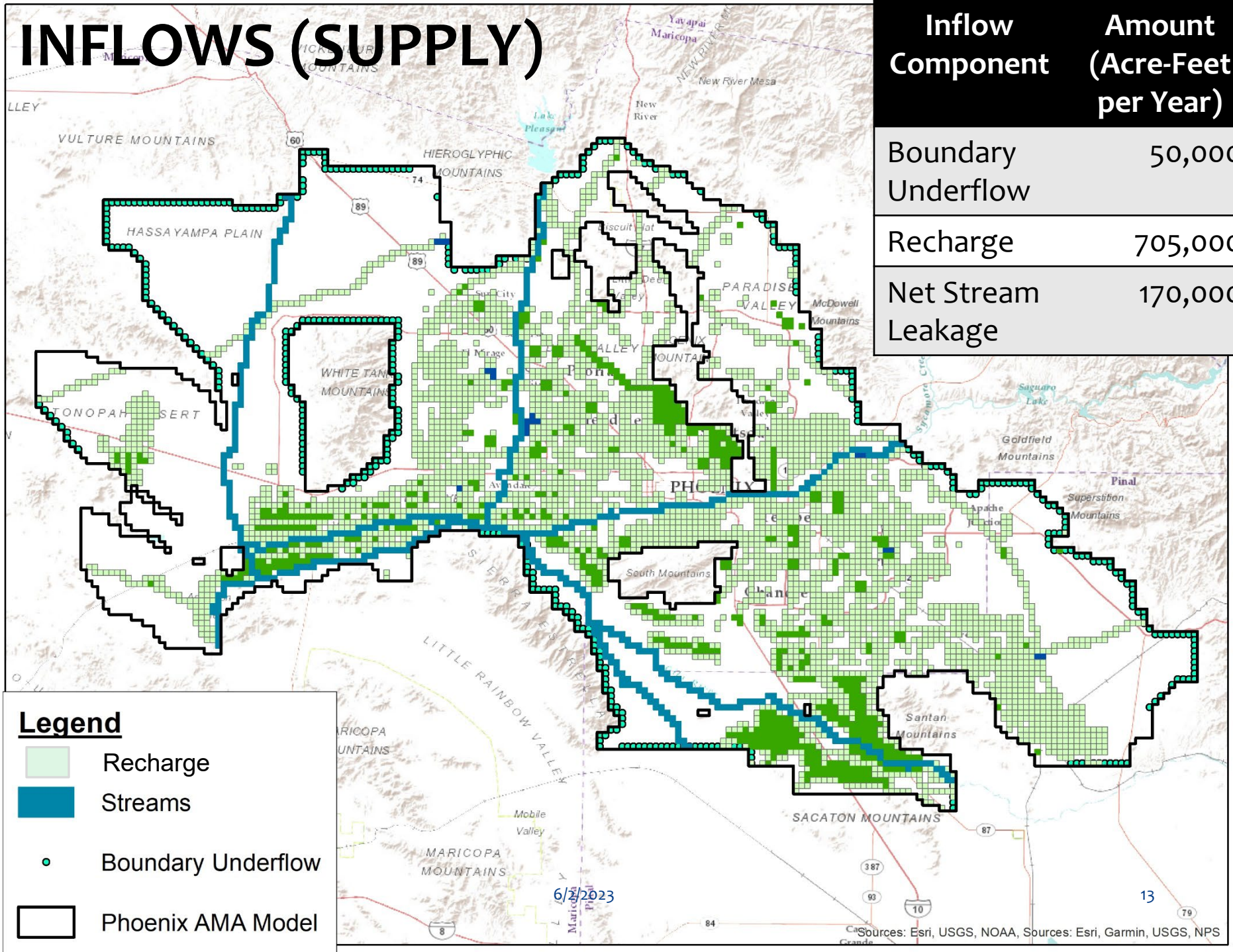
INFLOWS (SUPPLY)

Inflow Component	Amount (Acre-Feet per Year)
Boundary Underflow	50,000
Recharge	705,000



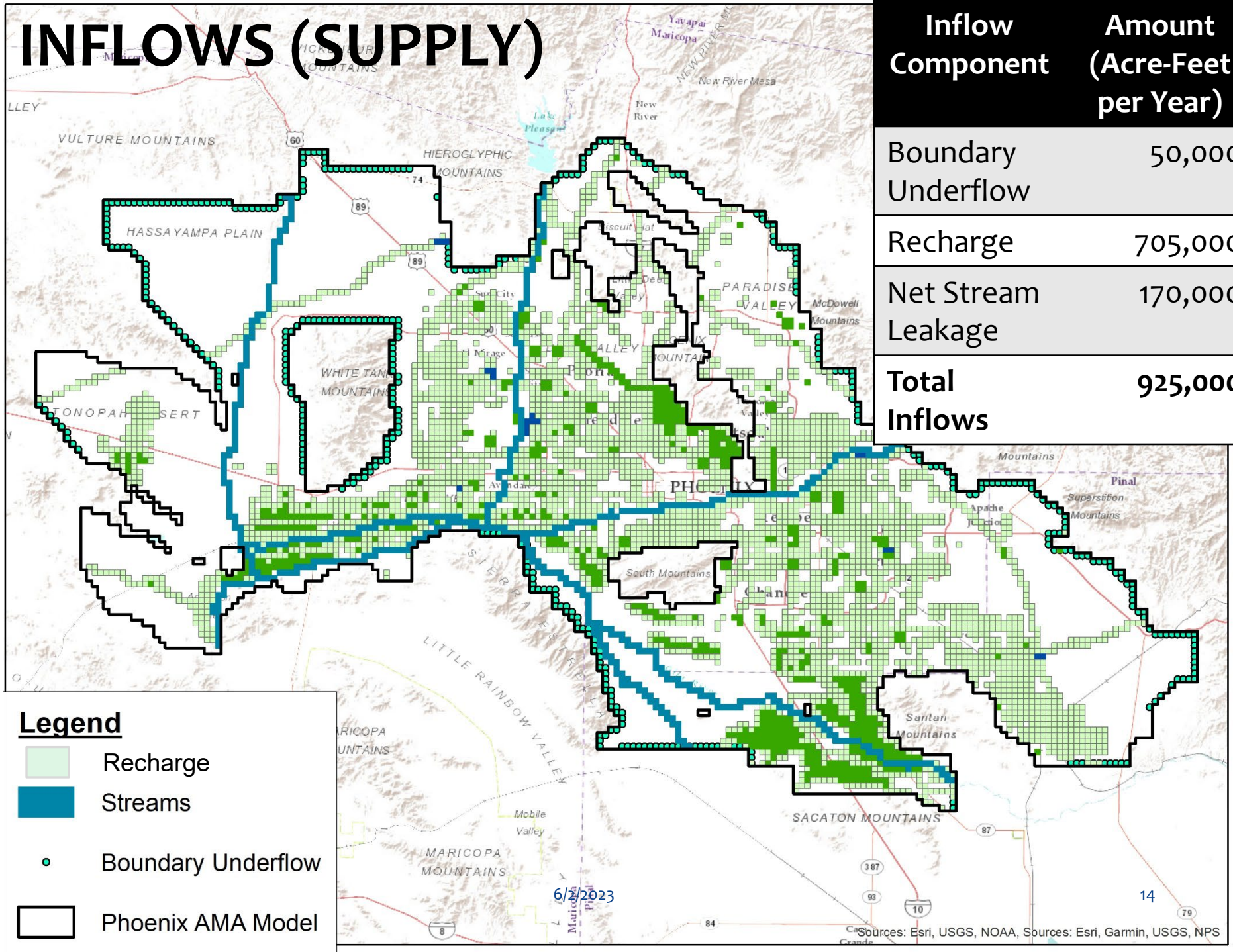
INFLOWS (SUPPLY)

Inflow Component	Amount (Acre-Feet per Year)
Boundary Underflow	50,000
Recharge	705,000
Net Stream Leakage	170,000



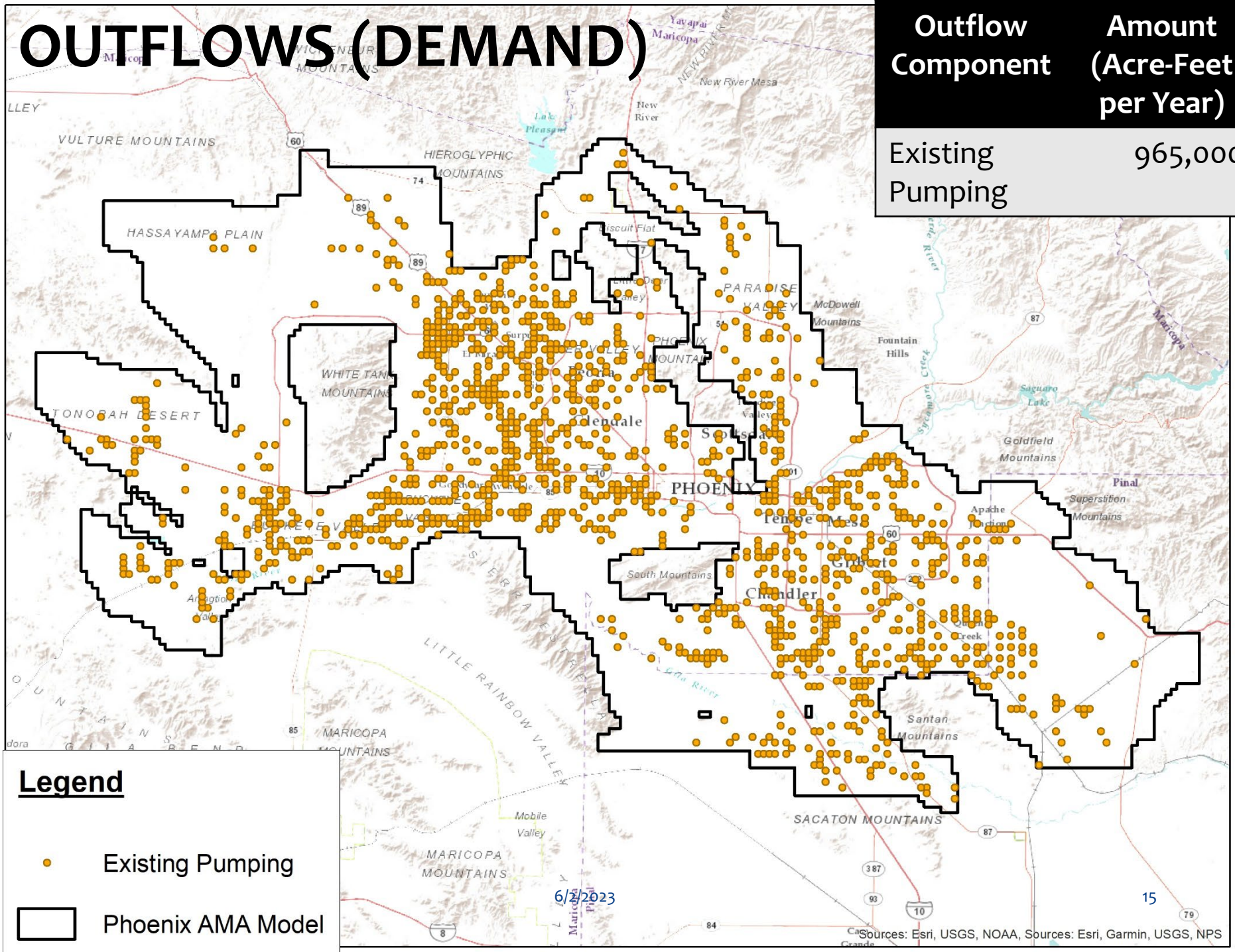
INFLOWS (SUPPLY)

Inflow Component	Amount (Acre-Feet per Year)
Boundary Underflow	50,000
Recharge	705,000
Net Stream Leakage	170,000
Total Inflows	**925,000**



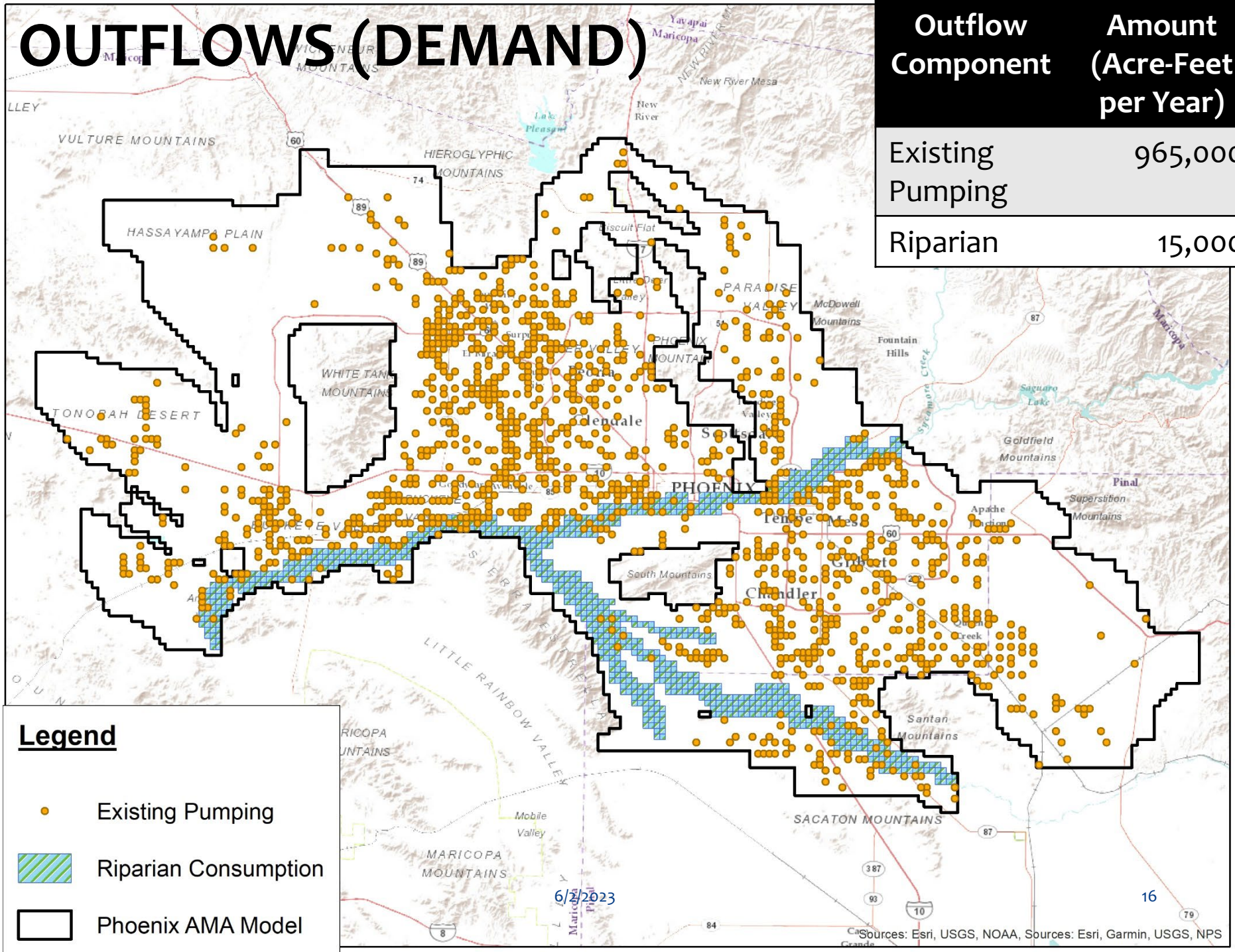
OUTFLOWS (DEMAND)

Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000



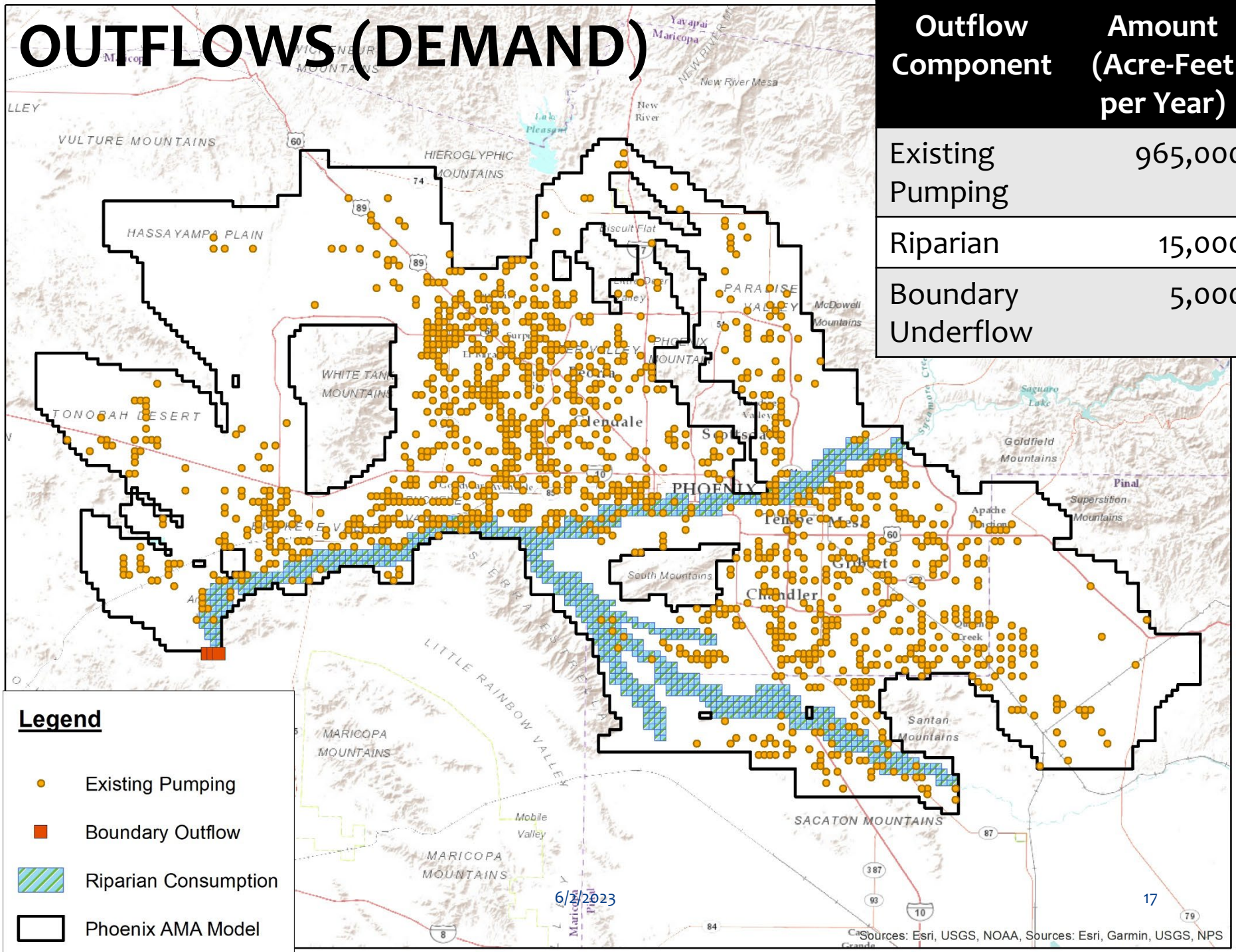
OUTFLOWS (DEMAND)

Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000
Riparian	15,000



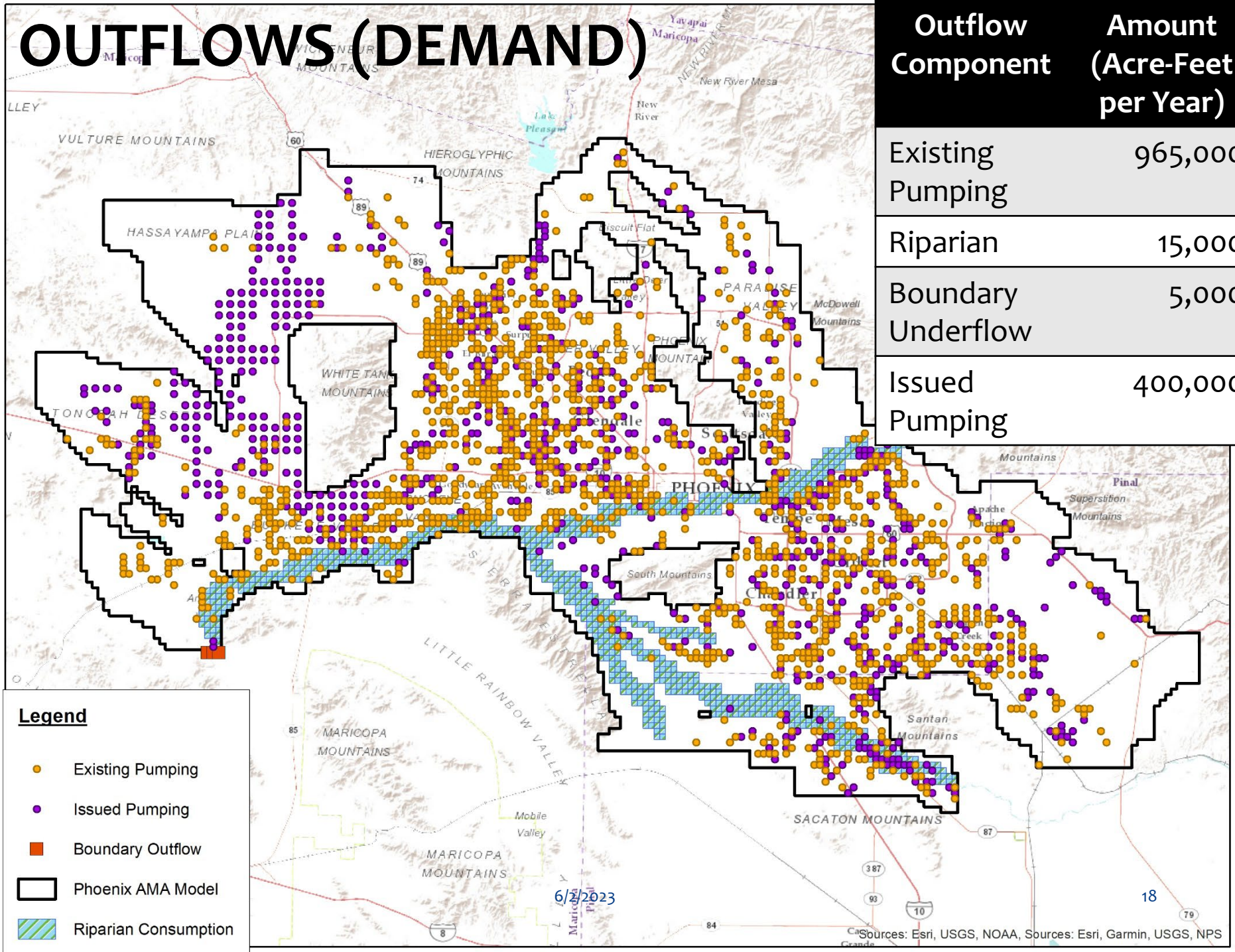
OUTFLOWS (DEMAND)

Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000
Riparian	15,000
Boundary Underflow	5,000



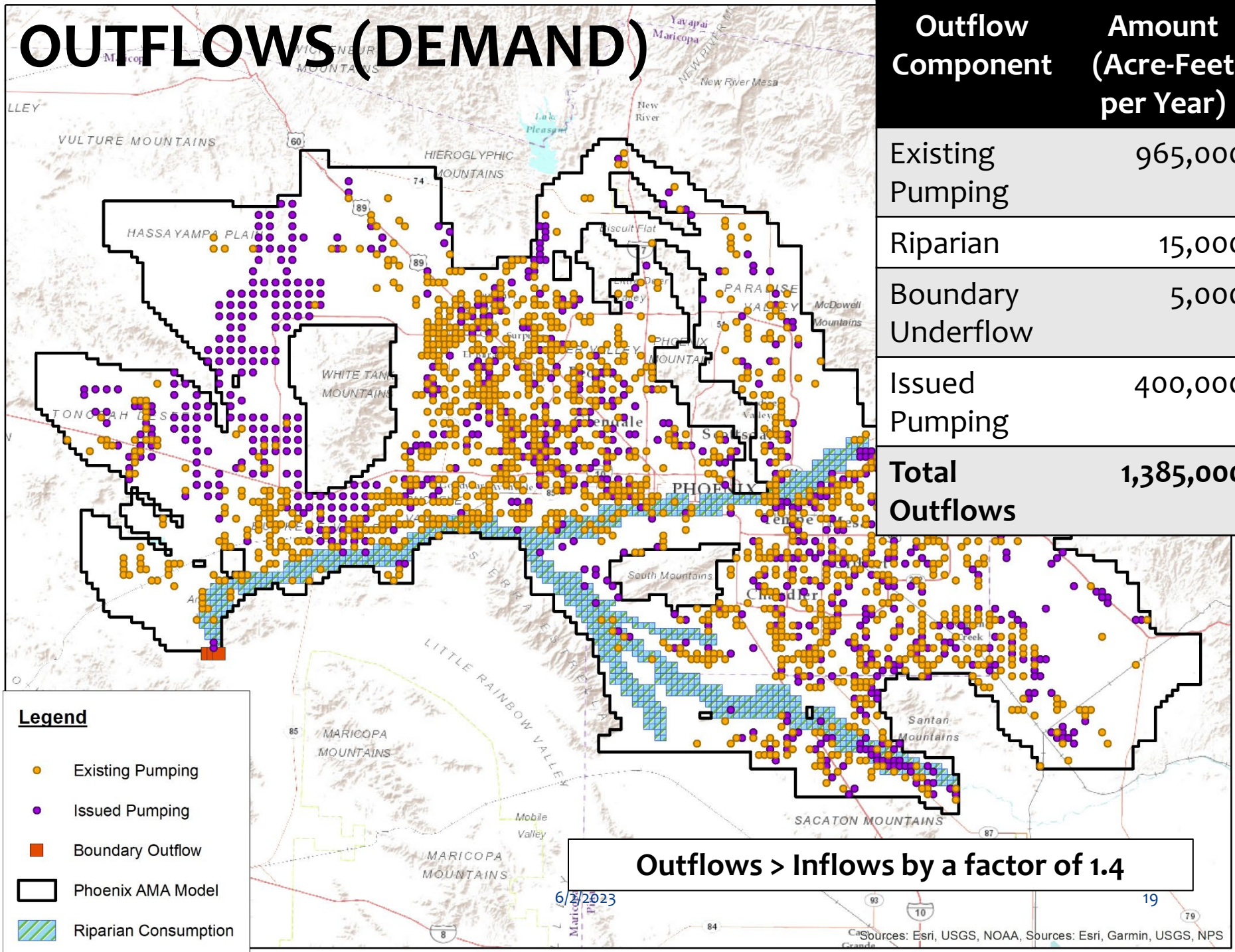
OUTFLOWS (DEMAND)

Outflow Component	Amount (Acre-Feet per Year)
Existing Pumping	965,000
Riparian	15,000
Boundary Underflow	5,000
Issued Pumping	400,000



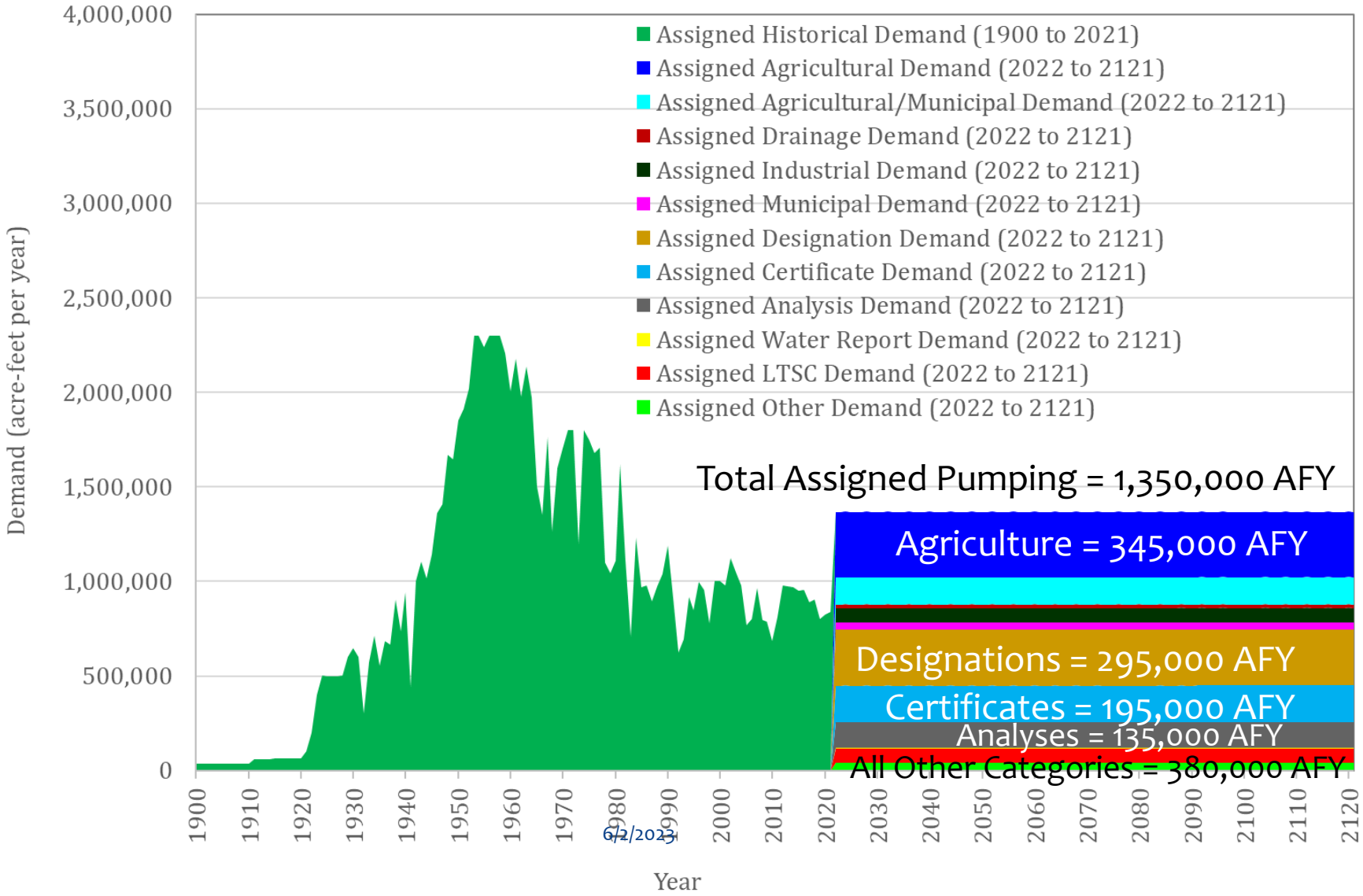
OUTFLOWS (DEMAND)

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**

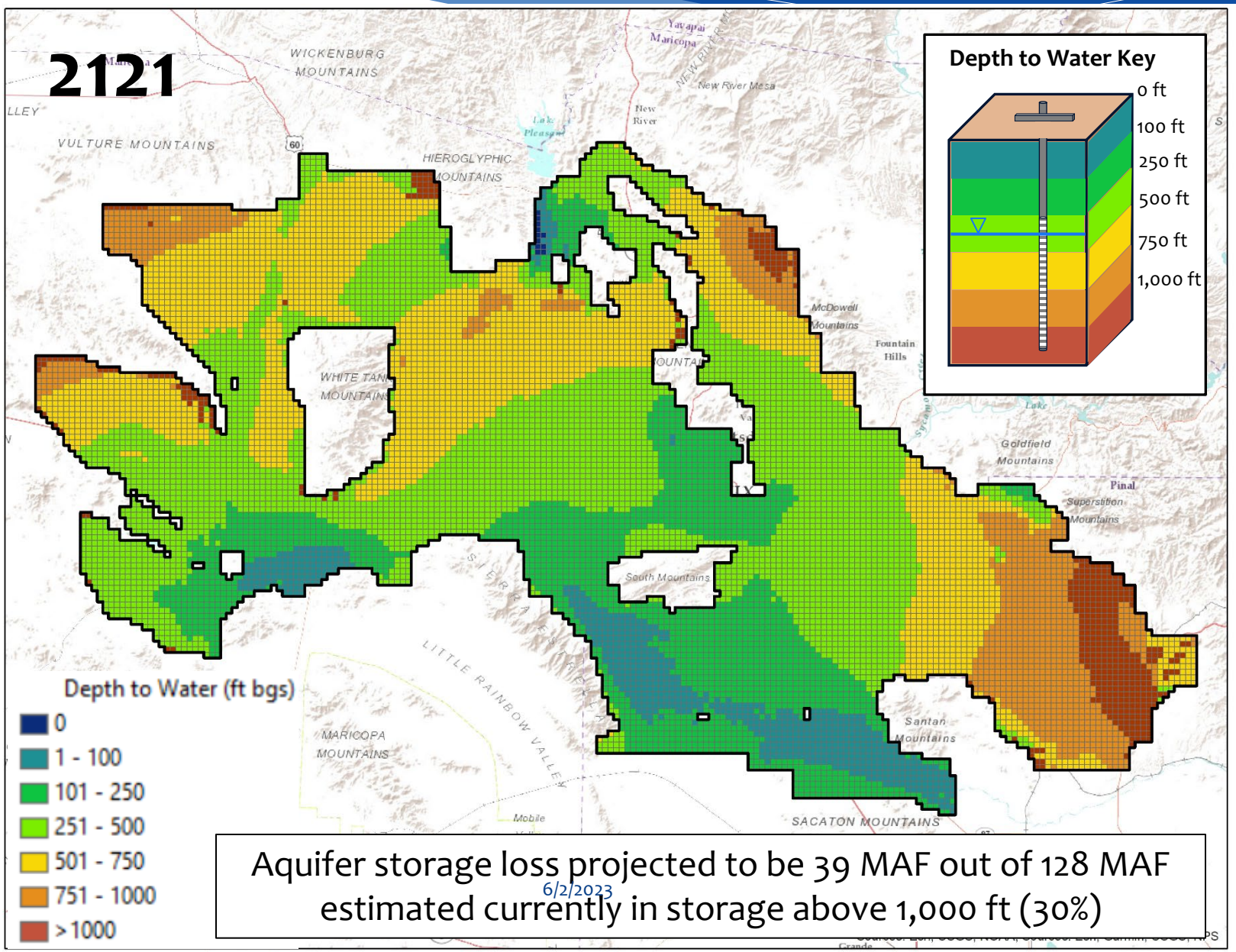


Outflows > Inflows by a factor of 1.4

Assigned Pumping in Projection

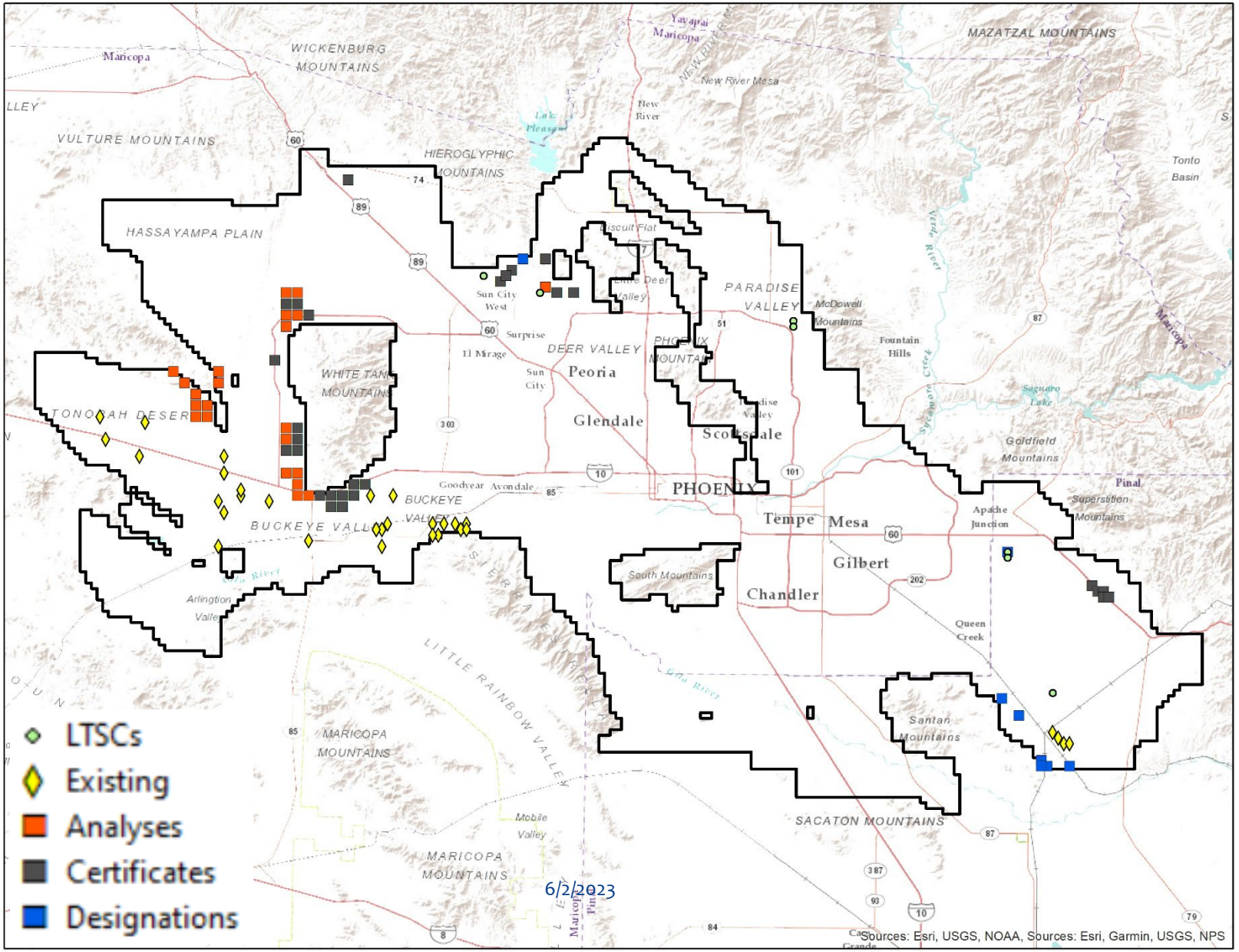


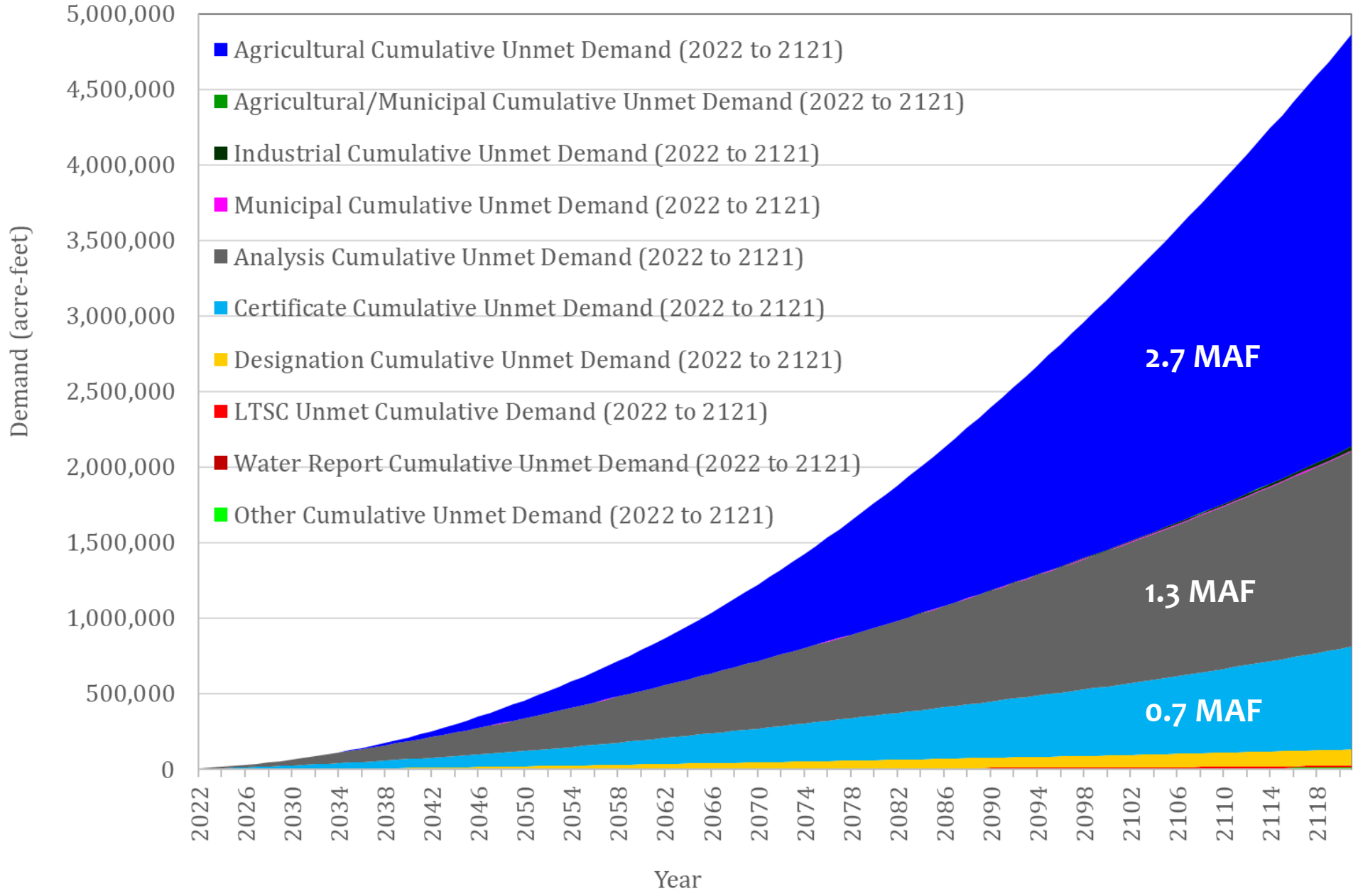
Simulated Depth to Water after 100 Years



Aquifer storage loss projected to be 39 MAF out of 128 MAF estimated currently in storage above 1,000 ft (30%)

Unmet Demand



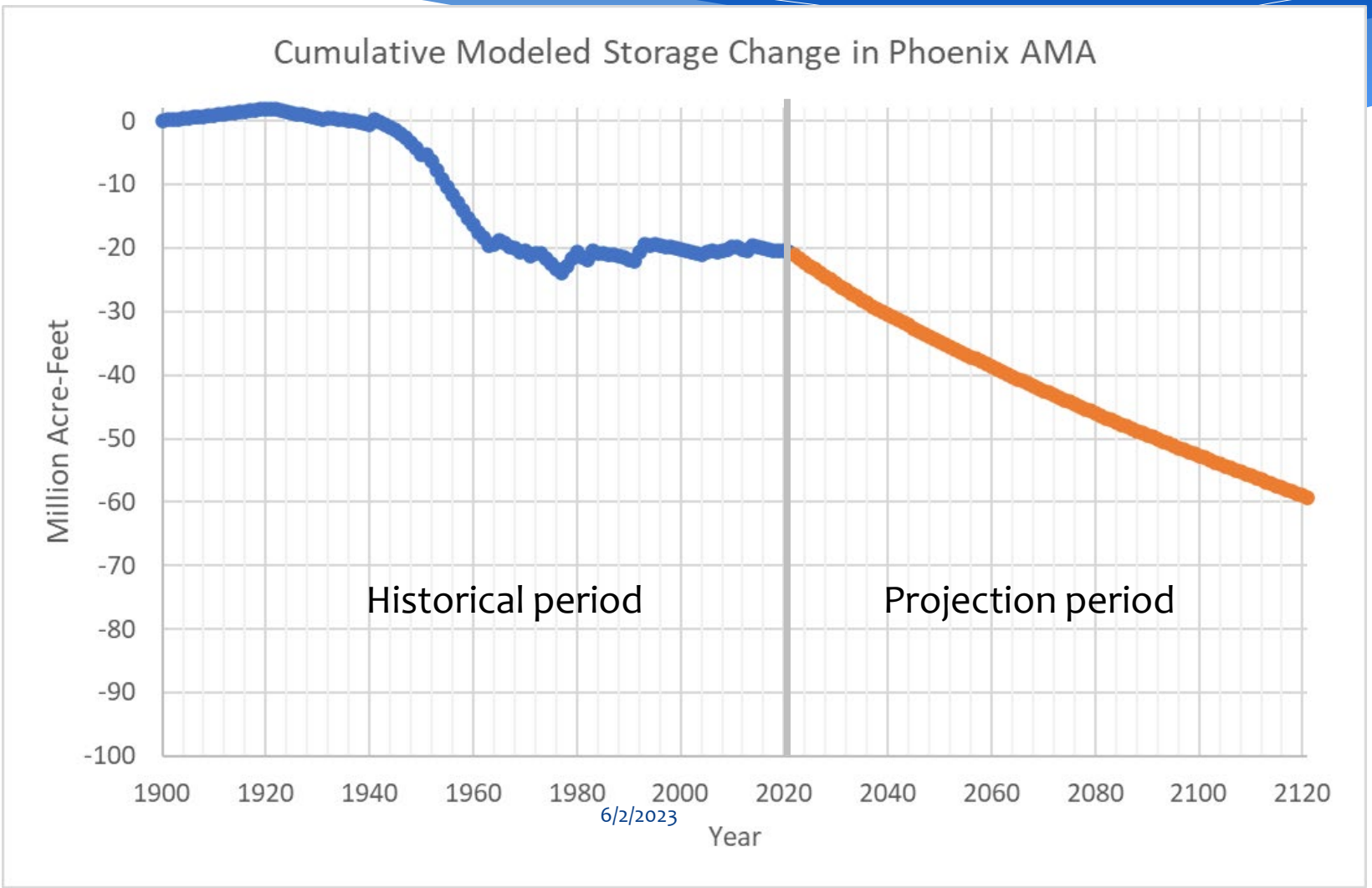

5,000,000
4,500,000
4,000,000
3,500,000
3,000,000
2,500,000
2,000,000
1,500,000
1,000,000
500,000
0
Demand (acre-feet)
Agricultural Cumulative Unmet Demand (2022 to 2121)
Agricultural/Municipal Cumulative Unmet Demand (2022 to 2121)
Industrial Cumulative Unmet Demand (2022 to 2121)
Municipal Cumulative 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
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

E-1.

ARIZONA BOARD OF HOMEOPATHIC AND INTEGRATED MEDICINE EXAMINERS
Title 4, Chapter 38, Articles 1-4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: **August 14, 2024**

SUBJECT: **ARIZONA BOARD OF HOMEOPATHIC AND INTEGRATED MEDICINE EXAMINERS**
Title 4, Chapter 38, Articles 1-4

Summary

This Five-Year Review Report (5YRR) from the Arizona Board of Homeopathic and Integrated Medicine Examiners (Board) relates to thirty-six (36) rules in Title 4, Chapter 38, Articles 1-4. The Board registers, licenses, and regulates medical assistants and physicians practicing homeopathic/integrated medicine in the state. The Board's mission is to protect the health, safety and welfare of Arizona citizens by examining, licensing and regulating homeopathic physicians and medical assistants. This 5YRR reviews thirty-six (36) rules in Title 4, Chapter 38, Articles 1-4. Specifically, Article 1 relates to General Provisions; Article 2 relates to Dispensing of Drugs of Homeopathic Physicians; Article 3 relates to Education, Supervision, and Delegation Standards for Registration of Medical Assistants by Homeopathic Physicians; and Article 4 relates to Application and Renewal Process; Time Frames.

The Board did not complete its prior course of action proposed in its 5YRR approved by Council in July 2019 because they have been pursuing statutory changes which would require broader rule changes throughout the rules.

Proposed Action

In the current report, the Board proposes to amend rules allowing the Board to do business electronically, make changes necessary to address issues indicated below, and conform the rules to the statutory changes brought about by SB 1163. The Board anticipates submitting a Notice of Final Rulemaking to the Council for review by March 31, 2025.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

This 5YRR assessed the economic impact of the five rulemakings which impacted these rules' articles: the 1998 rulemaking, which dealt with Article 4; the 2003 rulemaking, which dealt with Article 2; the 2005 rulemaking, which dealt with three specific rules; the 2010 rulemaking, which dealt with Article 3; the 2011 rulemaking, which dealt with Article 1; and the most recent rulemaking, in 2012, which increased the fee to renew a license by $25. It was determined, in their initial economic impact statements, that the 1998, 2003, 2005, 2011, and the 2012 rulemakings would have minimal or very little economic impact. The 2010 Rulemaking was expected to have some economic impact because, for example, an individual who wanted to be registered as a medical assistant would need to incur the cost of completing either a formal or practical educational program but would receive the benefit of becoming eligible for registration and employment. In all cases, the Board believes that the anticipated impact occurred.

Stakeholders were identified as the Board, Homeopathic Physicians and their assistants, individuals submitting applications to the Board, 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?**

The Board has determined that the benefits of the rules outweigh the probable costs of the rule and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board 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 Board indicates the rules are clear, concise, and understandable with the following exception:

- R4-38-118: streamlining the audit process and requirements

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board indicates the rules are generally consistent with other rules and statutes with the following exceptions:

- R4-38-103: statutory citations should be updated
- R4-38-103(1), R4-38-109, R4-38-402, R4-38-302, R4-38-305: the rules should be updated to accommodate the passing of SB 1163. SB 1163 changed education and requirements to the Homeopathic Practitioner license.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board indicates the rules are generally effective in achieving their objectives with the following exceptions:

- R4-38-107: although effective, the Board indicates they are considering other options for examination to reduce burdens on Applicants
- R4-38-110: the rule needs to be updated to include email addresses
- R4-38-108(A)(r): notarization of the application should be removed to facilitate electronic applications for licensure
- R4-38-109(D): the rule should be amended to no longer require licensees to retake the initial licensing exam if they allow their license to expire.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Board indicates the rules are generally enforced as written with the following exception:

- R4-38-107: the rule should be updated to accommodate the passing of SB 1163. SB 1163 changed education requirements and the rule in sow unenforceable 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?**

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 Board indicates the following rules were made after July 29, 2010, and deal, at least tangentially, with issuance of a regulatory permit, license, or agency authorization: R4-28-103, R4-28-104, R4-28-105, R4-28-107, R4-28-108, R4-28-109, and R4-28-117. The Board indicates these rules deal with a regulatory permit, license, or agency authorization issued to qualified individuals to conduct activities that are substantially similar in nature. As such, the Board indicates they are general permits under the definition in A.R.S. § 41-1001(12) and the rules comply with A.R.S. § 41-1037.

11. <u>Conclusion</u>

This 5YRR from the Board relates to rules in Title 4, Chapter 38, Articles 1-4. As indicated above, the rules are generally clear, concise, and understandable and effective in meeting their objectives. The Board proposes to amend rules allowing the Board to do business electronically, make changes necessary to address issues indicated above, and conform the rules to the statutory changes brought about by SB 1163. The Board anticipates submitting a Notice of Final Rulemaking to the Council for review by March 31, 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Arizona Board of Homeopathic
and Integrated Medicine Examiners
1740 West Adam Street, Phoenix, Arizona 85007
(602) 542-8154 info@homeopath.az.gov

April 25, 2024

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

RE: Title 4, Chapter 38, Article 1-4, Five Year Review Report

Dear Jessica Klein:

Please find enclosed the Five Year Review Report of the Arizona Board of Homeopathic and Integrated Medicine Examiners for Title 4 Chapter 38 which is due on April 26, 2024. The Board hereby certifies compliance with A.R.S. 41-1091. For questions about this report, please contact David Geriminsky at 602-364-0145 or director@acupuncture.az.gov.

Sincerely,

David Geriminsky

David Geriminsky
Executive Director

Governor's Regulatory Review Council

Five-Year-Review Report

Arizona Board of Homeopathic and Integrated Medicine Examiners

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S § 32-2904(B)(1)

Specific Statutory Authority:

R4-38-101. Definitions: A.R.S. § 32-2904(B)(1)
R4-38-102. Additional Requirements for Applicants Graduated from an Unapproved School of Medicine: A.R.S. § 32-2912(A)(2)
R4-38-103. Postgraduate Requirements for Licensure: A.R.S. § 32-2912(G)(3)
R4-38-104. Approved Postgraduate Coursework: A.R.S. § 32-2912(G)(3)
R4-38-105. Approval of Preceptorship: A.R.S. § 32-2912(G)(3)
R4-38-106. Fees: A.R.S. §§ 32-2914 and 32-2916
R4-38-107. Examination: A.R.S. § 32-2913
R4-38-108. Application for Licensure: A.R.S. § 32-2912(A)(8) and (G)
R4-38-109. License Renewal: A.R.S. § 32-2915
R4-38-110. Notification of Change in Contact Information: A.R.S. § 32-2916(B)
R4-38-111. Experimental Forms of Diagnosis and Treatment: A.R.S. § 32-2933(27)
R4-38-112. Peer Review: A.R.S. § 32-2933(27)
R4-38-113. Chelation Therapy Practice Requirements: A.R.S. § 32-2901(6)
R4-38-114. Rehearing or Review of Decision: A.R.S. § 41-1092
R4-38-115. Use of Title and Abbreviation: A.R.S. § 32-2932
R4-38-116. Continuing Education Requirement: A.R.S. § 32-2915(F)
R4-38-117. Application for Continuing Education Approval: A.R.S. § 32-2915(F)
R4-38-118. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement: A.R.S. § 32-2915(F)
R4-38-201. Definitions: A.R.S. § 32-2951
R4-38-202. General Provisions: A.R.S. § 32-2951
R4-38-206. Packaging: A.R.S. § 32-2951
R4-38-301. Definitions: A.R.S. §§ 32-2901(15), 32-2904(A)(9), 32-2933, and 32-2939
R4-38-302. Requirements to Supervise a Medical Assistant; Standards for Supervision: A.R.S. §§ 32-2904(A)(9) and 32-2939
R4-38-303. Board Standards for a Formal Education Program: A.R.S. § 32-2904(A)(9)
R4-38-304. Approved Practical Education Program; Renewal: A.R.S. § 32-2904(A)(9)
R4-38-305. Minimum Requirements for Registration of a Homeopathic Medical Assistant: A.R.S. § 32-2904(A)(9)
R4-38-306. Application to Register a Medical Assistant: A.R.S. § 32-2904(A)(9)
R4-38-307. Additional Requirements to Register a Previously Licensed Health Care Practitioner: A.R.S. § 32-2904(A)(9)
R4-38-308. Renewal of Medical Assistant Registration: A.R.S. § 32-2904(A)(9)
R4-38-309. Restrictions on Delegated Procedures: A.R.S. §§ 32-2904(A)(9) and 32-2939
R4-38-310. Registration Not Transferable; Multiple Employers: A.R.S. §32-2904(A)(9)
R4-38-311. Responsibilities of a Registered Medical Assistant: A.R.S. § 32-2904(A)(9)
R4-38-312. Unprofessional Conduct: A.R.S. § 32-2904(A)(9)
R4-38-401. Definitions: A.R.S. §§ 32-2912(A)(8) and (G) and 32-2915(G)
R4-38-402. Application; Initial License, Permit, or Registration: A.R.S. §32-2912(A)(8) and (G)
R4-38-403. Application; Renewal of License, Permit, or Registration: A.R.S. §32-2915(G)

2. The objective of each rule:

Rule	Objective
R4-38-101	Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition, and to supplement statutory definitions. The definitions are designed to facilitate understanding by those who use the rules.
R4-38-102	Additional Requirements for Applicants Graduated from an Unapproved School of Medicine: The objective of the rule is to specify the medical education that the Board has determined is of equivalent quality to that provided by an approved school of medicine. The purpose is to provide a means by which an individual who did not graduate from an approved school of medicine can become licensed.
R4-38-103	Postgraduate Requirements for Licensure: The objective of the rule is to specify postgraduate alternatives to having a degree in homeopathic medicine. The purpose is to provide a means by which an individual who did not obtain a degree in homeopathic medicine can become licensed.
R4-38-104	Approved Postgraduate Coursework: The objective of this rule is to specify postgraduate course work that the Board determined qualifies an individual for licensure even if the individual did not obtain a degree in homeopathic medicine. The purpose is to provide a means by which an individual who did not obtain a degree in homeopathic medicine can become licensed.
R4-38-105	Approval of Preceptorship: The objective is to specify the standards and procedure for obtaining the Board's approval of a preceptorship. The purpose is to provide a means by which an individual who did not obtain a degree in homeopathic medicine can become licensed.
R4-38-106	Fees: The objective of the rule is to specify the fees that the Board charges for its licensing activities. This enables an applicant to submit the correct amount.
R4-38-107	Examination: The objective of the rule is to prescribe the examination applicants are required to pass before being licensed, establish the passing criterion, and indicate materials that may be taken to the examination. This provides an applicant with necessary information regarding the examination qualification criteria
R4-38-108	Application for Licensure: The objective of the rule is to specify information an applicant is required to submit to the Board and information the applicant is required to have others submit to the Board. This enables an applicant to ensure that all required information is submitted.
R4-38-109	License Renewal. The objective of the rule is to specify when a licensee is required to submit license renewal materials to the Board, the materials that must be submitted, and the consequences of failing to submit materials timely. This enables a licensee to renew timely and avoid having a license expire.
R4-38-110	Notification of Change in Contact Information. The objective of the rule is to provide notice that the Board communicates with a licensee using the information the licensee has provided. This ensures that a licensee knows it is important to keep the Board apprised of changes in contact information.
R4-38-111	Experimental Forms of Diagnosis and Treatment. The objective of the rule is to clarify what is and what is not an experimental form of diagnosis and treatment. This assists licensees to avoid engaging in unprofessional conduct
R4-38-112	Peer Review. The objective of the rule is to establish minimum standards for peer

	review committees, which is one of the generally accepted criteria for use with an experimental form of diagnosis and treatment. This assists licensees to avoid engaging in unprofessional conduct.
R4-38-113	Chelation Therapy Practice Requirements. The objective of the rule is to establish minimum standards for the practice of chelation therapy for other than the treatment of metal poisoning. This assists licensees to avoid engaging in unprofessional conduct.
R4-38-114	Rehearing or Review of Decision. The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.
R4-38-115	Use of Title and Abbreviation. The objective of the rule is to specify the manner in which a homeopathic physician may designate the kind of physician he or she is. This assists licensees to avoid engaging in unprofessional conduct.
R4-38-116	Continuing Education Requirement. The objective of the rule is to specify continuing education activities that are approved by the Board and the standards used to decide whether to approve additional continuing education activities. This enables a licensee to have confidence that a continuing education activity will be accepted for license-renewal purposes.
R4-38-117	Application for Continuing Education Approval: The objective of the rule is to specify the requirements and procedures for obtaining the Board's approval of a continuing education course. This enables licensees to know that a Board-approved course meets certain minimum standards and will be accepted for license-renewal purposes.
R4-38-118	Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement. The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement and the manner in which an audited licensee is required to submit evidence of compliance. This enables a licensee to avoid being sanctioned for noncompliance.
R4-38-201	Definitions. The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.
R4-38-202	General Provisions. The objective of the rule is to provide notice to a licensee that a permit to dispense is required before the licensee dispenses a controlled substance, pharmaceutical drug, homeopathic medication, prescription-only drug, natural substance, non-prescription drug, or device. This protects the public from possible misuse of drugs.
R4-38-206	Packaging. The objective of the rule is to specify the manner in which a licensee is required to package dispensed drugs. This protects the public from possible misuse of drugs.
R4-38-301	Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.
R4-38-302	Requirements to Supervise a Medical Assistant; Standards for Supervision. The objective of the rule is to specify the manner in which a licensee must be qualified before supervising a medical assistant and the minimum standards for supervision of a medical assistant. This is to protect the public from care that does not meet generally accepted community standards.

R4-38-303	Board Standards for a Formal Education Program. The objective of the rule is to establish minimum standards for a medical-assistant formal educational program in various homeopathic modalities. This is to protect the public by ensuring that medical assistants who complete a formal educational program are prepared to provide quality care.
R4-38-304	Approved Practical Education Program; Renewal. The objective of the rule is to establish minimum standards for a medical-assistant practical educational program and procedures for obtaining the Board's approval of a practical educational program. This is to protect the public by ensuring that medical assistants who complete a practical educational program are prepared to provide quality care.
R4-38-305	Minimum Requirements for Registration of a Homeopathic Medical Assistant. The objective of the rule is to establish minimum standards for registering a homeopathic medical assistant. This is to protect the public by ensuring that both the medical assistant and the supervising homeopathic physician are qualified.
R4-38-306	Application to Register a Medical Assistant. The objective of the rule is to list the information required to register a medical assistant and the procedure for amending the job description of a registered medical assistant. This is to protect the public by ensuring that both the medical assistant and the supervising homeopathic physician are qualified.
R4-38-307	Additional Requirements to Register a Previously Licensed Health Care Practitioner. The objective of the rule is to specify additional requirements that apply when a licensee wants to register a previously licensed health care practitioner as a medical assistant. This is to protect the public from the possibility that a registered medical assistant may practice health care outside the scope of the medical assistant's job description.
R4-38-308	Renewal of Medical Assistant Registration. The objective of the rule is to specify when the registration of a medical assistant expires and the procedure for renewing the registration. This is to protect the public by ensuring that only a properly registered medical assistant provides care.
R4-38-309	Restrictions on Delegated Procedures. The objective of the rule is to specify procedures that may not be delegated to a medical assistant. This is to protect the public by ensuring that procedures requiring the knowledge and skill of a physician are provided by a physician rather than a medical assistant.
R4-38-310	Registration Not Transferable; Multiple Employers. The objective of the rule is to clarify that registration of a medical assistant is specific to the medical assistant and the employing homeopathic physician. The rule also clarifies the manner in which multiple homeopathic physicians employing the same medical assistant are required to register the medical assistant. This protects the public by clearly identifying the homeopathic physician responsible for supervising a medical assistant.
R4-38-311	Responsibilities of a Registered Medical Assistant. The objective of the rule is to specify the manner in which a registered medical assistant is required to communicate the medical assistant's status and the homeopathic modality in which the medical assistant is qualified. This protects the public from being confused regarding the qualification of the individual providing care.
R4-38-312	Unprofessional Conduct. The objective of the rule is to specify conduct relating to supervision of a medical assistant that is unprofessional. This enables a homeopathic physician to avoid conduct that might lead to disciplinary action.

R4-38-401	Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.
R4-38-402	Application; Initial License, Permit, or Registration. The objective of the rule is to specify the procedure and time-frames used by the Board to evaluate an application for initial license, permit, or registration. This enables an applicant to know what can be expected from the Board after an application is submitted.
R4-38-403	Application; Renewal of License, Permit, or Registration. The objective of the rule is to specify the procedure and time-frames used by the Board to evaluate an application for renewal of a license, permit, or registration. This enables an applicant to know what can be expected from the Board after an application is submitted.

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
R4-38-107	This rule is effective as written. However, the Board is considering other options for examination to reduce burdens on Applicants.
R4-38-110	This rule is effective however needs to be updated to include Email address.
R4-38-108(A)(r)	This rule is effective however notarization of the application should be removed to facilitate electronic applications for licensure.
R4-38-109(D)	This rule requires licensees to retake the initial licensing exam if they allow their license to expire. The Board feels that this should be eliminated. Other State Health Boards do not require their licensees to retake the exam for re-licensure and it does not provide any additional assurance to the public health safety and welfare.

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
R4-38-103	The statutory Citation in this rule is incorrect due to changes in statute and must be updated.
R4-38-103(1)	SB 1163 from this last session changed educational requirements in Statute for the Homeopathic Practitioner license type. This necessitates a change in this rule.
R4-38-109	SB 1163 from this last session changed educational requirements in Statute for the Homeopathic Practitioner license type. This necessitates a change in this rule or additional rules to define renewal procedures/applications for this license type.

R4-38-402	SB 1163 from this last session changed educational requirements in Statute for the Homeopathic Practitioner license type. This necessitates a change in this rule or additional rules to define Initial application procedures/applications for this license type.
R4-38-302	SB 1163 from this last session changed requirements in Statute for the Homeopathic Practitioner license type. This necessitates a change in this rule or additional rules to include Homeopathic Practitioners as supervisors for Homeopathic Medical Assistants.
R4-38-305	SB 1163 from this last session changed requirements in Statute for the Homeopathic Practitioner license type. This necessitates a change in this rule or additional rules to include Homeopathic Practitioners as supervisors for Homeopathic Medical Assistants.

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
R4-38-107	SB1163 from this last session changed educational requirements in statute for the homeopathic practitioner license type. This requires a separate exam or this license or to allow the licensee to take a national exam. The rule is unenforceable as written.

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
R4-38-118	This rule provides ambiguity as to which period is being audited for. Changing audits from prior to renew to post renewal would make the renewal process more streamlined and also provide additional surety that CE requirements are being met.

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:

Commenter	Comment	Agency's Response
N/A	N/A	N/A

8. Economic, small business, and consumer impact comparison:

1998 Rulemaking
The rules in Article 4, which deals with the application and renewal process and licensing time-frames, were made in 1998. The primary economic impact of these rules is on the Board, which is required to comply with its licensing time-frames. The rules simply explain to an applicant what can be expected

from the Board regarding application processing and action. The Board reports that it complies with its time-frames.

2003 Rulemaking
The rules in Article 2, which deal with Dispensing of Drugs by Homeopathic Physicians, were amended in this rulemaking. The primary objective of the amendments was to eliminate repetitive language. At the time the rules were amended, the Board anticipated the changes would have very little economic impact. The Board reports that the economic impact has been minimal.

2005 Rulemaking
R4-38-101, Definitions; R4-38-102, Additional Requirements for Applicants Graduated from an Unapproved School of Medicine; and R4-38-114, Rehearing or Review of Decision, were last amended in this rulemaking. At the time the rules were amended, the Board anticipated the changes would have very little economic impact. The Board reports that the economic impact has been minimal.

2010 Rulemaking
The rules in Article 3, which deal with medical assistants, were made in this rulemaking. At the time, The Board recognized that the rules would have some economic impact. For example, a homeopathic physician who wished to register a medical assistant would incur the cost of complying with the registration procedures and supervision standards but would receive the benefit of being able to make homeopathic services available to more customers. An individual who wanted to be registered as a medical assistant would incur the cost of completing either a formal or practical educational program but would receive the benefit of becoming eligible for registration and employment. The Board believes the anticipated impact occurred. There are currently 14 registered medical assistants. Almost all medical assistants become qualified by participating in a formal education program rather than a practical education program. No practical education program was approved in 2018.

2011 Rulemaking
In this rulemaking, the Board amended all of the rules in Article 1, General, that were not amended in the 2005 rulemaking. Many of the rule changes resulted from statutory changes that the legislature made in response to a Sunset Review of the Board. The Board believes the actual impact of the rules has been as anticipated.

The Board concluded that most of the economic impact on applicants and licensees resulted from legislative action rather than the rulemaking. The cost associated with obtaining 20 hours of Board-approved continuing education was estimated to be minimal because most licensees already participate in continuing education. It was expected there would be little to no economic cost associated with passing an examination as the Board charges no fee for examination. However, this is a necessary requirement to enable the Board to fulfill its obligation to protect public health and safety. The Board expected administrative costs associated with applying for and renewing licensure. However, the benefits of being licensed outweigh the costs of making application. As a result of the clarification regarding the manner in which a title must be written, it was expected that a homeopathic physician might incur the expense of having letterhead and business cards made that are in compliance. This is a necessary cost of doing business and provides the benefit of helping the homeopathic physician avoid any charge of false advertising.

The rulemaking established standards for approval of a preceptorship. However, since 1999, only three preceptorships have been approved. Applicants for licensure are required to pass a written examination.

2012 Rulemaking

In this rulemaking, the Board increased the fee to renew a license from $975 to $1,000. The Board expected the fee increase to generate approximately $2,100 from the 85 licensees that existed in FY11. The Board's expectation was accurate. The Board collected $89,400 in FY11 and $91,000 in FY13. The Board anticipates very little economic impact on a $25.00 per year increase.

No new rulemakings have been completed since 2012.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

No analysis has been submitted.

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.

No. The agency has been pursuing statutory changes which would require broader rule changes throughout the rules and affect many areas noted above. The Board felt that it would be more efficient to complete one rule making instead of having to change several of the same rules twice. SB 1163 was passed this year and the Board will be pursuing rule changes which we hope to have effective by the end of the year.

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 benefits of the rules outweigh the probable costs of the rule, and imposes the least burden and cost on the persons regulated necessary to achieve the regulatory objective.

The rules covering the subject matter are necessary to fulfill the agency's mission. The Agency believes the current rules pose the minimum cost and burden on the Licensees. As authorized the Agency established fees that were the least necessary to support agency functions for this self-funded Agency. The costs for the processing of applications for Licensure are necessary to achieve the underlying objectives and statutory requirements.

However, the Agency plans to review fees in the next fiscal year to determine whether new licensees due to SB1163 will allow the Agency to reduce fees.

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)?

There is no federal statute that applies.

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 following rules were made after July 29, 2010, and deal, at least tangentially, with issuance of a regulatory permit, license, or agency authorization: R4-28-103, R4-28-104, R4-28-105, R4-28-107, R4-28-108, R4-28-109, and R4-28-117. The rules deal with a regulatory permit, license, or agency authorization issued to qualified individuals to conduct activities that are substantially similar in nature. The rules comply with A.R.S. § 41-1037.

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 Board expects to submit a Notice of Final Rulemaking to the Council for review by March 31, 2025. The purpose of the package would be to amend rules allowing the Board to do business electronically and make changes necessary to address issues indicated above and conform the rules to the statutes changes brought about by SB 1163.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC AND INTEGRATED MEDICINE EXAMINERS

(Authority: A.R.S. § 32-2904 et seq.)

Chapter heading amended from Board of Homeopathic Medical Examiners to Board of Homeopathic and Integrated Medicine Examiners by A.R.S. § 32-2902 as amended by Laws 2008, Ch. 57 (Supp. 10-1).

ARTICLE 1. GENERAL

ARTICLE 2. DISPENSING OF DRUGS BY HOMEOPATHIC PHYSICIANS

ARTICLE 3. EDUCATION, SUPERVISION, AND DELEGATION STANDARDS FOR REGISTRATION OF MEDICAL ASSISTANTS BY HOMEOPATHIC PHYSICIANS

ARTICLE 4. APPLICATION AND RENEWAL PROCESS; TIME-FRAMES

Article 4, consisting of Sections R4-38-401 thru R4-38-403, adopted effective September 24, 1998 (Supp. 98-3).

ARTICLE 1. GENERAL

R4-38-101. Definitions

In addition to the definitions at A.R.S. § 32-2901, in this Chapter:

1. "Beneficial clinical usage" means that usage results of a therapy modality or treatment are documented by:
   a. Clinical reports from national or international organizations;
   b. Professionally recognized publications of clinical indications and contraindications;
   c. National or international instructional courses providing training in the use of the therapy modality, or treatment; or
   d. Professional peer review presentations of physicians' usage results with the therapy modality or treatment at local, county, state, national or international meetings.
2. "Classical homeopathy" means a system of medical practice expounded by Samuel Hahnemann in the *Organon of Medicine* that treats a disease by the administration of minute doses of a remedy that would in healthy persons produce symptoms of the disease treated.
3. "Complex homeopathy" means a system of medical practice that combines one or more homeopathic remedies that are not described in the *Organon of Medicine*.
4. "EAV" means electric acupuncture according to Reinhard Voll.
5. "Fifth Pathway program" means an academic program created by the Council on Medical Education of the American Medical Association specifically for American medical students studying abroad.
6. "Generally accepted experimental criteria in homeopathy" means:
   a. A protocol in which a therapy modality or treatment is administered in the smallest amount necessary to stimulate a healing response with a minimum of clinical aggravation of symptoms or side effects;
   b. A process of recording the clinical efficacy of a therapy modality or treatment reflected by measurements of symptom aggravation or improvement, laboratory testing, and changes in physiologic functioning; or
   c. A process by which innovative diagnostic procedures and devices are analyzed and evaluated according to their ability to assist a physician in assessing the degree of electrical resistance or conduction disturbance in the totality of a patient's presenting signs, symptoms, and physiologic responses

and predict or monitor the totality of the patient's responses to a therapy modality or treatment.

7. "Homeopathic indication" means a recognized standard of practice of homeopathic practitioners that describes a sign, symptom, and physical finding that leads to the recommendation of a particular substance or therapeutic procedure.
8. "Metal poisoning" means a level of toxic metals present in a patient that in the professional judgment of a licensee is inconsistent with the patient's ability to achieve optimal health.
9. "Proving method of administration" means testing a homeopathic drug on healthy volunteers by recording, compiling, and organizing symptoms that are developed into a repertory.
10. "Repertory" means a compilation, usually in book form, of information categorized by the different systems of the body and providing an index of symptoms and a listing of corresponding homeopathic remedies.
11. "Rubric" means a guiding symptom leading to a homeopathic remedy.

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Heading amended effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2).

R4-38-102. Additional Requirements for Applicants Graduated from an Unapproved School of Medicine

In addition to the requirements for a license prescribed in A.R.S. § 32-2912, an applicant who has not graduated from an approved school of medicine shall meet the following:

1. Hold a standard certificate issued by the Educational Council for Foreign Medical Graduates; or
2. Complete a Fifth Pathway program of one academic year of supervised clinical training under the direction of an approved school of medicine in the United States and upon completion of the Fifth Pathway program complete a 24-month internship, residency, or clinical fellowship program accredited by the Accreditation Council on Graduate Medical Education (ACGME).

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2).

R4-38-103. Postgraduate Requirements for Licensure

Under A.R.S. § 32-2912(F)(3), an applicant for licensure shall:

1. Have a degree of doctor of medicine in homeopathy issued by a homeopathic college or other Board-approved educational institution, or
2. Have successfully completed:
   a. Formal postgraduate courses approved under R4-38-104, or
   b. A preceptorship approved under R4-38-105.

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-103 renumbered to R4-38-104; new Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-104. Approved Postgraduate Coursework

A. An applicant who seeks licensure based on successful completion of formal postgraduate courses shall:

1. Complete at least 300 hours of formal postgraduate courses in one or more of the treatment modalities specified in subsections (C)(1) through (6);
2. Ensure that at least 40 of the 300 required hours are in a course of classical homeopathy; and
3. Submit with the application required under R4-38-108 a statement from the sponsor of the formal postgraduate course that includes:
   a. The applicant's name,
   b. The name of the course sponsor,
   c. The dates on which the course was taken,
   d. A brief description of the course content,
   e. The number of hours completed, and
   f. Whether the applicant successfully completed the course.

B. The Board shall approve a formal postgraduate course if the Board determines that:

1. Except as provided in subsection (B)(4), the course content provides training in one or more of the treatment modalities specified in subsections (C)(1) through (6).
2. There is evidence that the course instructor is qualified in the subject matter of the course; and
3. The course sponsor is recognized within the homeopathic, osteopathic, or allopathic medical profession as a provider of postgraduate training and continuing education; or
4. An applicant who has completed postgraduate coursework in treatment modalities not specified in subsections (C)(1) through (6) shall submit evidence of the postgraduate coursework with the application sufficient to enable the Board to determine whether the postgraduate coursework is related to the practice of homeopathic medicine as defined in statute.

C. An applicant who wishes to practice a specific treatment modality listed in subsections (C)(1) through (6) shall demonstrate proficiency in the modality by completing the indicated number of postgraduate course hours or certification by the indicated credentialing authority.

1. Acupuncture:
   a. Classical acupuncture:
      i. Certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), or
      ii. Completing at least 220 hours of postgraduate courses recognized by the American Academy of Medical Acupuncture or other sponsor approved by the Board that provides equivalent training.
   b. Electro-diagnosis: Completing at least 50 hours of postgraduate courses in electro-diagnosis that are approved by the Board.
2. Chelation therapy: Completing at least 16 hours of postgraduate courses offered by the American Board of Clinical Metal Toxicology, American College of Alternative Medicine, International College of Integrative Medicine, or the American Academy of Environmental Medicine or other sponsor approved by the Board that provides equivalent training.
3. Classical homeopathy: Completing at least 90 hours of formal postgraduate courses in classical homeopathy approved by the Board, or whose sponsor is recognized by the Council on Homeopathic Education, the American Institute of Homeopathy, the American Board of Homeotherapeutics, the Homeopathic Association of Naturopathic Physicians or the Council for Homeopathic Certification.

4. Complex homeopathy and electro-therapeutics, EAV and related: Completing at least 90 hours of formal postgraduate courses in complex homeopathy approved by the Board, or whose sponsor is recognized by the Council on Homeopathic Education, the American Institute of Homeopathy, the American Board of Homeotherapeutics, the Homeopathic Association of Naturopathic Physicians, or the Council for Homeopathic Certification.
5. Neuromuscular integration:
   a. Completing a residency or fellowship in physical medicine or graduation from an osteopathic medical school; or
   b. Completing at least 220 hours of formal postgraduate courses in neuromuscular integration therapies that are approved by the Board.
6. Orthomolecular therapy and nutrition: completing at least 300 hours of postgraduate courses in orthomolecular therapy and nutrition approved by the Board.

Historical Note

Adopted effective February 22, 1988 (Supp. 88-1). Amended effective January 27, 1995. Amended effective February 7, 1995 (Supp. 95-1). Amended effective November 12, 1996 (Supp. 96-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-104 renumbered to R4-38-105; new R4-38-104 renumbered from R4-38-103 and amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-105. Approval of Preceptorship

A. An applicant who seeks licensure based on successful completion of a preceptorship shall obtain the Board's approval of the preceptorship by submitting the following with the application required under R4-38-108:
1. A notarized affidavit from each preceptor on the preceptor's letterhead attesting to:
   a. The educational qualifications of the preceptor,
   b. The number of years the preceptor has been conducting preceptorships;
   c. The dates of the preceptorship,
   d. An outline of the training conducted,
   e. Which of the treatment modalities listed in A.R.S. § 32-2901(22) were involved in the training,
   f. The number of hours of didactic and clinical training in each treatment modality, and
   g. The general nature of the services performed during the training; and
2. A summary from the applicant of each preceptorship including:
   a. The name of each preceptor,
   b. The treatment modalities included in each preceptorship, and
   c. The total number of hours claimed instead of formal postgraduate courses.

B. The Board shall approve a preceptorship under this Section if the Board determines that:
1. The preceptorship provides training in one or more of the treatment modalities specified in R4-38-104;
2. The preceptorship involves a balance of didactic and clinical training;
3. The preceptor has been in full-time clinical practice for at least three years and meets the educational requirements of R4-38-302(C) in the treatment modality being precepted; and
4. If the preceptorship involves training in classical homeopathy, the preceptorship includes case-taking, repertory use, materia medica, philosophy and history of homeopathy, acute remedies, constitutional prescribing, posology, homeopathy prescription policy, and remedy handling policy.

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Amended by emergency rulemaking at 12 A.A.R. 4894, effective December 4, 2006 for 180 days (Supp. 06-4). Emergency expired. Amended by final rulemaking at 13 A.A.R. 2924, effective August 7, 2007 (Supp. 07-3). Amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1). Former R4-38-105 renumbered to R4-38-106; new R4-38-105 renumbered from R4-38-104 and amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-106. Fees

A. The Board establishes and shall collect the following fees, which are specifically authorized by A.R.S. § 32-2914:
1. Application for license: $550.00
2. Issuance of initial license: $250.00
3. Annual renewal of license: $1000.00
4. Late renewal penalty: $350.00
5. Application for dispensing permit: $200.00
6. Annual renewal of dispensing permit: $200.00
7. Locum tenens registration application: $200.00
8. Locum tenens registration issuance: $100.00
9. Application for approval of a practical education program: $150.00
10. Annual renewal of approval of a practical education program: $50.00
11. Initial application to register a medical assistant: $200.00
12. Annual renewal of registration of medical assistant: $200.00

B. The Board shall collect the following amounts for the services described:
1. Annual directory: $25.00
2. Copies, per page: $0.25
3. Copies, per audio tape: $35.00
4. Copies, per 1.44 M computer disk: $100.00
5. Mailing lists - non-commercial (per name): $0.05
6. Mailing lists - commercial (per name): $0.25
7. Mailing list labels (per name): $0.30
8. Copy of statutes or rules: $5.00

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-106 renumbered to R4-38-107; new R4-38-106 renumbered from R4-38-105 by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3). Amended by final rulemaking at 18 A.A.R. 2143, effective October 7, 2012 (Supp. 12-3).

R4-38-107. Examination

A. The examination for a license consists of two parts:
1. A timed written examination that includes questions addressing the treatment modalities listed in A.R.S. § 32-2901(22). To pass the written examination, an applicant shall obtain a score of at least 70 percent; and
2. A personal interview with the Board to examine an applicant's personal and professional history as it applies to homeopathic medicine. The Board may ask questions to clarify issues regarding the applicant's competence to

engage in the practice of medicine safely, unprofessional conduct in the applicant's professional record, and whether the scope of the applicant's practice falls within the scope of homeopathic medicine as defined at A.R.S. § 32-2901(22).

B. An applicant may use a copy of Kent's Repertory as a reference during the written examination. An applicant shall not use a computer or other written material during the written examination.

Historical Note

Adopted effective June 13, 1988 (Supp. 88-2). Amended effective February 7, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Section repealed; new R4-38-107 renumbered from R4-38-106 and amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-108. Application for Licensure

A. To apply for licensure, an applicant shall submit the following directly to the Board:

1. An application form that contains the following information about the applicant:
   a. Name as the applicant wants the name to appear on a license;
   b. Social Security number, as required under A.R.S. §§ 25-320(P) and 25-502(K);
   c. Date and place of birth;
   d. Personal identifying characteristics including gender, weight, height, eye and hair colors, and any identifying marks;
   e. Business name and address;
   f. Residential address;
   g. Business telephone and fax numbers;
   h. E-mail address;
   i. Date on which the applicant expects to take the written examination required under A.R.S. § 32-2913;
   j. Name of the approved medical school from which the applicant obtained an allopathic or osteopathic medical degree and the date of the degree;
   k. Name of the hospital program at which the applicant served as an intern and the years of the internship;
   l. Names and addresses of three physicians who will send the Board letters of recommendation for the applicant;
   m. List of the states or other jurisdictions in which the applicant is or ever has been licensed to practice medicine;
   n. List of specialty colleges of which the applicant is a member;
   o. List of specialty boards by which the applicant is certified;
   p. List of the places where the applicant has practiced medicine and the dates of practice;
   q. Statement indicating whether the applicant:
      i. Has, within the last 10 years, had a medical malpractice judgment entered against an applicant or settled a malpractice claim against the applicant;
      ii. Has ever been convicted of or pled guilty or nolo contendere to a criminal charge in an adult court of record;
      iii. Has been charged with a crime that is pending adjudication in an adult court of record;
      iv. Has had a state or other jurisdiction refuse or deny the applicant a license to practice medicine or has allowed the applicant to withdraw a license application instead of being refused or denied a license to practice medicine;
      v. Has had a state or other jurisdiction take disciplinary action against the applicant's license to practice medicine including placing the license on probation, suspending the license, limiting or restricting the license, revoking the license, or accepting surrender of the license;
      vi. Has had a state or other jurisdiction, including a federal agency, suspend, limit, restrict, revoke, deny, or accept surrender in lieu of action of the applicant's registration to possess, dispense, or prescribe controlled substances;
      vii. Has or had, within the last 10 years, a mental illness or psychological condition that impaired the applicant's ability to practice medicine or function as a medical student;
      viii. Is now or has been within the last 10 years dependent upon alcohol or drugs; and
      ix. Has had a specialty board or college suspend, revoke, or deny certification to the applicant.
   r. Notarized signature and attestation that the information provided is true, correct, and complete;
2. A summary listing the course title, sponsor, dates attended, and credit hours and evidence of completing the 300 hours of postgraduate coursework required under R4-38-104 or the preceptorship required under R4-38-105;
3. If the answer to any item in subsections (A)(1)(q)(i) through (ix) is yes, detailed information regarding the nature, date, and location of the incident, or the nature of the condition, and the identity of the agency, court, or organization involved, action taken, and current status;
4. An Arizona Statement of Citizenship and documentary evidence of U.S. citizenship or qualified alien status;
5. A list of the homeopathic modalities the applicant intends to make available under the applicant's supervision if the applicant is licensed;
6. If the applicant intends to use an experimental form of diagnosis or treatment in the applicant's homeopathic medical practice, a copy of the written informed consent materials that a patient will sign before examination or treatment;
7. Two photographs of the applicant's face taken within the last 60 days;
8. A copy of the membership card provided by a specialty college of which the applicant is a member;
9. A copy of the certification card provided by a specialty board by which the applicant is certified;
10. A completed and signed form authorizing individuals, organizations, previous employers, and schools to release to the Board information regarding the applicant;
11. A current curriculum vitae that includes all professional activity from medical school to the present; and
12. The license application fee specified in R4-38-106.

B. An applicant for licensure shall ensure that the following information is submitted directly to the Board:

1. Verification of graduation provided by the allopathic or osteopathic medical college from which the applicant graduated;
2. Letters of recommendation, on professional letterhead and notarized, from three licensed physicians; and
3. Verification of licensure from every jurisdiction in which the applicant is or ever has been licensed to practice medicine.

Historical Note

Adopted effective June 13, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-108 renumbered to R4-38-110; new Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-109. License Renewal

A. The Board shall provide a licensee with at least 30 days' notice of the need to renew the licensee's license. It is the responsibility of the licensee to renew timely. Failure to receive notice of the need to renew does not excuse failure to renew timely.

B. Under A.R.S. § 32-2915(G), a licensee who wishes to continue practicing homeopathic medicine shall submit the license renewal materials described in subsection (E) annually on or before the last day of the month in which the license was initially issued.

C. A licensee who fails to comply with subsection (E) by the date specified in subsection (B) may apply for license renewal within 60 days after the date specified in subsection (B) by:
1. Submitting to the Board the license renewal materials described in subsection (E), and
2. Paying the late renewal penalty prescribed in R4-38-106.

D. If a licensee fails to comply with either subsection (B) or (C), the licensee's license expires and the licensee shall immediately cease practicing homeopathic medicine. A licensee whose license expires may obtain licensure only by complying again with R4-38-108 and taking the examination specified in R4-38-107.

