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**Via Email [sscantlebury@azwater.gov](mailto:sscantlebury@azwater.gov)**

Ms. Sharon Scantlebury  
Arizona Department of Water Resources  
P. O. Box 36020  
Phoenix, Arizona 85067-6020

**Re: Pinal AMA Draft Policy Statement**

Dear Ms. Scantlebury:

I represent ANCCC, LLC, the owner of the Copper Mountain Development. It holds an Analysis of Water Supply in the Pinal Active Management Area for 6,314 acre feet that was issued on May 12, 2015.

In November 2019, the Arizona Department of Water Resources (“ADWR”) posted a draft substantive policy statement regarding the priority of issued assured water supply demands in hydrologic studies for assured water supply applications located in the Pinal active management area hydrologic model area. A copy of that draft is attached hereto for reference. By email dated May 15, 2020, ADWR requested comments on the draft substantive policy statement. These comments are submitted on behalf of Copper Mountain.

Existing rules provide that if an analysis holder applies for a certificate of assured water supply, ADWR presumes that the criterion demonstrated in the analysis (typically, the physical availability of groundwater) remains satisfied, “unless the Director has received new evidence demonstrating that the criterion is not satisfied.” A.A.C. R12-15-703.F.2.

The draft policy statement says that ADWR views the Pinal Model AWS run as evidence demonstrating that the physical availability criterion is likely no longer met for many issued Analyses within the Pinal Model area. It appears that is ADWR’s way of saying that ADWR will no longer presume that the physical availability of groundwater criterion demonstrated in an existing Analysis has been satisfied. Since almost all Analyses’ only demonstration is the physical availability of groundwater, the existing Analyses holders have to start over and prove the physical availability of groundwater if they wish to have a certificate of assured water supply issued.

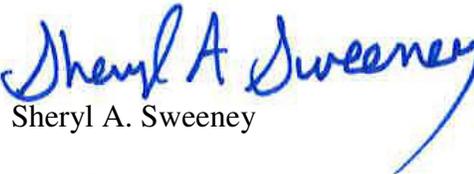
However, rather than requiring that all existing Analyses holders be treated the same, the draft policy statement gives priority to the oldest Analyses, i.e., those who have been tying up groundwater supplies for the longest time, but not really doing anything toward actual development.

By requiring existing Analyses holders applying for a certificate (Copper Mountain currently has a certificate application pending) to provide a hydrology study or model run that includes all Analyses issued prior to the Analysis upon which the applicant is relying, the draft policy statement arbitrarily favors old Analyses and makes newer Analyses essentially worthless. We find this approach highly unusual and will explore all legal remedies if enacted.

In order to avoid an arbitrary and capricious taking of an Analysis holder's real property rights (doing so in a policy statement, rather than a statute, rule or appealable agency action), ADWR has other options. In particular, ADWR could determine how much water is available under the existing Analyses and allow certificates relying on those Analyses to be issued on a first come, first served basis, until the water is "used up." This would allow ready development to move forward, would treat all Analyses holders equally and would allow additional time for the stakeholders to work on additional solutions. It also seems that a decision of this importance should not be done as a policy statement. It deserves, at least, a formal rulemaking, if not statutory direction.

Thank you for this opportunity to provide comments.

Very truly yours,

  
Sheryl A. Sweeney

Enclosure

c: Matt Lawson



DOUGLAS A. DUCEY  
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## SUBSTANTIVE POLICY STATEMENT

*This Substantive Policy Statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties, you may petition the agency under the Arizona Revised Statutes § 41-1033 for a review of the statement.*

### **PRIORITY OF ISSUED ASSURED WATER SUPPLY DEMANDS IN HYDROLOGIC STUDIES FOR ASSURED WATER SUPPLY APPLICATIONS LOCATED IN THE PINAL ACTIVE MANAGEMENT AREA HYDROLOGIC MODEL AREA**

#### **I. BACKGROUND**

Under the Assured Water Supply (AWS) Rules, a landowner can apply for an Analysis of AWS (Analysis) inside an Active Management Area (AMA) to demonstrate that one or more of the assured water supply criteria are met, including that sufficient water supplies are physically available to meet the estimated water demand of the development for 100 years. A.A.C. R12-15-703. Typically, landowners apply for an Analysis to demonstrate physical availability of groundwater. An Analysis issued for physical availability of groundwater can be relied on to demonstrate physical availability of groundwater for purposes of obtaining a Certificate of Assured Water Supply (Certificate), unless the Arizona Department of Water Resources (Department) receives new evidence that the volume of groundwater is no longer physically available. A.A.C. R12-15-703(F)(2). Analyses are issued for a term of 10 years and can be extended if the analysis holder meets certain criteria. A.A.C. R12-15-703(F), (H) and (I).

Pursuant to A.A.C. R12-15-716(B), to demonstrate physical availability of groundwater,<sup>1</sup> an applicant must “submit a hydrologic study, using a method of analysis approved by the Director [of the Arizona Department of Water Resources], that accurately describes the hydrology of the

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<sup>1</sup> For purposes of this substantive policy statement and pursuant to A.A.C. R12-15-716(I)(3), “groundwater” includes stored water to be recovered outside the area of impact of storage.

affected area.” Further, the hydrologic study must show that after 100 years of simulated groundwater pumping to meet the groundwater demands for the applicant, existing uses,<sup>2</sup> and issued demands,<sup>3</sup> depth-to-static water levels in the modeled area will