E. To renew a license issued by the Board, a licensee shall submit the following directly to the Board:
1. A license renewal application that contains the following information about the applicant:
   a. Name;
   b. License number;
   c. Business name and address;
   d. Residential address;
   e. Business telephone number;
   f. E-mail address;
   g. Address and telephone numbers of each location at which the licensee practices;
   h. Number of the active M.D. or D.O. license held by the licensee and name of the state that issued the license; and
   i. A statement indicating whether during the last 12 months:
      i. A licensing authority of another jurisdiction denied the licensee a license to practice allopathic, homeopathic, or osteopathic medicine and if so, the name of the jurisdiction, date of the denial, and an explanation of the circumstances;
      ii. A licensing authority of another jurisdiction revoked, suspended, limited, restricted, or took other action regarding a license of the licensee and if so, the name of the jurisdiction taking action, nature and date of the action taken, and an explanation of the circumstances;
      iii. The licensee has been convicted of or pled guilty or nolo contendere to a criminal charge, including driving under the influence of drugs or alcohol, and if so, the name of the jurisdiction in which convicted, nature of the crime, date of conviction, and current status;
      iv. A lawsuit was filed or settlement entered into or judgment entered against the licensee alleging professional malpractice or negligence in the practice of homeopathic, allopathic, or osteopathic medicine and if so, the case number, date of action, the matters alleged, and whether the lawsuit is still pending or the manner in which the settlement or judgment was resolved; and
      v. The licensee has or had a mental illness or psychological condition that may impair the licensee's ability to practice homeopathic medicine safely and skillfully and if so, the nature of the condition and any accommodations necessary;
      vi. The licensee has been charged with or arrested for any felony or misdemeanor involving conduct that may affect patient safety or a felony as required under A.R.S. § 32-3208.
2. A list of the treatment modalities the licensee makes available under the licensee's supervision;
3. If the licensee uses an experimental form of diagnosis or treatment in the licensee's practice of medicine, a copy of the written informed consent materials that a patient signs before examination or treatment;
4. A list of any specialty certifications held by the licensee, the certifying entity, and the date the certification expires;
5. If the licensee dispenses drugs or devices as part of the licensee's practice of homeopathic medicine:
   a. The licensee's DEA registration number;
   b. A statement of whether a complaint has been filed or legal action has been taken against the licensee by a court or federal or state agency for dispensing a device, drug, or substance and if so, the name and address of the court or federal or state agency and documentation of the action taken; and
   c. A list of the items dispensed;
6. An Arizona Statement of Citizenship and documentary evidence of U.S. citizenship or qualified alien status;
7. An affirmation that the licensee has completed the continuing education required under A.R.S. § 32-2915;
8. An affirmation that the licensee is in compliance with A.R.S. § 32-3211 regarding medical records;
9. The license renewal fee prescribed under R4-38-106; and
10. The licensee's dated signature affirming that the information provided is true, correct, and complete.

Historical Note

Adopted effective June 13, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-109 renumbered to R4-38-111; new Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-110. Notification of Change in Contact Information

The Board shall communicate with a licensee using the most recent contact information provided to the Board. To ensure timely communication from the Board, a licensee shall advise the Board in writing within 45 days of opening an additional office or a change in name, office or residential address, or telephone number.

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Section repealed by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). New R4-38-110 renumbered from R4-38-108 and amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-111. Experimental Forms of Diagnosis and Treatment

A. The Board neither approves nor advocates specific experimental therapies. The Board considers the standards in this Section

in determining whether a licensee is in compliance with A.R.S. § 32-2933(27). The Board considers a therapy that is in violation of applicable state or federal statutes, or state or federal rules or regulations regarding drugs and devices to be unprofessional conduct under A.R.S. § 32-2933(27).

B. Experimental forms of diagnosis or treatment, within the meaning of A.R.S. § 32-2933(27), include:
1. Administration of a pharmaceutical agent untested for safety in humans;
2. Use of a physical agent or electromagnetic current or field in a manner not supported by established clinical usage; and
3. Therapy modalities and diagnostic methods that are not included in the practice of homeopathic medicine as defined in A.R.S. § 32-2901(22) and do not meet the criteria of subsection (C).

C. The following are not an experimental form of diagnosis or treatment under A.R.S. § 32-2933(27):
1. A substance or therapy modality administered on a homeopathic indication that has been in beneficial clinical usage by professionally trained, legally qualified physicians for at least 10 years;
2. Homeopathic medications listed in the Homeopathic Pharmacopoeia of the United States;
3. Homeopathic medications that have been characterized by toxicity studies or by the "proving" method of administration on healthy volunteers to determine the medication's spectrum of action;
4. Administration of a pharmaceutical agent for a therapeutic indication supported by clinical usage if the agent is approved to be marketed publicly for other therapeutic indications by the appropriate regulatory agency; and
5. A procedure used for patient education, preventative medicine, or general health assessment or enhancement such as bio-terrain analysis, live blood analysis, soft laser, magnetic therapy, oxidative therapy, and microelectric therapy, and other procedures considered by the Board to be in beneficial clinical usage.

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Former R4-38-111 renumbered to R4-38-112; new R4-38-111 renumbered from R4-38-109 by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-112. Peer Review

A. A licensee using an experimental form of diagnosis and treatment such as vaccine therapy for cancer without affiliation with a recognized research institution, institutional review board, or peer review committee may request or the Board may require review of the procedure by the Board or a Board-appointed peer review committee.

B. In conducting the review, the Board or Board-appointed peer review committee shall examine protocols, recordkeeping, analyses of results, and informed patient consent forms and procedures. Based on the review, the Board shall determine the licensee's compliance with generally accepted homeopathic experimental criteria under A.R.S. § 32-2933(27).

C. As used in A.R.S. § 32-2933(27), "periodic review by a peer review committee" means peer review for compliance with any form of experimental medicine occurs at a minimum of five-year intervals through a recognized research institution, institutional review board, or a peer review committee. The chairperson of a Board-appointed peer review committee shall be appointed by the Board president and approved by the Board.

D. During a review of a licensee's use of experimental forms of diagnosis and treatment or at any other time the Board deems appropriate, the licensee shall submit informed patient consent forms and protocols and other records indicating the licensee's compliance with generally accepted experimental criteria designated in A.R.S. § 32-2933(27).

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Section repealed; new R4-38-112 renumbered from R4-38-111 by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-113. Chelation Therapy Practice Requirements

A. Before a licensee may practice chelation therapy for other than the treatment of metal poisoning, the licensee:
1. Shall document completion of the postgraduate education required in R4-38-104(C)(2); and
2. Submit to and obtain approval from the Board of the informed patient consent form required by A.R.S. § 32-2933(27). As part of the documentation submitted with the informed patient consent form, the licensee shall include a copy of the chelation therapy protocol.

B. A licensee shall ensure that detailed records and periodic analysis of results on patients consistent with the most recent informed consent and protocol on file with the Board are maintained consistent with A.R.S. § 32-2933(27) and available for periodic review by a peer review committee designated by the Board. The licensee shall ensure that retention of patient medical and treatment records conform to the requirements of A.R.S. § 32-2936.

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Amended effective February 7, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-114. Rehearing or Review of Decision

A. Except as provided in subsection (G), any party to an appealable agency action or a contested case before the Board who is aggrieved by a decision rendered in the case may file with the Board not later than 30 days after service of the decision, a written motion for rehearing or review of the decision, specifying the particular grounds for the motion. A decision is served when personally delivered or five days after the date the decision is mailed to the party at the party's last known residence or place of business.

B. A motion for rehearing may be amended at any time before a ruling by the Board. Any other party may file a response within 15 days after the motion or amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. The Board may grant a rehearing or review of the decision for any of the following reasons materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the Board or the hearing officer, or any order or abuse of discretion that results in the moving party being deprived of a fair hearing;
2. Misconduct of the Board or the non-moving party;
3. Accident or surprise that could not have been prevented by ordinary prudence;

4. Newly discovered material evidence that with reasonable diligence could not have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
7. The decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters.

E. Not later than 30 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting the rehearing shall specify the grounds for the rehearing.

F. When a motion for rehearing is based upon an affidavit the party shall serve the affidavit with the motion. Within 10 days after service, an opposing party may serve an opposing affidavit. The Board may extend the period to serve an opposing affidavit for an additional 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.

G. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public peace, health, or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

H. The terms "contested case" and "party" as used in this Section are defined in A.R.S. § 41-1001. The term "appealable agency action" is defined in A.R.S. § 41-1092.

Historical Note

Adopted effective June 3, 1988 (Supp. 88-2). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2).

R4-38-115. Use of Title and Abbreviation

A. The use of the abbreviation "M.D.(H.)" or "D.O.(H.)" (with or without periods), is equivalent to the written designation, "Doctor of Medicine (Homeopathic)" or "Doctor of Osteopathy (Homeopathic)."

B. A homeopathic physician practicing in this state who is not licensed by the Arizona Board of Medical Examiners or the Arizona Board of Osteopathic Examiners in Medicine and Surgery shall not use any designation other than the initials M.D.(H.) or D.O.(H.) (with or without periods) to indicate a doctoral degree.

C. A physician licensed by the Board and the Arizona Board of Medical Examiners or the Board and the Arizona Board of Osteopathic Examiners in Medicine and Surgery shall use M.D., M.D.(H.) or D.O., D.O.(H.) as appropriate (with or without periods).

D. A licensee practicing in this state shall display the license issued by the Board or an official duplicate of the license in a conspicuous location in the reception area of each office facility.

Historical Note

Adopted effective January 27, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2008, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-116. Continuing Education Requirement

A. Under A.R.S. § 32-2915(F), a licensee shall complete at least 20 hours of Board-approved continuing education in the 12 months before submitting the license renewal materials required under R4-38-109. If a licensee completes more than 20 hours of continuing education during a year, the licensee shall not report the extra hours in a subsequent year.

B. A licensee shall ensure that the licensee obtains and maintains for two years documentary evidence of complying with the continuing education requirement.

C. An hour of continuing education consists of 60 minutes of participation unless specified otherwise in subsection (D).

D. The following continuing education programs and activities are approved by the Board and do not require an application under R4-38-117:

1. Participating in an internship, residency, or fellowship at a teaching institution approved by the American Medical Association, Association of American Medical Colleges, or American Osteopathic Association. A licensee may claim one credit hour of continuing education for each day of training in a full-time approved program, or for a less than full-time training on a pro-rata basis. For purposes of this subsection, teaching institutions define "full-time";
2. Participating in an education program for an advanced degree in a medical or medically-related field in a teaching institution approved by the American Medical Association, Association of American Medical Colleges, or American Osteopathic Association. A licensee may claim one credit hour of continuing education for each one day of full-time study or less than a full-time study on a pro rata basis. For purposes of this subsection, teaching institutions define "full-time";
3. Participating in full-time research in a teaching institution approved by the American Medical Association, Association of American Medical Colleges, or American Osteopathic Association. A licensee may claim one credit hour of continuing education for each one day of full-time research, or less than full-time research on a pro rata basis. For purposes of this subsection, teaching institutions define "full-time";
4. An educational program certified as Category 1 by an organization accredited by the Accreditation Council for Continuing Medical Education or the American Osteopathic Association;
5. A medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of medicine and provided by an organization or institution accredited by the Accreditation Council for Continuing Medical Education or the American Osteopathic Association; and
6. A homeopathic medical education course approved or offered by the Council on Homeopathic Education.

E. The following activities are approved by the Board as continuing education and do not require an application under R4-38-117 subject to the specified limitations:

1. Serving as an instructor of medical students, house staff, other physicians, or allied health professionals from a hospital or other health care institution if serving as an instructor provides the licensee with an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic, osteopathic, or homeopathic medicine. A licensee who serves as an instructor:
   a. May claim one hour of continuing education for each hour of instruction up to a maximum of 10 hours, and
   b. If the licensee teaches substantially the same class more than once, may claim hours of continuing education only for the first time the class is taught;
2. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of allopathic, osteopathic, or homeopathic medicine. A licensee who publishes or presents a paper, report, or book:
   a. May claim one hour of continuing education for each hour preparing, writing, and presenting up to a maximum of 10 hours; and
   b. May claim hours of continuing education only after the date of publication or presentation; and
3. Participating in the following activities if the participation provides the licensee with an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic, osteopathic, or homeopathic medicine. A licensee may claim one hour of continuing education for each hour of participation in the following activities up to a maximum of six hours:
   a. Completing a self-instructed medical education program through the use of videotape, audiotape, film, filmstrip, radio broadcast, or computer;
   b. Reading scientific journals and books;
   c. Preparing for and obtaining specialty board certification or recertification; and
   d. Participating on a staff or quality of care committee or utilization review committee in a hospital, health care institution, or government agency.

F. The Board shall approve a program or activity note listed in subsection (D) or (E) as continuing education if the provider of the program or activity makes application under R4-38-117 and the Board determines that the program or activity:
1. Is designed to provide the participant with:
   a. Understanding of current developments, procedures, or treatments related to the practice of homeopathic medicine as defined at A.R.S. § 32-2901(22);
   b. Knowledge and skills used to practice homeopathic medicine safely and competently; or
   c. Knowledge and skills related directly or indirectly to patient care including practice management, medical ethics, or language necessary to the patient population served;
2. Includes a method by which the participant evaluates the:
   a. Stated objectives of the program or activity,
   b. Instructor knowledge and teaching ability,
   c. Effectiveness of the teaching methods used, and
   d. Usefulness or applicability of the information provided; and
3. Provides the participant with a certificate of attendance that shows the:
   a. Name of the participant;
   b. Name of the approved continuing education;
   c. Name of the continuing education provider;
   d. Date, time, and location of the continuing education; and
   e. Hours of instruction provided.

G. Except as specified in subsection (H), a licensee who fails to comply with subsection (A) may submit to the Board a notice of 60-day extension. The licensee shall submit the notice of 60-day extension no later than the date indicated in R4-38-109(B). If a licensee who submits a notice of 60-day extension fails to comply with the continuing education requirement and submit the affirmation required by R4-38-109(E)(7) within the extension period, the licensee's license expires and the licensee shall immediately cease practicing homeopathic medicine. A licensee whose license expires may obtain licensure only by complying again with R4-38-108 and taking the examination specified in R4-38-107.

H. If a licensee fails to comply with subsection (A) because of disability, military service, absence from the U.S., or other circumstance beyond the control of the licensee, the licensee may submit to the Board a request for a temporary waiver of the continuing education requirement that includes the reason for noncompliance, the number of hours of continuing education completed, and the amount of time requested for the licensee to complete the continuing education requirement. The licensee shall submit the request for temporary waiver no later than the date specified in R4-38-109(B). The Board shall evaluate the request for temporary waiver and provide written notice to the licensee of the time within which the licensee shall comply with subsection (A).

Historical Note

New Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-117. Application for Continuing Education Approval

A. To obtain Board approval of a continuing education under R4-38-116(F), the provider of the continuing education shall submit the following to the Board at least 10 days before the meeting at which the Board will consider the continuing education for approval:
1. An application for approval, using a form available from the Board, which contains the following information:
   a. Title of the continuing education;
   b. Name and address of the continuing education provider;
   c. Name and telephone and fax numbers of the contact person for the continuing education provider;
   d. Date, time, and place at which the continuing education will be taught, if known;
   e. Subject matter of the continuing education;
   f. Objective of the continuing education;
   g. Method of instruction; and
   h. Number of continuing education hours requested; and
2. The following documents:
   a. Curriculum vitae of the continuing education instructor,
   b. Detailed outline of the continuing education,
   c. Agenda for the continuing education showing hours of instruction and subject matter taught in each hour,
   d. Method by which participants will evaluate the continuing education, and
   e. Certificate of attendance that meets the requirements of R4-38-116(F)(3).

B. A provider of continuing education shall not advertise that a continuing education is approved until the Board approves the application submitted under subsection (A).

C. The Board's approval of a continuing education is valid for one year or until there is a change in subject matter, instructor, or hours of instruction. At the end of one year or when there is a change in subject matter, instructor, or hours of instruction, the provider of the continuing education shall reapply for approval.

Historical Note
New Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

R4-38-118. Audit of Compliance and Sanction for Noncompliance with Continuing Education Requirement

A. When notice of the need to renew a license is provided under R4-38-109(A), the Board shall also provide notice of an audit of continuing education records to a random sample of licensees.

B. A licensee who is notified of a continuing education audit shall submit documentary evidence of compliance with the continuing education requirement at the same time that the licensee submits the renewal application required under R4-38-109(E).

C. If a licensee subject to a continuing education audit fails to submit the required evidence no later than the date specified in R4-38-109(C), the licensee is considered to have committed an act of unprofessional conduct and is subject to probation or license suspension or revocation.

Historical Note
New Section made by final rulemaking at 17 A.A.R. 1980, effective November 12, 2011 (Supp. 11-3).

ARTICLE 2. DISPENSING OF DRUGS BY HOMEOPATHIC PHYSICIANS

R4-38-201. Definitions

In addition to the definitions in A.R.S. §§ 32-2901, 32-2933, and 32-2951, the following definitions apply in this Chapter:

1. "Administer" means the direct application of a controlled substance, prescription-only drug, dangerous drug as defined in A.R.S. § 13-3401, narcotic drug as defined in A.R.S. §13-3401, homeopathic medication, natural substance, or non-prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by a homeopathic physician, a homeopathic physician's nurse or assistant, or by the patient or research subject at a homeopathic physician's direction.
2. "Label" means a display of written, printed, or graphic matter on the immediate container of an article and, on the outside wrapper or container, if the display on the immediate wrapper or container is not easily legible through the outside wrapper.
3. "Labeling" means all labels and other written, printed, or graphic matter:
   a. On an article or any of its containers or wrappers and
   b. Accompanying the article.
4. "Manufacturer" means each person who prepares, derives, produces, compounds, processes, packages or repackages, or labels a drug in a place devoted to manufacturing the drug, but does not include a pharmacy, pharmacist, or physician.
5. "Natural substance" means an herbal phytotherapeutic or oxygen, carbon, or nitrogen-based therapeutic agent, vitamin, mineral, or food-factor concentrate isolated from animal, vegetable, or mineral sources for nutritional augmentation.
6. "Official compendium" means the latest revisions of the Pharmacopoeia of the United States and the Homeopathic Pharmacopoeia of the United States, the latest revision of the National Formulary, or any current supplement.
7. "Packaging" means the act or process of placing a drug in a container to dispense or distribute the drug.
8. "Pharmaceutical drug" means a drug intended for use in preventing or curing disease or relieving pain.

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Amended by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

R4-38-202. General Provisions

A. A homeopathic physician shall not dispense unless the physician obtains from the Board a permit to dispense. The physician may renew the permit annually at the same time the license is renewed. The physician shall include the following on the permit application or renewal form:

1. The classes of drugs the physician will dispense, including controlled substances, pharmaceutical drugs, homeopathic medications, prescription-only drugs, natural substances, non-prescription drugs defined in A.R.S. § 32-1901(46), and devices defined in A.R.S. § 32-1901(18);
2. The location where the physician will dispense; and
3. A copy of the physician's current Drug Enforcement Administration (DEA) registration, or an affidavit averring that the physician does not possess a DEA registration and that the physician will not prescribe or dispense controlled substances.

B. If a homeopathic physician determines that a shortage exists in a controlled substance maintained for dispensing, the physician shall immediately notify the Board, the local law enforcement agency, and the Department of Public Safety by telephone. The physician shall also provide written notification to the Board within seven days of the date of the discovery of the shortage.

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Amended by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

R4-38-203. Repealed

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

R4-38-204. Repealed

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

R4-38-205. Repealed

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Section repealed by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

R4-38-206. Packaging

In addition to the requirements of A.R.S. § 32-2951, a dispensing homeopathic physician shall dispense a controlled substance or prescription-only pharmaceutical drug in a light-resistant container with a consumer safety cap, unless the patient or patient's representative and the physician agree otherwise.

Historical Note
Adopted effective September 13, 1993 (Supp. 93-3). Amended by final rulemaking at 9 A.A.R. 1599, effective July 5, 2003 (Supp. 03-2).

ARTICLE 3. EDUCATION, SUPERVISION, AND DELEGATION STANDARDS FOR REGISTRATION OF MEDICAL ASSISTANTS BY HOMEOPATHIC PHYSICIANS

R4-38-301. Definitions

The definitions in A.R.S. §§ 32-2901, 32-2933, and 32-2951 apply to this Article. Additionally, in this Article:

"Advertisement" means a written, oral, or electronic communication, including a business card or telephone directory listing, which is intended, directly or indirectly, to inform a person that a medical assistant provides a homeopathic procedure.

"Delegated procedure" means a technical homeopathic function that a medical assistant is qualified to perform and is specified in the medical assistant's Board-approved job description.

"Electrodermal testing device" means an instrument that is FDA-registered for the measurement of galvanic skin response.

"FDA" means the United States Food and Drug Administration.

"Homeopathic modality" means a method of diagnosis and treatment listed in the definition of the practice of homeopathic medicine at A.R.S. § 32-2901.

"Homeopathic repertorization" means to assess an individual's symptoms and use a reference to determine the appropriate homeopathic remedy for each symptom.

"Homeotherapeutic instruction" means education regarding the signs, symptoms, and physical findings that lead to the recommendation of a particular substance or therapeutic procedure.

"Hour" means 60 minutes.

"Kinesiology" means the scientific study of human movement.

"Patient record," as used in A.R.S. § 32-2936, means a medical record, as defined at A.R.S. § 12-2291.

Historical Note
Adopted effective January 27, 1995 (Supp. 95-1). Amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-302. Requirements to Supervise a Medical Assistant; Standards for Supervision

A. Before a homeopathic physician applies to the Board to register a medical assistant under R4-38-306, the homeopathic physician shall be licensed by the Board.

B. When a homeopathic physician applies to the Board to register a medical assistant, the homeopathic physician shall submit evidence, as outlined in R4-38-103(C), that the homeopathic physician is qualified in the homeopathic modality of the procedure that will be delegated to the medical assistant.

C. The Board shall find that a homeopathic physician is qualified in the homeopathic modality of the procedure that will be delegated to a medical assistant if the homeopathic physician submits with the application to register the medical assistant certificates of attendance or other evidence that the homeopathic physician completed postgraduate coursework in the delegated homeopathic modality equal to or exceeding the number of hours specified in R4-38-103(C)(1) through (6).

D. A homeopathic physician who supervises a registered medical assistant shall:

1. Perform and document in the patient record the following for each patient for whom the medical assistant performs a delegated procedure:
   a. Initial evaluation,
   b. Treatment planning including any modification in the treatment plan, and
   c. Re-evaluation of the patient's health status every fourth visit and at the time of discharge or termination of treatment;
2. Respond within 15 minutes to a telephone call or other telecommunication from a medical assistant who performs a delegated procedure when the homeopathic physician is not physically present at the location at which the medical assistant is working;
3. Ensure that a note is placed in the patient record every time the medical assistant seeks direction from the homeopathic physician regarding a delegated procedure performed for a patient;
4. Ensure that the medical assistant performs only delegated procedures that are in the medical assistant's Board-approved job description;
5. Provide a specific written order for any procedure delegated to and performed by the medical assistant for a patient;
6. Ensure that the specific written order required under subsection (D)(5) is placed in the patient record on the day that the medical assistant performs the delegated procedure;
7. Ensure that the medical assistant makes a contemporaneous note in the patient record of any procedure performed by the medical assistant for the patient;
8. Review, initial, and date the medical assistant notes placed in patient records within one week after each note is made and initial and date each note; and
9. Review with the medical assistant a patient's response to treatments performed by the medical assistant:
   a. Within three months of the initial visit,
   b. After any significant change in the initial treatment plan, and
   c. After an adverse reaction.

Historical Note
Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-302 renumbered to R4-38-303; new Section R4-38-302 made by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-303. Board Standards for a Formal Education Program

A. The Board establishes the following minimum standards for a formal education program in the subject area specified:

1. Neuromuscular integration therapy procedures. A formal education program in neuromuscular integration therapy procedures shall:
   a. Be provided at an educational institution and designed to qualify a graduate as a physical therapist assistant in a U.S. jurisdiction; or
   b. Consist of 750 hours of educational training and 250 hours of supervised clinical experience in Feldenkrais, Rolfing, Hellerwork, Trager, Orthobionomy, Shiatsu, Reiki, Polarity, Jin Shin Jyutsu, or a similar therapy;

2. Homeopathic repertorization procedures. A formal education program in homeopathic repertorization procedures shall:
   a. Be provided at an educational institution,
   b. Be designed to train a graduate in classical homeopathy, and
   c. Consist of the following:
      i. 200 hours of education training, and
      ii. 100 hours of supervised clinical experience, and
3. Nutrition counseling and orthomolecular therapy procedures. A formal education program in nutrition counseling and orthomolecular therapy procedures shall:
   a. Be provided at an educational institution, and
   b. Consist of the following:
      i. 500 hours of education training, and
      ii. 175 hours of supervised clinical internship, or
   c. Result in certification by the Clinical Nutrition Certification Board.

B. If a homeopathic physician applies to register as a medical assistant an individual who completed a formal education program in a homeopathic modality other than those listed in subsection (A), the homeopathic physician shall submit to the Board evidence that the program consists of educational training and clinical supervision that is substantially equivalent to the requirements specified in R4-38-103(C).

Historical Note

Adopted effective January 27, 1995 (Supp. 95-1). Section repealed; new R4-38-303 renumbered from R4-38-302 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-304. Approved Practical Education Program; Renewal

A. A homeopathic physician who wishes to provide on-the-job practical education to an unregistered individual shall apply for and obtain Board approval of a practical education program specifically designed for the unregistered individual before providing the practical education program.

B. The Board's approval of a practical education program is specific to the unregistered individual being trained. A homeopathic physician who wishes to provide on-the-job practical education to more than one unregistered individual shall apply for and obtain Board approval of a practical education program for each unregistered individual.

C. The Board shall approve a practical education program only if the program meets one of the following minimum standards:
1. Neuromuscular integration therapy procedures. For each therapy listed in R4-38-303(A)(1)(b) in which practical education is provided, 375 hours of instruction and 125 hours of supervised clinical experience;
2. Homeopathic repertorization procedures.
   a. If performed with an electrodermal testing device or kinesiology, 180 hours of homeotherapeutic instruction including at least 45 hours of supervised clinical experience;
   b. If performed without an electrodermal testing device or kinesiology, 200 hours of homeotherapeutic instruction and 100 hours of supervised clinical experience;
3. Nutrition counseling and orthomolecular therapy procedures, 500 hours of instruction and 170 hours of supervised clinical experience; and
4. Other homeopathic procedure. Hours of instruction and supervised clinical experience that the Board determines is sufficient to enable the unregistered individual being trained to perform as a medical assistant in a safe and competent manner.

D. To obtain the Board's approval of a practical education program, the homeopathic physician who will provide the training shall:
1. Provide the following information on a form obtained from the Board:
   a. Name of the unregistered individual for whom the practical education program is designed,
   b. Residential address and telephone number of the unregistered individual,
   c. Social Security number of the unregistered individual,
   d. A training protocol that identifies the:
      i. Homeopathic procedure in which the unregistered individual will be trained,
      ii. Subject matter on which instruction will be provided and the hours devoted to each subject, and
      iii. Manner in which supervised clinical experience will be provided,
   e. Address at which the practical education program will be conducted,
   f. Name of the homeopathic physician who will provide the practical education, and
   g. License number of the homeopathic physician who will provide the practical education.
2. Attach the following to the form required under subsection (D)(1):
   a. Documentation of any previous on-the-job training or formal education, as described in R4-38-303, completed by the unregistered individual for whom the practical education program is designed;
   b. Documentation that the homeopathic physician is qualified in the procedure in which training will be provided. For the procedures in which training may be provided, the Board shall accept certificates of attendance or other evidence that the homeopathic physician completed postgraduate course work in the homeopathic procedure to be taught equal to or exceeding the number of hours specified in R4-38-103(C)(1) through (6).
3. Sign the application form affirming that the homeopathic physician shall:
   a. Ensure that the unregistered individual being trained is not held out or represented to be a medical assistant,
   b. Ensure that the unregistered individual is supervised at all times,
   c. Ensure that the unregistered individual is assigned only tasks that the unregistered individual can perform safely and competently,
   d. Ensure that the unregistered individual is not registered by the Board as a medical assistant before completing the practical education program, and
   e. Provide the unregistered individual with a certificate or other evidence of completion when the unregistered individual completes the Board-approved practical education program. The homeopathic physician shall include the following information on the certificate or other evidence of completion:
      i. Name of the unregistered individual completing the practical education program,
      ii. Name and license number of the homeopathic physician who provided the practical education program,

iii. Date on which Board approval was obtained for the practical education program,
iv. Dated signature of the homeopathic physician affirming that the practical education program completed met the standards established by the Board.

E. The Board's approval of a practical education program is valid for one year. If the homeopathic physician who obtained approval of the practical education program does not complete providing the program within one year, the homeopathic physician may renew the program by submitting to the Board a letter affirming continued compliance with this Section and paying the fee listed in R4-38-105.

Historical Note

Adopted effective January 27, 1995 (Supp. 95-1). Amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-305. Minimum Requirements for Registration of a Homeopathic Medical Assistant

A. The Board shall approve the registration of an individual as a homeopathic medical assistant only if the homeopathic physician who will supervise the individual submits evidence that the individual:
1. Completed a formal education program that meets the standards at R4-38-303, or
2. Completed a practical education program that is approved by the Board under R4-38-304.

B. The Board shall approve the registration of an individual as a homeopathic medical assistant only if the individual is employed and supervised by a homeopathic physician who submits the evidence required under R4-38-302(C) showing that the homeopathic physician is qualified in the homeopathic modality in which the individual will work.

Historical Note

Adopted effective January 27, 1995 (Supp. 95-1). Section repealed; new Section R4-38-305 made by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-306. Application to Register a Medical Assistant

A. If a homeopathic physician intends that an individual who meets one of the minimum requirements listed in R4-38-305(A) work as a medical assistant, the homeopathic physician shall submit to the Board an application to register the individual within two weeks after employing the individual.

B. To register an individual who meets one of the standards at R4-38-305(A) as a medical assistant, a homeopathic physician shall submit to the Board the following information on a form obtained from the Board:
1. About the individual being registered:
   a. Name;
   b. Residential address;
   c. Residential and mobile telephone numbers;
   d. E-mail address;
   e. Social Security number;
   f. Address of the practice location at which the individual will perform delegated procedures;
   g. Telephone and fax numbers of the clinic at which the individual will perform delegated procedures;
   h. Statement of whether the individual completed a formal education program that meets the standards at R4-38-303 or a practical education program approved by the Board under R4-38-304;
   i. Statement of whether the individual is or ever has been licensed as a health care practitioner in a U.S. jurisdiction in a profession subject to regulation by licensure in Arizona and if so:
      i. A list of all jurisdictions in which the individual is or ever has been licensed as a health care professional, and
      ii. A list of the health care professions in which the individual is or ever has been licensed; and
      iii. A statement whether the individual has ever been subject to a disciplinary proceeding by a health care regulatory board in any jurisdiction and if so, the jurisdiction, health care profession, date, and cause and result of the disciplinary proceeding:
   j. Statement of whether the individual has ever been charged with or convicted of any criminal act and if so, the nature of the criminal act, date, jurisdiction, and current status;
   k. Statement of whether the individual is a U.S. citizen and if not, whether the individual is an alien qualified to work in the U.S.; and
   l. Dated signature of the individual being registered affirming that the information provided under subsections (B)(1)(a) through (k) is true, correct, and complete;
2. Description of the homeopathic procedures and other duties that will be delegated to the individual being registered, and
3. About the homeopathic physician:
   a. Name,
   b. License number, and
   c. Dated signature of the homeopathic physician affirming that:
      i. All information provided, including the materials listed in subsection (C), is true, correct, and complete; and
      ii. The homeopathic physician has reviewed the standards for supervision listed at R4-38-302 and agrees to comply with the standards.

C. In addition to the form required under subsection (B), a licensed homeopathic physician applying to register an individual as a medical assistant shall attach the following materials to the form:
1. A curriculum vitae or resume of the individual being registered;
2. If the individual being registered completed a formal education program that meets the standards at R4-38-303, an official transcript from the school, college, or technical institution that provided the program;
3. If the individual being registered completed a practical education program approved by the Board under R4-38-304, a copy of the certificate or other evidence of completion required under R4-38-304;
4. If the individual being registered has ever been charged with or convicted of any criminal act, a certified copy of the original charging document and a copy of all court documents relating to the individual's current status;
5. If the individual being registered is not a U.S. citizen, a copy of the document that shows the individual is qualified to work in the U.S.;
6. The evidence required under R4-38-302(C) showing that the homeopathic physician is qualified in the homeopathic modality to be delegated; and
7. The fee required under R4-38-105.

D. Multiple homeopathic physicians who work in the same medical practice may apply jointly to register one individual as a medical assistant. If multiple homeopathic physicians apply

jointly to register one individual as a medical assistant, each shall:
1. Provide the information and affirmation required under subsection (B)(3), and
2. Provide the evidence required under subsection (C)(6).

E. A homeopathic physician who has registered a medical assistant may amend the medical assistant's job description provided under subsection (B)(2). To amend the job description of a registered medical assistant, the homeopathic physician shall submit to the Board:
1. A new job description that identifies the homeopathic procedures and other duties that will be delegated to the registered medical assistant,
2. The documentation required under subsection (C)(2) or (3) showing that the registered medical assistant is qualified to perform the procedures and other duties to be delegated, and
3. The evidence required under subsection (C)(6) showing that the homeopathic physician is qualified in the homeopathic modality to be delegated.

Historical Note

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-306 renumbered to R4-38-309; new R4-38-306 renumbered from R4-38-308 and amended by final rulemaking at 16 A.A.R. 178, March 6, 2010 (Supp. 10-1).

R4-38-307. Additional Requirements to Register a Previously Licensed Health Care Practitioner

A. An individual who is or ever has been licensed as a health care practitioner in a U.S. jurisdiction in a profession subject to regulation by licensure in this state shall not attempt to practice the health care profession outside of this state's regulatory authority by obtaining registration as a medical assistant under this Chapter.

B. A homeopathic physician may register as a medical assistant an individual previously licensed or subject to professional regulation as a health care practitioner in a U.S. jurisdiction, only if the individual meets one of the standards in R4-38-305(A). To register as a medical assistant an individual previously licensed or subject to professional regulation as a health care practitioner in a U.S. jurisdiction, a homeopathic physician shall submit to the Board the application form and materials required under R4-38-306(B) and (C).

C. In addition to complying with subsection (B), a homeopathic physician applying to register as a medical assistant an individual previously licensed or subject to professional regulation as a health care professional in a U.S. jurisdiction shall submit to the Board an affidavit from the individual being registered stating the reason for which the individual seeks employment as a homeopathic medical assistant rather than as a licensed Arizona health care practitioner in accordance with the individual's professional training.

D. The Board shall conduct an investigation of the individual's health care professional practice in all jurisdictions in which the individual is or ever has been licensed. The Board shall ensure that the investigation is sufficient to determine whether the individual ever engaged in unprofessional conduct, was deemed incompetent, or was physically or mentally unable to provide health care services safely.

E. The Board shall conduct a personal interview with the homeopathic physician and the individual being registered to determine whether:
1. The description of homeopathic procedures and delegated duties provided under subsection (B) is accurate,
2. The supervisory relationship between the homeopathic physician and individual will not constitute a violation of A.R.S. § 32-2933(11),
3. The homeopathic physician understands the supervisory responsibilities, and
4. The individual being registered understands the limitations under this Article and applicable statutes.

Historical Note

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-307 renumbered to R4-38-312; new R4-38-307 renumbered from R4-38-310 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-308. Renewal of Medical Assistant Registration

A. The registration of a medical assistant expires:
1. When the medical assistant ceases to be employed by the homeopathic physician who registered the medical assistant, or
2. When the supervising homeopathic physician fails to comply with subsection (B) by December 31.

B. To renew the registration of a medical assistant, on or before December 31of each year, the supervising homeopathic physician shall submit to the Board:
1. A renewal application form, which is available from the Board, and provide the following information:
   a. About the homeopathic physician.
      i. Name;
      ii. Name of medical facility at which the homeopathic physician is employed;
      iii. Address of the medical facility;
      iv. Telephone and fax numbers of the medical facility;
      v. E-mail address of the homeopathic physician; and
      vi. Dated signature of the homeopathic physician affirming that the information provided is true, correct, and complete;
   b. About the medical assistant.
      i. Name;
      ii. Residential address;
      iii. Residential telephone number;
      iv. Homeopathic procedures delegated to the medical assistant;
      v. Practice locations at which the medical assistant works;
      vi. Statement of whether the medical assistant has been arrested or charged with a criminal act during the last year; and if so, the nature of the criminal act, date, jurisdiction, and current status; and
      vii. Dated signature of the medical assistant affirming that the information provided is true, correct, and complete; and
2. The fee specified in R4-38-105 for annual renewal of a medical assistant registration.

C. When a medical assistant's registration expires, the supervising homeopathic physician may register the medical assistant again by complying with R4-38-306.

Historical Note

Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-308 renumbered to R4-38-306; new Section R4-38-308 made by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-309. Restrictions on Delegated Procedures
A homeopathic physician shall not delegate the following procedures to a registered medical assistant:

1. Psycho-therapeutic procedures, including individual or group psychotherapy, clinical hypnosis, or other behavioral health interventions subject to independent regulation in this state; or
2. Dispensing drugs, homeopathic agents, herbal products, natural products, or therapy devices if the supervising homeopathic physician has not obtained from the Board a dispensing permit.

Historical Note
Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-309 renumbered to R4-38-310; new R4-38-309 renumbered from R4-38-306 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-310. Registration Not Transferable; Multiple Employers

A. The registration and job description of a medical assistant are not transferable from one employing homeopathic physician to another or from one medical assistant to another.
1. If a medical assistant changes from one employing homeopathic physician to another, the new employing homeopathic physician shall apply to the Board to register the medical assistant;
2. If a homeopathic physician employs a new medical assistant, the homeopathic physician shall apply to the Board to register the new medical assistant.

B. A medical assistant may be employed by more than one homeopathic physician.
1. If the multiple homeopathic physicians by whom a medical assistant is employed are part of the same medical practice, they shall apply jointly under R4-38-306(D) to register the medical assistant;
2. If the multiple homeopathic physicians by whom a medical assistant is employed are not part of the same medical practice, each shall apply under R4-38-306 to register the medical assistant.

Historical Note
Adopted effective January 27, 1995 (Supp. 95-1). Former R4-38-310 renumbered to R4-38-307; new R4-38-310 renumbered from R4-38-309 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-311. Responsibilities of a Registered Medical Assistant
After approval by the Board, a registered medical assistant shall:

1. Perform only the homeopathic procedures and duties specified under R4-38-306(B)(2),
2. Wear a clearly labeled name tag stating the designation "medical assistant" and the specific homeopathic modality in which the registered medical assistant is approved to work, and
3. Ensure that any advertisement includes:
   a. The designation "medical assistant,"
   b. The name of the supervising physician, and
   c. A clear indication of the supervised nature of the delegated procedures provided.

Historical Note
Adopted effective January 27, 1995 (Supp. 95-1). Section repealed, new Section made by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

R4-38-312. Unprofessional Conduct
The following conduct by a homeopathic physician who supervises a medical assistant is unprofessional conduct because the conduct does or might constitute a danger to the health, welfare, or safety of the patient or the public:

1. Obtaining board approval for a practical education program or supervision of the medical assistant under false pretenses,
2. Failing to adhere to a standard for supervision listed in R4-38-302(D),
3. Failing to register and maintain registration for the medical assistant as required by this Article,
4. Allowing the medical assistant to perform a procedure not specified in the medical assistant's Board-approved job description,
5. Delegating a procedure to an individual who is not registered with the Board or for whom the homeopathic physician has not obtained approval of a practical education program,
6. Holding out or representing that an unregistered individual for whom the homeopathic physician is providing an approved practical education program is a medical assistant, and
7. Failing to ensure that the medical assistant complies with A.R.S. § 32-2933 and this Article.

Historical Note
New Section R4-38-312 renumbered from R4-38-307 and amended by final rulemaking at 16 A.A.R. 178, effective March 6, 2010 (Supp. 10-1).

ARTICLE 4. APPLICATION AND RENEWAL PROCESS; TIME-FRAMES

R4-38-401. Definitions
In this Article, the following terms apply:

1. "Application period" means 365 days, starting from the date an initial application and fee are received in the Board office under A.R.S. § 32-2912(F)(3) and (4).
2. "Deficiency notice" means a written, comprehensive list of missing information or documents.
3. "Prescribed fee" means a fee permitted by A.R.S. § 32-2914 or prescribed by R4-38-104.
4. "Serve" means sending the document by U.S. mail to the last address provided by the applicant.
5. "Staff" means any person employed or designated by the Board to perform administrative tasks.

Historical Note
Adopted effective September 24, 1998 (Supp. 98-3).

R4-38-402. Application; Initial License, Permit, or Registration

A. An applicant shall submit to the Board office a signed, notarized application form, the contents of which are described by A.R.S. Title 32, Chapter 29 and 4 A.A.C. 38; any supporting information required; and the prescribed fee. Within 90 days after receipt of an initial application package, staff shall finish an administrative completeness review.
1. If the application package is complete, staff shall serve the applicant with a written notice of administrative completeness informing the applicant of the date, time, and place of the Board's consideration of the application.
2. If the application package is deficient, staff shall serve the applicant with a written deficiency notice. The 90-day time-frame for staff to finish the administrative completeness review is suspended from the date the deficiency notice is served until all missing information is received.

B. Except as otherwise provided by law, the applicant shall provide all missing information within 180 days after the date on the deficiency notice, including information from other agencies, institutions, and persons. If the applicant has not already done so, the applicant shall take the written examination prescribed in R4-38-105 within the 180 days.

C. Within 90 days after receipt of a complete initial application package, the Board shall render a decision on the initial license, permit, or registration. The applicant shall undergo the oral examination and interview prescribed in R4-38-106 within the 90 days.

1. If the Board finds the applicant meets the licensing requirements, the Board shall grant a license effective on the date that the Board receives the license issuance fee. If no license fee is required, the Board shall grant the permit or registration, which is effective on the date granted.
2. If the Board finds the applicant does not meet the licensing requirements, the Board shall issue a written notice of denial of license.
3. If the Board determines that there are substantive deficiencies in the application, the Board shall serve a single comprehensive written request for additional information.
4. The 90-day substantive review time-frame is suspended from the date on the request for additional information until the date that all requested information is received. Except as otherwise provided by law, the applicant shall provide the requested information within 60 days from the date on the notice.

D. If an applicant fails to provide the information required in subsections (B) and (C), the Board shall determine whether to deny the application or to consider it withdrawn under A.R.S. § 32-2912(F).

Historical Note

Adopted effective September 24, 1998 (Supp. 98-3).

R4-38-403. Application; Renewal of License, Permit, or Registration

A. On or before the deadlines prescribed in A.R.S. § 32-2915(D), an applicant for renewal of a license, permit or registration shall submit to the Board a renewal application form, the contents of which are prescribed by A.R.S. Title 32, Chapter 29 and 4 A.A.C. 38, and the appropriate fees.

B. Within 30 days after receipt of a renewal application package, staff shall notify the applicant that the package is either complete or deficient.

1. If the application package is complete, staff may serve the applicant with a written notice of administrative completeness. If the notice of administrative completeness is not served within 30 days after receipt of a renewal application package, the package is deemed complete.
2. If the renewal application package is deficient, staff shall serve the applicant with a written deficiency notice. The 30-day time-frame for staff to finish the administrative completeness review is suspended from the date the deficiency notice is served until all missing information is received.

C. Except as otherwise provided by law, an applicant for renewal shall provide all missing information within 10 days after the date on the deficiency notice or by the applicable deadline prescribed in A.R.S. § 32-2915, whichever is later.

D. Within 90 days of receipt of a complete renewal application package, the Board shall either issue a license renewed notice, showing the effective year of renewal, or conduct a substantive review of those renewal applications which, when considered alone or in conjunction with additional information, raise a concern that the applicant's conduct may be in violation of A.R.S. Title 32, Chapter 29. The Board shall investigate and resolve such a concern under A.R.S. § 32-2934.

E. If an applicant for renewal fails to provide the missing information required by subsection (C), the license, permit, or registration expires effective January 1 of the renewal year for which the application was made and the Board shall not refund any renewal fees paid for that year.

Historical Note

Adopted effective September 24, 1998 (Supp. 98-3).

Arizona Board of Homeopathic and Integrated Medicine Examiners
Arizona Revised Statutes
Title 32, Chapter 29

32-2901. Definitions

In this chapter, unless the context otherwise requires:

1. "Acupuncture" means a medical therapy in which ailments are diagnosed and treated by the specific application of needles, heat or physical and electromagnetic impulses or currents to specific anatomic points on the body through any of the following:

(a) Diagnosing and treating ailments according to the systematic principles of traditional Asian medicine.

(b) Diagnosing and treating pain, neuromuscular disorders and other ailments based on the body's biophysics and neuroanatomic structure.

(c) Using devices to determine the biologic electrical response pattern of acupuncture points as a guide to diagnose bodily ailments and to guide the prescription of homeopathic substances, orthomolecular therapy or pharmaceutical medicine.

2. "Adequate records" means legible medical records that contain at a minimum sufficient information to identify the patient, support the diagnosis, document the treatment, accurately describe the results, indicate advice, cautionary warnings and informed consent discussions with the patient and provide sufficient information for another licensed health care practitioner to assume continuity of the patient's care and to continue or modify the treatment plan.

3. "Approved internship" means that the applicant has completed training in a hospital that was approved for internship, fellowship or residency training by the council on medical education in hospitals of the American medical association, the association of American medical colleges, the royal college of physicians and surgeons of Canada, the American osteopathic association or any board-approved similar body in the United States or Canada that approves hospitals for internship, fellowship or residency training.

4. "Approved school of medicine":

(a) As it relates to a person who is seeking licensure pursuant to section 32-2912, subsection A, means a school or college that offers a course of study that on successful conclusion results in a degree of doctor of medicine or doctor of osteopathic medicine and that offers a course of study that is approved or accredited by the association of American medical colleges, the association of Canadian medical colleges, the American medical association, the American osteopathic association or any board-approved similar body in the United States or Canada that accredits this course of study.

(b) As it relates to a person who is seeking licensure pursuant to section 32-2912, subsection B, means a school or college that on successful completion results in a degree of doctor of homeopathy and that is approved or accredited by the accreditation commission for homeopathic

education in North America or any board-approved similar body that accredits this course of study.

5. "Approved training program", for a person who is seeking licensure pursuant to section 32-2912, subsection B, means a program that requires the person to both:

(a) Successfully complete one of the following:

(i) A program that would qualify an applicant to become certified or licensed to practice pursuant to chapter 8, 14, 19 or 39 of this title.

(ii) Training and testing by the United States armed forces at a level comparable to the national standards for emergency medical care technicians.

(iii) A program that is approved or accredited by the accreditation commission for homeopathic education in North America, or its successor organization, or any similar board-approved body that accredits this course of study.

(b) Meet one of the following:

(i) Hold, or pass the examination to hold, a certification from the council for homeopathic certification or its successor as designated by the board.

(ii) Complete a program that is approved by the board and that is designed to prepare the person for the practice of homeopathic medicine.

6. "Board" means the board of homeopathic and integrated medicine examiners.

7. "Chelation therapy" means an experimental medical therapy to restore cellular homeostasis through the use of intravenous, metal-binding and bioinorganic agents such as ethylene diamine tetraacetic acid. Chelation therapy is not an experimental therapy if it is used to treat heavy metal poisoning.

8. "Controlled substance" means a drug or substance or a drug's or substance's immediate precursor that is defined or listed in title 36, chapter 27, article 2 or the rules adopted pursuant to title 36, chapter 27, article 2.

9. "Drug" means a medication or substance that is any of the following:

(a) Recognized in the official compendia or for which standards or specifications are prescribed in the official compendia.

(b) Intended for use in diagnosing, curing, mitigating, treating or preventing human diseases.

(c) Articles other than food that are intended to affect the structure or function of the human body.

10. "Homeopathic medication" means a substance of animal, vegetable or mineral origin that is prepared according to homeopathic pharmacology and that is given usually in a homeopathic microdosage.

11. "Homeopathic microdosage" means a substance prepared so that it is diluted from ten to the minus one to ten to the minus ten-thousandth or higher of its original concentration.

12. "Homeopathy" means a system of medicine that employs homeopathic medication in accordance with the principle that a substance that produces symptoms in a healthy person can cure those symptoms in an ill person.

13. "Immediate family" means a person's spouse, natural or adopted children, parents and siblings and the natural or adopted children, parents and siblings of the person's spouse.

14. "Letter of concern" means an advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the board believes the licensee should modify or eliminate certain practices.

15. "Licensee" means a person who is licensed pursuant to this chapter.

16. "Medical assistant" means an unlicensed person who has completed an educational program approved by the board, who assists in a homeopathic practice under the supervision of a doctor of homeopathy or homeopathic physician and who performs delegated procedures commensurate with the assistant's education and training but who does not diagnose, interpret, design or modify established treatment programs or violate any statute.

17. "Medical incompetence" means the lack of sufficient medical knowledge or skill by a licensee to a degree that is likely to endanger a patient's health. Medical incompetence includes the range of knowledge expected for basic licensure pursuant to this chapter or as a medical or osteopathic physician in any professional regulatory jurisdiction of the United States and additional knowledge of homeopathic treatments and modalities expected of persons who are licensed pursuant to this chapter.

18. "Minor surgery":

(a) Means surgical procedures that are conducted by a licensee who is licensed pursuant to section 32-2912, subsection A in an outpatient setting and that involve the removal or repair of lesions or injuries to the skin, mucous membranes and subcutaneous tissues, the use of topical, local or regional anesthetic agents, the treatment by stabilizing or casting nondisplaced and uncomplicated fractures of the extremities and diagnostic endoscopies of the intestinal tract, nasopharynx and vagina.

(b) Includes diagnostic aspiration of joints and subcutaneous cysts, therapeutic injections of muscular trigger points, tendons, ligaments and scars and the subcutaneous implantation of medical therapeutic agents.

(c) Does not include the use of general, spinal or epidural anesthesia, the opening of body cavities, the repair of blood vessels and nerves or the biopsy by incision, excision or needle aspiration of internal organs, the breast or the prostate.

19. "Neuromuscular integration" means musculoskeletal therapy that uses any combination of manual methods, physical agents and physical medicine procedures and devices to improve physiological function by normalizing body structure.

20. "Nutrition" means the recommendation by a licensee of therapeutic or preventative dietary measures, food factor concentrates, fasting and cleansing regimens and the rebalancing by a licensee of digestive system function to correct diseases of malnutrition, to resolve conditions of metabolic imbalance and to support optimal vitality.

21. "Orthomolecular therapy" means therapy to provide the optimum concentration of substances normally present in the human body such as vitamins, minerals, amino acids and enzymes. Orthomolecular therapy includes the diagnosis of ailments or physiologic stresses that occur as a result of genetic or environmental influences as well as acquired or inherited allergy and hypersensitivity responses.

22. "Pharmaceutical medicine" means a drug therapy that uses prescription-only and nonprescription pharmaceutical agents as well as medicinal agents of botanical, biological or mineral origin and that is based on current scientific indications or traditional or historical usage indications.

23. "Practice of homeopathic medicine",

(a) For the purposes of a person who is licensed pursuant to section 32-2912, subsection A, means the practice of medicine in which the person purports to diagnose, treat or correct actual or imagined human diseases, injuries, ailments, infirmities and deformities of a physical or mental origin using treatment modalities that include acupuncture, chelation therapy, homeopathy, minor surgery, neuromuscular integration, nutrition, orthomolecular therapy and pharmaceutical medicine.

(b) For the purposes of a person who is licensed pursuant to section 32-2912, subsection B, means the practice of medicine in which the person purports to diagnose, treat or correct actual or imagined human diseases, injuries, ailments, infirmities and deformities of a physical or mental origin by means of homeopathy or nutrition.

24. "Preceptorship" means an extended period of individual study with one or more experienced homeopathic physicians or institutions.

25. "Prescription-only drug" does not include a controlled substance but does include:

(a) A drug that is generally regarded by medical experts to be unsafe if its use and dosage are not supervised by a medical practitioner.

(b) A drug that is approved for use under the supervision of a medical practitioner pursuant to the federal new drug application law or section 32-1962.

(c) A potentially harmful drug if its labeling does not contain full directions for its use by the patient.

(d) A drug that is required by federal law to bear on its label the following words: "Caution: Federal law prohibits dispensing without prescription."

26. "Professional negligence" means any of the following:

(a) That a licensee administers treatment to a patient in a manner that is contrary to accepted practices and that harms the patient if it can be shown to the board's satisfaction that accepted practices are inherently less hazardous.

(b) That a licensee commits an act of unprofessional conduct or displays an unreasonable lack of professional skill or fidelity.

(c) That a licensee's negligence, carelessness or disregard of established principles or practice results in a patient's injury, unnecessary suffering or death.

27. "Special purpose licensing examination" means an examination developed by the national board of medical examiners on behalf of the federation of state medical boards for use by state licensing boards to test the basic medical competence of physicians who are applying for licensure and who have been in practice in another jurisdiction of the United States and to determine the competence of a physician under investigation by a state licensing board.

32-2902. Board of homeopathic and integrated medicine examiners; membership; terms; removal; immunity

A. The board of homeopathic and integrated medicine examiners is established consisting of the following members appointed by the governor:

1. Two public members.

2. Until January 1, 2017, four members who are licensed pursuant to section 32-2912, subsection A.

3. Beginning January 1, 2017, five members who are licensed pursuant to this chapter, one of whom is licensed pursuant to section 32-2912, subsection B.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. Board members serve staggered three-year terms ending on June 30. Board members shall not serve more than three consecutive terms. A board member may continue to serve until that member's replacement takes office.

D. Board members shall be residents of this state for at least three consecutive years immediately before their appointment.

E. The governor may remove a board member from office because of that member's neglect of duty, malfeasance, misfeasance, incompetence or unprofessional or dishonorable conduct.

F. A board member's term of office automatically ends if that member is absent from this state for more than six months or if that member fails to attend three consecutive regularly scheduled board meetings.

G. Board members and board employees are immune from civil liability for any good faith action they take to implement this chapter.

32-2903. Board meetings; organization; compensation

A. The board shall hold an annual meeting each September in Maricopa county. At this meeting the board shall elect from its membership a president and a vice president.

B. The board by majority vote may also establish an annual schedule of regular meetings at times and places prescribed by the board.

C. The board may hold a special meeting if the president determines that this is necessary to carry out the board's functions. The vice president may call a special meeting if the president is unable to do so. At these meetings the board may use communications equipment that allows all participants to hear each other.

D. The executive director shall give each board member ten days' written notice of the date and time of each board meeting. On request of the president, the board by majority vote may waive this notification requirement. If the president is absent, the vice president may request that the board take this action.

E. A majority of board members constitutes a quorum. However, only a majority of the full board may issue a license.

F. Board members are eligible to receive compensation in the amount of not more than $150 for each day of actual service in the business of the board. Board members are eligible to receive compensation for all expenses necessarily and properly incurred in attending board meetings.

G. Medical consultants and agents appointed under section 32-2904 are eligible to receive compensation of not more than $200 for each day of service.

32-2904. Powers and duties

A. The board shall:

1. Conduct all examinations for applicants for a license under this chapter, issue licenses, conduct hearings, regulate the conduct of licensees and administer and enforce this chapter.

2. Enforce the standards of practice prescribed by this chapter and board rules.

3. Collect and account for all fees under this chapter and deposit, pursuant to sections 35-146 and 35-147, the monies in the appropriate fund.

4. Maintain a record of its acts and proceedings, including the refusal to issue a license or the issuance, renewal, suspension or revocation of licenses to practice according to this chapter.

5. Maintain a roster of all persons who are licensed pursuant to this chapter that includes:

(a) The licensee's name.

(b) The current professional office address.

(c) The date and number of the license issued under this chapter.

(d) Whether the licensee is in good standing.

6. Adopt and use a seal, the imprint of which is evidence of the board's official acts.

7. Contract with the department of administration for administrative and recordkeeping services.

8. Charge additional fees that do not exceed the cost of the services for services the board deems necessary to carry out its intent and purposes.

9. Adopt rules regarding the regulation and the qualifications of medical assistants.

10. Keep board records open to public inspection during normal business hours.

11. Meet each January with the acupuncture board of examiners to set financial compensation for staff and operating expense sharing.

B. The board may:

1. Adopt rules necessary or proper to administer this chapter.

2. Subject to title 41, chapter 4, article 4, hire personnel to carry out the purposes of this chapter.

3. Hire investigators subject to title 41, chapter 4, article 4 or contract with investigators to assist in investigating violations of this chapter and contract with other state agencies if required to carry out this chapter.

4. Appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.

5. Subject to title 41, chapter 4, article 4, employ consultants to perform duties the board determines are necessary to implement this chapter.

6. Compile and publish an annual directory.

7. Adopt rules to establish competency or professional review standards for any minor surgical procedure.

8. Appoint two or more board members to a subcommittee that reviews and approves applications and issues permits pertaining to homeopathic medical assistants and associated practical educational programs, pursuant to board rules.

9. Appoint two or more board members to a subcommittee that reviews and approves applications and issues permits pertaining to drugs and device dispensing practices, pursuant to board rules.

32-2905. Executive director; duties

A. The executive director of the acupuncture board of examiners shall serve as the executive director of the board of homeopathic and integrated medicine examiners. The staff of the acupuncture board of examiners shall carry out the administrative responsibilities of the board of homeopathic and integrated medicine examiners.

B. The executive director shall:

1. Collect all monies due and payable to the board.

2. Deposit, pursuant to sections 35-146 and 35-147, all monies received by the board in the appropriate fund.

3. Prepare bills for authorized expenditures of the board and obtain warrants from the department of administration.

4. Act as custodian of the seal, books, records, minutes and proceedings of the board.

5. Perform all duties prescribed by the board.

6. Perform all administrative duties of the board.

7. Subject to title 41, chapter 4, article 4, employ personnel necessary to carry out board functions.

32-2906. Board of homeopathic and integrated medicine examiners' fund

A. A board of homeopathic and integrated medicine examiners' fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected under this

chapter in the state general fund and deposit the remaining ninety per cent in the board of homeopathic medical examiners' fund.

B. Monies deposited in the fund are subject to section 35-143.01.

32-2907. Jurisdiction arbitration panel; members; procedures; duties

A. When the board receives a complaint on a licensee who is also licensed pursuant to chapter 13 or 17 of this title, the board shall immediately notify the other board.

B. If the boards disagree and if both boards continue to claim jurisdiction over the dual licensee, an arbitration panel shall decide jurisdiction. The panel shall consist of one member from each board, one legal representative from each board and one attorney who is licensed to practice law in this state, who is selected by the supreme court and who shall serve as chairman.

C. The chairman shall fix a date, time and place for a meeting within thirty days after the date the action is referred to the panel.

D. The panel shall determine which board shall investigate the complaint or whether both boards shall conduct their own investigation and hearing.

E. After conducting its investigation, the board chosen to conduct the investigation shall transmit all investigation materials, findings and conclusions to the other board. That board shall review this information to determine if it shall take any action against the licensee or dismiss the complaint.

F. If the licensing boards decide without resorting to arbitration which board shall conduct the investigation, the board conducting the investigation shall transmit all materials, findings and conclusions to the other board.

32-2911. Persons and acts not affected by chapter

This chapter does not prevent:

1. The practice of any other method, system or science of healing by a person who is licensed pursuant to the laws of this state if that person is acting within the scope of that license.

2. The practice by licensees discharging their duties while members of the armed forces of the United States or other federal agencies.

3. A person from administering a lawful domestic or family remedy, health food or health food supplement to that person's immediate family members.

4. A person from administering over-the-counter homeopathic remedies in the course of providing medical assistance in an emergency.

5. The practice of any of the healing arts offered by this state's Indian tribes.

6. The practice of religion, treatment by prayer or the laying on of hands as a religious rite or ordinance.

7. Any act competently performed by a physician assistant that is within the scope of that person's duties.

8. A person who is licensed to practice homeopathic medicine in any state, district or territory of the United States from infrequently consulting with a person licensed under this chapter or acting pursuant to an invitation by a legitimate sponsor to visit this state to promote professional education through lectures, clinics or demonstrations if that person does not open an office, meet with patients or receive calls relating to the practice of homeopathic medicine outside of the sponsoring institution's facilities and programs.

9. The independent practice of acupuncture as a traditional Asian healing art.

10. The practice of providing treatment of the spiritual vital force in accordance with hahnemanian principles through the use of remedies that are diluted beyond the concentration of substances in drinking water and prepared in the manner described in the homeopathic pharmacopoeia of the United States.

32-2912. Qualifications of applicant; applications; scope of practice

A. The board shall grant a license to practice pursuant to this chapter to an applicant who meets all of the following requirements:

1. Holds a degree from an approved school of medicine or has received a medical education that the board determines is of equivalent quality.

2. Holds a license in good standing to practice medicine or osteopathic medicine that is issued under chapter 13 or 17 of this title or by another state, district or territory of the United States.

3. Has a professional record that indicates that the applicant has not had a license to practice medicine refused, revoked, suspended or restricted in any way by any state, territory, district or country for reasons that relate to the applicant's ability to competently and safely practice medicine.

4. Has a professional record that indicates that the applicant has not committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee under this chapter.

5. Has the physical and mental capacity to safely engage in the practice of medicine.

6. Pays all fees and costs required by the board.

7. Completes the application required by the board.

B. Notwithstanding subsection A, paragraphs 1 and 2 of this section, the board shall issue a license pursuant to this chapter to an applicant who meets the requirements of subsection A, paragraphs 3, 4, 5, 6 and 7 of this section and who either holds a degree from an approved school of medicine or has completed an approved training program.

C. The board may require an applicant to submit additional written or oral information and may conduct additional investigations if it determines that this is necessary to adequately inform itself of the applicant's ability to meet the requirements of this chapter. If an applicant has had a license revoked by or has surrendered a license to another jurisdiction, the applicant may attempt to demonstrate to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the revocation or surrender of the license.

D. The board shall vacate its previous order to deny or revoke a license if that denial or revocation was based on the applicant's conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The applicant may resubmit an application for licensure as soon as the court enters the reversal.

E. If the board finds that an applicant has committed an act or engaged in conduct that would constitute grounds for disciplinary action, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, before it issues a license the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

F. Except as provided in subsection D of this section, a person shall not submit an application for reinstatement or a new application within five years after the person has completely corrected the conduct and made full legal restitution to the board's satisfaction.

G. An applicant shall submit a verified completed application to the board in a form and within a period of time prescribed by the board. The application shall include:

1. The application fee.

2. Affidavits from three persons who are actively licensed to practice allopathic, osteopathic or homeopathic medicine in any state or district of the United States and who are able to attest to the applicant's fitness to practice pursuant to this chapter.

3. A diploma or certificate issued by an approved training program, a homeopathic college or any other educational institution approved by the board or documentation of the applicant's successful completion of preceptorships or formal postgraduate courses approved by the board.

4. If the person is applying for licensure pursuant to subsection A of this section, proof that the applicant has served a board-approved internship.

5. The applicant's oath that:

(a) All of the information contained in the application and the accompanying evidence or other credentials is correct.

(b) The applicant submitted the credentials without fraud or misrepresentation and that the applicant is the lawful holder of the credentials.

(c) The applicant authorizes the release to the board of any information from any source that the board determines is necessary for it to act on the application.

H. The board shall promptly inform an applicant in writing of any deficiency in the application that prevents the board from acting on it.

I. The board shall consider an application withdrawn if any of the following is true:

1. The applicant submits a written request to withdraw the application.

2. The applicant without good cause fails to appear for a board interview.

3. The applicant fails to submit information to the board within one year after the board's request for that information.

4. The applicant fails to complete the required examination or personal interview within one year after submitting the application.

J. A person who is issued a license pursuant to subsection B of this section shall practice only within the scope of practice as prescribed by this chapter. A licensee who acts outside that scope of practice commits an act of unprofessional conduct. In addition to all other available remedies, the board may seek injunctive relieve pursuant to section 32-2940.

32-2913. Examination; reexamination

A. An applicant for licensure shall successfully pass an examination prescribed by the board.

B. If a person is seeking licensure pursuant to section 32-2912, subsection A, the examination for a license to practice under this chapter shall include all subjects that are generally accepted as necessary for a thorough knowledge of the practice of homeopathic medicine. The board shall prescribe rules for conducting the examination and shall set the passing grade.

C. If a person is seeking licensure pursuant to section 32-2912, subsection B, the examination for a license to practice under this chapter shall include all subjects that are generally accepted as necessary for a thorough knowledge of the practice of homeopathic medicine. The board shall prescribe rules for conducting the examination and shall set the passing grade.

D. The board shall review the examination of any applicant on the applicant's request. A grade on an examination reviewed by the board may be changed only by the majority vote of the members of the board. A person who fails to pass the initial licensure examination may be reexamined within one year after the date of the receipt of the original application fee without payment of additional fees. However, the applicant shall pay all additional fees associated with board-prescribed investigatory examinations such as the special purpose licensing examination.

E. In a written examination, applicants shall be designated by numbers only and the corresponding names shall be kept secret until after the grading of the examinations.

F. The board shall issue a license without examination to an applicant who is seeking licensure pursuant to section 32-2912, subsection B if the applicant holds, or has passed the examination to hold, a certification from the council for homeopathic certification, or its equivalent.

32-2914. Fees

A. The board by formal vote at its annual meeting shall establish fees and penalties that do not exceed the following:

1. $550 for an application for a license to practice homeopathic medicine pursuant to section 32-2912, subsection G, paragraph 1.

2. $250 for issuance of an initial license.

3. $50 for issuance of a duplicate license.

4. $1,000 for annual renewal of a license.

5. $350 for late renewal of a license.

6. $200 for initial and annual renewal of a permit to dispense drugs and devices.

7. $500 for an application for a locum tenens registration.

8. $250 for issuance of a locum tenens registration.

9. $200 for annual renewal of a homeopathic medical assistant registration.

10. $.25 per page for copying board records, documents, letters, minutes, applications and files.

11. $35 for a copy of an audiotape.

12. $100 for the sale of computerized tapes or diskettes that do not require programming.

13. $200 for supervising a homeopathic medical assistant.

14. $300 for each initial application and annual renewal of a registration to conduct a practical educational program for supervised medical assistants.

B. The board may charge a licensee with the board's costs to administer a special purpose licensing examination related to its investigation of the licensee's competence.

C. The board may charge the actual cost of completing a professional conduct investigation to the licensee who is the subject of the investigation if the board determines that the licensee violated this chapter or a board rule.

D. The board shall charge additional fees for services that it is not required to provide under this chapter but that it determines are necessary to carry out its purpose. The board shall charge only the actual cost of providing these services.

32-2915. Licensure; issuance; duplicate licenses; renewal; continuing education; expiration; cancellation

A. The board shall issue a license to practice homeopathic medicine in this state if the applicant meets all board requirements for licensure and pays the licensure fee.

B. The board may issue a duplicate license to a person who holds a license under this chapter on payment of the duplicate license fee.

C. At least thirty days before the first day of the month in which a license was initially issued, the executive director shall notify the licensee of the renewal date and provide a renewal form.

D. Each licensee shall include with the renewal form a statement that the licensee completed at least twenty hours of board-approved continuing education in the preceding year. The board shall not renew a license if the licensee does not fully document compliance with this subsection. The board may waive the continuing education requirements of this subsection for a period prescribed by the board if the licensee's noncompliance was due to disability, military service, absence from the United States or circumstances beyond the control of the licensee. If a licensee fails to complete the continuing education requirements of this subsection for any other reason, the board may grant an extension of not more than sixty days. A licensee who fails to comply with the continuing education requirements of this subsection and who has not been granted a waiver pursuant to this subsection commits an act of unprofessional conduct and is subject to probation or licensure suspension or revocation.

E. A licensee shall submit a completed application for license renewal and the renewal fee each year on or before the last day of the month in which the license was initially issued. A license expires if it is not renewed within sixty days. A licensee who fails to do this by the first day of the following month must also submit a late fee as prescribed by the board. A person who practices homeopathic medicine after a license has expired is in violation of this chapter.

F. The board may issue a license to a person whose license has expired only if that person applies for a license as prescribed in sections 32-2912 and 32-2913.

G. With each application for licensure renewal, the licensee shall include a report of disciplinary actions, restriction and any other action placed on or against the license or practice by any other state regulatory board or agency of the federal government, including the denial of a license for failing a special purpose licensing examination. The report shall include the name and address of the sanctioning agency, the nature of the action taken and a general statement of the charges leading to the action taken.

H. On request of a licensee, the board shall cancel that person's license to practice homeopathic medicine if the licensee is not the subject of a board investigation or disciplinary proceeding. The board may cancel the license of a person who is under investigation for violating this chapter or board rules if the licensee admits to the violations in writing and on the board record.

32-2916. Directory; change of address; civil penalty; fees

A. The board may publish an annual directory containing the following:

1. The names and addresses of the officers and members of the board.

2. The names and addresses of all persons who are certified, licensed or registered by the board.

3. The current certified board rules.

4. A copy of this chapter.

5. A list of approved postgraduate and continuing education courses in the treatment modalities pertinent to the practice of homeopathic medicine.

6. A list of approved schools of medicine and approved training programs.

7. Additional information that the board determines is of interest and importance to licensees.

B. Each licensee shall inform the board in writing of the licensee's home address, personal email address, home telephone number, office address, work email address and office telephone number as requested by the board and within forty-five days after a change in any of this information. The board shall keep a licensee's home address and home telephone number confidential. The board may assess a licensee who fails to comply with this subsection with the board's costs to locate the licensee. The board may also impose a civil penalty on that licensee of not more than $100.

C. The board shall provide each licensee with one copy of the directory free of charge. The board may provide additional copies to the public and licensee for a cost of not more than $25 for each directory.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected under this section in the board of homeopathic and integrated medicine examiners' fund.

32-2917. Locum tenens registration

A. The board president or a person designated by the board may issue locum tenens registration to a person who meets all of the following requirements:

1. Submits proof satisfactory to the board that the applicant for registration holds an unrestricted license to practice allopathic, osteopathic or homeopathic medicine in another state, district or territory of the United States, that the license has not been revoked or suspended for any reason and that there are no unresolved complaints or formal charges filed against the applicant with any licensing board.

2. Submits an application as prescribed by section 32-2912.

3. The licensee for whom the applicant for registration under this section is substituting or assisting provides the board with a written request for the applicant's registration.

4. Submits the fees required under section 32-2914.

B. The board may authorize the applicant to provide locum tenens services if it is satisfied that the applicant has met the requirements of subsection A of this section.

C. Locum tenens registration granted under this section is valid for thirty days. The board may extend registration for an additional thirty days on written request by the person who made the original request for registration. This request shall explain why the extension is necessary and shall include prescribed fees and other information requested by the board.

32-2931. Violations; classification

A. The following acts are class 5 felonies:

1. Practicing medicine as a homeopathic doctor or homeopathic practitioner pursuant to this chapter without being licensed or exempt from licensure pursuant to this chapter.

2. Securing a license to engage in the practice of homeopathic medicine pursuant to this chapter by fraud or deceit.

3. Impersonating a member of the board.

B. The following acts are class 2 misdemeanors:

1. Using the designation "doctor of homeopathy", "homeopathic doctor", "medical doctor-homeopathic", "doctor of osteopathic medicine (homeopathic)", "homeopathic practitioner" or "homeopathic physician" without being licensed pursuant to this chapter.

2. Using any words, initials or symbols that lead the public to believe that a person is licensed to engage in the practice of homeopathic medicine in this state if this is not true.

32-2932. Use of title or abbreviation by licensees

A. A person who is licensed pursuant to section 32-2912, subsection A may use the designation and sign the licensee's name, wherever required, in any capacity, as "homeopathic doctor", "homeopathic physician". If the licensee is a graduate of a board-approved allopathic school of medicine, the licensee may also use the designation "medical doctor (homeopathic)". If the licensee is a graduate of a board-approved osteopathic school of medicine, the licensee may also use the designation "doctor of osteopathic medicine (homeopathic)".

B. A person who is licensed pursuant to section 32-2912, subsection B may use the designation "homeopathic practitioner", "doctor of homeopathy" or "homeopathic doctor". A person may use the designation "homeopathic doctor" or "doctor of homeopathy" only if the person holds a doctorate and is licensed pursuant to chapter 8, 14, 19 or 39 of this title.

C. The board may adopt in rule abbreviations for the titles listed in subsections A and B of this section.

32-2933. Definition of unprofessional conduct

A. In this chapter, unless the context otherwise requires, "unprofessional conduct" includes the following acts, whether occurring in this state or elsewhere:

1. Performing an invasive surgical procedure that is not specifically allowed by this chapter or by board rules or pursuant to a license issued under chapter 13 or 17 of this title.

2. Wilfully betraying a professional secret or wilfully violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or with foreign countries or with the Arizona homeopathic and integrative medical association or any of its component organizations or with the homeopathic medical organizations of other states, counties, districts or territories or with those of foreign countries.

3. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is deemed conclusive evidence of guilt.

4. Exhibiting habitual intemperance in the use of alcohol or habitual substance abuse.

5. Violating federal, state, county or municipal laws or regulations applicable to the practice of medicine or relating to public health.

6. Prescribing a controlled substance for other than accepted therapeutic purposes.

7. Committing conduct that the board determines is gross professional negligence, repeated professional negligence or any negligence that causes the death of a patient.

8. Impersonating another person licensed pursuant to this chapter.

9. Acting or assuming to act as a member of the board if this is not true.

10. Procuring or attempting to procure a license to practice homeopathic medicine by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another.

11. Having professional connection with or lending one's name to an illegal practitioner of homeopathic medicine or of any of the other healing arts.

12. Representing that a manifestly incurable disease, injury, ailment or infirmity can be permanently cured or that a curable disease, injury, ailment or infirmity can be cured within a stated time if this is not true.

13. Offering, undertaking or agreeing to cure or treat a disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

14. Refusing to divulge to the board on demand the means, method, device or instrumentality used in treating a disease, injury, ailment or infirmity.

15. Giving or receiving or aiding or abetting the giving or receiving of rebates, either directly or indirectly.

16. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of homeopathic medicine except as the same may be necessary for accepted therapeutic purposes.

17. Exhibiting immorality or misconduct that tends to discredit the profession.

18. Being disciplined by another regulatory jurisdiction because of the licensee's mental or physical inability to engage safely in the practice of medicine, medical incompetence or unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly with an act of unprofessional conduct prescribed by this section. The disciplinary action may include refusing, denying, revoking or suspending a license, issuing a formal reprimand, issuing a decree of censure or otherwise limiting, restricting or monitoring the licensee or placing the licensee on probation.

19. Committing any conduct or practice contrary to recognized standards of ethics of the homeopathic medicine profession, any conduct or practice that does or might constitute a danger to the health, welfare or safety of the patient or the public or any conduct, practice or condition that does or might impair the ability to practice homeopathic medicine safely and skillfully.

20. Failing or refusing to maintain adequate records on a patient or to make patient records promptly available to another licensee on request and receipt of proper authorization.

21. Advertising in a false, deceptive or misleading manner.

22. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate this chapter or any board rule.

23. Using a controlled substance unless it is prescribed by a physician for use during a prescribed course of treatment.

24. Prescribing, dispensing or administering anabolic androgenic steroids for other than therapeutic purposes.

25. Prescribing or dispensing controlled substances to members of the licensee's immediate family.

26. Prescribing, dispensing or administering schedule II controlled substances as prescribed by section 36-2513 or the rules adopted pursuant to section 36-2513, including amphetamines and similar schedule II sympathomimetic drugs in treating exogenous obesity for a period in excess of thirty days in any one year, or the nontherapeutic use of injectable amphetamines.

27. Dispensing a schedule II controlled substance that is an opioid.

28. Using experimental forms of diagnosis and treatment without adequate informed patient consent, without a board-approved written disclosure that the form of diagnosis and treatment to be used is

experimental and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a peer review committee.

29. Engaging in sexual intimacies with a patient.

30. Using the designation "M.D." or "D.O." in a way that would lead the public to believe that a person is licensed by the Arizona medical board or the Arizona board of osteopathic examiners in medicine and surgery in this state if this is not the case.

31. Falsely or fraudulently representing or holding oneself out as being a homeopathic medical specialist.

32. Failing to dispense drugs and devices in compliance with article 4 of this chapter.

33. Violating a formal board order, terms of probation or a stipulation issued or entered into by the board or its designee under this chapter.

34. Charging a fee for services not rendered or charging and collecting a clearly unreasonable fee. In determining the reasonableness of the fee, the board shall consider the fee customarily charged in this state for similar services in relation to modifying factors such as the time required, the complexity of the service and the skill required to perform the service properly. This paragraph does not apply if there is a clearly written contract for a fixed fee between the licensee and the patient that is entered into before the licensee provides the service.

35. Failing to appropriately direct, collaborate with or supervise a licensed, certified or registered health care provider, a homeopathic medical assistant or office personnel employed or assigned to the licensee to assist in the medical care of patients.

36. Knowingly making a false or misleading statement on a form required by the board or in written correspondence with the board.

37. Failing to furnish legally requested information in a timely manner to the board or its investigators or representatives.

38. Failing to allow properly authorized board personnel to examine or have access to a licensee's documents, reports or records that relate to the licensee's medical practice or medically related activities.

39. Signing a blank, undated or predated prescription form.

40. Refusing to submit to a body fluid examination required under section 32-2941 or pursuant to a board investigation into the licensee's substance abuse.

41. Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a comprehensive physical or mental health status examination of that person or has previously established a doctor-patient relationship. This paragraph does not apply to:

(a) A licensee who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional.

(b) Emergency medical situations as defined in section 41-1831.

(c) Prescriptions written to prepare a patient for a medical examination.

(d) Prescriptions written or prescription medications issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, a public health emergency, an infectious disease outbreak or an act of bioterrorism. For the purposes of this subdivision, "bioterrorism" has the same meaning prescribed in section 36-781.

42. Failing to obtain from a patient before an examination or treatment a signed informed consent that includes language that makes it clear the licensee is providing homeopathic medical treatment instead of or in addition to standard conventional allopathic or osteopathic treatment.

B. If a person is licensed pursuant to section 32-2912, subsection B, unprofessional conduct also includes the following:

1. Performing an invasive procedure, including performing intravenous therapy, drawing bodily fluids or ordering genetic testing.

2. Prescribing, dispensing or administering any controlled substance.

3. Prescribing, dispensing or administering a prescription drug.

4. Using the title "physician", "medical doctor-homeopathic", "doctor of osteopathic medicine-homeopathic", "doctor of medicine (homeopathic)" or "homeopathic physician" or otherwise implying that the licensee is a licensed allopathic or osteopathic physician.

5. Failing to correct a known misunderstanding regarding the licensee's licensure status.

6. Failing to obtain from a patient before an examination or treatment a signed informed consent that includes language that makes it clear the licensee is not an allopathic or osteopathic physician and is providing homeopathic treatment under the limited scope of practice of homeopathic medicine pursuant to this chapter.

7. Failing to consult with or refer patients to other health care providers when appropriate.

8. Discontinuing or advising a patient to discontinue a physician's treatment or medicine without first consulting the prescribing or treating physician.

9. Failing to refer a patient with a life-threatening illness to a licensed allopathic or osteopathic physician currently practicing homeopathic, allopathic or osteopathic medicine.

32-2934. Grounds for suspension or revocation of license; duty to report; unprofessional conduct hearing; decision of board

A. The board on its own motion may investigate any evidence that appears to show that a licensee is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of homeopathic medicine. Any licensee, the Arizona homeopathic and integrative medical association or any health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the person may have that appears to show that a licensee is or may be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of homeopathic medicine. The board shall notify the licensee about whom information is received as to the content of the information within one hundred twenty days after receipt of the information. Any person who reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing the information. The board may not open an investigation if identifying information regarding the complainant is not provided to the board. It is an act of unprofessional conduct for any licensee to fail to report as required by this section. Any health care institution that fails to report as required by this section shall be reported by the board to the institution's licensing agency.

B. If a complainant wishes to have the complainant's identifying information withheld from the licensee against whom the allegation of unprofessional conduct is being made, the board shall enter into a written agreement with the complainant stating that the complainant's identifying information will not be provided to the licensee against whom the allegation of unprofessional conduct is being made to the extent consistent with the administrative appeals process. The board shall post this policy on the board's website where a person would submit a complaint online.

C. A health care institution shall inform the board if the privileges of a licensee to practice in the health care institution are denied, revoked, suspended or limited because of actions by the licensee that jeopardized patient health and welfare or if the licensee resigns during pending proceedings for revocation, suspension or limitation of privileges. A report to the board pursuant to this subsection shall contain a general statement of the reasons the health care institution denied or took action to revoke, suspend or limit a licensee's privileges.

D. The board may conduct investigations necessary to fully inform itself with respect to any evidence filed with the board under subsection A of this section. As part of this investigation, the board may require the licensee under investigation to be interviewed by board representatives or, at the licensee's expense, to undergo any combination of mental, physical, oral or written medical competency examinations.

E. If the information gathered under subsections A and C of this section indicates that the protection of public health requires that the board take emergency action, the board may order the summary suspension of a license pending the outcome of a formal disciplinary hearing pursuant to title 41, chapter 6, article 10. The board shall serve the suspended licensee with a written notice of the specific charges and the time and place of the formal hearing. The board shall hold this hearing within sixty days after the suspension unless the board for good reason shown by the licensee grants an extension on the hearing date.

F. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit direct action against the license, it may take any of the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If after completing its initial investigation under subsection A of this section the board determines that rehabilitative or disciplinary action can be taken without the presence of the licensee at an informal interview, the board and the licensee may enter into a stipulated agreement to limit or restrict the licensee's practice or to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of homeopathic medicine.

H. If after completing its investigation the board believes that this information is or may be true, the board may request an informal interview with the licensee. If the licensee refuses the invitation or accepts the invitation and the results of the interview indicate that suspension or revocation of the license may be in order, the board shall issue a formal complaint and conduct a formal hearing pursuant to title 41, chapter 6, article 10. If after completing the informal interview the board finds that the information provided under subsection A of this section is not of sufficient seriousness to merit suspension or revocation of the license, it may take the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File a letter of concern.

3. Issue a decree of censure. A decree of censure constitutes an official action against the license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or board rules.

4. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee. The probation, if deemed necessary, may include temporary suspension of the license for not more than twelve months, restriction of the license to practice homeopathic medicine or a requirement for restitution of fees to a patient resulting from violations of this chapter or board rules. If a licensee fails to comply with the terms of probation, the board may file a summons, complaint and notice of hearing pursuant to title 41, chapter 6, article 10 based on the information considered by the board at the informal interview and any other acts or conduct alleged to be in violation of this chapter or board rules.

5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or medical activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of homeopathic medicine.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

I. In an informal interview or a formal hearing the board, in addition to any other action that it may take, may impose an administrative penalty in an amount of at least $500 but not more than $2,000 on a licensee who violates this chapter or a board rule. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this chapter.

J. If in the opinion of the board it appears that the allegations concerning a licensee are of a magnitude as to warrant suspension or revocation of the license, the board shall serve on the licensee a summons and a complaint fully setting forth the conduct or inability concerned and setting a date, time and place for a hearing pursuant to title 41, chapter 6, article 10 to be held before the board at least sixty days after the date of the notice.

K. A licensee who wishes to be present at the hearing in person or by representation, or both, shall file a verified answer with the board within twenty days after receiving service of the summons and complaint. The licensee may present witnesses at this hearing. A licensee who has been notified of a complaint pursuant to this section shall file with the board a written response not more than twenty days after service of the complaint and the notice of hearing. If the licensee fails to file an answer in writing, it is deemed an admission of the act or acts charged in the complaint and notice of hearing and the board may take disciplinary action pursuant to this chapter without a hearing.

L. The board shall issue subpoenas for witnesses as it may need and for witnesses as the licensee may request. Any person refusing to obey a subpoena shall be certified by the board to the superior court in the county in which service was made, and the court may institute proceedings for contempt of court.

M. Service of the summons and complaint shall be as required in civil cases.

N. Service of subpoenas for witnesses shall be as provided by law for the service of subpoenas generally.

O. A licensee who after a hearing is found to be guilty of unprofessional conduct or is found to be mentally or physically unable to engage safely in the practice of homeopathic medicine is subject to any combination of censure, probation or suspension of license or revocation of the license for a prescribed period of time or permanently and under conditions that the board deems appropriate for the protection of the public health and safety and just in the circumstances.

P. If the board acts to modify any licensee's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

Q. Notwithstanding section 32-2906, subsection A, the board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from administrative penalties paid pursuant to this section in the state general fund.

R. A letter of concern is a nondisciplinary public document that the board may use in future disciplinary actions.

32-2935. Right to examine and copy evidence; summoning witnesses and documents; taking testimony; right to counsel; court aid; process

A. In connection with the investigation by the board on its own motion or as the result of information received pursuant to section 32-2934, subsection A, the board or its authorized agents or employees shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documents, reports, records or any other physical evidence of any person being investigated, or the reports, records and any other documents maintained by and in possession of any hospital, clinic, office, laboratory, pharmacy or any other public or private agency, and any health care

institution as defined in section 36-401, if these documents, reports, records or evidence relate to medical competence, unprofessional conduct or the mental or physical ability of a licensee to practice homeopathic medicine safely.

B. For the purpose of all investigations and proceedings conducted by the board:

1. The board on its own initiative, or on application of any person involved in the investigation, may issue subpoenas compelling the attendance and testimony of witnesses, or demanding the production for examination or copying of documents or any other physical evidence if the evidence relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to practice homeopathic medicine safely. Within five days after the service of a subpoena on any person requiring the production of any evidence in that person's possession or under that person's control, the person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify the subpoena if in its opinion the evidence required does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation or does not describe with sufficient particularity the physical evidence whose production is required. Any member of the board or any agent designated by the board may administer oaths or affirmations, examine witnesses and receive evidence.

2. Any person appearing before the board has the right to be represented by counsel.

C. The superior court, on application by the board or by the person subpoenaed, may issue an order:

1. Requiring the person to appear before the board or the duly authorized agent to produce evidence relating to the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt.

2. Revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter, is not relevant to the charge that is the subject matter of the hearing or investigation, or does not describe with sufficient particularity the evidence whose production is required.

D. Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, any other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified or information received and records kept by the board as a result of investigation procedures are not available to the public.

E. This section or any other provision of law making communications between a licensee and a patient a privileged communication does not apply to investigations or proceedings conducted pursuant to this chapter. The board and its employees, agents and representatives shall keep in confidence the names of any patients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

F. Hospital records, medical staff records, medical staff review committee records and testimony concerning these records, and proceedings related to the creation of these records, are not available to the public, shall be kept confidential by the board and are subject to the same provisions concerning discovery and use in legal actions as are the original records in the possession and control of hospitals, their medical staffs and their medical staff review committees. The board shall

use records and testimony during the course of investigations and proceedings pursuant to this chapter.

32-2936. Patient records

A licensee must keep a patient's medical records as follows:

1. If the patient is an adult, for at least seven years after the last date the licensee provided the patient with medical or health care services.

2. If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least seven years after the last date the licensee provided that patient with medical or health care services, whichever date occurs first.

3. If the patient dies before the expiration of the dates prescribed in paragraph 1 or 2, for at least three years after the patient's death.

32-2937. Judicial review

Except as provided in section 41-1092.08, subsection H, judicial review of license suspension or revocation is available pursuant to title 12, chapter 7, article 6.

32-2939. Medical assistants

This chapter does not prevent a medical assistant from assisting a licensee pursuant to rules adopted by the board.

32-2940. Injunctive relief

A. In addition to all other available remedies, if the board has any reason to believe that a person has violated this chapter or a board rule, the board through the attorney general or the county attorney may apply to the superior court in Maricopa county for an injunction restraining that person from engaging in the violation. It is not necessary for the board to show damage or injury. It is sufficient for the board to charge that the respondent on a certain day in a named county committed the violation.

B. The court shall grant a temporary restraining order, a preliminary injunction or a permanent injunction without bond.

C. The board may serve the defendant in any county of this state where the defendant is found.

32-2941. Substance abuse and treatment rehabilitation program; private contract; funding

A. The board may establish a program for the treatment and rehabilitation of licensees who are impaired by alcohol or substance abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release of all treatment records to the board on demand.

3. Quarterly reports to the board regarding each licensee's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired licensee who the treating organization believes is misusing chemical substances.

5. Reports to the board as soon as possible of the name of the licensee who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. A licensee who is impaired by alcohol or substance abuse shall agree to enter into a stipulation order with the board. The board shall place the licensee on probation if the licensee refuses to do so.

D. The board may charge the board's costs relating to the licensee's participation in the program to that licensee.

E. The board shall summarily suspend a license pursuant to section 32-2934 if the licensee continues or resumes alcohol or substance abuse after a board stipulation or probationary order that is no longer in effect. After this suspension the board may delay license revocation or other disciplinary actions if the licensee attends a treatment program pursuant to this section. Within ninety days after the licensee completes this program the board shall schedule formal proceedings for licensure revocation or other disciplinary action.

32-2942. Mental, behavioral and physical health evaluation and treatment program; confidential consent agreement; private contract; immunity; program termination

A. The board may establish a confidential program for the evaluation, treatment and monitoring of persons who are licensed pursuant to this chapter and who have a medical, psychiatric, psychological or behavioral health disorder that may impact the ability to safely practice medicine or perform health care tasks. The program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. A licensee who has a medical, psychiatric, psychological or behavioral health disorder described in subsection A of this section and who has not committed a violation of this chapter may agree to enter into a confidential consent agreement with the board for participation in a program established pursuant to this section if the licensee either:

1. Voluntarily reports that disorder to the board.

2. Is reported to the board by a peer review committee, hospital medical staff member, health plan or other health care practitioner or health care entity.

C. The board may contract with a private organization to operate a program established pursuant to this section. The contract shall require that the private organization do all of the following:

1. Periodically report to the board regarding treatment program activity.

2. Release all treatment records to the board on demand.

3. Immediately report to the board the name of a licensee who the treating organization believes is incapable of safely practicing medicine or performing health care tasks.

D. An evaluator, teacher, supervisor or volunteer in a program established pursuant to this section who acts in good faith within the scope of that program is not subject to civil liability, including malpractice liability, for the actions of a licensee who is participating in the program pursuant to this section.

E. The program established pursuant to this section ends on July 1, 2025 pursuant to section 41-3102.

32-2943. Complaints; statute of limitations

The board may not act on its own motion or on any complaint received by the board in which an allegation of unprofessional conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. This time limitation does not apply to:

1. Medical malpractice settlements or judgments or allegations of sexual misconduct or if an incident or occurrence involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. A board's consideration of the specific unprofessional conduct related to a licensee's failure to disclose conduct or a violation as required by law.

32-2951. Dispensing drugs and devices; conditions; exception; civil penalty; definition

A. Except as provided in subsection C of this section, a person who is licensed pursuant to section 32-2912, subsection A may dispense drugs and devices kept by the licensee, including:

1. Controlled substances.

2. Prescription-only drugs.

3. Homeopathic medications.

4. Nonprescription drugs.

B. A person who is licensed pursuant to section 32-2912, subsection A may dispense drugs and devices under subsection A of this section if:

1. The licensee includes the following information on the label of each controlled substance and prescription-only drug and on the label or accompanying instruction sheets of each homeopathic medication or nonprescription drug:

(a) The licensee's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, the quantity dispensed, directions for its use and any cautionary statements.

(e) The number of authorized refills.

2. The licensee enters into the patient's medical record the name, strength and potency of the drug dispensed, the date the drug is dispensed, the dosing schedule, the number of refills and the therapeutic reason.

3. The licensee keeps all controlled substances in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

4. The licensee pays a permit fee prescribed under section 32-2914.

C. A person who is licensed pursuant to section 32-2912, subsection A may not dispense a schedule II controlled substance that is an opioid, except for an opioid that is for medication-assisted treatment for substance use disorders.

D. Except in an emergency situation, a licensee who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

E. Before a licensee dispenses a controlled substance or a prescription-only pharmaceutical drug pursuant to subsection B of this section, the licensee shall give the patient a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing physician or by a pharmacy of your choice."

F. The licensee shall include the following information on a prescription order:

1. The date it is issued.

2. The patient's name and address.

3. The name, strength and quantity of the drug.

4. Two signature lines for the licensee. The right side of the prescription form under the signature line shall contain the phrase "substitution permissible" and the left side under the signature line shall contain the phrase "dispense as written".

5. The dispensing licensee's United States drug enforcement agency number for controlled substances.

6. The date and the printed name and signature of the person who prepares, counts or measures the drug, labels the container or distributes a prepackaged drug to the patient or the patient's representative.

G. Before the licensee dispenses a homeopathic medication, including a prescription-only homeopathic medication or a nonprescription drug, the licensee shall give the patient a written statement on which appears the following statement in bold type: "Prescriptions may be filled by this prescribing physician or by a pharmacy of your choice."

H. A person who is licensed pursuant to section 32-2912, subsection A shall dispense controlled substances, except schedule II controlled substances that are opioids, and prescription-only drugs for profit only to the licensee's own patient and only for conditions being treated by that licensee. The licensee shall personally determine the legitimacy or advisability of the drugs dispensed and shall document in writing the licensee's procedures for supervising the role of nurses and attendants in the dispensing process.

I. A person who is licensed pursuant to section 32-2912, subsection B may dispense only those drugs and devices kept by that licensee that are homeopathic medications and nonprescription drugs, including nutritional supplements, and must include the following information on the label or accompanying instruction sheets of each homeopathic medication or nonprescription drug:

1. The dispensing licensee's name, address and telephone number.

2. The date the substance is dispensed.

3. The patient's name.

4. The name and strength of the substance, the quantity dispensed, directions for its use and any cautionary statements.

J. A licensee who dispenses drugs and devices pursuant to subsection I of this section must enter into the patient's medical record the name, strength and potency of the substance dispensed, the date the substance is dispensed, the dosing schedule and the therapeutic reason.

K. A person who is licensed pursuant to section 32-2912, subsection B may not dispense controlled substances or prescription-only substances.

L. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

M. For the purposes of this section, "dispense" means the delivery by a licensee of a drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

E-2.

DEPARTMENT OF AGRICULTURE
Title 3 Chapter 1, Articles 1-3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: **September 30, 2024**

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 1, Articles 1-3

Summary

This Five-Year Review Report (5YRR) from the Department of Agriculture (Department) covers eleven (11) rules in Title 3, Chapter 1, Articles 1-3 related to the Administration of the Department. Specifically, Article 1 relates to General Provisions, Article 2 relates to Practice and Procedure-Contested Cases and Appealable Agency Actions, and Article 3 relates to Public Participation in Rulemaking.

The Department indicates there was no prior proposed course of action.

Proposed Action

The Department does not propose to amend these rules.

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 economic impact of the rules has not changed since the adoption of the rules that are in place. Further they indicate that these rules do not adversely impact the regulated community. The rules govern administrative procedures and stakeholders include anyone requesting information or doing business with the Department.

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 rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying objective. The rules establish basic administrative procedures and principles. The rules benefit rather than burden the public.

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 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 not adopted after July 29, 2010 and that these rules do not require a permit.

11. Conclusion

This 5YRR from the Department covers eleven rules in Title 3, Chapter 1, Articles 1-3 related to the Administration of the Department. As indicated above, the rules are effective in meeting their objectives and consistent with other rules and statutes. The Department does not propose a rulemaking to amend these rules at this time.

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
Executive Deputy Director

Arizona Department of Agriculture

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P: (602) 542-0945 F: (602) 542-0898

August 13, 2024

grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Arizona Department of Agriculture, Title 3, Chapter 1, Articles 1-3, Five Year Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report of the Arizona Department of Agriculture's ("Department") for Title 3, Chapter 1, Articles 1 through 3, which is due August 30, 2024.

The Department reviewed all the rules in Articles 1 through 3. 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 Brian McGrew at (602) 542-3228 or bmcgrew@azda.gov with any questions about this report.

Sincerely,

Paul E. Brierley
Executive Deputy Director

cc: Jeff Grant, Deputy Director

Arizona Department of Agriculture

5 YEAR REVIEW REPORT

Chapter 1. Department of Agriculture - Administration

Article 1 through 3

August 30, 2024

1. **Authorization of the rule by existing statutes**
General Statutory Authority: A.R.S. § 3-107
Specific Authority: A.R.S. § 41-1003

2. **The objective of each rule:**

Rule	Objective
R3-1-101	The objective of the rule is to establish definition of terms for the Chapter
R3-1-102	The objective of the rule is to explain the computation of time period required by rule or order.
R3-1-103	The objective is to set out the standards for determining the time applicants will have to complete a licensing exam and to provide for requests for disability accommodations.
R3-1-201	The objective is to establish that the Department will use the appeals procedures in A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Department.
R3-1-218	The objective of the rule is to lay out the grounds upon which the Director may grant a rehearing of an administrative law judge's decision.
R3-1-301	The objective of the rule is to state when the public may access rulemaking records.
R3-1-302	The objective of the rule is to set out the procedure for the public to formally request the Department to make, amend, or repeal a rule.
R3-1-303	The objective of the rule is to inform the public who to contact with written comment on proposed rulemakings.
R3-1-304	The objective of the rule is to set out the procedure for conducting oral proceedings on proposed rulemakings.
R3-1-306	The objective of the rule is to set out a procedure for written criticisms of a rule that are not formal petitions for amendment or repeal.
R3-1-307	The objective of the rule is to establish the procedure for the public to request the Department to review a practice or substantive policy statement that may constitute a rule.

3. **Are the rules effective in achieving their objectives?** **Yes X** **No ____**

4. **Are the rules consistent with other rules and statutes?** **Yes X** **No ___**

5. **Are the rules enforced as written?** **Yes X** **No ____**

6. **Are the rules clear, concise, and understandable?** **Yes X** **No ___**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___ No** X

8. **Economic, small business, and consumer impact comparison:**

The economic impact of the rules has not changed since the last rulmaking to amend these rules in 2004. The original estimted impact is neglegible since the objective of these rules are designed to benefit the regulated community ad consumers by prescibing the Department responsibilities in administering programs, provide guidance on appeals procedures, and prescribe the public process in rulemaking, and this estimation has not changed. The Department works with agricultural industry representatives in developing and promulgating rules, therefore, these rules do not adversely impact the regulated community or cosumers. The Department bears minimal expenses related to educating staff and the regulated community on the rules. Other than the Department, no political subdivision is effected by the rules. The Department had determined the rules are the least burdensome and there is no more cost effective way to administer the rules in the Chapter.

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?**

The Department intended to maintain the rules as written and no additional action was taken since the last 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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes the rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. The rules establish basic administrative procedures and principles. The rules benefit rather than burden the public.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___** **No** X

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 not adopted after July 29, 2010 and do not require a permit.

14. **Proposed course of action**

The Department intends to maintain the rules as currently written.

Department of Agriculture – Administration

TITLE 3. AGRICULTURE

CHAPTER 1. DEPARTMENT OF AGRICULTURE ADMINISTRATION

Authority: A.R.S. §§ 3-107, 41-1023, 41-1024, 41-1029, 41-1032, 41-1033, 41-1061, 41-1062, and 41-1064

Chapter 1, consisting of Articles 1, 2, and 3, adopted effective April 11, 1994 (Supp. 94-2).

Former Title 3, Chapter 1, Article 1, Sections R3-1-01 through R3-1-09 renumbered to Title 3, Chapter 4, Article 1, Sections R3-4-101 through R3-4-109; Former Title 3, Chapter 1, Article 2, Sections R3-1-50 through R3-1-77 renumbered to Title 3, Chapter 4, Article 2, Sections R3-4-201 through R3-4-248; Title 3, Chapter 1, Article 3, Sections R3-1-301 through R3-1-307 renumbered to Title 3, Chapter 4, Article 3, Sections R3-4-301 through R3-4-307; Title 3, Chapter 1, Article 4, Sections R3-1-401 through R3-1-408 renumbered to Title 3, Chapter 4, Article 4, Sections R3-4-401 through R3-4-408; Title 3, Chapter 1, Article 5, Sections R3-1-501 through R3-1-504 renumbered to Title 3, Chapter 4, Article 5, Sections R3-4-501 through R3-4-504; Title 3, Chapter 1, Article 6, Sections R3-1-601 through R3-1-633 and Appendix 1, renumbered to Title 3, Chapter 4, Article 6, Sections R3-4-601 through R3-4-633 and Appendix 1; Title 3, Chapter 1, Article 7, Sections R3-1-701 through R3-1-710 renumbered to Title 3, Chapter 5, Article 1, Sections R3-5-101 through R3-5-110 (Supp. 91-4).

ARTICLE 1. GENERAL PROVISIONS

Section

ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS

Section

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING

Section

Department of Agriculture – Administration
ARTICLE 1. GENERAL PROVISIONS

R3-1-101. Definitions

In addition to the definitions in A.R.S. § 41-1001, the following terms apply to this Chapter:

"Administrative Law Judge" means an individual, or the Director of the Department, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency action.

"Department" means the Arizona Department of Agriculture.

"Director" means the Director of the Arizona Department of Agriculture.

"License" includes 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. A.R.S. § 41-1001.

"Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. A.R.S. § 41-1001.

"Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency. A.R.S. § 41-1001.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section amended by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-102. Computation of Time

The Department shall compute a period of time for action required in a Department rule or order, as follows:

1. The day of the act, event, or default from which the designated period of time begins to run shall not be included;
2. The last day of the period shall be included unless it is a Saturday, Sunday, or Arizona legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Arizona legal holiday; and
3. If the period of time allowed is 10 days or less, intermediate Saturdays, Sundays, and Arizona legal holidays are not included.

Historical Note

Adopted effective October 14, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-103. Licensing; Testing

A. For a license for which an applicant is required to pass an examination, the Department may limit the amount of time the applicant is allowed to complete the licensing examination. In determining whether and to what extent the time-frame for an examination will be limited, the Department shall consider the following:

1. The number of questions on the examination;
2. The difficulty and content of the questions;
3. And if available, historical data on the average amount of time taken to complete the examination.

B. An applicant seeking an accommodation under the American's with Disabilities Act to the manner in which an examination is administered shall make a written request to the Department at the time the applicant schedules the examination. The Department may require the applicant to provide medical documentation to confirm the need for the requested accommodation.

C. The Department shall review the request for accommodation and decide this request on a case-by-case basis.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS

R3-1-201. Adjudicative Proceedings Before the Department

The Department shall use the uniform administrative appeals procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Department.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-202. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-203. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-204. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-205. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-206. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-207. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-208. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-209. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-210. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-211. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-212. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-213. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-214. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-215. Repealed

Historical Note
Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-216. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-217. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-218. Rehearing or Review of Decision; Basis

A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.

B. The Director shall grant a rehearing or review of an administrative law judge's decision for any of the following causes materially affecting the moving party's rights:

1. The decision is not justified by the evidence or is contrary to law.
2. There is newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original proceeding.
3. One or more of the following has deprived the party of a fair hearing:
   a. Irregularity or abuse of discretion in the conduct of the proceeding;
   b. Misconduct of the Department, the administrative law judge, or the prevailing party; or
   c. Accident or surprise which could not have been prevented by ordinary prudence.
4. Excessive or insufficient sanction.

C. The Director may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

R3-1-219. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 8 A.A.R. 3194, effective July 10, 2002 (Supp. 02-3).

ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING

R3-1-301. Rulemaking Record

A person may review an official rulemaking record at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. The Department shall provide a copy of a record according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-302. Petition to Make, Amend, or Repeal a Rule

A. A person requesting the Department to adopt, amend, or repeal a rule, as prescribed in A.R.S. § 41-1033, shall file a petition with the Director. A petition shall contain:

1. The name, address, and signature of the person submitting the petition;
2. For the making of a new rule, the specific language of the proposed rule;
3. For the amendment of a current rule, the Section number, title, and language of the current rule with changes identified by drawing a line through language to be deleted and underlining proposed language;
4. For the repeal of a current rule, the Section number and title of the rule;
5. A statement describing why the rule should be made, amended, or repealed; and
6. The date the petition is signed.

B. A person may submit additional information in support of a petition, including:

1. Statistical data or other study, clearly referencing any attached exhibit;
2. Identification of a person that would be affected and how the person would be affected; and
3. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or any written comments received from the public.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

Department of Agriculture – Administration

R3-1-303. Written Comment; Proposed Rulemaking

A person shall direct written comment on a proposed rule to the person identified by the Department in a rulemaking notice published in the Arizona Administrative Register as responsible for accepting written comment.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-304. Oral Proceeding; Proposed Rulemaking

A presiding officer shall perform the following acts on behalf of the Department when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:

1. Request that each attendee register by name and representative capacity, if applicable, on a form provided by the Department;
2. Require that an attendee intending to speak provide the following information on a form obtained from the Department:
   a. Name and representative capacity, if applicable;
   b. Position with regard to the proposed rule; and
   c. Approximate length of time needed to present comment;
3. Open the oral proceeding by identifying the rule to be considered, the purpose of the proceeding, and the agenda for the proceeding;
4. Allow a statement by a Department representative to explain the background and general content of the proposed rule;
5. Allow public comment limited to a reasonable amount of time for each speaker, without permitting undue repetition, or extensive reading of written comments or exhibits into the record;
6. Allow the Department to present additional information after public comments are received;
7. Allow a person to respond to the Department's supplemental presentation;
8. Accept written comments and exhibits on behalf of the Department; and
9. Make closing remarks that include the location where written comments are received by the Department and the date and time the rulemaking record will close.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-305. Repealed

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Section repealed by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-306. Written Criticism of a Current Rule

A. A person may file a written criticism of a current rule with the Department at any time.

B. A criticism shall clearly identify the rule addressed and describe with specificity the person's concern regarding the rule.

C. The Department shall acknowledge receipt of a criticism within 20 days and shall retain the criticism in the Department's files for review under A.R.S. § 41-1056.

D. A criticism is not a petition as prescribed in R3-1-302.

Historical Note

Adopted effective April 11, 1994 (Supp. 94-2). Amended by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

R3-1-307. Petition for Review of a Practice or Policy

A person may petition the Director to review a practice or substantive policy statement, as prescribed in A.R.S. § 41-1033, that the petitioner alleges to constitute a rule. The petition shall contain:

1. The name, address, and signature of the petitioner;
2. The representative capacity of the petitioner, if applicable;
3. The practice or substantive policy statement at issue, identified by Department division, number, title, date, or concise description;
4. A statement describing with specificity why the petitioner alleges the practice or substantive policy statement constitutes a rule; and
5. The date the petition is signed.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2657, effective August 7, 2004 (Supp. 04-2).

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.

E-3.

ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL
Title 3, Chapter 9, Article 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: **October 2, 2024**

SUBJECT: **ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL**
Title 3, Chapter 9, Article 3

Summary

This Five-Year Review Report (5YRR) from the Arizona Cotton Research and Protection Council (Council) covers two (2) rules in Title 3, Chapter 9, Article 3. Specifically rule 301 relates to Ginning and Remittance Forms and rule 303 relates to Weather Related Extensions.

There were no proposed changes to either rule in the previous 5YRR, which was approved by the Council in October 2019.

Proposed Action

In the current report, the Council does not propose any changes to the rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Council states that there was no anticipated significant economic, small business and consumer impact, and there is still no anticipated significant economic impact as a result of prescribing reporting forms.

The Council provides the following information for the 2023 Crop Year:

- 11 cotton gins completed the Ginning and Remittance Form
- 229,752 bales of cotton were reported
- $859,419 in revenue was generated on this bale assessment fee

Stakeholders include the Council and cotton gin operators.

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 Council concludes that any costs associated with this rule are dramatically outweighed by the benefits, and the regulatory burden to Arizona's growers is optimally minimized.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Council 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 Council states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Council states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Council states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Council 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 Council 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 Council indicates the rules do not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Council covers two (2) rules in Title 3, Chapter 9, Article 3. Specifically rule R3-9-301 relates to Ginning and Remittance Forms and rule R3-9-303 relates to Weather Related Extensions. The Council indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, the Council does not propose any amendments to the rules.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

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ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL
3721 E WIER AVE
PHOENIX AZ 85040-2933
602-438-0059 (PH)
602-438-0407 (FAX)

September 9, 2024

Governor's Regulatory Review Council
Department of Administration
State of Arizona
100 North 15th Avenue
Phoenix, AZ 85007

RE: 5-year-review Report

Enclosed is the Five-year-review Report for the Arizona Cotton Research and Protection Council (ACRPC). The ACRPC members reviewed and approved this report at its regular meeting on June 25, 2024. The ACRPC has two rules, R3-9-301 and R-3-9-303. There are no changes being submitted during this current review.

The Council does not have any substantive policy statements and is in compliance with A.R.S. § 41-1091.

If you have any questions regarding this report, please contact Tish Bond, Business Manager 602/438-0059.

Sincerely,

Mark Killian
Director

Arizona Cotton Research and Protection Council
2024 Five-Year-Review Report

TITLE 3. AGRICULTURE
CHAPTER 9. AGRICULTURE COUNCILS AND COMMISSIONS
ARTICLE 3. ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL

Prepared for the Governor's Regulatory Review Council

REPORT: AAC TITLE 3, CHAPTER 9, ARTICLE 3.

ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.) G.R.R.C. determines the review schedule. The Arizona Cotton Research and Protection Council's rules listed under Article 3, Arizona Cotton Research and Protection Council, are to be reviewed and submitted by June 28, 2024.

TABLE OF CONTENTS

R3-9-301 GINNING AND REMITTANCE FORMS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   The Council's general rulemaking authority is A.R.S. § 3-1083.
   The Council's specific rulemaking authority is A.R.S. § 3-1086(B).

2. **Objective of the rule, including the purpose for the existence of the rule.**

   R3-9-301, Ginning and Remittance Forms, establishes the reporting requirements for cotton gin operators.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule clarifies statutory reporting requirements, in that reporting shall be on forms prescribed by the Council. The rule prescribes the forms used to collect the data required by the Council to perform its duties and responsibilities.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with the statutory requirement of A.R.S. § 3-1086(B). There are no federal statutes or regulations with which the Council's rules must be consistent.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

As per A.R.S. § 3-1083 (B)(3) at the Council's quarterly September meeting, the rebate is determined. As per A.R.S. § 3-1086, annually gin managers receive ginning and remittance forms which are used to identify the number of bales ginned. The Council consistently and fairly enforces the rule as written. No problems with enforcement have surfaced.

6. **Clarity, conciseness, and understandability of the rule.**

   The Council feels the rules meet or exceed all standards for clarity, conciseness, and understandability.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms regarding the rule have been received during the last five years.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   There was no anticipated significant economic, small business and consumer impact last rulemaking as expected, and there is still no anticipated significant economic impact, as a result of prescribing reporting forms.

   R3-9-301, Ginning and Remittance Forms, establishes the reporting requirements for

cotton gin operators.

For the 2023 Crop Year

- 11 cotton gins completed the Ginning and Remittance Form
- 229,752 bales of cotton were reported
- $859,419 in revenue was generated on this bale assessment fee

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Council did not receive any analyses.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

No actions were prescribed in conjunction with the previous five-year review.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The Cotton Council was established by the legislature at the request of the Arizona Cotton Industry. The cotton industry requested the tools to address the challenges that existed or may arise to challenge the cotton industry without impacting the State's general fund or redirecting any other State revenues or funds. In response, the Council and the enabling statute(s) were created allowing the growers of this State at the direction of the Council to assess themselves in order to fund Council activities benefitting Arizona's Cotton Industry.

As a snapshot, Council activities have led to eradication of the Boll Weevil and Pink Bollworm (non-native pests of cotton), the creation of technology to decrease aflatoxin

in cotton seed and other crops, and development of seed varieties especially suited for Arizona. The council also conducts surveys and other activities to protect Arizona cotton from damaging invasive species and diseases. As a result of eradication efforts, pesticide use in Arizona cotton has dropped to the lowest levels in over 30 years greatly benefitting the cotton industry, the environment and society at large. Due to the Council's aflatoxin remediation technology, Arizona cotton, corn and tree nut growers now have the capability to naturally reduce aflatoxin producing fungi in their fields.

The Council also monitors insect populations to protect the investment Arizona growers made in eradication programs, funds research benefitting the cotton industry, conducts continuing and new research, and other activities as requested by the industry. The total positive benefit the council provides would be impractical to calculate. This rule is at the heart of that structure which allows the council the opportunity to create large returns on the investment made by our growers, large benefits for the environment, and the State of Arizona without increasing the burden to the general population. Cotton growers interact with the cotton gins to process their harvested product. The gins use these forms to interact with the council and determine the bale assessment owed to the Council by statute. This greatly reduces the burden on the growers and utilizes information generated by the cotton gins and the Council to fairly and equitably carry out the duties and responsibilities of the Council.

In conclusion, it is our view that any costs associated with this rule are dramatically outweighed by the benefits, and the regulatory burden to our growers is optimally minimized.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

There are no federal statutes or regulations with which the Council's rules must be consistent.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit,

license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action is currently necessary for the rule.

R3-9-303 WEATHER RELATED EXTENSIONS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. § 3-1083(C)(1)
   Implementing statute: A.R.S. § 3-1086 (C)

2. **Objective of the rule, including the purpose for the existence of the rule.**

   This rule was created to establish a mechanism whereby a cotton producer may request temporary relief in the form of an extension of the tillage deadline in R3-4-204(E) based on a qualifying weather event that has delayed or prevented compliance. Rainfall can delay compliance by creating muddy fields that cannot effectively be tilled. Wind can delay compliance in PM10 nonattainment areas because of blowing dust concerns caused by the combination of field work and wind.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule is effective in meeting its objectives. As the below table indicates, there is a clear decline in the number of extensions requested.

Growing Year	Extension requests
2019	10
2020	0
2021	0
2022	0
2023	3

b. Based upon area wide weather events the Council granted blanket weather-related extensions for applicable areas during the 2022 and 2023 harvests.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

There are no federal laws applicable to the subject of this rule. This rule interleaves with AAC R3-4-204 which requires cotton crop remnants be rendered non-hostable for the protection of Arizona's Cotton Industry from various pests and diseases. R3-9-303 provides relief in instances where qualifying weather events have prevented timely compliance with AAC R3-4-204. R3-9-303 was created at the request of the Arizona cotton industry in conjunction with and related to changes made to AAC R3-4-204, also at the request of the Arizona cotton industry.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The Council consistently and fairly enforces the rule as written. No problems with enforcement have surfaced. Agency enforcement policy is based on proactive compliance assistance, working with growers early and often to avoid in as much as possible, the need for weather related extensions or sanctions related to AAC R3-4-204, and A.R.S. § 3-1086 (D).

Extensions are granted based on extraordinary weather events, validated through documentation and inspection by Council staff. By design this rule excludes the consideration of business decisions made by the producer(s) as grounds for extensions. Upon receipt of a completed application for a weather-related extension, any data provided is verified and compiled along with any notes from Council staff including current and historical weather data. Within ten business days the Director issues a written notice granting or denying a weather-related extension. In instances involving multiple extension requests and extraordinary weather events affecting large portions

of the growing area, the Director will request an emergency meeting of the Council to propose a blanket extension of the crop destruction deadline. In instances where extensions are granted, Council staff closely monitors and works with the producer to insure completion by the extended deadline.

6. **Clarity, conciseness, and understandability of the rule.**

   The Council offers the determination that the rule meets or exceeds any standards for clarity, conciseness, and understandability. In practice it has provided a structure that is usable for our producers, achieves the goals of the Arizona cotton industry, and is enforceable.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No criticism regarding R3-9-303 has been received.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

   The economic impact of this rule would be for cotton producers who are granted tillage deadline extensions. The economic impact would be to prevent forfeiture of a producer's rebate of bale assessments and avoid incurring a per acre fine of $100 for non-compliance with the tillage deadlines established in R3-4-204. See A.R.S. §§ 3-

1086(D) (penalty) & 3-1087(B) (rebate). Cotton producers generally have between 500 and 2,000 acres of cotton, with 700 to 1,200 acres being more common. On average, producers get about 2.9 bales of cotton from each acre. The Council sets the rebate amount, and in recent years the rebate has been $1 per bale. Thus, a producer not in compliance will be impacted at an average rate of $110.80 per acre when considering both the bale assessment rebate and penalty. For a producer with 1,000 acres of cotton that totally fails to comply with the tillage deadline, that producer's cost will amount to about $110,800.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   No analysis R3-9-303 competitiveness has been submitted to this agency. However, as this rule recognized conditions out of the producer's control in application of related regulations the expectation would be any analysis would show a positive relationship.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

    Not applicable. There was no course of action indicated in the previous five-year review report for this rule.

11. **A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

    This rule establishes a mechanism whereby producers can receive temporary relief from regulation based on qualifying weather events beyond the control of the producer. In practice the rule has to be effective with minimal burden to the Council and its producers while achieving the goal of producing documentable facts to drive the

decisions regarding weather-related extensions. This suggests the rule proactively prevents burden to the Council, producers, and the State by eliminating conflicts due to the impacts of extraordinary weather events upon the discharge of the Council's and the State's regulatory duties and the responsibility of cotton producers.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action is currently necessary for the rule.

1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
2. The AGRPC may modify an applicant's proposed project in awarding funding.
3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

F. Awards and project monitoring.
1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.
4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
   a. A final research report, and
   b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.

G. Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.

H. Governmental units.
1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
2. The AGRPC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
   a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
   b. The application shall be available for public inspection upon receipt by the AGRPC.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4684, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

ARTICLE 3. ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL

R3-9-301. Ginning and Remittance Forms

A. Each September the Arizona Cotton Research and Protection Council shall send the ginning and remittance report forms and a fee schedule to the operator of each gin for which a report was made during the previous year. A gin operator who has not submitted a report in the previous year may obtain the report forms and a fee schedule from the Arizona Cotton Research and Protection Council office.

B. Each gin operator who gins for Arizona producers during the current crop year shall complete the following reports and submit them with the appropriate fees, to the Arizona Cotton Research and Protection Council within the times specified below:
1. On or before February 15 of each year:
   a. The name and number of the reporting gin;
   b. The business mailing address, telephone number, and county of the reporting gin;
   c. The name of the authorized agent for the gin;
   d. The crop year;
   e. The name and mailing address of each crop producer;
   f. The Farm Service Agency (FSA) farm number;
   g. An estimate of the number of bales to be ginned by March 15 from cotton grown at or below 2,700 feet elevation; and
   h. An estimate of the number of bales to be ginned by March 15 from cotton grown above 2,700 feet elevation;
2. On or before March 15 of each year:
   a. The information in subsections (B)(1)(a) through (f),
   b. The total number of bales actually ginned and the certification number issued by the Department for meeting the tillage deadline for cotton grown at or below 2,700 feet elevation, and
   c. The total number of bales actually ginned from cotton grown above 2,700 feet elevation.

Historical Note

Adopted as an emergency effective September 10, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Adopted as a permanent rule effective March 7, 1985 (Supp. 85-2). Amended subsection (A) as an emergency effective November 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-6). Amended subsection (A) as permanent action effective February 5, 1986 (Supp. 86-1). Amended subsection (A) effective September 24, 1986 (Supp 86-5). Former Section R3-12-201 repealed and a new Section R3-12-201 adopted effective December 2, 1987 (Supp. 87-4). Section 3-9-301 renumbered from R3-12-201 (Supp. 91-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 4439, effective November 3, 1999 (Supp. 99-4).

R3-9-302. Expired

Historical Note

New Section made by final rulemaking at 10 A.A.R. 4741, effective January 1, 2005 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 3188, effective October 2, 2019 (Supp. 19-4).

R3-9-303. Weather Related Extensions

A. For the purpose of this Section:
1. "Council" means the Arizona Cotton Research and Protection Council.
2. "Qualifying weather event" means substantial interference with post-harvest activities as outlined in subsection (E)(1) to detach the cotton root from the soil caused by significant rain or moisture or by sustained winds within an established PM10 nonattainment area.

B. A cotton producer may request an extension of the tillage deadline in R3-4-204(E) based on a qualifying weather event that has delayed or prevented compliance.

C. A cotton producer requesting an extension shall submit the following information to the Council Staff Director:
1. The producer's name, address, and telephone number;
2. The registered Farm Service Agency (FSA) farm names of the farms for which the extension is requested;
3. The legal description of the fields or an accurate scale farm map of the fields for which the extension is requested;
4. A detailed description of the qualifying weather events supporting the extension request, including the dates of the events; and
5. The number of days requested as an extension of the tillage deadline.

D. Submission Deadline.
1. Extension requests shall be received a minimum of one business day prior to the tillage deadline.
2. Extension requests that are illegible or missing information required by subsection (C) shall be considered incomplete and returned to the requestor with a written explanation of the deficiencies. Corrected extension requests shall also be received a minimum of one business day prior to the tillage deadline.

E. Administrative Review.
1. The Council Staff Director may amend, grant or deny a request for extension based on the information provided and any other relevant information available, including but not limited to data collected from meteorological sources, staff recommendations, field notes and photographs.
2. The Council Staff Director shall issue a written notice granting or denying an extension request within ten business days of receipt of a complete request advising whether or not the request fell within the parameters of a qualified weather event.

F. Blanket Extensions. The Council, by vote, may authorize a blanket weather-related extension for a county, cultural zone or a subset of either based on an area-wide qualifying weather event or events.

Historical Note
Section made by emergency rulemaking at 20 A.A.R. 124, effective January 10, 2014, for 180 days (Supp. 14-1). Emergency expired; new Section made by final rulemaking at 20 A.A.R. 2521, effective August 18, 2014 2014 (Supp. 14-3).

ARTICLE 4. EXPIRED

Article 4, consisting of Sections R3-9-401 through R3-9-405, formerly the rules for the Arizona Wine Commission expired under A.R.S. § 41-1056(E). The rules are no longer authorized as the Commission was terminated on July 1, 2004, under A.R.S. § 41-3004.18. The statutes under which the Commission operated, A.R.S. §§ 3-551 through 3-557, added by Laws 1993, Ch. 40, § 1, were repealed on January 1, 2005, by A.R.S. § 41-3004.18. Accordingly, under A.R.S. § 41-1011(C), the rules of this agency have been removed from the Code. The rescinded Article is on file in the Office of the Secretary of State (Supp. 05-2).

Article 4, consisting of Sections R3-9-401 through R3-9-405, made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1).

R3-9-401. Expired

Historical Note
New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

R3-9-402. Expired

Historical Note
New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

R3-9-403. Expired

Historical Note
New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

R3-9-404. Expired

Historical Note
New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

R3-9-405. Expired

Historical Note
New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

ARTICLE 5. ARIZONA CITRUS RESEARCH COUNCIL

Article 5, consisting of Sections R3-9-501 through R3-9-505, made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).

R3-9-501. Definitions
"Department" means the Arizona department of agriculture. A.R.S. § 3-468(3).

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).

R3-9-502. Elections

A. The Council shall elect officers during the first quarter of each calendar year.

B. Officers shall continue in office until the next annual election is held.

C. An officer may be successively reelected.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 5548,

3-1083. Council powers and duties

A. The council shall:

1. Receive and disburse monies to be used in administering this article.

2. Meet at least once each calendar quarter and more frequently on the call of the chairman or by five members of the council.

3. Annually elect a chairman from among its members.

4. Elect a secretary and treasurer from among its members.

5. Establish an executive committee consisting of the chairman, secretary and treasurer. An executive committee member may not serve in the same executive office for more than three years. The executive committee shall act in accordance with the direction received from the council or, if necessary, the executive committee shall act and bring the matter before the full council at the next regular meeting of the council for review and ratification.

6. Provide for a triennial audit of its accounts by a qualified public accounting firm and additional audits as the council may require and make an annual financial statement available to any producer and the auditor general on request.

7. Keep and maintain a permanent record of its proceedings and make these records available for public inspection for any lawful purpose.

8. Prepare an annual report of its activities, receipts and expenditures. The report shall be submitted to the governor, other state officers as the council determines and other persons in the cotton industry in this state as may be appropriate. Copies of the annual report shall be available to any interested cotton producer and the general public on request.

9. Organize and administer any referendum called for under subsection C, paragraph 9 of this section.

B. The council may authorize or contract for any of the following programs:

1. Those research programs that are related to cotton production or its protection, including cotton seed breeding or other research programs to develop germplasm.

2. Programs of aflatoxin control and cotton pest eradication.

3. A program to rebate a portion of collected fees to cotton producers to provide an incentive to plow up cotton fields in a timely manner.

4. Any other programs that the council deems to be appropriate for furthering the purposes of this article.

C. The council may:

1. Adopt rules necessary to promptly and effectively administer this article.

2. Award grants of monies, property, services or other assistance to public or private recipients for the express purpose of furthering the objectives of this article, including research programs related to cotton protection and production authorized by the council.

3. Accept grants and donations of monies, property, services or other assistance from public or private sources for the express purpose of furthering the objectives of this article.

4. Investigate and prosecute in the name of this state any action or suit to enforce the collection or ensure payment of the fees authorized and to sue and be sued in the name of the council.

5. Buy and sell seed and other products used in the council's aflatoxin control program, extend credit in connection with the sale and distribution of treated seed and other products, collect and enforce debts or obligations with respect to extended credit and take a security interest in collateral of all kinds, including real and personal property to secure the credit.

6. Cooperate with any local, state and national organizations or agencies engaged in activities similar to or related to those of the council and enter into contracts with these organizations or agencies for carrying on joint programs.

7. Acquire and protect patents, licenses or certificates of protection for plant varieties resulting from seed breeding or other programs authorized by the council and grant licenses to use intellectual property rights held by the council.

8. Act jointly and in cooperation with this state or any other state or the federal government in the administration of any program deemed by the council as beneficial to the cotton industry of this state.

9. Refer to the cotton producers in this state for an advisory vote the question of establishing, continuing or discontinuing any program authorized by this article.

10. Expend monies for public relations programs that are organized to promote the cotton industry or agriculture in this state.

11. Purchase and sell motor vehicles for the administration of its own motor vehicle fleet and provide for its operation and maintenance.

12. Provide monies to the department as necessary for the abatement of a cotton nuisance under section 3-204, subsection G or section 3-205, subsection G or for the plow up of cotton fields pursuant to section 3-204.01 to be loaned by and repaid to the council pursuant to section 3-1085, subsection B.

3-1086. Fees; collection; plow-up enforcement; budget; civil penalty

A. The council, on or before July 1 of each calendar year, shall assess a fee of not to exceed one dollar per bale of cotton produced in this state on land above twenty-seven hundred feet in elevation and not to exceed five dollars per bale of cotton produced in this state on land twenty-seven hundred feet in elevation or below. If the council finds that a program to control cotton pests or diseases is necessary on land above twenty-seven hundred feet in elevation, the council may raise the fee not to exceed three dollars per bale of cotton subject to the council adopting an annual budget for the program.

B. Cotton gins shall collect and remit the fee to the council according to procedures and on forms the council prescribes. A gin shall remit at least one-half of the annual fee as established by the council and not designated as a rebate for the plow up of cotton fields as provided in section 3-1087, subsection B on or before February 15 of each year with a report of actual bales ginned through January 31 of each year and an estimate of bales to be ginned by March 15. The remainder of the fee is due on or before March 15 of each year. The portion of the fee that is designated as a rebate for the plow up of cotton fields may be held by the gin, subject to certification by the council that a producer has complied with the plow-up program. On notification of certification to the gin, the fee designated for the plow-up program as a rebate shall be credited to the producer's account of the gin responsible for the remittance of the fee.

C. The council may grant extensions for the plow up of cotton fields for weather-related reasons only. The council shall establish, by rule, criteria and a process for granting extensions.

D. If a producer fails to comply with the requirement to plow up cotton fields on established dates as required by section 3-1087, subsection B and rules adopted under chapter 2, article 1 of this title, the producer forfeits the fee designated as a rebate under subsection B of this section and section 3-1087, subsection B and is also assessed a civil penalty of one hundred dollars for each acre not in compliance as certified by the council. The rebate must be remitted in full to the council by the gin responsible for the remittance of the rebate. The council shall notify the owner or person in charge of the amount of the civil penalty and the requirement that it must be paid to the council within three months. At the council's request, the attorney general shall file an action in superior court to recover civil penalties assessed pursuant to this subsection. All monies collected under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the cotton research and protection council fund established by section 3-1085. The council may adopt rules to implement this subsection. A producer may appeal to the council the forfeited rebate or the assessed penalty applicable to the noncompliant acres pursuant to title 41, chapter 6, article 10. The council may request, under section 3-204.01, that the department plow up cotton fields not in compliance with section 3-1087, subsection B and the rules adopted under chapter 2, article 1 of this title.

E. A cotton producer is responsible for payment of the fee unless the fee is withheld for payment to the council by a gin.

F. Before establishing the annual fee the council shall establish a budget. The budget is effective on approval of the council.

G. Title 41, chapter 6 does not apply to setting the fee under this section, but the council shall provide sixty days' advance notice of the meeting at which the fee will be adopted and the amount of the proposed fee. The council shall receive public testimony at the meeting regarding the fee.

E-4.

BOARD OF MASSAGE THERAPY
Title 4, Chapter 15, Articles 1-4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: October 16, 2024

SUBJECT: **BOARD OF MASSAGE THERAPY**
Title 4, Chapter 15, Articles 1-4

Summary

This Five-Year Review Report (5YRR) from the Board of Massage Therapy (Board) relates to twelve (12) rules and one (1) table in Title 5, Chapter 15, Articles 1-4 regarding regulation of massage therapists in Arizona. Specifically, the Articles relate to the following:

- **Article 1** - General Provisions
- **Article 2** - Licensing
- **Article 3** - Continuing Education
- **Article 4** - Regulatory Provisions

In the prior 5YRR for these rules, which was approved in May 2020, the Board proposed to amend several rules it indicated were not clear, concise, understandable, effective, and consistent with other rules and statutes. Additionally, after discussion with the Council, the Board proposed to amend R4-15-201(A)(2) to reduce the education hour requirement from 700 hours to a number that is the least burdensome necessary to achieve its regulatory objective. The Board also proposed to amend R4-15-201(C) to remove the TOEFL and TOEIC exam requirements because the national exams required in R4-15-201(D)(1) already contain a communication proficiency component. The Board stated it intended to request approval from the Governor's Office to proceed with rulemaking no later than January 2020 and intended to

complete a rulemaking that addressed the issues identified in the prior report as soon as it received approval to do so. However, the Board indicates it did not complete its prior proposed course of action. Specifically, the Board states it did not complete these changes because all members of the Board were subsequently dismissed by the Governor and all new members were reappointed.

Proposed Action

In the current report, the Board indicates some of the rules are not clear, concise, understandable, consistent, effective, and enforced as written, as described in more detail below. The Board states the rules need to be amended or repealed and intends to seek approval from the Governor's Office to conduct rulemaking no later than July 2025. However, the Board has not indicated the month and year in which it will submit a rulemaking package to the Council as required by Council rule R1-6-301(A)(14).

1. Has the agency analyzed whether the rules are authorized by statute?

The Board cites both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The rules in Articles 1, 2, and 3 were last amended or made in a 2014 rulemaking. The Board anticipated that the costs of the rulemaking would be minimal as the amendments simply made the rules consistent with legislative changes. As a result of this review, the Board determined that the economic impact of these rules has not varied from the anticipated impact.

The rule in Article 4 was promulgated in 2006 and reviewed in a 5YRR in 2014. The rulemaking reduced the Board's fee for a regular license, established standards for continuing education (Article 3), added requirements for license renewal, added a fee for a renewal license, and added a fee for delinquent license renewal; the rulemaking was anticipated to have minimal costs. As a result of this review, the Board determined that it correctly estimated the economic impact of the rules and that there is no change from the economic impact in the previous rulemaking.

Stakeholders were identified as the Board, individuals having or obtaining a massage therapy license, massage therapy schools, 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?

The Board believes that protecting the public health and safety outweighs the costs and burdens of the rules on persons regulated by the rules. State regulation through the Board and its administrative rules simplified regulatory requirements in the massage industry, thereby reducing the burden of regulation while increasing the benefits to public health and safety.

4. Has the agency received any written criticisms of the rules over the last five years?

The Board indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Board indicates the rules are generally clear, concise, and understandable except for the following:

- **R4-15-102(1)**:
  - A.R.S. § 32-4227 identifies maximum fees that the Board may charge for various licenses and the Board has not exceeded these maximum fees because this subsection indicates that the Board only charges $195 for a license application and the license application fee includes issuance of the initial license if the application is approved. Moreover, the Board waives application fees for applicants who show they qualify for a waiver pursuant to A.R.S. § 41-1080.01. Nevertheless, this subsection does not clarify that the Board also collects the fee that is required by the Department of Public Safety (DPS) pursuant to R13-1-401 to process fingerprints for federal background checks pursuant to R4-15-201 and R4-15-203 and authorized under A.R.S. § 32-4222(A)(10). The Board needs to amend this rule to clarify that it collects the fee for DPS to process fingerprint cards.
- **R4-15-201(A)(1)**:
  - This subsection requires applicants who submit an application before January 1, 2008 to complete 500 hours of education and supervised clinical instruction. However, this section is no longer necessary and the Board needs to remove this subsection in order to make the rule clearer and more concise.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates the rules are generally consistent with other rules and statutes except for the following:

- **R4-15-201(B)(1)(p) and R4-15-203(I)(c):**
  - These rules require the signature on an application to be notarized. However, A.R.S. § 32-4224(A) requires the application to be filed under oath or affirmation, which is different from notarization. These subsections need to be amended in order to remove the notarization requirements and provide that the application shall be submitted to the Board under oath or affirmation.
- **R4-13-203:**
  - This rule refers to A.R.S. § 32-4223 for reciprocity requirements. However, that statute does not take into account the recently enacted A.R.S. § 32-4302 regarding reciprocity for spouses of active duty members of the armed forces accompanying the member to this state. The Board needs to amend this rule in order to ensure

that reciprocity requirements for spouses of active duty members of the armed forces accompanying the member to this state are consistent with A.R.S. § 32-4302.

- **R4-15-204:**
    - This rule is consistent with A.R.S. § 32-4228 which indicates which massage therapy schools the Board must recognize. However, this rule does not provide for schools located in a Canadian province or schools that are accredited to offer massage therapy education by an agency that is recognized by the secretary of the U.S. Department of Education. The Board needs to amend this rule in order to recognize such schools. Specifically, the Board needs to amend subsections (B)(1) and (B)(2) to clarify that the applicant or school must show that the school is approved by an agency similar to the Board for Private Postsecondary Education or accredited by an agency approved by the U.S. Department of Education.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Board indicates the rules are generally effective in achieving their regulatory objectives except for the following:

- **R4-15-201(A)(2):**
    - The Board proposes amending this rule to reduce the requirement for 700 classroom and clinical hours to be completed because A.R.S. § 32-4222(B)(1) requires the applicant to complete a minimum of 500 hours at a Board-recognized school. So long as the number of hours is the least necessary to ensure that the applicant has the knowledge and experience to practice massage safely, then the probable benefits (i.e. knowledge of best practices, safety measures, ethics, etc.) of the rule outweigh the probable costs (i.e. time and money spent on any hours required above the statutory minimum) of the rule. Reducing the hours to the least number necessary to ensure adequate knowledge and experience to practice safely would ensure the rule is least burdensome on the applicant while still achieving the regulatory purpose, thereby reducing the economic impact of the rule and increasing its effectiveness.
- **R4-15-201(C):**
    - A.R.S. § 32-4222(E) requires the Board to establish rules that provide communication proficiency requirements in order to ensure the safety of massage therapy clients and massage therapists. The Board believes the TOEFL and TOEIC exam requirements can be removed from this rule because the national exams required in R4-15-201(D)(1) already contain a communication proficiency component. R4-15-201(D)(1) requires a passing score on either the NCBTMB or FSTMB examination. These exams include a communication component to ensure that the applicant can communicate effectively. Thus, the TOEFL and TOEIC are not necessary and removing the requirement for particular scores on a TOEFL or TOEIC exam will reduce the burden of becoming licensed while still achieving the regulatory purpose of ensuring that applicants can communicate and

practice safely in Arizona, thereby increasing effectiveness of the rule. By reducing the burden of the rules while still complying with statutory requirements, the Board can ensure that the probable benefits of the rule (i.e. ensuring effective communication) outweigh the probable costs (i.e. exams showing effective communication).

8. Has the agency analyzed the current enforcement status of the rules?

The Board indicates it enforces the rules as written with the exception of R4-15-201(B)(1)(p) and R4-15-203(I)(c) which requires a notarized signature as discussed above. The Board indicates it has not required notarization since May 2018 and needs to amend this rule to be more consistent with statute.

With regard to R4-15-201(B)(1)(b), the Board indicates A.R.S. § 32-4224 allows the Board to establish rules requiring information on a license application. However, as of 2014, the Board requires a passport style photo of every applicant, so this subsection is no longer necessary or enforced. The Board does not ask an applicant for information regarding the applicant's weight, height, eye color, or race. The Board needs to amend this rule to remove these requirements.

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 Board indicates there are no corresponding federal laws.

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?

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 Board indicates its statutes (*See* A.R.S. §§ 32-4221 and 32-4255), require individualized licenses be issued so a general permit is not applicable. As such, under A.R.S. § 41-1037(A)(2), the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.

11. Conclusion

This 5YRR from the Board relates to twelve (12) rules and one (1) table in Title 5, Chapter 15, Articles 1-4 regarding regulation of massage therapists in Arizona. Specifically, the Articles relate to the following: Article 1 - General Provisions; Article 2 - Licensing; Article 3 - Continuing Education; Article 4 - Regulatory Provisions.

The Board indicates some of the rules are not clear, concise, understandable, consistent, effective, and enforced as written, as described in more detail above. The Board states the rules need to be amended or repealed and intends to seek approval from the Governor's Office to conduct rulemaking no later than July 2025. However, the Board has not indicated the month and year in which it will submit a rulemaking package to the Council as required by Council rule R1-6-301(A)(14). Council staff recommends the Council inquire as to when the Board anticipates submitting a rulemaking to address the issues identified in the Board's report.

Katie Hobbs
Governor

Arizona State Board of Massage Therapy

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June 28, 2024

Jessica Klein, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Ave., Ste. 402
Phoenix, AZ 85007

Re: Five-year-review Report for 4 A.A.C. 15, Articles 1-4

In compliance with A.R.S. § 41-1056(A), the Arizona Board of Massage Therapy (Board) has reviewed all of the rules in A.A.C. Title 4, Chapter 15, Articles 1-4 and submits the enclosed report to the Council for approval. The Board certifies that it is in compliance with A.R.S. § 41-1091. The Board contact person for this report is Tom Augherton, Executive Director, who may be reached at (602) 542-8217.

Sincerely,

Tom Augherton
Executive Director
Arizona State Board of Massage Therapy

BOARD OF MASSAGE THERAPY

Five-year-review Report: A.A.C. Title 4, Chapter 15, Article 4

June 2024

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 15. Board of Massage Therapy

Articles 1-4

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-4203(A)(7)

Specific Statutory Authority:

R4-15-101. Definitions: A.R.S. § 32-4203(A)(7)

R4-15-102. Fees: A.R.S. §§ 32-4222(A)(6) and 32-4227

R4-15-103. Ethical Standards: A.R.S. § 32-4203(A)(6)

R4-15-201. Qualifications; Application for a Regular License: A.R.S. §§ 32-4203(A) and (B) and 32-4222

R4-15-203. Application for a License by Reciprocity: A.R.S. § 32-4223

R4-15-204. Board-recognized School: A.R.S. §§ 32-4201(2), 32-4203(A)(5), 32-4228

R4-15-205. Application for Renewal of License: A.R.S. § 32-4225

R4-15-207. Licensing Time-frames: A.R.S. §§ 41-1072 through 41-1077

Table 1. Licensing Time-frames (in Days): A.R.S. §§ 41-1072 through 41-1077

R4-15-301. Required Continuing Education Hours: A.R.S. §§ 32-4203(A)(5) and 32-4225

R4-15-302. Approval of Continuing Education: A.R.S. § 32-4225

R4-15-303. Documentation of Completion of Continuing Education: A.R.S. § 32-4225

R4-15-401. Rehearing or Review of Board's Decision: A.R.S. § 41-1092.09

2. Objective of the rule including the purpose for the existence of the rule:

The purpose of all the rules is to comply with statute, be consistent with current industry standards, increase efficiencies in the licensing process, and protect public health and safety.

Rule	Objective

R4-15-101. Definitions	The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.
R4-15-102. Fees	The objective of the rule is to specify the fees the Board charges for its licensing activities.
R4-15-103. Ethical Standards	The objective of the rule is to protect the public by establishing ethical standards with which a licensee must conform.
R4-15-201. Qualifications; Application for a Regular License	The objective of the rule is to specify the content of an application for a license including information required to be submitted directly to the Board by third parties.
R4-15-203. Application for a License by Reciprocity	The objective of the rule is to specify the requirements for obtaining a license by reciprocity.
R4-15-204. Board-recognized School	The objective of the rule is to identify schools the Board recognizes and specify procedures for other schools to obtain recognition.
R4-15-205. Application for Renewal of License	The objective of this rule is to specify the requirements for renewal of a license.
R4-15-207. Licensing Time-frames	The objective of the rule is to specify the time frames within which the Board will act on a license application.
Table 1. Licensing Time-frames (in Days)	The objective of the rule is to specify in table form the time frames within which the Board will act on a license application.
R4-15-301. Required Continuing Education Hours	The objective of the rule is to specify the number of hours of continuing education required for license renewal and the manner in which the hours must be obtained.
R4-15-302. Approval of Continuing Education	The objective of the rule is to specify continuing education activities that are approved by the Board.
R4-15-303. Documentation of Completion of Continuing Education	The objective of the rule is to provide notice to licensees that the Board will audit compliance with the continuing education requirement.
R4-15-401. Rehearing or Review of Board's Decision	The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee to know how to exhaust the licensee's administrative

	remedies before making application for judicial review under A.R.S. § 12-901.

3. **Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:**

   The Board determined the rules are effective in achieving their objectives, with the exception of R4-15-201(A)(2) and (C) as discussed below.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:**

   The Board determined the majority of the rules reviewed are consistent with both statutes and other Board rules. There are no federal statutes specifically applicable to the rules reviewed.

   R4-15-201(B)(1)(p) and R4-15-203(I)(c) require the signature on an application to be notarized. However, A.R.S. § 32-4224(A) requires the application to be filed under oath or affirmation, which is different from notarization. These subsections need to be amended in order to remove the notarization requirements and provide that the application shall be submitted to the Board under oath or affirmation.

   R4-13-203 refers to A.R.S. § 32-4223 for reciprocity requirements. However, that statute does not take into account the recently enacted A.R.S. § 32-4302 regarding reciprocity for spouses of active duty members of the armed forces accompanying the member to this state. The Board needs to amend this rule in order to ensure that reciprocity requirements for spouses of active duty members of the armed forces accompanying the member to this state are consistent with A.R.S. § 32-4302.

   R4-15-204 is consistent with A.R.S. § 32-4228 which indicates which massage therapy schools the Board must recognize. However, this rule does not provide for schools located in a Canadian province or schools that are accredited to offer massage therapy education by an agency that is recognized by the secretary of the U.S. Department of Education. The Board

needs to amend this rule in order to recognize such schools. Specifically, the Board needs to amend subsections (B)(1) and (B)(2) to clarify that the applicant or school must show that the school is approved by an agency similar to the Board for Private Postsecondary Education or accredited by an agency approved by the U.S. Department of Education.

5. **Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:**

The Board enforces the rules as written with the exception of R4-15-201(B)(1)(p) and R4-15-203(I)(c) which requires a notarized signature as discussed above. The Board has not required notarization since May 2018 and needs to amend this rule to be more consistent with statute.

With regard to R4-15-201(B)(1)(b), A.R.S. § 32-4224 allows the Board to establish rules requiring information on a license application. However, as of 2014, the Board requires a passport style photo of every applicant, so this subsection is no longer necessary or enforced. The Board does not ask an applicant for information regarding the applicant's weight, height, eye color, or race. The Board needs to amend this rule to remove these requirements.

6. **Clarity, conciseness, and understandability of the rule:**

The Board believes the rules are generally clear, concise, and understandable, with the exception of the following:

R4-15-102(1): A.R.S. § 32-4227 identifies maximum fees that the Board may charge for various licenses and the Board has not exceeded these maximum fees because this subsection indicates that the Board only charges $195 for a license application and the license application fee includes issuance of the initial license if the application is approved. Moreover, the Board waives application fees for applicants who show they qualify for a waiver pursuant to A.R.S. § 41-1080.01. Nevertheless, this subsection does not clarify that the Board also collects the fee that is required by the Department of Public Safety (DPS) pursuant to R13-1-401 to process fingerprints for federal background checks pursuant to

R4-15-201 and R4-15-203 and authorized under A.R.S. § 32-4222(A)(10). The Board needs to amend this rule to clarify that it collects the fee for DPS to process fingerprint cards.
R4-15-201(A)(1): This subsection requires applicants who submit an application before January 1, 2008 to complete 500 hours of education and supervised clinical instruction. However, this section is no longer necessary and the Board needs to remove this subsection in order to make the rule clearer and more concise.

7. **Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is 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 rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:**

   The Board received no written criticisms regarding the reviewed rules during the past five years.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:**

   Currently, the Board licenses approximately 32,000 individuals, of which, 14,000 maintain active status. The Board receives approximately 1,300 new applications per year, resulting in $284,700 collected in fees.

   All the rules in Articles 1 through 3 were amended or made in a rulemaking that went into effect on August 5, 2014 (20 A.A.R. 2246). The 2014 rulemaking was completed to make the rules consistent with 2013 legislation as well as Board statutes and practice. The most significant changes included adding ethical standards with which a licensee must comply, including amending the definition of "good moral character," and establishing English

communication proficiency standards. In the EIS associated with the 2014 rulemaking, the Board determined that the changes regarding "good moral character" and English proficiency could have potential costs for applicants because it is possible that both changes could prevent an individual from qualifying for licensure. However, as discussed above, state law requires the Board to establish English proficiency requirements and ethical standards (A.R.S. § 32-4203(A)(6)), so the Board determined both changes were necessary to comply with state laws to protect the health and safety of consumers of massage therapy services. The 2014 EIS also indicated that the changes regarding continuing education and examinations may produce cost savings for licensees and applicants by reducing the burden of becoming licensed and maintaining a license. Ultimately, the Board anticipated that the costs of the rulemaking would be minimal as the amendments simply made the rules consistent with legislative changes. Thus, the economic impact of these rules has not varied from the impact anticipated in the 2014 EIS.

The one rule in Article 4, Rehearing or Review of Board's Decision, was made in 2006 and reviewed in a five-year review report approved by the Governor's Regulatory Review Council in 2014. The rulemaking reduced the Board's fee for a regular license (R4-15-102(A)(1)), established standards for continuing education (Article 3), added requirements for license renewal (R4-15-205), added a fee for a renewal license (R4-15-102(A)(4), and added a fee for delinquent license renewal (R4-15-102(A)(5)). The costs that resulted from this rulemaking are consistent with the costs projected in the EIS associated with that rulemaking. In the EIS associated with that rulemaking the Board estimated the costs to the Board or a licensee to be minimal and less than $1,000. Since the promulgation of the rule, the costs have been minimal. Since 2014, the Board has received approximately 3 motions for rehearing. A quarter of the complaints involved allegations of sexual assault. The Board reviews all of the complaints received, and in the past year, of the 113 cases received, the Board opened approximately 40 cases for further review. The rules provide for background checks to prevent individuals with a significant history of sexual crimes from obtaining a massage therapy license. The rules also allow the Board to investigate such allegations of a licensee and take necessary steps to either discipline licensees or revoke licenses. In the past year, the Board conducted approximately 63

investigative reviews and disciplined approximately 27 licensees. Thus, the rules are narrowly tailored to address conduct giving rise to the majority of the complaints and have been effective in addressing those complaints. The Board concludes it correctly estimated the economic impact of the rules when they were most recently amended/adopted. There is no change from the economic impact the Board anticipated in the previous rulemaking.

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:

No analysis was submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

These rules were last reviewed in 2019 and the Board the same courses of action as described above, at that time.

The Board also proposed to amend R4-15-201(A)(2) to reduce the requirement for 700 classroom and clinical hours to be completed because A.R.S. § 32-4222(B)(1) requires the applicant to complete a minimum of 500 hours at a Board-recognized school. So long as the number of hours is the least necessary to ensure that the applicant has the knowledge and experience to practice massage safely, then the probable benefits (i.e. knowledge of best practices, safety measures, ethics, etc.) of the rule outweigh the probable costs (i.e. time and money spent on any hours required above the statutory minimum) of the rule. Reducing the hours to the least number necessary to ensure adequate knowledge and experience to practice safely would ensure the rule is least burdensome on the applicant while still achieving the regulatory purpose, thereby reducing the economic impact of the rule and increasing its effectiveness.

With regard to R4-15-201(C), A.R.S. § 32-4222(E) requires the Board to establish rules that provide communication proficiency requirements in order to ensure the safety of massage therapy clients and massage therapists. The Board believes the TOEFL and TOEIC exam

requirements can be removed from this rule because the national exams required in R4-15-201(D)(1) already contain a communication proficiency component. R4-15-201(D)(1) requires a passing score on either the NCBTMB or FSTMB examination. These exams include a communication component to ensure that the applicant can communicate effectively. Thus, the TOEFL and TOEIC are not necessary and removing the requirement for particular scores on a TOEFL or TOEIC exam will reduce the burden of becoming licensed while still achieving the regulatory purpose of ensuring that applicants can communicate and practice safely in Arizona, thereby increasing effectiveness of the rule. By reducing the burden of the rules while still complying with statutory requirements, the Board can ensure that the probable benefits of the rule (i.e. ensuring effective communication) outweigh the probable costs (i.e. exams showing effective communication).

The Board proposed to make these changes by requesting approval from the Governor's office by January 2020. However, the Board did not complete these changes because all members of the Board were dismissed by the Governor and all new members were reappointed.

11. A determination after analysis 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 persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board believes that protecting the public health and safety outweighs the costs and burdens of the rules on persons regulated by the rules. These rules are necessary to protect the health and welfare of the public. Massage therapists increasingly are part of the organized delivery of health care in hospitals, doctor's offices, addiction treatment, and pain management centers. As such, these rules are necessary to ensure that massage therapists have the necessary training, knowledge, and experience to practice massage therapy without injury to their clients. These rules also provide for necessary background checks of massage therapists to ensure that the Board does not license individuals that could pose a threat to clients, particularly when clients may be in vulnerable situations. Moreover, these rules simply enforce statutory requirements that the Board has been charged with administering. It

is statute that requires an individual to be licensed to practice massage therapy (A.R.S. §§ 32-4221(A) and 32-4255(A)); to submit an application to the Board (A.R.S. §§ 32-4223 and 32-4224); to renew a license biennially (A.R.S. § 32-4225); pay fees for a license (A.R.S. § 32-4227); and participate in continuing education (A.R.S. § 32-4225). Statute requires massage therapy schools to obtain recognition from the Board (A.R.S. § 32-4228). Additionally, prior to state regulation of massage therapists, massage therapists faced a significant burden of paying multiple fees to obtain licensure in multiple municipalities with significantly varying licensing requirements. State regulation through the Board and its administrative rules simplified regulatory requirements in the massage industry, thereby reducing the burden of regulation while increasing the benefits to public health and safety.

The rules establish the exact fees charged by the Board, the content of applications, and standards for recognizing massage therapy schools and accepting continuing education.

12. A determination after analysis 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:

No federal law is directly applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The Board's statutes (See A.R.S. §§ 32-4221 and 32-4255), require individualized licenses be issued so a general permit is not applicable.

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, the agency may indicate that no action is necessary for the rule:

The Board determines the rules need to be amended or repealed and intends to seek approval from the Governor's office no later than July 2025.

ARIZONA BOARD OF MASSAGE THERAPY
2024 Five-Year Review, Title 4, Chapter 15
Articles 1-4

Rule No.	Title	Last Revision	Eff.	Enf.	Consist.	C/C / U	Probable benefits/ Least Burden	ARS Authority	EIS Comp.	Previous and Current Proposed Course of Action
R4-15-101	Definitions	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. § 32-4203(A)(7)	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-102	Fees	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. §§ 32-4222(A)(6) and 32-4227	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-103	Ethical Standards	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. § 32-4203(A)(6)	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-201	Qualifications; Application for a Regular License	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. §§ 32-4203(A) and (B) and 32-4222	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-203	Application for a License by Reciprocity	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. § 32-4223	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.

R4-15-204	Board-recognized School	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. §§ 32-4201(2), 32-4203(A)(5), 32-4228	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-205	Application for Renewal of License	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. § 32-4225	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-207	Licensing Time-frames	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. §§ 41-1072 through 41-1077	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
Table 1	Licensing Time-frames (in Days)	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. §§ 41-1072 through 41-1077	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-301	Required Continuing Education Hours	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. §§ 32-4203(A)(5) and 32-4225	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-302	Approval of Continuing Education	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. § 32-4225	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.
R4-15-303	Documentation of Completion of Continuing Education	August 5, 2014	Y	Y	Y	Y	Y	A.R.S. § 32-4225	The EIS has not changed since the rules were	The Board did not propose a previous course of action and

									promulgated or last amended.	does not need to amend the rule at this time.
R4-15-401	Rehearing or Review of Board's Decision	September 9, 2006	Y	Y	Y	Y	Y	A.R.S. § 41-1092.09	The EIS has not changed since the rules were promulgated or last amended.	The Board did not propose a previous course of action and does not need to amend the rule at this time.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

Editor's Note: 4 A.A.C. 15 made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). This Chapter formerly contained the rules for the Department of Liquor Licenses and Control before being recodified to 19 A.A.C. 1 in 1995 (Supp. 04-2).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of R4-15-101 and R4-15-102, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).

ARTICLE 2. LICENSING

Article 2, consisting of R4-15-201 through R4-15-207, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).

ARTICLE 3. CONTINUING EDUCATION

Article 3, consisting of R4-15-301 through R4-15-303, made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).

ARTICLE 4. REGULATORY PROVISIONS

Article 4, consisting of R4-15-401, made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of R4-15-101 and R4-15-102, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).

R4-15-101. Definitions

In addition to the definitions in A.R.S. § 32-4201, in this Chapter:

1. "Accredited" means approved by the:
   a. New England Association of Schools and Colleges,
   b. Middle States Association of Colleges and Secondary Schools,
   c. North Central Association of Colleges and Schools,
   d. Northwest Association of Schools and Colleges,
   e. Southern Association of Colleges and Schools,
   f. Western Association of Schools and Colleges,
   g. National Commission for Certifying Agencies, or
   h. Commission on Massage Therapy Accreditation.
2. "Applicant" means an individual requesting a regular, renewal, or reciprocity license from the Board or recognition as an out-of-state school as required by A.R.S. § 32-4228.
3. "Application packet" means the documents, forms, fees, and additional information required by the Board of an applicant.
4. "Classroom instruction" means the physical or distance learning format environment in which massage therapy didactic teaching or lecturing takes place.
5. "Client" means an individual receiving massage therapy.
6. "Clinical instruction" means the hands-on application of massage therapy.
7. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to massage therapy.
8. "Day" means calendar day.
9. "Distance learning" means the instructor of a continuing education and the individual receiving the continuing education are not located in the same room in which the continuing education is being provided.
10. "FSMTB" means Federation of State Massage Therapy Boards, the body that administers a massage and bodywork licensing examination.
11. "Health care practitioner" means "practitioner" defined in A.R.S. § 32-3101.
12. "Hour" or "classroom hour" means 50 to 60 minutes of participation.
13. "High school equivalency diploma" means:
    a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a high school equivalency test or meets the requirements of A.R.S. § 15-702(B),
    b. A document issued by a state other than this state to an individual who passes a high school equivalency test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B), or
    c. A document issued by a country other than the United States to an individual who has completed that country's equivalent of a 12th grade education as determined by the Board based upon information obtained from American or foreign consulates or embassies or other governmental entities.
14. "Good moral character" means an applicant:
    a. Has not been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or other related offense;
    b. Has not been convicted of an act involving dishonesty, fraud, misrepresentation, or gross negligence;
    c. Is not currently incarcerated in a local, state, or federal penal institution or is not on community supervision;
    d. Has not had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action; or
    e. Has not had a massage therapy certification revoked or suspended by a national massage therapy certifying agency.
11. "License" means written authorization issued by the Board to engage in the practice of massage therapy in Arizona.

16. "Massage therapy student" means an individual receiving instruction in massage therapy or bodywork therapy at a Board-recognized school.
17. "NCBTMB" means National Certification Board for Therapeutic Massage and Bodywork, the body that is accredited by the National Commission for Certifying Agencies and provides examinations of and certifies individuals in massage therapy and bodywork.
18. "Regular license" means an approval issued by the Board to an applicant who meets the requirements in A.R.S. § 32-4222(A) and (B), and this Chapter.
19. "Practice of massage therapy" means the same as "massage therapy" as defined in A.R.S. § 32-4201.
20. "Supervised instruction" means a licensee responsible for a massage therapy student at a Board-recognized school:
    a. For clinical instruction:
        i. Is present at the location where the massage therapy student is performing massage therapy as part of the massage therapy student's education,
        ii. Is immediately available for consultation, and
        iii. Evaluates the performance of the massage therapy student.
    b. For classroom instruction:
        i. Is immediately available for consultation, and
        ii. Evaluates the performance of the massage therapy student.
21. "TOEFL" means Test of English as a Foreign Language.
22. "TOEIC" means Test of English for International Communications.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

R4-15-102. Fees

A. The Board shall charge the following fees that are nonrefundable, unless A.R.S. § 41-1077 applies:
1. Application for a license, $195;
2. Reinstatement of a license, $125;
3. Duplicate license, $25;
4. License renewal, $95; and
5. Delinquent renewal of a license, $40.

B. The Board shall charge 25 cents per page for copying records, documents, letters, minutes, applications, and files.

C. If an applicant submits a paper application, the applicant shall pay any of the fees listed in subsection (A) by cashier's check or money order. If an applicant submits an electronic application, the applicant shall pay by credit card.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 15 A.A.R. 1562, effective September 1, 2009 (Supp. 09-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

R4-15-103. Ethical Standards

Pursuant to A.R.S. § 32-4203(A)(6), the Board is adopting the following ethical standards, which a licensee is required to meet:

1. When a licensee agrees to provide massage therapy to a client, the licensee shall:
    a. Inform the client and other health care practitioners, if applicable, of the licensee's qualifications, education, and experience;
    b. Provide only those massage therapies that are within the licensee's qualifications, education, and experience;
    c. Provide massage therapy only when the licensee believes that it will be advantageous to the client;
    d. Refer the client to other health care practitioners after evaluating the client for any contraindications and the referral is within the best interests of the client;
    e. Provide draping that ensures the safety, comfort, and privacy of the client;
    f. Respect the client's right to refuse, modify, or terminate treatment;
    g. Safeguard the confidentiality of all client information unless disclosure is requested by the client in writing, medically necessary, required by law, or necessary for the protection of the public; and
    h. Refrain from engaging in sexual activity with the client even if the client attempts to sexualize the relationship.
2. A licensee shall not advertise that the licensee offers sensual or erotic massage that constitutes sexual activity as stated in A.R.S. § 32-4253 or for the purposes of sexual gratification.
3. A licensee shall not discriminate against a client on the basis of race, sex, age, religion, disability, or national origin.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

ARTICLE 2. LICENSING

Article 2, consisting of R4-15-201 through R4-15-207, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).

R4-15-201. Qualifications; Application for a Regular License

A. To meet the requirements in A.R.S. § 32-4222(B), an applicant who submits an application:
1. Before January 1, 2008 shall complete 500 classroom and clinical hours of supervised instruction at a Board-recognized school, and
2. On and after January 1, 2008 shall complete 700 classroom and clinical hours of supervised instruction at a Board-recognized school.

B. An applicant for a regular license shall meet the requirements in A.R.S. § 32-4222(A) and (B) before submitting an application packet that contains:
1. An application form that includes:
    a. The applicant's name, date of birth, place of birth, social security number, email address, residence and business addresses, residence and business telephone numbers, and mailing address, if applicable;
    b. The applicant's race, gender, height, weight, and eye color;
    c. Each name or alias previously or currently being used by the applicant;
    d. The applicant's name as it will appear on the license;
    e. To satisfy the requirements in A.R.S. § 32-4222(A)(5):
        i. If the applicant graduated from a high school, the date of graduation and name of the high school;

ii. If the applicant received a high school equivalency diploma, the date the high school equivalency diploma was awarded; or
iii. If the applicant passed an ability to benefit examination recognized by the United States Department of Education, written documentation of passage;

f. One passport quality photograph of the applicant's head and shoulders no larger than 2 1/2 by 3 inches taken no more than 60 days before the date of the application;
g. The name and address of each Board-recognized school attended by the applicant, dates of attendance, and date of completion of the course of study;
h. The number of hours of classroom and clinical instruction completed by the applicant at a Board-recognized school;
i. Whether the applicant has passed the examination administered by the NCBTMB or FSTMB and if so, the name of the entity and date the examination was taken;
j. Whether the applicant has been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a related offense or entered into a plea of no contest and, if so:
i. Charged felony or offense;
ii. Date of conviction;
iii. Court having jurisdiction over the felony or offense;
iv. Probation officer's name, address, and telephone number, if applicable;
v. A copy of the notice of expungement, if applicable; and
vi. A copy of the notice of restoration of civil rights, if applicable;
k. Whether the applicant currently holds or has held a massage therapy license issued by another state and if so, the name of each state;
l. Whether the applicant has ever voluntarily surrendered a license under A.R.S. § 32-4254 or had a license to practice massage therapy or another related license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
m. Whether the applicant is currently under investigation, suspension, or restriction by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
n. Whether the applicant has committed any of the actions or been subject to any of the actions listed in the definition of good moral character in R4-15-101;
o. Whether English is the applicant's native language and, if not:
i. What the applicant's native language is, and
ii. Whether the applicant has met the requirements in subsection (C); and
p. A notarized statement, signed by the applicant, stating: the information on the application form is true and correct;

2. Documentation of citizenship or alien status that meets the requirements in A.R.S. § 41-1080;
3. A completed and legible fingerprint card; and
4. The fee required in R4-15-102.

C. If English is not the native language of the applicant, to meet the requirements in A.R.S. § 32-4222(E), the applicant shall take and pass, no more than twenty four months before the date of the application, either of the following examinations:
1. The internet-based TOEFL with the following minimum scores:
a. For the writing section, 25;
b. For the speaking section, 25;
c. For the reading section, 25; and
d. For the listening section, 25; or
2. The TOEIC with the following minimum scores:
a. For the speaking section, 150;
b. For the writing section, 150;
c. For the listening section, 300;
d. For the reading section, 350.

D. In addition to the requirements in subsections (A), (B), and (C), an applicant shall arrange to have directly submitted to the Board from the issuing entity:
1. Written verification of a passing score on the NCBTMB or FSTMB examination;
2. To show proof of completion of the classroom hours of supervised instruction at a Board-recognized school required in subsection (A), academic transcripts from the Board-recognized school from which the applicant graduated; and
3. The score earned on the examination in subsection (C).

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

R4-15-202. Expired

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 1941, effective October 31, 2009 (Supp. 09-4).

R4-15-203. Application for a License by Reciprocity
An applicant for a license by reciprocity shall meet the requirements in A.R.S. § 32-4223 and:
1. Submit an application packet that contains the information in R4-15-201 (B)(1)(a), (b), (c), (d), (e), (i), (j), (k), (m), (n), (B)(2), and photograph required by R4-15-201(B)(1)(f) and:
a. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S § 32-4223(A)(1), the name of the state where the applicant was licensed continuously for five years immediately before the date of the application;
b. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), whether the applicant holds a current certification from the NCBTMB or another agency that meets the standards of the National Commission for Certifying Agencies; and
c. A notarized statement, signed by the applicant, stating that the information on the application form is true and correct;
2. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S § 32-4223(A)(1), arrange to have verification of the license or certificate in

the jurisdiction in the other state sent directly to the Board from the jurisdiction including:
a. The license or certificate number issued to the applicant by the jurisdiction,
b. Whether the jurisdiction has instituted disciplinary proceedings against the applicant or has unresolved complaints pending against the applicant, and
c. Whether the license or certificate is in good standing.
3. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), arrange to have:
a. A verification of certification as a massage therapist sent directly to the Board from the NCBTMB or other agency that meets the standards of the National Commission for Certifying Agencies; and
b. Academic transcripts from the Board-recognized school from which the applicant completed the course of study;
4. Submit a completed and legible fingerprint card; and
5. Submit the fee required in R4-15-102.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

R4-15-204. Board-recognized School

A. A massage therapy school or bodywork therapy school in this state that is offered by a community college or approved by the Arizona State Board for Private Postsecondary Education is a Board-recognized school.

B. A massage therapy school or bodywork therapy school in another state that is approved by an agency similar to the Board for Private Postsecondary Education and that wishes to be a Board-recognized school shall:
1. Have a program that meets requirements that are substantially equivalent to those imposed by the Board for Private Postsecondary Education in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39; and
2. Submit an application packet to the Board that includes:
a. The name, address, and telephone number of the massage therapy school or bodywork therapy school;
b. The same information required by the Board for Private Postsecondary Education in R4-39-103(B); and
c. Documentation from the agency similar to the Board for Private Postsecondary Education that states the applicant meets the requirements of the agency.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

R4-15-205. Application for Renewal of a License

An applicant for a renewal license shall submit:
1. An application form that contains the licensee's:
a. Name;
b. Massage therapy license number;
c. Massage therapy license expiration date;
d. Birthdate;
e. Residence and practice addresses;
f. Residence and practice telephone numbers;
g. Mailing address;
h. E-mail address;
i. Alien status declaration if the licensee is not a citizen or national of the United States;
j. Declaration of whether the licensee has been charged with or convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a related offense or entered into a plea of no contest during the two-year period immediately preceding the renewal application date and, if so, the licensee shall provide the following information:
i. The charged felony or offense;
ii. The date of conviction;
iii. The court having jurisdiction over the felony or offense;
iv. The probation officer's name, address, and telephone number, if applicable;
v. A copy of the notice of expungement, if applicable; and
vi. A copy of the restoration of civil rights, if applicable;
k. Declaration that the licensee has completed the continuing education required by A.R.S. § 32-4225(E) during the two-year period immediately preceding the renewal application date or if audited, the documentation required in R4-15-303(B); and
l. Signature and date of submission; and
2. The fee required in R4-15-102(A).

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

R4-15-206. Reserved

R4-15-207. Licensing Time-frames

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame shall not be extended by more than 25 percent of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1 and begins when the Board receives an application.
1. If the application packet is not complete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
2. If an application is complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If the Board grants the license during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written

request for additional information or documentation until the Board receives the additional information or documentation.

2. The Board shall send a written notice of approval to an applicant who meets the qualifications and requirements in A.R.S. Title 32, Chapter 42 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 32, Chapter 42 and this Chapter.

D. The Board shall consider an application withdrawn if within 365 days from the application submission date the applicant fails to supply the missing information under subsection (B)(1) or (C)(1).

E. An applicant who does not wish an application withdrawn may request a denial in writing within 365 days from the application submission date.

F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time-frame's last day.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

Table 1. Time-frames (in Days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Regular license R4-15-201	A.R.S. § 32-4222	120	60	60
License by Reciprocity R4-15-203	A.R.S. § 32-4223	120	60	60
Board-recognized school R4-15-204	A.R.S. § 32-4228	120	60	60
Renewal License	A.R.S. § 32-4225	60	30	30

Historical Note
New Table 1 made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

ARTICLE 3. CONTINUING EDUCATION

R4-15-301. Required Continuing Education Hours

A. During the two-year period immediately preceding license expiration, a licensee applying for a renewal license shall complete 24 hours or more of continuing education.

B. A licensee may complete a maximum of 12 continuing education hours from a distance learning format to satisfy the requirement in subsection (A).

C. A licensee shall not carry over hours from one renewal period to another renewal period.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

R4-15-302. Approval of Continuing Education

The following continuing education is approved by the Board:

1. Continuing education that is taught by an association, corporation, or organization:
   a. Accredited by the National Commission for Certifying Agencies, or
   b. Approved by the NCBTMB.
2. Continuing education sponsored by a massage therapy school or bodywork therapy school that is:
   a. Affiliated with a community college located in this state, or
   b. Approved by the Arizona State Board for Private Postsecondary Education;
3. Continuing education offered by a regionally or nationally accredited post-secondary institution in a state other than Arizona;
4. Continuing education offered by an institution approved by a post-secondary educational entity as a massage therapy or bodywork therapy school in a state other than Arizona.
5. For each renewal period no more than four hours of CPR or four hours of First Aid for a combination of no more than eight hours that is taught by an instructor who has been certified in CPR or First Aid instruction by the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council and has a current card issued by the American Red Cross, American Heart Association, or American Safety and Health Institute, or National Safety Council that contains:
   a. The instructor's name,
   b. A statement by the certifying entity that authorizes the instructor to teach CPR or first aid, and
   c. A certification expiration date;
6. For each renewal period no more than three hours for attendance at a Board meeting, if the licensee obtains a document that states the licensee attended a minimum of three hours at a Board meeting, the date of the Board meeting, and the signature of the Board's chair or executive director. The licensee may claim only the actual number of hours attended by the licensee for a maximum of three hours; or
7. For each renewal period one hour for each eight hours serving as an instructor of a massage therapy class at a Board-recognized school for a maximum of 10 hours and the licensee documents:
   a. The name of the Board-recognized school,
   b. The title of the massage therapy class,
   c. The subject matter of the massage therapy class,
   d. The dates of the instruction,
   e. The location of the massage therapy class, and
   f. A confirmation of number of hours that is on official school letterhead and signed by the owner of the Board-recognized school or designee.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

R4-15-303. Documentation of Completion of Continuing Education

A. When renewing a license, a licensee shall submit on a renewal application an affirmation of completion of 24 hours of continuing education.

B. The Board may annually and randomly select a minimum of 10% of active licenses for an audit of continuing education and require the following information:
1. The name of the licensee,
2. The title of the continuing education,
3. The subject matter of the continuing education,
4. The date of the continuing education,
5. The hours completed,
6. The location where the continuing education took place, and
7. The name of the instructor providing the continuing education.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

ARTICLE 4. REGULATORY PROVISIONS

R4-15-401. Rehearing or Review of Board's Decision

A. Except as provided in subsection (F), a party who is aggrieved by a decision issued by the Board may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section and except as provided in A.R.S. § 41-1092.09(C), a decision is considered served when personally delivered to the party's last known address or mailed by certified mail to the party at the party's last known address or the party's attorney.

B. A party filing a motion for rehearing or review under this Section may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.

C. The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the party's rights:
1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprived the party of a fair hearing;
2. Misconduct of the Board or administrative law judge;
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 or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
7. That the findings of fact or decision are not supported by the evidence or are contrary to law.

D. The Board may affirm or modify its decision or grant a rehearing or review to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify the grounds for the rehearing or review and the rehearing or review shall cover only those matters specified.

E. No later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any reasons in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.

F. If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If the Board issues the decision as a final decision without an opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 12-904.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).

32-4201. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of massage therapy.

2. "Board recognized school" means a school that is any of the following:

(a) Accredited to offer massage therapy education by an agency recognized by the secretary of the United States department of education.

(b) If located in this state, offered by a community college or approved by the state board for private postsecondary education.

(c) If located in another state or a Canadian province, approved by an agency similar to the state board for private postsecondary education.

(d) A career technical education district program that is offered by a career technical education district as defined in section 15-391.

3. "Bodywork therapy" means massage therapy.

4. "Massage therapist" means a person who is licensed under this chapter to engage in the practice of massage therapy.

5. "Massage therapy" means the following that are undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement or provide general or specific therapeutic benefits:

(a) The manual application of compression, stretch, vibration or mobilization of the organs and tissues beneath the dermis, including the components of the musculoskeletal system, peripheral vessels of the circulatory system and fascia, when applied primarily to parts of the body other than the hands, feet and head.

(b) The manual application of compression, stretch, vibration or mobilization using the forearms, elbows, knees or feet or handheld mechanical or electrical devices.

(c) Any combination of range of motion, directed, assisted or passive movements of the joints.

(d) Hydrotherapy, including the therapeutic applications of water, heat, cold, wraps, essential oils, skin brushing, salt glows and similar applications of products to the skin.

6. "Practice of massage therapy" means the application of massage therapy to any person for a fee or other consideration. Practice of massage therapy does not include the diagnosis of illness or disease, medical procedures, naturopathic manipulative medicine, osteopathic manipulative medicine, chiropractic adjustive procedures, homeopathic neuromuscular integration, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, nursing, occupational therapy, athletic training, physical therapy, acupuncture or podiatry is required by law.

32-4203. Board; powers and duties

A. The board shall:

1. Evaluate the qualifications of applicants for licensure.

2. Designate at least one national examination that it requires applicants to pass. The examination must be available to a graduating massage therapy or bodywork therapy student within ninety days before the student's expected graduation date. The board shall require that an examination be processed and the results returned to the board within thirty days after the examination is administered. If, by October 20, 2005, the testing agency administering the examination fails or is unable to comply with the requirements of this paragraph, the board shall designate another examination for applicants to pass.

3. Issue licenses to persons who meet the requirements of this chapter.

4. Regulate the practice of massage therapy by interpreting and enforcing this chapter.

5. Establish education requirements for licensees and applicants, including identifying board-recognized schools and continuing education programs and assessing the continuing competence of licensees.

6. Adopt rules for ethical and professional conduct to govern the practice of massage therapy in this state.

7. Adopt rules to enforce this chapter.

8. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.

9. At its first regular meeting after the start of each calendar year, elect officers from among its members as necessary to accomplish board business.

10. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.

11. Maintain a current list of all licensees that includes the licensee's name, current business address and telephone number and license number and that is regularly accessible in electronic format to public officials and agencies to verify the license status of licensees in this state.

12. Enter into contracts for services necessary to enforce this chapter.

13. Publish, at least annually, or make available for copying or reproduction in any format, final disciplinary actions taken against a licensee.

B. The board may:

1. 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.

2. Administer oaths and affirmations, subpoena witnesses, take evidence and require the production of documents, records or information, either kept in original form or electronically stored or recorded, or other items relevant to a matter within the jurisdiction of the board.

3. For initial licensure, require a criminal background check, including the fingerprinting of every applicant for licensure, to assist the board in determining whether grounds exist to deny a license.

32-4222. Qualifications for licensure

A. An applicant for a license as a massage therapist shall:

1. Be at least eighteen years of age.

2. Be a citizen or legal resident of the United States.

3. Satisfy the requirements of section 32-4224.

4. Receive either a high school diploma or general equivalency diploma or a similar document or certificate or submit proof that the applicant has passed an ability to benefit examination recognized by the United States department of education.

5. Pay the fees established pursuant to section 32-4227.

6. Within five years preceding the date of the application for initial licensure, not have been convicted of a misdemeanor involving prostitution or solicitation or another similar offense involving moral turpitude that has a reasonable relationship to the practice of massage therapy.

7. Within the preceding five years, not have voluntarily surrendered a license under section 32-4254 or not have had a license to practice massage therapy or another similar license revoked by a political subdivision of this state or a regulatory agency in another jurisdiction in the United States for an act that occurred in that jurisdiction and that would be subject to discipline pursuant to this chapter.

8. Not be currently under investigation, suspension or restriction by a political subdivision of this state or a regulatory agency in another jurisdiction in the United States for an act that occurred in that jurisdiction and that would be subject to discipline pursuant to this chapter. If the applicant is under investigation by a regulatory agency in another jurisdiction, the board shall suspend the application process and may not issue or deny a license to the applicant until the investigation is resolved.

9. For initial licensure, submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The board may charge the cost of each criminal background check to the applicant.

10. Beginning January 1, 2023, possess a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 for initial licensure, license renewal, a temporary license or license reinstatement pursuant to this chapter.

B. In addition to the requirements of subsection A of this section, an applicant for licensure as a massage therapist shall either:

1. Have successfully completed a course of study of massage therapy or bodywork therapy consisting of a minimum of five hundred classroom and clinical hours of supervised instruction at a board recognized school in this state that is accredited by an agency recognized by the secretary of the United States department of education.

2. Have done both of the following:

(a) Successfully completed a course of study in massage therapy or bodywork therapy consisting of a minimum of five hundred classroom and clinical hours of supervised instruction at a school in this state that is licensed by the state board for private postsecondary education or at a school outside of this state that is recognized by the board pursuant to section 32-4228.

(b) Successfully passed an examination administered by a national board accredited by the certifying agency that has been approved by the national commission on competency assurance and that is in good standing with that agency or have successfully passed an examination that is administered or approved by the board.

C. The board may adopt rules to allow it to consider the education and experience of an applicant who came from a foreign country. The board by rule may increase the minimum number of classroom hours of supervised instruction at a board recognized school that an applicant for licensure must successfully have completed.

D. If the board is satisfied that an applicant meets the requirements of this section, the board shall issue a license to the applicant.

E. Subject to the board's approval, the executive director may issue licenses to applicants who meet the requirements of this chapter.

F. The board may deny an application for a license if the applicant committed an act that would subject a person licensed under this chapter to disciplinary action.

32-4223. Reciprocity

A. An applicant is eligible for reciprocal licensure if either of the following applies:

1. The applicant has been licensed in another state that has comprehensive standards for licensure for massage therapists for at least two of the last five years preceding the filing of the application with the board.

2. The applicant holds a current certification from the national certification board for therapeutic massage and bodywork or another agency that meets the standards of the national organization on competency assurance and received education and training substantially equivalent to that required by this chapter.

B. When an applicant submits an application for reciprocity, the applicant shall also submit a letter or other document acceptable to the board showing whether any jurisdiction that has previously certified or licensed the applicant has instituted disciplinary proceedings or has unresolved complaints pending against the applicant. If a disciplinary proceeding or an unresolved complaint is pending, the applicant shall not be licensed until the proceeding or the complaint has been resolved in the applicant's favor.

32-4225. License renewal; changes in personal information; notification; continuing education

A. Except as provided in section 32-4301, a license issued pursuant to this chapter is subject to renewal every other year on the licensee's birthday and expires unless renewed.

B. The executive director shall notify each licensee at least sixty days before expiration of the license and may renew the license on receipt of a completed renewal application.

C. Each licensee is responsible for reporting to the board a name change and changes in business and home addresses and phone numbers within ten days after any change.

D. Each licensee shall notify the board in writing within ten days after the issuance of a final order, judgment or conviction of a felony or other offense involving moral turpitude or prostitution, solicitation or any other similar offense.

E. When a licensee renews a license, the licensee must provide the board with an affirmation of the successful completion of at least twenty-four hours of continuing education in the practice of massage therapy, as approved by the board, during the immediately preceding two years.

32-4227. Fees

A. The board shall establish and collect nonrefundable fees that do not exceed the following:

1. To apply for an original license, two hundred fifty dollars.

2. To renew a license, two hundred fifty dollars.

3. To reinstate a lapsed license, two hundred fifty dollars.

4. To renew a license after the expiration date of the license, a delinquency fee of one hundred twenty-five dollars.

5. For each duplicate license, fifty dollars.

6. For copying records, documents, letters, minutes, applications and files, twenty-five cents per page.

B. The board shall charge additional fees for services not required to be provided by this chapter but that the board determines are necessary and appropriate to carry out this chapter. The fees shall not exceed the actual cost of providing these services.

32-4228. Massage therapy schools; recognition

A. The board shall recognize a school of massage therapy located in this state if it is approved by the state board for private postsecondary education, is accredited to offer massage therapy education by an agency recognized by the secretary of the United States department of education or is a career technical education district program that is offered by a career technical education district as defined in section 15-391.

B. The board shall recognize a school of massage therapy located in another state or a Canadian province if it is accredited or approved by an agency similar to the state board for private postsecondary education or it is accredited to offer massage therapy education by an agency recognized by the secretary of the United States department of education.

C. Each school of massage therapy that is located in this state and that receives approval from the state board for private postsecondary education shall report to the board of massage therapy:

1. The physical address of the school and each instructional facility maintained or operated by the school.

2. All faculty and instructional staff, and all additions to or deletions from the faculty and staff.

D. The board shall maintain a list of recognized schools.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.

2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.

3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.

4. The impact of the licensing decision on public health and safety.

5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.

2. Within seven days after receipt of initial application.

3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A of this section. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application is not complete until the agency receives all requested information.

D. Except for an application submitted to the department of water resources pursuant to title 45, a determination by an agency that an application is not administratively complete is an appealable agency action, which if timely initiated, entitles the applicant to an adjudication on the merits of the administrative completeness of the application.

41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may 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 twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.

2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

Gmail

Simon Larscheidt <simon.larscheidt@azdoa.gov>

GRRC Submittal by Arizona Massage Therapy Board

1 message

Thomas Augherton <tom.augherton@massageboard.az.gov> Mon, Nov 4, 2024 at 8:41 AM
To: Simon Larscheidt <simon.larscheidt@azdoa.gov>

Dear Simon:

Consistent with the testimony offered by Massage Board staff at the public GRRC workshop last week, attached please find a copy of the sections of the Board's rules which can now be identified for removal, subsequent to earlier statutory changes by the Arizona Legislature.

The Board staff is also providing this exhibit to the Governor's Office Boards' Liaison staff.

Thank you for your staff's assistance with this.

cc: Arizona State Massage Therapy Board members

Attachment: 1

Sincerely,

Tom Augherton, Executive Director

Arizona State Board of Massage Therapy

1740 W. Adams Street S. 3401

Phoenix, Arizona 85007

Email: tom.augherton@massageboard.az.gov

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Licensing: info@massageboard@az.gov

Office: 602-542-8217

2019 5YRR rules superseded by statute (1).docx
13K

R4-15-201(A)(2) In 2019 the Board proposed to reduce the requirement for 700 classroom hours to the least necessary to ensure safety

R4-15-201(C) in 2019 the Board proposed to remove the English language proficiency requirements from rule because the national exams required by other Board rules already includes a language proficiency requirement.

R4-15-201(B)(1)(p) and R4-15-203(1)(c) the board proposed to remove these notarization requirements because A.R>S. § 32-4224 already requires the application to be filed under oath. SUPERSEDED BY STATUTE

R4-15-203 the Board proposed to amend this rule to ensure reciprocity requirements are consistent with A.R.S. § 32-4302. SUPERSEDED BY STATUTE

R4-15-204 the Board proposed to amend this rule to allow for Canadian schools.

R4-201(B)(1)(b) the Board proposed to amend this rule to reflect that the application now requires a passport photo instead of just a physical description of the applicant

R4-15-102(1) the Board proposed to amend this rule to reflect that it collects a fingerprint fee according to A.R.S. § 32-4222 on behalf of DPS. SUPERSEDED BY STATUTE

R4-15-201(A)(1) the Board proposed to remove this rule because it only pertains to applicants who submit an application before January 1, 2008.

E-5.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: October 1, 2024; November 5, 2024

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

FROM: Council Staff

DATE: October 9, 2024

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 3

Staff Update

This Five-Year Review Report (5YRR) was previously considered at the September 24, 2024 Study Session and October 1, 2024 Council Meeting. At those meetings, the Council had questions regarding references to the Child and Adult Care Food Program (CACFP) in these rules. The Department has submitted a revised report and additional correspondence related to those questions which are included in the final materials for the Council's reference.

Summary

This 5YRR from the Department of Health Services (Department) relates to thirty-four (34) rules and three (3) tables in Title 9, Chapter 3 regarding the monitoring, certification, and regulation of Child Care Group Homes (CCGH). Specifically, these rules cover the following articles:

- Article 1 - General
- Article 2 - Certification
- Article 3 - Operating a Child Care Group Home
- Article 4 - Program and Equipment Standards
- Article 5 - Physical Environment Standards

In the prior 5YRR for these rules, which was approved by the Council in December 2019, the Department proposed to amend rules to make them clearer and increase understandability by simplifying and clarifying some requirements, updating antiquated language and outdated definition and references, and making minor technical and grammatical changes. Changes included adding and updating antiquated terms, such as "accredited," "enrolled children," "modification," and "positioning device." Other changes include clarifying fingerprint clearance cards, updating the Department of Agriculture Child and Adult Care Food Program Meal Patterns for children and infants, and clarifying adult staff member high school education requirements. Additionally, requirements related to child passenger restraint systems would be changed to make them consistent with A.R.S. § 28-907. The Department engaged in an expedited rulemaking to implement the prior proposed course of action, which became effective on September 2, 2020.

Proposed Action

In the current report, the Department is proposing changes to several rules to improve their clarity, conciseness, understandability, consistency, and effectiveness as outlined in more detail below. The Department plans to make changes to the rules to address these items and to submit a Notice of Final Rulemaking to the Council by December 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 A.R.S. Title 36, Chapter 7.1, Article 4 authorizes the Department to monitor, certify, and regulate CCGH. The Department states it currently certifies approximately 290 CCGHs statewide, with 287 active licenses. In addition, between July 1, 2023, and July 1, 2024, the Department issued 71 certifications for initial, renewal, and amended CCGH licenses.

The Department indicates in the last five years, it has completed two expedited rulemakings and one exempt rulemaking in 9 A.A.C. 3. The Department states affected persons included CCGH certificate holders, consumers, enrolled children, parents of enrolled children, and the Department. The Department indicates it was not required to complete an economic, small business, and consumer impact statement (EIS) for the exempt rulemakings, and as such, the Department did not file an EIS for any of the exempt and expedited rulemakings.

Overall, the Department estimates that certificate holders, enrolled children, consumers and the Department benefit significantly from the rulemakings for providing updated rules that are easier to use, less expensive to enforce, consistent with statute, easier to understand and more effectively protect the health and safety of enrolled children.

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 rules aim to ensure the safety, health, and proper administration of child care group homes by establishing clear guidelines and consistent standards for terminology, approval processes, representation, application requirements, staff requirements, certifications fees, notifications of changes, inspection access, disciplinary actions, and various operational aspects. The Department believes these rules are important to public health because they ensure the safety, well-being, and promote the development of children in care, prevent the spread of illness and communicable diseases, maintain high standards of hygiene and sanitation, and safeguard against abuse and neglect, thereby promoting a healthy and secure environment for children and the broader community. Thus, the Department believes, the probable benefits of the rules outweigh the probable costs of the rules. In addition, the Department believes, 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 indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are generally clear, concise, and understandable except for the following:

- R9-3-101
    - The rule is clear, concise, and understandable, but could be improved in subsection (3) by updating the names of the accreditation institutions.
- R9-3-101
    - The rule is clear, concise, and understandable, but could be improved in subsection (10) by removing "certification" since that language is not consistent with a background check. In addition, the definition can be amended to also include that the state criminal history checks within this state and each state where a staff member resided during the preceding five years. Lastly, current subsections (10)(c) and (d) can be combined since the National Crime Information Center includes the National Sex Offender Registry.
- R9-3-101
    - The rule is clear, concise, and understandable, but could be improved in subsection (96) which defines the term "public school" as the same definition as "school" in A.R.S. § 15-101. Since the statutory definition specifies the term "public school," the definition used in the rules can be simplified by removing the reference to "school."
- R9-3-101

    - The rule is clear, concise, and understandable, but could be improved by removing an obsolete definitions that are not used in Chapter 3, or that are only used once, including "corporal punishment," "licensed applicator," "mat," "perishable food," and "regular basis." Terms only used once can be described in the Section it is used and omitted from the definitions in R9-5-101. Removing these terms and definitions would require renumbering subsequent terms and definitions.
- R9-3-101
    - The rules would be more clear if "written notice" was defined as a message in written, typed, or printed characters sent or otherwise proved to have been received.
- R9-3-201
    - The rules would be more clear if language was updated and amended to reflect the online application process rather than a paper "packet." In addition, most homes do not have a landline and only a cell phone is used. Therefore, the rules can be updated to reflect this.
- R9-3-301
    - The rules would be more clear if subsection (A)(4)(i) was removed because it is duplicative to the requirement in (A)(4)(g).
- R9-3-302
    - The rule is clear, concise, and understandable, but could be improved by consolidating language to be more simple and clear.
- R9-3-303
    - The rule is clear, concise, and understandable, but could be improved by reducing the burden on child care group homes by removing the required immunization card and having the information documented and on file in a format put together by the child care group home. In addition, the language regarding the required documentation on the immunization record can be updated and simplified. For example, the "home address" is required and the rule further states that the "city, state, and zip code" are required, however this information should be included within the "home address." Also, an email address requirement should be added to the rules to align with electronic methods of submission.
- R9-3-307
    - The rule would be more clear in subsection (B)(3) was amended to specify the timeframe that documentation needs to be kept, which would only be for 12 months after the date of the notification.
- R9-3-307
    - The rule would be more clear in subsection (D) was amended to cross-reference the communicable diseases list in 9 A.A.C. 6, Article 2, and if specifying the exemption of reporting human immunodeficiency virus or a sexually transmitted disease was removed.
- R9-3-101, R9-3-404, and R9-3-407
    - The rules could be clearer by using the terms 'an enrolled child with a special health care need or a disability. This word usage is more inclusive and also aligns

with the new changes the Department is making in a current rulemaking for Title 9, Chapter 5. Child Care Facilities.

- Table 4.1
    - The rule could be clearer by correcting a grammatical error by adding the word "the" when referring to the "parent or child."
- R9-3-407
    - The rule could be clearer by combining subsections (A)(16) and (17) so that the rule is less duplicative.
- Table 5.1
    - The rule is clear, concise, and understandable, but could be improved by amending the word "supper" to "dinner" for consistency throughout the Article.
- R9-3-502
    - The rule is clear, concise, and understandable, but could be improved by amending a grammatical correction in subsection (C)(3) and clarifying that there is covering over the fall zone of the climbing structure, swing, or slide.
- R9-3-503
    - The rule is clear, concise, and understandable, but could be improved by amending a grammatical correction in subsection (E) by moving the placement of the word "clearly" in the rule.
- R9-3-508
    - The rule could be improved in subsection (7) by simplifying the language related to reptiles in a child care group home.

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 the following:

- R9-3-101
    - The definition of "accident" in subsection (2) should align with the rules in Chapter 5 for child care facilities and be amended to include that an "accident" means an unexpected occurrence that requires attention from a staff member.
- R9-3-101
    - The definition of "age-appropriate" in subsection (7) should align with the rules in Chapter 5 for child care facilities and can be updated to use more inclusive terms within the definition.
- R9-3-101 and R9-3-310
    - The rules would align more with the Chapter 5 for child care facilities and be consistent with the Child Care and Development Block Grant requirements by defining the term "serious physical injury" and using this terminology in the rules rather than just "injury.
- R9-3-101
    - The rules would align other rules in Title 9 if "written notice" was defined as a message in written, typed, or printed characters sent or otherwise proved to have been received to clarify that electronic forms of documentation is acceptable.

- R9-3-102
    - The rules would align more with the Chapter 5 as well as other licensing rules in Title 9 if subsection (A) was removed because it is an obsolete rule to allow for the Department to have additional substantive review time.
- R9-3-103, R9-3-201, and R9-3-301
    - The rules would align more with the Chapter 5 for child care facilities by removing the required Department-provided orientation and making this an optional training that is still available.
- R9-3-201
    - The rules would align more with A.R.S. § 41-1080 regarding the acceptable type of documentation of citizenship.
- R9-3-202
    - The rules would align more with the Chapter 5 for child care facilities as well as the CCDBG requirements of requiring the fingerprint clearance card is issued or renewed every five years. In addition, subsection (F)(1) should require the background check to be completed before the stating date of employment or volunteer service, in compliance with A.R.S. § 46-811 as well as CCDBG requirements. Lastly, subsection (J) is obsolete and can be removed since the date to be in compliance with A.R.S. § 46-811(A) has passed.
- R9-3-203
    - The rules would align more with the Chapter 5 as well as other licensing rules in Title 9 if the rules were amended in subsection (C)(1) to use clearer language regarding the documentation in a "Department-provided format."
- R9-3-301
    - The rules related to tuberculosis testing can be amended and simplified to be less of a burdensome requirement for stakeholders. The Department is currently amending rules in Chapter 5 for child care facilities and is simplifying the required tuberculosis testing to align with CDC standards. Rather than requiring everyone who works at a child care facility or child care group home to receive tuberculosis testing before working, the Department plans to amend the rules to require a self-screening form in a Department-provided format for tuberculosis screening purposes and follow recommendations for further tuberculosis testing, as applicable. Therefore, not everyone will require to be tested for tuberculosis.
- R9-3-302
    - The rules would align more with the Chapter 5 for child care facilities as well as the CCDBG requirements by updating the training requirements to be the same. This would include updating the language to be written the same, and adding several new training requirements to the current rules including the use of safe sleeping practices, prevention of shaken baby syndrome, child abuse detection, indoor/outdoor activity safety, sun safety, water safety, etc.
- R9-3-302
    - The cross-reference in subsection (B) should be updated from A.R.S. § 36-309 to A.R.S. § 36-3009.
- R9-3-304

    - The rules would align more with Chapter 5 for child care facilities as well as the CCDBG requirements by requiring a 30-calendar day grace period for an enrolled child who has not had immunizations and is homeless.
- R9-3-305
    - The rules would align more with Chapter 5 for child care facilities if subsection (B) was removed regarding an enrolled child who is allowed to self-admit or self-release because they would be exempt from the requirement.
- R9-3-403
    - The rules would align more with Chapter 5 for child care facilities if the rules were amended to remove the required a top sheet or blanket for each infant. According to the American Academy of Pediatrics, loose blankets and other soft items in an infant's sleep space can contribute to an increased risk of sleep-related infant death.
- R9-3-405
    - The Department is currently amending rules in Chapter 5 for child care facilities, based on stakeholder input, the Department is amending the term from "discipline" to "positive discipline" so that there is less negative cogitation. In addition, language within each subsection of this Section can be amended or rewritten to be clearer, align with the Chapter 5 rules, and coincide with what is wanted in the industry.

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:

- R9-3-201
    - Subsection (2)(k)(ci) would be more effective and less burdensome to licensees by removing that the documentation of good standing issued by the Arizona Corporation Commission has to be dated within the last three months. General documentation would be acceptable and LLC holders can obtain that for free, the current rules require the LLC holder to pay for additional documentation.
- R9-3-205
    - The rule is effective but could be improved and updated by removing a required fax number for the point of contact of the child care group home.
- R9-3-301 and R9-3-302
    - The rule is effective but could be improved by specifying that CPR and first aid training specific to adult and pediatric is required, since some training classes do not include the pediatric portion of the training.
- R9-3-501
    - Subsection (A)(2) can be removed because the Department does not license child care group homes to facilitate more than 10 enrolled children, therefore the rule is not effective.
- R9-3-507

- Reference to soiled plastic pants in subsection (B)(3) can be removed since these are no longer commonly used, therefore the rule is not effective.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are currently 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 indicates the rules are not related to federal law.

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?

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 certifies child care group homes in compliance with A.R.S. § 36-897.01. The Department states a CCGH is specific to the certificate holder and is valid only for the location occupied at the time the certificate was issued. As such, the Department indicates a general permit is not applicable and is not used. Pursuant to A.R.S. § 41-1037(A)(3), an agency may use a permit other than a general permit if "[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements."

11. Conclusion

This 5YRR from the Department relates to thirty-four (34) rules and three (3) tables in Title 9, Chapter 3 regarding the monitoring, certification, and regulation of Child Care Group Homes. Specifically, these rules cover the following articles: Article 1 - General, Article 2 - Certification, Article 3 - Operating a Child Care Group Home, Article 4 - Program and Equipment Standards, and Article 5 - Physical Environment Standards. The Department is proposing changes to several rules to improve their clarity, conciseness, understandability, consistency, and effectiveness and plans to submit a Notice of Final Rulemaking to the Council by December 2025.

Council staff recommends approval of this report.

Gmail

GRRC - ADOA <grrc@azdoa.gov>

DHS: 5YRR on 9 A.A.C. 3

1 message

Angelica Trevino <angelica.trevino@azdhs.gov> Wed, Oct 9, 2024 at 11:35 AM
To: GRRC - ADOA <grrc@azdoa.gov>
Cc: Margaret Bernal <margaret.bernal@azdhs.gov>, Lucinda Feeley <lucinda.feeley@azdhs.gov>

Hello,

RE: Response to comments/questions raised at the GRRC Meeting of 10/1/2024 regarding 5YRR on 9 A.A.C. 3

In response to the comments raised by Vice Chair Thornwald, the Department amended the report. Please see #8 of the report, in the 6th paragraph (also shown in this email below in italics).

Response to Vice Chair Thorwald's comments/questions:
The Child and Adult Care Food Program (CACFP) is a federal program through the United States Department of Agriculture (USDA) that provides reimbursements for nutritious meals and snacks to eligible children and adults who are enrolled for care at participating child care centers, day care homes, and adult day care centers. As such, the CACFP has a broader scope than just in relation to children and the rules for licensing Child Care Group Homes found in 9 A.A.C. 3 (which is the subject of this 5YRR).

The Arizona Department of Education operates the CACFP in Arizona for children. The Department of Health Services (Department) uses the meal pattern guidance offered by the CACFP and the Arizona Department of Education when using language in the rules pertaining to Child Care Group Homes (9 A.A.C. 3); however, does not incorporate or reference the CACFP in the rules themselves. The Five-Year-Report intended to say that the Department believes that the rules can benefit from updating terminology to terminology that is also used by the CACFP.

Additional Information:

The Arizona Department of Education monitors the organizations that receive funds through the CACFP. Child care centers and Head Start Programs wanting to participate in the federally funded food program must apply through the Arizona Department of Education and meet the requirements. Child Care Group Homes (the subject of this 5YRR) fall within the scope of child care centers that may apply with the Arizona Department of Education to receive federal funds to reimburse "for nutritious meals and snacks served to eligible children enrolled for care." More information on this program can be found at: https://www.azed.gov/hns/cacfp.

More information on a broader scope of the program can be found at:

https://www.fns.usda.gov/cacfp

This information is from their website: "CACFP also provides reimbursements for meals served to children and youth participating in afterschool care programs, children residing in emergency shelters, and adults over the age of 60 or living with a disability and enrolled in day care facilities. CACFP contributes to the wellness, healthy growth, and development of young children and adults in the United States."

For clarification purposes the Five-Year-Review Report was updated to say the following:

... Other changes include clarifying fingerprint clearance cards and clarifying adult staff member high school education requirement. The Department will also consider updating terminology in rules by using terminology used by the Child and Adult Care Food Program (CACFP) which is a federally funded food program. This food program provides guidance on meal patterns used in centers offering care for children and infants. The Department does not incorporate CACFP into the rules; however, may use terminology used by CACFP.

Best,

Angie Trevino
Senior Rules Analyst
ARIZONA DEPT OF HEALTH SERVICES

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9 AAC 3 Child Care Group Homes 5YRR. rev 10.9.24.pdf
240K

ARIZONA DEPARTMENT
OF HEALTH SERVICES

August 9, 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. 3, Five-Year-Review Report for Child Care Group Homes

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. 3, Child Care Group Homes, which is due on September 30, 2024.

The Department reviewed the rules in 9 A.A.C. 3, 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 3. Department of Health Services – Child Care Group Homes

Due: September 30, 2024

Submitted: August 9, 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. §§ 36-897.01 through 36-897.13

2. The objective of each rule:

Rule	Objective
R9-3-101	The objective of the rule is to define the terms used in Chapter 3 so requirements are clear and terms are interpreted consistently.
R9-3-102	The objective of the rule is to specify the process for Department approval of an application for a certificate and a change affecting a certificate.
Table 1.1	The objective of the table is to specify time-frame duration required for Department's approval of an application for a certificate and a change affecting a certificate.
R9-3-103	The objective of the rule is to establish which individuals may act on behalf of an applicant or certificate holder based on whether the applicant or certificate holder is an individual or business organization.
R9-3-201	The objective of the rule is to specify the requirements for submitting an application packet for licensure as a child care group home.
R9-3-202	The objective of the rule is to establish requirements for a licensee to ensure that each staff member has a current-valid fingerprint clearance card before the staff member's staring date of employment or volunteer service and maintains a current-valid fingerprint clearance card during employment or time providing volunteer service.
R9-3-203	The objective of the rule is to establish the certification fees for a certificate holder and inform a certificate holder when fees are due.

R9-3-204	The objective of the rule is to inform a certificate holder that a certificate to operate a child care group home is not valid if the certificate holder fails to submit the certification fee specified in R9-3-203.
R9-3-205	The objective of the rule is to inform a licensee of specific changes made to a child care group home that requires a licensee to notify the Department prior to making the change. Changes affecting a license include space utilization or capacity, name, ownership, and location.
R9-3-206	The objective of the rule is to inform an applicant, certificate holder, or provider that the Department, during an inspection or investigation, shall have access to the physical premises of a child care group home and permitted to interview staff members or enrolled children outside the presence of others.
R9-3-207	The objective of the rule is to specify the types of and the criteria to consider when determining a disciplinary action the Department may take.
R9-3-301	The objective of the rule is to establish the responsibilities of a certificate holder; the responsibilities and qualification criteria for a group home provider and staff members; and requirements to ensure residents are safe and receive continuously quality of care.
R9-3-302	The objective of the rule is to require a certificate holder to provide basic child care trainings to new staff members, ensure that staff members complete additional child care trainings annually, and maintain document of staff members completed training.
R9-3-303	The objective of the rule is to establish who may enroll a child into a child care group home and what information related to the child is required at the time of enrollment and disenrollment.
R9-3-304	The objective of the rule is to provide immunization requirements for enrolled children, including requirements for ensuring enrolled children maintain current age-appropriate immunizations required by 9 A.A.C. 6, Article 7.
R9-3-305	The objective of the rule is to ensure the safety of enrolled children by requiring a certificate holder to establish methods for documenting the arrival and departure of an enrolled child; for verifying an enrolled child who has written permission to self-admit or self-release; and verifying an unknown individual asked to sign out an enrolled child.
R9-3-306	The objective of the rule is to require certificate holders to make certain pesticide information available to enrolled children parents before a pesticide application occurs in a child care group home.

R9-3-307	The objective of the rule is to provide requirements to prevent the spread of illness or infestation in a child care group home and for reporting to parents and local health agencies exposure or potential exposure of a communicable disease or infestation.
R9-3-308	The objective of the rule is to provide requirements to protect enrolled children from abuse or neglect by requiring certificate holders and staff members to report and document suspected abuse or neglect of an enrolled child to Child Protective Services or local law enforcement.
R9-3-309	The objective of the rule is to ensure proper administration of medications, prescription and non-prescription, to enrolled children. The requirements include who may and how a medication is administered; verification of a parent or medical professional written authorized; and how to store enrolled children's medication to prevent unauthorized access.
R9-3-310	The objective of the rule is to provide requirements for a certificate holder to maintain and make available a first-aid kit to staff members for providing first-aid treatment to an enrolled child, when needed, and for a certificate holder and staff members attending to an enrolled child who has an injury, medical emergency, or death.
R9-3-401	The objective of the rule is to establish requirements that ensure areas and equipment for enrolled children are free of hazards and in good repair. The rule also includes requirements for toys and playground equipment be age-appropriate, sufficient in number, and accessible and staff members are to monitor enrolled children's health and safety by changing soiled clothing, making drinking water available, observing for overexposure to the sun, and applying sunscreen.
R9-3-402	The objective of the rule is to establish standards for the sleeping/napping needs of enrolled children and for when an attending staff member may sleep.
R9-3-403	The objective of the rule is to establish standards for the unique needs of infants and 1- and 2-year-old enrolled children. The standards require a group home to utilize safe sleeping positions and bedding; limit awake time spent in a crib, swing, and other confining device; prepare and store formula, milk, and foods; use age-specific utensils, toys, and feeding chairs; change soiled diapers; and develop a toilet training program.
R9-3-404	The objective of the rule is to establish standards for the unique needs of enrolled children with special needs and staff members who assist an enrolled child using a feeding tube or transporting an enrolled child in a wheelchair.
R9-3-405	The objective of the rule is to clarify requirements and limits a certificate holders shall ensure staff members apply when disciplining or providing guidance to enrolled children.

R9-3-406	The objective of the rule is to establish nutrition and meal standards to ensure that enrolled children receive the right balance of fruits, vegetable, milk, whole grains, and lean protein with each meal to maintain good health, growth, and development.
Table 4.1	The objective of the rule is to provide requirements for the times each type of meal is to be served to an enrolled child.
Table 4.2	The objective of the rule is to provide food components, quantities, and permitted and non-permitted combination of a meal required to be served to an enrolled child.
R9-3-407	The objective of the rule is to establish requirements to ensure that food is stored, served, and consumed in a safe and sanitary manner.
R9-3-408	The objective of the rule is to ensure that enrolled children are safe when transported by a group home during hours of operation. The requirements include obtaining parent's permission prior to transport an enrolled child and maintaining a motor vehicle used for transport according to state laws.
R9-3-501	The objective of the rule is to ensure that the child care group home has sufficient square footage, toileting facilities, climate control, and lighting.
R9-3-502	The objective of the rule is to ensure that a child care group home has sufficient outdoor activity area, shading, play equipment, landscaping, and fencing.
R9-3-503	The objective of the rule is to establish standards for maintaining a swimming pool and a safe swim environment used by enrolled children and staff members.
R9-3-504	The objective of the rule is to establish fire and emergency standards, including fire and emergency evacuation drills, for child care group homes to ensure the health and safety of enrolled children and staff members.
R9-3-505	The objective of the rule is to establish general safety standards for a child care group home to ensure the health and safety of enrolled children on the premises. The standards protect enrolled children against toxic substances, flammable liquids, window blind or curtain cords, fans; stairways; glass and mirrors, firearms, and having access to areas that contain mowers, irrigation, heating and air conditioning units, and other types of hazards conditions.
R9-3-506	The objective of the rule is to ensure a child care group home and its furnishings, equipment, supplies, materials, utensils, and toys are kept clean and free of insects and vermin.

R9-3-507	The objective of the rule is to establish requirements for maintaining clean and sanitary conditions when changing and disposing of diapers of enrolled children at a child care group home.
R9-3-508	The objective of the rule is to establish requirements for maintaining clean and sanitary conditions when animals are kept on the premises of a child care group home.

3. Are the rules effective in achieving their objectives? **Yes __** **No _X_**

Rule	Explanation
R9-3-201	Subsection (2)(k)(ci) would be more effective and less burdensome to licensees by removing that the documentation of good standing issued by the Arizona Corporation Commission has to be dated within the last three months. General documentation would be acceptable and LLC holders can obtain that for free, the current rules require the LLC holder to pay for additional documentation.
R9-3-205	The rule is effective but could be improved and updated by removing a required fax number for the point of contact of the child care group home.
R9-3-301 and R9-3-302	The rule is effective but could be improved by specifying that CPR and first aid training specific to adult and pediatric is required, since some training classes do not include the pediatric portion of the training.
R9-3-501	Subsection (A)(2) can be removed because the Department does not license child care group homes to facilitate more than 10 enrolled children, therefore the rule is not affective.
R9-3-507	Reference to soiled plastic pants in subsection (B)(3) can be removed since these are no longer commonly used, therefore the rule is not affective.

4. Are the rules consistent with other rules and statutes? **Yes __** **No ___**

Rule	Explanation
R9-3-101	The definition of "accident" in subsection (2) should align with the rules in Chapter 5 for child care facilities and be amended to include that an "accident" means an unexpected occurrence that requires attention from a staff member.
R9-3-101	The definition of "age-appropriate" in subsection (7) should align with the rules in Chapter 5 for child care facilities and can be updated to use more inclusive terms within the definition.

R9-3-101 and R9-3-310	The rules would align more with the Chapter 5 for child care facilities and be consistent with the Child Care and Development Block Grant requirements by defining the term "serious physical injury" and using this terminology in the rules rather than just "injury.
R9-3-101	The rules would align other rules in Title 9 if "written notice" was defined as a message in written, typed, or printed characters sent or otherwise proved to have been received to clarify that electronic forms of documentation is acceptable.
R9-3-102	The rules would align more with the Chapter 5 as well as other licensing rules in Title 9 if subsection (A) was removed because it is an obsolete rule to allow for the Department to have additional substantive review time.
R9-3-103, R9-3-201, and R9-3-301	The rules would align more with the Chapter 5 for child care facilities by removing the required Department-provided orientation and making this an optional training that is still available.
R9-3-201	The rules would align more with A.R.S. § 41-1080 regarding the acceptable type of documentation of citizenship.
R9-3-202	The rules would align more with the Chapter 5 for child care facilities as well as the CCDBG requirements of requiring the fingerprint clearance card is issued or renewed every five years. In addition, subsection (F)(1) should require the background check to be completed before the stating date of employment or volunteer service, in compliance with A.R.S. § 46-811 as well as CCDBG requirements. Lastly, subsection (J) is obsolete and can be removed since the date to be in compliance with A.R.S. § 46-811(A) has passed.
R9-3-203	The rules would align more with the Chapter 5 as well as other licensing rules in Title 9 if the rules were amended in subsection (C)(1) to use clearer language regarding the documentation in a "Department-provided format."
R9-3-301	The rules related to tuberculosis testing can be amended and simplified to be less of a burdensome requirement for stakeholders. The Department is currently amending rules in Chapter 5 for child care facilities and is simplifying the required tuberculosis testing to align with CDC standards. Rather than requiring everyone who works at a child care facility or child care group home to receive tuberculosis testing before working, the Department plans to amend the rules to require a self-screening form in a Department-provided format for tuberculosis screening purposes and follow recommendations for further tuberculosis testing, as applicable. Therefore, not everyone will require to be tested for tuberculosis.
R9-3-302	The rules would align more with the Chapter 5 for child care facilities as well as the CCDBG requirements by updating the training requirements to be the same. This would include

	updating the language to be written the same, and adding several new training requirements to the current rules including the use of safe sleeping practices, prevention of shaken baby syndrome, child abuse detection, indoor/outdoor activity safety, sun safety, water safety, etc.
R9-3-302	The cross-reference in subsection (B) should be updated from A.R.S. § 36-309 to A.R.S. § 36-3009.
R9-3-304	The rules would align more with Chapter 5 for child care facilities as well as the CCDBG requirements by requiring a 30-calendar day grace period for an enrolled child who has not had immunizations and is homeless.
R9-3-305	The rules would align more with Chapter 5 for child care facilities if subsection (B) was removed regarding an enrolled child who is allowed to self-admit or self-release because they would be exempt from the requirement.
R9-3-403	The rules would align more with Chapter 5 for child care facilities if the rules were amended to remove the required a top sheet or blanket for each infant. According to the American Academy of Pediatrics, loose blankets and other soft items in an infant's sleep space can contribute to an increased risk of sleep-related infant death.
R9-3-405	The Department is currently amending rules in Chapter 5 for child care facilities, based on stakeholder input, the Department is amending the term from "discipline" to "positive discipline" so that there is less negative cogitation. In addition, language within each subsection of this Section can be amended or rewritten to be clearer, align with the Chapter 5 rules, and coincide with what is wanted in the industry.

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

R9-3-101	The rule is clear, concise, and understandable, but could be improved in subsection (3) by updating the names of the accreditation institutions.
R9-3-101	The rule is clear, concise, and understandable, but could be improved in subsection (10) by removing "certification" since that language is not consistent with a background check. In addition, the definition can be amended to also include that the state criminal history checks within this state and each state where a staff member resided during the preceding five years. Lastly, current subsections (10)(c) and (d) can be combined since the National Crime Information Center includes the National Sex Offender Registry.
R9-3-101	The rule is clear, concise, and understandable, but could be improved in subsection (96) which defines the term "public school" as the same definition as "school" in A.R.S. § 15-101. Since the statutory definition specifies the term "public school," the definition used in the rules can be simplified by removing the reference to "school."
R9-3-101	The rule is clear, concise, and understandable, but could be improved by removing an obsolete definitions that are not used in Chapter 3, or that are only used once, including "corporal punishment," "licensed applicator," "mat," "perishable food," and "regular basis." Terms only used once can be described in the Section it is used and omitted from the definitions in R9-5-101. Removing these terms and definitions would require renumbering subsequent terms and definitions.
R9-3-101	The rules would be more clear if "written notice" was defined as a message in written, typed, or printed characters sent or otherwise proved to have been received.
R9-3-201	The rules would be more clear if language was updated and amended to reflect the online application process rather than a paper "packet." In addition, most homes do not have a landline and only a cell phone is used. Therefore, the rules can be updated to reflect this.
R9-3-301	The rules would be more clear if subsection (A)(4)(i) was removed because it is duplicative to the requirement in (A)(4)(g).
R9-3-302	The rule is clear, concise, and understandable, but could be improved by consolidating language to be more simple and clear.
R9-3-303	The rule is clear, concise, and understandable, but could be improved by reducing the burden on child care group homes by removing the required immunization card and having the information documented and on file in a format put together by the child care group home. In addition, the language regarding the required documentation on the immunization record can be updated and simplified. For example, the "home address" is required and the rule further states that the "city, state, and zip code" are required, however this information should be

	included within the "home address." Also, an email address requirement should be added to the rules to align with electronic methods of submission.
R9-3-307	The rule would be more clear in subsection (B)(3) was amended to specify the timeframe that documentation needs to be kept, which would only be for 12 months after the date of the notification.
R9-3-307	The rule would be more clear in subsection (D) was amended to cross-reference the communicable diseases list in 9 A.A.C. 6, Article 2, and if specifying the exemption of reporting human immunodeficiency virus or a sexually transmitted disease was removed.
R9-3-101, R9-3-404, and R9-3-407	The rule could be clearer by using the terms 'an enrolled child with a special health care need or a disability. This word usage is more inclusive and also aligns with the new changes the Department is making in a current rulemaking for Title 9, Chapter 5. Child Care Facilities.
Table 4.1	The rule could be clearer by correcting a grammatical error by adding the word "the" when referring to the "parent or child."
R9-3-407	The rule could be clearer by combining subsections (A)(16) and (17) so that the rule is less duplicative.
Table 5.1	The rule is clear, concise, and understandable, but could be improved by amending the word "supper" to "dinner" for consistency throughout the Article.
R9-3-502	The rule is clear, concise, and understandable, but could be improved by amending a grammatical correction in subsection (C)(3) and clarifying that there is covering over the fall zone of the climbing structure, swing, or slide.
R9-3-503	The rule is clear, concise, and understandable, but could be improved by amending a grammatical correction in subsection (E) by moving the placement of the word "clearly" in the rule.
R9-3-508	The rule could be improved in subsection (7) by simplifying the language related to reptiles in a child care group home.

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.) Title 36, Chapter 7.1, Article 4 authorizes the Arizona Department of Health Services (Department) to monitor, certify, and regulate child care group homes (CCGHs). "Child care group home" is defined in A.R.S. § 36-897(1) to mean “a residential facility in which child care is regularly provided for compensation for periods of less than twenty-four hours per day for not less than five children but no more than ten children through the age of twelve years.” The Department licenses CCGHs and has adopted rules for CCGHs in Arizona Administrative Code (A.A.C.) Title 9, Chapter 3. A.R.S. § 36-897.01 requires the Department to “issue an initial certificate if the department determines that the applicant and the applicant's child care group home are in substantial compliance with the requirements of this article and department rules and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies” and pursuant to A.R.S. § 36-897.02, “by rule shall establish standards of care for child care group home.” A CCGH certificate is valid for one year, and A.R.S. § 36-897.02(F) requires the Department to monitor each CCGH at least two times per year to ensure that the CCGH is meeting Department standards of care. The rules in Title 9, Chapter 3 provide definitions; application requirements for licensure, including fingerprinting; facility administration requirements; facility staff and training requirements; facility program and equipment requirements; and requirements for the physical plant of a facility.

The Department currently certifies approximately 290 CCGHs statewide, with 287 active licenses. Between July 1, 2023, and July 1, 2024, the Department issued 71 certifications for initial, renewal, and amended CCGH licenses. As of August 2024, there are 25 pending applications for initial certification. During Fiscal Year 2023 (FY23), the Department did not deny or withdraw any applications, though 45 group homes closed. In the same period, the Department conducted 329 routine compliance inspections and 92 complaint-based inspections. Additionally, 20 enforcement actions were taken against licensed CCGHs, with some actions addressing multiple complaints.

In the last five years, the Department has completed two expedited rulemakings and one exempt rulemaking in 9 A.A.C. 3. Affected persons include certificate holders (CCGHs), consumers, enrolled children, parents of enrolled children, and the Department. The analysis of the estimated economic impact designated annual costs and benefits as minimal or when less than $1,000; moderate when $1,000 to 10,000; and substantial when greater than $10,000. Costs and benefits were designated as significant when meaningful or important but not readily subject to quantification. The Department was not required to complete an economic, small business, and consumer impact statement (EIS) for the exempt rulemakings, and as such, the Department did not file an EIS for any of the exempt and expedited rulemakings.

The rules in 9 A.A.C. 3 were last amended by final expedited rulemaking at 28 A.A.R. 1835, with an immediate effective date of July 7, 2022. This rulemaking implemented Laws 2020, Ch. 86 to clarify requirements for child care personnel, volunteers, and others who provide services for enrolled children to obtain and provide a valid fingerprint clearance card within seven working days of employment or volunteer work. Additionally, the rulemaking clarified requirements for background checks pursuant to the Child Care and Development Block Grant Act of 2014 as indicated in Laws 2020, Ch. 86. With over 2,500 child care group

homes currently licensed in Arizona, the Department expected that the rulemaking would benefit thousands of children enrolled in licensed child care group homes by providing rules that ensure child care personnel, volunteers, and others have a fingerprint clearance card, or as applicable, are approved by a background check before starting employment or volunteer work. This rulemaking amended R9-3-101, R9-3-201, R9-3-202, R9-3-205, and R9-3-301. As expected, the rulemaking provided a significant benefit to child care group homes by ensuring health and safety needs were met, therefore, any associated costs outweigh the benefits of the rule.

The Department also amended the rules in 2022 by exempt rulemaking at 28 A.A.R. 1767, with an immediate effective date of July 1, 2022. In this rulemaking, the Department lowered the certification fee for CCGHs in R9-3-203. The Department clarified in the rules that the fee for a license is due on an annual basis, as specified in A.R.S. § 36-897.01(D). The certificate for licensing fees for CCGHs decreased from $1,000 to $330. This reduction in certification fees significantly alleviated financial burdens on CCGHs, enabling them to allocate more resources toward enhancing the quality of care and accessibility for families.

The rules in 9 A.A.C. 3 were also mended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). The Department amended the rules to achieve the purpose prescribed in A.R.S. § 41-1027(A)(1) to amend a rule that is outdated and in (A)(7) to implement a course of action proposed in a five-year review report (Report). Through expedited rulemaking, under A.R.S. § 41-1027, the Department amended 23 Sections and two Tables. The Report identified that the rules are effective, however could be improved to make clearer and increase understandability of the rules by simplifying and clarifying some requirements, updating antiquated language and outdated definition and references, and making minor technical and grammatical changes. Changes include adding and updating antiquated terms, such as “accredited” “enrolled children,” “modification” and “positioning device.” Other changes include clarifying fingerprint clearance cards and clarifying adult staff member high school education requirement. The Department will also consider updating terminology in rules by using terminology used by the Child and Adult Care Food Program (CACFP) which is a federally funded food program. This food program provides guidance on meal patterns used in centers offering care for children and infants. The Department does not incorporate CACFP into the rules; however, may use terminology used by the CACFP. Additionally, requirements related to child passenger restraint system will be changed to make consistent with A.R.S. § 28-907 and 28-909. Also, the rules were amended to be consistent with A.R.S. § 37-897.13, which allows for and enrolled school-age child to possess and use a topical sunscreen product if the parent of the enrolled school-age child provides notice to the child care group home without having to have a note or prescription from a licensed health care professional. As expected, the new changes have not increased the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person. The Department believes the amended rules have eliminated confusion, reduced regulatory burden, and has improved health and safety of children at CCGHs.

Overall, the Department estimates that certificate holders, enrolled children, consumers and the Department benefit significantly from the rulemakings for providing updated rules that are easier to use, less expensive to enforce, consistent with statute, easier to understand and more effectively protect the health and

safety of enrolled children. The Department has determined that the benefit of the rules outweigh any potential costs and impose the least burden and costs to persons and governmental agencies regulated by the rules and achieve the regulatory objective of protecting the health, safety, and well-being of children in licensed child care facilities.

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. Through expedited rulemaking found in 26 A.A.R. 1969, the Department completed this course of action.

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 rules aim to ensure the safety, health, and proper administration of child care group homes by establishing clear guidelines and consistent standards for terminology, approval processes, representation, application requirements, staff requirements, certification fees, notifications of changes, inspection access, disciplinary actions, and various operational aspects. These rules are important to public health because they ensure the safety, well-being, and promote the development of children in care, prevent the spread of illness and communicable diseases, maintain high standards of hygiene and sanitation, and safeguard against abuse and neglect, thereby promoting a healthy and secure environment for children and the broader community. 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)?

The rules are not related to federal laws. However, some CCGHs receive funding from the Child Care and Development Block Grant (CCDBG). The CCDBG is a federal program in the United States that provides funding to states to help low-income families access affordable and high-quality child care. This block grant supports working parents and those attending job training or educational programs by subsidizing child care costs. Additionally, it aims to improve the overall quality of child care, ensure health and safety standards in child care settings, and enhance the development and well-being of children. CCDBG regulates entities who receive funding with requirements set forth according to 45 CFR Part 98. The Department of Economic Security is the lead

agency to enforce CCDBG requirements. Some of the rules in 9 A.A.C. 3 that are the least burdensome and promote health and safety are consistent with the CCDBG requirements.

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 Department, in compliance with A.R.S. § 36-897.01, certifies CCGHs. A CCGH is specific to the certificate holder and is valid only for the location occupied at the time the certificate was issued. A general permit is not applicable and is not used.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Changes as described in this 5YRR, could improve the effectiveness and enforcement of the rules. The Department plans to make changes to the rules to address these items and to submit a Notice of Final Rulemaking to the Council by December 2025.

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

Authority: A.R.S. §§ 36-132(A)(1) and (C), 36-136(G) and 36-897.01

ARTICLE 1. GENERAL

ARTICLE 2. CERTIFICATION

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS

ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

ARTICLE 1. GENERAL

R9-3-101. Definitions

In addition to the definitions in A.R.S. § 36-897 and unless the context indicates otherwise, the following definitions apply in this Chapter:

1. "Abuse" has the meaning in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
   a. Causes physical injury to an enrolled child, and
   b. May or may not be an emergency.
3. "Accredited" means approved by the:
   a. New England, Commission of Institution of Higher Education,
   b. Middle States, Commission of Higher Education,
   c. North Central, the Higher Learning Commission,
   d. Northwest Association of Schools and Colleges,
   e. Commission on Colleges, or
   f. Western Association of Colleges and Schools.
4. "Activity" means an action planned by a certificate holder or staff member and performed by an enrolled child while supervised by a staff member.
5. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
6. "Adult" means an individual 18 years of age or older.
7. "Age-appropriate" means consistent with a child's age and age-related stage of physical growth and mental development.
8. "Applicant" means an individual or business organization requesting one of the following:
   a. A certificate under R9-3-201, or
   b. Approval of a change affecting a certificate under R9-3-205.
9. "Application" means the documents that an applicant is required to submit to the Department to request a certificate or approval of a request for a change affecting a certificate.
10. "Background check certification" means results identified in searches according to A.R.S.§ 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
    a. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
    b. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;
    c. The National Crime Information Center; and
    d. The National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 A.S.C. 16901 et seq).
11. "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
12. "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, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
13. "Capacity" means the maximum number of enrolled children authorized by the Department to be present at a child care group home during hours of operation.
14. "Certificate holder" means a person to whom the Department has issued a certificate.
15. "Change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in the operation of a child care group home.
16. "Child" means any individual younger than 13 years of age.
17. "Child care experience" means an individual's documented work with children in:
    a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
    b. A public school, a charter school, a private school, or an accommodation school; or
    c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12.
18. "Child care services" means the range of activities and programs provided by a certificate holder to an enrolled child, including personal care, supervision, education, guidance, and transportation.
19. "Child with special needs" means:
    a. A child with a documented diagnosis from a physician, physician assistant, or registered nurse practitioner of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
    b. A child with a "developmental disability" as defined in A.R.S. § 36-551; or
    c. A "child with a disability" as defined in A.R.S. § 15-761.

20. "Clean" means:
    a. To remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping; or
    b. Free of dirt and debris.
21. "Communicable disease" has the meaning in A.A.C. R9-6-101.
22. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
23. "Controlling person" has the meaning in A.R.S. § 36-881.
24. "Corporal punishment" means any physical act used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
25. "CPR" means cardiopulmonary resuscitation.
26. "Credit hour" means an academic unit earned through an accredited college or university for completing the equivalent of one hour of class time each week during a semester or equivalent shorter course term, as designated by the accredited college or university.
27. "Designated agent" means an individual who is authorized by an applicant or certificate holder to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or certificate holder.
28. "Developmentally appropriate" means consistent with a child's physical, emotional, social, cultural, and cognitive development, based on the child's age and family background and the child's personality, learning style, and pattern and timing of growth.
29. "Discipline" means the on-going process of helping a child develop self-control and assume responsibility for the child's own actions.
30. "Documentation" means information in written, photographic, electronic, or other permanent form.
31. "Emergency" means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
32. "Endanger" means to expose an individual to a situation where physical or mental injury to the individual may occur.
33. "Enrolled child" means a child:
    a. Who is not a resident; and
    b. Who has been placed by a parent or guardian to receive child care services regardless of payment.
34. "Fall zone" means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
35. "Field trip" means travel for a specific activity to a location away from an area of the child care group home approved for providing child care services.
35. "Food" means a raw, cooked, or processed edible substance or ingredient, including a beverage, used or intended for use in whole or in part for human consumption.
36. "Guidance" means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
37. "Hazard" means a source of endangerment.
38. "High school equivalency diploma" means:
    a. A document issued by the Arizona State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
    b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
    c. A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental entities.
40. "Hours of operation" means the specific days of the week and time period during a day when a certificate holder provides child care services on a regular basis.
41. "Illness" means physical manifestation or signs of sickness such as pain, vomiting, rash, fever, discharge, or diarrhea.
42. "Immediate" or "Immediately" means without restriction, delay, or hesitation.
43. "Inaccessible" means:
    a. Out of an enrolled child's reach, or
    b. Locked.
44. "Individual plan" means a written description of the daily activities required for an enrolled child with special needs.
45. "Infant" means a child 12 months of age or younger.
46. "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
47. "Licensed applicator" means an individual who complies with A.A.C. R3-8-201(C).
48. "Mat" means a foam pad that has a waterproof cover.
49. "Mechanical restraint" means a device, article, or garment attached or adjacent to a child's body that the child cannot easily remove and that restricts the child's freedom of movement or normal access to the child's body, but does not include a device, article, or garment:
    a. Used for orthopedic purposes, or

b. Necessary to allow a child to heal from a medical condition.

50. "Medication" means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or that is available without a prescription for the treatment or prevention of illness or infestation.
51. "Menu" means a written description of food that a child care group home provides and serves as a meal or snack.
52. "Modification" means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a child care group home.
53. "Motor vehicle" has the meaning in A.R.S. § 28-101.
54. "Neglect" has the meaning in A.R.S. § 8-201.
55. "Outbreak" has the meaning in A.A.C. R9-6-101.
56. "Parent" means:
    a. A natural or adoptive mother or father,
    b. A legal guardian appointed by a court of competent jurisdiction, or
    c. A "custodian" as defined in A.R.S. § 8-201.
57. "Perishable food" means food that becomes unfit for human consumption if not stored to prevent spoilage.
58. "Person" has the meaning in A.R.S. § 1-215.
59. "Personal items" means those articles of property that belong to an enrolled child and are brought to the child care group home for that enrolled child's exclusive use, such as clothing, a blanket, a sheet, a toothbrush, a pacifier, a hairbrush, a comb, a washcloth, or a towel.
60. "Physician" means an individual licensed as a doctor of:
    a. Allopathic medicine under A.R.S. Title 32, Chapter 13;
    b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
    c. Osteopathic medicine under A.R.S. Title 32, Chapter 17;
    d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
    e. Allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of another state.
61. "Physician assistant" means:
    a. The same as in A.R.S. § 32-2501, or
    b. An individual licensed as a physician assistant under the laws of another state.
62. "Positioning device" means a belt or harness that prevents an enrolled infant's movement.
63. "Premises" means a child care group home's residence and the surrounding property, including any structures on the property, that can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another person.
64. "Registered nurse practitioner" means:
    a. The same as in A.R.S. § 32-1601, or
    b. An individual licensed as a registered nurse practitioner under the laws of another state.
65. "Regular basis" means at recurring, fixed, or uniform intervals.
66. "Residence" means a dwelling, such as a house, used for human habitation.
67. "Resident" means an individual who receives child care services and uses a child care group home as the individual's principal place of habitation for 30 calendar days or more during the calendar year.
68. "Sanitize" means to use heat, a chemical agent, or a germicidal solution to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
69. "School-age child" means a child who attends:
    a. A public school, as defined for "school" in A.R.S. § 15-101; or
    b. A private school, as defined in A.R.S. § 15-101.
70. "Separate" means to exclude a child from and have the child physically move away from other children, while keeping the child under supervision.
71. "Signed" means affixed with an individual's signature or, if the individual is unable to write the individual's name, with a symbol representing the individual's signature.
72. "Sippy cup" means a lidded drinking container that is designed to be leak-proof or leak-resistant and from which a child drinks through a spout or straw.
73. "Space utilization" means the designated use of specific areas on the premises for providing child care services.
74. "Staff member" means an individual who works at a child care group home providing child care services, regardless of whether compensation is received by the individual in return for providing child care services, and includes a provider.
75. "Supervision" means:
    a. For a child who is awake, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times, to interact with the child, and to provide guidance to the child;
    b. For a child who is asleep, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times and to respond to the child;
    c. For a staff member who is not an adult, knowledge of and accountability for the actions and whereabouts of the staff member and the ability to interact with and provide guidance to the staff member; or

d. For an individual other than a child or staff member, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.

76. "Swimming pool" has the meaning in A.A.C. R18-5-201.
77. "Training" means instruction received through:
    a. Completion of a live or computerized conference, seminar, lecture, workshop, class, or course; or
    b. Watching a video presentation.
78. "Week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
79. "Working day" means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

Historical Note

Emergency rule adopted effective June 16, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency expired. Adopted effective October 22, 1992 (Supp. 92-4). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3). New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-102. Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Chapter is set forth in Table 1.1. The applicant 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 described in A.R.S. § 41-1072 for each type of approval 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.

1. The Department shall send a notice of administrative completeness or deficiencies to the applicant 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.
    c. If an applicant fails to submit to the Department all of the information or items listed in the notice of deficiencies within 180 calendar days after the date that the Department sent the notice of deficiencies, the Department shall consider the application withdrawn.
2. If the Department issues a certificate or other approval to the applicant 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 described in A.R.S. § 41-1072 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 for an application for a certificate, the Department shall conduct an inspection that may require more than one visit to the child care group home or premises.
2. As part of the substantive review for a request for approval of a change affecting a certificate that requires a change in the use of physical space at a child care group home, the Department shall conduct an inspection that may require more than one visit to the child care group home.
3. The Department shall send a certificate or a written notice of approval or denial of a certificate or other request for approval to an applicant within the substantive review time-frame.
4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
    a. If the Department determines that an applicant, a child care group home, or the premises are not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, 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.
    b. An applicant 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.
    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 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)(4)(b), the Department shall deny the application.

5. The Department shall issue a certificate or approval if the Department determines that the applicant and the child care group home or premises are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, and the applicant submits documentation of corrections, which is acceptable to the Department, for any deficiencies.
6. If the Department denies a certificate or approval, the Department shall send to the applicant 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 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

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
Certificate under R9-3-201	A.R.S. § 36-897.01	150	30	120
Approval of Change Affecting Certificate under R9-3-205(B)	A.R.S. §§ 36-897.01 and 36-897.02	75	30	45

Historical Note

New Table 1.1 renumbered from Table 1 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-103. Individuals to Act for Applicant or Certificate Holder

When an applicant or certificate holder is required by this Chapter to provide information on or sign an application form or other document, hold a fingerprint clearance card, or complete Department-provided orientation, the following shall satisfy the requirement on behalf of the applicant or certificate holder:

1. If the applicant or certificate holder is an individual, the individual; and
2. If the applicant or certificate holder is a business organization, the designated agent 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 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

ARTICLE 2. CERTIFICATION

R9-3-201. Application for a Certificate

An applicant for a certificate shall:

1. Be at least 21 years of age, and
2. Submit to the Department an application packet containing:
   a. An application on a form provided by the Department that contains:
      i. The applicant's name and date of birth;
      ii. The name to be used for the child care group home, if any;
      iii. The address and telephone number of the residence;
      iv. The mailing address of the applicant, if different from the address of the residence;
      v. The applicant's contact telephone number, if different from the telephone number of the residence;
      vi. The applicant's e-mail address, if applicable;
      vii. The name of the provider, if different from the applicant;

viii. The requested capacity for the child care group home;
ix. The anticipated hours of operation for the child care group home;
x. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
xi. Whether the applicant or any controlling person has been denied a certificate or license to operate a child care group home or child care facility in this state or another state or has had a certificate or license to operate a child care group home or child care facility revoked in this state or another state and, if so:
(1) The name of the individual who had the certificate or license denied or revoked,
(2) The reason for the denial or revocation,
(3) The date of the denial or revocation, and
(4) The name and address of the certifying or licensing agency that denied or revoked the certificate or license;
xii. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
xiii. A statement that the applicant has sufficient financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
xiv. A statement that the information provided in the application packet is accurate and complete; and
xv. The applicant's signature and date the applicant signed the application;

b. A copy of the applicant's:
i. U.S. passport,
ii. Birth certificate,
iii. Naturalization documents, or
iv. Documentation of legal resident alien status;

c. A copy of the applicant's valid fingerprint clearance card issued, both front and back, according to A.R.S. Title 41, Chapter 12, Article 3.1;

d. A copy of the applicant's valid background check document according to A.R.S. § 46-811(A);

e. A copy of the form required in A.R.S. § 36-897.03(B) for the applicant;

f. A document issued by the Department showing that the applicant has completed Department-provided orientation training that included the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4, and this Chapter;

g. A floor plan of the residence where child care services will be provided, showing:
i. The location and dimensions of each room in the residence, with designation of the rooms to be used for providing child care services;
ii. The location of each exit from the residence;
iii. The location of each sink and toilet available for use by enrolled children;
iv. The location of each smoke detector in the residence; and
v. The location of each fire extinguisher in the residence;

h. A site plan of the premises showing:
i. The location and dimensions of the outdoor activity area;
ii. The height of the fence around the outdoor activity area;
iii. The location of each exit from the outdoor activity area;
iv. The location of the residence;
v. The location of each swimming pool, if applicable;
vi. The location and height of the fence around each swimming pool, if applicable; and
vii. The location and dimensions of any other building or structure on the premises, if applicable;

i. If the child care group home is located within one-fourth of a mile of agricultural land:
i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the child care group home, and
ii. A copy of an agreement complying with A.R.S. § 36-897.01(B) for each parcel of agricultural land;

j. The applicable fee in R9-3-203; and

k. If the applicant is a business organization, a form provided by the Department that contains:
i. The name, street address, city, state, and zip code of the business organization;
ii. The type of business organization;
iii. The name, date of birth, title, street address, city, state, and zip code of the designated agent;
iv. The name, date of birth, title, street address, city, state, and zip code of each other controlling person;
v. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable; and
vi. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application, if applicable.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 15 A.A.R. 2091, effective January 1, 2010 (Supp. 09-4). Amended by exempt rulemaking at 17 A.A.R. 1530, effective Sep-

tember 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-202. Fingerprinting and Background Checks

A. A certificate holder shall ensure that:
1. A staff member completes, signs, dates, and submits to the certificate holder before the staff member's starting date of employment or volunteer service:
   a. The form required in A.R.S. § 36-897.03(B); and
   b. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I); and
2. An adult resident completes, signs, dates, and submits to the certificate holder before the resident's starting date of residency or the date of certification of the child care group home the form required in A.R.S. § 36-897.03(B).

B. A certificate holder shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and documentation of a valid background check document issued under A.R.S. § 46-811.

C. Except as provided in A.R.S. § 41-1758.03, a certificate holder shall ensure that a staff member before starting date of employment or volunteer service and an adult resident before starting date of residency or the date of certification of the child care group homes, submits a copy of a valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.

D. A certificate holder shall ensure that each individual who is a staff member or an adult resident submits to the certificate holder a copy of the individual's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every six years.

E. If a staff member or resident possesses a fingerprint clearance card that was issued before the staff member or resident became a staff member or resident at the child care group home, a certificate holder shall:
1. Contact the Department of Public Safety before the individual becomes a staff member or resident to determine whether the fingerprint clearance card is valid; and
2. Document this determination, including the name of the staff member or resident, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

F. A certificate holder shall ensure each staff member and each adult resident submits to the certificate holder documentation of the staff member's or adult resident's valid:
1. Background check issued under A.R.S. § 46-811(A) within 10 calendar days after stating date of employment or volunteer service; and
2. Background check each time the background check document is issued or renewed every five years.

G. If required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a certificate holder shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.

H. A certificate holder shall not allow an adult individual to be a staff member or a resident if the individual:
1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1, and has not received an interim approval under A.R.S. § 41-619.55;
2. Has been denied a background check document that indicates the adult individual is not eligible for employment due to violations identified pursuant to A.R.S. § 46-811;
3. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
4. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
5. Has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
6. Has had a license to operate a child care facility or certificate to operate a child care group home in this state or another state revoked for reasons related to the endangerment of the health and safety of children;
7. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or
8. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

I. Within 30 calendar days after the day of a staff member's or adult resident's 18th birthday, the staff member or adult resident shall provide to the certificate holder copies of a valid fingerprint clearance card and a valid background check document specified in subsection (C).

J. Beginning November 1, 2021, certificate holders, staff members, and adult residents shall comply with A.R.S. § 46-811(A) and subsection (C)(2) by November 1, 2022.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by exempt rulemaking at 19 A.A.R. 2607, effective August 1, 2013 (Supp.13-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-203. Certification Fees

A. Except as provided in subsection (B), the certification fee for a certificate holder is $330.

B. The Department may discount the certification fee in subsection (A), based on available funding or if the applicant or certificate holder participates in a Department-approved program.

C. A certificate holder shall submit to the Department annually and no more than 60 calendar days before the anniversary date of the child care group home's certificate:

1. A form provided by the Department that contains:
   a. The certificate holder's name;
   b. The child care group home's name, if applicable, and certificate number; and
   c. Whether the certificate holder intends to submit the applicable fee:
      i. With the form, or
      ii. According to the payment plan in subsection (C)(2)(b); and
2. Either:
   a. The applicable fee in subsection (A) or (B), or
   b. One-half of the applicable fee in subsection (A) or (B) with the form and the remainder of the applicable fee due no later than 120 calendar days after the anniversary date of the child care group home's certificate.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 15 A.A.R. 2091, effective January 1, 2010 (Supp. 09-4). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 1561, effective July 29, 2010 (Supp. 10-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by exempt rulemaking at 28 A.A.R. 1767 (July 22, 2022), with an immediate effective date of July 1, 2022 (Supp. 22-3).

R9-3-204. Invalid Certificate

If a certificate holder does not submit the certification fee as required in R9-3-203(C)(2), the certificate to operate a child care group home is no longer valid, and the child care group home is operating without a certificate.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-204 renumbered to R9-3-205; new R9-3-204 renumbered from R9-3-207 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-205. Changes Affecting a Certificate

A. For an intended change in a certificate holder's name or the name of a child care group home:

1. The certificate holder shall send the Department written notice of the name change at least 30 calendar days before the intended date of the name change; and
2. Upon receipt of the written notice required in subsection (A)(1), the Department shall issue an amended certificate that incorporates the name change but retains the anniversary date of the certificate.

B. At least 30 calendar days before the date of an intended change in a child care group home's space utilization or capacity, a certificate holder shall submit to the Department a written request for approval of the intended change that includes:

1. The certificate holder's name;
2. The child care group home's name, if applicable;
3. The name, telephone number, e-mail address, and fax number of a point of contact for the request;
4. The child care group home's certificate number;
5. The type of change intended:
   a. Space utilization, or
   b. Capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable:
   a. If requesting a change in capacity, the square footage of the outdoor activity area and the square footage of the indoor areas where child care services will be provided;
   b. If requesting a change that involves a modification of the residence that requires a building permit, a copy of the building permit;
   c. If requesting a change in space utilization that affects individual rooms:
      i. A floor plan of the residence that complies with R9-3-201(2)(g) and shows the intended changes, and
      ii. The square footage of each affected room; and
   d. If requesting a change in space utilization that affects the outdoor activity area:

i. A site plan of the premises that complies with R9-3-201(2)(h) and shows the intended changes, and
ii. The square footage of the intended outdoor activity area.

C. The Department shall review a request submitted under subsection (B) according to R9-3-102. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send the certificate holder an approval of the request and, if necessary, an amended certificate that incorporates the change but retains the anniversary date of the current certificate.

D. A certificate holder shall not implement any change in subsection (B) until the Department issues an approval or amended certificate.

E. At least 30 calendar days before the date of a change in ownership:
1. A certificate holder shall send the Department written notice of the change in ownership; and
2. A person planning to assume operation of a child care group home shall obtain a new certificate as specified in R9-3-201 before beginning operation of the child care group home.

F. A certificate holder changing a child care group home's location shall:
1. Apply for a new certificate as prescribed in R9-3-201, and
2. Obtain a new certificate from the Department before beginning operation of the child care group home at the new location.

G. Within 30 calendar days after the date of a change in the business organization information provided under R9-3-201(2)(k), other than a change in ownership, a certificate holder that is a business organization shall send the Department written notice of the change.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-205 renumbered to R9-3-206; new R9-3-205 renumbered from R9-3-204 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-206. Inspections; Investigations

A. An applicant, certificate holder, or provider shall allow immediate access to all areas of the premises that may affect the health, safety, or welfare of an enrolled child or to which an enrolled child may have access during hours of operation to representatives from:
1. The Department,
2. The local health department,
3. Arizona Department of Child Safety, or
4. The local fire department or State Fire Marshal.

B. A certificate holder or provider shall permit the Department to interview each staff member or enrolled child outside of the presence of others as part of an investigation.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-206 renumbered to R9-3-207; new R9-3-206 renumbered from R9-3-205 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-207. Denial, Revocation, or Suspension of a Certificate

A. The Department may deny, revoke, or suspend a certificate to operate a child care group home if an applicant or certificate holder:
1. Provides false or misleading information to the Department;
2. Is the parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
3. Has been denied a certificate or license to operate a child care group home or child care facility in any state, unless the denial was based on the individual's failure to complete the certification or licensing process according to a required time-frame;
4. Has had a certificate or license to operate a child care group home or child care facility revoked or suspended in any state for reasons that relate to endangerment of the health and safety of children;
5. Has been denied a fingerprint clearance card or has had a fingerprint clearance card suspended or revoked under A.R.S. Title 41, Chapter 12, Article 3.1; or
6. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 4 or this Chapter.

B. In determining whether to deny, suspend, or revoke a certificate, the Department shall consider the threat to the health and safety of enrolled children at a child care group home based on the factors listed in A.R.S. § 36-897.06.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1561, effective July 29, 2010 (Supp. 10-3). Former R9-3-207 renumbered to R9-3-204; new R9-3-207 renumbered from R9-3-206 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

ARTICLE 3. OPERATING A CHILD CARE GROUP HOME

Article 3, consisting of R9-3-301 through R9-3-315, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

R9-3-301. Certificate Holder and Provider Responsibilities

A. A certificate holder shall:

1. Designate a provider who:
   a. Lives in the residence;
   b. Is 21 years of age or older;
   c. Has a high school diploma, high school equivalency diploma, associate degree, or bachelor degree;
   d. Meets one of the following:
      i. Has completed at least three credit hours in child growth and development, nutrition, psychology, or early childhood education;
      ii. Has completed at least 60 hours of training in child growth and development, nutrition, psychology, early childhood education, or management of a child care business; or
      iii. Has at least 12 months of child care experience; and
   e. Has completed Department-provided orientation training that includes the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
2. Ensure that each staff member is 16 years of age or older;
3. Ensure that each resident 12 years of age or older and each staff member submits, on or before the starting date of residency, employment, or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:
   a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of residency, employment, or volunteer service, that includes the date and the type of tuberculosis screening test; or
   b. If the resident or staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the resident or staff member is free from infectious active tuberculosis that is signed and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of residency, employment, or volunteer service; and
4. Ensure that the provider:
   a. Supervises or assigns an adult staff member to supervise each staff member who is not an adult;
   b. Maintains on the premises a file for each staff member, for 12 months after the date the staff member last worked at the child care group home, containing:
      i. The staff member's name, date of birth, home address, and telephone number;
      ii. The staff member's starting date of employment or volunteer service;
      iii. The staff member's ending date of employment or volunteer service, if applicable;
      iv. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
      v. The form required in A.R.S. § 36-897.03(B);
      vi. For an adult staff member, a copy of the staff member's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1;
      vii. Documents required by subsection (A)(3);
      viii. Documentation of the requirements in A.R.S. § 36-897.03(C);
      ix. If applicable:
         (1) The form required in A.R.S. § 8-804(I);
         (2) Documentation of the submission required in A.R.S. § 8-804(C) and the information received as a result of the submission; and
         (3) Documentation of the completion of the Department-provided orientation training specified in subsection (A)(1)(e), if applicable;
      x. Documentation of the training required in R9-3-302; and
      xi. Documentation of a high school diploma, high school equivalency diploma, associate degree, or bachelor degree, if applicable;
   c. Maintains on the premises a file for each resident, for 12 months after the date the resident last resided at the child care group home, containing:
      i. The resident's name and date of birth;
      ii. The resident's relationship to the provider;
      iii. The date the resident began residing at the child care group home;
      iv. The date the resident last resided at the child care group home, if applicable;
      v. A written statement by the resident or, if the resident is a minor, the provider attesting to the resident's current immunity against measles, rubella, diphtheria, mumps, and pertussis;

vi. If the resident is an adult, the form required in A.R.S. § 36-897.03(B);
vii. If the resident is an adult, the documents required by R9-3-202(C)(2) or R9-3-202(D); and
viii. If the resident is 12 years of age or older, the documents required by subsection (A)(3);

d. Prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the staff member's start time and end time of providing child care services for the child care group home;
e. Maintains on the premises the dated attendance record required in subsection (A)(4)(d) for 12 months after the date on the attendance record;
f. Except as specified in R9-3-408, provides child care services only in areas:
i. Designated as provided in R9-3-201(2)(g)(i), or
ii. Approved under R9-3-205(C);
g. Does not engage in outside employment during hours of operation or operate another business at or out of the residence during hours of operation;
h. Does not allow another staff member to engage in or operate another business at or out of the residence during the staff member's assigned work hours at the child care group home;
i. Does not allow the operation of another business on the premises during hours of operation unless the operation of the business does not involve persons coming onto the premises during hours of operation because of the business; and
j. Does not allow the cultivation of medical marijuana on the premises.

B. A certificate holder shall ensure that all of the records required to be maintained by this Chapter either are written in English or, if written in a language other than English, include an English translation.

C. A certificate holder shall:
1. Secure and maintain general liability insurance of at least $100,000 for the child care group home; and
2. Maintain on the premises documentation of the insurance coverage required in subsection (C)(1).

D. A certificate holder shall ensure that:
1. While acting on behalf of the certificate holder when the provider is not present at the child care group home, an adult staff member with a high school diploma or high school equivalency certificate and one of the following is on the premises:
a. At least six months of child care experience;
b. Two or more credit hours in child growth and development, nutrition, psychology, or early childhood education; or
c. At least 30 hours of training in child growth and development, nutrition, psychology, or early childhood education; and
2. At least one adult staff member, in addition to the provider or the staff member specified in subsection (D)(1), is on the premises when six or more enrolled children are at the child care group home.

E. A certificate holder shall ensure that a parent, an individual designated in writing by the parent, or legal guardian of an enrolled child is allowed immediate access during hours of operation to the areas of the premises where the enrolled child is receiving child care services.

F. A certificate holder shall:
1. Prepare a document that includes the following information:
a. The name and contact telephone number of the provider;
b. The hours of operation of the child care group home;
c. Charges, fees, and payment requirements for child care services;
d. Whether medications are administered at the child care group home and, if so, a description of what the parent is required to give to the child care group home;
e. Whether enrolled children go on field trips under the supervision of a staff member;
f. Whether the child care group home provides transportation for enrolled children to or from school, a school bus stop, or other locations;
g. The mechanism by which a staff member will verify that an individual contacting the child care group home by telephone claiming to be the parent of an enrolled child is the enrolled child's parent;
h. A statement that a parent has access to the areas on the premises where the parent's enrolled child is receiving child care services;
i. A statement that inspection reports for the child care group home are available for review at the child care group home; and
j. The local address and contact telephone number for the Department; and
2. Ensure that a staff member provides the document required in subsection (F)(1) to a parent of an enrolled child.

G. A certificate holder shall ensure that a staff member posts in a place that can be conspicuously viewed by individuals entering or leaving the child care group home:
1. The child care group home certificate;
2. The name of the provider;
3. The name of the staff member designated to act on behalf of the certificate holder when the provider is not present at the child care group home;
4. The hours of operation for the child care group home;
5. The weekly activity schedule required in R9-3-401(B)(4)(b);

6. The amount of time in minutes enrolled children may watch television, videos, or DVDs at the child care group home; and
7. The weekly menu, required in R9-3-406(F), before the first meal or snack of the week.

H. A certificate holder shall ensure that a staff member supervises any individual who is not a staff member and is on the premises where enrolled children are present.

I. A certificate holder shall ensure that a staff member who has current training in first aid and CPR is present during hours of operation when an enrolled child is on the premises or on a trip away from the premises under the supervision of a staff member.

J. A certificate holder shall ensure that if a staff member or resident lacks documentation of immunization or evidence of immunity that complies with A.A.C. R9-6-704 for a communicable disease listed in A.A.C. R9-6-702:
1. The staff member or resident is excluded from the child care group home between the start and end of an outbreak of the communicable disease at the child care group home, or
2. The child care group home is closed until the end of an outbreak at the child care group home.

K. Within 72 hours after changing a provider, a certificate holder shall send the Department written notice of the change, including the name of the new provider.

L. Except as provided in subsections (M) and (N), a certificate holder shall notify the Department in writing of a planned change in a child care group home's hours of operation at least three calendar days before the date of the planned change, including:
1. The certificate holder's name;
2. The child care group home's certificate number; and
3. The current and intended hours of operation.

M. A certificate holder is not required to notify the Department of a change in a child care group home's hours of operation when the change in the child care group home's hours of operation is due to the occurrence of a state or federal holiday on a day of the week the child care group home regularly provides child care services.

N. When the premises of a child care group home are left unoccupied during hours of operation or the child care group home is temporarily closed due to an unexpected event, a certificate holder shall ensure that a staff member notifies the Department before leaving the child care group home unoccupied or closing the child care group home, stating the period of time during which the child care group home will be unoccupied or closed.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by exempt rulemaking at 19 A.A.R. 2607, effective August 1, 2013 (Supp.13-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3). Amended by final expedited rulemaking at 28 A.A.R. 1835 (July 29, 2022), with an immediate effective date of July 7, 2022 (Supp. 22-3).

R9-3-302. Staff Training

A. Within 10 calendar days after the starting date of employment or volunteer service, a certificate holder shall provide, and each staff member shall complete, training for new staff members that includes all of the following:
1. Names, ages, and developmental stages of enrolled children;
2. Health needs, nutritional requirements, any known allergies, and information about adaptive devices of enrolled children;
3. Guiding and disciplining children;
4. Hand washing techniques;
5. Diapering techniques and toileting, if any enrolled children are in diapers or require assistance in using the toilet;
6. Sudden infant death syndrome awareness, if child care services are provided to an infant or a one-year-old child;
7. Preparing, serving, and storing food;
8. Preparing, handling, and storing infant formula and breast milk, if any enrolled children are fed infant formula or breast milk;
9. Recognizing signs of illness and infestation;
10. Detecting, preventing, and reporting child abuse or neglect;
11. Responding to accidents and emergencies;
12. Sun safety;
13. Procedures for trips away from the child care group home, if applicable; and
14. Staff responsibilities as required by A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter.

B. A certificate holder shall ensure that a staff member's completion of the training required by subsection (A) is documented and signed by the provider, including the date of completion of the training.

C. A certificate holder shall ensure that each staff member completes a total of 12 or more actual hours of training every 12 months after becoming a staff member in two or more of the following:
1. Child growth and development, which may include sudden infant death prevention;
2. Developmentally appropriate activities;
3. Nutrition and developmentally appropriate eating habits;
4. Responding to accidents and emergencies, including CPR and first aid for infants and children;
5. Recognizing signs of illness and infestation;
6. Detecting, preventing, and reporting child abuse or neglect;

7. Guiding and disciplining children; and
8. Availability of community services and resources, including those available to children with special needs.

D. A certificate holder shall ensure that a staff member submits to the certificate holder documentation of training received as required by subsection (C) as the training is completed.

E. A certificate holder shall ensure that a staff member required by R9-3-301(I) meets all of the following:
1. The staff member obtains first aid training specific to infants and children;
2. The staff member obtains CPR training specific to infants and children, which includes a demonstration of the staff member's ability to perform CPR;
3. The staff member maintains current training in first aid and CPR; and
4. The staff member provides the certificate holder with a copy of the front and back of the current card issued to the staff member upon completing first aid and CPR training as proof of completion of the requirements in this subsection.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new Section made by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-303. Enrollment of Children

A. A certificate holder shall require that a child be enrolled by the child's parent or by an individual authorized in writing by the child's parent.

B. Except as required in A.R.S. § 36-309, before a child is enrolled at a child care group home, a certificate holder shall require the individual enrolling the child to complete a Department-provided Emergency, Information, and Immunization Record card containing:
1. The child's name, home address, city, state, zip code, sex, and date of birth;
2. The date of the child's enrollment;
3. The name, home address, city, state, zip code, and contact telephone number of each parent of the child;
4. The name and contact telephone number of at least two individuals authorized by the child's parent to collect the child from the child care group home or to be contacted if the child's parent cannot be contacted;
5. The name and contact telephone number of the child's physician, physician assistant, or registered nurse practitioner;
6. Written authorization for emergency medical care of the child;
7. The name of the individual to be contacted in case of injury or sudden illness of the child;
8. A written description provided by a child's parent of the nutritional and dietary needs of the child;
9. A written description provided by the child's parent noting the child's susceptibility to illness, physical conditions of which a staff member should be aware, and any individual requirements for health maintenance; and
10. The dated signature of the individual completing the Emergency, Information, and Immunization Record card.

C. A certificate holder shall maintain a current Emergency, Information, and Immunization Record card for each enrolled child on the premises in a place that provides a staff member ready access to the card in the event of an emergency at, or evacuation of, the child care group home.

D. When a child is disenrolled from a child care group home, the certificate holder shall ensure that a staff member:
1. Enters the date of disenrollment on the child's Emergency, Information, and Immunization Record card; and
2. Maintains the records in subsection (D)(1) for 12 months after the date of disenrollment on the premises in a place separate from the current Emergency, Information, and Immunization Record cards.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-303 renumbered from R9-3-307 and amended by exempt rulemaking at 17 A.A.R. 1530, September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-304. Enrolled Child Immunization Requirements

A. A certificate holder shall not permit an enrolled child to receive child care services at a child care group home until the child care group home receives:
1. An immunization record for the enrolled child with the information required in 9 A.A.C. 6, Article 7, stating that the enrolled child has received all current, age-appropriate immunizations required under 9 A.A.C. 6, Article 7, that is:
   a. Provided by a physician, physician assistant, registered nurse practitioner, or another individual authorized by state law to administer immunizations; or
   b. Generated from the Arizona State Immunization Information System, which is the Department's child immunization reporting system established in A.R.S. § 36-135; or
2. An exemption affidavit for the enrolled child provided by the enrolled child's parent that contains:
   a. A statement, signed by the enrolled child's physician, physician assistant, or registered nurse practitioner, that the immunizations required by 9 A.A.C. 6, Article 7 would endanger the enrolled child's health or medical condition; or

b. A statement, signed by the enrolled child's parent, that the enrolled child is being raised in a religion whose teachings are in opposition to immunization.

B. A certificate holder shall ensure that a staff member attaches an enrolled child's written immunization record or exemption affidavit, required in subsection (A), to the enrolled child's Emergency, Information, and Immunization Record card, required in R9-3-303(B).

C. A certificate holder shall ensure that a staff member updates an enrolled child's written immunization record required in subsection (A)(1)(a) each time the enrolled child's parent provides the child care group home with a written statement from the enrolled child's physician, physician assistant, or registered nurse practitioner that the enrolled child has received an age-appropriate immunization required by 9 A.A.C. 6, Article 7.

D. If an enrolled child's immunization record indicates that the enrolled child has not received an age-appropriate immunization required by 9 A.A.C. 6, Article 7, a certificate holder shall ensure that a staff member:

1. Notifies the enrolled child's parent in writing that the enrolled child may attend the child care group home for not more than 15 calendar days after the date of the notification unless the enrolled child's parent complies with the immunization requirements in 9 A.A.C. 6, Article 7; and
2. Documents on the enrolled child's Emergency, Information, and Immunization Record card the date on which the enrolled child's parent is notified of an immunization required by the Department.

E. For an outbreak of a disease listed in A.A.C. R9-6-702 at a child care group home, a certificate holder shall:

1. Not allow an enrolled child to attend the child care group home between the start and end of the outbreak if the enrolled child lacks documentation of immunization or evidence of immunity to the disease that complies with A.A.C. R9-6-704, and
2. Permit the enrolled child to attend the child care group home if a parent of the enrolled child provides any of the documents in A.A.C. R9-6-704 for the enrolled child.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-304 renumbered from R9-3-308 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-305. Admission and Release of Enrolled Children

A. A certificate holder shall ensure that:

1. An enrolled child is signed into and signed out from the child care group home by:
   a. The enrolled child's parent;
   b. An individual authorized in writing or by telephone by the enrolled child's parent; or
   c. The enrolled child, if the enrolled child is a school-age child and the enrolled child's parent has given written permission for the enrolled child to self-admit or self-release;
2. The individual signing the enrolled child into or out from the child care group home:
   a. Records the time of the enrolled child's arrival or departure, and
   b. Signs the attendance record with at least the first initial of the individual's first name and the individual's last name; and
3. The attendance record is maintained on the premises for 12 months from the date of the attendance record.

B. If an enrolled child gives a staff member written permission for the enrolled child to self-admit or self-release, the certificate holder shall ensure that the staff member verifies permission with the enrolled child's parent before the enrolled child is allowed to self-admit or self-release.

C. If an individual who is unknown to a staff member present comes to sign out an enrolled child, the certificate holder shall ensure that before releasing the child to the individual the staff member reviews:

1. The enrolled child's Emergency, Information, and Immunization Record card to verify that the enrolled child's parent has authorized the individual to sign out the child; and
2. A driver's license or other picture identification to verify the individual's identity.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-305 renumbered from R9-3-310 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-306.

Pesticides

Except as prescribed by A.R.S. § 36-898(C), a certificate holder shall ensure that a staff member makes the following pesticide information available in writing to the parent of an enrolled child, upon the parent's request, at least 48 hours before a pesticide application occurs on the premises:

1. The name and telephone number of the pesticide business licensee and the name of the licensed applicator providing pesticide services;
2. The date and time of the pesticide application;
3. The pesticide label, including a warning label stating that the pesticide should not be applied when children are present, and the material safety data sheet; and

4. The brand, concentration, rate of application, and any use restrictions required by the label of the herbicide or specific pesticide.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new Section made by exempt rulemaking at 17 A.A.R. 1530, September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-307. Illness and Infestation

A. A certificate holder shall ensure that an enrolled child is excluded from the child care group home when:
1. A staff member determines that the enrolled child's illness:
   a. Prevents the enrolled child from participating in activities without experiencing discomfort or aggravation of symptoms, or
   b. Results in a greater need for care than staff members can provide without compromising the health or safety of other enrolled children, or
2. The child's exclusion is required under 9 A.A.C. 6, Article 3
.

B. If an enrolled child exhibits signs of illness or infestation that require exclusion from the child care group home under subsection (A), a certificate holder shall ensure that a staff member:
1. Immediately separates the enrolled child from other enrolled children;
2. Notifies the individual designated by the parent on the enrolled child's Emergency, Information, and Immunization Record card to be contacted in case of the enrolled child's injury or illness that the enrolled child needs to be picked up from the child care group home; and
3. Makes a written record of the notification and places it in the enrolled child's file.

C. A certificate holder shall ensure that a staff member or resident who has signs or symptoms of illness or infestation is excluded from the child care group home when required under 9 A.A.C. 6, Article 3.

D. If a certificate holder is notified that an enrolled child, staff member, or resident has an infestation or a communicable disease, other than human immunodeficiency virus or a sexually transmitted disease, the certificate holder shall:
1. Provide written notice of potential exposure to each staff member and to a parent of each enrolled child within 24 hours after the certificate holder receives notice of the communicable disease or infestation;
2. Maintain the written notice required in subsection (D)(1) on the premises for 12 months after the written notice is provided; and
3. Provide notice to the local health agency if required under 9 A.A.C. 6, Article 2.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-307 renumbered to R9-3-303; new R9-3-307 renumbered from R9-3-311 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-308. Suspected Abuse or Neglect of an Enrolled Child

A certificate holder shall ensure that:
1. The certificate holder or a staff member immediately reports suspected abuse or neglect of an enrolled child under A.R.S. Title 8, Chapter 4, Article 8, or to a local law enforcement agency, as required by A.R.S. § 13-3620;
2. If a staff member or resident is suspected of abuse or neglect of an enrolled child, the certificate holder also reports the suspected abuse or neglect to the Department; and
3. Documentation of a report required in subsection (1) or (2) is maintained on the premises for 12 months after the date of the report.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-308 renumbered to R9-3-304; new R9-3-308 renumbered from R9-3-312 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-309. Medications

A. A certificate holder shall ensure that a document is prepared and maintained on the premises that specifies:
1. Whether prescription or nonprescription medications are administered to enrolled children; and
2. If prescription or nonprescription medications are administered, the requirements in subsection (B) for administering the prescription or nonprescription medications.

B. If prescription or nonprescription medications are administered at a child care group home, a certificate holder shall ensure that:
1. The provider or another staff member designated in writing by the provider is responsible for:

a. Administering medications at the child care group home,
b. Storing medications at the child care group home,
c. Supervising the ingestion of medications, and
d. Documenting the administration of medications;

2. At any given time, only one designated staff member at the child care group home is responsible for the duties described in subsection (B)(1);
3. The designated staff member does not administer a medication to an enrolled child unless the child care group home receives written authorization on a completed Department-provided authorization form that includes:
   a. The child's first and last name;
   b. The name of the medication;
   c. The prescription number, if any;
   d. Instructions for administration specifying:
      i. The dosage,
      ii. The route of administration,
      iii. The first and last dates that the medication is to be administered, and
      iv. The times and frequency of administration;
   e. The reason for the medication;
   f. The signature of the child's parent; and
   g. The date of signature; and
4. The designated staff member:
   a. Measures liquid medications for oral administration using a measuring cup, spoon, or dropper specifically made for measuring liquid medication;
   b. Administers prescription medications provided by an enrolled child's parent to the enrolled child only from a container dispensed by a pharmacy and accompanied by a pharmacy-generated prescription label that includes the child's first and last name and administration instructions;
   c. Administers nonprescription medications provided by an enrolled child's parent to the enrolled child only from an original manufacturer's container labeled with the enrolled child's first and last name;
   d. Does not administer a medication that has been transferred from one container to another;
   e. Does not administer a nonprescription medication to an enrolled child inconsistent with the instructions on the nonprescription medication's label, unless the child care group home receives written administration instructions from the enrolled child's physician, physician assistant, or registered nurse practitioner;
   f. Documents each administration of medication to an enrolled child on the Department-provided form required in subsection (B)(3) including:
      i. The name of the enrolled child;
      ii. The name and amount of medication administered and the prescription number, if any;
      iii. The date and time the medication was administered; and
      iv. The signature of the staff member who administered the medication to the enrolled child; and
   g. Maintains the record on the premises for 12 months after the date the medication is administered.

C. A certificate holder shall allow an enrolled child to receive an injection at the child care group home only after obtaining written authorization from a physician, physician assistant, or registered nurse practitioner. The certificate holder shall maintain the written authorization on the premises for 12 months after the date of the last injection.

D. An individual authorized by state law to give injections may give an injection to an enrolled child. In an emergency, an individual may give an injection to an enrolled child according to A.R.S. §§ 32-1421(A)(1) and 32-1631(2).

E. A certificate holder shall return unused prescription or nonprescription medication to a parent when the medication is no longer being administered to the enrolled child or has expired, whichever comes first, or dispose of the medication according to state and federal laws, if the child is no longer enrolled at the child care group home and the certificate holder is unable to locate the child's parent.

F. Except as provided in subsection (G), a certificate holder shall ensure that:
1. Medication belonging to an enrolled child is:
   a. Stored in a locked, leak-proof storage cabinet or container that is used only for storing enrolled children's medication.
   b. Stored in a secured refrigeration unit that is used only for storing enrolled children's medications that requires refrigeration.
2. Medication belonging to a staff member or resident is stored in a locked, leak-proof storage cabinet or container that is separate from the storage container for enrolled children's medications.

G. A certificate holder shall ensure that a staff member's or enrolled child's prescription medication necessary to treat life-threatening symptoms is kept in a location inaccessible to enrolled children except when the prescription medication is administered to treat the life-threatening symptoms.

H. A certificate holder shall ensure that a child care group home does not stock a supply of prescription or nonprescription medications for administration to enrolled children.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-309 renumbered from R9-3-313 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-310. Accident and Emergency Procedures

A. A certificate holder shall ensure that a child care group home has a first-aid kit on the premises that contains at least the following items, in a quantity sufficient to meet the needs of the enrolled children at the child care group home:
1. Sterile bandages including:
   a. Adhesive bandages of assorted sizes,
   b. Sterile gauze pads, and
   c. Sterile gauze rolls,
2. Antiseptic solution or sealed antiseptic wipes,
3. Single-use non-porous gloves,
4. Reclosable plastic bags of at least one-gallon size,
5. Scissors, and
6. Adhesive or self-adhering tape.

B. A certificate holder shall ensure that the first aid kit required in subsection (A) is accessible to staff members but inaccessible to enrolled children.

C. If, while receiving child care services at a child care group home, an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, does not require medical treatment by a physician, physician assistant, or registered nurse practitioner, the certificate holder shall ensure that first aid treatment as needed is provided to the enrolled child by an individual with current training in first aid.

D. If, while receiving child care services at a child care group home, an enrolled child has an accident, injury, or emergency that, based on an evaluation by a staff member, requires medical treatment by a physician, physician assistant, or registered nurse practitioner, a certificate holder shall ensure that a staff member:
1. Within 30 minutes after the accident, injury, or emergency, notifies the individual designated by the parent on the enrolled child's Emergency, Information, and Immunization Record card to be contacted in case of the enrolled child's injury or illness;
2. Documents:
   a. A description of the accident, injury, or emergency, including the date, time, and location of the accident, injury, or emergency;
   b. The method used to notify the designated individual; and
   c. The time the designated individual was notified; and
3. Maintains documentation required in subsection (D)(2) on the premises for 12 months after the date of the child's disenrollment.

E. A certificate holder shall notify the Department orally or in writing within 24 hours after an enrolled child's death at the child care group home during hours of operation.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-310 renumbered to R9-3-305; new R9-3-310 renumbered from R9-3-314 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-311. Renumbered

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-311 renumbered to R9-32-307 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

Table 2. Repealed

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Table repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-312. Renumbered

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-312 renumbered to R9-3-308 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-313. Renumbered

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-313 renumbered to R9-3-309 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-314. Renumbered

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-314 renumbered to R9-3-310 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-315. Repealed

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

ARTICLE 4. PROGRAM AND EQUIPMENT STANDARDS

Article 4, consisting of R9-3-401 through R9-3-413, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

R9-3-401. General Program, Equipment, and Health and Safety Standards

A. In addition to complying with the requirements in this Chapter, a certificate holder shall ensure that the health, safety, or welfare of an enrolled child is not placed at risk of harm.

B. A certificate holder shall ensure that:
1. A staff member:
   a. Supervises each enrolled child at all times,
   b. Plays and communicates with an enrolled child throughout the day, and
   c. Responds immediately to signs of distress from an enrolled child;
2. The areas of the child care group home approved for providing child care services are maintained free from hazards;
3. The toys, materials, and equipment for use by enrolled children:
   a. Include, as appropriate to the ages of the enrolled children at the child care group home:
      i. Arts supplies,
      ii. Manipulatives to enhance small motor development,
      iii. Indoor and outdoor equipment to enhance large motor development,
      iv. Creative play materials,
      v. Books, and
      vi. Musical instruments;
   b. Are sufficient in number and type to meet the needs of the enrolled children in attendance at the child care group home;
   c. Are accessible to enrolled children; and
   d. Are maintained free from hazards and in a condition that allows the toys, materials, and equipment to be used for their original purpose;
4. The activities at the child care group home are:
   a. Structured to meet the age and developmental level of each enrolled child; and
   b. Based upon a written weekly schedule that includes:
      i. Routines, such as meals, snacks, and rest periods, that follow a familiar and consistent pattern;
      ii. If weather and air quality permit, outdoor activities to enhance large muscle development;
      iii. Stories, music, dancing, singing, and reading;
      iv. Listening and talking opportunities; and
      v. Creative activities such as water play, cutting and pasting, painting, coloring, dramatic play, and playing with blocks;
5. Clean clothing is available to an enrolled child; and
6. Drinking water is available to enrolled infants and one- or two-year-old children and is accessible to older enrolled children at all times.

C. A certificate holder shall ensure that a staff member:
1. Monitors an enrolled child for overheating or overexposure to the sun and, if an enrolled child exhibits signs of overheating or overexposure to the sun, notifies a staff member who has current training in first aid to evaluate the enrolled child;

2. When an enrolled child's clothing is wet or soiled:
   a. Except for an enrolled child who can change the enrolled child's own clothing, changes the enrolled child's wet or soiled clothing;
   b. If the clothing is soiled with feces, empties the feces into a flush toilet without rinsing the clothing;
   c. Stores the enrolled child's wet or soiled clothing in a sealed plastic bag labeled with an identifier that is specific to the enrolled child; and
   d. Sends the enrolled child's wet or soiled clothing home with the enrolled child or the enrolled child's parent;
3. Bathes an enrolled child at the child care group home only if the child care group home has received written permission from the enrolled child's parent;
4. Except as specified in subsection (C)(5), labels the personal items of an enrolled child with an identifier that is specific to the enrolled child and stores the personal items separately from the personal items of other enrolled children and residents;
5. Stores diapering products in a location that is inaccessible to enrolled children but accessible for diaper changing;
6. If a parent of an enrolled child permits or asks a staff member to apply sunscreen, diapering products, or other substances to the skin of an enrolled child, obtains:
   a. The sunscreen, diapering products, or other substances from the enrolled child's parent; or
   b. If the child care group home supplies the sunscreen, diapering products, or other substances, written permission from the enrolled child's parent for the application of the specific sunscreen, diapering products, or other substances; and
   7. Allows an enrolled school-age child to possess and use a topical sunscreen product if the parent of the enrolled school-age child provides notice to the child care group home without having to have a note or prescription from a licensed health care professional.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-402. Supplemental Standards for Napping or Sleeping

A. A certificate holder shall ensure that:
1. Each enrolled child who naps or sleeps at the child care group home is furnished with a bed, cot, mat, or crib that accommodates the enrolled child's height and weight;
2. The bed, cot, mat, or crib is not used by another individual while in use by the enrolled child;
3. The cot, mat, or bed's mattress is covered with a clean sheet that is laundered when soiled, at least once every seven calendar days, and before use by a different enrolled child;
4. The crib mattress is covered with a clean fitted-sheet designed for the crib mattress size that is laundered when soiled, at least once every 24 hours, and before use by a different enrolled child; and
5. A clean blanket or sheet is provided to each enrolled child.

B. A certificate holder shall not allow an enrolled child to use:
1. A waterbed,
2. The upper bed of a bunk bed, or
3. A stacked crib.

C. A certificate holder shall ensure that a crib used by an enrolled child:
1. Has bars or openings spaced no more than 2 3/8 inches apart;
2. Has a crib mattress that is:
   a. Measured to fit not more than 1/2 inch from the crib side, and
   b. Commercially waterproofed or covered with a waterproof crib mattress cover;
3. Is cleaned and sanitized when soiled; and
4. Does not contain bumper pads, pillows, comforters, sheepskins, stuffed toys, or other soft products when an enrolled child is in the crib.

D. When enrolled children are present at a child care group home during hours of operation, a certificate holder shall ensure that a staff member:
1. Remains awake until all enrolled children are asleep, and
2. Is allowed to sleep only:
   a. During the hours of 8:00 p.m. to 5:00 a.m., and
   b. If the staff member can hear and respond to an enrolled child waking from sleep.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-403. Supplemental Standards for Care of an Enrolled Infant or One- or Two-Year-Old Child

A. A certificate holder shall ensure that:

1. A staff member:
   a. Does not allow an enrolled infant or one- or two-year-old child to spend more than 30 consecutive minutes of time while awake in a crib, playpen, swing, feeding chair, infant seat, or other confining piece of equipment;
   b. Allows each enrolled infant to maintain an individual pattern of sleeping, waking, and eating, unless the enrolled infant's parent has instructed otherwise;
   c. If providing a bottle or sippy cup to an enrolled infant or one- or two-year-old child before the enrolled infant or one- or two-year-old child naps or sleeps:
      i. Ensures that only water is in the bottle or sippy cup unless the written instructions required by subsection (A)(3)(b) state otherwise;
      ii. Removes the used bottle or sippy cup from the enrolled infant or one- or two-year-old child's crib, bed, cot, or mat as soon as the enrolled infant or one- or two-year-old child finishes drinking or falls asleep; and
      iii. Cleans the used bottle or sippy cup before the bottle or sippy cup is reused;
   d. Checks the diaper of each enrolled infant or one- or two-year-old child throughout the day and changes a diaper as soon as it is wet or soiled;
   e. Ensures that toys provided for an enrolled infant or one- or two-year-old child are too large to swallow; and
   f. Does not permit an enrolled infant to use a walker;
2. When putting an enrolled infant to sleep, a staff member:
   a. Places the enrolled infant on the enrolled infant's back to sleep, unless the enrolled infant's physician, physician assistant, or registered nurse practitioner has instructed otherwise in writing;
   b. Provides a clean blanket or sheet to the enrolled infant;
   c. Does not use a positioning device that restricts movement, unless the enrolled infant's physician, physician assistant, or registered nurse practitioner has instructed otherwise in writing; and
   d. Does not use a mechanical restraint on the enrolled infant in a crib;
3. When feeding an enrolled infant, a staff member:
   a. Prepares and stores the enrolled infant's formula, breast milk, or other food according to written instructions from the enrolled infant's parent;
   b. Feeds formula, breast milk, or other food to the enrolled infant according to current written instructions from the enrolled infant's parent; and
   c. If the enrolled infant is younger than six months of age or cannot hold a bottle for feeding, holds the enrolled infant for feeding; and
4. When feeding an enrolled infant who is no longer being held for feeding or an enrolled one- or two-year-old child, a staff member:
   a. Seats the enrolled infant or one- or two-year-old child in a feeding chair or at a table with a chair that allows the enrolled infant or one- or two-year-old child to reach food while sitting; and
   b. If the feeding chair is manufactured with a safety strap, fastens the safety strap around the enrolled infant or one- or two-year-old child while the enrolled infant or one- or two-year-old child is seated in the feeding chair.

B. A certificate holder shall ensure that a staff member:

1. Consults with an enrolled child's parent to establish a written plan for toilet training for the enrolled child,
2. Implements the toilet training plan,
3. Provides the parent with information about the enrolled child's progress in toilet training, and
4. Ensures that toilet training is not forced on the enrolled child.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-404. Supplemental Standards for Care of an Enrolled Child with Special Needs

A. Before an enrolled child with special needs receives child care services at a child care group home, the certificate holder shall ensure that the provider obtains from the enrolled child's parent an individual plan for the enrolled child that includes, as applicable, the following:

1. A medication schedule,
2. Nutrition and feeding instructions,
3. Instructions for medical equipment or adaptive devices used by the enrolled child,
4. Emergency instructions,
5. Toileting and personal hygiene instructions,
6. Identification of specific child care services to be provided at the child care group home, and
7. Instructions for fire and emergency evacuation drills.

B. A certificate holder shall ensure that:
1. At least one staff member receives instructions from the parent of an enrolled child with special needs that enables the staff member to interact with, feed, and care for the enrolled child with special needs;
2. Documentation of the instructions required in subsection (B)(1) is maintained on the premises for 12 months after the child is disenrolled;
3. When tube feeding an enrolled child, a staff member only uses:
   a. Commercially prepackaged formula in a ready-to-use state, stored according to directions on the package;
   b. Formula prepared by the enrolled child's parent and brought to the child care group home in an unbreakable container; or
   c. Breast milk brought to the child care group home in an unbreakable container;
4. Only a staff member who received the instructions required in subsection (B)(1):
   a. Feeds an enrolled child who requires tube feeding using the enrolled child's tube-feeding apparatus, and
   b. Cleans the enrolled child's tube-feeding apparatus; and
5. A staff member:
   a. Assists an enrolled child with special needs to enable the enrolled child to participate in activities at the child care group home; and
   b. Ensures that the enrolled child is provided with developmentally appropriate toys, materials, and equipment.

C. In addition to complying with the requirements in R9-3-408, a certificate holder shall ensure that a staff member transporting an enrolled child with special needs in a wheelchair in a motor vehicle operated by the child care group home ensures that:
1. The enrolled child's wheelchair is manufactured to be secured in a motor vehicle;
2. The enrolled child's wheelchair is secured in the motor vehicle using a minimum of four anchorages attached to the motor vehicle floor, and four securement devices, such as straps or webbing that have buckles and fasteners, that attach the wheelchair to the anchorages;
3. The enrolled child is secured in the wheelchair by means of a wheelchair restraint that is a combination of pelvic and upper body belts intended to secure a passenger in a wheelchair; and
4. The enrolled child's wheelchair is placed in a position in the motor vehicle that does not prevent access to the enrolled child in the wheelchair or passage to the front and rear of the motor vehicle.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-404 renumbered from R9-3-406 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Subsection (B)(3)(a) corrected at request of Department, Office File No. M11-379, filed October 20, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-405. Discipline and Guidance

A. A certificate holder shall ensure that a staff member:
1. Establishes and maintains reasonable guidelines and limits for enrolled children's behavior and applies them consistently;
2. Teaches, models, and encourages orderly conduct, self-control, and age-appropriate behavior;
3. When disciplining an enrolled child:
   a. Explains to the enrolled child why the particular behavior is not allowed,
   b. Suggests an alternate behavior to the enrolled child, and
   c. Assists the enrolled child to become engaged in an alternate activity; and
4. If an enrolled child's behavior may result in harm to self or others, holds the enrolled child without undue force until the enrolled child regains self-control or composure.

B. A certificate holder shall ensure that a staff member does not use or allow:
1. A method of discipline that could cause harm to the health, safety, or welfare of an enrolled child;
2. Corporal punishment;
3. Discipline associated with:
   a. Eating, napping, sleeping, or toileting;
   b. Medication;
   c. Mechanical restraint;
   d. Humiliation; or
   e. Fear; or
4. Discipline administered to an enrolled child by an individual who is not a staff member.

C. A certificate holder may allow a staff member to separate an enrolled child older than two years of age from other children for unacceptable behavior according to the following:
1. A separation period may not last longer than three minutes after the enrolled child has regained control or composure, and
2. A staff member may not allow an enrolled child to be separated for longer than 10 minutes without the staff member interacting with the enrolled child.

D. A staff member may not discipline the staff member's own child in a manner inconsistent with subsections (A) through (C) during hours of operation.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-405 renumbered from R9-3-409 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-406.

General Nutrition and Menu Standards

A. This Section does not apply to infants.

B. A certificate holder shall ensure that meals and snacks are served to enrolled children in compliance with Table 4.1.

C. When a child care group home provides food for enrolled children, the certificate holder shall ensure that:

1. Each meal or snack is prepared and served according to the meal pattern requirements in Table 4.2;
2. Second servings of food are served to each enrolled child at meal time and snack time, if requested by the enrolled child;
3. The same food item, other than milk, is not served more than once in a single day;
4. During each week, meals include a variety of foods from each food category in the meal pattern requirements in Table 4.2;
5. Unless an enrolled child's parent requests otherwise, milk served to the enrolled child is:
   a. Fat-free or 1% low-fat milk for an enrolled child older than two years of age; and
   b. Whole milk for an enrolled child two years of age or younger;
6. Only pasteurized milk is served;
7. Reconstituted dry milk is not served to meet the fluid milk requirement;
8. Juice served to enrolled children for a meal or snack is pasteurized full-strength 100% vegetable juice, fruit juice, or fruit and vegetable juice combination from an original, commercially filled container or reconstituted from a concentrate according to manufacturer directions;
9. A beverage sweetened with any kind of sugar product is not provided by the child care group home; and
10. High fat or high sugar food items such as muffins, brownies, donuts, pastries, croissants, cakes, or cookies are served to satisfy a meal or snack category no more than twice each week.

D. If a parent who provides food for the parent's enrolled child does not provide milk or juice for the enrolled child, the certificate holder shall provide milk or juice to the enrolled child unless doing so would be inconsistent with a modified diet prescribed for the enrolled child by the child's parent, physician, physician assistant, or registered nurse practitioner.

E. A certificate holder shall ensure that a staff member maintains a supply of food sufficient to serve the meals and snacks required by this Section to be served to each enrolled child attending the child care group home in a single day.

F. A certificate holder shall ensure that a staff member:

1. Prepares a weekly menu specifying the foods to be served at each meal and snack on each day,
2. Dates each menu, and
3. Writes food substitutions on a posted menu no later than the morning of the day of the meal or snack to which the substitution applies.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-406 renumbered from R9-3-410 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

Table 4.1. Meals and Snacks Required to Be Served to Enrolled Children

Times Enrolled Child Is at Child Care Group Home	Child Required to Be Served
Before 8:00 a.m.	Breakfast, if requested by parent or child
Between 8:00 a.m. and 11:00 a.m.	At least one snack
Between 11:00 a.m. and 1:00 p.m.	Lunch
Between 1:00 p.m. and 5:00 p.m.	At least one snack
Between 5:00 p.m. and 7:00 p.m., if staying beyond 7:00 p.m.	Dinner
Between 7:00 p.m. and 9:00 p.m., if staying beyond 9:00 p.m.	At least one snack

Historical Note
New Table made by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

Table 4.2. Meal Pattern Requirements for Children

Food Components	Ages 1 through 2 years	Ages 3 through 5 years	Ages 6 and Older
Breakfast:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetable, fruit, or both	1/4 cup	1/2 cup	1/2 cup
3. Grains	1/2 oz eq[1]	1/2 oz eq[1]	1 oz eq[1]
Lunch or Supper:			
1. Milk, fluid	1/2 cup	3/4 cup	1 cup
2. Vegetables Fruits	1/8 cup cup	1/4 cup cup	1/2 cup cup
3. Grains	1/8 cup	1/4 cup	1/4 cup
4. Meat or meat alternates	1/2 oz eq[1] 1 oz.	1/2 oz eq[1] 1 1/2 oz.	1 oz eq[1] 2 oz.
Snack: (select 2 of these 4 components)***			
1. Milk, fluid	1/2 cup	1/2 cup	1 cup
2. Vegetables Fruits	1/2 cup 1/2 cup	1/2 cup 1/2 cup	3/4 cup 3/4 cup
3. Bread Grains	 1/2 oz.	 1/2 oz.	 1 oz.
4. Meat or meat alternates	1/2 oz.	1/2 oz.	1 oz.

[1] Meat and meat alternates may be used to substitute the entire grains component a maximum of three times per week. Oz eq = ounce equivalents
* In the same meal service, dried beans or dried peas may be used as a meat alternate or as a vegetable; however, such use does not satisfy the requirement for both components.
** At lunch and supper, no more than 50% of the requirement shall be met with nuts, seeds, or nut butters. Nuts, seeds, or nut butters shall be combined with another meat or meat alternative to fulfill the requirement. Two tablespoons of nut butter or one ounce of nuts or seeds equals one ounce of meat.
*** Juice may not be served when milk is served as the only other component.

Historical Note
New Table made by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-407. General Food Service and Food Handling Standards

A. A certificate holder shall ensure that:
1. Except as provided in subsection (B), each staff member washes the staff member's hands with soap and running water before handling food, after handling potentially hazardous food, and before serving food;
2. Except as provided in subsection (B), enrolled children, except infants and children with special needs who cannot wash their own hands, wash their hands with soap and running water before and after handling or eating food;
3. A staff member:

a. Washes with a washcloth, paper towel, disposable wipe, or soap and running water the hands of an enrolled infant or child with special needs who cannot wash the child's own hands before and after the enrolled infant or child with special needs handles or eats food; and
b. If using a washcloth, paper towel, or disposable wipes, uses each washcloth, paper towel, or disposable wipe only once before it is laundered or discarded;

4. A staff member:
   a. Encourages, but never forces, an enrolled child to eat;
   b. Assists each enrolled child who needs assistance with eating; and
   c. Teaches self-feeding skills and habits of good nutrition to each enrolled child as necessary;
5. Food served to an enrolled child younger than five years of age is prepared so as not to present a choking hazard;
6. Each enrolled child is supplied with drinking and eating utensils for the child's own use;
7. Each enrolled child's bottle or sippy cup is marked with an identifier that is specific to the enrolled child;
8. An enrolled child is not allowed to drink from the bottle, sippy cup, cup, or glass of another individual;
9. An enrolled child is not allowed to eat food directly off the floor, carpet, or ground;
10. An enrolled child's parent is notified when the child consistently refuses to eat or exhibits unusual eating behavior;
11. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent, physician, physician assistant, or registered nurse practitioner, as specified in R9-3-303(B)(8), and is written and posted in the kitchen;
12. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent, physician, physician assistant, or registered nurse, as specified in R9-3-303(B)(8), and is written and posted in the kitchen;
13. After each use, non-single-use utensils and equipment used in preparing, eating, or drinking food are:
    a. Washed in an automatic dishwasher and air dried or heat dried; or
    b. Washed in hot soapy water, rinsed in clean water, and air dried or heat dried;
14. Single-use utensils and equipment are disposed of after being used;
15. Perishable foods are covered and stored in a refrigerator;
16. A refrigerator at the child care group home maintains a temperature of 41° F or below, as shown by a thermometer kept in the refrigerator at all times;
17. A freezer at the child care group home maintains a temperature of 0° F or below, as shown by a thermometer kept in the freezer at all times;
18. Foods are prepared as close as possible to serving time and, if prepared in advance, are either:
    a. Cold held at a temperature of 45° F or below or hot held at a temperature of 130° F or above until served, or
    b. Cold held at a temperature of 45° F or below and then reheated to a temperature of at least 165° F before being served;
19. When fresh milk is poured from the original-commercial milk container into a serving container used at a meal or a cup, the unused milk is not returned to the original-commercial milk container;
20. Food leftover from a meal where enrolled children pass a serving container from individual to individual or from the provider's family meal is not served to an enrolled child; and
21. A food is not served past its expiration date or after it has begun to spoil.

B. If soap and running water are not available at the location where food is served, such as on a field trip, a staff member may use disposable wipes or hand sanitizer as a substitute for washing hands with soap and running water.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-407 renumbered from R9-3-411 and amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-408. Field Trips and Other Trips Away from the Child Care Group Home

A. A certificate holder shall only allow a staff member to take an enrolled child away from an area of the child care group home approved for providing child care services during hours of operation with written permission from the enrolled child's parent as follows:

1. For a trip to drop off the enrolled child at or pick up the enrolled child from the enrolled child's school, bus stop, or another location, the written permission shall include:
   a. The enrolled child's name;
   b. The location where the enrolled child will be dropped off or picked up;
   c. The time at which the enrolled child will be dropped off or picked up;
   d. The time period, not to exceed 12 months, during which the permission is given; and
   e. The dated signature of the enrolled child's parent; and
2. For a field trip, the written permission shall include:
   a. The enrolled child's name;
   b. A description of the field trip;
   c. The name of the field trip destination, if applicable;
   d. The street address and, if available, the telephone number of the field trip destination, if applicable;
   e. Either:

i. The date or dates of the field trip; or
ii. The time period, not to exceed 12 months, during which the permission is given;
f. The projected time of departure from the child care group home;
g. The projected time of arrival back at the child care group home; and
h. The dated signature of the enrolled child's parent.

B. A certificate holder shall ensure that a staff member maintains a copy of the written permission required in subsection (A) for 12 months after:
1. For a trip under subsection (A)(1), the date of the last trip; and
2. For a trip under subsection (A)(2), the last date for which permission was given.

C. A certificate holder shall ensure that:
1. Each motor vehicle used by an individual to transport an enrolled child:
   a. Is maintained in a mechanically safe condition;
   b. Is free from hazards;
   c. Is registered by the Arizona Department of Transportation as required by A.R.S. Title 28, Chapter 7;
   d. Has documentation of current motor vehicle insurance coverage maintained inside the motor vehicle that includes the legal name of the child care group home or certificate holder and, if transporting enrolled children and infants, liability information;
   e. Has an operational heating system;
   f. Has an operational air-conditioning system; and
   g. Is equipped with:
      i. A first-aid kit that meets the requirements in R9-3-310; and
      ii. Two large, clean towels or blankets;
2. An enrolled child is not transported in a truck bed, camper, or trailer attached to a motor vehicle; and
3. The Department is notified by telephone or other equally expeditious means within 24 hours after a motor vehicle accident that involves a motor vehicle transporting an enrolled child, including a description of the accident.

D. A certificate holder shall ensure that an individual who drives a motor vehicle used to transport an enrolled child:
1. Is 18 years of age or older, and
2. Holds a valid driver's license.

E. A certificate holder shall ensure that an individual transporting an enrolled child in a motor vehicle:
1. Requires that each door be locked before the motor vehicle is set in motion and keeps the doors locked while the motor vehicle is in motion;
2. Does not permit an enrolled child to be seated in front of a motor vehicle's air bag;
3. Requires that each enrolled child remain seated and entirely inside the motor vehicle while the motor vehicle is in motion;
4. Uses a child passenger restraint system, as required under A.R.S. § 28-907, for each enrolled child who is:
   a. Under eight years of age, and
   b. Not more than four feet nine inches tall;
5. Requires that each enrolled child in subsection (E)(4) be secured before the motor vehicle is set in motion and while the motor vehicle is in motion;
6. Does not permit an enrolled child to open or close a door or window in the motor vehicle;
7. Sets the emergency parking brake and removes the ignition keys from the motor vehicle before exiting the motor vehicle;
8. Ensures that each enrolled child is loaded into or unloaded from the motor vehicle away from moving traffic at curbside or in a driveway, parking lot, or other location designated for this purpose; and
9. Does not use audio headphones or a telephone while the motor vehicle is in motion.

F. A certificate holder shall ensure that a staff member taking enrolled children off the premises:
1. Carries the following:
   a. A copy of the Emergency, Information, and Immunization Record card, including the attached immunization record, for each enrolled child accompanying the staff member; and
   b. Drinking water in an amount sufficient to meet the needs of each individual going off the premises and sufficient cups or other drinking receptacles so that each individual can drink from a different cup or receptacle; and
2. Accounts for each enrolled child while the enrolled child is off the premises.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed; new R9-3-408 renumbered from R9-3-412 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-409. Renumbered

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-409 renumbered to R9-3-405 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-410. Renumbered

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-410 renumbered to R9-3-406 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Subsection (C)(1)(g)(i) corrected at request of Department, Office File No. M11-425, filed November 22, 2011 (Supp. 11-3).

Table 3. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Table repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

Table 4. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Table repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-411. Renumbered

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-411 renumbered to R9-3-407 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-412. Renumbered

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Former R9-3-412 renumbered to R9-3-408 by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-413. Repealed

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Section repealed by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

ARTICLE 5. PHYSICAL ENVIRONMENT STANDARDS

Article 5, consisting of R9-3-501 through R9-3-508, made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1).

R9-3-501. General Physical Environment Standards

A. A certificate holder shall ensure that a child care group home has:

1. At least 30 square feet of floor space in indoor areas of the child care group home approved for providing child care services for each enrolled child, not including the following:
   a. A kitchen,
   b. A bathroom,
   c. A laundry room,
   d. A workshop room,
   e. A hallway, or
   f. A garage that has not been converted into living space;
2. If there are up to 10 enrolled children at the child care group home, excluding enrolled children who are in diapers, indoor bathroom facilities with at least one working toilet and one working sink available for use by enrolled children;
3. If there are more than 10 enrolled children at the child care group home, excluding enrolled children who are in diapers, indoor bathroom facilities with at least two working toilets and two working sinks available for use by enrolled children;
4. At least two unobstructed, usable exits to the outside available for use by enrolled children; and
5. An outdoor activity area.

B. A certificate holder shall ensure that each indoor area of the child care group home approved for providing child care services is maintained at a temperature between 68° F and 82° F during hours of operation.

C. A certificate holder shall ensure that the lighting in each indoor area of the child care group home approved for providing child care services is sufficient to enable a staff member to see each enrolled child in the indoor area.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-502. Outdoor Activity Area Standards

A. Except as provided in subsection (B), a certificate holder shall ensure that the child care group home has an outdoor activity area that:
1. Is on the premises;
2. Is at least 500 square feet in size;
3. Is adjacent to the residence;
4. Includes shaded areas large enough to accommodate all enrolled children occupying the outdoor activity area at any time; and
5. Except as provided in subsection (D), is enclosed by a fence that:
   a. Is at least 4 feet high;
   b. Is secured to the ground;
   c. Does not have any vertical or horizontal open space that exceeds 4 inches at any point, including any space on a gate; and
   d. Has a gate from which an individual may exit the outdoor activity area.

B. The outdoor activity area of a child care group home may be less than 500 square feet if:
1. The outdoor activity area is at least 375 square feet in size; and
2. The certificate for the child care group home was issued:
   a. Before September 30, 2011, and the size of the outdoor activity area is not less than the size of the outdoor activity area on September 29, 2011; and
   b. On or after September 30, 2011, and the capacity of the child care group home is limited so that the outdoor activity area provides at least 50 square feet per each enrolled child.

C. A certificate holder shall ensure that:
1. A staff member:
   a. Keeps the gate in the fence surrounding an outdoor activity area closed while enrolled children are in the outdoor activity area, and
   b. Arranges play equipment in an outdoor activity area to eliminate hazards and to minimize conflict between children using the play equipment;
2. If a child can fall more than 48 inches from a climbing structure, swing, or slide in an outdoor activity area to the ground below, the climbing structure, swing, or slide:
   a. Has one of the following covering the fall zone of the climbing structure, swing, or slide:
      i. At least 6 inches of fine loose sand, pea gravel, wood fiber product, or other resilient material; or
      ii. A shock-absorbing unitary surfacing material manufactured for such use in outdoor activity areas; and
   b. Unless manufactured to be tip-resistant, as stated in the manufacturer's description of the climbing structure, swing, or slide, is anchored securely to the ground with anchors that are installed below the ground and are covered by the resilient material required in subsection (C)(2)(a)(i) or (ii); and
3. If a child can fall between 24 and 48 inches from a climbing structure, swing, or slide in an outdoor activity area to the ground below, the climbing structure, swing, or slide has covering the fall zone of the climbing structure, swing, or slide non-dormant, growing grass or the resilient material required in subsection (C)(2)(a)(i) or (ii).

D. If the property adjoining an outdoor activity area has a swimming pool that is not enclosed by a fence that complies with the requirements of R9-3-503(B), the certificate holder shall ensure that the fence around the outdoor activity area complies with the requirements of R9-3-503(B).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-503. Swimming Pool Standards

A. A certificate holder shall ensure that a swimming pool used by an enrolled child at a child care group home:
1. Contains water that meets one of the following chemical disinfection standards:
   a. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
   b. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
   c. An oxidation-reduction potential equal to or greater than 650 millivolts; and
2. 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;
b. An operational vacuum cleaning system; and
c. The following items, which shall be accessible whenever the swimming pool is in use:
   i. A ring buoy attached to a 1/2 inch diameter rope at least 25 feet in length, and
   ii. A shepherd's crook.

B. A certificate holder shall ensure that a swimming pool at the child care group home is totally enclosed by a fence that:
1. Separates the swimming pool from all other outdoor activity areas;
2. Is secured to the ground;
3. Is at least 5 feet high;
4. Has a self-closing, self-latching, lockable gate; and
5. Does not have any vertical or horizontal open space that exceeds 4 inches at any point, including any space on a gate

C. A certificate holder shall ensure that:
1. On each day an enrolled child uses a swimming pool at the child care group home, a staff member tests the swimming pool's water quality at least once for compliance with subsection (A)(1), and records the results of the water quality tests in a log that includes each testing date and test result;
2. A swimming pool is not used by an enrolled child if a water quality test shows that the swimming pool water does not comply with subsection (A)(1);
3. Each gate on a fence around a swimming pool on the premises is locked whenever the swimming pool is not in use;
4. Swimming pool chemicals are kept in a locked storage area; and
5. Swimming pool machinery, including a vacuum cleaning system, is inaccessible to enrolled children.

D. A certificate holder shall ensure that a staff member does not allow an enrolled child to use or have access to a wading pool.

E. Before an enrolled child is allowed to swim at the child care group home, a certificate holder shall ensure that:
1. The enrolled child's parent has given written permission for swimming; and
2. An individual who has current lifeguard certification that includes a demonstration of the individual's ability to perform CPR is stationed at the swimming pool in a location that enables the individual to see clearly all parts of the swimming pool, including the bottom, at all times while enrolled children are using the swimming pool.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-504. Fire Safety, Gas Safety, and Emergency Standards

A. A certificate holder shall ensure that:
1. The house number of the child care group home's residence is painted or posted on the premises so that it is visible from the street;
2. A smoke detector is installed in each indoor area of the child care group home approved for providing child care services and in each hallway of the child care group home's residence;
3. Each smoke detector required under subsection (A)(2):
   a. Is maintained in an operable condition; and
   b. Is either battery operated or, if hard-wired into the electrical system of the child care group home's residence, has a back-up battery;
4. The child care group home's residence has at least two portable fire extinguishers:
   a. One of which is labeled as rated at least 1A-10-BC by the Underwriters Laboratories is mounted on the kitchen wall and is easily accessible, and
   b. One of which is labeled as rated at least 2A-10-BC by the Underwriters Laboratories and is maintained in a location accessible to staff members in an area of the child care group home approved for providing child care services;
5. Each electrical outlet in an area of the child care group home approved for providing child care services is covered with a safety plug cover or insert when not in use;
6. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the child care group home;
7. 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 child care group home;
8. Each electrical, cable, or telephone outlet at the child care group home is covered with a face plate;
9. A wood-burning stove, the interior of a fireplace, or a chiminea is inaccessible to enrolled children when in use;
10. An unvented space heater or open-flame space heater is not used in the child care group home's residence during hours of operation;

11. An electric portable heater is not used in the child care group home's residence during hours of operation unless the electric portable heater:
    a. Has:
        i. Either a non-porous casing or a grill with a mesh small enough to prevent cloth or a child's finger from entering the casing,
        ii. A tilt switch that shuts off power to the electric portable heater if the electric portable heater tips over,
        iii. An automatic shutoff control to prevent overheating, and
        iv. A thermostat control; and
    b. Is plugged directly into a wall outlet;
12. A candle or incense is not burned in the child care group home's residence during hours of operation; and
13. Smoking is not permitted in the residence during hours of operation or in the presence or sight of enrolled children.

B. A certificate holder shall ensure that a staff member:
1. Tests the battery for each smoke detector required under subsection (A)(2) each month,
2. Makes a record of each test performed,
3. Replaces a smoke detector battery that is no longer charged, and
4. Maintains the record of the test on the premises for 12 months after the date of the test.

C. A certificate holder shall:
1. Replace a disposable fire extinguisher when its indicator reaches the red zone; and
2. Ensure that each rechargeable fire extinguisher in the child care group home's residence:
    a. Is serviced at least once every 12 months, and
    b. 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.

D. If there are gas pipes that run from a gas meter to an appliance or location on the premises:
1. Before an applicant for a child care group home is issued a certificate by the Department, the applicant shall obtain a gas inspection report by a licensed plumber or individual authorized by the local jurisdiction that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on the premises; and
2. A certificate holder shall ensure that:
    a. Each unused natural gas outlet at the child care group home has its valves removed by and is capped at the wall or floor by a licensed plumber or individual authorized by the local jurisdiction;
    b. A licensed plumber or individual authorized by the local jurisdiction conducts a gas inspection that verifies there are no gas leaks in the gas pipes that run from the gas meter to any appliance or location on the premises at least once every 12 months after the date of the certificate; and
    c. A copy of a current gas inspection report, including documentation of any repairs or corrections required by the gas inspection report, is maintained on the premises.

E. A certificate holder shall:
1. Prepare a fire and emergency plan, consisting of:
    a. The child care group home's address and telephone number;
    b. A list of emergency telephone numbers, including 9-1-1 and a poison control center;
    c. A document or documents that include the contact telephone number for a parent of each enrolled child; and
    d. An evacuation plan for the child care group home, including a floor plan of the child care group home's residence on which lines have been drawn showing the evacuation path from each area of the child care group home approved for providing child care services;
2. Maintain the fire and emergency plan in a location accessible to staff members; and
3. Post a copy of the floor plan showing the evacuation paths from the residence in each indoor area of the child care group home approved for providing child care services.

F. A certificate holder shall ensure that:
1. An unannounced fire and emergency evacuation drill are:
    a. At least once each month; and
    b. Each fire drill and emergency evacuation drill is conducted at a different time of day than the fire and emergency evacuation drill conducted in the previous month;
2. During the fire and emergency evacuation drill, each staff member and enrolled child at the child care group home is evacuated from the child care group home according to the evacuation plan;
3. A record is made of each fire and emergency evacuation drill, including:
    a. The date of the fire and emergency evacuation drill, and
    b. The time of the fire and emergency evacuation drill; and
4. The record of the fire and emergency evacuation drill is maintained on the premises for 12 months after the date of the fire and emergency evacuation drill.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-505. General Safety Standards

A. A certificate holder shall ensure that the following are cared for only on the ground floor of the child care group home's residence:
1. An enrolled infant,
2. An enrolled child younger than five years of age, and
3. An enrolled child who uses a wheelchair or is not able to walk.

B. Except as provided in subsection (A)(3), a certificate holder may allow a staff member to care for an enrolled child five years of age or older on a floor above or below the ground floor of the child care group home's residence if one of the two unobstructed, usable exits to the outside required in R9-3-501(A)(4) from the floor on which child care services are provided leads to the ground level outside without passing through the ground floor.

C. If the residence of a child care group home is a mobile home, a manufactured home, or a factory-built building, as defined in A.R.S. § 41-2142, the certificate holder shall ensure that:
1. The skirting around the mobile home, manufactured home, or factory-built building is permanently attached and surrounds the entire perimeter of the residence; and
2. Each stairway or ramp to the mobile home, manufactured home, or factory-built building has railings.

D. A certificate holder shall ensure that:
1. A stairway that leads to a floor or room outside of the areas of the child care group home approved for providing child care services is separated from the areas of the child care group home approved for providing child care services by either a door or gate that is kept closed during hours of operation;
2. A glass window, mirror, or other glass surface that is located lower than 36 inches above the floor, a sliding glass door, or another type of glass partition that is located lower than 36 inches above the floor:
   a. Is made of safety glass that has been manufactured, fabricated, or treated to prevent the glass from shattering or flying when struck or broken;
   b. Is shielded by a barrier to prevent impact by or physical injury to an enrolled child; or
   c. Has conspicuous markings located at a child's eye level;
3. Firearms kept at the child care group home are unloaded, out of the view of enrolled children, and stored in separate locked areas, locked cabinets, or locked containers away from the locked areas, locked cabinets, or locked containers in which ammunition is stored;
4. The child care group home has at least one operable telephone available for use by a staff member;
5. Except as provided in R9-3-503(C)(4) and subsection (D)(6)(d), the following are stored in a labeled container separate from food storage areas and are inaccessible to an enrolled child:
   a. Materials and chemicals labeled as a toxic substance, and
   b. Substances that have a child warning label and may be a hazard to a child;
6. Flammable liquids are stored:
   a. In an original container;
   b. Separate from food storage areas;
   c. Away from any heat-producing appliance or equipment, such as a water heater or furnace; and
   d. Except for hand sanitizers being provided for use, in a location inaccessible to enrolled children;
7. Each window blind cord or curtain cord at the child care group home is anchored to a wall or inaccessible to an enrolled child;
8. Each fan in an area of the child care group home approved for providing child care services is inaccessible to an enrolled child; and
9. An enrolled child does not have access to the following on the premises:
   a. Lawn mowers, ladders, toilet brushes, plungers, and other equipment that may be a hazard to a child;
   b. An air conditioner, evaporative cooler, heat pump, or furnace;
   c. A hot tub or spa;
   d. A pond or fountain;
   e. An irrigation ditch, abandoned mine, or well; or
   f. A trampoline.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

R9-3-506. General Cleaning and Sanitation Standards

A certificate holder shall ensure that:

1. All areas of the child care group home approved for providing child care services and the furnishings, equipment, supplies, materials, utensils, and toys in those areas are kept clean and free of insects and vermin;
2. All equipment, materials, and toys used by or accessible to enrolled children are cleaned and disinfected as often as necessary to maintain them in a clean and disinfected condition and, for items used by infants or one- or two-year-old children, at least once every 24 hours;
3. All plumbing fixtures at the child care group home are maintained in operating condition;
4. The plumbing at the child care group home supplies sufficient water pressure to meet the child care group home's toileting and cleaning needs;
5. Each bathroom used by an enrolled child at the child care group home has the following within the reach of enrolled children:

a. Mounted toilet tissue,
b. Soap contained in a dispenser, and
c. Singly dispensed paper towels;

6. A staff member washes the staff member's hands with soap and running water after toileting;
7. An enrolled child, other than an enrolled child with special needs who cannot wash the enrolled child's own hands, washes the enrolled child's hands with soap and running water after toileting;
8. After an enrolled child with special needs who cannot wash the enrolled child's own hands uses the toilet, a staff member washes the enrolled child's hands with a washcloth, cloth, or paper towel, or disposable wipes, using each washcloth, cloth, or paper towel, or disposable wipe on only one enrolled child and only one time before it is laundered or discarded;
9. Each toilet bowl and sink in a child care group home available for use by enrolled children is cleaned and disinfected daily or, if necessary, more often;
10. A bathtub is cleaned and disinfected before being used to bathe an enrolled child and, if used to bathe more than one enrolled child in one day, between each use;
11. Food waste at the child care group home is stored in a covered waterproof container that is clean and lined with a plastic bag; and
12. Food waste and other refuse is removed from the residence daily or, if necessary, more often.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-507. Diaper-Changing Standards

A. A certificate holder shall ensure that a staff member changes diapers only on a nonabsorbent, sanitizable diaper changing surface that:
1. Is kept clear of items not required for diaper changing;
2. Is in an area of the child care group home approved for providing child care services, but not in a kitchen or eating area; and
3. Provides access to running water that is not a kitchen sink and dispensed soap within 15 feet.

B. A certificate holder shall ensure that:
1. A staff member:
   a. Cleans, sanitizes, and dries a diaper-changing surface using a single-use paper towel before and after each diaper change;
   b. Washes the staff member's hands with soap and running water before and after each diaper change;
   c. Wears single-use non-porous gloves during each diaper change;
   d. Washes an enrolled child's hands with soap and running water or with a washcloth or disposable wipe after the enrolled child's diaper is changed and uses each washcloth or disposable wipe on only one child and only one time before it is laundered or discarded; and
   e. Documents the daily diaper changes for each enrolled child in a dated diaper-changing log after changing the enrolled child's diaper;
2. The diaper-changing log is maintained on the premises for 12 months after the date of the last diaper change recorded in the diaper-changing log;
3. Soiled cloth diapers or plastic pants from an enrolled child are:
   a. If soiled with feces, emptied into a flush toilet without rinsing the cloth diapers or plastic pants;
   b. Placed in a plastic bag labeled with an identifier that is specific to the enrolled child;
   c. Stored in a waterproof container that is tightly covered and lined with a plastic bag; and
   d. Sent home with the enrolled child's parent; and
4. Soiled disposable diapers and disposable training pants are:
   a. Stored in a waterproof container that is tightly covered and lined with a plastic bag; and
   b. Removed from the diaper-changing area and discarded in an outside waste receptacle once daily or, if necessary, more often.

TITLE 9. HEALTH SERVICES

CHAPTER 3. DEPARTMENT OF HEALTH SERVICES - CHILD CARE GROUP HOMES

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3). Amended by final expedited rulemaking at 26 A.A.R. 1969, with an immediate effective date of September 2, 2020 (Supp. 20-3).

R9-3-508. Pet and Animal Standards

A certificate holder shall ensure that:

1. Each dog, cat, or ferret at the child care group home has a current vaccination against rabies;
2. Documentation of current vaccination against rabies, required in subsection (1), is maintained on the premises;
3. All pet and animal habitats at the child care group home are kept clean;
4. When kept in an area of the child care group home approved for providing child care services, a bird is:
   a. Kept in a cage during hours of operation, and
   b. Not kept in the kitchen or an eating area of the child care group home;
5. Pets and animals are controlled so that the cleanliness of the child care group home is maintained and no enrolled child, staff member, or other individual at the child care group home is endangered;
6. All animals, except cats and dogs, are kept in enclosures that are inaccessible to enrolled children, except as an activity, during hours of operation;
7. A reptile in a child care group home is:
   a. Kept in a tank, container, or other enclosure that is:
      i. Inaccessible to enrolled children,
      ii. Not located in an area of the child care group home approved for providing child care services, and
      iii. Not brought into or through areas of the child care group home approved for providing child care services;
   b. Not taken out of the tank, container or other enclosure at any time during hours of operation;
   c. Not brought into areas of the child care group home approved for providing child care services at any time; and
   d. Not used as part of an activity;
8. Each pet dish is inaccessible to enrolled children during hours of operation;
9. Receptacles for pet feces and urine, such as litter boxes, are inaccessible to enrolled children;
10. Pet feces in an outdoor activity area are cleaned up before enrolled children are permitted in the outdoor activity area; and
11. Enrolled children and staff members wash their hands with soap and running water after an activity involving animals.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1214, effective September 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 17 A.A.R. 1530, effective September 30, 2011 (Supp. 11-3).

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.

36-897.01. Certification; application; fees; rules; fingerprinting; renewal; exemption from rule making

A. A child care group home shall be certified by the department. An application for a certificate shall be made on a written or electronic form prescribed by the department and shall contain all information required by the department.

B. If a child care group home is within one-fourth mile of agriculture land, the application shall include the names and addresses of the owners and lessees of any agricultural land within one-fourth mile of the facility. Within ten days after receipt of an application for a certificate, the department shall notify the owners and lessees of agricultural land as listed on the application. The department shall deny a certificate that affects agricultural land regulated pursuant to section 3-365,

except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may issue a certificate to the child care group home to be located within the affected buffer zone. The agreement may include any stipulations regarding the child care group home, including conditions for future expansion of the facility and changes in the operational status of the facility that will result in a breach of the agreement. This subsection applies to the renewal of a certificate for a child care group home located in the same location if the child care group home certificate was not previously issued under this subsection.

C. The director, by rule, may establish and collect fees for child care group homes and a late filing fee. Beginning January 1, 2010, ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. Pursuant to available funding the department shall collect annual fees.

E. Beginning January 1, 2010, subject to the availability of monies, the department may establish a discount program for certification fees paid by child care group homes, including a public health discount program.

F. The department shall issue an initial certificate if the department determines that the applicant and the applicant's child care group home are in substantial compliance with the requirements of this article and department rules and the facility agrees to carry out a plan acceptable to the director to eliminate any deficiencies.

G. A certificate is valid unless it is revoked or suspended or the licensee does not pay the licensure fee and may be renewed by submitting the certification fee as prescribed by the department pursuant to subsection C of this section.

H. In order to ensure that the equipment and services of a child care group home and the good character of an applicant are conducive to the welfare of children, the department by rule shall establish the criteria for granting, denying, suspending and revoking a certificate.

I. The director shall adopt rules and prescribe forms as may be necessary for the proper administration and enforcement of this article.

J. The certificate shall be conspicuously posted in the child care group home for viewing by parents and the public.

K. Current department inspection reports shall be kept at the child care group home and shall be made available to parents on request.

L. A certificate is not transferable and is valid only for the location occupied at the time it is issued.

M. An application for an initial certificate shall include:

1. The form that is required pursuant to section 36-897.03, subsection B and that is completed by the applicant.

2. A copy of a valid fingerprint clearance card issued to the applicant pursuant to section 41-1758.07.

N. The department of health services shall notify the department of public safety if the department of health services receives credible evidence that a person who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.

2. Falsified information on any form required by section 36-897.03.

O. Certificate holders may pay fees by installment payments based on procedures established by the department.

P. The department shall review its actual costs to administer this article at least once every two years. If the department determines that its administrative costs are lower than the fees it has collected pursuant to this section, it shall adjust fees.

Q. If the department lowers fees, the department may refund or credit fees to licensees.

R. Fee reductions are exempt from the rule making requirements of title 41, chapter 6.

36-897.02. Standards of care; monitoring

A. The department by rule shall establish standards of care for child care group homes. These rules shall include minimum programmatic, personnel, supervision of children, training, physical environment and financial stability standards.

B. At least two adults shall be present in the child care group home when six to ten children are cared for in the home.

C. For purposes of certification of the child care group home, the provider's own children shall not be counted.

D. The total number of children present in a child care group home at any given time for whom compensation is received shall not exceed ten.

E. The total number of children present in a child care group home at any given time, including children related to the provider, shall not exceed fifteen.

F. The department shall monitor the operation of a child care group home at least two times each year to ensure that the child care group home is meeting department standards of care.

36-897.03. Child care group homes; child care personnel; fingerprints; definition

A. Child care personnel, including volunteers, shall submit the form prescribed in subsection B of this section to the employer and shall have valid fingerprint clearance cards issued pursuant to section 41-1758.07 before starting employment or volunteer work.

B. Applicants, certificate holders and child care personnel shall attest on forms that are provided by the department that:

1. They are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement committing any of the offenses listed in section 41-1758.07, subsection B or C in this state or similar offenses in another state or jurisdiction.

2. They are not parents or guardians of a child adjudicated to be a dependent child as defined in section 8-201.

3. They have not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state or had a license to operate a child care facility or a certificate to operate a child care group home revoked for reasons that relate to the endangerment of the health and safety of children.

C. The provider shall make documented, good faith efforts to contact previous employers of child care personnel to obtain information or recommendations that may be relevant to an individual's fitness to work in a certified child care group home.

D. The director may adopt rules prescribing the exclusion from child care group homes of individuals whose presence may be detrimental to the welfare of children.

E. The forms required by subsection B of this section are confidential.

F. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection B or subsection B, paragraph 2 or 3 of this section is prohibited from being employed in any capacity in a child care group home.

G. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.07, subsection C shall not work in a child care group home without direct visual supervision unless the person has applied for and received the required fingerprint clearance card pursuant to section 41-1758 and is registered as child care personnel. A person who is subject to this subsection shall not be employed in any capacity in a child care group home if that person is denied the required fingerprint clearance card.

H. The employer shall notify the department of public safety if the employer receives credible evidence that any child care personnel either:

1. Is arrested for or charged with an offense listed in section 41-1758.07, subsection B.

2. Falsified information on the form required by subsection B of this section.

I. For the purposes of this section, "child care personnel" means all employees of and persons who are eighteen years of age or older and who reside in a child care group home that is certified by the department.

36-897.04. Exemptions

A. This article does not apply to the care given to children by or in:

1. The homes of their own parents.

2. A religious institution conducting a nursery in conjunction with its religious services.

3. A unit of the public school system.

4. A regularly organized private school engaged in an educational program which may be attended in substitution for public school pursuant to section 15-802.

5. Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion.

6. Any facility that provides only recreational or instructional activity to school age children who may come to and go from that facility at their own volition.

B. If regularly organized private schools exempt under subsection A, paragraph 4 of this section provide child care beyond public school hours or for children who are not regularly enrolled in kindergarten programs or grades one through twelve, that portion of the school providing this care shall be considered a child care group home and is subject to this article.

36-897.05. Inspection of child care group homes

A. The department or designated local health departments or its agents may at any time visit, during hours of operation, and inspect a child care group home in order to determine whether it is certified and is being conducted in compliance with applicable law, this article and rules adopted pursuant to this article.

B. The department shall visit each child care group home as often as necessary to assure continued compliance with this article and the rules adopted pursuant to this article. At least one unannounced visit shall be made annually.

36-897.06. Civil penalty; collection

A. The director may impose a civil penalty on a person who violates this article or rules adopted pursuant to this article in an amount of not more than one 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. A person may appeal the assessment by requesting an administrative hearing. If a person requests a hearing to appeal an assessment, the director shall 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 on which the violation has been documented by the department.

B. In determining the civil penalty pursuant to subsection A, the department shall consider the following:

1. Repeated violations of statutes or rules.

2. Patterns of noncompliance.

3. Types of violations.

4. Severity of violations.

5. Potential for and occurrences of actual harm.

6. Threats to health and safety.

7. Number of children affected by the violations.

8. Number of violations.

9. Size of the facility.

10. Length of time during which violations have been occurring.

C. If a civil penalty imposed pursuant to subsection A of this section is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

D. Civil penalties collected pursuant to subsection A of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. The department shall develop an instrument that documents compliance and noncompliance of child care group homes according to the criteria prescribed in its rules governing child care group home certification. Blank copies of the instrument, which shall be in standardized form, shall be made available to the public.

36-897.07. Training program

The director shall establish a training program to provide training for child care group homes and users of child care group home services, technical assistance materials for child care group homes and information to enhance consumer awareness.

36-897.08. Intermediate sanctions; notification of compliance; hearing

A. If the director has reasonable cause to believe that a child care group home is in violation of this article or a rule adopted pursuant to this article and that the health or safety of the children is endangered, on written notice to the child care group home the director may impose one or more of the following intermediate sanctions until the child care group home is in substantial compliance:

1. Immediately restrict admissions to the child care group home.

2. Terminate specific services that the child care group home may offer.

3. Reduce the child care group home's capacity.

B. A child care group home sanctioned pursuant to this section shall notify the department in writing when it is in substantial compliance. On receipt of notification the department shall conduct an

inspection. If the department determines that the child care group home is in substantial compliance the director shall immediately rescind the sanctions. If the department determines that the child care group home is not in substantial compliance the sanctions remain in effect. The child care group home may then notify the department of substantial compliance not sooner than fourteen days after the date of that inspection. If the department determines on the return inspection that the child care group home is still not in substantial compliance the sanctions remain in effect. Thereafter, a child care group home may notify the department of substantial compliance not sooner than thirty days after the date of the last inspection. A child care group home shall make all notifications of substantial compliance by certified mail. The department shall conduct all inspections required pursuant to this subsection within fourteen days after receipt of notification of substantial compliance. If the department does not conduct an inspection within this time period, the sanctions have no further effect.

C. On written request by a person who has been sanctioned pursuant to this section the director or the director's designee shall conduct a hearing to review the sanctions. A request for a hearing shall be made by certified mail within ten days after receipt of notice of the sanctions. The office of administrative hearings shall conduct an administrative hearing within seven business days after the notice of appeal has been filed with the office of administrative hearings.

D. A hearing conducted pursuant to this section shall comply with the requirements of title 41, chapter 6, article 10.

36-897.09. Operating without a certificate; notice; hearing; violation; classification

A. If the department has reasonable cause to believe that a person is operating a child care group home without a certificate, it shall notify that person to cease operation within ten days of receiving the notice. The department shall give notice either by certified mail or by personal service. The notice shall state that the person may make a written request for a hearing before the director or the director's designee pursuant to title 41, chapter 6, article 10.

B. If a person fails to cease operation, the department may request that the county attorney of the county in which the home is located enforce this article. The department may also notify the attorney general who shall immediately seek a restraining order and an injunction against the home.

C. A person who continues to operate a child care group home without certification ten days after receiving notice pursuant to this section is guilty of a class 1 misdemeanor.

36-897.10. Pending action or sale; effect on licensure

A. The department shall not act on an application for certification of a currently certified child care group home while any enforcement or court action related to child care group home certification is pending against that group home's current certificate holder.

B. The director may continue to pursue any court, administrative or enforcement action against the certificate holder even if the group home is in the process of being sold or transferred to a new owner.

C. The department shall not approve a change in group home ownership unless it determines that there has been a transfer of legal and equitable interests, control and authority in the group home so that persons other than the transferring certificate holder, that certificate holder's agent or other

parties exercising authority or supervision over the group home's daily operations or staff are responsible for and have control over the group home.

36-897.11. Injunctions; definition

A. If the department believes that a child care group home is operating under conditions that may cause serious harm to children, the department shall notify the attorney general or the county attorney of the county in which the child care group home is located who shall immediately seek a restraining order and injunction against the home.

B. For the purposes of this section, "serious harm" means a substantial physical injury.

36-897.12. Inspection of records

A. Records maintained by the department for child care group homes are available to the public for review and copying.

B. Personally identifiable information that relates to a child, parent or guardian is confidential. The department shall disclose this information only as follows:

1. Pursuant to a court order.

2. Pursuant to a written consent signed by the parent or guardian.

3. To a law enforcement officer who requires it for official purposes.

4. To an official of a governmental agency who requires it for official purposes.

C. The department shall enter into the child care group home's case file, contiguous to the form containing the reported violations, those documents that verify correction of reported violations.

36-897.13. Use of sunscreen in child care group homes

A school-age child who attends a child care group home in this state may possess and use a topical sunscreen product without a note or prescription from a licensed health care professional.

Title 45 —Public Welfare
Subtitle A —Department of Health and Human Services
Subchapter A —General Administration

PART 98—CHILD CARE AND DEVELOPMENT FUND

Authority: 42 U.S.C. 618, 9858.

Source: 63 FR 39981, July 24, 1998, unless otherwise noted.

Subpart A—Goals, Purposes and Definitions

§ 98.1 Purposes.

(a) The purposes of the CCDF are:

(1) To allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within that State;

(2) To promote parental choice to empower working parents to make their own decisions regarding the child care services that best suits their family's needs;

(3) To encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings;

(4) To assist States in delivering high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance;

(5) To assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight standards established in this subchapter and in State law (including State regulations);

(6) To improve child care and development of participating children; and

(7) To increase the number and percentage of low-income children in high-quality child care settings.

(b) The purpose of this part is to provide the basis for administration of the Fund. These regulations provide that State, Territorial, and Tribal Lead Agencies:

(1) Maximize parental choice of safe, healthy and nurturing child care settings through the use of certificates and through grants and contracts, and by providing parents with information about child care programs;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in home care, care provided by relatives and sectarian child care providers;

(3) Improve the quality and supply of child care and before- and after-school care services that meet applicable requirements and promote healthy child development and learning and family economic stability;

(4) Coordinate planning and delivery of services at all levels, including Federal, State, Tribal, and local;

(5) Design flexible programs that provide for the changing needs of recipient families and engage families in their children's development and learning;

(6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;

(7) Design programs that provide uninterrupted service to families and providers, to the extent allowed under the statute, to support parental education, training, and employment and continuity of care that minimizes disruptions to children's learning and development;

(8) Provide a progression of training and professional development opportunities for caregivers, teachers, and directors to increase their effectiveness in supporting children's development and learning and strengthen and retain (including through financial incentives and compensation improvements) the child care workforce.

[81 FR 67573, Sept. 30, 2016]

§ 98.2 Definitions.

For the purpose of this part and part 99:

The Act refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, as amended and codified at 42 U.S.C. 9858 *et seq.*

ACF means the Administration for Children and Families;

Application is a request for funding that includes the information required at § 98.13;

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services;

Caregiver means an individual who provides child care services directly to an eligible child on a person-to-person basis;

Categories of care means center-based child care, family child care, and in home care;

Center-based child care provider means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Child care certificate means a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

Child Care and Development Fund (CCDF) means the child care programs conducted under the provisions of the Child Care and Development Block Grant Act, as amended. The Fund consists of Discretionary Funds authorized under section 658B of the amended Act, and Mandatory and Matching Funds appropriated under section 418 of the Social Security Act;

Child care provider that receives assistance means a child care provider that receives Federal funds under the CCDF pursuant to grants, contracts, or loans, but does not include a child care provider to whom Federal funds under the CCDF are directed only through the operation of a certificate program;

Child care services, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

Child experiencing homelessness means a child who is homeless as defined in section 725 of SubtitleVII-B of the McKinney-Vento Act (42 U.S.C. 11434a);

Child with a disability means:

(1) A child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401);

(2) A child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*);

(3) A child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(4) A child with a disability, as defined by the State, Territory or Tribe involved;

Construction means the erection of a facility that does not currently exist;

The Department means the Department of Health and Human Services;

Director means a person who has primary responsibility for the daily operations and management for a child care provider, which may include a family child care provider, and which may serve children from birth to kindergarten entry and children in school-age child care;

Discretionary funds means the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant;

Eligible child means an individual who meets the requirements of § 98.20;

Eligible child care provider means:

(1) A center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, siblings (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

English learner means an individual who is an English learner, as defined in section 8101 of the Elementary and Secondary Education Act of 1965 or who is limited English proficient, as defined in section 637 of the Head Start Act (42 U.S.C. 9832);

Facility means real property or modular unit appropriate for use by a grantee to carry out a child care program;

Family child care provider means one or more individual(s) who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

In-home child care provider means an individual who provides child care services in the child's own home;

Lead Agency means the State, territorial or tribal entity, or joint interagency office, designated or established under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

Licensing or regulatory requirements means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or tribal law;

Liquidation period means the applicable time period during which a fiscal year's grant shall be liquidated pursuant to the requirements at § 98.60.;

Major renovation means any renovation that has a cost equal to or exceeding $350,000 in CCDF funds for child care centers and $50,000 in CCDF funds for family child care homes, which amount shall be adjusted annually for inflation and published on the Office of Child Care website. If renovation costs exceed these thresholds and do not include:

(1) Structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or

(2) Extensive alteration of a facility such as to significantly change its function and purpose for direct child care services, even if such renovation does not include any structural change; and improve the health, safety, and/or quality of child care, then it shall not be considered major renovation;

Mandatory funds means the general entitlement child care funds described at section 418(a)(1) of the Social Security Act;

Matching funds means the remainder of the general entitlement child care funds that are described at section 418(a)(2) of the Social Security Act;

Modular unit means a portable structure made at another location and moved to a site for use by a grantee to carry out a child care program;

Obligation period means the applicable time period during which a fiscal year's grant shall be obligated pursuant to § 98.60;

Parent means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis*;

The Plan means the Plan for the implementation of programs under the CCDF;

Program period means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality activities pursuant to § 98.53;

Provider means the entity providing child care services;

The regulation refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment;

Secretary means the Secretary of the Department of Health and Human Services;

Sectarian organization or sectarian child care provider means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

Sectarian purposes and activities means any religious purpose or activity, including but not limited to religious worship or instruction;

Services for which assistance is provided means all child care services funded under the CCDF, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

Sliding fee scale means a system of cost-sharing by a family based on income and size of the family, in accordance with § 98.45(l);

State means any of the States and the District of Columbia, and includes Territories and Tribes unless otherwise specified;

Teacher means a lead teacher, teacher, teacher assistant, or teacher aide who is employed by a child care provider for compensation on a regular basis, or a family child care provider, and whose responsibilities and activities are to organize, guide, and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and children in school-age child care;

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands;

Territory mandatory funds means the child care funds set aside at section 418(a)(3)(C) of the Social Security Act (42 U.S.C. 618(a)(3)(C)) for payments to the Territories;

Tribal mandatory funds means the child care funds set aside at section 418(a)(3)(B) of the Social Security Act (42 U.S.C. 618(a)(3)(B)) for payments to Indian Tribes and tribal organizations;

Tribal organization means the recognized governing body of any Indian Tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its

activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

Types of providers means the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67573, Sept. 30, 2016; 89 FR 15411, Mar. 1, 2024; 89 FR 52396, June 24, 2024]

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent CCDF funds from being expended for the purposes provided in the Act, without limitation, then States shall segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead Agency responsibilities.

The Lead Agency (which may be an appropriate collaborative agency), or a joint interagency office, as designated or established by the Governor of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the CCDF program, directly or through other governmental or non-governmental agencies, in accordance with § 98.11;

(b) Apply for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c);

(e) Coordinate CCDF services pursuant to § 98.12; and

(f) Consult, collaborate, and coordinate in the development of the State Plan in a timely manner with Indian Tribes or tribal organizations in the State (at the option of the Tribe or tribal organization).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67574, Sept. 30, 2016]

§ 98.11 Administration under contracts and agreements.

(a) The Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In addition, the Lead Agency can use other public or private local agencies to implement the program; however:

(1) The Lead Agency shall retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The Lead Agency shall serve as the single point of contact for issues involving the administration of the grantee's CCDF program; and

(3) Administrative and implementation responsibilities undertaken by agencies other than the Lead Agency shall be governed by written agreements that specify the mutual roles and responsibilities of the Lead Agency and the other agencies in meeting the requirements of this part. The contents of the written agreement may vary based on the role the agency is asked to assume or the type of project undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

(b) In retaining overall responsibility for the administration of the program, the Lead Agency shall:

(1) Determine the basic usage and priorities for the expenditure of CCDF funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subrecipients and contractors, in accordance with 75 CFR parts 351 to 353;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of any subgrantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local or non-governmental agencies through which the State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67574, Sept. 30, 2016]

§ 98.12 Coordination and consultation.

The Lead Agency shall:

(a) Coordinate the provision of services for which assistance is provided under this part with the agencies listed in § 98.14(a).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, per § 98.10(f) with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67574, Sept. 30, 2016]

§ 98.13 Applying for Funds.

The Lead Agency of a State or Territory shall apply for Child Care and Development funds by providing the following:

(a) The amount of funds requested at such time and in such manner as prescribed by the Secretary.

(b) The following assurances or certifications:

(1) An assurance that the Lead Agency will comply with the requirements of the Act and this part;

(2) A lobbying certification that assures that the funds will not be used for the purpose of influencing pursuant to 45 CFR part 93, and, if necessary, a Standard Form LLL (SF-LLL) that discloses lobbying payments;

(3) An assurance that the Lead Agency provides a drug-free workplace pursuant to 45 CFR 76.600, or a statement that such an assurance has already been submitted for all HHS grants;

(4) A certification that no principals have been debarred pursuant to 2 CFR 180.300;

(5) Assurances that the Lead Agency will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended), and;

(6) Assurances that the Lead Agency will comply with the applicable provisions of Public Law 103-277, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, regarding prohibitions on smoking.

(c) The Child Care and Development Fund Plan, at times and in such manner as required in § 98.17; and

(d) Such other information as specified by the Secretary.

[63 FR 39981, July 24, 1998, as amended at 89 FR 15412, Mar. 1, 2024]

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the Lead Agency shall:

(a)

(1) Coordinate the provision of child care services funded under this part with other Federal, State, and local child care and early childhood development programs (including such programs for the benefit of Indian children, infants and toddlers, children with disabilities, children experiencing homelessness, and children in foster care) to expand accessibility and continuity of care as well as full-day services. The Lead Agency shall also coordinate the provision of services with the State, and if applicable, tribal agencies responsible for:

(i) Public health, including the agency responsible for immunizations;

(ii) Employment services/workforce development;

(iii) Public education (including agencies responsible for prekindergarten services, if applicable, and early intervention and preschool services provided under Part B and C of the Individuals with Disabilities Education Act (20 U.S.C. 1400));

(iv) Providing Temporary Assistance for Needy Families;

(v) Child care licensing;

(vi) Head Start collaboration, as authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*);

(vii) State Advisory Council on Early Childhood Education and Care (designated or established pursuant to the Head Start Act (42 U.S.C. 9831 *et seq.*)) or similar coordinating body;

(viii) Statewide after-school network or other coordinating entity for out-of-school time care (if applicable);

(ix) Emergency management and response;

(x) Child and Adult Care Food Program (CACFP) authorized by the National School Lunch Act (42 U.S.C. 1766) and other relevant nutrition programs;

(xi) Services for children experiencing homelessness, including State Coordinators of Education for Homeless Children and Youth (EHCY State Coordinators) and, to the extent practicable, local liaisons designated by Local Educational Agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and Continuum of Care grantees;

(xii) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*);

(xiii) Mental health services; and

(xiv) Child care resources and referral agencies, child care consumer education organizations, and providers of early childhood education training and professional development.

(2) Provide a description of the results of the coordination with each of these agencies in the CCDF Plan.

(3) If the Lead Agency elects to combine funding for CCDF services with any other early childhood program, provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding.

(4) Demonstrate in the CCDF Plan how the State, Territory, or Tribe encourages partnerships among its agencies, other public agencies, Indian Tribes and Tribal organizations, and private entities, including faith-based and community-based organizations, to leverage existing service delivery systems for child care and development services and to increase the supply and quality of child care and development services and to increase the supply and quality of child care services for children who are less than 13 years of age, such as by implementing voluntary shared service alliance models.

(b) Consult with appropriate representatives of local governments;

(c)

(1) Hold at least one hearing in the State, after at least 20 days of statewide public notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

(2) The hearing required by paragraph (c)(1) shall be held before the Plan is submitted to ACF, but no earlier than nine months before the Plan becomes effective.

(3) In advance of the hearing required by this section, the Lead Agency shall make available to the public the content of the Plan as described in § 98.16 that it proposes to submit to the Secretary, which shall include posting the Plan content on a Web site.

(d) Make the submitted and final Plan, any Plan amendments, and any approved requests for temporary relief (in accordance with § 98.19) publicly available on a Web site.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67574, Sept. 30, 2016]

§ 98.15 Assurances and certifications.

(a) The Lead Agency shall include the following assurances in its CCDF Plan:

(1) Upon approval, it will have in effect a program that complies with the provisions of the CCDF Plan, and that is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended, section 418 of the Social Security Act, and all other applicable Federal laws and regulations;

(2) The parent(s) of each eligible child within the area served by the Lead Agency who receives or is offered child care services for which financial assistance is provided is given the option either:

(i) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(ii) To receive a child care certificate as defined in § 98.2;

(3) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the Lead Agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(4) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(5) With respect to State and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and registration requirements, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(f).

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to § 98.55(h)(1).

(7) Training and professional development requirements comply with § 98.44 and are applicable to caregivers, teaching staff, and directors working for child care providers of services for which assistance is provided under the CCDF.

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m);

(9) The State will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use statewide by child care providers and caregivers. Such guidelines shall—

(i) Be research-based and developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten;

(ii) Be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(l)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, and in consultation with child development and content experts; and

(iii) Be updated as determined by the State.

(10) Funds received by the State to carry out this subchapter will not be used to develop or implement an assessment for children that—

(i) Will be the primary or sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter;

(ii) Will be used as the primary or sole basis to provide a reward or sanction for an individual provider;

(iii) Will be used as the primary or sole method for assessing program effectiveness; or

(iv) Will be used to deny children eligibility to participate in the program carried out under this subchapter.

(11) To the extent practicable and appropriate, any code or software for child care information systems or information technology that a Lead Agency or other agency expends CCDF funds to develop must be made available upon request to other public agencies, including public agencies in other States, for their use in administering child care or related programs.

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) The State has developed the CCDF Plan in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(l)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body, pursuant to § 98.14(a)(1)(vii);

(2) In accordance with § 98.31, the Lead Agency has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(3) As required by § 98.32, the State maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(4) It will collect and disseminate to parents of eligible children, the general public and, where applicable, child care providers, consumer education information that will promote informed child care choices, information on access to other programs for which families may be eligible, and information on developmental screenings, as required by § 98.33;

(5) In accordance with § 98.33(a), that the State makes public, through a consumer-friendly and easily accessible Web site, the results of monitoring and inspection reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings;

(6) There are in effect licensing requirements applicable to child care services provided within the State, pursuant to § 98.40;

(7) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

(8) In accordance with § 98.42(a), procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements;

(9) Caregivers, teachers, and directors of child care providers comply with the State's, Territory's, or Tribe's procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)), if applicable, or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);

(10) There are in effect monitoring policies and practices pursuant to § 98.42;

(11) Payment rates for the provision of child care services, in accordance with § 98.45, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs;

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m); and

(13) There are in effect policies to govern the use and disclosure of confidential and personally identifiable information about children and families receiving CCDF assistance and child care providers receiving CCDF funds.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67575, Sept. 30, 2016; 89 FR 15412, Mar. 1, 2024]

§ 98.16 Plan provisions.

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) A description of processes the Lead Agency will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring and auditing procedures, and indicators or measures to assess performance pursuant to § 98.11(a)(3);

(c) The assurances and certifications listed under § 98.15;

(d)

(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.55(f);

(e) A description of the coordination and consultation processes involved in the development of the Plan and the provision of services, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14;

(f) A description of the public hearing process, pursuant to § 98.14(c);

(g) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.46:

(1) Special needs child;

(2) Physical or mental incapacity (if applicable);

(3) Attending (a job training or educational program);

(4) Job training and educational program;

(5) Residing with;

(6) Working;

(7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.

(8) Very low income; and

(9) In loco parentis;

(h) A description and demonstration of eligibility determination and redetermination processes to promote continuity of care for children and stability for families receiving CCDF services, including:

(1) An eligibility redetermination period of no less than 12 months in accordance with § 98.21(a);

(2) A graduated phase-out for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b);

(3) Processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c);

(4) Processes to incorporate additional eligible children in the family size in accordance with § 98.21(d);

(5) Procedures and policies for presumptive eligibility in accordance with § 98.21(e), including procedures for tracking the number of presumptively eligible children;

(6) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete initial eligibility determination or re-determination, pursuant to § 98.21(f);

(7) Processes for using eligibility for other programs to verify eligibility for CCDF in accordance with § 98.21(g);

(8) Limiting any requirements to report changes in circumstances in accordance with § 98.21(h);

(9) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(i); and,

(10) Other policies and practices such as timely eligibility determination and processing of applications;

(i) For child care services pursuant to § 98.50:

(1) A description of such services and activities;

(2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to § 98.30(e)(1)(iii);

(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(5) Any eligibility criteria, priority rules, and definitions established pursuant to §§ 98.20 and 98.46;

(j) A description of the activities to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, to increase parental choice, and to improve the quality of child care, pursuant to § 98.53;

(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost-sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.45(l). This shall include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

(l) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41, and any exemptions to those requirements for relative providers made in accordance with § 98.42(c);

(m) A description of child care standards for child care providers of services for which assistance is provided under the CCDF, in accordance with § 98.41(d), that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors;

(n) A description of monitoring and other enforcement procedures in effect to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42;

(o) A description of criminal background check requirements, policies, and procedures in accordance with § 98.43, including a description of the requirements, policies, and procedures in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe;

(p) A description of training and professional development requirements for caregivers, teaching staff, and directors of providers of services for which assistance is provided in accordance with § 98.44;

(q) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(r) Payment rates and a summary of the facts, including a local market rate survey or alternative methodology relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.45;

(s) A detailed description of the State's hotline for complaints, its process for substantiating and responding to complaints, whether or not the State uses monitoring as part of its process for responding to complaints for both CCDF and non-CCDF providers, how the State maintains a record of substantiated parental complaints, and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

(t) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

(u) A detailed description of the licensing requirements applicable to child care services provided, any exemption to licensing requirements that is applicable to child care providers of services for which assistance is provided under the CCDF and a demonstration of why such exemption does not endanger the health, safety, or development of children, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

(v) Pursuant to § 98.33(f), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act (42 U.S.C. 607(e)(2)), to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(w)

(1) When any Matching funds under § 98.55(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.55(c)(1), or for more than 10% of the funds available at § 98.55(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care;

(x) A description of the supply of child care available regardless of subsidy participation relative to the population of children requiring child care, including care for infants and toddlers, children with disabilities as defined by the Lead Agency, children who receive care during nontraditional hours, and children in underserved geographic areas, including the data sources used to identify shortages in the supply of child care providers;

(y) A description of the Lead Agency's strategies and the actions it will take to address the supply shortages identified in paragraph (x) of this section and improve parent choice specifically for families eligible to participate in CCDF, including:

(1) For families needing care during nontraditional hours, which may include strategies such as higher payment rates, engaging with home-based child care networks, partnering with employers that have employees working nontraditional hours, and grants or contracts for direct services;

(2) For families needing infant and toddler care, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations;

(3) For families needing care for children with disabilities, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations;

(4) For families in underserved geographic areas, which must include grants or contracts for direct services pursuant to § 98.30(b) and described further in paragraph (z) of this section and may include additional strategies such as enhanced payment rates, training and professional development opportunities for the child care workforce, and engaging with staffed family child care networks and/or child care provider membership organizations; and,

(5) A method of tracking progress toward goals to increase supply and support equal access and parental choice;

(z) A description of how the Lead Agency will use grants or contracts for direct services to achieve supply building goals for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and, at Lead Agency option, children who receive care during nontraditional hours. This must include a description of the proportion of the shortages for these groups would be filled by contracted or grant funded slots. Lead Agencies must continue to provide CCDF families the option to choose a certificate for the purposes of acquiring care;

(aa) A description of how the Lead Agency will improve the quality of child care services for children in underserved geographic areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours;

(bb) A description of how the Lead Agency prioritizes increasing access to high-quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46;

(cc) A description of how the Lead Agency develops and implements strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services;

(dd) A demonstration of how the State, Territory or Tribe will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Disaster Plan (or Disaster Plan for a Tribe's service area) that:

(1) For a State, is developed in collaboration with the State human services agency, the State emergency management agency, the State licensing agency, the State health department or public health department, local and State child care resource and referral agencies, and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body; and

(2) Includes the following components:

(i) Guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary child care services during a disaster, and temporary operating standards for child care after a disaster;

(ii) Coordination of post-disaster recovery of child care services; and

(iii) Requirements that child care providers of services for which assistance is provided under the CCDF, as well as other child care providers as determined appropriate by the State, Territory or Tribe, have in place:

(A) Procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and children with chronic medical conditions; and

(B) Procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for child care providers of services for which assistance is provided under CCDF at § 98.41(a)(1)(vii);

(ee) A description of generally-accepted payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, cover mandatory fees, and pay based on a full or part-time basis;

(ff) A description of internal controls to ensure integrity and accountability, processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, and procedures in place to document and verify eligibility, pursuant to § 98.68;

(gg) A description of how the Lead Agency will provide outreach and services to eligible families with limited English proficiency and persons with disabilities and facilitate participation of child care providers with limited English proficiency and disabilities in the subsidy system;

(hh) A description of policies to prevent suspension, expulsion, and denial of services due to behavior of children birth to age five in child care and other early childhood programs receiving assistance under this part, which must be disseminated as part of consumer and provider education efforts in accordance with § 98.33(b)(1)(v);

(ii) Designation of a State, territorial, or tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, in accordance with § 98.42(b)(4);

(jj) A description of how the Lead Agency will support child care providers in the successful engagement of families in children's learning and development;

(kk) A description of how the Lead Agency will respond to complaints submitted through the national hotline and website, required in section 658L(b) of the CCDBG Act of 2014 (42 U.S.C.9858j(b)), including the designee responsible for receiving and responding to such complaints regarding both licensed and license-exempt child care providers; and

(ll) Such other information as specified by the Secretary.

[81 FR 67576, Sept. 30, 2016, as amended at 89 FR 15412, Mar. 1, 2024; 89 FR 52396, June 24, 2024]

§ 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of three years.

(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67578, Sept. 30, 2016]

§ 98.18 Approval and disapproval of Plans and Plan amendments.

(a) ***Plan approval.*** The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) ***Plan amendments.***

(1) Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved or denied not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(2) Lead Agencies must ensure advanced written notice is provided to affected parties (*i.e.,* parents and child care providers) of substantial changes in the program that adversely affect eligibility, payment rates, and/or sliding fee scales.

(c) ***Appeal of disapproval of a Plan or Plan amendment.***

(1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67578, Sept. 30, 2016]

§ 98.19 Requests for temporary waivers.

(a) ***Requests for relief.*** The Secretary may temporarily waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements for a State, consistent with the conditions described in section 658I(c)(1) of the Act (42 U.S.C. 9858g(c)(1)), provided that the waiver request:

(1) Describes circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part;

(2) By itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of the Act and this part;

(3) Will not contribute to inconsistency with the purposes of the Act or this part, and;

(4) Meets the requirements set forth in paragraphs (b) through (g) of this section.

(b) ***Types.*** Types of waivers include:

(1) ***Transitional and legislative waivers.*** Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial or tribal legislature to enact legislation to implement the provisions of this subchapter. Such waivers are:

(i) Limited to a two-year period;

(ii) May not be extended, notwithstanding paragraph (f) of this section;

(iii) Are designed to provide States, Territories and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and;

(iv) Are conditional, dependent on progress towards implementation, and may be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(2) ***Waivers for extraordinary circumstances.*** States, Territories and Tribes may apply for waivers meeting the requirements described in paragraph (a) of this section, in cases of extraordinary circumstances, which are defined as temporary circumstances or situations, such as a natural disaster or financial crisis. Such waivers are:

(i) Limited to an initial period of no more than 2 years from the date of approval;

(ii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension, and;

(iii) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(c) ***Contents.*** Waiver requests must be submitted to the Secretary in writing and:

(1) Indicate which type of waiver, as detailed in paragraph (b) of this section, the State, Territory or Tribe is requesting;

(2) Detail each sanction or provision of the Act or regulations that the State, Territory or Tribe seeks relief from;

(3) Describe how a waiver from that sanction or provision will, by itself, improve delivery of child care services for children; and

(4) Certify and describe how the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

(d) ***Notification.*** Within 90 days after receipt of the waiver request or, if additional follow up information has been requested, the receipt of such information, the Secretary will notify the Lead Agency of the approval or disapproval of the request.

(e) ***Termination.*** The Secretary shall terminate approval of a request for a waiver authorized under the Act or this section if the Secretary determines, after notice and opportunity for a hearing based on the rules of procedure in part 99 of this chapter, that the performance of a State, Territory or Tribe granted relief under this section has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(f) ***Renewal.*** Where permitted, the Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State, Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

(g) ***Restrictions.*** The Secretary may not:

(1) Permit Lead Agencies to alter the federal eligibility requirements for eligible children, including work requirements, job training, or educational program participation, that apply to the parents of eligible children under this part;

(2) Waive anything related to the Secretary's authority under this part; or

(3) Require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in the Act.

[81 FR 67578, Sept. 30, 2016, as amended at 89 FR 15413, Mar. 1, 2024]

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) To be eligible for services under § 98.50, a child shall, at the time of eligibility determination or redetermination:

(1)

(i) Be under 13 years of age; or,

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2)

(i) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI), which must be based on the most recent SMI data that is published by the Bureau of the Census, for a family of the same size; and

(ii) Whose family assets do not exceed $1,000,000 (as certified by such family member); and

(3)

(i) Reside with a parent or parents who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the Lead Agency, and reside with a parent or parents other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis.

(B) At grantee option, the waiver provisions in paragraph (a)(3)(ii)(A) of this section apply to children in foster care when defined in the Plan, pursuant to § 98.16(g)(7).

(b) A grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.46, which shall be described in the Plan pursuant to § 98.16(i)(5), so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under subpart D of this part;

(3) Violate the provisions of this section, § 98.46, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate; or

(4) Impact eligibility other than at the time of eligibility determination or redetermination.

(c) For purposes of implementing the citizenship eligibility verification requirements mandated by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. 1601 *et seq.,* only the citizenship and immigration status of the child, who is the primary beneficiary of the CCDF benefit, is relevant. Therefore, a Lead Agency or other administering agency may not condition a child's eligibility for services under § 98.50 based upon the citizenship or immigration status of their parent or the provision of any information about the citizenship or immigration status of their parent.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67579, Sept. 30, 2016]

§ 98.21 Eligibility determination processes.

(a) A Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent redetermination, subject to the following:

(1) During the period of time between determinations or redeterminations, if the child met all of the requirements in § 98.20(a) on the date of the most recent eligibility determination or redetermination, the child shall be considered eligible and will receive services at least at the same level, regardless of:

(i) A change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(ii) A temporary change in the ongoing status of the child's parent as working or attending a job training or educational program. A temporary change shall include, at a minimum:

(A) Any time-limited absence from work for an employed parent due to reasons such as need to care for a family member or an illness;;

(B) Any interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) Any student holiday or break for a parent participating in training or education;

(D) Any reduction in work, training or education hours, as long as the parent is still working or attending training or education;

(E) Any other cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency;

(F) Any change in age, including turning 13 years old during the eligibility period; and

(G) Any change in residency within the State, Territory, or Tribal service area.

(2)

(i) Lead Agencies have the option, but are not required, to discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(1)(ii) of this section. However, if the Lead Agency exercises this option, it must continue assistance at least at the same level for a period of not less than three months after each such loss or cessation in order for the parent to engage in job search and resume work, or resume attendance at a job training or educational activity.

(ii) At the end of the minimum three-month period of continued assistance, if the parent is engaged in a qualifying work, education, or training activity with income below 85% of SMI, assistance cannot be terminated and the child must continue receiving assistance until the next scheduled re-determination, or at Lead Agency option, for an additional minimum 12—month eligibility period.

(iii) If a Lead Agency chooses to initially qualify a family for CCDF assistance based on a parent's status of seeking employment or engaging in job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still not found employment, although assistance must continue if the parent becomes employed during the job search period.

(3) Lead Agencies cannot increase family co-payment amounts, established in accordance with § 98.45(k), within the minimum 12-month eligibility period except as described in paragraph (b)(3) of this section.

(4) Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in paragraph (a)(1) of this section, any payment for such a child shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances.

(5) Notwithstanding paragraph (a)(1), the Lead Agency may discontinue assistance prior to the next re-determination in limited circumstances where there have been:

(i) Excessive unexplained absences despite multiple attempts by the Lead Agency or designated entity to contact the family and provider, including prior notification of possible discontinuation of assistance;

(A) If the Lead Agency chooses this option, it shall define the number of unexplained absences that shall be considered excessive;

(B) [Reserved]

(ii) A change in residency outside of the State, Territory, or Tribal service area; or

(iii) Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

(b)

(1) Lead Agencies that establish family income eligibility at a level less than 85 percent of SMI for a family of the same size (in order for a child to initially qualify for assistance) must provide a graduated phase-out by implementing two-tiered eligibility thresholds, with the second tier of eligibility (used at the time of eligibility re-determination) set at:

(i) 85 percent of SMI for a family of the same size; or

(ii) An amount lower than 85 percent of SMI for a family of the same size, but above the Lead Agency's initial eligibility threshold, that:

(A) Takes into account the typical household budget of a low income family; and

(B) Provides justification that the second eligibility threshold is:

(*1*) Sufficient to accommodate increases in family income over time that are typical for low-income workers and that promote and support family economic stability; and

(*2*) Reasonably allows a family to continue accessing child care services without unnecessary disruption.

(2) At re-determination, a child shall be considered eligible (pursuant to paragraph (a) of this section) if their parents, at the time of redetermination, are working or attending a job training or educational program even if their income exceeds the Lead Agency's income limit to initially quality for assistance, as long as their income does not exceed the second tier of the eligibility described in (b)(1);

(3) A family meeting the conditions described in paragraph (b)(2) of this section shall be eligible for services pursuant to the conditions described in § 98.20 and all other paragraphs of this section, with the exception of the co-payment restrictions at paragraph (a)(3) of this section. To help families transition off of child care assistance, Lead Agencies may gradually adjust co-pay amounts for families whose children are determined eligible under the graduated phase-out conditions described in paragraph (b)(2) and may require additional reporting on changes in family income as described in paragraph (h)(3) of this section, provided such requirements do not constitute an undue burden, pursuant to conditions described in paragraphs (h)(2)(ii) and (iii) of this section.

(c) The Lead Agency shall establish processes for initial determination and redetermination of eligibility that take into account irregular fluctuation in earnings, including policies that ensure temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments.

(d) The Lead Agency shall establish policies and processes to incorporate additional eligible children in the family size (*e.g.,* siblings or foster siblings), including ensuring a minimum of 12 months of eligibility between eligibility determination and redetermination as described in paragraph (a) of this section for children previously determined eligible and for new children who are determined eligible, without placing undue reporting burden on families.

(e) At a Lead Agency's option, a child may be considered presumptively eligible for up to three months and begin to receive child care subsidy prior to full documentation and eligibility determination:

(1) The Lead Agency may issue presumptive eligibility prior to full documentation of a child's eligibility if the Lead Agency first obtains a less burdensome minimum verification requirement from the family.

(2) If, after full documentation is provided, a child is determined to be ineligible, the Lead Agency shall ensure that a child care provider is paid and shall not recover funds paid or owed to a child care provider for services provided as a result of the presumptive eligibility determination except in cases of fraud or intentional program violation by the provider.

(3) Any CCDF payment made on behalf of a presumptively eligible child prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part and will not be subject to disallowance so long as the payment was not for a service period longer than the period of presumptive eligibility.

(4) If a child is determined to be eligible, the period of presumptive eligibility will apply to the minimum of 12 months of eligibility prior to re-determination described in paragraph (a) of this section.

(5) The Secretary may deny the use of federal funds for direct services under presumptive eligibility for Lead Agencies under a corrective action plan for error rate reporting pursuant to § 98.102(c).

(f) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program are not required to unduly disrupt their education, training, or employment in order to complete the eligibility determination or re-determination process, including the use of online applications and other measures, to the extent practicable.

(g) At the Lead Agency's option, enrollment in other benefit programs or documents or verification used for other benefit programs may be used to verify eligibility as appropriate according to § 98.68(c) for CCDF, such as:

(1) Benefit programs with income eligibility requirements aligned with the income eligibility at § 98.20(a)(2)(i) may be used to verify a family's income eligibility; and

(2) Benefit programs with other eligibility requirements aligned with § 98.20(a)(3) may verify:

(i) A family's work or attendance at a job training or educational program;

(ii) A family's status as receiving, or need to receive, protective services; or

(iii) Other information needed for eligibility.

(h) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility redetermination process.

(i) The Lead Agency shall specify in the Plan any requirements for parents to notify the Lead Agency of changes in circumstances during the minimum 12-month eligibility period, and describe efforts to ensure such requirements do not place an undue burden on eligible families that could impact continued eligibility between redeterminations.

(1) The Lead Agency must require families to report a change at any point during the minimum 12-month period, limited to:

(i) If the family's income exceeds 85% of SMI, taking into account irregular income fluctuations; or

(ii) At the option of the Lead Agency, the family has experienced a non-temporary cessation of work, training, or education.

(2) Any additional requirements the Lead Agency chooses, at its option, to impose on parents to provide notification of changes in circumstances to the Lead Agency or entities designated to perform eligibility functions shall not constitute an undue burden on families. Any such requirements shall:

(i) Limit notification requirements to items that impact a family's eligibility (*e.g.,* only if income exceeds 85 percent of SMI, or there is a non-temporary change in the status of the child's parent as working or attending a job training or educational program) or those that enable the Lead Agency to contact the family or pay providers;

(ii) Not require an office visit in order to fulfill notification requirements; and

(iii) Offer a range of notification options (*e.g.,* phone, email, online forms, extended submission hours) to accommodate the needs of parents;

(3) During a period of graduated phase-out, the Lead Agency may require additional reporting on changes in family income in order to gradually adjust family co-payments, if desired, as described in paragraph (b)(3) of this section.

(4) Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis.

(i) Lead Agencies are required to act on this information provided by the family if it would reduce the family's co-payment or increase the family's subsidy.

(ii) Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, the family has experienced a non-temporary change in the work, training, or educational status.

(j) Lead Agencies must take into consideration children's development and learning and promote continuity of care when authorizing child care services.

(k) Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities.

[81 FR 67579, Sept. 30, 2016, as amended at 89 FR 15413, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services shall be offered a choice:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(2) To receive a child care certificate as defined in § 98.2. Such choice shall be offered any time that child care services are made available to a parent.

(b)

(1) Lead Agencies shall increase parent choice by providing some portion of the delivery of direct services via grants or contracts, including at a minimum for children in underserved geographic areas, infants and toddlers, and children with disabilities.

(2) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Shall be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used as a deposit for child care services if such a deposit is required of other children being cared for by the provider;

(4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction;

(6) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificates shall be made available to any parents offered child care services.

(e)

(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Family child care; and

(iii) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at § 98.16(i)(2). Under each of the above categories, care by a sectarian provider may not be limited or excluded.

(2) Lead Agencies shall provide information regarding the range of provider options under paragraph (e)(1) of this section, including care by sectarian providers and relatives, to families offered child care services.

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.45, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in § 98.2; or

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2, with the exception of in-home care; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

(g) As long as provisions at paragraph (f) of this section are met, parental choice provisions shall not be construed as prohibiting a Lead Agency from establishing policies that require providers of child care services for which assistance is provided under this part to meet higher standards of quality, such as those identified in a quality rating and improvement system or other transparent system of quality indicators.

(h) Parental choice provisions shall not be construed as prohibiting a Lead Agency from providing parents with information and incentives that encourage the selection of high-quality child care.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67580, Sept. 30, 2016; 89 FR 15413, Mar. 1, 2024]

§ 98.31 Parental access.

The Lead Agency shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. The Lead Agency shall provide a detailed description in the Plan of such procedures.

[81 FR 67581, Sept. 30, 2016]

§ 98.32 Parental complaints.

The State shall:

(a) Establish or designate a hotline or similar reporting process for parents to submit complaints about child care providers;

(b) Maintain a record of substantiated parent complains;

(c) Make information regarding such parental complaints available to the public on request; and

(d) The Lead Agency shall provide a detailed description in the Plan of how:

(1) Complaints are substantiated and responded to, including whether or not the State uses monitoring as part of its process for responding to complaints for both CCDF and non-CCDF providers; and,

(2) A record of substantiated complaints is maintained and is made available.

[81 FR 67581, Sept. 30, 2016]

§ 98.33 Consumer and provider education.

The Lead Agency shall:

(a) Certify that it will collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site that ensures the widest possible access to services for families who speak languages other than English and persons with disabilities, including:

(1) Lead Agency processes, including:

(i) The process for licensing child care providers pursuant to § 98.40;

(ii) The process for conducting monitoring and inspections of child care providers pursuant to § 98.42;

(iii) Policies and procedures related to criminal background checks for child care providers pursuant to § 98.43; and

(iv) The offenses that prevent individuals from serving as child care providers.

(2) A localized list of all licensed child care providers, and, at the discretion of the Lead Agency, all eligible child care providers (other than an individual who is related to all children for whom child care services are provided), differentiating between licensed and license-exempt providers, searchable by zip code;

(3) The quality of a provider as determined by the Lead Agency through a quality rating and improvement system or other transparent system of quality indicators, if such information is available for the provider;

(4) Results of monitoring and inspection reports for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), including those required at § 98.42 and those due to major substantiated complaints about failure to comply with provisions at § 98.41 and Lead Agency child care policies. Lead Agencies shall post in a timely manner full monitoring and inspection reports, either in plain language or with a plain language summary, for parents and child care providers to understand, and shall establish a process for correcting inaccuracies in the reports. Such results shall include:

(i) Information on the date of such inspection;

(ii) Areas of compliance and non-compliance;

(iii) Information on corrective action taken by the State and child care provider, where applicable;

(iv) Any health and safety violations, including any fatalities and serious injuries occurring at the provider, prominently displayed on the report or summary; and

(v) A minimum of 3 years of results where available.

(5) Aggregate data for each year for eligible providers including:

(i) Number of deaths (for each provider category and licensing status);

(ii) Number of serious injuries (for each provider category and licensing status);

(iii) Instances of substantiated child abuse that occurred in child care settings; and,

(iv) Total number of children in care (for each provider category and licensing status).

(6) Referrals to local child care resource and referral organizations.

(7) Directions on how parents can contact the Lead Agency or its designee and other programs to help them understand information included on the Web site.

(8) The sliding fee scale for parent co-payments pursuant to § 98.45(l), including the co-payment amount a family may expect to pay and policies for waiving co-payments.

(b) Certify that it will collect and disseminate, through resource and referral organizations or other means as determined by the State, including, but not limited to, through the Web site described in paragraph (a) of this section, to parents of eligible children and the general public, and where applicable providers, information about:

(1) The availability of the full diversity of child care services to promote informed parental choice, including information about:

(i) The availability of child care services under this part and other programs for which families may be eligible, as well as the availability of financial assistance to obtain child care services;

(ii) Other programs for which families that receive assistance under this part may be eligible, including:

(A) Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*);

(B) Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*);

(C) Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*);

(D) Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*);

(E) Special supplemental nutrition program for women, infants, and children (42 U.S.C. 1786);

(F) Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766);

(G) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*);

(iii) Programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*);

(iv) Research and best practices concerning children's development, meaningful parent and family engagement, and physical health and development, particularly healthy eating and physical activity; and

(v) State policies regarding social emotional behavioral health of children which may include positive behavioral health intervention and support models for birth to school-age or age-appropriate, and policies to prevent suspension and expulsion of children birth to age five in child care and other early childhood programs, as described in the Plan pursuant to § 98.16(ee), receiving assistance under this part.

(c) Provide information on developmental screenings to parents as part of the intake process for families receiving assistance under this part, and to providers through training and education, including:

(1) Information on existing resources and services the State can make available in conducting developmental screenings and providing referrals to services when appropriate for children who receive assistance under this part, including the coordinated use of the Early and Periodic Screening,

Diagnosis, and Treatment program (42 U.S.C. 1396 *et seq.*) and developmental screening services available under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 *et seq.*); and

(2) A description of how a family or eligible child care provider may utilize the resources and services described in paragraph (c)(1) of this section to obtain developmental screenings for children who receive assistance under this part who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

(d) For families that receive assistance under this part, provide specific information about the child care provider selected by the parent, including health and safety requirements met by the provider pursuant to § 98.41, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any voluntary quality standards met by the provider. Information must also describe how CCDF subsidies are designed to promote equal access in accordance with § 98.45, how to submit a complaint through the hotline at § 98.32(a), and how to contact local resource and referral agencies or other community-based supports that assist parents in finding and enrolling in quality child care.

(e) Provide linkages to databases related to paragraph (a) to HHS for implementing a national Web site and other uses as determined by the Secretary.

(f) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act (42 U.S.C. 607(e)(2)) that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to § 98.11, other entities, and shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:

(i) “Appropriate child care”;

(ii) “Reasonable distance”;

(iii) “Unsuitability of informal child care”;

(iv) “Affordable child care arrangements”;

(3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (f) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act (42 U.S.C. 608(a)(7)).

(g) Include in the triennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (f) of this section.

[81 FR 67581, Sept. 30, 2016, as amended at 89 FR 15414, Mar. 1, 2024]

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) Lead Agencies shall:

(1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;

(2) Describe in the Plan exemption(s) to licensing requirements, if any, for child care services for which assistance is provided, and a demonstration for how such exemption(s) do not endanger the health, safety, or development of children who receive services from such providers. Lead Agencies must provide the required description and demonstration for any exemptions based on:

(i) Provider category, type, or setting;

(ii) Length of day;

(iii) Providers not subject to licensing because the number of children served falls below a State-defined threshold; and

(iv) Any other exemption to licensing requirements; and

(3) Provide a detailed description in the Plan of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

(b)

(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67582, Sept. 30, 2016]

§ 98.41 Health and safety requirements.

(a) Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services for which assistance is provided under this part. Such requirements, which are subject to monitoring pursuant to § 98.42, shall:

(1) Include health and safety topics consisting of, at a minimum:

(i) The prevention and control of infectious diseases (including immunizations); with respect to immunizations, the following provisions apply:

(A) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State, territorial, or tribal public health agency.

(B) Notwithstanding this paragraph (a)(1)(i), Lead Agencies may exempt:

(*1*) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles), provided there are no other unrelated children who are cared for in the same setting.

(*2*) Children who receive care in their own homes, provided there are no other unrelated children who are cared for in the home.

(*3*) Children whose parents object to immunization on religious grounds.

(*4*) Children whose medical condition contraindicates immunization.

(C) Lead Agencies shall establish a grace period that allows children experiencing homelessness and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.

(*1*) The length of such grace period shall be established in consultation with the State, Territorial or Tribal health agency.

(*2*) Any payment for such child during the grace period shall not be considered an error or improper payment under subpart K of this part.

(*3*) The Lead Agency may also, at its option, establish grace periods for other children who are not experiencing homelessness or in foster care.

(*4*) Lead Agencies must coordinate with licensing agencies and other relevant State, Territorial, Tribal, and local agencies to provide referrals and support to help families of children receiving services during a grace period comply with immunization and other health and safety requirements;

(ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(iii) Administration of medication, consistent with standards for parental consent;

(iv) Prevention and response to emergencies due to food and allergic reactions;

(v) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(vi) Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(vii) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)) that shall include procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and

practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;

(viii) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(ix) Appropriate precautions in transporting children, if applicable;

(x) Pediatric first aid and cardiopulmonary resuscitation;

(xi) Recognition and reporting of child abuse and neglect, in accordance with the requirement in paragraph (e) of this section; and

(xii) May include requirements relating to:

(A) Nutrition (including age-appropriate feeding);

(B) Access to physical activity;

(C) Caring for children with special needs; or

(D) Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.

(2) Include minimum health and safety training on the topics above, as described in § 98.44.

(b) Lead Agencies may not set health and safety standards and requirements other than those required in paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified at § 98.42(c).

(d) Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to strengthening the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address:

(1) Group size limits for specific age populations;

(2) The appropriate ratio between the number of children and the number of caregivers, in terms of age of children in child care; and

(3) Required qualifications for caregivers in child care settings as described at § 98.44(a)(4).

(e) Lead Agencies shall certify that caregivers, teachers, and directors of child care providers within the State or service area will comply with the State's, Territory's, or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of the Child Abuse and Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area.

[81 FR 67582, Sept. 30, 2016]

§ 98.42 Enforcement of licensing and health and safety requirements.

(a) Each Lead Agency shall certify in the Plan that procedures are in effect to ensure that child care providers of services for which assistance is made available in accordance with this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements, including those described in § 98.41.

(b) Each Lead Agency shall certify in the Plan it has monitoring policies and practices applicable to all child care providers and facilities eligible to deliver services for which assistance is provided under this part. The Lead Agency shall:

(1) Ensure individuals who are hired as licensing inspectors are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements appropriate to provider setting and age of children served. Training shall include, but is not limited to, those requirements described in § 98.41, and all aspects of the State, Territory, or Tribe's licensure requirements;

(2) Require inspections of child care providers and facilities, performed by licensing inspectors (or qualified inspectors designated by the Lead Agency), as specified below:

(i) For licensed child care providers and facilities,

(A) Not less than one pre-licensure inspection for compliance with health, safety, and fire standards, and

(B) Not less than annually, an unannounced inspection for compliance with all child care licensing standards, which shall include an inspection for compliance with health and safety, (including, but not limited to, those requirements described in § 98.41) and fire standards (inspectors may inspect for compliance with all three standards at the same time); and

(ii) For license-exempt child care providers and facilities that are eligible to provide services for which assistance is made available in accordance with this part, an annual inspection for compliance with health and safety (including, but not limited to, those requirements described in § 98.41), and fire standards;

(iii) Coordinate, to the extent practicable, monitoring efforts with other Federal, State, and local agencies that conduct similar inspections.

(iv) The Lead Agency may, at its option:

(A) Use differential monitoring or a risk-based approach to design annual inspections, provided that the contents covered during each monitoring visit is representative of the full complement of health and safety requirements;

(B) Develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting; and

(3) Ensure the ratio of licensing inspectors to such child care providers and facilities is maintained at a level sufficient to enable the State, Territory, or Tribe to conduct effective inspections on a timely basis in accordance with the applicable Federal, State, Territory, Tribal, and local law;

(4) Require child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care.

(c) For the purposes of this section and § 98.41, Lead Agencies may exclude grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, from the term "child care providers." If the Lead Agency chooses to exclude these providers, the Lead Agency shall provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers.

[81 FR 67583, Sept. 30, 2016]

§ 98.43 Criminal background checks.

(a)

(1) States, Territories, and Tribes, through coordination of the Lead agency with other State, territorial, and tribal agencies, shall have in effect:

(i) Requirements, policies, and procedures to require and conduct background checks, and make a determination of eligibility for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

(ii) Licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in paragraph (c) of this section; and

(iii) Requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe required in paragraph (e)(1) of this section.

(2) In this section:

(i) Child care provider means a center based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that:

(A) Is not an individual who is related to all children for whom child care services are provided; and

(B) Is licensed, regulated, or registered under State law or eligible to receive assistance provided under this subchapter; and

(ii) Child care staff member means an individual (other than an individual who is related to all children for whom child care services are provided):

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Any individual residing in a family child care home who is age 18 and older.

(b) A criminal background check for a child care staff member under paragraph (a) of this section shall include:

(1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;

(2) A search of the National Crime Information Center's National Sex Offender Registry; and

(3) A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding five years:

(i) State criminal registry or repository, with the use of fingerprints being:

(A) Required in the State where the staff member resides;

(B) Optional in other States;

(ii) State sex offender registry or repository; and

(iii) State-based child abuse and neglect registry and database.

(c)

(1) The State, Territory, or Tribe in coordination with the Lead Agency shall find a child care staff member ineligible for employment for services for which assistance is made available in accordance with this part, if such individual:

(i) Refuses to consent to the criminal background check described in paragraph (b) of this section;

(ii) Knowingly makes a materially false statement in connection with such criminal background check;

(iii) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a felony consisting of:

(A) Murder, as described in section 1111 of title 18, United States Code;

(B) Child abuse or neglect;

(C) A crime against children, including child pornography;

(D) Spousal abuse;

(E) A crime involving rape or sexual assault;

(F) Kidnapping;

(G) Arson;

(H) Physical assault or battery; or

(I) Subject to paragraph (e)(4) of this section, a drug-related offense committed during the preceding 5 years; or

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, and sexual assault, or of any misdemeanor involving child pornography.

(2) A child care provider described in paragraph (a)(2)(i) of this section shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (c)(1) of this section.

(d)

(1) A child care provider covered by paragraph (a)(2)(i) of this section shall submit a request, to the appropriate State, Territorial, or Tribal agency, defined clearly on the State or Territory Web site described in paragraph (g) of this section, for a criminal background check described in paragraph (b) of this section, for each child care staff member (including prospective child care staff members) of the provider.

(2) Subject to paragraph (d)(3) of this section, the provider shall submit such a request:

(i) Prior to the date an individual becomes a child care staff member of the provider; and

(ii) Not less than once during each 5-year period for any existing staff member.

(3) A child care provider shall not be required to submit a request under paragraph (d)(2) of this section for a child care staff member if:

(i) The staff member received qualifying results from a background check described in paragraph (b) of this section;

(A) Within 5 years before the latest date on which such a submission may be made; and

(B) While employed by or seeking employment by another child care provider within the State;

(ii) The State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(iii) The staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after receiving qualifying results for either the check described at paragraph (b)(1) or (b)(3)(i) of this section in the State where the prospective staff member resides. Pending completion of all background check components in paragraph (b) of this section, the staff member must be supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within the past five years.

(e) ***Background check results.***

(1) The State, Territory, or Tribe shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which the provider submitted the request, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) States, Territories, and Tribes shall ensure the privacy of background check results by:

(i) Providing the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in paragraph (c)(1) of this section, without revealing any disqualifying crime or other related information regarding the individual.

(ii) If the child care staff member is ineligible for such employment due to the background check, the State, Territory, or Tribe will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member, along with information on the opportunity to appeal, described in paragraph (e)(3) of this section.

(iii) No State, Territory, or Tribe shall publicly release or share the results of individual background checks, except States and Tribes may release aggregated data by crime as listed under paragraph (c)(1)(iv) of this section from background check results, as long as such data is not personally identifiable information.

(3) States, Territories, and Tribes shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report. The State, Territory, and Tribe shall ensure that:

(i) Each child care staff member is given notice of the opportunity to appeal;

(ii) A child care staff member will receive clear instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report;

(iii) If the staff member files an appeal, the State, Territory, or Tribe will attempt to verify the accuracy of the information challenged by the child care staff member, including making an effort to locate any missing disposition information related to the disqualifying crime;

(iv) The appeals process is completed in a timely manner for each child care staff member; and

(v) Each child care staff member shall receive written notice of the decision. In the case of a negative determination, the decision should indicate the State's efforts to verify the accuracy of information challenged by the child care staff member, as well as any additional appeals rights available to the child care staff member.

(4) States, Territories, and Tribes may allow for a review process through which the State, Territory, or Tribe may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in paragraph (c)(1)(iv)(I) of this section is eligible for employment described in paragraph (c)(1) of this section, notwithstanding paragraph (c)(2) of this section. The review process shall be consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);

(5) Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) ***Fees for background checks.*** Fees that a State, Territory, or Tribe may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs for the processing and administration.

(g) ***Transparency.*** The State or Territory must ensure that its policies and procedures under this section, including the process by which a child care provider or other State or Territory may submit a background check request, are published in the Web site of the State or Territory as described in § 98.33(a) and the Web site of local lead agencies.

(h) ***Disqualification for other crimes.***

(1) Nothing in this section shall be construed to prevent a State, Territory, or Tribe from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in paragraph (c)(1) of this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members or prospective staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

[81 FR 67584, Sept. 30, 2016, as amended at 89 FR 15414, Mar. 1, 2024]

§ 98.44 Training and professional development.

(a) The Lead Agency must describe in the Plan the State or Territory framework for training, professional development, and postsecondary education for caregivers, teachers, and directors, including those working in school-age care, that:

(1) Is developed in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body;

(2) May engage training and professional development providers, including higher education in aligning training and education opportunities with the State's framework;

(3) Addresses professional standards and competencies, career pathways, advisory structure, articulation, and workforce information and financing;

(4) Establishes qualifications in accordance with § 98.41(d)(3) designed to enable child care and school-age care providers that provide services for which assistance is provided in accordance with this part to promote the social, emotional, physical, and cognitive development of children and improve the knowledge and skills of caregivers, teachers and directors in working with children and their families;

(5) Includes professional development conducted on an ongoing basis, providing a progression of professional development (which may include encouraging the pursuit of postsecondary education);

(6) Reflects current research and best practices relating to the skills necessary for caregivers, teachers, and directors to meet the developmental needs of participating children and engage families, including culturally and linguistically appropriate practices; and

(7) Improves the quality, diversity, stability, and retention (including financial incentives and compensation improvements) of caregivers, teachers, and directors.

(b) The Lead Agency must describe in the Plan its established requirements for pre-service or orientation (to be completed within three months) and ongoing professional development for caregivers, teachers, and directors of child care providers of services for which assistance is provided under the CCDF that, to the extent practicable, align with the State framework:

(1) Accessible pre-service or orientation training in health and safety standards appropriate to the setting and age of children served that addresses:

(i) Each of the requirements relating to matters described in § 98.41(a)(1)(i) through (xi) and specifying critical health and safety training that must be completed before caregivers, teachers, and directors are allowed to care for children unsupervised;

(ii) At the Lead Agency option, matters described in § 98.41(a)(1)(xii); and

(iii) Child development, including the major domains (cognitive, social, emotional, physical development and approaches to learning);

(2) Ongoing, accessible professional development, aligned to a progression of professional development, including the minimum annual requirement for hours of training and professional development for eligible caregivers, teachers and directors, appropriate to the setting and age of children served, that:

(i) Maintains and updates health and safety training standards described in § 98.41(a)(1)(i) through (xi), and at the Lead Agency option, in § 98.41(a)(1)(xii);

(ii) Incorporates knowledge and application of the State's early learning and developmental guidelines for children birth to kindergarten (where applicable);

(iii) Incorporates social-emotional behavior intervention models for children birth through school-age, which may include positive behavior intervention and support models including preventing and reducing expulsions and suspensions of preschool-aged and school-aged children;

(iv) To the extent practicable, are appropriate for a population of children that includes:

(A) Different age groups;

(B) English learners;

(C) Children with developmental delays and disabilities; and

(D) Native Americans, including Indians, as the term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (including Alaska Natives within the meaning of that term), and Native Hawaiians (as defined in section 6207 of the Elementary and Secondary Education Act of 1965);

(v) To the extent practicable, awards continuing education units or is credit-bearing; and

(vi) Shall be accessible to caregivers, teachers, and directors supported through Indian tribes or tribal organizations that receive assistance under this subchapter.

[81 FR 67585, Sept. 30, 2016]

§ 98.45 Equal access.

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide in the Plan a summary of the data and facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers is made available, and the extent to which child care providers participate in the CCDF subsidy system and any barriers to participation including barriers related to payment rates and practices, based on information obtained in accordance with paragraph (d)(2) of this section;

(2) How payment rates are adequate and have been established based on the most recent market rate survey or alternative methodology conducted in accordance with paragraph (c) of this section;

(3) How base payment rates enable providers to meet health, safety, quality, and staffing requirements in accordance with paragraphs (f)(1)(ii)(A) and (f)(2)(ii) of this section;

(4) How the Lead Agency took the cost of higher quality into account in accordance with paragraph (f)(2)(iii) of this section, including how payment rates for higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, relate to the estimated cost of care at each level of quality;

(5) How co-payments based on a sliding fee scale are affordable and do not exceed 7 percent of income for all families, as stipulated at paragraph (l) of this section; if applicable, a rationale for the Lead Agency's policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts (based on information obtained in accordance with paragraph (d)(2) of this section);

(6) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (m) of this section;

(7) How and on what factors the Lead Agency differentiates payment rates; and

(8) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access.

(c) The Lead Agency shall demonstrate in the Plan that it has developed and conducted, not earlier than two years before the date of the submission of the Plan, either:

(1) A statistically valid and reliable survey of the market rates for child care services; or

(2) An alternative methodology, such as a cost estimation model, that has been:

(i) Proposed by the Lead Agency; and

(ii) Approved in advance by ACF.

(d) The Lead Agency must:

(1) Ensure that the market rate survey or alternative methodology reflects variations by geographic location, category of provider, and age of child;

(2) Track through the market rate survey or alternative methodology, or through a separate source, information on the extent to which:

(i) Child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices; and

(ii) CCDF child care providers charge amounts to families more than the required family co-payment (under paragraph (l) of this section) in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts.

(e) Prior to conducting the market rate survey or alternative methodology, the Lead Agency must consult with:

(1) The State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, local child care program administrators, local child care resource and referral agencies, and other appropriate entities; and

(2) Organizations representing child care caregivers, teachers, and directors.

(f) After conducting the market rate survey or alternative methodology, the Lead Agency must:

(1) Prepare a detailed report containing the results, and make the report widely available, including by posting it on the Internet, not later than 30 days after the completion of the report. The report must include:

(i) The results of the market rate survey or alternative methodology;

(ii) The estimated cost of care necessary (including any relevant variation by geographic location, category of provider, or age of child) to support:

(A) Child care providers' implementation of the health, safety, quality, and staffing requirements at §§ 98.41 through 98.44; and

(B) Higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, at each level;

(iii) The Lead Agency's response to stakeholder views and comments; and,

(iv) The data and summary required at paragraph (d)(2)(ii) of this section.

(2) Set payment rates for CCDF assistance:

(i) In accordance with the results of the most recent market rate survey or alternative methodology conducted pursuant to paragraph (c) of this section;

(ii) With base payment rates established at least at a level sufficient for child care providers to meet health, safety quality, and staffing requirements in accordance with paragraph (f)(1)(ii)(A) of this section;

(iii) Taking into consideration the cost of providing higher-quality child care services, including consideration of the information at each level of higher quality required by paragraph (f)(1)(ii)(B) of this section;

(iv) Taking into consideration the views and comments of the public obtained in accordance with paragraph (e) and through other processes determined by the Lead Agency; and

(v) Without, to the extent practicable, reducing the number of families receiving CCDF assistance.

(g) To facilitate parent choice, increase program quality, build supply, and better reflect the cost of providing care, it is permissible for a Lead Agency to pay an eligible child care provider the Lead Agency's established payment rate at paragraph (a) of this section, which may be more than the price charged to children not receiving CCDF subsidies.

(h) A Lead Agency may not establish different payment rates based on a family's eligibility status, such as TANF status.

(i) Payment rates under paragraph (a) of this section shall be consistent with the parental requirements in § 98.30

(j) Nothing in this section shall be construed to create a private right of action if the Lead Agency acts in accordance with the Act and this part.

(k) Nothing in this part shall be construed to prevent a Lead Agency from differentiating payment rates on the basis of such factors as:

(1) Geographic location of child care providers (such as location in an urban or rural area);

(2) Age or particular needs of children (such as the needs of children with disabilities, children served by child protective services, and children experiencing homelessness);

(3) Whether child care providers provide services during the weekend or other non-traditional hours; or

(4) The Lead Agency's determination that such differential payment rates may enable a parent to choose high-quality child care that best fits the parents' needs.

(l) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) for families that receive CCDF child care services that:

(1) Helps families afford child care and enables choice of a range of child care options;

(2) Is based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of subsidy payment;

(3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part, not to exceed 7 percent of income for all families, regardless of the number of children in care who may be receiving CCDF assistance; and

(4) At Lead Agency discretion, allows for co-payments to be waived for families whose incomes are at or below 150 percent of the poverty level for a family of the same size, that have children who are in foster or kinship care or otherwise receive or need to receive protective services, that are experiencing homelessness, that have children who have a disability as defined at § 98.2, that are enrolled in Head Start or Early Head Start (42 U.S.C. 9831 *et seq.*), or that meet other criteria established by the Lead Agency.

(m) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF child care providers that reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency can demonstrate that such practices are not generally-accepted for a type of child care setting):

(1) Ensure timeliness of payment to child care providers by paying in advance of or at the beginning of the delivery of child care services to children receiving assistance under this part;

(2) Support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by:

(i) Basing payment on a child's authorized enrollment; or,

(ii) An alternative approach for which the Lead Agency provides a justification in its Plan that the requirements at paragraph (m)(2)(i) of this section are not practicable, including evidence that the alternative approach will not undermine the stability of child care programs.

(3) Pay providers on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and

(4) Pay for reasonable mandatory registration fees that the provider charges to private-paying parents.

(n) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF providers that:

(1) Ensure child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information regarding payment policies, including rates, schedules, any fees charged to providers, and the dispute resolution process required by paragraph (n)(3);

(2) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment, and that such notice is sent to providers no later than the day the Lead Agency becomes aware that such a change will occur;

(3) Include timely appeal and resolution processes for any payment inaccuracies and disputes;

(4) May include taking precautionary measures when a provider is suspected of fiscal mismanagement; and

(5) Ensure the total payment received by CCDF child care providers is not reduced by the determination of affordable family co-payment as described in the sliding fee scale at § 98.45(l).

[81 FR 67586, Sept. 30, 2016, as amended at 89 FR 15414, Mar. 1, 2024]

§ 98.46 Priority for child care services.

(a) Lead Agencies shall give priority for services provided under § 98.50(a) to:

(1) Children of families with very low family income (considering family size);

(2) Children with special needs, which may include any vulnerable populations as defined by the Lead Agency; and

(3) Children experiencing homelessness.

(b) Lead Agencies shall prioritize increasing access to high-quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have a sufficient number of such programs.

[81 FR 67587, Sept. 30, 2016]

§ 98.47 List of providers.

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

[63 FR 39981, July 24, 1998. Redesignated at 81 FR 67584, Sept. 30, 2016]

§ 98.48 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the CCDF because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the CCDF, the Lead Agency shall assure that before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

[63 FR 39981, July 24, 1998. Redesignated at 81 FR 67584, Sept. 30, 2016]

§ 98.49 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a)(1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead Agency shall assure that, before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2.

[63 FR 39981, July 24, 1998. Redesignated at 81 FR 67584, Sept. 30, 2016]

Subpart F—Use of Child Care and Development Funds

§ 98.50 Child care services.

(a) Direct child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.45(l);

(3) Using funding methods provided for in § 98.30 including grants or contracts for slots for children in underserved geographic areas, for infants and toddlers, and children with disabilities. Grants solely to improve the quality of child care services like those in (b) of this section would not satisfy the requirements at § 98.30(b); and

(4) Based on the priorities in § 98.46.

(b) Of the aggregate amount of funds expended by a State or Territory (*i.e.,* Discretionary, Mandatory, and Federal and State share of Matching funds):

(1) No less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) No less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

(3) Nothing in this section shall preclude the State or Territory from reserving a larger percentage of funds to carry out activities described in paragraphs (b)(1) and (2) of this section.

(4) Amounts reserved pursuant to this subsection may not be used to satisfy requirements at § 98.30(b).

(c) Funds expended from each fiscal year's allotment on quality activities pursuant to paragraph (b) of this section:

(1) Must be in alignment with an assessment of the Lead Agency's need to carry out such services and care as required at § 98.53(a);

(2) Must include measurable indicators of progress in accordance with § 98.53(g); and

(3) May be provided directly by the Lead Agency or through grants or contracts with local child care resource and referral organizations or other appropriate entities.

(d) Of the aggregate amount of funds expended (*i.e.,* Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.54.

(e) Not less than 70 percent of the State and Territory Mandatory and Federal and State share of State Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act;

(2) Are attempting through work activities to transition off such assistance program; and

(3) Are at risk of becoming dependent on such assistance program.

(f) From Discretionary amounts provided for a fiscal year, the Lead Agency shall:

(1) Reserve the minimum amount required under paragraph (b) of this section for quality activities, and the funds for administrative costs described at paragraph (d) of this section; and

(2) From the remainder, use not less than 70 percent to fund direct services (provided by the Lead Agency).

(g) Of the funds remaining after applying the provisions of paragraphs (a) through (f) of this section, the Lead Agency shall spend a substantial portion of funds to provide direct child care services to low-income families who are working or attending training or education.

(h) Pursuant to § 98.16(i)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

[81 FR 67587, Sept. 30, 2016, as amended at 89 FR 15415, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

§ 98.51 Services for children experiencing homelessness.

Lead Agencies shall expend funds on activities that improve access to quality child care services for children experiencing homelessness, including:

(a) The use of procedures to permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained;

(1) If, after full documentation is provided, a family experiencing homelessness is found ineligible,

(i) The Lead Agency shall pay any amount owed to a child care provider for services provided as a result of the initial eligibility determination; and

(ii) Any CCDF payment made prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part;

(2) [Reserved]

(b) Training and technical assistance for providers and appropriate Lead Agency (or designated entity) staff on identifying and serving children experiencing homelessness and their families; and

(c) Specific outreach to families experiencing homelessness.

[81 FR 67588, Sept. 30, 2016]

§ 98.52 Child care resource and referral system.

(a) A Lead Agency may expend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined appropriate by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, lead child care resource and referral organization.

(b) If a Lead Agency uses funds as described in paragraph (a) of this section, the local or regional child care resource and referral organizations supported shall, at the direction of the Lead Agency:

(1) Provide parents in the State with consumer education information referred to in § 98.33 (except as otherwise provided in that paragraph), concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider, including child care provided during nontraditional hours and through emergency child care centers, in their political subdivisions or regions;

(2) To the extent practicable, work directly with families who receive assistance under this subchapter to offer the families support and assistance, using information described in paragraph (b)(1) of this section, to make an informed decision about which child care providers they will use, in an effort to ensure that the families are enrolling their children in the most appropriate child care setting to suit their needs and one that is of high quality (as determined by the Lead Agency);

(3) Collect data and provide information on the coordination of services and supports, including services under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431, *et seq.*), for children with disabilities (as defined in section 602 of such Act (20 U.S.C. 1401));

(4) Collect data and provide information on the supply of and demand for child care services in political subdivisions or regions within the State and submit such information to the State;

(5) Work to establish partnerships with public agencies and private entities, including faith-based and community-based child care providers, to increase the supply and quality of child care services in the State; and

(6) As appropriate, coordinate their activities with the activities of the State Lead Agency and local agencies that administer funds made available in accordance with this part.

[81 FR 67588, Sept. 30, 2016]

§ 98.53 Activities to improve the quality of child care.

(a) The Lead Agency must expend funds from each fiscal year's allotment on quality activities pursuant to §§ 98.50(b) and 98.83(g) in accordance with an assessment of need by the Lead Agency. Such funds must be used to carry out at least one of the following quality activities to improve the quality of child care services for all children, regardless of CCDF receipt, in accordance with paragraph (e) of this section:

(1) Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development through activities such as those included at § 98.44, in addition to:

(i) Offering training, professional development, and postsecondary education opportunities for child care caregivers, teachers and directors that:

(A) Relate to the use of scientifically based, developmentally-appropriate, culturally-appropriate, and age-appropriate strategies to promote the social, emotional, physical, and cognitive development of children, including those related to nutrition and physical activity; and

(B) Offer specialized training, professional development, and postsecondary education for caregivers, teachers and directors caring for those populations prioritized at § 98.44(b)(2)(iv), and children with disabilities;

(ii) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education;

(iii) Including effective, age-appropriate behavior management strategies and training, including positive behavior interventions and support models for birth to school-age, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors;

(iv) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development;

(v) Providing training corresponding to the nutritional and physical activity needs of children to promote healthy development;

(vi) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and

(vii) Connecting child care caregivers, teachers, and directors with available Federal and State financial aid that would assist these individuals in pursuing relevant postsecondary education, or delivering financial resources directly through programs that provide scholarships and compensation improvements for education attainment and retention.

(2) Improving upon the development or implementation of the early learning and development guidelines at § 98.15(a)(9) by providing technical assistance to eligible child care providers in order to enhance the cognitive, physical, social, and emotional development and overall well-being of participating children.

(3) Developing, implementing, or enhancing a tiered quality rating and improvement system for child care providers and services to meet consumer education requirements at § 98.33, which may:

(i) Support and assess the quality of child care providers in the State, Territory, or Tribe;

(ii) Build on licensing standards and other regulatory standards for such providers;

(iii) Be designed to improve the quality of different types of child care providers and services;

(iv) Describe the safety of child care facilities;

(v) Build the capacity of early childhood programs and communities to promote parents' and families' understanding of the early childhood system and the rating of the program in which the child is enrolled;

(vi) Provide, to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services; and

(vii) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child centered settings, or similar settings that offer a distinctive approach to early childhood development.

(4) Improving the supply and quality of child care programs and services for infants and toddlers through activities, which may include:

(i) Establishing or expanding high-quality community or neighborhood based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high-quality, age-appropriate care to infants and toddlers from low-income families;

(ii) Establishing or expanding the operation of community or neighborhood-based family child care networks;

(iii) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers through, but not limited to:

(A) Training and professional development for caregivers, teachers and directors, including coaching and technical assistance on this age group's unique needs from statewide networks of qualified infant-toddler specialists; and

(B) Improved coordination with early intervention specialists who provide services for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431. *et seq.*);

(iv) If applicable, developing infant and toddler components within the Lead Agency's quality rating and improvement system described in paragraph (a)(3) of this section for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines;

(v) Improving the ability of parents to access transparent and easy to understand consumer information about high-quality infant and toddler care as described at § 98.33; and

(vi) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers.

(5) Establishing or expanding a statewide system of child care resource and referral services.

(6) Facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards.

(7) Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.

(8) Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high-quality.

(9) Supporting Lead Agency or local efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development.

(10) Carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided, and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible.

(b) Lead Agencies are strongly encouraged to engage families and providers with direct experience in the child care subsidy system to improve the quality of child care and child care subsidy policy. Lead Agencies may expend quality funds to support such engagement including:

(1) Planning and implementing an engagement strategy to solicit and implement feedback from families, child care providers, and staff who have direct experience with the child care subsidy program and/or quality improvement activities;

(2) Compensating participating parents, child care providers, and child care staff for their time and for expenses incurred as a result of their participation (*i.e.* transportation, child care); and

(3) Hiring parents, child care providers, or child care staff to serve as subject matter experts in the development or refinement of subsidy policy and quality initiatives.

(c) Pursuant to § 98.16(j), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(d) Non-Federal expenditures required by § 98.55(c) (*i.e.,* the maintenance-of effort amount) are not subject to the requirement at paragraph (a) of this section.

(e) Activities to improve the quality of child care services are not restricted to activities affecting children meeting eligibility requirements under § 98.20 or to child care providers of services for which assistance is provided under this part.

(f) Unless expressly authorized by law, targeted funds for quality improvement and other set asides that may be included in appropriations law may not be used towards meeting the quality expenditure minimum requirement at § 98.50(b).

(g) States shall annually prepare and submit reports, including a quality progress report and expenditure report, to the Secretary, which must be made publicly available and shall include:

(1) An assurance that the State was in compliance with requirements at § 98.50(b) in the preceding fiscal year and information about the amount of funds reserved for that purpose;

(2) A description of the activities carried out under this section to comply with § 98.50(b);

(3) The measures the State will use to evaluate its progress in improving the quality of child care programs and services in the State, and data on the extent to which the State had met these measures;

(4) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving children receiving assistance under this part, and in other regulated and unregulated child care centers and family child care homes, to the extent possible; and

(5) A description of how the Lead Agency responded to complaints submitted through the national hotline and Web site, required in section 658L(b) of the CCDBG Act (42 U.S.C. 9858j(b)).

[81 FR 67588, Sept. 30, 2016, as amended at 89 FR 15415, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

§ 98.54 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to § 98.55(b), shall be expended for administrative activities. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation include the following types of activities:

(i) Planning, developing, and designing the Child Care and Development Fund program;

(ii) Providing local officials and the public with information about the program, including the conduct of public hearings;

(iii) Preparing the application and Plan;

(iv) Developing agreements with administering agencies in order to carry out program activities;

(v) Monitoring program activities for compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to the Secretary;

(vii) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before-and after-school care programs;

(ix) Coordinating the resolution of audit and monitoring findings;

(x) Evaluating program results; and

(xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.57.

(b) The following activities do not count towards the five percent limitation on administrative expenditures in paragraph (a) of this section:

(1) Establishment and maintenance of computerized child care information systems;

(2) Establishing and operating a certificate program;

(3) Eligibility determination and redetermination;

(4) Preparation/participation in judicial hearings;

(5) Child care placement;

(6) Recruitment, licensing, inspection of child care providers;

(7) Training for Lead Agency or sub recipient staff on billing and claims processes associated with the subsidy program;

(8) Reviews and supervision of child care placements;

(9) Activities associated with payment rate setting;

(10) Resource and referral services; and

(11) Training for child care staff.

(c) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(d) Non-Federal expenditures required by § 98.55(c) (*i.e.,* the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

(e) If a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described in this section shall be counted towards the five percent limit.

[63 FR 39981, July 24, 1998. Redesignated and amended at 81 FR 67588, 67590, Sept. 30, 2016]

§ 98.55 Matching fund requirements.

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at § 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched at the Federal medical assistance rate for the applicable fiscal year for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act.

(c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:

(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402(g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with § 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at § 98.10, or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use;

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the Lead Agency and the entity designated by the State to receive donated funds pursuant to paragraph (f) of this section (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match; and

(v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this section. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds in accordance with § 98.16(d)(2).

(g) The following are not counted as an eligible State expenditure under this part:

(1) In-kind contributions; and

(2) Family contributions to the cost of care as required by § 98.45(l).

(h) Public pre-kindergarten (pre-K) expenditures:

(1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and

(2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(w), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In addition, in any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to draw down the State's full allotment of Federal matching funds available under this subsection.

(4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

(i) Matching funds are subject to the obligation and liquidation requirements at § 98.60(d)(4).

[63 FR 39981, July 24, 1998, as amended at 72 FR 27979, May 18, 2007. Redesignated and amended at 81 FR 67588, 67590, Sept. 30, 2016; 89 FR 52397, June 24, 2024]

§ 98.56 Restrictions on the use of funds.

(a) ***General.***

(1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;

(2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) ***Construction.***

(1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements. Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, not prohibited.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 8.41.

(3) Tribes and tribal organizations are subject to the requirements at § 98.84 regarding construction and renovation.

(c) ***Tuition.*** Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services that supplant or duplicate the academic program of any public or private school.

(d) ***Sectarian purposes and activities.*** Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) ***Non-Federal share for other Federal programs.*** The CCDF may not be used as the non-Federal share for other Federal grant programs, unless explicitly authorized by statute.

[63 FR 39981, July 24, 1998. Redesignated and amended at 81 FR 67588, 67590, Sept. 30, 2016]

§ 98.57 Cost allocation.

(a) The Lead Agency and subgrantees shall keep on file cost allocation plans or indirect cost agreements, as appropriate, that have been amended to include costs allocated to the CCDF.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

[63 FR 39981, July 24, 1998. Redesignated at 81 FR 67588, Sept. 30, 2016]

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

(1) Discretionary Funds are available to States, Territories, and Tribes;

(2) State Mandatory and Matching Funds are available to States;

(3) Territory Mandatory Funds are available to Territories; and

(4) Tribal Mandatory Funds are available to Tribes.

(b) Subject to the availability of appropriations, in accordance with relevant statutory provisions and the apportionment of funds from the Office of Management and Budget, the Secretary:

(1) May withhold a portion of the CCDF funds made available for a fiscal year for the provision of technical assistance, for research, evaluation, and demonstration, and for a national toll free hotline and Web site;

(2) Will award the remaining CCDF funds to grantees that have an approved application and Plan.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) The following obligation and liquidation provisions apply to States and Territories:

(1) Discretionary Fund allotments shall be obligated in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year.

(2)

(i) Mandatory Funds for States requesting Matching Funds per § 98.55 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

(ii) Mandatory Funds for States that do not request Matching Funds are available until expended.

(3) Mandatory Funds for Territories shall be obligated in the fiscal year in which funds are granted and liquidated no later than the end of the succeeding fiscal year.

(4) Both the Federal and non-Federal share of the Matching Fund shall be obligated in the fiscal year in which the funds are granted and liquidated no later than the end of the succeeding fiscal year.

(5) Except for paragraph (d)(6) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 75.2, Expenditures and Obligations.

(6) Obligations may include subgrants or contracts that require the payment of funds to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

(i) A local office of the Lead Agency;

(ii) Another entity at the same level of government as the Lead Agency; or

(iii) A local office of another entity at the same level of government as the Lead Agency.

(7) In instances where the Lead Agency issues child care certificates, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but shall be no later than the end of the liquidation period.

(8) In instances where third party agencies issue child care certificates, the obligation of funds occurs upon entering into agreement through a subgrant or contract with such agency, rather than when the third party issues certificates to a family.

(9) Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government.

(e) The following obligation and liquidation provisions apply to Tribal Discretionary and Tribal Mandatory Funds:

(1) Tribal grantees shall obligate all funds by the end of the fiscal year following the fiscal year for which the grant is awarded. Any funds not obligated during this period will revert to the Federal government.

(2) Obligations that remain unliquidated at the end of the succeeding fiscal year shall be liquidated within the next fiscal year. Any tribal funds that remain unliquidated by the end of this period will also revert to the Federal government.

(f) Cash advances shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the State Lead Agency, its subgrantee or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g) Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall,

(1) if received by the Lead Agency during the applicable obligation period, described in paragraphs (d) and (e) of this section, be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or

(2) if received after the end of the applicable obligation period described at paragraphs (d) and (e) of this section, be returned to the Federal government.

(h) Repayment of loans made to child care providers as part of a quality improvement activity pursuant to § 98.53, may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

[63 FR 39981, July 24, 1998, as amended at 81 FR 3020, Jan. 20, 2016; 81 FR 67591, Sept. 30, 2016; 89 FR 15415, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

§ 98.61 Allotments from the Discretionary Fund.

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance, research, and the national hotline and Web site, pursuant to § 98.60(b), and amounts reserved for the Territories and Tribes, pursuant to § 98.60(b) and paragraphs (b) and (c) of this section, shall be allotted based upon the formula specified in section 658O(b) of the Act (42 U.S.C. 9858m(b)).

(b) For the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands an amount up to one-half of one percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Funds shall be allotted to these Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(*1*) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(*2*) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (b)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (b)(1)(ii) of this section:

(*1*) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(*2*) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2)

(i) The formula used in calculating a Territory's allotment is as follows:

$$\frac{YCF_t \times APF_t}{\sum(YCF_t \times APF_t)} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term "YCF_t" means the Territory's Young Child factor as defined at paragraph (b)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term "APF_t" means the Territory's Allotment Proportion factor as defined at paragraph (b)(1)(ii) of this section.

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) not less than two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Except as specified in paragraph (c)(2) of this section, grants to individual tribal grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (c)(1)(i) of this section, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children that apply as part of a consortium, pursuant to § 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (c)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the tribal grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (c)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) All funds reserved for Territories at paragraph (b) of this section will be allotted to Territories, and all funds reserved for Tribes at paragraph (c) of this section will be allotted to tribal grantees. Any funds that are returned by the Territories after they have been allotted will revert to the Federal government.

(e) For other organizations, up to $2,000,000 may be reserved from the tribal funds reserved at paragraph (c) of this section. From this amount the Secretary may award a grant to a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and to a private non-profit organization established for the purpose of serving youth who are Indians or Native Hawaiians. The Secretary will establish selection criteria and procedures for the award of grants under this subsection by notice in the FEDERAL REGISTER.

(f) Lead Agencies shall expend any funds that may be set-aside for targeted activities pursuant to annual appropriations law as directed by the Secretary.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67591, Sept. 30, 2016]

§ 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3)(A) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1) an amount of funds equal to the greater of:

(1) the Federal share of its child care expenditures under subsections (g) and (i) of section 402 of the Social Security Act (as in effect before October 1, 1995) for fiscal year 1994 or 1995 (whichever is greater); or

(2) the average of the Federal share of its child care expenditures under the subsections referred to in subparagraph (a)(1) of this section for fiscal years 1992 through 1994.

(b) For Indian Tribes and tribal organizations will be allocated from the funds appropriated under section 418(a)(3)(B) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:

(1) The Metlakatla Indian Community of the Annette Islands Reserve:

(2) Arctic Slope Native Association;

(3) Kawerak, Inc.;

(4) Maniilaq Association;

(5) Association of Village Council Presidents;

(6) Tanana Chiefs Conference;

(7) Cook Inlet Tribal Council;

(8) Bristol Bay Native Association;

(9) Aleutian and Pribilof Islands Association;

(10) Chugachmuit;

(11) Tlingit and Haida Central Council;

(12) Kodiak Area Native Association; and

(13) Copper River Native Association.

(c)

(1) Grants to individual Tribes with 50 or more Indian children, and to Tribes with fewer than 50 Indian children that apply as part of a consortium pursuant to § 98.80(b)(1), will be equal to an amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, by the number of Indian children in each Tribe's service area pursuant to § 98.80(e).

(2) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) The Territories will be allocated from the funds appropriated under section 418(a)(3)(C) of the Social Security Act based upon the following factors:

(1) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(2) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(i) Per capita income shall be:

(A) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(B) Determined every two years.

(ii) [Reserved]

[63 FR 39981, July 24, 1998, as amended at 89 FR 15415, Mar. 1, 2024

§ 98.63 Allotments from the Matching Fund.

(a) To each of the 50 States and the District of Columbia there is allocated an amount equal to its share of the total available under section 418(a)(3) of the Social Security Act. That amount is based on the same ratio as the number of children under age 13 residing in the State bears to the national total of children under age 13. The number of children under 13 is derived from the best data available to the Secretary for the second preceding fiscal year.

(b) For purposes of this section, the amounts available under section 418(a)(3) of the Social Security Act (42 U.S.C. 618(a)(3)) excludes the amounts reserved and allocated under § 98.60(b)(1) for technical assistance, research and evaluation, and the national toll-free hotline and Web site and under § 98.62(a) and (b) for the Mandatory Fund.

(c) Amounts under this section are available pursuant to the requirements at § 98.55(c).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67591, Sept. 30, 2016]

§ 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds and Territory Mandatory Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Mandatory Funds granted to Territories are redistributed only to Territories. Discretionary Funds granted to the Territories are not subject to reallotment. Any Discretionary funds granted to the Territories that are returned after they have been allotted will revert to the Federal Government.

(b) Any portion of a State's Discretionary Fund allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other States in proportion to the original allotments. For purposes of this paragraph the term “State” means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The other Territories and the Tribes may not receive reallotted State Discretionary Funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to § 98.61(a).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that the State does not have any funds available for reallotment; or

(ii) In the case of a report postmarked after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(4) States receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

(c)

(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of § 98.55(c) in the period for which the grant was first made. For purposes of this paragraph (c)(1), the term “State” means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

(2) Matching Funds allotted to a State under § 98.63(a), but not granted, shall also be redistributed in the manner described in paragraph (1) of this section.

(3) The amount of Matching Funds granted to a State that will be made available for redistribution will be based on the State's financial report to ACF for the Child Care and Development Fund (ACF-696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(4) A State eligible to receive redistributed Matching Funds shall also use the ACF-696 to request its share of the redistributed funds, if any.

(5) A State's share of redistributed Matching Funds is based on the same ratio as the number of children under 13 residing in the State to the number of children residing in all States eligible to receive and that request the redistributed Matching Funds.

(6) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

(d) Any portion of a Tribe's allotment of Discretionary Funds that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other tribal grantees in proportion to their original allotments. States and Territories may not receive reallotted tribal funds.

(1) Each year, the Tribe shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by a deadline established by the Secretary.

(2) Based upon the reallotment reports submitted by Tribes, the Secretary will reallot Tribal Discretionary Funds among the other Tribes.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to other tribal grantees in proportion to each Tribe's original allotment for the applicable fiscal year pursuant to § 98.62(c).

(ii) If the total amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to an applicant Tribe is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a Tribe does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that Tribe does not have any funds available for reallotment; or

(ii) In the case of a report received after the deadline established by the Secretary, any funds reported to be available for reallotment shall revert to the Federal government.

(4) Tribes receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

(e)

(1) Any portion of the Mandatory Funds that are not obligated in the period for which the grant is made shall be redistributed. Territory Mandatory Funds, if any, will be redistributed on the request of, and only to, those other Territories that have obligated their entire Territory Mandatory Fund allocation in full for the period for which the grant was first made.

(2) The amount of Mandatory Funds granted to a Territory that will be made available for redistribution will be based on the Territory's financial report to ACF for the Child Care and Development Fund (ACF-696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(3) A Territory eligible to receive redistributed Mandatory Funds shall also use the ACF-696 to request its share of the redistributed funds, if any.

(4) A Territory's share of redistributed Mandatory Funds is based on the same ratio as § 98.62(d).

(5) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67591, Sept. 30, 2016; 89 FR 15416, Mar. 1, 2024]

§ 98.65 Audits and financial reporting.

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with 45 CFR part 75, subpart F, and the Single Audit Act Amendments of 1996.

(b) Lead Agencies are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Lead Agencies shall submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Lead Agencies shall also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and that are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other CCDF funds to which the Lead Agency is or may be entitled.

(e) Lead Agencies shall provide access to appropriate books, documents, papers and records to allow the Secretary to verify that CCDF funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

(f) The audit required in paragraph (a) of this section shall be conducted by an agency that is independent of the State, Territory or Tribe as defined by generally accepted government auditing standards issued by the Comptroller General, or a public accountant who meets such independent standards.

(g) Lead Agencies shall submit financial reports, in a manner specified by ACF, quarterly for each fiscal year until funds are expended.

(h) At a minimum, a State or territorial Lead Agency's quarterly report shall include the following information on expenditures under CCDF grant funds, including Discretionary (which includes realloted funding and any funds transferred from the TANF block grant), Mandatory, and Matching Funds (which includes redistributed funding); and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) Child care administration;

(2) Quality activities, including any sub-categories of quality activities as required by ACF;

(3) Direct services for both grant or contracted slots and certificates;

(4) Non-direct services, including:

(i) Establishment and maintenance of computerized child care information systems;

(ii) Certificate program cost/eligibility determination;

(iii) All other non-direct services; and

(5) Such other information as specified by the Secretary.

(i) Tribal Lead Agencies shall submit financial reports annually in a manner specified by ACF.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67591, Sept. 30, 2016; 89 FR 15416, Mar. 1, 2024]

§ 98.66 Disallowance procedures.

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.

(b) If the Department, as the result of an audit or a review, finds that expenditures should be disallowed, the Department will notify the Lead Agency of this decision in writing.

(c)

(1) If the Lead Agency agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Lead Agency shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Lead Agency may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Lead Agency may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Lead Agency may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Lead Agency's request for reconsideration in (c)(2)(i) of this section shall be postmarked no later than 30 days after the receipt of the disallowance notice. A Lead Agency may request an extension within the 30-day time frame. The request for reconsideration, pursuant to (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Lead Agency's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)

(1) Upon receipt of a request for reconsideration, pursuant to (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Lead Agency that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Lead Agency and any other necessary materials.

(3) If the reconsideration decision is adverse to the Lead Agency's position, the response will include a notification of the Lead Agency's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Lead Agency refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Lead Agency.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to § 98.90, the findings of which have been appealed by the Lead Agency.

(j) Disallowances under the CCDF program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements.

(a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures shall be sufficient to permit:

(1) Preparation of reports required by the Secretary under this subpart and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

§ 98.68 Program integrity.

(a) Lead Agencies are required to describe in their Plan effective internal controls that are in place to ensure integrity and accountability, while maintaining continuity of services, in the CCDF program. These shall include:

(1) Processes to ensure sound fiscal management;

(2) Processes to identify areas of risk;

(3) Processes to train child care providers and staff of the Lead Agency and other agencies engaged in the administration of CCDF about program requirements and integrity; and

(4) Regular evaluation of internal control activities.

(b) Lead Agencies are required to describe in their Plan the processes that are in place to:

(1) Identify fraud or other program violations, which may include, but are not limited to the following:

(i) Record matching and database linkages;

(ii) Review of attendance and billing records;

(iii) Quality control or quality assurance reviews; and

(iv) Staff training on monitoring and audit processes.

(2) Investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

(c) Lead Agencies must describe in their Plan the procedures that are in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination and redetermination. Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible during the period between redeterminations as described in § 98.21(a)(1):

(1) The Lead Agency shall pay any amount owed to a child care provider for services provided for such a child during this period under a payment agreement or authorization for services; and

(2) Any CCDF payment made for such a child during this period shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances, as set forth at § 98.21(a).

[81 FR 67591, Sept. 30, 2016]

Subpart H—Program Reporting Requirements

§ 98.70 Reporting requirements.

(a) Quarterly Case-level Report—

(1) State and territorial Lead Agencies that receive assistance under the CCDF shall prepare and submit to the Department, in a manner specified by the Secretary, a quarterly case-level report of monthly family case-level data. Data shall be collected monthly and submitted quarterly. States may submit the data monthly if they choose to do so.

(2) The information shall be reported for the three-month federal fiscal period preceding the required report. The first report shall be submitted no later than August 31, 1998, and quarterly thereafter. The first report shall include data from the third quarter of FFY 1998 (April 1998 through June 1998). States and Territorial Lead Agencies which choose to submit case-level data monthly must submit their report for April 1998 no later than July 30, 1998. Following reports must be submitted every thirty days thereafter.

(3) State and territorial Lead Agencies choosing to submit data based on a sample shall submit a sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not prohibited from submitting case-level data for the entire population receiving CCDF services.

(4) Quarterly family case-level reports to the Secretary shall include the information listed in § 98.71(a).

(b) Annual Report—

(1) State and territorial Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual report. The report shall be submitted, in a manner specified by the Secretary, by December 31 of each year and shall cover the most recent federal fiscal year (October through September).

(2) The first annual aggregate report shall be submitted no later than December 31, 1997, and every twelve months thereafter.

(3) Biennial reports to Congress by the Secretary shall include the information listed in § 98.71(b).

(c) Tribal Annual Report—

(1) Tribal Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual aggregate report.

(2) The report shall be submitted in the manner specified by the Secretary by December 31 of each year and shall cover services for children and families served with CCDF funds during the preceding Federal Fiscal Year.

(3) Biennial reports to Congress by the Secretary shall include the information listed in § 98.71(c).

(d) State and territorial Lead Agencies shall make the following reports publicly available on a Web site in a timely manner:

(1) Annual administrative data reports under paragraph (b) of this section;

(2) Quarterly financial reports under § 98.65(g); and

(3) Annual quality progress reports under § 98.53(g).

[63 FR 39981, July 24, 1998, as amended at 81 FR 67592, Sept. 30, 2016; 89 FR 52397, June 24, 2024]

§ 98.71 Content of report.

(a) At a minimum, a State or territorial Lead Agency's quarterly case-level report to the Secretary, as required in § 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) The total monthly family income and family size used for determining eligibility;

(2) Zip code of residence of the family and zip code of the location of the child care provider;

(3) Gender and month/year of birth of children;

(4) Ethnicity and race of children;

(5) Whether the head of the family is a single parent

(6) The sources of family income and assistance from employment (including self-employment), cash or other assistance under the Temporary Assistance for Needy Families program under Part A of title IV of the Social Security Act (42 U.S.C. 609(a)(7)), cash or other assistance under a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977, and other assistance programs;

(7) The month/year child care assistance to the family started;

(8) The type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care;

(9) Whether the child care provider was a relative;

(10) The total monthly child care copayment by the family;

(11) [Reserved]

(12) The total expected dollar amount per month to be received by the provider for each child;

(13) The total hours per month of such care;

(14) Unique identifier of the head of the family unit receiving child care assistance, and of the child care provider;

(15) Reasons for receiving care;

(16) Whether the family is experiencing homelessness;

(17) Whether the parent(s) are in the military service;

(18) Whether the child has a disability;

(19) Primary language spoken at home;

(20) Date of the child care provider's most recent health, safety and fire inspection meeting the requirements of § 98.42(b)(2);

(21) Indicator of the quality of the child care provider; and

(22) Any additional information that the Secretary shall require.

(b) At a minimum, a State or territorial Lead Agency's annual aggregate report to the Secretary, as required in § 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

(1) The number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;

(2) The number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);

(3) The manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;

(4) The total number (without duplication) of children and families served under CCDF;

(5) For Lead Agencies implementing presumptive eligibility in accordance with § 98.21(e):

(i) The number of presumptively eligible children ultimately determined fully eligible;

(ii) The number of presumptively eligible children for whom the family does not complete the documentation for full eligibility verification; and,

(iii) The number of presumptively eligible children who are determined not to be eligible after full verification;

(6) The number of child fatalities by type of care; and

(7) Any additional information that the Secretary shall require.

(c) A Tribal Lead Agency's annual report as required in § 98.70(c), shall include such information as the Secretary shall require.

[81 FR 67592, Sept. 30, 2016, as amended at 89 FR 15416, Mar. 1, 2024]

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or tribal organization (as described in subpart G of these regulations) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to the requirements under this part as specified in this section based on the size of the awarded funds. The Secretary shall establish thresholds for Tribes' total CCDF allotments pursuant to §§ 98.61(c) and 98.62(b) to be divided into three categories:

(1) Large allocations;

(2) Medium allocations; and

(3) Small allocations.

(b) An Indian Tribe applying for or receiving CCDF funds shall:

(1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a CCDF program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium that receives CCDF funds; and

(2) Demonstrate its current service delivery capability, including skills, personnel, resources, community support, and other necessary components to satisfactorily carry out the proposed program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive CCDF funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium;

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age;

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds, manage a CCDF program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive CCDF services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the CCDF, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, shall include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67592, Sept. 30, 2016]

§ 98.81 Application and Plan procedures.

(a) In order to receive CCDF funds, a Tribal Lead Agency shall apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

(b) Tribal Lead Agencies with large and medium allocations shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility.

(i) If the Tribe's median income is below a certain level established by the Secretary, then, at the Tribe's option, any Indian child in the Tribe's service area shall be considered eligible to receive CCDF funds, regardless of the family's income, work, or training status, provided that provision for services still goes to those with the highest need.

(ii) If the Tribe's median income is above the level established by the Secretary, then a tribal program must determine eligibility for services pursuant to § 98.20(a)(2). A tribal program, as specified in its Plan, may use either:

(A) 85 percent of the State median income for a family of the same size; or

(B) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

(2) For purposes of determining eligibility, the following terms shall also be defined:

(i) Indian child; and

(ii) Indian reservation or tribal service area.

(3) The Tribal Lead Agency shall also assure that:

(i) The applicant shall coordinate, to the maximum extent feasible, with the Lead Agency in the State in which the applicant shall carry out CCDF programs or activities, pursuant to § 98.82; and

(ii) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, CCDF programs and activities shall be carried out on an Indian reservation for the benefit of Indian children, pursuant to § 98.83(b).

(4) The Plan shall include any information, as prescribed by the Secretary, necessary for determining the number of children in accordance with §§ 98.61(c), 98.62(c), and 98.80(b)(1).

(5) The Plan shall include a description of the Tribe's payment rates, how they are established, and how they support quality including, where applicable, cultural and linguistic appropriateness.

(6) The Plan is not subject to the following requirements:

(i) The early learning and developmental guidelines requirement at § 98.15(a)(9);

(ii) The certification to develop the CCDF Plan in consultation with the State Advisory Council at § 98.15(b)(1);

(iii) The licensing requirements applicable to child care services at §§ 98.15(b)(6) and §§ 98.16(u);

(iv) The identification of the public or private entities designated to receive private funds at § 98.16(d)(2);

(v) A definition of very low income at § 98.16(g)(8);

(vi) A description at § 98.16(i)(4) of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(vii) The description of the sliding fee scale at § 98.16(k);

(viii) The description of the market rate survey or alternative methodology at § 98.16(r);

(ix) The description relating to Matching Funds at § 98.16(w);

(x) The description of how the Lead Agency uses grants or contracts for supply building at § 98.16(z);

(xi) The description of how the Lead Agency prioritizes increasing access to high-quality child care in areas with high concentration of poverty at § 98.16(aa); and

(xii) The description of provider payment practices at § 98.16(ee).

(7) In its initial Plan, an Indian Tribe shall describe its current service delivery capability pursuant to § 98.80(b)(2).

(8) A consortium shall also provide the following:

(i) A list of participating or constituent members, including demonstrations from these members pursuant to § 98.80(c)(1);

(ii) A description of how the consortium is coordinating services on behalf of its members, pursuant to § 98.83(c)(1); and

(iii) As part of its initial Plan, the additional information required at § 98.80(c)(4).

(9) Plans for Tribal Lead Agencies with medium allocations are not subject to the following requirements unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program:

(i) The assurance at § 98.15(a)(2) regarding options for services;

(ii) A description of any limits established for the provision of in-home care at § 98.16(i)(2), or

(iii) A description of the child care certificate payment system(s) at § 98.16(q).

(c) Tribal Lead Agencies with small allocations shall submit an abbreviated CCDF Plan, as described by the Secretary.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67593, Sept. 30, 2016; 89 FR 15416, Mar. 1, 2024]

§ 98.82 Coordination.

Tribal applicants shall coordinate the development of the Plan and the provision of services, to the extent practicable, as required by §§ 98.12 and 98.14 and:

(a) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(b) With other Federal, State, local, and tribal child care and childhood development programs.

[81 FR 67593, Sept. 30, 2016]

§ 98.83 Requirements for tribal programs.

(a) The grantee shall designate an agency, department, or unit to act as the Tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities for the benefit of Indian children shall be carried out on or near an Indian reservation.

(c) In the case of a tribal grantee that is a consortium:

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their three-year CCDF Plan; and

(2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.

(3) If a Tribe elects to participate in a consortium arrangement to receive one part of the CCDF (*e.g.,* Discretionary Funds), it may not join another consortium or apply as a direct grantee to receive the other part of the CCDF (*e.g.,* Tribal Mandatory Funds).

(4) If a Tribe relinquishes its membership in a consortium at any time during the fiscal year, CCDF funds awarded on behalf of the member Tribe will remain with the tribal consortium to provide direct child care services to other consortium members for that fiscal year.

(d)

(1) Tribal Lead Agencies shall not be subject to:

(i) The requirements to use grants or contracts to build supply for certain populations at § 98.30(b);

(ii) The requirement to produce a consumer education website at § 98.33(a). Tribal Lead Agencies still must collect and disseminate the provider-specific consumer education information described at § 98.33(a) through (d), but may do so using methods other than a website;

(iii) The requirement to have licensing applicable to child care services at § 98.40;

(iv) The requirement for a training and professional development framework at § 98.44(a);

(v) The market rate survey or alternative methodology described at § 98.45(b)(2) and the related requirements at § 98.45(c), (d), (e), and (f);

(vi) The requirement for a sliding fee scale at § 98.45(l);

(vii) The requirement to have provider payment practices that reflect generally accepted payment practices at § 98.45(m);

(viii) The requirement that Lead Agencies shall give priority for services to children of families with very low family income at § 98.46(a)(1);

(ix) The requirement that Lead Agencies shall prioritize increasing access to high-quality child care in areas with significant concentrations of poverty and unemployment at § 98.46(b);

(x) The requirements to use grants or contracts at § 98.50(a)(3);

(xi) The requirements about Mandatory and Matching Funds at § 98.50(e);

(xii) The requirement to complete the quality progress report at § 98.53(g);

(xiii) The requirement that Lead Agencies shall expend no more than five percent from each year's allotment on administrative costs at § 98.54(a); and

(xiv) The Matching fund requirements at §§ 98.55 and 98.63.

(2) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the provision at § 98.42(b)(2) to require inspections of child care providers and facilities, unless a Tribal Lead Agency describes an alternative monitoring approach in its Plan and provides adequate justification for the approach.

(3) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the requirement at § 98.43 to conduct comprehensive criminal background checks, unless the Tribal Lead Agency describes an alternative background check approach in its Plan and provides adequate justification for the approach.

(e) Tribal Lead Agencies with medium and small allocations shall not be subject to the requirement for certificates at § 98.30(a) and (d).

(f) Tribal Lead Agencies with small allocations must spend their CCDF funds in alignment with the goals and purposes described in § 98.1. These Tribes shall have flexibility in how they spend their CCDF funds and shall be subject to the following requirements:

(1) The health and safety requirements described in § 98.41;

(2) The monitoring requirements at §§ 98.42 and 98.83(d)(2); and

(3) The background checks requirements described in §§ 98.43 and 98.83(d)(3);

(4) The requirements to spend funds on activities to improve the quality of child care described in §§ 98.83(g) and 98.53;

(5) The use of funds requirements at § 98.56 and cost allocation requirement at § 98.57;

(6) The financial management requirements at subpart G of this part that are applicable to Tribes;

(7) The reporting requirements at subpart H of this part that are applicable to Tribes;

(8) The eligibility definitions at § 98.81(b)(2);

(9) The 15 percent limitation on administrative activities at § 98.83(i);

(10) The monitoring, non-compliance, and complaint provisions at subpart J of this part; and

(11) Any other requirement established by the Secretary.

(g) Of the aggregate amount of funds expended (*i.e.*, Discretionary and Mandatory Funds):

(1) For Tribal Lead Agencies with large, medium, and small allocations, no less than nine percent shall be used for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) For Tribal Lead Agencies with large and medium allocations, no less than three percent shall be used to carry out activities at § 98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

(3) Nothing in this section shall preclude the Tribal Lead Agencies from reserving a larger percentage of funds to carry out activities described in paragraph (g)(1) and (2) of this section.

(h) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (i) of this section, the direct services requirement at § 98.50(f)(2), or the quality expenditure requirement at § 98.53(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(i) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under paragraph (h) of this section) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(j)

(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (i)(1) of this section is subject to the actual availability of the appropriation.

[81 FR 67593, Sept. 30, 2016, as amended at 82 FR 3186, Jan. 11, 2017; 89 FR 15416, Mar. 1, 2024; 89 FR 52397, June 24, 2024]

§ 98.84 Construction and renovation of child care facilities.

(a) Upon requesting and receiving approval from the Secretary, Tribal Lead Agencies may use amounts provided under §§ 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

(b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:

(1) Adequate facilities are not otherwise available to enable the Tribal Lead Agency to carry out child care programs;

(2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the Tribal Lead Agency as compared to the level of services provided by the Tribal Lead Agency in the preceding fiscal year. The Secretary shall waive this requirement if:

(i) The Secretary determines that the decrease in the level of child care services provided by the Indian tribe or tribal organization is temporary; and

(ii) The Indian tribe or tribal organization submits to the Secretary a plan that demonstrates that after the date on which the construction or renovation is completed:

(A) The level of direct child care services will increase; or

(B) The quality of child care services will improve.

(c)

(1) Tribal Lead Agency may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) A Tribal Lead Agency may only use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by the Secretary. If the project later fails to gain the Secretary's approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

(1) Federal share requirements and use of property requirements at 45 CFR 75.318;

(2) Transfer and disposition of property requirements at 45 CFR 75.318(c);

(3) Title requirements at 45 CFR 75.318(a);

(4) Cost principles and allowable cost requirements at subpart E of this part;

(5) Program income requirements at 45 CFR 75.307;

(6) Procurement procedures at 45 CFR 92.36; 75.326 through 75.335; and

(7) Any additional requirements established by program instruction, including requirements concerning:

(i) The recording of a Notice of Federal Interest in the property;

(ii) Rights and responsibilities in the event of a grantee's default on a mortgage;

(iii) Insurance and maintenance;

(iv) Submission of plans, specifications, inspection reports, and other legal documents; and

(v) Modular units.

(e) In lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies shall obligate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded. Tribal construction and major renovation funds must be liquidated at the end of the second succeeding fiscal year following this obligation deadline. Any Tribal construction and major renovation funds that remain unliquidated by the end of this period will revert to the Federal government.

(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a) of this section, for minor renovation.

(g) A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. A new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(h) A construction or renovation project that requires and receives approval by the Secretary must include as part of the construction and renovation costs:

(1) planning costs as allowed at § 98.84(c);

(2) labor, materials and services necessary for the functioning of the facility; and

(3) initial equipment for the facility. Equipment means items which are tangible, nonexpendable personal property having a useful life of more than five years.

[63 FR 39981, July 24, 1998, as amended at 81 FR 3020, Jan. 20, 2016; 81 FR 67594, Sept. 30, 2016; 89 FR 15417, Mar. 1, 2024]

Subpart J—Monitoring, Non-compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the CCDF for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the CCDF Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)

(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) ***Length of retention period.***

(1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to § 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Lead Agency, pursuant to § 98.90 or § 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.16; or

(2) If in the operation of any program for which funding is provided under the CCDF, there is a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Lead Agency a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Lead Agency, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Lead Agency has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) The Secretary will disallow any improperly expended funds;

(2) An amount equal to or less than the improperly expended funds will be deducted from the administrative portion of the State allotment for the following fiscal year; or

(3) A combination of the above options will be applied.

(b) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including:

(1) Disqualification of the Lead Agency from the receipt of further funding under the CCDF; or

(2)

(i) A penalty of not more than four percent of the funds allotted under § 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to implement a provision of the Act, these regulations, or the Plan required under § 98.16;

(ii) This penalty will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty;

(iii) This penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary; or

(iv) The Lead Agency may show cause to the Secretary why the amount of the penalty, if applied, should be reduced.

(3)

(i) A penalty of five percent of the funds allotted under § 98.61 (*i.e.*, the Discretionary Funds) for a Fiscal Year shall be withheld for any For Fiscal Year the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.46(a);

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty;

(iii) This penalty will not be applied if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure; and

(iv) The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster.

(4)

(i) A penalty of five percent of the funds allotted under § 98.61 (*i.e.*, the Discretionary Funds) for a Fiscal Year shall be withheld for any Fiscal Year that the Secretary determines that the State, Territory, or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43;

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty; and

(iii) This penalty will not be applied if the State, Territory, or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

(c) If a Lead Agency is subject to additional sanctions as provided under paragraph (b) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(d) Nothing in this section, or in § 98.90 or § 98.91, will preclude the Lead Agency and the Department from informally resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (b) of this section, may nevertheless be applied, even though the issue is resolved informally.

(e) It is at the Secretary's sole discretion to choose the penalty to be imposed under paragraphs (a) and (b) of this section.

[63 FR 39981, July 24, 1998, as amended at 81 FR 67594, Sept. 30, 2016]

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Lead Agency has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the CCDF shall be submitted in writing to the Assistant Secretary for Children and Families. The complaint shall identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Lead Agency. Any comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints that are not satisfactorily resolved through communication with the Lead Agency will be pursued through the process described in § 98.90.

[63 FR 39981, Sept. 24, 1998, as amended at 81 FR 67595, Sept. 30, 2016]

Subpart K—Error Rate Reporting

Source: 72 FR 50898, Sept. 5, 2007, unless otherwise noted.

§ 98.100 Error Rate Report.

(a) ***Applicability*** —The requirements of this subpart apply to the fifty States, the District of Columbia and Puerto Rico.

(b) ***Generally*** —States, the District of Columbia and Puerto Rico shall calculate, prepare and submit to the Department, a report of errors occurring in the administration of CCDF grant funds, at times and in a manner specified by the Secretary in instructions. States, the District of Columbia and Puerto Rico must use this report to calculate their error rates, which is defined as the percentage of cases with an error (expressed as the total number of cases with an error compared to the total number of cases); the percentage of cases with an improper payment (expressed as the total number of cases with an improper payment compared to the total number of cases); the percentage of improper payments (expressed as the total amount of improper payments in the sample compared to the total dollar amount of payments made in the sample); the average amount of improper payment; and the estimated annual amount of improper payments. The report also will provide strategies for reducing their error rates and allow States, the District of Columbia and Puerto Rico to set target error rates for the next cycle.

(c) ***Error Defined*** —For purposes of this subpart, an "error" shall mean any violation or misapplication of statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds, regardless of whether such violation results in an improper payment.

(d) ***Improper Payment Defined*** —For purposes of this subpart, "improper payment."

(1) Means any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds; and

(2) Includes any payment of CCDF grant funds to an ineligible recipient, any payment of CCDF grant funds for an ineligible service, any duplicate payment of CCDF grant funds and payments of CCDF grant funds for services not received. Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in § 98.21(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances, as set forth at § 98.21(a) and (b).

(e) ***Costs of Preparing the Error Rate Report*** —Provided the error rate calculations and reports focus on client eligibility, expenses incurred by the States, the District of Columbia and Puerto Rico in complying with this rule, including preparation of required reports, shall be considered a cost of direct service related to eligibility determination and therefore is not subject to the five percent limitation on CCDF administrative costs pursuant to § 98.54(a).

[72 FR 50898, Sept. 5, 2007, as amended at 81 FR 67595, Sept. 30, 2016]

§ 98.101 Case Review Methodology.

(a) ***Case Reviews and Sampling*** —In preparing the error reports required by this subpart, States, the District of Columbia and Puerto Rico shall conduct comprehensive reviews of case records using a methodology established by the Secretary. For purposes of the case reviews, States, the District of Columbia and Puerto Rico shall select a random sample of case records which is estimated to achieve the calculation of an estimated annual amount of improper payments with a 90 percent confidence interval of ±5.0 percent.

(b) ***Methodology and Forms*** —States, the District of Columbia and Puerto Rico must prepare and submit forms issued by the Secretary, following the accompanying instructions setting forth the methodology to be used in conducting case reviews and calculating the error rates.

(c) ***Reporting Frequency and Cycle*** —States, the District of Columbia and Puerto Rico shall conduct case reviews and submit error rate reports to the Department according to a staggered three-year cycle established by the Secretary such that each State, the District of Columbia, and Puerto Rico will be selected once, and only once, in every three years.

(d) ***Access to Federal Staff*** —States, the District of Columbia and Puerto Rico must provide access to Federal staff to participate and provide oversight in case reviews and error rate calculations, including access to forms related to determining error rates.

(e) ***Record Retention*** —Records pertinent to the case reviews and submission of error rate reports shall be retained for a period of five years from the date of submission of the applicable error rate report or, if the error rate report was revised, from the date of submission of the revision. Records must be made available to Federal staff upon request.

§ 98.102 Content of Error Rate Reports.

(a) ***Baseline Submission Report*** —At a minimum, States, the District of Columbia and Puerto Rico shall submit an initial error rate report to the Department, as required in § 98.100, which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

(1) Percentage of cases with an error (regardless of whether such error resulted in an over or under payment), expressed as the total number of cases in the sample with an error compared to the total number of cases in the sample;

(2) Percentage of cases with an improper payment (both over and under payments), expressed as the total number of cases in the sample with an improper payment compared to the total number of cases in the sample;

(3) Percentage of improper payments (both over and under payments), expressed as the total dollar amount of improper payments in the sample compared to the total dollar amount of payments made in the sample;

(4) Average amount of improper payments (gross over and under payments, divided by the total number of cases in the sample that had an improper payment (both over and under payments));

(5) Estimated annual amount of improper payments (which is a projection of the results from the sample to the universe of cases statewide during the 12-month review period) calculated by multiplying the percentage of improper payments by the total dollar amount of child care payments that the State, the District of Columbia or Puerto Rico paid during the 12-month review period;

(6) For each category of data listed above, targets for errors and improper payments in the next reporting cycle;

(7) Summary of methodology used to arrive at estimate, including fieldwork preparation, sample generation, record review and error rate computation processes;

(8) Discussion of the causes of improper payments identified and actions that will be taken to correct those causes in order to reduce the error rates;

(9) Description of the information systems and other infrastructure that assist the State, the District of Columbia and Puerto Rico in identifying and reducing improper payments, or if the State, the District of Columbia or Puerto Rico does not have these tools, a description of actions that will be taken to acquire the necessary information systems and other infrastructure; and

(10) Such other information as specified by the Secretary.

(b) ***Standard Report*** —At a minimum, the State, the District of Columbia and Puerto Rico shall submit an error rate report to the Department, as required in § 98.100, made subsequent to the baseline submission report as set forth in § 98.102(a) which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

(1) All the information reported in the baseline submission, as set forth in § 98.102(a), updated for the current cycle;

(2) For each category of data listed in § 98.102(a)(1) through (5), States, the District of Columbia and Puerto Rico must include data and targets from the prior cycle in addition to data from the current cycle and targets for the next cycle;

(3) Description of whether the State, the District of Columbia or Puerto Rico met error rate targets set in the prior cycle and, if not, an explanation of why not;

(4) Discussion of the causes of improper payments identified in the prior cycle and actions that were taken to correct those causes, in addition to a discussion on the causes of improper payments identified in the current cycle and actions that will be taken to correct those causes in order to reduce the error rates; and

(5) Such other information as specified by the Secretary.

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by paragraph (b) of this section.

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Root causes of error as identified on the Lead Agency's most recent ACF-404 and other root causes identified;

(iii) Detailed descriptions of actions to reduce improper payments and the name and/or title of the individual responsible for ensuring actions are completed;

(iv) Milestones to indicate progress towards action completion and error reduction goals;

(v) A timeline for completing each action of the plan within 1 year, and for reducing the improper payment rate below the threshold established by the Secretary; and

(vi) Targets for future improper payment rates.

(3) Subsequent progress reports including updated corrective action plans must be submitted as requested by the Assistant Secretary until the Lead Agency's improper payment rate no longer exceeds the threshold.

(4) Failure to carry out actions as described in the approved corrective action plan or to fulfill requirements in this paragraph (c) will be grounds for a penalty or sanction under § 98.92.

[72 FR 50898, Sept. 5, 2007, as amended at 81 FR 67595, Sept. 30, 2016; 89 FR 15417, Mar. 1, 2024]

E-6.

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

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

FROM: Council Staff

DATE: October 21, 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 current meeting cycle. The Department has 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.

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. Has the agency analyzed the rules' clarity, conciseness, and understandability?

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. Has the agency analyzed the rules' consistency with other rules and statutes?

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. Has the agency analyzed the rules' effectiveness in achieving its objectives?

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. Has the agency analyzed the current enforcement status of the rules?

The Department indicates the rules are currently 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 indicates there are no corresponding federal laws.

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?

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. Conclusion

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.

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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.
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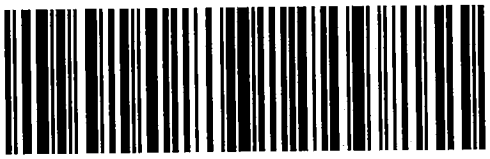
Enclosures

EXHIBIT A

RETURN RECEIPT REQUESTED ELECTRONICALLY

2960 Pelham Parkway #249
Birmingham AL 35124

USPS CERTIFIED MAIL



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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.

[signature] 03/18/20

DUANE MANLEY
12HA BOARD CHAIR

Date

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

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

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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
Mobile: (602)320-8866
Email: hdukes@dukeslawaz.com

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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ARIZONA DEPARTMENT OF HEALTH SERVICES

July 29, 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. 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; 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.

4. Are the rules consistent with other rules and statutes? **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. Are the rules enforced as written? **Yes _X_ No __**

Rule	Explanation

6. Are the rules clear, concise, and understandable? **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. 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).

7. Has the agency received written criticisms of the rules within the last five years? Yes __ No _X_

Commenter	Comment	Agency's Response

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 August 2025.

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

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).

Section

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.

E-7.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 5, Article 33

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: **October 2, 2024**

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 5, Article 33

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) covers seven (7) rules in Title 6, Chapter 5, Article 33 related to "Achieving A Better Life Experience" or (ABLE) program. The ABLE Act is a federal law that allows states to create tax-advantaged savings accounts for people with disabilities. The program's goal is to help people with disabilities save for qualified disability expenses without losing eligibility for public benefits.

This is the first 5YRR since the rules were implemented in May of 2019.

Proposed Action

The Department does not propose taking action or making any amendments to the rules 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 has not identified any other economic impact that is significantly different from that projected in the economic impact statement for the rulemaking it promulgated in 2019. The specific changes are outlined in the paragraph below.

From December 2019 to March 2024, the total number of accounts opened, including those pending opening, increased from 913 to 3,249. An additional full time employee was added to the program in that time to account for the increased workload, and the total projected costs to the Department for the State Fiscal Year 2024 is $228,111. In the same time period, the program was able to reduce its account maintenance fee from $39 per year to $27, a cost savings of 31% to the client.

Stakeholders are identified as the Department and individuals engaging with the ABLE Program.

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?**

These rules govern all aspects of the ABLE Program. The benefits of these rules outweigh any costs associated with the rules and impose the least burden on individuals regulated by these rules. The Department does not anticipate any negative impacts on small businesses or individuals regulated by these rules.

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 the rules are not more stringent than corresponding federal law.

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 these rules do not require a permit, license, or agency authorization and therefore A.R.S. § 41-1037 does not apply.

11. **Conclusion**

This 5YRR from the Department covers seven rules in Title 6, Chapter 5, Article 33 related to the ABLE program. As indicated above, the rules are generally effective in achieving its objectives and enforced as written. The Department does not propose taking action or making any amendments to the rules at this time.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Katie Hobbs
Governor

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Vacant
Director

August 20, 2024

Ms. Jessica Klein
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Klein:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 5, Social Services, Article 33.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Hiroko Flores, Deputy Rules Administrator, Governance and Innovation Administration, at (480) 487-7694.

Sincerely,

Nicole Davis
Office of General Counsel

Attachments

DEPARTMENT OF ECONOMIC SECURITY

TITLE 6, CHAPTER 5

Article 33 - ACHIEVING A BETTER LIFE EXPERIENCE

FIVE-YEAR REVIEW REPORT

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1954(A)(3) and 46-202

Specific Statutory Authority: A.R.S. § 46-902(1)

2. Analysis of rules:

Rule **Analysis**

R6-5-3301 Title: Definitions

Objective: The objective of this rule is to define the terms used in this Article and promote a uniform understanding of terms used by the Department.

- Is this rule effective in meeting the objective? ☑ **Yes** ☐ **No**
- Is this rule consistent with other rules and statutes? ☑ **Yes** ☐ **No**
- Is this rule enforced as written? ☑ **Yes** ☐ **No**
- Is this rule clear, concise, and understandable? ☑ **Yes** ☐ **No**

Rule **Analysis**

R6-5-3302 Title: Program Manager

Objective: The objective of this rule is to explain the responsibilities of the program manager.

- Is this rule effective in meeting the objective? ☑ **Yes** ☐ **No**
- Is this rule consistent with other rules and statutes? ☑ **Yes** ☐ **No**
- Is this rule enforced as written? ☑ **Yes** ☐ **No**
- Is this rule clear, concise, and understandable? ☑ **Yes** ☐ **No**

Rule **Analysis**

R6-5-3303 Title: Fees

Objective: The objective of this rule is to explain the different types of fees the program manager may impose on designated beneficiaries.

- Is this rule effective in meeting the objective? ☑ **Yes** ☐ **No**
- Is this rule consistent with other rules and statutes? ☑ **Yes** ☐ **No**
- Is this rule enforced as written? ☑ **Yes** ☐ **No**
- Is this rule clear, concise, and understandable? ☑ **Yes** ☐ **No**

Rule **Analysis**

R6-5-3304 Title: Opening an Account

Objective: The objective of this rule is to explain how to open an account, the fees included in the application process, the information required in the application, and the applicant's right to reapply if an application is denied.

- Is this rule effective in meeting the objective? ☑ **Yes** ☐ **No**
- Is this rule consistent with other rules and statutes? ☑ **Yes** ☐ **No**
- Is this rule enforced as written? ☑ **Yes** ☐ **No**
- Is this rule clear, concise, and understandable? ☑ **Yes** ☐ **No**

Rule **Analysis**

R6-5-3305 Title: Contribution

Objective: The objective of this rule is to explain who can make a contribution to an account, the exception to when cash or a cash equivalent contribution can be made, the limit amount of annual contributions made to an account, and that excess contributions will be returned to the contributors.

- Is this rule effective in meeting the objective? ☑ **Yes** ☐ **No**
- Is this rule consistent with other rules and statutes? ☑ **Yes** ☐ **No**
- Is this rule enforced as written? ☑ **Yes** ☐ **No**
- Is this rule clear, concise, and understandable? ☑ **Yes** ☐ **No**

Rule **Analysis**

R6-5-3306 Title: Statements

Objective: The objective of this rule is to explain who can receive an account statement and how the account statement will be provided.

- Is this rule effective in meeting the objective? ☑ **Yes** ☐ **No**
- Is this rule consistent with other rules and statutes? ☑ **Yes** ☐ **No**
- Is this rule enforced as written? ☑ **Yes** ☐ **No**
- Is this rule clear, concise, and understandable? ☑ **Yes** ☐ **No**

Rule **Analysis**

R6-5-3307 Title: Program-to-Program Transfers and Rollovers

Objective: The objective of this rule is to explain that, subject to federal law, the ABLE Program allows the transfer of the account balance to or from another state's ABLE program and the criteria for which rollovers are allowed to occur.

- Is this rule effective in meeting the objective? ☑ **Yes** ☐ **No**
- Is this rule consistent with other rules and statutes? ☑ **Yes** ☐ **No**
- Is this rule enforced as written? ☑ **Yes** ☐ **No**
- Is this rule clear, concise, and understandable? ☑ **Yes** ☐ **No**

3. Has the Department received written criticisms of the rules within the last five years?

☐ **Yes** ☑ **No**

4. Economic, small business, and consumer impact comparison:

In December 2019, the total number of accounts opened, including those pending opening, totaled 913. As of March 2024, the number of accounts has increased to 3,249. An additional full time employee has been added to the program in that time to account for the increased workload, and the total projected costs to the Department for the State Fiscal Year 2024 is $228,111. In the same time period, the program was able to reduce its account maintenance fee from $39 per year to $27, a cost savings of 31% to the client. The Department has not identified any other economic impact that is significantly different from that projected in the economic impact statement for the rulemaking it promulgated in 2019 (25 A.A.R. 885, May 20, 2019).

5. Has the agency received any business competitiveness analyses of the rules?

☐ **Yes** ☑ **No**

6. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes ☐ **No** ☐ **N/A** ☑

The rules for A.A.C. Title 6, Chapter 5, Article 33 - Achieving a Better Life Experience were made by final rulemaking and became effective May 20, 2019. This is the first Five-Year Review Report from the Department for A.A.C. Title 6, Chapter 5, Article 33 - Achieving a Better Life Experience as required under A.R.S. § 41-1056.

7. 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:

These rules govern all aspects of the ABLE Program. The benefits of these rules outweigh any costs associated with the rules and impose the least burden on individuals regulated by these rules. The Department does not anticipate any negative impacts on small businesses or individuals regulated by these rules.

8. Are the rules more stringent than corresponding federal laws?

☐ **Yes** ☑ **No**

9. 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 Department has determined that A.R.S. § 41-1037 does not apply to these rules because

they do not require a regulatory permit, license, or agency authorization.

10. Proposed course of action:

During this review, the Department has determined the existing rules under Article 33 are effective in meeting their objective, are consistent with other rules and statutes, are enforced as written, and are clear, concise, and understandable. The Department does not propose to take any action at this time.

Ariz. Admin. Code § R6-5-3301 Definitions

Library:	Arizona Administrative Code
Edition:	2024
Citation:	Ariz. Admin. Code § R6-5-3301
Year:	2024

Id. vLex Fastcase: VLEX-978038390

Link: https://fastcase.vlex.com/vid/ariz-admin-code--978038390

Text

The following definitions apply to this Article:

1. "ABLE" means the Achieving a Better Life Experience Act.

2. "Account" means an individual account in the fund established as prescribed for a single designated beneficiary.

3. "Aggregate Account Balance" means the total amount in an account on a particular date.

4. "Applicant" means any individual who applies to open an Account in the Program.

5. "Cash" means personal check, cashier's check, money order, debit card, Automated Clearing House (ACH) payments, or a similar cash equivalent.

6. "Code" means the federal Internal Revenue Code of 1986, as amended (26 U.S.C. 529A).

7. "Committee" means the same as in A.R.S. § 46-901(3).

8. "Department" means the Arizona Department of Economic Security.

9. "Designated Beneficiary" means the same as in A.R.S. § 46-901(5).

10. "Designated Representative" means a person who is authorized to act on behalf of a Designated Beneficiary.

11. "Disability Certification" means the certification described in Section 529A of the Code.

12. "Eligible Individual" means the same as in A.R.S. § 46-901(6).

13. "IRS" means the federal Internal Revenue Service.

14. "Program" means the same as in A.R.S. § 46-901(9).

15. "Program Manager" means the entity selected by the Department for the Program in accordance with A.R.S. § 46-903(C)(1) -(8).

16. "Qualified Disability Expenses" means the same as in A.R.S. § 46-901(10).

17. "Qualified Withdrawal" or "Qualified Distribution" means a withdrawal from an Account to pay Qualified Disability Expenses of the Designated Beneficiary.

18. "Secretary" means the United States Secretary of the Treasury or his/her delegate.

19. "SSA" means the Social Security Administration.

History: Adopted by final rulemaking at 25 A.A.R. 885, effective 5/20/2019.

Ariz. Admin. Code § R6-5-3302 Program Manager

Library:	Arizona Administrative Code
Edition:	2024
Citation:	Ariz. Admin. Code § R6-5-3302
Year:	2024

Id. vLex Fastcase: VLEX-978038975

Link: https://fastcase.vlex.com/vid/ariz-admin-code--978038975

Text

Responsibilities of the Program Manager:

1. The Program Manager shall implement the Program, including the administration and management of the Program.

2. The Program Manager shall ensure adequate safeguards to prevent aggregate contributions on behalf of a Designated Beneficiary in excess of the limit established by the Department under section 529(b)(6) of the Code. For purposes of this Section, aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality of either.

3. The Program Manager shall compile or cause to be compiled the necessary information to complete any reports.

4. The Program Manager may contract with third parties to assist the Department and Program Manager in the educational and promotional activities for the Program.

5. The Program Manager may use forms provided or promulgated by the SSA, the IRS, or other federal agencies for the purposes of the ABLE Program. The Program Manager may also promulgate its own forms reasonably necessary to implement the ABLE Program.

History: Adopted by final rulemaking at 25 A.A.R. 885, effective 5/20/2019.

Ariz. Admin. Code § R6-5-3303 Fees

Library:	Arizona Administrative Code
Edition:	2024
Citation:	Ariz. Admin. Code § R6-5-3303
Year:	2024

Id. vLex Fastcase: VLEX-978037940

Link: https://fastcase.vlex.com/vid/ariz-admin-code--978037940

Text

1. The Program Manager may impose administrative, maintenance, investment management and investment fees on Designated Beneficiaries.

2. The Program Manager may impose a nonrefundable application fee to review and process paper applications.

History: Adopted by final rulemaking at 25 A.A.R. 885, effective 5/20/2019.

Ariz. Admin. Code § R6-5-3304 Opening an Account

Library:	Arizona Administrative Code
Edition:	2024
Citation:	Ariz. Admin. Code § R6-5-3304
Year:	2024

Id. vLex Fastcase: VLEX-978039343

Link: https://fastcase.vlex.com/vid/ariz-admin-code--978039343

Text

1. To open an Account in the Program, an individual shall submit a completed application form, pay the application fee, if any, and pay an initial minimum contribution to the Account, if any, to the Program Manager at https://az-able.com/.

2. The Program Manager may require a minimum initial contribution to open an Account.

3. The content of the application form shall be prescribed by the Program Manager, but shall include at a minimum, the following information:

    a. The name, address, social security number and birth date of the Designated Beneficiary;

    b. The name, address and social security number of the Designated Representative, if the Designated Beneficiary is not the applicant;

    c. Evidence that the Designated Beneficiary is an Eligible Individual;

    d. Any additional information required by the Program Manager.

4. Completed applications shall be submitted as specified on the application form.

5. Applications that are incomplete or fail to meet the requirements established by the Department and the Program Manager shall be rejected. Reapplication is permissible.

History: Adopted by final rulemaking at 25 A.A.R. 885, effective 5/20/2019.

Ariz. Admin. Code § R6-5-3305 Contributions

Library:	Arizona Administrative Code
Edition:	2024
Citation:	Ariz. Admin. Code § R6-5-3305
Year:	2024

Id. vLex Fastcase: VLEX-978040493

Link: https://fastcase.vlex.com/vid/ariz-admin-code--978040493

Text

1. Any person may make contributions to an Account, subject to the limitations imposed by federal law.

2. Except in the case of program-to-program transfers, contributions may be made in cash or a similar cash equivalent.

3. Annual contributions to an Account from all sources, except contributions received in program-to-program transfers, are limited to the per-beneficiary amount excluded from the federal gift tax under federal law.

4. Excess contributions and excess aggregate contribution shall be returned to contributors.

History: Adopted by final rulemaking at 25 A.A.R. 885, effective 5/20/2019.

Ariz. Admin. Code § R6-5-3306 Statements

Library:	Arizona Administrative Code
Edition:	2024
Citation:	Ariz. Admin. Code § R6-5-3306
Year:	2024

Id. vLex Fastcase: VLEX-978039740

Link: https://fastcase.vlex.com/vid/ariz-admin-code--978039740

Text

1. Account statements shall be provided to Designated Beneficiaries and Designated Representatives in accordance with the Act.

2. Account statements may be provided to other individuals authorized to receive that information under the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 96et seq.) and the Truth in Lending Act (15 U.S.C. 1601et seq.).

3. The Account statements may be provided using U.S. Mail or provided electronically via website access or e-mail, as selected by the Designated Beneficiary or Designated Representative.

History: Adopted by final rulemaking at 25 A.A.R. 885, effective 5/20/2019.

Ariz. Admin. Code § R6-5-3307 Program-To-Program Transfers and Rollovers

Library:	Arizona Administrative Code
Edition:	2024
Citation:	Ariz. Admin. Code § R6-5-3307
Year:	2024

Id. vLex Fastcase: VLEX-978040116

Link: https://fastcase.vlex.com/vid/ariz-admin-code--978040116

Text

1. Subject to federal law, the Program shall permit a program-to-program transfer through which a Designated Beneficiary transfers the entire amount of an Account from the AZ ABLE Program to or from a different state's ABLE program, or for the transfer of an Account from a Designated Beneficiary to another Eligible Individual who is a member of the family of the former Designated Beneficiary, without any intervening distribution.

2. Subject to federal law, the Program shall permit rollovers through which a contribution to an Account of a Designated Beneficiary (or an Eligible Individual who is a member of the family of the Designated Beneficiary) of all or a portion of the amount withdrawn from the Designated Beneficiary's Account, provided the contribution is made within 60 days of the date of the withdrawal, and, in the case of a rollover to the Designated Beneficiary's Account, no rollover has been made to another account established under an ABLE program within the prior 12 months.

History: Adopted by final rulemaking at 25 A.A.R. 885, effective 5/20/2019.

A.R.S. § 46-202 Rules

Library:	Arizona Statutes
Edition:	2024
Citation:	A.R.S. § 46-202
Year:	2024

Id. vLex Fastcase: VLEX-978113496

Link: https://fastcase.vlex.com/vid/r-s--46-978113496

Text

The director shall adopt rules with respect to the time in which a recipient must notify the department of a change in circumstances affecting the recipient's eligibility. In adopting such rules the director shall consider and comply with federal regulations concerning notice of change of eligibility status.

A.R.S. § 41-1954 Powers and Duties

Library:	Arizona Statutes
Edition:	2024
Citation:	A.R.S. § 41-1954
Year:	2024

Id. vLex Fastcase: VLEX-977237309

Link: https://fastcase.vlex.com/vid/r-s--41-977237309

Text

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles. (b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles. (c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles. (d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as

amended, and other related federal acts and titles. (e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions. (f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles. (g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles. (h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles. (i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall

purposes and objectives of the department.

10. 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 its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that is judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food. (b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry. (c) Accepting and disbursing federal monies, and any state monies appropriated by

the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items. (d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry. (e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956. (f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include: (a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons. (b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless. (c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people. (d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness. (e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless. (f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness. (g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

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. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary,

the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to: (a) The child, if the child is at least eighteen years of age or is emancipated. (b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department 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.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department'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 inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department 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 department 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 department 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 department 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. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.

2. State and local tax and revenue records, including information on residence address, employer, income and assets.

3. Records concerning real and titled personal property.

4. Records of occupational and professional licenses.

5. Records concerning the ownership and control of corporations, partnerships and other business entities.

6. Employment security records.

7. Records of agencies administering public assistance programs.

8. Records of the motor vehicle division of the department of transportation.

9. Records of the state department of corrections.

10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

History: Amended by L. 2019, ch. 163,s. 18, eff. 8/27/2019.
Amended by L. 2014SP2, ch. 1,s. 136, eff. 5/29/2014.
L12, ch 122, sec 17 & ch 321, sec. 142.

A.R.S. § 46-902 Qualified Able Program; Duties

Library:	Arizona Statutes
Edition:	2024
Citation:	A.R.S. § 46-902
Year:	2024

Id. vLex Fastcase: VLEX-978214120

Link: https://fastcase.vlex.com/vid/r-s--46-978214120

Text

The department shall:

1. Develop and implement the program in a manner consistent with this article through the adoption of rules, guidelines and procedures in consultation with the committee.

2. Retain professional services, if necessary, including accountants, auditors, consultants and other experts.

3. Seek rulings and other guidance from the United States department of the treasury and the internal revenue service relating to the program.

4. Make changes to the program, as necessary, to comply with 26 United States Code section529A and any regulations issued pursuant to that section.

5. Provide notification to the chairpersons of the senate health and human services committee and the house of representatives children and family affairs committee or their successor committees of any material changes to the federal program that would necessitate changes in this article or rules adopted pursuant to this article.

6. Negotiate and select the financial institution or institutions to act as the depository and manager of the program in accordance with this article. The department shall consult with the committee when selecting the financial institution or institutions.

7. Negotiate a fee with the financial institution or institutions.

8. Maintain the program on behalf of this state as required by 26 United States Code section529A and any regulations issued pursuant to that section.

9. Develop and implement requirements, in consultation with the committee, for disbursements from accounts for qualified disability expenses.

10. Provide for separate accounting for each designated beneficiary of the designated beneficiary's account.

11. Develop procedures for educating account owners about nonqualified and qualified expenses if the department finds that distributions from any account were made for nonqualified expenses.

12. Develop and provide, in consultation with the committee, educational materials on the program, qualified disability expenses and requirements for being a designated beneficiary.

History: Added by L. 2016, ch. 214,s. 5, eff. 8/5/2016.

F.

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON A.R.S. § 41-1033(G) PETITION RELATED TO ARIZONA MEDICAL BOARD

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - PETITION

MEETING DATE: November 5, 2024

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

FROM: Council Staff

DATE: September 30, 2024

SUBJECT: **A.R.S. 41-1033(G) Petition - Arizona Medical Board**

Background

On August 22, 2024, GRRC staff received a correspondence ("Petition") from ALP Law Firm on behalf of Dr. Mitchell Kaye, M.D., a urologist certified by the Arizona Medical Board ("Board"). The Petition requests, pursuant to A.R.S. § 41-1033(G), that the Council review "certain actions of the Board that Dr. Kaye believes are not authorized by statute, exceed its own final ruling (the "Final Order," attached hereto as Exhibit A) and authority on the matter, is unduly burdensome to Dr. Kaye, is not necessary to fulfill a public health, safety, or welfare concern, and that infringes on Dr. Kaye's own fundamental legal rights." *See* Petition at 1.

The Board initially received a complaint against Dr. Kaye, related to an incident which occurred on April 25, 2022, which led to the Board's initiation of Matter No. 22-09427A that same year.[1] Ultimately, the Board issued its Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation ("Final Order") in December 2023. Therein, the Board noted Dr. Kaye had signed a Personal Code of Conduct from his hospital on July 13, 2022, which required that he enroll in the Physicians Universal Leadership Skills Education (P.U.L.S.E.) 360 Intensive Program ("P.U.L.S.E. Program"). *See* Final Order at 2. The P.U.L.S.E. Program is a third-party program intended to help physicians "improve their teamwork skills through an assessment-driven intensive coaching process that teaches them how to reduce–and often

[1] The Council has no authority to review the substance of the underlying complaint against Dr. Kaye and any facts in the underlying Matter No. 22-09427A are irrelevant to the Council's analysis pursuant to A.R.S. § 41-.1033(G).

eliminate–complaints." *See* https://www.pulse360program.com/pulse-360-intensive-program/. Dr. Kaye's participation in the P.U.L.S.E. Program was ongoing at the time of the Final Order. *See* Final Order at 2-3.

The Final Order issued by the Board placed Dr. Kaye on probation for one year and required him to continue to participate in the P.U.L.S.E. Program and successfully complete it, among other requirements. *Id.* at 4 Specifically, the Final Order stated that Dr. Kaye shall comply with all recommendations from the P.U.L.S.E. Program and "shall promptly provide Board staff with satisfactory proof of completion." *Id*. Furthermore, in order to terminate probation, the Final Order indicated Dr. Kaye must submit a written request to the Board for release from the terms of the Final Order which "must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order." *Id.* at 5. The Final Order also states, "[t]he Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority." *Id.*

Subsequent to the Final Order, it appears Dr. Kaye lost hospital privileges, which prevented him from finishing the P.U.L.S.E. Program. *See* Petition Exhibit E. In an effort to assess Dr. Kaye's progress through the P.U.L.S.E. Program and his compliance with the Final Order, the Board indicated that Dr. Kaye must sign all releases required by the P.U.L.S.E. Program which would allow P.U.L.S.E. Program staff to speak with the Board and allow the Board to access P.U.L.S.E. Program material Dr. Kaye was in the process of completing. *Id*. Specifically, in a June 13, 2024 correspondence, Board staff stated:

> You are correct that what is Board ordered must be done and if not done, a new investigation will be initiated to address Dr. Kaye's noncompliance with the Board order. In order for us to even consider how PULSE 360 can be completed without Dr. Kaye working at a hospital, I need to communicate with PULSE 360 about what has already been done. I also need to be able to communicate with them about Dr. Kaye's options should he be working outside of a hospital. I don't think his loss of privileges is automatically a barrier to him completing PULSE. Hence the need for the consent form.

Id. Dr. Kaye initially refused to sign the P.U.L.S.E. Program's "Consent to Release and Exchange Information Form," ("Release") objecting to section 9 which included language wherein Dr. Kaye must release and hold the P.U.L.S.E. Program harmless "in the event of injuries caused intentionally or through gross negligence," and to release the P.U.L.S.E. Program from "any and all liability arising out of any PULSE workplace assessment, monitoring, education, coaching, other professional development and/or exchange of information…." *See* Petition Exhibit D.

Petitioner's Arguments

As indicated above, Dr. Kaye alleges actions taken by the Board are not authorized by statute, exceed its own Final Order and authority, are unduly burdensome, are not necessary to fulfill a public health, safety, or welfare concern, and infringe on his fundamental rights.

Specifically, Dr. Kaye alleges the Final Order does not require him to sign any further documentation related to the P.U.L.S.E. Program, such as the Release, nor does it require him to waive his fundamental rights. Dr. Kaye alleges he is unaware of any statute or order which permits the Board to force him to waive unknown future claims of negligence against a third party. Furthermore, Dr. Kaye alleges this demand is unduly burdensome and is not necessary to fulfill a public health, safety, or welfare concern.

Relevant Statutes

A.R.S. § 41-1033(G) allows a person to "petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section."

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

See A.R.S. § 41-1033(H).

Analysis

As an initial matter, A.R.S. § 41-1033(G) does not authorize the Council to review agency disciplinary actions against individual licensees. As outlined above, the Council is limited to the review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. While Dr. Kaye indicates "this Petition is not intended as an appeal [sic] the Final Order; rather, it seeks review of the Board's actions since issuing the Final Order," (*see* Petition at 2) to the extent the "actions of the Board" outlined in the Petition relate to the Board's Final Order and Dr. Kaye's compliance therewith, it is outside the scope of the Council's statutory authority to review.

However, even if the matter was within the Council's scope of review, Dr. Kaye has not directed the Council to any applicable *agency* practice, substantive policy statement, final rule, or regulatory licensing requirement to review. The crux of the Petition is Dr. Kaye's objections to signing the P.U.L.S.E. Program's Release. However, the Release is a P.U.L.S.E. Program practice, not a Board practice, required by the P.U.L.S.E. Program to share its information with outside parties. Dr. Kaye even admits the P.U.L.S.E. Program "is in no way affiliated with the Board." *Id.* at 4. Additionally, "practice" is defined as "a repeated or customary action." *See* Merriam-Webster Dictionary (https://www.merriam-webster.com/dictionary/practice). The Board's insistence that Dr. Kaye comply with the P.U.L.S.E. Program's required Release arose from the Board's need to access P.U.L.S.E. Program information due to the unique and fact-specific circumstance where Dr. Kaye's completion of the P.U.L.S.E. Program in compliance with the Final Order was complicated by losing hospital privileges. In this way, to the extent the Board is related to the P.U.L.S.E. Program's practice of requiring a Release, it does not rise to the level of a "practice" on the part of the Board based on the facts presented here. Given no other substantive policy statement, final rule, or regulatory licensing requirement challenged in the Petition, there is nothing substantive for the Council to review.

Nevertheless, even if the Council were to accept that the P.U.L.S.E. Program's requirement to sign the Release constituted a Board practice, the practice is specifically authorized by statute, does not exceed the agency's statutory authority or authority outlined in the terms of the Final Order, and is not unduly burdensome. Dr. Kaye states he is "unaware of any statute or order which permits the Board to force him to waive unknown future claims of negligence against a third party." However, A.R.S. § 32-1451(C) states, "[t]he [B]oard…may require the doctor, at the doctor's expense, to undergo assessment by a board approved rehabilitative, retraining or assessment program. ***This subsection does not establish a cause of action against any person, facility or program that conducts an assessment, examination or investigation in good faith pursuant to this subsection.***" (Emphasis added). As such, a release of liability provision such as the one found in section 9 of the Release is specifically authorized by statute and would be well within the Board's statutory authority. Furthermore, the Board's insistence that Dr. Kaye comply with the P.U.L.S.E. Program's Release so the Board could access information on his progress towards completion was well within its "sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority" as outlined by the Final Order. Notwithstanding the specific statutory authority for the Release in this circumstance and being within the scope of the terms of the Final Order, such liability releases are so commonplace as to undermine the assertion that they are unduly burdensome.

Conclusion

Council staff believes this matter is outside the scope of the Council's review as the Council is not statutorily authorized to review agency disciplinary actions. Furthermore, Council staff does not believe the Petition puts forth an agency practice, substantive policy statement, final rule or regulatory licensing requirement that the Council can review substantively. However, even if it did, the Board actions alleged in the Petition are specifically authorized by statute, do not exceed the agency's statutory authority or authority outlined in the terms of the Final Order, and are not unduly burdensome. Therefore, Council staff does not recommend that this Petition receive a hearing at a future Council meeting.

To challenge the Board's Final Order, Dr. Kaye may petition the Board for a rehearing or review pursuant to A.R.S. § 41-1092.09(B). It appears Dr. Kaye already exhausted this administrative remedy, filing a Motion/Petition for Rehearing on January 11, 2023, which was denied by the Board at its August 6, 2024 public meeting. Upon exhausting all administrative remedies, Dr. Kaye may appeal the Board's Final Order to the Maricopa County Superior Court pursuant to A.R.S. Title 12, Chapter 7, Article 6 (Judicial Review of Administrative Decisions). *See* A.R.S. § 32-1453.

Andrew L. Plattner
APlattner@alplawgroup.com
August 22, 2024

Via Electronic Filing to grrc@azdoa.gov
Arizona Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007
Attn: Simon Larscheidt, Esq.

Re: Petition for Review of Agency Practice and Unduly Licensing Practice under A.R.S. § 41-1033(G)

Dear Arizona Governor's Regulatory Review Council:

This law office represents Mitchell Kaye, M.D. regarding Matter No. 22-0427A, currently before the Arizona Medical Board (the "Board"). Copies of the relevant documents are attached hereto and summarized below, perhaps the most relevant having been received from the Board on August 12, 2024.

Pursuant to A.R.S. § 41-1033(G), please consider this correspondence as a Petition to the Regulatory Review Council to request a review of certain actions of the Board that Dr. Kaye believes are not authorized by statute, exceed its own final ruling (the "Final Order," attached hereto as Exhibit A) and authority on the matter, is unduly burdensome to Dr. Kaye, is not necessary to fulfill a public health, safety, or welfare concern, and that infringes on Dr. Kaye's own fundamental legal rights. Via this correspondence, Dr. Kaye respectfully requests that the Regulatory Review Council review the actions that the Board undertook since issuing its Final Order in Matter No. 22-09427A and its ruling three days ago (also attached to Exhibit A), and provide appropriate relief to Dr. Kaye.

To clarify, this Petition is not intended as an appeal the Final Order (although the Final Order is fraught with problems); rather, it seeks review of the Board's actions since issuing the Final Order.

A. Relevant Background.

Dr. Kaye is a board-certified urologist with over thirty years of experience. On April 25, 2024, he was preparing for a scheduled procedure (a urethral diverticulectomy) at HonorHealth. One of HonorHealth's employed nurses scheduled to assist with the procedure, commenced placing an inappropriate catheter into the patient in a prepped, sterile, surgical field. If Dr. Kaye failed to stop her by reacting and grabbing the catheter tubing away from the surgical site, the patient would have been injured by that nurse. That nurse complained falsely about the interaction to HonorHealth and the police. She also filed a complaint against Dr. Kaye with the Arizona Medical Board, which is Matter No. 22-09427A. The Board knew that this complaining nurse has a history of substandard work at HH as described in the communication from her supervisor attached as Exhibit B hereto.

After almost two (2) years since the complaint to the Board was filed by the nurse and despite the Board's refusal to admit wrongdoing under Arizona Revised Statutes and the Arizona Administrative Code and agree to a re-hearing, in December 2023, the Board issued a Findings of Fact, Conclusions of Law, and Order for Letter of Reprimand and Probation on the matter.[1] Dr. Kaye submitted a timely Motion/Petition for Rehearing (attached hereto as Exhibit C), which was denied without explanation or any response in writing to the substantive legal points made in Motion/Petition for Rehearing.

[1] Dr. Kaye disputes most, if not all, of the Complaint, as well as the Board's Findings of Fact and Conclusions of Law. However, for purposes of this Petition for Relief, such disputes are irrelevant, and thus Dr. Kaye will not delve into them here.

Importantly, the Final Order states, in part, as follows:

> "Respondent [Dr. Kaye] is placed on Probation for a period of 1 year with the following terms and conditions:
>
> **a. <u>P.U.L.S.E. 360 Intensive Program</u>**
> Respondent shall continue to participate in the P.U.L.S.E. Program and successfully complete it. Respondent shall comply with all recommendations from the Program. Respondent shall promptly provide Board staff with satisfactory proof of completion."

Again, this petition is not an appeal the Final Order.[2]

<u>B. The Board's Unlawful Actions Following the Final Order.</u>

Importantly, the Final Order does <u>not</u> require Dr. Kaye to sign any further documentation whatsoever related to the P.U.L.S.E. Program. Indeed, Dr. Kaye simply must provide "proof of completion" to the Board within a certain time frame. The Board wanted information from the P.U.L.S.E. Program. Of course, Dr. Kaye did not object and agreed to sign a release. The release (attached hereto as Exhibit D), Item 9, includes language wherein Dr. Kaye must release and hold the Program harmless "in the event of injuries *caused intentionally or through gross negligence*" and to release the Program from "any and all liability arising out of any PULSE workplace assessment, monitoring, education, coaching, other professional development and/or exchange of information". The Final Order <u>does not require</u> Dr. Kaye to waive his fundamental legal rights and the Board knows

[2] For a variety of reasons, Dr. Kaye adamantly disagrees with the Board requiring participation in the P.U.L.S.E. 360 Intensive Program. Such dispute is currently before the Board, with a hearing scheduled on August 6, 2024. Thus, this Petition will not delve into such issues at this time, pending the August 6, 2024, hearing. However, Dr. Kaye reserves the right to bring such issues to the attention of this Regulatory Review Council in the future and by no means waive any rights thereto.

this. Regardless, and as you will see from the communications in this regard attached hereto as Exhibit E, the Board refused to honor Dr. Kaye's rights; the Board trampled on them. The Board repeatedly and unequivocally threatened Dr. Kaye with further Board and/or legal action if Dr. Kaye does not sign an overly broad and unduly burdensome release of rights, waiving any potential claims against a third-party, for-profit company, the P.U.L.S.E. Program, which is in no way affiliated with the Board. In other words, employees/agents of the Program could, *hypothetically*[3], cause a car collision with Dr. Kaye, or post his personal, confidential medical information on the Internet for all to see, or engage in any other countless acts of negligence causing him bodily, emotional, and/or monetary harm, and Dr. Kaye would have waived legal avenues of relief against the P.U.L.S.E. Program. Instead of answering our questions to the Board on this matter (as you will see), the Board simply threatened additional action against Dr. Kaye if he did not re-sign the release as written.

The Board threatened: "Failure to sign the complete consent form by tomorrow morning, including item 9, will result in a *new case* for violation of a Board Order. Item 9 is a reasonable part of the consent form" (emphasis added). Confused by such blatant disregard for Dr. Kaye's legal rights, Dr. Kaye's counsel specifically inquired: "Are you saying that if Dr. Kaye does not agree to waive claims against a someone who may commit negligence, that such is a violation of a Board order or rule?" Shockingly, the Board's agent confirmed her threat, unequivocally stating that: "You are correct that what is Board ordered must be done and if not done, a new investigation will be initiated to address Dr. Kaye's noncompliance with the Board order".

[3] This is not to suggest that any employees/agents have or will engage in any such conduct. This is simply intended to illustrate the incredibly broad language of the release, which far exceeds the Board's authority.

The Board's blatant disregard for Dr. Kaye's legal rights against a third party is astounding. Such demand far exceeds the Final Order and the Board's authority, and its agents' threats and refusal to provide any legal justification for them is abhorrent and they should be subject to the utmost scrutiny. (Note that the Board was provided, well in advance of the Final Order, an article regarding the P.U.L.S.E. Program, demonstrating that for-profit motives and the methodology used by the P.U.L.S.E. Program could be skewed and not accurate or factual, and, therefore, in no one's best interests. But the Board ignored such information). That article is attached hereto as Exhibit F.

Dr. Kaye is unaware of any statue or order which permits the Board to force him to waive unknown future claims of negligence against a third party. I know of no law that permits the Medical Board to threaten its licensee when its threats are not based upon law or its rulings, such as the Final Order. The Board's demand/threat of further unknown action is unduly burdensome and is by no means necessary to fulfill a public health, safety, or welfare concern. Nothing about what the Board has done in this regard protects us, the public, which is the main reason the Board exists. Indeed, if anything, the Board's demand creates a public health, safety, or welfare concern because it allows (and, in this case, promotes) the P.U.L.S.E. Program and its agents to act intentionally and grossly negligent against the Board's licensees with no fear of consequence.

Dr. Kaye respectfully requests that the Regulatory Review Council find that the Board has exceeded its own authority and Final Order.

Sincerely,

Andrew Plattner

Andrew L. Plattner

EXHIBIT A

FINAL ORDER ATTACHED

BEFORE THE REVIEW COMMITTEE OF THE ARIZONA MEDICAL BOARD

In the Matter of **MITCHELL C. KAYE, M.D.** Holder of License No. 25021 For the Practice of Allopathic Medicine In the State of Arizona.	Case No. MD-22-0427A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR LETTER OF REPRIMAND AND PROBATION**

The Review Committee of the Arizona Medical Board ("Board") considered this matter at its public meeting on October 6, 2023. Mitchell C. Kaye, M.D. ("Respondent"), appeared with legal counsel, Andrew Plattner, Esq., before the Review Committee for a Formal Interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(P). The Review Committee voted to issue Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 25021 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-22-0427A after receiving a complaint from a Hospital nurse ("YD") alleging that Respondent verbally and physically assaulted her in an operating room, and exhibited unprofessional behavior towards other staff.

4. On April 25, 2022, Respondent was scheduled to complete a urethral diverticulectomy procedure in the Hospital's main operating room. After entering the operating room, Respondent became verbally aggressive with OR staff. Staff members reported to the Hospital that Respondent used inappropriate language towards YD and other staff, threw sterile equipment on the floor requiring staff to get new equipment, and that Respondent grabbed YD's arm and pushed her into a prep stand. Staff members

reported they did not respond to Respondent's behavior at the time out of concern that it would cause him to escalate and further impact patient safety.

5. Respondent's Hospital employment records included complaints filed by his co-workers regarding his conduct. In 2017, Respondent was asked by the Hospital to register for an anger management course, seek counseling assistance, attend a team building session, and sign and date an acknowledgement of the Hospital's code of conduct conditions.

6. On July 13, 2022, Respondent signed a Personal Code of Conduct from the Hospital which required that he enroll in the Physicians Universal Leadership Skills Education (P.U.L.S.E.) 360 Intensive Program. After completing the initial assessment with P.U.L.S.E., Respondent would be required to participate in monthly monitoring sessions with individuals designated by the PPEC for 12 months.

7. The Hospital reported to the Board that Respondent's participation in the Program is ongoing.

8. During a Formal Interview on this matter, Respondent stated that he was a dedicated and caring physician but recognized that his direct manner was problematic and that his participation in the P.U.L.S.E. program was helpful and that he had recently gotten hearing aids to assist controlling his vocal tone and volume.

9. Respondent testified regarding the April 25, 2022 incident. Respondent stated that the OR team he had been assigned had improperly prepped and draped the patient and had not gathered the necessary surgical instruments yet. Respondent stated that while he was attempting to reposition the patient, Nurse YD approached with a cardiac monitoring catheter. Respondent stated that in a split second decision, he grabbed the catheter and tubing; pulling it away from the patient in order to avoid contaminating the surgical field. Respondent denied touching YD at any time.

10. Respondent stated that he did express displeasure to the OR supervisor, but denied yelling, stating that he has a naturally gruff voice. Respondent stated that he was unhappy with the nurse anesthetist's patient interaction in the pre-operative area because Respondent felt the nurse anesthetist's statements had caused an already nervous patient consider cancelling the surgery. Respondent denied that any surgical instruments fell to the floor, but did note that he was missing required surgical instruments that should have been placed by staff. Respondent stated that he did not consider cancelling the procedure because the patient was already asleep and while it was a potentially technically challenging procedure, he did not require much assistance to complete it.

11. Respondent stated that he understood the role physicians play in terms of ensuring patient safety and being team leaders. Respondent testified that he felt the Hospital discipline process was unfair, but that he is actively participating in the P.U.L.S.E. program because he sees it as a way to improve his interactions with people. Respondent testified regarding what he has learned during the P.U.L.S.E. Program.

12. Respondent stated that once the OR Supervisor was in the room, the procedure proceeded well with no issues from his own perspective.

13. During that same Formal Interview, Review Committee members commented that violations of A.R.S. §§ 32-1401(27)(r) and (jj) were established based on Respondent's verbal conduct with Hospital staff. Committee members noted that disrespectful communication has the potential to negatively impact patient care due to the impact on staff morale. Committee members expressed concern that Respondent had displayed a lack of insight during the interview and agreed that probation was warranted to ensure that Respondent continued to engage in remediation and mentoring to improve his communication patterns.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(r) ("Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.").

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(jj) ("Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.
2. Respondent is placed on Probation for a period of 1 year with the following terms and conditions:

a. P.U.L.S.E. 360 Intensive Program

Respondent shall continue to participate in the P.U.L.S.E. Program and successfully complete it. Respondent shall comply with all recommendations from the Program. Respondent shall promptly provide Board staff with satisfactory proof of completion.

b. Continuing Medical Education

Respondent shall within 6 months of the effective date of this Order, complete the Improving Inter-Professional Communication course offered by Center for Personalized Education for Physicians ("CPEP"). Respondent shall, within **thirty days** of the effective

date of this Order, submit satisfactory proof of enrollment with Board staff. Upon completion of the CME, Respondent shall provide Board staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure.

c. Obey All Laws

Respondent shall obey all state, federal and local laws, all rules governing the practice of medicine in Arizona, and remain in full compliance with any court ordered criminal probation, payments and other orders.

d. Tolling

In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona, will not apply to the reduction of the probationary period.

e. Probation Termination

Prior to the termination of Probation, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent's request for release will be placed on the next pending Board agenda, provided a complete submission is received by Board staff no less than 30 days prior to the Board meeting. Respondent's request for release must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order. The Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED AND EFFECTIVE this 11th day of December, 2023.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Executive Director

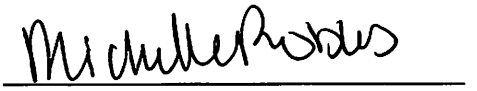
EXECUTED COPY of the foregoing mailed this 11th day of December, 2023 to:

Mitchell C. Kaye, M.D.
Address of Record

Andrew Plattner, Esq.
ALP Law, PLC
9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Attorney for Respondent

ORIGINAL of the foregoing filed this 11th day of December, 2023 with:

Arizona Medical Board
1740 West Adams, Suite 4000
Phoenix, Arizona 85007



Board staff

EXHIBIT B

LETTER FROM HELEN HALL, M.D.-ATTACHED

Dear Mr. Plattner:

I am writing in support of Dr. Mitchell Kaye. While I am aware of the situation that led up to a complaint against him, I was not directly involved. I have always known Dr. Kaye to be a competent surgeon that has always made himself available to assist me in difficult circumstances.

Unfortunately, I too have witnessed how the Honor Health "complaint system" is used against physicians as a manner of "getting even". In a recent example, I was performing a colonoscopy. The nurse assigned to assist me was chatting away with her coworkers instead of focusing on the patient and what I required. After she failed to respond to requests to retract a needle that was deployed into my patient's colon through the working channel, I raised my voice to get her attention. The result of this interaction was a variance report targeting my behavior. I was forced to respond and now have another complaint in my hospital file, while the unprofessional behavior of the staff goes unpunished.

In a similar example, my partner was called to address a concern with one of his patients in the recovery room. While attending to his patient, he was being crowded by several staff that had congregated. In an effort to control his patient's situation, he merely asked unnecessary personnel to leave. This led to a complaint against my partner that has spent years on and leading hospital committees.

I share many of the same concerns that Dr. Kaye has in trying to provide the best quality care for the people that entrust their health to me. While the majority of people I work with at Honor Health are caring and competent, there are clearly outliers that interfere with the effective delivery of care. Unfortunately, it is frequently these people that "game the system" and try to undermine physicians putting them on the defensive.

I am happy to be of further assistance in this matter.

Helen Hall, MD

EXHIBIT C

MOTION/PETITION FOR REHEARING-ATTACHED

ALP LAW, PLC
9141 EAST HIDDEN SPUR TRAIL, SUITE 101
SCOTTSDALE, ARIZONA 85255
TELEPHONE: (602) 848-4899
Andrew Plattner (AZ Bar No. 019252)
(APlattner@alplawgroup.com)
Attorney for Mitchell C. Kaye, M.D., Respondent

THE ARIZONA MEDICAL BOARD

CASE MD-22-0427A

MOTION/PETITION FOR RE-HEARING

DATED: January 11, 2023

By that certain Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation dated and signed by Patricia E. McSorley on December 11, 2023 and received by mail on December 13, 2023 (the "Ruling"), the Respondent named therein, Mitchell C. Kaye, hereby files, through legal counsel undersigned, this motion/petition for re-hearing on this above-referenced Case.

Pursuant to Arizona Revised Statutes §41-1092.09 and the Arizona Administrative Code §R4-16-103, Respondent's motion/petition for re-hearing is based upon the following:

The findings of fact or decision is not justified by the evidence.

The Board's Ruling was based on: (1) HonorHealth's peer review write-ups spanning many years that were/are unrelated to the matter and facts at hand of Case 22-22-0427A, were/are themselves not supported or proven by any evidence (they were just one sided) and have never been used by HonorHealth to curtail Dr. Kaye's privileges or cause him to cease, in any way, his continued surgical schedule for the hospital's patients; (2) the Board's unjustified and unequivocal

belief in the complainant's unproven and false allegations; and (3) and its choice to ignore the complainant's poor character and abilities as a licensed medical professional (she is a licensed nurse and presumably trained by HonorHealth and capable to perform the medical services asked of her), which were supported by evidence with those who have first-hand knowledge and to which the Board gave no weight. The Board does not like Dr. Kaye's demeanor. That is clear. Despite the fact that, in this Case 22-22-0427A, he prevented harm to a patient that would have most certainly occurred at the hands of the complainant had he not intervened, he was punished for his tone. Such is not a reasonable basis to punish him.

At the Formal Interview, it was proven that, despite such submissions (perr review records) from HonorHealth in response to the Board's subpoenas, to which Dr. Kaye had no ability or right to object, HonorHealth still desires him to perform surgeries for its patients and has not curtailed his privileges in any way. Why? Because these HonorHealth records are obviously not relevant to HonorHealth when deciding whether Dr. Kaye should remain fully privileged and eligible to provide the full scope of his urological surgical services at their campuses. Dr. Kaye remains on HonorHealth's emergency call roster without restriction, and, at one point-and despite the HonorHealth reviews that the Board obtained-provided the bulk of emergency care for the three Scottsdale campuses. These are facts.

The Board deemed the unsupported write-ups and allegations it received in this matter as proof of their veracity. To be sure, these remain unproven. The Board ignored the unequivocal evidence in front of it that Dr. Kaye's actions in OR were intended to ensure patient safety, which worked. His split-second reaction, without doubt, protected an anesthetized patient from suffering physical harm due to an unauthorized and careless action by another licensed professional (a nurse) known by her employer (HonorHealth) to have been less than professional while employed with HonorHealth.

The Board disregarded the following facts that had been provided to it

sometime before the Interview and presented at the Interview again:

- The complainant (a licensed nurse and employee of HonorHealth) either did not possess the medical skill or training to carefully position the patient in lithotomy position or chose to ignore such skill and training altogether by her careless actions;
- The complainant just threw a paper drape on top of a prepped patient without the standard practice of toweling off and isolating the planned surgical site.
- See the photograph below and note that the complainant told one investigator that she was going to prep the patient who was already prepped with the sponge pictured on the right, and told another that she was putting in the catheter, which is represented by the photograph on the left. The complainant did not even have an awareness of the appropriateness of the catheter she needed to put in for the surgical procedure; and
- If the complainant felt a catheter was required, she failed to place a catheter prior to draping the patient.

Instead of taking responsibility for her own substandard patient care and surgical suite preparation, complainant chose to pursue a vengeful course of action, thereby fabricating a story that was inconsistent from one complaint to the next. Such is what happens now at HonorHealth (and presumably other hospital systems); one who is "subordinate" to another who makes an allegation, proven or not, is the victim, and his or

her word matters more than that of the physician, regardless of whether the allegation is true or false.

Please understand that Dr. Kaye has never desired to make this matter about the character of the complainant. However, this matter was initiated by her and the Board, based upon her false and unproven allegations, and despite Dr. Kaye's protection of the patient in this matter. Dr. Kaye did not touch the complainant, let alone assault her, physically or verbally. These events simply did not happen. What is more, complainant did not present evidence to the Board to prove her allegations. She had the opportunity to be present at the Interview and tell her story, but she did not even show up. She knew the damage was done based upon her unsupported and mean-spirited statements alone, because people who complain in the HonorHealth system do so with impunity. That is something that the Board should look into.

The Board stated that Dr. Kaye demonstrated a "lack of insight" (see page 59, line 24 of the transcript). On page 61 of the transcript, the Board also states:

> Then we also have a statement where it's just one person versus another person. The reason I kind of agreed with Dr. Bethancourt that it wasn't about the touching, is it did look like we had different versions of that in the record to me. But I think that's beside the point. We have multiple people testifying together that there was a problem with hostility and with the environment involved. And it boggles the mind and common sense to think all those people got together and orchestrated ahead of time how they were going to respond to this.

Here, the Board demonstrates that the actual evidence is "beside the point." Then the Board states that there must be something to allegations if many people state there was hostility. We presume "We have multiple people testifying…" means the peer

review records, which, of course is not testimony and is not, as stated, reflective of any kind of prior hearing where Dr. Kaye was given the chance to present evidence in his defense. This kind of analysis (especially at a public interview) is extremely troubling and not proper. Is the standard for punishing a physician to rely upon unproven write-ups and conjecture and to ignore the obvious truth that a physician's actions/words prevented patient harm? It is not, and see below regarding the actual standard that must be applied.

To be fair, we understand that the Board felt at the Interview that physicians bear liability for supervising and controlling nursing staff and others in the operating room, or at least being the "team leader." While there is certainly merit to that position, that position should have been more fully described and proven at or before the Interview. If that is how the Board felt, then the Board had a duty to investigate what such supervision means in this Case MD-22-0427A, which is failed to do.

The Board is also obviously correct in that Dr. Kaye has an obsessive-compulsive desire to control the details of the operating room microenvironment. In the one-hour psychiatric evaluation with Dr. Kaye, he was described as having "obsessive-compulsive traits." Despite the fact that the Board's chosen psychiatrist also felt Dr. Kaye needed no restrictions on his practice of any kind, Dr. Kaye and his counsel were blasted by the Board for pointing out that such traits could be beneficial for patient care, and that there is literature that exists to support this Board's conclusion. Indeed, see pages 59-60 of the transcript where the Board stated:

> Mr. Plattner got this 100 percent wrong. He made the statement that if you are the patient, you want to have what happened here. I 100 percent disagree with that. I think if you're the patient, you, 100 percent, don't want what happened here to be happening during your care. Dr. Bethancourt, you made allusion to the literature that shows that things like this do contribute to adverse events and even mortality. That's true. And

> I've worked in many operating rooms where things got off to a stressful start. No one's 100 percent. Maybe the doctor could focus 100 percent on what he was doing. But there seems to be a real lack of insight as to the impacts on patient safety of a stressed operating room staff. Everybody in this team has jobs to do, and it impairs doing those jobs to start under unnecessary stress. And the operating room involves enough stress as it is. I think physicians have to be responsible for the energy they bring into the room and for the impacts of their behavior.

These statements by the Board, while they may have validity, again, ignore the facts of this case. What happened in this Case MD-22-22-0427A? Well, what happened here is that a nurse failed in her clinical duties and, without Dr. Kaye's intervention, may have hurt a patient. That fact cannot be ignored, but was. What Mr. Plattner stated was also: "And again, if I'm that patient, I want what happened to happen again. I want to be cared for. If it were my wife or my daughters or my mother in this particular case, I want that person in that room." (See Transcript, Page 51). The Board knew quite well what that meant; a patient who might be physically harmed due to a nurse's misjudgment but such injury is thwarted by the surgeon, even if his demeanor is rude or condescending, is better off because of the surgeon's intervention, even if the nurse was embarrassed.

The Board punished Dr. Kaye for his demeanor, even though he is already in the P.U.L.S.E. Program and following its dictates. The Board concluded that Dr. Kaye's obsessive-compulsive traits (which are related to his approach to patient care) are more harmful to patient care (without presenting the actual literature or empirical evidence to prove such conclusion) than a careless nurse who is presumably trained in the services that the hospital requires her to render for surgeries. If the persons in the OR (who are

employed by and trained by HonorHealth, and who are not subject to discipline or training requirements that might be imposed upon them by Dr. Kaye) are not properly skilled or lack insight or judgment as to patient care, the "team" falls apart, and that is not the physician's responsibility or liability. If the "team" has weak links and patient safety is on the line, if the team leader (the physician) does not step up, then patients get hurt. How the Board put patient safety at a lower degree of merit than a physician's demeanor is unclear and is certainly not proper in its deliberations or conclusions.

Dr. Kaye sincerely understands and appreciates that the Board believes that a physician, like Dr. Kaye, who has admittedly been curt or harsh in his demeanor, can negatively impact the OR process or patient care. This make sense, to an extent. If this (a physician's demeanor, regardless of his actual surgical skills) is the Board's chief concern and somehow relates to a medical standard of care, then it must subject all physicians who are on a team with other staff or licensed professionals to behavioral evaluations, as that now seems to be the standard for the quality of a physician or at least the basis to punish a physician under ARS 32-1401(27)(jj). If a physician, in this instance, was meek and did not step up for the patient for fear of being in front of the Board or HonorHealth's peer review because of the known retaliation he or she may face for speaking up on behalf of a patient who might otherwise be injured, and if the catheter was inserted improperly, would not the patient have been harmed and would not the physician be in front of the Board anyway and likely sued (along with HonorHealth) by the patient or her family? Are surgical skills, acumen and truly caring for patients' safety less relevant than demeanor? In this case, the Board punished a physician for his demeanor and ignored the evidence that his demeanor was secondary to protecting the patient. Despite whatever literature might exist demonstrating that demeanor causes harm, Dr. Kaye's patients have never been harmed because of his demeanor. What about insuring that HonorHealth trains its employed and licensed professionals on the most basic surgical preparation that physicians (bold, meek, indifferent or otherwise) can rely on? We would imagine kind of information is contained in the literature the Board suggests

exists and frames the basis for the Punishment.

The Ruling concludes that violations of ARS Sections 32-1401(27)(r) and (jj) were established based upon Respondent's verbal conduct with staff. First, the complainant, who we know was not honest in her allegations, did not even show up to present at the Interview. As such, the Board cannot conclude even what was stated or the tone in which it was stated. What is more, the evidence here shows that, but for Dr. Kaye, the patient would have been physically injured by the complainant. Without his words and actions, which the Board deems the "harm" or "potential harm" here, the patient would have actually been physically harmed. This Case MD-2022-0427A is not related to prior one-sided and unproven peer review results; this Case relates to a patient who was protected by her surgeon where a nurse was mistaken in her actions and embarrassed.

Perhaps the Board, in its reading of the literature or other research into HonorHealth, knows that recent events at HonorHealth Shea, due to its negligent staff, led to a patient being dropped from an operating table. Perhaps the Board could have looked further into the HonorHealth variance reporting systems and processes as part of this year-long investigation, where, if it had, it would find that the variance process at HonorHealth over the years has been abused, to say the least, by complaining parties, and that the physicians are almost always on the losing end.

In this case, the Board was provided with examples/evidence from Dr. Hall (to whom it could have also issued a subpoena) attesting to the faulty (to say the least) HonorHealth variance process. If the Board felt these variance matters were demonstrative here and if it had looked deeper, it would have found that, in one instance, one of Dr. Kaye's surgical assists ("RM") was reported simply because he told a nurse that they had to notify Dr. Kaye of an incorrect second needle account after Dr. Kaye left the room. The point here is that the Board's reliance on records received from HonorHealth to judge Dr. Kaye ignores the fact that the HonorHealth write-up processes do not permit physicians to access what is in their records to ensure they are accurate, let alone argue against them. They are not proof. Again, the Board took here as fact that

which was provided to it from the complainant and HonorHealth and ignored the supporting evidence presented by Dr. Kaye.

Nothing in the Ruling, nothing from the Formal Interview transcript and no other communication from the Board during the several months that this matter lingered addresses in any way evidence presented here supporting Dr. Kaye. That evidence presented to the Board was:

- That certain email from Margaret Hannah dated June 9, 2023 was first-hand evidence and knowledge of the complainant's history of being untruthful. That email shows the mistakes that occurred in this case as relates to patient care were solely on the shoulders of the complainant and another, not Dr. Kaye. That other person was the surgical assistant ("JD"). JD and complainant are long time and close friends. JD's back was turned when the "incident" occurred; she was facing away to her operative stand, which is evidence presented by Dr. Kaye. JD is well known for her foul language in the operating room and speaking poorly about physicians and her coworkers and supervisors in lounges and the operating room. She has been thrown out of rooms with other surgeons due to her attitude.

- That certain letter from Dr. Hall describing how the HonorHealth complaint system is used against physicians to get even with them. Whether the Board chooses to believe this or not, it has a duty to look at the evidence presented in the light in which it is presented. The Board here clearly took as truth the assessments it received from HonorHealth without considering the processes employed and whether the assessments were true, accurate or supported by evidence. The Board further ignored the compelling evidence presented by persons at HonorHealth in favor of Dr. Kaye.

- The fact that the Board required Dr. Kaye to submit to a psychiatric examination with a physician of the Board's choice, AND that such physician concluded that: Dr. Kaye is safe to practice; that, while he may have obsessive

compulsive personality traits, he is safe to practice; and that no further evaluation or treatment is needed.

The Board failed its burden of proof.

Pursuant to ARS § 32-1451.04, "except for disciplinary matters brought pursuant to section 32-1401, paragraph 27, subdivision (aa), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter." The United States Courts for the Ninth Circuit defines clear and convincing as follows:

> "**1.7 Burden of Proof—Clear and Convincing Evidence**
>
> When a party has the burden of proving any claim or defense by clear and convincing evidence, it means that the party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt."

Also, According to the Supreme Court in *Colorado v. New Mexico, 467 U.S. 310 (1984)*, "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue. In other words, the fact finder must be convinced that the contention is highly probable.

The Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation fail to state that this clear and convincing evidence standard was met.

Even if the Board believes this standard is not applicable, this Petition/Motions sets forth more than sufficient facts above to demonstrate that the Board did not use the evidence at hand in justifying its ruling.

Excessive penalty.

Dr. Kaye, as the Board is aware, is successfully and timely completing the P.U.L.S.E. Program per the request of HonorHealth. He has not violated any aspect of the Program or the Code of Conduct.

The Board's discipline, as evidenced by its Ruling, is unnecessary and punitive. Compliance with the Program and Code of Conduct, and perhaps

additional training related to communication skills might be warranted, but not discipline.

What is more, by its actions here, the Board has actually caused harm or potential harm to the public. Dr. Kaye is ex-military, as the Board knows. He saw Tri-Care patients (who are military) because he believes they need excellent care. He has been terminated from Tri-Care due to the Board's actions here, and he had never had any complaint or concern with these patients or Tri-Care before. They have now lost a good surgeon.

The decision is the result of a passion or prejudice.

As stated above, the Board does not like Dr. Kaye's demeanor, and such dislike is based upon unproven materials.

Also, during the Interview, but after all evidence was presented and neither Dr. Kaye nor his counsel were permitted to speak, Ms. Shepard referred to an unproven incident report from almost 9 years ago, where she stated that "I'd just like to point out that in addition to YD's allegation that Dr. Kaye physically assaulted her, the peer review records provided in the case also contain an allegation in 2015 that Dr. Kaye slapped a surgery tech's hand, which is on pages 127 and 129. That's it. Thank you." (See transcript, bottom of page 54 and top of page 55). Of course such an allegation, without any evidence to support its veracity and that is taken as true, is prejudicial.

It is unbelievable that Ms. Shepherd would make this statement without actually investigating whether that statement was even true. The truth of that 9-year old matter was that while a patient was being positioned on his side for a kidney procedure and the team was well positioned for coordinated and safe positioning, the nurse just walked in the room from the hall, not the sterile core, and placed a hand on the patient's back without any direction or ability to direct/supervise such action. Dr. Kaye swept his hand to move the nurse's hand off the patient, no different than sweeping salt off a table. And Ms. Shepherd

completely failed to state that the offending person (first initial "K") was relieved of her duties within months of this incident.

The Board also questioned why Dr. Kaye did not just cancel the surgery after the patient was already asleep. Perhaps Dr. Kaye could have tried to cancel the surgery, and that thought did cross his mind. However, because these types of incidents (the nurse's failures to be sure) happen, it is not reasonable to establish policy that would just cancel surgeries that are scheduled where the patients are safe and prepared for the procedure because a licensed nurse (or another) might cause harm or might be causing other problems that do not ultimately interfere with the procedure. If that were the policy, surgeries would be cancelled quite often and patients would most certainly be harmed as a result.

The Board, we hope, will focus on the patient here, as Dr. Kaye did. The patient is a young person that has had to live with an indwelling catheter due to the underlying pathology that necessitated her scheduled procedure. The surgery was a success; her discomfort from continued catheterization and urinary retention were resolved. Dr. Kaye told the patient his job was to complete the care she wanted and to help her, which he did. Because of his acumen and resolve (and, yes, perhaps because he has obsessive-compulsive traits which the Board's psychiatrist knew and still stated he was fine to continue as is) he had the ability to complete the care he was responsible for and to which he promised the patient, all of which were overriding considerations to the seconds-long incident that did not break the continuity of Dr. Kaye's concentration. And, yes, that is a surgeon we want in the OR. We suggest the Board reaches out to the patient and asks her how she feels.

For these reasons, we respectfully request a rehearing.

ALP LAW GROUP

By: */s/ Andrew L. Plattner*
Andrew L. Plattner
9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Attorney for Respondent

ORIGINAL and COPIES of the foregoing delivered and mailed on this 11th day of January 2024 to:

1740 W Adams St, Unit 4000
Phoenix, AZ 85007

/s/ Andrew L. Plattner

EXHIBIT D

PULSE PROGRAM RELEASE-ATTACHED

PULSE 360 PROGRAM - Consent to Release and Exchange Information

1. **PRINT *YOUR* NAME HERE->:** Mitchell Kaye **BIRTHDATE:** 2-20-61

I instruct and authorize, by signing this Consent to Release and Exchange Information ("Consent"), the Physicians Development Program Inc dba PULSE 360 Program and its employees, agents and/or independent contractors ("PULSE"), to release, receive or exchange my PULSE-related reports and any and all personal or professional information, whether peer review protected or not, TO, FROM AND WITH **each of the following entities and/or individuals listed below**:

NAMES	*JOB TITLE*	*FACILITY*	*EMAIL*	*PHONE*
2. Erin Downey		Arizona Medical Board	erinn.downey@azmed.gov	
3. Kathryn DesMarais			kathryn.desmarais@azmed.gov	
4.				

PLEASE INITIAL A-E

5. X mk I understand and agree that the purpose of this Consent is to enable PULSE to release, receive and/or exchange information which may be helpful to my overall workplace assessment, monitoring, professional development, and/or education.

6. X mk I understand and agree that the nature and extent of information to be released, received or exchanged is any and all my personal or professional information, whether peer review protected or not.

7. X mk I understand and agree that I may revoke this Consent at any time except to the extent that information has been exchanged in reliance on this document. This Consent shall continue for five years or until I revoke it in writing and I receive confirmation in writing of my revocation, whichever comes first.

8. X mk I understand and agree that a copy of this Consent may be provided to the entities/individuals above.

9. X mk In further consideration of the agreement of PULSE to release, receive and/or exchange information to assist me in fulfilling the requirements of the requesting/referring facilities/organizations above, I agree to release PULSE from any and all liability arising out of any PULSE workplace assessment, monitoring, education, coaching, other professional development and/or exchange of information about me to which I have consented, whether peer review protected or not, but I do NOT hold PULSE harmless in the event of injuries caused intentionally or through gross negligence. I agree that I or PULSE must resolve any claim related to PULSE services by individual arbitration according to the American Arbitration Association's Commercial Arbitration Rules (or, the Canadian Arbitration Association if I am licensed to provide healthcare in Canada) in the venue of Miami-Dade County, Florida. In the event of arbitration, I waive my rights to confidentiality of any information and/or feedbackabout me. I may keep a copy of this document for my records.

10. X mk I've read, understand and agree to 1-10; all of my questions about this agreement have been answered.

11. **Sign Name: X** Mitchell C Kaye **Date:** 6/12/24

12. **Specialty:** Urologic Surgery **Cell Phone:** 4802161792

For Office Use Only: Release Approved by: _____ **Date:** _____

EXHIBIT E

EMAILS WITH AGENTS OF AZ MEDICAL BOARD-ATTACHED

From:	Andrew Plattner
To:	Erinn Downey
Cc:	Kathryn Desmarais; cary@pdpflorida.com
Subject:	RE: Dr. Kaye
Date:	Thursday, June 13, 2024 9:08:00 AM
Attachments:	PULSE Consent 2.pdf

Dear Ms. Downey, Ms. DesMarais and Ms. Brito:

Please find attached hereto Dr. Kaye's consent (with all lines initialed) to the release of the PULSE 360 Program information to the Arizona Medical Board.

For the record, Dr. Kaye's attorney (me) is questioning the Board about its legal right to make the demands and threats it is making. It is me, not Dr. Kaye, who has and who will continue to try and obtain from the Board its legal basis to require, as a condition of Dr. Kaye's license status, that he waive rights under the law as relates to a party that is not the Board and who is not a partner with or under contract with the Board.

I have asked, repeatedly, for any substantiation for the threat that, if Dr. Kaye does not (1) consent to the release of the PULSE 360 Program documents (which he has consented to yesterday already-as you know-and only wanted not to waive his rights under Arizona law, but still consent to the release) and (2) does not release potential future claims against a 3rd party for that 3rd party's ***negligence***, he will be met with yet another action by the Board, and the Board (I assume you have full authority from the Board to behave as you are) refuses to respond other to than to continue its threats.

Your response is, "do what we say, or else." While such response is certainly not a response as to the legal right of the Board to act in this manner, Dr. Kaye has no choice, it seems, other than to do what the Board demands, whether justified or not, so that he can avoid further threats or actions against his license.

Worse here is that, the Board knows that he has complied with the Board's Order. He has already completed CPEP early. The Board has been timely notified about the issue with completing the PULSE Program due to the loss of hospital privileges. Despite such compliance, the Board ignores these facts

completely and continues only to threaten.

Again, we will look forward to receiving all of the documentation that is sent to the Board simultaneously sent to Dr. Kaye.

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Andrew Plattner <APlattner@alplawgroup.com>
Sent: Wednesday, June 12, 2024 3:55 PM
To: Erinn Downey <erinn.downey@azmd.gov>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cary@pdpflorida.com
Subject: Re: Dr. Kaye

Are you saying that if Dr. Kaye does not agree to waive claims against a someone who may commit negligence, that such is a violation of a Board order or rule?

I do not follow that. Please elaborate.

Thank you.

Andy Plattner

Andy
Andy

Get Outlook for iOS

From: Erinn Downey <erinn.downey@azmd.gov>

Sent: Wednesday, June 12, 2024 3:49:12 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cary@pdpflorida.com <cary@pdpflorida.com>
Subject: Re: Dr. Kaye

Mr. Plattner,

Failure to sign the complete consent form by tomorrow morning, including item 9, will result in a new case for violation of a Board Order. Item 9 is a reasonable part of the consent form. PULSE cannot directly send the report to Dr. Kaye as they are doing this for the Board's purposes. The report must be sent to Board staff directly and then Board staff can release the report to you once received.

Regards,

Erinn Downey, Manager
Physician Health Program
Arizona Medical Board & Regulatory
Board of Physician Assistants
1740 W. Adams, Ste. 4000
Phoenix, AZ 85007
Direct: 480.551.2732
Fax: 480.551.2702
Email: erinn.downey@azmd.gov
www.azmd.gov
www.azpa.gov

On Wed, Jun 12, 2024 at 3:29 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Dear Ms. Downey, Ms. DesMarais and Ms. Brito:
>
> Please find attached hereto Dr. Kaye's consent to the release of the PULSE 360 Program information to the Arizona Medical Board.
>
> While Dr. Kaye consents, which is under protest as the Board has not yet provided any legal authority for its demands, he cannot check all boxes on the Consent Form, especially Box 9. By its

terms, if the PULSE 360 Program is negligent and Dr. Kaye is damaged due to negligence, he has no recourse. This should not be a condition to release the records to the Board. The Board has demanded that he execute a consent to release, which is what he has clearly done, but it is not reasonable (and perhaps not legal) to demand that he waive claims against a 3rd party (in this matter, the PULSE 360 Program), even if that 3rd party is negligent.

Last, we demand that what is sent to the Board is sent to Dr. Kaye simultaneously so that he knows what was delivered and he can review the documents himself.

Thank you.

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101

Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Tuesday, June 11, 2024 1:09 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Subject: Re: Dr. Kaye

Mr. Plattner,

For any case, the licensee may request copies of records and/or reports as it relates to their case. Board staff will release that information whether at that time or at the supplemental response stage if any violations are sustained. In light of this information, please advise whether or not Dr. Kaye will be signing those consent forms for PULSE 360. It shouldn't take until Friday to determine if he will sign some consent forms so that we can see how compliant he has been with the Board's order.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

Board of Physician Assistants

1740 W. Adams, Ste. 4000

Phoenix, AZ 85007

Direct: 480.551.2732

Fax: 480.551.2702

Email: erinn.downey@azmd.gov

www.azmd.gov

www.azpa.gov

On Tue, Jun 11, 2024 at 12:59 PM Andrew Plattner <APlattner@alplawgroup.com>

wrote:

> Ms. Downey:
>
> If you review the email I sent carefully, you will see that is not the position. Again, we have until Friday to resolve and we want to do so. I think that if you take the time to read what I sent, it will be clear. See below where I made the applicable language in red. As stated yesterday, I am also more than happy to discuss.
>
> Andy
>
> **Andrew Plattner** | Manager
>
> **9141 East Hidden Spur Trail, Suite 101**
>
> **Scottsdale, Arizona 85255**
> **Direct: 602.848.4899**
> **aplattner@alplawgroup.com**
>
>
>
> ---
>
> **From:** Erinn Downey <erinn.downey@azmd.gov>
> **Sent:** Tuesday, June 11, 2024 12:49 PM
> **To:** Andrew Plattner <APlattner@alplawgroup.com>
> **Cc:** Kathryn Desmarais <kathryn.desmarais@azmd.gov>
> **Subject:** Re: Dr. Kaye
>
> Mr. Plattner,

Are you saying that Dr. Kaye is refusing to sign consents with PULSE 360 to allow the Board to check on his compliance with a Board Order? Please advise ASAP.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

Board of Physician Assistants

1740 W. Adams, Ste. 4000

Phoenix, AZ 85007

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Email: erinn.downey@azmd.gov

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On Tue, Jun 11, 2024 at 12:45 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Ms. Downey:
>
> Per Ms. Desmarais' last email (see attached), we have until 6-17-24. Our

goals to is resolve this instant issue within that period.

When representing a client, counsel is required to advise after consideration of the matter or, in this case, the threats made by the Board that would continue to impact a client's career. PLEASE understand that neither Dr. Kaye nor this firm want anything other for this matter to conclude and for Dr. Kaye to move on. He respects the Board and its Order and has been compliant therewith.

In my 25 years of practice and being in front of the Board for dozens of physicians, I have not been presented with such a threatening tone. That tone, coupled with the fact that Dr. Kaye has been punished for sincerely attempting to protect the health of a patient from the acts of a non-compliant HonorHealth employee, permits us to have a reasonable amount of wariness about how information (which can be skewed and unfairly misrepresentative of the facts) from third parties in this matter can be used to a physician's detriment.

The Board is threatening that, if Dr. Kaye does not consent to the release of the PULSE 360 Program's information, he will be in violation. Assuming the violation relates to the Order, I re-read it; and, as relates to the PULSE Program, it states exactly as follows:

"P.U.L.S.E. 360 Intensive Program

Respondent shall continue to participate in the P.U.L.S.E. Program and successfully complete it. Respondent shall comply with all recommendations from the Program. Respondent shall promptly provide Board staff with satisfactory proof of completion."

The Order requires completion of the PULSE Program which has now become an obstacle as Dr. Kaye does not have hospital privileges. The

Order does not state that Dr. Kaye must consent to disclosure of information, some of which is personal as between him a counselor. As the Board may know and as Dr. Kaye discovered upon reaching out to the PULSE Program in this regard, they/PULSE does not condition Dr. Kaye's compliance with the Program if there is not an agreed-upon disclosure to the Board.

The Order does require Dr. Kaye to complete CPEP, which has already been completed, and well in advance of the deadline. Dr. Kaye is doing what he can to comply with the precise language of the Order, and, but for the loss of HonorHealth privileges, the PULSE Program would continue there and would be completed.

While considering this matter in the period given (6-17-24), if you have information in this regard that we do not possess or if you have legal authority that requires Dr. Kaye to consent to the PULSE Program disclosing to the Board, please provide that to us so that we may consider it before the deadline.

If there is no authority here to support the Board's demand, Dr. Kaye is still inclined to consent, so long as he receives the same documentation that is provided to the Board and he has time to consider and provide his feedback; we want to ensure that the facts are accurate and what is presented to the Board is true.

As further relates to the PULSE Program, please see the attached article regarding the Program and note the author's (an MD, PhD) comments which relates precisely to this matter. When reviewing this article, you will note that:

1. Taken, it seems, directly from the facts of this matter with Dr. Kaye where he was appropriately critical of a nurse's poor performance (which saved a patient from injury), "…the survey provides the perfect opportunity to "get back at" the physician.

2. Hospital leaders can manipulate the list of raters who can be biased. In this regard, what the Board received from HonorHealth insofar as peer review materials for many years and how the Board considered them as fact (when they were obviously not factual and one-sided) requires us to

consider the possible impact of the Board's threat to receive information from the same source "or else!"

3. Even selecting a "…physician at a hospital to undergo a PULSE survey sends a clear message to the raters…that there is a behavior problem with the targeted physician…."

Recall that the Board stated in one of our meetings that it has literature supporting its discipline of Dr. Kaye. We have not received such literature or any citation from the Board and, as such, cannot review what they used to support the discipline. But, the attached article does cite literature that describes the need to work as a "team," which may what the Board has read. In any event, such abuses of programs such as PULSE makes sense (there is money to be made by the Program) and have been known for some time presumably by the Board based upon the literature it reviewed, and we ask that the Board consider the literature that we provide here (the attached article) in its continuing deliberations in this matter.

Please do not lose sight of the fact that Dr. Kaye is a good clinician and other physicians ask him to help with difficult cases. Patients do not complain about his work. His tone has been harsh, as he had admitted, but he is clearly working on his tone. He completed CPEP in advance of the deadline, and he would have completed PULSE but for his loss of staff privileges.

We ask once more to end the probation due the facts and circumstances here and mainly because Dr. Kaye has done what he can to comply and is offering herein alternatives to further comply.

We look forward to your response.

Thank you.

Andy Platner

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101

Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Monday, June 10, 2024 3:54 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Subject: Re: Dr. Kaye

Mr. Plattner,

Dr. Kaye needs to sign consents with PULSE 360 immediately so that we can obtain information about his progress and/or lack thereof. If he fails to sign those consents and we can't communicate with PULSE, he will be in violation. I don't know how much more clear about this we can be.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

Board of Physician Assistants

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On Mon, Jun 10, 2024 at 3:43 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> We are not trying to argue with the Board, but we are now confused because of the request and then the demand.
>
> May we please have a call in this regard to clarify?
>
> Andy
>
> **Andrew Plattner** | Manager
>
> 
>
> **9141 East Hidden Spur Trail, Suite 101**
>
> **Scottsdale, Arizona 85255**
> **Direct: 602.848.4899**
> **aplattner@alplawgroup.com**

From: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Sent: Monday, June 10, 2024 1:31 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Erinn Downey <erinn.downey@azmd.gov>
Subject: Re: Dr. Kaye

Dear Mr. Plattner,

Please make sure that Dr. Kaye complies with PULSE 360 Program to sign any and all releases that allow the Arizona Medical Board access to speak with PULSE 360 staff and they can provide Board Staff with access to the PULSE 360 Intensive Program Material that Dr. Kaye was in the process of completing.

I will need this completed by June 17, 2024.

Thanks in advance for your assistance.

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

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Kathryn.Desmarais@azmd.gov

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Phoenix, AZ 85007

On Mon, Jun 10, 2024 at 7:29 AM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Ms. DesMarais:
>
> Thank you for your continued work here. What follows are responses to the points/questions raised in your most recent emails:
>
> 1. Dr. Kaye does not have hospital privileges elsewhere. He is hoping to obtain hospital privileges soon. But for the Board's Order, Dr. Kaye would have his privileges at HonorHealth.
> 2. Generally, and as a reminder, Dr. Kaye was disciplined, in part, due to a split-second reflex to protect his patient from the malfeasance of the complainant nurse. The Board believed such nurse, even though evidence was presented that she was not a

good employee at HonorHealth and was at fault from a patient-care perspective, and the Board took as fact the peer review notes from years prior, which was, we believe unfair considering such reviews were unrelated to the incident.

3. Yes, Dr. Kaye's tone towards staff at HonorHealth in the past may have been rough, but the only evidence about the instant matter for which he is on probation by the Board and for which he has lost way more than he deserved to lose, is that the nurse would have injured the patient but for his interference. His actions have caused no harm to the public and certainly not to the patient.
4. We remain concerned that Dr. Kaye has been severely punished for his "attitude," despite the fact that there are no complaints about his skills as a surgeon, and one who has been called by other surgeons for years to assist in their tougher cases.
5. The personal cost to Dr. Kaye is great and mounting, and his patients are the ones that are paying the highest cost. For instance, due to the probation, HonorHealth terminated his privileges (which, even though was attending the PULSE Program, would not have happened but for the Board's Order), the loss of his practice group affiliation, the inability to continue to see veterans and certain patients on government programs, cancer patients having their procedures cancelled with less than 1 week notice, the immediate loss of ability to perform non-office based surgical interventions, and the loss of access to communication programs that facilitate rapid patient information sharing. He has already paid a very high price.
6. We ask that the Board also note that, per the Order, the Dr. Kaye completed, very quickly, the CPEP program, which, as you may know, is more beneficial than the PULSE Program and addresses the Board's concerns much better than the PULSE Program has and could. The CPEP program, completed in a fraction of the time, was magnitudes more impactful for Dr. Kaye than the last 1 and ½ year of the PULSE Program. Dr Kaye described that participating in a group discussion with colleagues from across the country who are in a similar predicament was more insightful and valuable. As a side-note but one that we hope the Board takes into consideration, is that other physicians in the CPEP Program were there for similar

reasons. That is, they were there because hospital staff who were not doing their job and possibly causing injury, delay or other harm to patients, spoke up on behalf of their patients. When the hospital staff, even though they made the errors, did not like the tone, they complained. And, like HonorHealth, those hospitals took the side of the staff member, not the physician or the patient. So, it seems there is a trend in this regard where the wrongful actor escapes punishment and the physician is punished for protecting the patient.

7. Consider the PULSE Program and note in particular:

    1. Dr. Kaye enrolled in the Program 10/19/22. During that time, and without regular feedback (as I presented to the Board previously), he has paid an exorbitant amount of money for a Program that may not even do what the Board wants.
    2. He has been in the Program for over 1 ½ years at the direction of an HonorHealth Medical Staff committee. He has not had, nor as he ever had, any restrictions or limitations of his ability to perform procedures germane to the practice of his specialty, even though he did not start earning points at or about the 9-month mark after starting the Program. Despite Dr. Kaye's willingness to comply with the PULSE program, the hospital staff leaders responsible for oversight have been unavailable and unhelpful. The Program, if the Board will take a close look, will be shown to be, at this time, more wasteful than perhaps other programs or education that would make more sense and address what the Board is concerned about.

    3. For the first 9 months, the surveys were completed by some who did not know and never even worked with Dr. Kaye; they were at hospitals and facilities where he did not perform services. He requested of the Program leaders to have surveys done by people who are able to honestly make assessments because they have some idea who he is and his work. After about 9 months, the leaders agreed and the surveys were being returned with favorable comments and he ultimately has received 3 of the 4 points necessary to graduate.

4. At this time, there are 2 options (as we understand it) to graduate: (i) move the Program to a new facility; and (ii) just pay for counseling sessions and videos for 1-year, which does nothing insofar as addressing the Board's concerns that he be a team player, and this will also exceed the probation period per the Order.
5. Dr. Kaye changed his practice patterns to do mainly office-based procedures and clinic work. Because he is not at the hospital, there is no one to rate him in that hospital.

As such, we ask that the Board allow the CPEP Program and the very timely completion thereof be the punishment and lift/end the probation. Completion of the PULSE Program by watching videos cannot be what the Board had in mind.

I completely understand the timing here is fast and we are doing what we can to help. If needed, my cell: 480-570-2134.

Andrew Plattner | Manager

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aplattner@alplawgroup.com

From: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Sent: Friday, June 7, 2024 11:14 AM
To: Andrew Plattner <APlattner@alplawgroup.com>
Subject: Re: Dr. Kaye

Hi Andrew,

I just spoke with PULSE yesterday.. The Board needs to know if he can finish this course otherwise, if I write a modification I need to get that

complete to get on the July agenda. I have other cases I am working on., I Have to keep them moving.

I fear if he can;t finish this course, what the Board could give him will be costly and very time consuming if it's one of the PBI communication classes with the AIR letter or the one with 12 meetings. I am pushing this. I think it will be in his best interest.

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

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Kathryn.Desmarais@azmd.gov

1740 W. Adams St, Suite 4000
Phoenix, AZ 85007

On Fri, Jun 7, 2024 at 11:08 AM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> I will do what I can. We did not know such a meeting was occurring so soon, but thank you. Andy
>
> **Andrew Plattner** | Manager
>
> **9141 East Hidden Spur Trail, Suite 101**
>
> **Scottsdale, Arizona 85255**
> **Direct: 602.848.4899**
> **aplattner@alplawgroup.com**
>
>

From: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Sent: Friday, June 7, 2024 11:05 AM
To: Andrew Plattner <APlattner@alplawgroup.com>
Subject: Dr. Kaye

Hi Andrew,

Can you help me with the following information, if possible I need it before the meeting we are having with PULSE on Monday.

1. Confirm when the program started for him.

2, Prior to the meeting, we need to know where else he holds privileges

Thanks,

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

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Kathryn.Desmarais@azmd.gov

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Phoenix, AZ 85007

From:	Andrew Plattner
To:	Erinn Downey
Cc:	Kathryn Desmarais; cari@pdpflorida.com
Subject:	RE: Dr. Kaye
Date:	Thursday, June 13, 2024 12:27:00 PM
Attachments:	Kaye Consent to Pulse Release of Info Only.pdf

The attached complies.

Our prior communications in this regard speak for themselves.

Just to ensure the point is clearly made, the facts here are that you demanded, not knowing what the Consent form from PULSE 360 stated, that Dr. Kaye consent to disclosing information. Due to your demands that I requested multiple times be backed by legal support (which such legal support has not been provided), he did so.

You did not initially demand that he waive legal claims against a private commercial enterprise that is not part of the Arizona Medical Board, that is nowhere in the Board's Order and for which you provided no legal support. When the Consent form was presented, Dr. Kaye consented to the release but, upon my advice, did not sign the legal waiver and release. Why? Because it purports to cause him to release any and all unknown future claims where the waiver does **not** describe the risks or even the activities that the PULSE personnel may be undertaking that could cause any such risks. You threatened Dr. Kaye with further Board complaints if he did not agree to waive such unknown claims and risks and the sign the consent form as presented.

IN MY OPINION, this is an unwarranted and flagrant abuse of your power, and your tone and threats in the last 2 days are unwarranted, to say the least. This is my opinion (not Dr. Kaye's) based upon my 25 years of experience with the Board, 99% of which has been reasonable and respectful from both sides. Now that Dr. Kaye has given you what you demanded, we assume you will take no further retaliation against him.

Per your emails, we look forward to receiving from you ALL of the PULSE Program information that you receive.

Andrew Plattner | Manager

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taking any action based on the e-mail or attachments is prohibited. If you received this e-mail and/or any attachments by mistake, please immediately notify the sender and delete the message from both your inbox and deleted folders. Thank you for your cooperation.

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Thursday, June 13, 2024 10:16 AM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cari@pdpflorida.com
Subject: Re: Dr. Kaye

Mr. Plattner,

PULSE needs a clean copy with no alterations (i.e. the 'under duress' note). Please send one over STAT.

Regards,

Erinn Downey, Manager
Physician Health Program
Arizona Medical Board & Regulatory
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On Thu, Jun 13, 2024 at 9:56 AM Erinn Downey <erinn.downey@azmd.gov> wrote:

> Mr. Plattner,
>
> It appears that you have been copying the incorrect address for Cari at PULSE so I have copied her here with the correct address. I need her to confirm that this consent form allows them to communicate with us about Dr. Kaye's progress in PULSE 360 despite the handwritten "under duress" on the consent form.
>
> You are correct that what is Board ordered must be done and if not done, a new investigation will be initiated to address Dr. Kaye's noncompliance with the Board order. In order for us to even consider how PULSE 360 can be completed without

Dr. Kaye working at a hospital, I need to communicate with PULSE 360 about what has already been done. I also need to be able to communicate with them about Dr. Kaye's options should he be working outside of a hospital. I don't think his loss of privileges is automatically a barrier to him completing PULSE. Hence the need for the consent form.

As stated before, you will not receive the PULSE reports simultaneously because they have to be released to Board staff directly and then Board staff will send them to you. PULSE is not to release them directly to you. You will be provided ample opportunity to submit a response to the PULSE reports should any violation be sustained due to their contents. Alternatively, you can always submit responses to anything the Board sends you and it will be added to Dr. Kaye's file.

Regards,

Erinn Downey, Manager
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On Thu, Jun 13, 2024 at 9:08 AM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Dear Ms. Downey, Ms. DesMarais and Ms. Brito:
>
> Please find attached hereto Dr. Kaye's consent (with all lines initialed) to the release of the PULSE 360 Program information to the Arizona Medical Board.
>
> For the record, Dr. Kaye's attorney (me) is questioning the Board about its legal right to make the demands and threats it is making. It is me, not Dr. Kaye, who has and who will continue to try and obtain from the Board its

legal basis to require, as a condition of Dr. Kaye's license status, that he waive rights under the law as relates to a party that is not the Board and who is not a partner with or under contract with the Board.

I have asked, repeatedly, for any substantiation for the threat that, if Dr. Kaye does not (1) consent to the release of the PULSE 360 Program documents (which he has consented to yesterday already-as you know-and only wanted not to waive his rights under Arizona law, but still consent to the release) and (2) does not release potential future claims against a 3rd party for that 3rd party's ***negligence***, he will be met with yet another action by the Board, and the Board (I assume you have full authority from the Board to behave as you are) refuses to respond other to than to continue its threats.

Your response is, "do what we say, or else." While such response is certainly not a response as to the legal right of the Board to act in this manner, Dr. Kaye has no choice, it seems, other than to do what the Board demands, whether justified or not, so that he can avoid further threats or actions against his license.

Worse here is that, the Board knows that he has complied with the Board's Order. He has already completed CPEP early. The Board has been timely notified about the issue with completing the PULSE Program due to the loss of hospital privileges. Despite such compliance, the Board ignores these facts completely and continues only to threaten.

Again, we will look forward to receiving all of the documentation that is sent to the Board simultaneously sent to Dr. Kaye.

Andrew Plattner | Manager

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aplattner@alplawgroup.com

From: Andrew Plattner <APlattner@alplawgroup.com>
Sent: Wednesday, June 12, 2024 3:55 PM
To: Erinn Downey <erinn.downey@azmd.gov>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cary@pdpflorida.com
Subject: Re: Dr. Kaye

Are you saying that if Dr. Kaye does not agree to waive claims against a someone who may commit negligence, that such is a violation of a Board order or rule?

I do not follow that. Please elaborate.

Thank you.

Andy Plattner

Andy
Andy

Get Outlook for iOS

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Wednesday, June 12, 2024 3:49:12 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cary@pdpflorida.com <cary@pdpflorida.com>
Subject: Re: Dr. Kaye

Mr. Plattner,

Failure to sign the complete consent form by tomorrow morning, including item 9, will result in a new case for violation of a Board Order. Item 9 is a reasonable part of the consent form. PULSE cannot directly send the report to Dr. Kaye as they are doing this for the Board's purposes. The report must be sent to Board staff directly and then Board staff can release the report to you once received.

Regards,

Erinn Downey, Manager
Physician Health Program
Arizona Medical Board & Regulatory
Board of Physician Assistants
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On Wed, Jun 12, 2024 at 3:29 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Dear Ms. Downey, Ms. DesMarais and Ms. Brito:
>
> Please find attached hereto Dr. Kaye's consent to the release of the PULSE 360 Program information to the Arizona Medical Board.
>
> While Dr. Kaye consents, which is under protest as the Board has not yet provided any legal authority for its demands, he cannot check all boxes on the Consent Form, especially Box 9. By its terms, if the PULSE 360 Program is negligent and Dr. Kaye is damaged due to negligence, he has no recourse. This should not be a condition to release the records to the Board. The Board has demanded that he execute a consent to release, which is what he has clearly done, but it is not reasonable (and perhaps not legal) to demand that he waive claims against a 3rd party (in this matter, the PULSE 360 Program), even if that 3rd party is negligent.
>
> Last, we demand that what is sent to the Board is sent to Dr. Kaye simultaneously so that he knows what was delivered and he can review the documents himself.
>
> Thank you.

Andrew Plattner | Manager

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aplattner@alplawgroup.com

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Tuesday, June 11, 2024 1:09 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Subject: Re: Dr. Kaye

Mr. Plattner,

For any case, the licensee may request copies of records and/or reports as it relates to their case. Board staff will release that information whether at that time or at the supplemental response stage if any violations are sustained. In light of this information, please advise whether or not Dr. Kaye will be signing those consent forms for PULSE 360. It shouldn't take until Friday to determine if he will sign some consent forms so that we can see how compliant he has been with the Board's order.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

Board of Physician Assistants

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On Tue, Jun 11, 2024 at 12:59 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Ms. Downey:
>
> If you review the email I sent carefully, you will see that is not the position. Again, we have until Friday to resolve and we want to do so. I think that if you take the time to read what I sent, it will be clear. See below where I made the applicable language in red. As stated yesterday, I am also more than happy to discuss.
>
> Andy
>
> **Andrew Plattner** | Manager

9141 East Hidden Spur Trail, Suite 101

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Direct: 602.848.4899
aplattner@alplawgroup.com

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Tuesday, June 11, 2024 12:49 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Subject: Re: Dr. Kaye

Mr. Plattner,

Are you saying that Dr. Kaye is refusing to sign consents with PULSE 360 to allow the Board to check on his compliance with a Board Order? Please advise ASAP.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

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On Tue, Jun 11, 2024 at 12:45 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Ms. Downey:
>
> Per Ms. Desmarais' last email (see attached), we have until 6-17-24. Our goals to is resolve this instant issue within that period.
>
> When representing a client, counsel is required to advise after consideration of the matter or, in this case, the threats made by the Board that would continue to impact a client's career. PLEASE understand that neither Dr. Kaye nor this firm want anything other for this matter to conclude and for Dr. Kaye to move on. He respects the Board and its Order and has been compliant therewith.
>
> In my 25 years of practice and being in front of the Board for dozens of physicians, I have not been presented with such a threatening tone. That tone, coupled with the fact that Dr. Kaye has been punished for sincerely attempting to protect the health of a patient from the acts of a non-compliant HonorHealth employee, permits us to have a reasonable amount of wariness about how information (which can be skewed and unfairly misrepresentative of the facts) from third parties

in this matter can be used to a physician's detriment.

The Board is threatening that, if Dr. Kaye does not consent to the release of the PULSE 360 Program's information, he will be in violation. Assuming the violation relates to the Order, I re-read it; and, as relates to the PULSE Program, it states exactly as follows:

"P.U.L.S.E. 360 Intensive Program

Respondent shall continue to participate in the P.U.L.S.E. Program and successfully complete it. Respondent shall comply with all recommendations from the Program. Respondent shall promptly provide Board staff with satisfactory proof of completion."

The Order requires completion of the PULSE Program which has now become an obstacle as Dr. Kaye does not have hospital privileges. The Order does not state that Dr. Kaye must consent to disclosure of information, some of which is personal as between him a counselor. As the Board may know and as Dr. Kaye discovered upon reaching out to the PULSE Program in this regard, they/PULSE does not condition Dr. Kaye's compliance with the Program if there is not an agreed-upon disclosure to the Board.

The Order does require Dr. Kaye to complete CPEP, which has already been completed, and well in advance of the deadline. Dr. Kaye is doing what he can to comply with the precise language of the Order, and, but for the loss of HonorHealth privileges, the PULSE Program would continue there and would be completed.

While considering this matter in the period given (6-17-24), if you have information in this regard that we do not possess or if you have legal authority that requires Dr. Kaye to consent to the PULSE

Program disclosing to the Board, please provide that to us so that we may consider it before the deadline.

If there is no authority here to support the Board's demand, Dr. Kaye is still inclined to consent, so long as he receives the same documentation that is provided to the Board and he has time to consider and provide his feedback; we want to ensure that the facts are accurate and what is presented to the Board is true.

As further relates to the PULSE Program, please see the attached article regarding the Program and note the author's (an MD, PhD) comments which relates precisely to this matter. When reviewing this article, you will note that:

1. Taken, it seems, directly from the facts of this matter with Dr. Kaye where he was appropriately critical of a nurse's poor performance (which saved a patient from injury), "…the survey provides the perfect opportunity to "get back at" the physician.

2. Hospital leaders can manipulate the list of raters who can be biased. In this regard, what the Board received from HonorHealth insofar as peer review materials for many years and how the Board considered them as fact (when they were obviously not factual and one-sided) requires us to consider the possible impact of the Board's threat to receive information from the same source "or else!"

3. Even selecting a "…physician at a hospital to undergo a PULSE survey sends a clear message to the raters…that there is a behavior problem with the targeted physician…."

Recall that the Board stated in one of our meetings that it has literature supporting its discipline of Dr. Kaye. We have not received such literature or any citation from the Board and, as such, cannot review what they used to support the discipline. But, the attached article does cite literature that describes the need to work as a "team," which may what the Board has read. In any event, such abuses of programs such as PULSE makes sense (there is money to be made by

the Program) and have been known for some time presumably by the Board based upon the literature it reviewed, and we ask that the Board consider the literature that we provide here (the attached article) in its continuing deliberations in this matter.

Please do not lose sight of the fact that Dr. Kaye is a good clinician and other physicians ask him to help with difficult cases. Patients do not complain about his work. His tone has been harsh, as he had admitted, but he is clearly working on his tone. He completed CPEP in advance of the deadline, and he would have completed PULSE but for his loss of staff privileges.

We ask once more to end the probation due the facts and circumstances here and mainly because Dr. Kaye has done what he can to comply and is offering herein alternatives to further comply.

We look forward to your response.

Thank you.

Andy Platner

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101

Scottsdale, Arizona 85255
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aplattner@alplawgroup.com

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Monday, June 10, 2024 3:54 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Subject: Re: Dr. Kaye

Mr. Plattner,

Dr. Kaye needs to sign consents with PULSE 360 immediately so that we can obtain information about his progress and/or lack thereof. If he fails to sign those consents and we can't communicate with PULSE, he will be in violation. I don't know how much more clear about this we can be.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

Board of Physician Assistants

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On Mon, Jun 10, 2024 at 3:43 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> We are not trying to argue with the Board, but we are now confused because of the request and then the demand.
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> **Andrew Plattner** | Manager
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> **From:** Kathryn Desmarais <kathryn.desmarais@azmd.gov>
> **Sent:** Monday, June 10, 2024 1:31 PM
> **To:** Andrew Plattner <APlattner@alplawgroup.com>
> **Cc:** Erinn Downey <erinn.downey@azmd.gov>
> **Subject:** Re: Dr. Kaye

Dear Mr. Plattner,

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I will need this completed by June 17, 2024.

Thanks in advance for your assistance.

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

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1740 W. Adams St, Suite 4000
Phoenix, AZ 85007

On Mon, Jun 10, 2024 at 7:29 AM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Ms. DesMarais:
>
> Thank you for your continued work here. What follows are responses to the points/questions raised in your most recent emails:
>
> 1. Dr. Kaye does not have hospital privileges elsewhere. He is hoping to obtain hospital privileges soon. But for the Board's Order, Dr. Kaye would have his privileges at HonorHealth.
> 2. Generally, and as a reminder, Dr. Kaye was disciplined, in part, due to a split-second reflex to protect his patient from the malfeasance of the complainant nurse. The Board believed such nurse, even though evidence was presented that she was not a good employee at HonorHealth and was at fault from a patient-care perspective, and the Board took as fact the peer review notes from years prior, which was, we believe unfair considering such reviews were unrelated to the incident.
> 3. Yes, Dr. Kaye's tone towards staff at HonorHealth in the past may have been rough, but the only evidence about the instant matter for which he is on probation by the Board and for which he has lost way more than he deserved to lose, is that the nurse would have injured the patient but for his interference. His actions have caused no harm to the public and certainly not to the patient.
> 4. We remain concerned that Dr. Kaye has been severely punished for his "attitude," despite the fact that there are no complaints about his skills as a surgeon, and one who has

been called by other surgeons for years to assist in their tougher cases.

5. The personal cost to Dr. Kaye is great and mounting, and his patients are the ones that are paying the highest cost. For instance, due to the probation, HonorHealth terminated his privileges (which, even though was attending the PULSE Program, would not have happened but for the Board's Order), the loss of his practice group affiliation, the inability to continue to see veterans and certain patients on government programs, cancer patients having their procedures cancelled with less than 1 week notice, the immediate loss of ability to perform non-office based surgical interventions, and the loss of access to communication programs that facilitate rapid patient information sharing. He has already paid a very high price.

6. We ask that the Board also note that, per the Order, the Dr. Kaye completed, very quickly, the CPEP program, which, as you may know, is more beneficial than the PULSE Program and addresses the Board's concerns much better than the PULSE Program has and could. The CPEP program, completed in a fraction of the time, was magnitudes more impactful for Dr. Kaye than the last 1 and ½ year of the PULSE Program. Dr Kaye described that participating in a group discussion with colleagues from across the country who are in a similar predicament was more insightful and valuable. As a side-note but one that we hope the Board takes into consideration, is that other physicians in the CPEP Program were there for similar reasons. That is, they were there because hospital staff who were not doing their job and possibly causing injury, delay or other harm to patients, spoke up on behalf of their patients. When the hospital staff, even though they made the errors, did not like the tone, they complained. And, like HonorHealth, those hospitals took the side of the staff member, not the physician or the patient. So, it seems there is a trend in this regard where the wrongful actor escapes punishment and the physician is punished for protecting the patient.
7. Consider the PULSE Program and note in particular:

1. Dr. Kaye enrolled in the Program 10/19/22. During that time, and without regular feedback (as I presented to the Board previously), he has paid an exorbitant amount of money for a Program that may not even do what the Board wants.
2. He has been in the Program for over 1 ½ years at the direction of an HonorHealth Medical Staff committee. He has not had, nor as he ever had, any restrictions or limitations of his ability to perform procedures germane to the practice of his specialty, even though he did not start earning points at or about the 9-month mark after starting the Program. Despite Dr. Kaye's willingness to comply with the PULSE program, the hospital staff leaders responsible for oversight have been unavailable and unhelpful. The Program, if the Board will take a close look, will be shown to be, at this time, more wasteful than perhaps other programs or education that would make more sense and address what the Board is concerned about.
3. For the first 9 months, the surveys were completed by some who did not know and never even worked with Dr. Kaye; they were at hospitals and facilities where he did not perform services. He requested of the Program leaders to have surveys done by people who are able to honestly make assessments because they have some idea who he is and his work. After about 9 months, the leaders agreed and the surveys were being returned with favorable comments and he ultimately has received 3 of the 4 points necessary to graduate.
4. At this time, there are 2 options (as we understand it) to graduate: (i) move the Program to a new facility; and (ii) just pay for counseling sessions and videos for 1-year, which does nothing insofar as addressing the Board's concerns that he be a team player, and this will also exceed the probation period per the Order.
5. Dr. Kaye changed his practice patterns to do mainly office-based procedures and clinic work. Because he is not at the hospital, there is no one to rate him in that hospital.

As such, we ask that the Board allow the CPEP Program and the very timely completion thereof be the punishment and lift/end the probation. Completion of the PULSE Program by watching videos cannot be what the Board had in mind.

I completely understand the timing here is fast and we are doing what we can to help. If needed, my cell: 480-570-2134.

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101

Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Sent: Friday, June 7, 2024 11:14 AM
To: Andrew Plattner <APlattner@alplawgroup.com>
Subject: Re: Dr. Kaye

Hi Andrew,

I just spoke with PULSE yesterday.. The Board needs to know if he can finish this course otherwise, if I write a modification I need to get that

complete to get on the July agenda. I have other cases I am working on., I Have to keep them moving.

I fear if he can;t finish this course, what the Board could give him will be costly and very time consuming if it's one of the PBI communication classes with the AIR letter or the one with 12 meetings. I am pushing this. I think it will be in his best interest.

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

480-551-2716(Direct)

480-551-2702 (Fax)

Kathryn.Desmarais@azmd.gov

1740 W. Adams St, Suite 4000
Phoenix, AZ 85007

On Fri, Jun 7, 2024 at 11:08 AM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> I will do what I can. We did not know such a meeting was occurring so soon, but thank you. Andy
>
> **Andrew Plattner** | Manager
>
> **9141 East Hidden Spur Trail, Suite 101**
>
> **Scottsdale, Arizona 85255**
> **Direct: 602.848.4899**
> **aplattner@alplawgroup.com**
>
>
>
> ---
>
> **From:** Kathryn Desmarais <kathryn.desmarais@azmd.gov>
> **Sent:** Friday, June 7, 2024 11:05 AM
> **To:** Andrew Plattner <APlattner@alplawgroup.com>
> **Subject:** Dr. Kaye
>
> Hi Andrew,

Can you help me with the following information, if possible I need it before the meeting we are having with PULSE on Monday.

1. Confirm when the program started for him.

2, Prior to the meeting, we need to know where else he holds privileges

Thanks,

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

480-551-2716(Direct)

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Kathryn.Desmarais@azmd.gov

1740 W. Adams St, Suite 4000
Phoenix, AZ 85007

From:	Andrew Plattner
To:	Erinn Downey
Cc:	Kathryn Desmarais; cari@pdpflorida.com
Subject:	RE: Dr. Kaye
Date:	Thursday, June 13, 2024 12:50:00 PM

One correction. His birthday is June 29, '61

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Andrew Plattner
Sent: Thursday, June 13, 2024 12:28 PM
To: Erinn Downey <erinn.downey@azmd.gov>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cari@pdpflorida.com
Subject: RE: Dr. Kaye

The attached complies.

Our prior communications in this regard speak for themselves.

Just to ensure the point is clearly made, the facts here are that you demanded, not knowing what the Consent form from PULSE 360 stated, that Dr. Kaye consent to disclosing information. Due to your demands that I requested multiple times be backed by legal support (which such legal support has not been provided), he did so.

You did not initially demand that he waive legal claims against a private commercial enterprise that is not part of the Arizona Medical Board, that is nowhere in the Board's Order and for which you provided no legal support. When the Consent form was presented, Dr. Kaye consented to the release but, upon my advice, did not sign the legal waiver and release. Why? Because it purports to cause him to release any and all unknown future claims where the waiver does **not** describe the risks or even the activities that the PULSE personnel may be undertaking that could cause any such risks. You threatened Dr. Kaye with further Board complaints if he did not agree to waive such unknown claims and risks and the sign the consent form as presented.

IN MY OPINION, this is an unwarranted and flagrant abuse of your power, and your tone and threats in the last 2 days are unwarranted, to say the least. This is my opinion (not Dr. Kaye's) based upon my 25 years of experience with the Board, 99% of which has been reasonable and respectful from both sides. Now that Dr. Kaye has given you what you demanded, we assume you will take no further retaliation against him.

Per your emails, we look forward to receiving from you ALL of the PULSE Program information that you receive.

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Thursday, June 13, 2024 10:16 AM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cari@pdpflorida.com
Subject: Re: Dr. Kaye

Mr. Plattner,

PULSE needs a clean copy with no alterations (i.e. the 'under duress' note). Please send one over STAT.

Regards,

Erinn Downey, Manager
Physician Health Program
Arizona Medical Board & Regulatory
Board of Physician Assistants
1740 W. Adams, Ste. 4000
Phoenix, AZ 85007

Direct: 480.551.2732
Fax: 480.551.2702
Email: erinn.downey@azmd.gov
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On Thu, Jun 13, 2024 at 9:56 AM Erinn Downey <erinn.downey@azmd.gov> wrote:

> Mr. Plattner,
>
> It appears that you have been copying the incorrect address for Cari at PULSE so I have copied her here with the correct address. I need her to confirm that this consent form allows them to communicate with us about Dr. Kaye's progress in PULSE 360 despite the handwritten "under duress" on the consent form.
>
> You are correct that what is Board ordered must be done and if not done, a new investigation will be initiated to address Dr. Kaye's noncompliance with the Board order. In order for us to even consider how PULSE 360 can be completed without Dr. Kaye working at a hospital, I need to communicate with PULSE 360 about what has already been done. I also need to be able to communicate with them about Dr. Kaye's options should he be working outside of a hospital. I don't think his loss of privileges is automatically a barrier to him completing PULSE. Hence the need for the consent form.
>
> As stated before, you will not receive the PULSE reports simultaneously because they have to be released to Board staff directly and then Board staff will send them to you. PULSE is not to release them directly to you. You will be provided ample opportunity to submit a response to the PULSE reports should any violation be sustained due to their contents. Alternatively, you can always submit responses to anything the Board sends you and it will be added to Dr. Kaye's file.
>
> Regards,
>
> **Erinn Downey, Manager**
> Physician Health Program
> Arizona Medical Board & Regulatory
> Board of Physician Assistants
> 1740 W. Adams, Ste. 4000
> Phoenix, AZ 85007
> Direct: 480.551.2732
> Fax: 480.551.2702
> Email: erinn.downey@azmd.gov

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On Thu, Jun 13, 2024 at 9:08 AM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Dear Ms. Downey, Ms. DesMarais and Ms. Brito:
>
> Please find attached hereto Dr. Kaye's consent (with all lines initialed) to the release of the PULSE 360 Program information to the Arizona Medical Board.
>
> For the record, Dr. Kaye's attorney (me) is questioning the Board about its legal right to make the demands and threats it is making. It is me, not Dr. Kaye, who has and who will continue to try and obtain from the Board its legal basis to require, as a condition of Dr. Kaye's license status, that he waive rights under the law as relates to a party that is not the Board and who is not a partner with or under contract with the Board.
>
> I have asked, repeatedly, for any substantiation for the threat that, if Dr. Kaye does not (1) consent to the release of the PULSE 360 Program documents (which he has consented to yesterday already-as you know-and only wanted not to waive his rights under Arizona law, but still consent to the release) and (2) does not release potential future claims against a 3rd party for that 3rd party's ***negligence***, he will be met with yet another action by the Board, and the Board (I assume you have full authority from the Board to behave as you are) refuses to respond other to than to continue its threats.
>
> Your response is, "do what we say, or else." While such response is certainly not a response as to the legal right of the Board to act in this manner, Dr. Kaye has no choice, it seems, other than to do what the Board demands, whether justified or not, so that he can avoid further threats or

actions against his license.

Worse here is that, the Board knows that he has complied with the Board's Order. He has already completed CPEP early. The Board has been timely notified about the issue with completing the PULSE Program due to the loss of hospital privileges. Despite such compliance, the Board ignores these facts completely and continues only to threaten.

Again, we will look forward to receiving all of the documentation that is sent to the Board simultaneously sent to Dr. Kaye.

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Andrew Plattner <APlattner@alplawgroup.com>
Sent: Wednesday, June 12, 2024 3:55 PM
To: Erinn Downey <erinn.downey@azmd.gov>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cary@pdpflorida.com
Subject: Re: Dr. Kaye

Are you saying that if Dr. Kaye does not agree to waive claims against a someone who may commit negligence, that such is a violation of a Board order or rule?

I do not follow that. Please elaborate.

Thank you.

Andy Plattner

Andy
Andy

Get Outlook for iOS

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Wednesday, June 12, 2024 3:49:12 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>; cary@pdpflorida.com <cary@pdpflorida.com>
Subject: Re: Dr. Kaye

Mr. Plattner,

Failure to sign the complete consent form by tomorrow morning, including item 9, will result in a new case for violation of a Board Order. Item 9 is a reasonable part of the consent form. PULSE cannot directly send the report to Dr. Kaye as they are doing this for the Board's purposes. The report must be sent to Board staff directly and then Board staff can release the report to you once received.

Regards,

Erinn Downey, Manager
Physician Health Program
Arizona Medical Board & Regulatory
Board of Physician Assistants
1740 W. Adams, Ste. 4000
Phoenix, AZ 85007
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On Wed, Jun 12, 2024 at 3:29 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Dear Ms. Downey, Ms. DesMarais and Ms. Brito:

Please find attached hereto Dr. Kaye's consent to the release of the PULSE 360 Program information to the Arizona Medical Board.

While Dr. Kaye consents, which is under protest as the Board has not yet provided any legal authority for its demands, he cannot check all boxes on the Consent Form, especially Box 9. By its terms, if the PULSE 360 Program is negligent and Dr. Kaye is damaged due to negligence, he has no recourse. This should not be a condition to release the records to the Board. The Board has demanded that he execute a consent to release, which is what he has clearly done, but it is not reasonable (and perhaps not legal) to demand that he waive claims against a 3rd party (in this matter, the PULSE 360 Program), even if that 3rd party is negligent.

Last, we demand that what is sent to the Board is sent to Dr. Kaye simultaneously so that he knows what was delivered and he can review the documents himself.

Thank you.

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101

Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Erinn Downey <erinn.downey@azmd.gov>

Sent: Tuesday, June 11, 2024 1:09 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Subject: Re: Dr. Kaye

Mr. Plattner,

For any case, the licensee may request copies of records and/or reports as it relates to their case. Board staff will release that information whether at that time or at the supplemental response stage if any violations are sustained. In light of this information, please advise whether or not Dr. Kaye will be signing those consent forms for PULSE 360. It shouldn't take until Friday to determine if he will sign some consent forms so that we can see how compliant he has been with the Board's order.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

Board of Physician Assistants

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On Tue, Jun 11, 2024 at 12:59 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Ms. Downey:
>
> If you review the email I sent carefully, you will see that is not the position. Again, we have until Friday to resolve and we want to do so. I think that if you take the time to read what I sent, it will be clear. See below where I made the applicable language in red. As stated yesterday, I am also more than happy to discuss.
>
> Andy
>
> **Andrew Plattner** | Manager
>
> **9141 East Hidden Spur Trail, Suite 101**
>
> **Scottsdale, Arizona 85255**
> **Direct: 602.848.4899**
> **aplattner@alplawgroup.com**
>
>
>
> ---
>
> **From:** Erinn Downey <erinn.downey@azmd.gov>
> **Sent:** Tuesday, June 11, 2024 12:49 PM
> **To:** Andrew Plattner <APlattner@alplawgroup.com>
> **Cc:** Kathryn Desmarais <kathryn.desmarais@azmd.gov>

Subject: Re: Dr. Kaye

Mr. Plattner,

Are you saying that Dr. Kaye is refusing to sign consents with PULSE 360 to allow the Board to check on his compliance with a Board Order? Please advise ASAP.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

Board of Physician Assistants

1740 W. Adams, Ste. 4000

Phoenix, AZ 85007

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On Tue, Jun 11, 2024 at 12:45 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

Ms. Downey:

Per Ms. Desmarais' last email (see attached), we have until 6-17-24. Our goals to is resolve this instant issue within that period.

When representing a client, counsel is required to advise after consideration of the matter or, in this case, the threats made by the Board that would continue to impact a client's career. PLEASE understand that neither Dr. Kaye nor this firm want anything other for this matter to conclude and for Dr. Kaye to move on. He respects the Board and its Order and has been compliant therewith.

In my 25 years of practice and being in front of the Board for dozens of physicians, I have not been presented with such a threatening tone. That tone, coupled with the fact that Dr. Kaye has been punished for sincerely attempting to protect the health of a patient from the acts of a non-compliant HonorHealth employee, permits us to have a reasonable amount of wariness about how information (which can be skewed and unfairly misrepresentative of the facts) from third parties in this matter can be used to a physician's detriment.

The Board is threatening that, if Dr. Kaye does not consent to the release of the PULSE 360 Program's information, he will be in violation. Assuming the violation relates to the Order, I re-read it; and, as relates to the PULSE Program, it states exactly as follows:

"P.U.L.S.E. 360 Intensive Program

Respondent shall continue to participate in the P.U.L.S.E. Program and successfully complete it. Respondent shall comply with all recommendations from the Program. Respondent shall promptly provide Board staff with satisfactory proof of completion."

The Order requires completion of the PULSE Program which has now become an obstacle as Dr. Kaye does not have hospital privileges. The Order does not state that Dr. Kaye must consent to disclosure of information, some of which is personal as between him a counselor. As the Board may know and as Dr. Kaye discovered upon reaching out to the PULSE Program in this regard, they/PULSE does not condition Dr. Kaye's compliance with the Program if there is not an agreed-upon disclosure to the Board.

The Order does require Dr. Kaye to complete CPEP, which has already been completed, and well in advance of the deadline. Dr. Kaye is doing what he can to comply with the precise language of the Order, and, but for the loss of HonorHealth privileges, the PULSE Program would continue there and would be completed.

While considering this matter in the period given (6-17-24), if you have information in this regard that we do not possess or if you have legal authority that requires Dr. Kaye to consent to the PULSE Program disclosing to the Board, please provide that to us so that we may consider it before the deadline.

If there is no authority here to support the Board's demand, Dr. Kaye is still inclined to consent, so long as he receives the same documentation that is provided to the Board and he has time to consider and provide his feedback; we want to ensure that the facts are accurate and what is presented to the Board is true.

As further relates to the PULSE Program, please see the attached article regarding the Program and note the author's (an MD, PhD) comments which relates precisely to this matter. When reviewing this article, you will note that:

1. Taken, it seems, directly from the facts of this matter with Dr. Kaye where he was appropriately critical of a nurse's poor performance (which saved a patient from injury), "…the survey provides the perfect opportunity to "get back at" the physician.

2. Hospital leaders can manipulate the list of raters who can be biased. In this regard, what the Board received from HonorHealth insofar as peer review materials for

many years and how the Board considered them as fact (when they were obviously not factual and one-sided) requires us to consider the possible impact of the Board's threat to receive information from the same source "or else!"

3. Even selecting a "…physician at a hospital to undergo a PULSE survey sends a clear message to the raters…that there is a behavior problem with the targeted physician…."

Recall that the Board stated in one of our meetings that it has literature supporting its discipline of Dr. Kaye. We have not received such literature or any citation from the Board and, as such, cannot review what they used to support the discipline. But, the attached article does cite literature that describes the need to work as a "team," which may what the Board has read. In any event, such abuses of programs such as PULSE makes sense (there is money to be made by the Program) and have been known for some time presumably by the Board based upon the literature it reviewed, and we ask that the Board consider the literature that we provide here (the attached article) in its continuing deliberations in this matter.

Please do not lose sight of the fact that Dr. Kaye is a good clinician and other physicians ask him to help with difficult cases. Patients do not complain about his work. His tone has been harsh, as he had admitted, but he is clearly working on his tone. He completed CPEP in advance of the deadline, and he would have completed PULSE but for his loss of staff privileges.

We ask once more to end the probation due the facts and circumstances here and mainly because Dr. Kaye has done what he can to comply and is offering herein alternatives to further comply.

We look forward to your response.

Thank you.

Andy Platner

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101

Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Erinn Downey <erinn.downey@azmd.gov>
Sent: Monday, June 10, 2024 3:54 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Subject: Re: Dr. Kaye

Mr. Plattner,

Dr. Kaye needs to sign consents with PULSE 360 immediately so that we can obtain information about his progress and/or lack thereof. If he fails to sign those consents and we can't communicate with PULSE, he will be in violation. I don't know how much more clear about this we can be.

Regards,

Erinn Downey, Manager

Physician Health Program

Arizona Medical Board & Regulatory

Board of Physician Assistants

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Phoenix, AZ 85007

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On Mon, Jun 10, 2024 at 3:43 PM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> We are not trying to argue with the Board, but we are now confused because of the request and then the demand.
>
> May we please have a call in this regard to clarify?
>
> Andy
>
> **Andrew Plattner** | Manager
>
> **9141 East Hidden Spur Trail, Suite 101**

Scottsdale, Arizona 85255
Direct: 602.848.4899
aplattner@alplawgroup.com

From: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Sent: Monday, June 10, 2024 1:31 PM
To: Andrew Plattner <APlattner@alplawgroup.com>
Cc: Erinn Downey <erinn.downey@azmd.gov>
Subject: Re: Dr. Kaye

Dear Mr. Plattner,

Please make sure that Dr. Kaye complies with PULSE 360 Program to sign any and all releases that allow the Arizona Medical Board access to speak with PULSE 360 staff and they can provide Board Staff with access to the PULSE 360 Intensive Program Material that Dr. Kaye was in the process of completing.

I will need this completed by June 17, 2024.

Thanks in advance for your assistance.

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

480-551-2716(Direct)

480-551-2702 (Fax)

Kathryn.Desmarais@azmd.gov

1740 W. Adams St, Suite 4000
Phoenix, AZ 85007

On Mon, Jun 10, 2024 at 7:29 AM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> Ms. DesMarais:
>
> Thank you for your continued work here. What follows are responses to the points/questions raised in your most recent emails:
>
> 1. Dr. Kaye does not have hospital privileges elsewhere. He is hoping to obtain hospital privileges soon. But for the Board's Order, Dr. Kaye would have his privileges at HonorHealth.
> 2. Generally, and as a reminder, Dr. Kaye was disciplined, in

part, due to a split-second reflex to protect his patient from the malfeasance of the complainant nurse. The Board believed such nurse, even though evidence was presented that she was not a good employee at HonorHealth and was at fault from a patient-care perspective, and the Board took as fact the peer review notes from years prior, which was, we believe unfair considering such reviews were unrelated to the incident.

3. Yes, Dr. Kaye's tone towards staff at HonorHealth in the past may have been rough, but the only evidence about the instant matter for which he is on probation by the Board and for which he has lost way more than he deserved to lose, is that the nurse would have injured the patient but for his interference. His actions have caused no harm to the public and certainly not to the patient.
4. We remain concerned that Dr. Kaye has been severely punished for his "attitude," despite the fact that there are no complaints about his skills as a surgeon, and one who has been called by other surgeons for years to assist in their tougher cases.
5. The personal cost to Dr. Kaye is great and mounting, and his patients are the ones that are paying the highest cost. For instance, due to the probation, HonorHealth terminated his privileges (which, even though was attending the PULSE Program, would not have happened but for the Board's Order), the loss of his practice group affiliation, the inability to continue to see veterans and certain patients on government programs, cancer patients having their procedures cancelled with less than 1 week notice, the immediate loss of ability to perform non-office based surgical interventions, and the loss of access to communication programs that facilitate rapid patient information sharing. He has already paid a very high price.

6. We ask that the Board also note that, per the Order, the Dr. Kaye completed, very quickly, the CPEP program, which, as you may know, is more beneficial than the PULSE Program and addresses the Board's concerns much better than the PULSE Program has and could. The CPEP program,

completed in a fraction of the time, was magnitudes more impactful for Dr. Kaye than the last 1 and ½ year of the PULSE Program. Dr Kaye described that participating in a group discussion with colleagues from across the country who are in a similar predicament was more insightful and valuable. As a side-note but one that we hope the Board takes into consideration, is that other physicians in the CPEP Program were there for similar reasons. That is, they were there because hospital staff who were not doing their job and possibly causing injury, delay or other harm to patients, spoke up on behalf of their patients. When the hospital staff, even though they made the errors, did not like the tone, they complained. And, like HonorHealth, those hospitals took the side of the staff member, not the physician or the patient. So, it seems there is a trend in this regard where the wrongful actor escapes punishment and the physician is punished for protecting the patient.

7. Consider the PULSE Program and note in particular:

    1. Dr. Kaye enrolled in the Program 10/19/22. During that time, and without regular feedback (as I presented to the Board previously), he has paid an exorbitant amount of money for a Program that may not even do what the Board wants.
    2. He has been in the Program for over 1 ½ years at the direction of an HonorHealth Medical Staff committee. He has not had, nor as he ever had, any restrictions or limitations of his ability to perform procedures germane to the practice of his specialty, even though he did not start earning points at or about the 9-month mark after starting the Program. Despite Dr. Kaye's willingness to comply with the PULSE program, the hospital staff leaders responsible for oversight have been unavailable and unhelpful. The Program, if the Board will take a close look, will be shown to be, at this time, more wasteful than perhaps other programs or education that would make more sense and address what the Board is concerned about.
    3. For the first 9 months, the surveys were completed by some who did not know and never even worked with

Dr. Kaye; they were at hospitals and facilities where he did not perform services. He requested of the Program leaders to have surveys done by people who are able to honestly make assessments because they have some idea who he is and his work. After about 9 months, the leaders agreed and the surveys were being returned with favorable comments and he ultimately has received 3 of the 4 points necessary to graduate.

4. At this time, there are 2 options (as we understand it) to graduate: (i) move the Program to a new facility; and (ii) just pay for counseling sessions and videos for 1-year, which does nothing insofar as addressing the Board's concerns that he be a team player, and this will also exceed the probation period per the Order.
5. Dr. Kaye changed his practice patterns to do mainly office-based procedures and clinic work. Because he is not at the hospital, there is no one to rate him in that hospital.

As such, we ask that the Board allow the CPEP Program and the very timely completion thereof be the punishment and lift/end the probation. Completion of the PULSE Program by watching videos cannot be what the Board had in mind.

I completely understand the timing here is fast and we are doing what we can to help. If needed, my cell: 480-570-2134.

Andrew Plattner | Manager

9141 East Hidden Spur Trail, Suite 101

Scottsdale, Arizona 85255

Direct: 602.848.4899
aplattner@alplawgroup.com

From: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Sent: Friday, June 7, 2024 11:14 AM
To: Andrew Plattner <APlattner@alplawgroup.com>
Subject: Re: Dr. Kaye

Hi Andrew,

I just spoke with PULSE yesterday.. The Board needs to know if he can finish this course otherwise, if I write a modification I need to get that

complete to get on the July agenda. I have other cases I am working on., I Have to keep them moving.

I fear if he can;t finish this course, what the Board could give him will be costly and very time consuming if it's one of the PBI communication classes with the AIR letter or the one with 12 meetings. I am pushing this. I think it will be in his best interest.

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

480-551-2716(Direct)

480-551-2702 (Fax)

Kathryn.Desmarais@azmd.gov

1740 W. Adams St, Suite 4000
Phoenix, AZ 85007

On Fri, Jun 7, 2024 at 11:08 AM Andrew Plattner <APlattner@alplawgroup.com> wrote:

> I will do what I can. We did not know such a meeting was occurring so soon, but thank you. Andy
>
> **Andrew Plattner** | Manager
>
> **9141 East Hidden Spur Trail, Suite 101**
>
> **Scottsdale, Arizona 85255**
> **Direct: 602.848.4899**

aplattner@alplawgroup.com

From: Kathryn Desmarais <kathryn.desmarais@azmd.gov>
Sent: Friday, June 7, 2024 11:05 AM
To: Andrew Plattner <APlattner@alplawgroup.com>
Subject: Dr. Kaye

Hi Andrew,

Can you help me with the following information, if possible I need it before the meeting we are having with PULSE on Monday.

1. Confirm when the program started for him.

2, Prior to the meeting, we need to know where else he holds privileges

Thanks,

Kathryn L. DesMarais, CMBI

Senior Compliance Officer

Compliance Department

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

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EXHIBIT F

ARTICLE REGARDING PULSE-ATTACHED

Editorial:

Sham Peer Review: Abuse of the P.U.L.S.E. Survey

Lawrence R. Huntoon, M.D., Ph.D.

The P.U.L.S.E. (Physicians Universal Leadership Skills Survey Enhancement)[1] survey is a formal workplace behavioral assessment tool[2] that is increasingly being used to monitor physician behavior in medical schools, residencies, hospitals, and clinics.[3,4] The survey is also used by treatment centers that specialize in evaluation and treatment of disruptive physicians.[5,6] It is similar to 360-degree survey methods used in many *Fortune* 500 companies today.

P.U.L.S.E. was developed in 2002 by a psychologist, Larry Harmon, Ph.D., who is cofounder and co-director of a company known as Physicians Development Program (PDP) in Miami, Fla.[7,8] P.U.L.S.E. has been cited in a number of publications, including a chapter on "Managing Difficult and Disruptive Physicians" in a book titled *The Business of Healthcare*. Harmon co-authored the chapter with Susan Lapenta, a "partner in the law firm Horty, Springer & Mattern, P.C., of Pittsburgh, Pa." The firm specializes in healthcare law, and Lapenta "has worked extensively with hospitals and their medical staffs on peer review investigations and hearings. She has also assisted medical staffs in the revision of bylaws and related projects. Additionally, Lapenta has served as counsel in litigation stemming from credentialing decisions, including the defense of antitrust claims."[9] The Horty-Springer firm is well-known for its numerous publications and course offerings on peer review, credentialing, and other matters affecting medical staff governance.

P.U.L.S.E. purports to look at both motivating behaviors and disruptive behaviors and the impact they have on the healthcare team.[1] The Physicians Development Program also offers another survey tool known as the B.A.D. (Behavioral Assessment of Disruptiveness) survey.[1] The P.U.L.S.E. survey is typically conducted by e-mail or online, and raters are allowed to remain anonymous. The survey can be administered to all physicians in a department, or to all members of the medical staff.

Surveys are often administered at 3, 6, or 12-month intervals. The results are typically graphically displayed and color-coded,[8] green for acceptable conduct, red for unacceptable conduct, and yellow for borderline unacceptable conduct, or another similar color scheme. Survey results are compared to results from other physicians at the hospital or other group norms. Results can be used in peer reviews and at the time of reappointment and renewal of hospital privileges.

Unfortunately, like other tools used to assess physician conduct and competence, P.U.L.S.E. is subject to abuse.

Quantifying Subjective Opinions

Although P.U.L.S.E. results are said to "provide objective feedback to upper management," [2] in actuality they are nothing more than a quantification of the subjective opinions of the raters. Subjective opinions, of course, are influenced by many factors. If a physician, for example, has been appropriately and respectfully critical of poor nursing performance or poor performance of O.R. technicians, the survey provides the perfect opportunity to "get back at" that physician. If a physician competitor or group of physician competitors decides to try to reduce or eliminate competition, the survey provides the means to achieve that goal. A hospital administration can also manipulate the selection of raters so as to retaliate against a physician whistleblower. And, although allowing raters to remain anonymous may provide a more candid view of the physician, it can also serve as an invitation for raters who dislike the physician to make false and/or trumped up charges against the physician.

Rater Selection Subject to Manipulation

Although physicians subject to the P.U.L.S.E. survey are often asked to provide a list of physicians and hospital staff they work with (the raters), medical staff leadership and the hospital administration can add to or manipulate the final list of raters. Much like hospitals that stack a peer review panel with physicians who dislike the physician under review, biased selection of raters, based on improper motives, is an effective means of assuring a negative outcome. And, since different physicians often work with different raters, the so-called comparative norms do not necessarily represent true comparisons between physicians at the hospital.

It also has been claimed that a scatter plot of P.U.L.S.E. results for a group of physicians at a hospital is able to identify the "bad apple" physician and distinguish between truly disruptive behavior and a physician who is a political target at the hospital. In the chapter about managing "difficult" and "disruptive" physicians, Harmon and his co-author stated: "Once completed, a scatter plot can be prepared designating where each physician falls compared to his colleagues, thereby identifying the so-called bad apple."[8] Another article on P.U.L.S.E. stated: "It's also the best way to find out if a physician isn't being disruptive, but may be a political target at the hospital."[7] The scatter-plot argument, however, fails to consider bias in rater selection by those who want to eliminate the physician from the hospital based on improper motives.

Singling Out the Targeted Physician

Selecting a single physician at a hospital to undergo a P.U.L.S.E. survey sends a clear message to the raters, and anyone with whom they communicate, that there is a behavior problem with the targeted physician and the hospital is seeking documentation. In some cases, the hospital is specifically

seeking to obtain documentation to be used in a sham peer review against the targeted physician. Hospitals that use sham peer review to eliminate certain physicians use this tactic in an attempt to objectify the disruptive physician label.

AAPS has been contacted by physicians who have had this tactic used against them in a hospital. These physicians, who were outspoken in their attempts to make improvements at their hospitals, were labeled "disruptive" following a P.U.L.S.E. survey that the hospital demanded. In one case, some nurses even reportedly "joked" with the physician that he had better be nice to them; otherwise they will give him a bad survey rating.

Hospitals that use this tactic against physicians who are targeted for sham peer review take advantage of their built-in information gathering and distribution network of employees to spread negative information about the physician throughout the hospital and medical community.

Consequences of Being Labeled "Disruptive" Following a P.U.L.S.E. Survey

The consequences of being labeled "disruptive" following a P.U.L.S.E. survey range from informal collegial intervention to termination of hospital privileges. A behavioral contract or Personalized Code of Conduct may be required. Such contracts can be used to limit the physician's due process rights in the hospital. In detailing the "Top Six Steps for Dealing with Disruptive Physicians," authors Harmon and Lapenta acknowledge: "Personalized Code of Conduct may narrow rights."[8]

Remedial programs, including anger management programs and/or personal coaching, are sometimes required after a physician has been labeled "disruptive" following a P.U.L.S.E. survey.

A physician who is labeled "disruptive" following a P.U.L.S.E. survey may also be required to travel to a specialized treatment center for "disruptive" physicians.[10] According to one article, "Inpatient and residential programs may be helpful if the underlying disorder is sufficiently severe to likely prevent the physician from benefitting from outpatient interventions, or less intensive interventions have failed."[11]

Physicians who are treated at these centers often receive additional psychiatric diagnoses, including narcissistic and obsessive-compulsive personality traits or disorders, and personality disorder NOS (not otherwise specified). The article by Harmon and Pomm noted: "Many physicians referred for disruptive behavior have an Axis I mood disorder, Axis II personality disorders, or both, especially those with narcissistic and obsessive-compulsive traits."[11] The article also provided a list of inpatient/ residential treatment centers.[11]

Treatment at inpatient/ residential treatment centers may involve intensive group therapy, individual psychotherapy, and treatment with medications. According to Harmon and Pomm, "Medication management for physicians with underlying psychiatric disorders also may be indicated. In particular, medications that increase emotional control, decrease impulsiveness, and improve mood generally are recommended."[11]

One physician also reported that electroconvulsive shock (ECS) therapy was recommended, apparently as a means to alter his view toward authority in the hospital setting (personal communication). Fortunately, ECS was never administered in that case.

Conclusions

Although proponents of P.U.L.S.E. claim that "…ongoing and periodic surveying of disruptive physicians gives physicians an opportunity to 'see themselves as others see them,'…"[11] if a hospital administration singles out a targeted physician for a P.U.L.S.E. survey and selects biased raters, then it may be more like looking at oneself in a funhouse mirror at the entrance to a house of horrors.

Physicians need to be aware that abuse of P.U.L.S.E. exists, and that hospitals that do sham peer reviews are using this tactic to eliminate certain physicians based on motives that have nothing to do with the furtherance of quality care. Physicians who serve on peer review panels or are involved in re-credentialing need to be vigilant and diligent in examining how P.U.L.S.E. data was generated.

Lawrence R. Huntoon, M.D., Ph.D., is a practicing neurologist and editor-in-chief of the *Journal of American Physicians and Surgeons*. Contact: editor@jpands.org.

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August 12, 2024

Andrew Plattner, Esq.
ALP Law, PLC
9141 E. Hidden Spur Trail, Ste 101
Scottsdale, AZ 85255

RE: Mitchell C. Kaye, M.D.
Case # MD-22-0427A

Dear Mr. Plattner

The purpose of this letter is to inform you that during the August 6, 2024, public meeting, the Arizona Medical Board ("Board") reviewed the above-referenced case to determine whether to grant or deny your client's request for Termination of the Board Order. At the conclusion of its review, the Board voted to deny the request for termination of the Board Order.

Sincerely,

Michelle Robles
Board Operations Manager
E-Mail: board_coordinator@azmd.gov

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October 22, 2024

Patricia Grant, Esq.
Governor's Regulator Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Dear Ms. Grant,

1. Background[1]

The Board initiated case number MD-22-0427A after receiving a complaint from a hospital nurse ("YD") alleging that Dr. Kaye verbally and physically assaulted her in an operating room and exhibited unprofessional behavior toward other staff.

The Board's investigation found that on April 25, 2022, Dr. Kaye was scheduled to complete a urethral diverticulectomy procedure in the hospital's main operating room. After entering the operating room, Dr. Kaye became verbally aggressive with OR staff. Staff members reported to the Hospital that Dr. Kaye used inappropriate language towards YD and other staff, threw sterile equipment on the floor requiring staff to get new equipment, and that Dr. Kaye grabbed YD's arm and pushed her into a prep stand. Staff members reported they did not respond to Dr. Kaye's behavior at the time out of concern that it would cause him to escalate and further impact patient safety.

On July 13, 2022, Dr. Kaye signed a Personal Code of Conduct from the hospital which required that he enroll in the Physicians Universal Leadership Skills Education (P.U.LS.E.) 360 Intensive Program. After completing the initial assessment with P.U.L.S.E., Dr. Kaye was required by the hospital to participate in monthly monitoring sessions with individuals designated by the PPEC for 12 months.

[1] Board investigative materials are confidential pursuant to A.R.S. § 32-1451.01(C) ("Patient records, including clinical records, medical reports, laboratory statements and reports, any file, film, other report or oral statement relating to diagnostic findings or treatment of patients, any information from which a patient or the patient's family might be identified ***or any information received and records or reports kept by the board as a result of the investigation procedure outlined in this chapter are not available to the public***."). This limits the Board's ability to provide information to GRRC in an open public forum. The background information provided herein is a summary of publicly available information from the Board's orders, meeting minutes and recordings. The Board reserves the right to object to non-public information being discussed in open session. Communications between Dr. Kaye's counsel and Board staff, the letter of support for Dr. Kaye as well as the consent to release that are appended to Dr. Kaye's petition are all part of the Board's confidential investigative file.

On October 6,2023, the Board's Review Committee conducted a Formal Interview and issued Findings of Fact, Conclusions of Law and Order for Letter of Reprimand to Dr. Kaye based on the Committee's determination that Dr. Kaye violated A.R.S. §§ 32-1401(27)(r)[2] and (jj)[3] ("Order") (Exhibit A- October 6, 2023 Review Committee Meeting Minutes). The Order included a requirement that Dr. Kaye continue in the P.U.L.S.E. Program mandated by the hospital; comply with any recommendations from the program, and submit satisfactory proof of completion to the Board. The Order was entered on December 11, 2023. (Exhibit B- Order)

Dr. Kaye submitted a timely request for review or rehearing, which the Board considered at a public meeting on February 6, 2024. The Board denied the request and issued a formal order which set forth the basis for the Board's decision and notified Dr. Kaye of his right to appeal the Board's decision to the Superior Court. (Exhibit C- Order Denying Rehearing and February 6, 2024 Meeting Minutes).[4] Dr. Kaye did not to appeal the matter to the Superior Court within the time allowed by statute. The Order is now final and no longer subject to judicial review.

Dr. Kaye subsequently requested that the Board terminate the Order, and the Board considered his request at its August 6, 2024 meeting. Dr. Kaye's counsel stated that Dr. Kaye could not complete the P.U.L.S.E. Program due to his loss of privileges at the hospital. At the meeting, Board staff confirmed for the Board that while Dr. Kaye was no longer employed by the hospital, he was currently working at a surgery center and he would be able to complete the program at the surgery center. (Exhibit D- August 6, 2024 Draft Meeting Minutes) Based on the fact that Dr. Kaye could complete the program at his new workplace, the Board denied his request for early termination.

2. <u>The Board Requests GRRC Deny Petition to Review</u>

Dr. Kaye now brings this action before GRRC pursuant to A.R.S. § 41-1033(G) and asks that GRRC to find that the Board exceeded its authority and the Board's Order. A.R.S. § 41-1033(G) states:

> G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted

[2] Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.

[3] Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.

[4] Contrary to counsel's assertion that the Board denied his petition for rehearing "without explanation" the Board considered and discussed the petition in open session, as captured by the meeting minutes and recording publicly available on the Board's website, and the formal order denying the petition, which was sent to Dr. Kaye by regular and certified mail.

> petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

The Board requests that GRRC deny Dr. Kaye's request for review. As a preliminary matter, it seems that Dr. Kaye has objections to the appropriateness of the factual and unprofessional conduct findings in the Order, and the Board's decision to require him to complete P.U.L.S.E. as a part of his probation.[5] To the extent that he has these objections, the correct remedy for Dr. Kaye would have been to exercise his appeal rights pursuant to A.R.S. §§ 12-901. A.R.S. § 41-1033(G) is not intended to circumvent the admirative review process nor is it intended to provide a petitioner a collateral means in which to appeal a Board order.

To the extent that Dr. Kaye's objection seems to be centered around Board staff's attempts to obtain information regarding his performance in the program in order to assist the Board in ruling on his request for early termination of his probation, this is not an agency practice appropriately subject to GRRC's review.

3. <u>The Language Contained in the P.U.L.S.E. Waiver for Release of Information is Beyond the Control of the Board</u>

The Board's Order required that Dr. Kaye comply with the following terms:

> **a. <u>P.U.L.S.E. 360 Intensive Program</u>**
>
> Respondent shall continue to participate in the P.U.L.S.E. Program and successfully complete it. Respondent shall comply with all recommendations from the Program. Respondent shall promptly provide Board staff with satisfactory proof of completion.

The request by Dr. Kaye to terminate the Order prior to completion of the P.U.L.S.E. Program reasonably necessitated that the Board Staff get additional information directly from P.U.L.S.E. regarding Dr. Kaye's compliance and possible alternatives for Dr. Kaye to complete the program.[6] In order to provide the Board with the information about Dr.

---

[5] *See* e.g. Dr. Kaye's petition at footnotes #1 and #2 which states:

> For a variety of reasons, Dr. Kaye adamantly disagrees with the Board requiring participation in the P.U.L.S.E.360 Intensive Program. Such dispute is currently before the Board, with a hearing scheduled on August 6, 2024. Thus, this Petition will not delve into such issues at this time, pending the August 6, 2024, hearing. However, Dr. Kaye reserves the right to bring such issues to the attention of this Regulatory Review Council in the future and by no means waive any rights thereto.

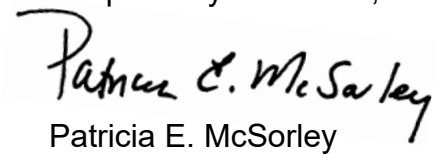
[6] A.R.S. §§ 32-1451.01(A) and (B)(1) states in relevant part, "A. In connection with the investigation by the board on its own motion, or as the result of information received pursuant to section 32-1451, subsection A, the board or its duly authorized agents or employees at all reasonable times may examine and copy any

Kaye's compliance, P.U L S.E. required for its purposes the completion of the waiver for release of information. The P.U.L.S.E. Program is an independent third-party vendor with which the Board has no direct contractual or financial relationship. The Board had no input into the business practices of this entity, including the decision to require one of its participants to execute a release with waiver language. It does not appear that Dr. Kaye raised this objection to P.U.L.S.E. directly as the party responsible for drafting the document at issue. Dr. Kaye ultimately did sign the release, although it is the Board's understanding that he has now withdrawn that consent. This decision by Dr. Kaye to withdraw his consent makes his arguments about P.U.L.S.E.'s waiver language moot. Dr. Kaye's request for termination of the Order was presented to the Board at its meeting on August 6, 2024, and the Board denied the request. The Board's decision was based on the fact that Dr. Kaye could complete the program at his new place of employment. This information was not provided by Dr. Kaye in his request for termination.

4. <u>Conclusion</u>

Simply because Dr. Kaye does not agree with the Board's decision to impose probation in this case, this does not entitle him to use the provisions of A.R.S. § 41-1033(G) to appeal the Order. This is not the appropriate forum for Dr. Kaye to air his grievances on this issue. Dr. Kaye's objection is to language in a release drafted by an independent third-party vendor. This does not constitute an "agency practice substantive policy statement, final rule or regulatory licensing requirement" subject to GRRC review pursuant to A.R.S. § 41-1033(G). Therefore, the Board respectfully requests that GRRC deny review in this matter.

Respectfully submitted,



Patricia E. McSorley
Executive Director

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documents, reports, records or other physical evidence of the person it is investigating or that is in possession of any hospital, clinic, physician's office, laboratory, pharmacy, public or private agency, health care institution as defined in section 36-401 and health care provider and that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine. . . (B)(1) The board on its own initiative or on application of any person involved in the investigation may issue subpoenas to require the attendance and testimony of witnesses or to demand the production for examination or copying of documents or any other physical evidence that relates to medical competence, unprofessional conduct or the mental or physical ability of a licensee to safely practice medicine . . ."

Exhibit A

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FINAL MINUTES FOR BOARD REVIEW COMMITTEE A TELECONFERENCE MEETING
Held on Friday, October 6, 2023
1740 W. Adams St. • Phoenix, Arizona

Committee Members
Gary R. Figge, M.D., Chair
Jodi A. Bain, M.A., J.D., LL.M.
Bruce A. Bethancourt, M.D., F.A.C.R., F.A.S.T.R.O.
R. Screven Farmer, M.D.
Constantine Moschonas, M.D., F.A.A.N.
Eileen M. Oswald

GENERAL BUSINESS

A. CALL TO ORDER
Chairman Figge called the Committee's meeting to order at: 8:05 a.m.

B. ROLL CALL
The following Committee members participated telephonically: Dr. Figge, Ms. Bain, Dr. Bethancourt, Dr. Farmer, Dr. Moschonas, and Ms. Oswald.

ALSO PRESENT
The following Board staff were present: Patricia E. McSorley, Executive Director; Heather Foster, Public Records Coordinator; and Amy Skaggs, SIRC Coordinator; Investigations. Elizabeth Campbell, Assistant Attorney General ("AAG") was also present.

C. OPENING STATEMENTS

D. PUBLIC STATEMENTS REGARDING MATTERS LISTED ON THE AGENDA
Individuals who addressed the Committee during the Public Statements portion of the meeting appear beneath the case.

E. APPROVAL OF MINUTES

- August 2, 2023 Review Committee A Minutes

  MOTION: Ms. Oswald moved to approve the August 2, 2023 Board Review Committee A minutes.
  SECOND: Dr. Farmer.
  VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Farmer, Dr. Moschonas, Dr. Bethancourt, and Ms. Oswald. The following Committee member was absent: Ms. Bain.
  VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
  MOTION PASSED.

LEGAL MATTERS

F. FORMAL INTERVIEWS

1. MD-22-0427A, MITCHELL C. KAYE, M.D., LIC. #25021
   Dr. Kaye and counsel Andrew Plattner were virtually present.

   Board Staff summarized that the Board initiated this case after receiving a complaint from a registered nurse, YD, alleging that Dr. Kaye verbally and physically assaulted her and exhibited inappropriate and unprofessional behavior towards staff in the operating room. During the investigation, Board staff obtained Dr. Kaye's peer review records from the hospital, which included records related to the allegations of unprofessional behavior. The peer review records noted that there had been numerous complaints filed against Dr. Kaye from July 2010 through April 2022. The complaints and actions were categorized as inappropriate expression of anger, violation of rules, unethical conduct, and insufficient communication. On July 13, 2022, at the hospital's request, Dr. Kaye enrolled in the Pulse 360 Intensive Program. He has not yet completed the program.. On February 15, 2023, Board staff issued an Interim Order requiring Dr. Kaye to undergo a psychiatric evaluation. The evaluator opined that Dr. Kaye did not meet criteria for a mental health or substance abuse condition which would impair his ability to practice medicine. The evaluator stated that it is hoped that Dr. Kaye's participation in the PULSE program will provide necessary insight and skills related to effective interpersonal communication. SIRC recognized that Dr. Kaye has no history of Board action; however, based on his history of behavioral issues at a hospital without resolution, SIRC recommended a Letter of Reprimand and Probation requiring completion of the PULSE 360 program. Furthermore, SIRC recommended that Dr. Kaye also complete CPEP's Improving Inter-Professional Communication course to ensure Dr. Kaye remediates the Board's concerns in a timely manner.

   Dr. Kaye provided an opening statement to the Committee where he acknowledged that he has ruffled a few feathers lately and has made changes to better working conditions. Dr. Kaye explained the situation that occurred and stated that there was a last-minute decision to switch medical staff right before surgery which brought severe anxiety to my patient. Dr. Kaye requested that this case to be dismissed.

   During questioning Dr. Kaye provided insight on how the situations escalated during surgery. Dr. Kaye stated that he called the supervising physician of the surgical floor to express his displeasure with medical staff and their work ethics and lack of preparedness of the surgical suite. He had arranged for an anesthesiologist to assist prior to the surgery as the patient was very anxious. Dr. Kaye informed the surgical floor prior to the surgery what equipment was needed so the suite would be prepped, and it was not. Dr. Kaye opined that the surgery went well and there was no impact on patient care. Dr. Kaye informed the Committee of the changes he has made after taking some of the courses in the PULSE program. This includes using hearing aids, choosing words more carefully, and picking his battles more carefully. Dr. Kaye opined that performing surgery requires a team that goes beyond the surgical suite.

   Mr. Plattner provided a closing statement to the Committee and stated that this was not a case regarding patient care and that Dr. Kaye is in the PULSE 360 program and is willingly to improve his leadership and behavioral attitudes. Mr. Plattner stated that this is he said/she said situation and noted that the complainant cannot prove that physical violence occurred. Mr. Plattner requested dismissal.

   During Deliberations, Dr. Bethencourt opined that there has been unprofessional conduct regarding the r and jj violations.

   MOTION: Dr. Bethancourt moved for a finding of unprofessional conduct in violation of A.R.S. § 32-1401(27)(r) and (jj).
   SECOND: Dr. Farmer.
   Dr. Bethancourt explained that with regards to the r violation, Dr. Kaye's unprofessional conduct exhibiting disrespectful behaviors have an impact on staff, employers, and

patients. It can effect communication, provide a hostile work environment, bring down staff morale and increase patient mortality. Regarding the jj violation, Dr. Kaye needs to be a team leader, especially during the time out. Dr. Kaye's degrading comments towards YD was confirmed by all staff in the room as well and is considered inappropriate direction. Dr. Bethancourt commented that there was a lot of projection towards hospital leadership and staff and it's important for the physician's future career to understand these issues.

VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Farmer, Dr. Bethancourt, and Ms. Oswald. The following Committee member was absent: Ms. Bain. The following Committee members recused: Dr. Moschonas.
VOTE: 4-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

MOTION: Dr. Bethancourt moved for a draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and One Year Probation to include completion of CPEP's Improving Inter-Professional Communication course within 6 months and completion of the Physicians Universal Leadership Skills Education (P.U.L.S.E.) 360 Intensive Program within 12 months. The CME hours shall be in addition to the hours required for license renewal. The Probation shall not terminate except upon affirmative request of the physician and approval by the Board, and Dr. Kaye's request for termination shall be accompanied by proof of successful completion of the CME.
SECOND: Dr. Farmer.
Dr. Farmer expressed concern regarding the physician's lack of insight and that stressed operating staff does impact patient care and can lead to adverse events or mortality. Dr. Farmer disagreed that this is a he said/she said situation and noted that Dr. Kaye has a voluminous file on disrespectful behaviors and opined that this does not occur without some involvement from the physician. Dr. Bethancourt opined that CPECP and the PULSE 360 program will be great for Dr. Kaye. Ms. Oswald opined from a patient's perspective this surgery should have been cancelled. Ms. Oswald expressed concern that Dr. Kaye has yet to make a connection between real or perceived disruptive behavior and patient care. This can be addressed with the PULSE program. Dr. Figge agreed and as a patient knowing what occurred there could be fear for potential harm.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Farmer Dr. Bethancourt, and Ms. Oswald. The following Committee member was absent: Ms. Bain. The Following Committee member recused: Dr. Moschonas.
VOTE: 4-yay, 0-nay, 0-abstain, 1-recuse, 1-absent.
MOTION PASSED.

G. FORMAL INTERVIEWS

1. THIS CASE HAS BEEN PULLED FROM THE AGENDA.

CONSENT AGENDA

H. APPROVAL OF DRAFT FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

1. MD-19-1001A, MD-20-0925A, RONALD A. YUNIS, M.D., LIC. #25201
   B.G. addressed the Committee during the Public Statements portion of the meeting.

MOTION: Dr. Farmer moved to approve the Findings of Fact, Conclusions of Law and Order for Probation. Within six months of the effective date of this Order, Respondent shall complete the Improving Inter-professional Communications offered by the Center for Personalized Education for Physicians ("CPEP"). Upon completion of the CME, Respondent shall provide Board staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure.
SECOND: Dr. Bethancourt.

Dr. Farmer noted the public statements comments regarding this matter and noted that this case has been adjudicated and new conduct would need to go through the Board's complaint process.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Ms. Bain, Dr. Farmer, Dr. Moschonas, Dr. Bethancourt, and Ms. Oswald. The following Committee member was absent: Ms. Bain.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

GENERAL BUSINESS

I. DISCUSSION REGARDING DEBRIEFING ON COMMITTEE PROCESSES

Dr. Farmer stated this is an effective process and that the committee was able to go into detail to adjudicate the case. Dr. Bethancourt agreed that the process is very effective. Dr. Figge noted that the Board staff does an amazing job reviewing the hundreds of documents and putting the meeting together, so that the meeting moves effectively and smoothly.

J. ADJOURNMENT

MOTION: Dr. Farmer moved for adjournment.
SECOND: Ms. Oswald.
VOTE: The following Committee members voted in favor of the motion: Dr. Figge, Dr. Farmer, Dr. Moschonas, Dr. Bethancourt, and Ms. Oswald. The following Committee member was absent: Ms. Bain.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The meeting adjourned at: 9:49 a.m.

Patricia E. McSorley, Executive Director

Exhibit B

BEFORE THE REVIEW COMMITTEE OF THE ARIZONA MEDICAL BOARD

In the Matter of **MITCHELL C. KAYE, M.D.** Holder of License No. 25021 For the Practice of Allopathic Medicine In the State of Arizona.	Case No. MD-22-0427A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR LETTER OF REPRIMAND AND PROBATION**

The Review Committee of the Arizona Medical Board ("Board") considered this matter at its public meeting on October 6, 2023. Mitchell C. Kaye, M.D. ("Respondent"), appeared with legal counsel, Andrew Plattner, Esq., before the Review Committee for a Formal Interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(P). The Review Committee voted to issue Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 25021 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-22-0427A after receiving a complaint from a Hospital nurse ("YD") alleging that Respondent verbally and physically assaulted her in an operating room, and exhibited unprofessional behavior towards other staff.

4. On April 25, 2022, Respondent was scheduled to complete a urethral diverticulectomy procedure in the Hospital's main operating room. After entering the operating room, Respondent became verbally aggressive with OR staff. Staff members reported to the Hospital that Respondent used inappropriate language towards YD and other staff, threw sterile equipment on the floor requiring staff to get new equipment, and that Respondent grabbed YD's arm and pushed her into a prep stand. Staff members

reported they did not respond to Respondent's behavior at the time out of concern that it would cause him to escalate and further impact patient safety.

5. Respondent's Hospital employment records included complaints filed by his co-workers regarding his conduct. In 2017, Respondent was asked by the Hospital to register for an anger management course, seek counseling assistance, attend a team building session, and sign and date an acknowledgement of the Hospital's code of conduct conditions.

6. On July 13, 2022, Respondent signed a Personal Code of Conduct from the Hospital which required that he enroll in the Physicians Universal Leadership Skills Education (P.U.L.S.E.) 360 Intensive Program. After completing the initial assessment with P.U.L.S.E., Respondent would be required to participate in monthly monitoring sessions with individuals designated by the PPEC for 12 months.

7. The Hospital reported to the Board that Respondent's participation in the Program is ongoing.

8. During a Formal Interview on this matter, Respondent stated that he was a dedicated and caring physician but recognized that his direct manner was problematic and that his participation in the P.U.L.S.E. program was helpful and that he had recently gotten hearing aids to assist controlling his vocal tone and volume.

9. Respondent testified regarding the April 25, 2022 incident. Respondent stated that the OR team he had been assigned had improperly prepped and draped the patient and had not gathered the necessary surgical instruments yet. Respondent stated that while he was attempting to reposition the patient, Nurse YD approached with a cardiac monitoring catheter. Respondent stated that in a split second decision, he grabbed the catheter and tubing; pulling it away from the patient in order to avoid contaminating the surgical field. Respondent denied touching YD at any time.

10. Respondent stated that he did express displeasure to the OR supervisor, but denied yelling, stating that he has a naturally gruff voice. Respondent stated that he was unhappy with the nurse anesthetist's patient interaction in the pre-operative area because Respondent felt the nurse anesthetist's statements had caused an already nervous patient consider cancelling the surgery. Respondent denied that any surgical instruments fell to the floor, but did note that he was missing required surgical instruments that should have been placed by staff. Respondent stated that he did not consider cancelling the procedure because the patient was already asleep and while it was a potentially technically challenging procedure, he did not require much assistance to complete it.

11. Respondent stated that he understood the role physicians play in terms of ensuring patient safety and being team leaders. Respondent testified that he felt the Hospital discipline process was unfair, but that he is actively participating in the P.U.L.S.E. program because he sees it as a way to improve his interactions with people. Respondent testified regarding what he has learned during the P.U.L.S.E. Program.

12. Respondent stated that once the OR Supervisor was in the room, the procedure proceeded well with no issues from his own perspective.

13. During that same Formal Interview, Review Committee members commented that violations of A.R.S. §§ 32-1401(27)(r) and (jj) were established based on Respondent's verbal conduct with Hospital staff. Committee members noted that disrespectful communication has the potential to negatively impact patient care due to the impact on staff morale. Committee members expressed concern that Respondent had displayed a lack of insight during the interview and agreed that probation was warranted to ensure that Respondent continued to engage in remediation and mentoring to improve his communication patterns.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(r) ("Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.").

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(jj) ("Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.
2. Respondent is placed on Probation for a period of 1 year with the following terms and conditions:

a. **P.U.L.S.E. 360 Intensive Program**

Respondent shall continue to participate in the P.U.L.S.E. Program and successfully complete it. Respondent shall comply with all recommendations from the Program. Respondent shall promptly provide Board staff with satisfactory proof of completion.

b. **Continuing Medical Education**

Respondent shall within 6 months of the effective date of this Order, complete the Improving Inter-Professional Communication course offered by Center for Personalized Education for Physicians ("CPEP"). Respondent shall, within **thirty days** of the effective

date of this Order, submit satisfactory proof of enrollment with Board staff. Upon completion of the CME, Respondent shall provide Board staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure.

c. Obey All Laws

Respondent shall obey all state, federal and local laws, all rules governing the practice of medicine in Arizona, and remain in full compliance with any court ordered criminal probation, payments and other orders.

d. Tolling

In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona, will not apply to the reduction of the probationary period.

e. Probation Termination

Prior to the termination of Probation, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent's request for release will be placed on the next pending Board agenda, provided a complete submission is received by Board staff no less than 30 days prior to the Board meeting. Respondent's request for release must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order. The Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED AND EFFECTIVE this 11th day of December, 2023.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Executive Director

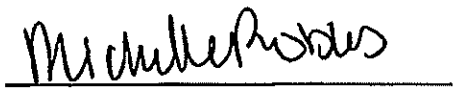
EXECUTED COPY of the foregoing mailed
this 11th day of December, 2023 to:

Mitchell C. Kaye, M.D.
Address of Record

Andrew Plattner, Esq.
ALP Law, PLC
9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Attorney for Respondent

ORIGINAL of the foregoing filed
this 11th day of December, 2023 with:

Arizona Medical Board
1740 West Adams, Suite 4000
Phoenix, Arizona 85007



Board staff

Exhibit C

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **MITCHELL C. KAYE, M.D.** Holder of License No. 25021 For the Practice of Allopathic Medicine In the State of Arizona	Case No. MD-22-0427A **ORDER DENYING PETITION FOR REHEARING**

At its public meeting on February 6, 2024 the Arizona Medical Board ("Board") considered Mitchell C. Kaye, M.D.'s ("Respondent") Petition for Rehearing of the Board's Order dated December 11, 2023 in the above referenced matter. Respondent was represented by his counsel, Andrew Plattner, Esq. Board members noted that the Committee who considered Respondent's formal interview reviewed voluminous evidence and had a robust discussion regarding the appropriate outcome for the case. Board members agreed that Respondent failed to establish that any the criteria for rehearing or review required pursuant to A.A.C.R4-16-103(D). After considering all of the evidence and arguments of counsel, the Board voted to deny Respondent's Petition for Rehearing.

ORDER

IT IS HEREBY ORDERED that:

Respondent's Petition for Rehearing is denied. The Board's December 11, 2023 Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation in Case MD-22-0427A is effective and constitutes the Board's final administrative order.

RIGHT TO APPEAL TO SUPERIOR COURT

Respondent is hereby notified that he has exhausted his administrative remedies. Respondent is advised that an appeal to Superior Court in Maricopa County may be taken from this decision pursuant to title 12, chapter 7, and article 6 of the Arizona Revised Statutes.

DATED AND EFFECTIVE this 13th day of February, 2024.

ARIZONA MEDICAL BOARD

By _____
Patricia E. McSorley
Executive Director

EXECUTED COPY of the foregoing mailed via Certified Mail
this 13th day of February, 2024 to:

Mitchell C. Kaye, M.D.
Address of Record

Andrew Plattner, Esq.
ALP Law, PLC
9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Attorney for Respondent

ORIGINAL of the foregoing filed
this 13th day of February, 2024 with:

Arizona Medical Board
1740 West Adams, Suite 4000
Phoenix, Arizona 85007

_____
Board staff

Ms. McSorley informed the Board of the staff transitions that have taken place and will be taking place. Electing a new slate of officers is a Board process.

Dr. Farmer acknowledged the great job of Ms. McSorley's tenure as ED. Dr. Farmer commented that the committee structure provides an opportunity for distribution of responsibility and for others to gain experience and skills. Dr. Farmer opined that it is time to move Board members through the positions for officers.

MOTION: Dr. Krahn moved to nominate Dr. Figge for Chairman of the Board.
SECOND: Ms. Bain.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Board members were absent: Ms. Jones, Dr. Moschonas, and Ms. Oswald.
VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

Board members agreed that the chair and vice-chair be physician members.

MOTION: Dr. Beyer moved to nominate Dr. Betancourt for Vice-Chairman of the Board.
SECOND: Ms. Bain.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Board members were absent: Ms. Jones, Dr. Moschonas, and Ms. Oswald.
VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

MOTION: Ms. Bain moved to nominate Dr. Krahn for Secretary.
SECOND: Dr. Artz.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Board members were absent: Ms. Jones, Dr. Moschonas, and Ms. Oswald.
VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

J. APPROVAL OF MINUTES

- November 1, 2023 Special Teleconference
- December 18, 2023 Summary Action
- December 8, 2023 Regular Session; including Executive Session

MOTION: Dr. Krahn moved to approve the November 1, 2023, Special Teleconference, December 18, 2023, Summary Action and the December 8, 2023, Regular Session; including Executive Session minutes.
SECOND: Ms. Bain.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Board members were absent: Ms. Jones, Dr. Moschonas, and Ms. Oswald. The following Board members abstained: Dr. Figge.
VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

LEGAL MATTERS

K. MOTION FOR REHEARING/REVIEW (Formal Interview)

1. MD-22-0427A, MITCHELL C. KAYE, M.D., LIC. #25021
   Counsel Andrew Plattner was present on behalf of Dr. Kaye. Dr. Beyer recused from this case.

   Mr. Plattner argued that there is sufficient grounds for rehearing as the findings were not justified by the evidence, the board did not take into account the evidence before them

and did not meet its burden of proof to discipline the physician in the manner it did. Mr. Plattner opined that the Board made it clear that they did not appreciate the physician's attitude. However, the psychologist stated that he is obsessive and compulsive which the physician has admitted to. Mr. Plattner argued that the complainants' statements were inconsistent and false. Mr. Plattner stated that the Board had witness statements and peer reviews, which were not presented at the formal interview. Mr. Plattner argued that the physician demonstrated that without his intervention, the patient would have been injured by the complainant nurse. Mr. Plattner further argued that the potential harm that the Board found had no relation to the patient, but to the physician's conduct. Mr. Plattner requested a rehearing.

During deliberations, Dr. Figge noted that there are eight criteria to consider rehearing the case and opined that there is not a compelling argument for rehearing. Mr. Figge noted that a complainant is not required to appear for a formal interview. Dr. Figge opined that the Committee had a robust discussion, fully reviewed the evidence in the case and their findings were based on the evidence considered.

MOTION: Dr. Figge moved to deny the Petition for Rehearing.
SECOND: Dr. Bethancourt.
Dr. Gillard noted that there were a number of peer reviews over a ten-year period regarding the physician's behavior.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Ms. Dorrell, and Dr. Figge. The following Board member was recused: Dr. Beyer. The following Board members were absent: Ms. Jones, Dr. Moschonas, and Ms. Oswald.
VOTE: 8-yay, 0-nay, 0-abstain, 1-recuse, 3-absent.
MOTION PASSED.

2. MD-22-0911A, PATRICK L. BOSARGE, M.D., LIC. #58004
Counsel Lisa Bivens was present on behalf of Dr. Bosarge.

Ms. Bivens argued that the Board's analysis is inconsistent with Arizona law and is not supported by the evidence but was a result of passion and prejudice. Ms. Bivens argued that the three unprofessional conduct findings were improper. Ms. Bivens first argued that the Board could not find a violation of A.R.S. § 32-1401(27)(r) without articulating a deviation from the standard of care. Ms. Bivens also argued that finding a violation of A.R.S. § 32-1401(27)(u) would put Dr. Bosarge on the OIG exclusion list and negatively impact his ability to practice medicine in a hospital setting. Ms. Bivens opined that the basis for this violation was not factually supported by the evidence. Ms. Bivens Ms. Bivens argued that the violation of A.R.S. § 32-1401(27)(jj) re could not be established due to the lack of direct supervision. Ms. Bivens argued that the Board improperly relied on evidence from the hospital's files. Ms. Bivens lastly argued that the Board's decision was the result of passion and prejudice. In closing, Ms. Bivens requested rehearing or review of the Board's decision.

MOTION: Ms. Bain moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).
SECOND: Dr. Krahn.
VOTE: The following Board members voted in favor of the motion: Dr. Farmer, Dr. Gillard, Dr. Krahn, Dr. Artz, Ms. Bain, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, and Dr. Figge. The following Board members were absent: Ms. Jones, Dr. Moschonas, and Ms. Oswald.
VOTE: 9-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

The Board entered into Executive Session at 9:10 a.m.
The Board returned to Open Session at 9:53 a.m.
No legal action was taken by the Board during Executive Session.

Exhibit D

1. MARC S. BRACY, M.D., LIC. #N/A

   RESOLUTION: Licensure by endorsement granted.

2. CHRISTOPHER P. RODGERS, M.D., LIC. #N/A

   RESOLUTION: Licensure by endorsement granted.

*****END OF CONSENT AGENDA*****

OTHER BUSINESS

S. REQUEST FOR TERMINATION OF BOARD ORDER

1. MD-18-0299A, SHEILA R. MANE, M.D., LIC. #27651

   MOTION: Dr. Gillard moved to grant the request for termination of the April 7, 2023 Board Order.
   SECOND: Dr. Bethancourt.
   VOTE: The following Board members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Gillard, Ms. Jones and Dr. Moschonas. The following Board members were absent: Dr. Artz, Ms. Bain, Dr. Farmer and Dr. Krahn.
   VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 4-absent.
   MOTION PASSED.

2. MD-22-0427A, MITCHELL C. KAYE, M.D., LIC. #25021

   Counsel Andrew Plattner addressed the Board during the Public Statements portion of the meeting on behalf of the physician. Dr. Beyer stated that he knows the physician but that it would not affect his ability to adjudicate the case.

   Ms. Jones commented that she did not find the emails from Board staff threatening, as stated in the letter from the attorney. Ms. Jones opined that in the letter the attorney appears to be derogatory toward not only staff but also to the hospital and the nursing staff. Ms. Jones inquired about the PULSE program and requested clarification on if the issue is that the physician can't get it completed or won't.

   Board staff explained that Dr. Kaye can complete PULSE. He has three out of the four points that are required. Even if he no longer has privileges at the hospital, he does work at another surgery center and would be able to complete it should he choose to at that surgery center. Board staff opined that the issue is that the physician needs to survey the staff where he is working now and opined that he does not want to do that.

   Ms. Jones noted that the hold up is that he would need to survey the staff where he is currently working not as stated per his attorney's letter. Dr. Gillard noted that his case when to Committee A and the physician was not happy with the results and petitioned for rehearing, which was denied. The physician has fulfilled everything except this one part, and there is an avenue to do that. Dr. Gillard inquired if this should be tabled to allow the physician to complete the remaining part. Dr. Figge inquired if the Board simply deny the request for termination to make that statement.

   Ms. Smith opined that denial would make the same statement.

   MOTION: Ms. Jones moved to deny the request for termination of the February 13, 2024 Board Order.
   SECOND: Dr. Bethancourt.

Dr. Beyer noted that the attorney's issue was that PULSE program was not responding to Dr. Kaye's concerns. Dr. Beyer inquired if staff is aware of any communication issues or any legitimate problems that this program is putting in their way. Dr. Figge commented that in the letter the attorney stated that he's not getting any response from the hospital about completing it and they won't complete it because he is no longer on staff there.

Board staff noted that it can be completed from his current place of employment. Board staff had an interview with PULSE over the phone and they were very positive that he could complete it if he could do it at this other facility but it would require work on his part. The physician either doesn't understand this or doesn't want to understand it.
VOTE: The following Board members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Dr. Beyer, Ms. Dorrell, Dr. Gillard, Ms. Jones and Dr. Moschonas. The following Board members were absent: Dr. Artz, Ms. Bain, Dr. Farmer and Dr. Krahn.
VOTE: 7-yay, 0-nay, 0-abstain, 0-recuse, 4-absent.
MOTION PASSED.

T. GENERAL CALL TO THE PUBLIC

T.D. addressed the Board during the General Call to the Public regarding COVID-19.

U. ADJOURNMENT

MOTION: Dr. Beyer moved for adjournment.
SECOND: Dr. Bethancourt.
VOTE: The following Board members voted in favor of the motion: Dr. Figge, Dr. Bethancourt, Ms. Bain, Dr. Beyer, Ms. Dorrell, Dr. Gillard, Ms. Jones and Dr. Moschonas. The following Board members were absent: Dr. Artz, Dr. Farmer and Dr. Krahn.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 3-absent.
MOTION PASSED.

The meeting adjourned at: 3:52 p.m.

Patricia E. McSorley, Executive Director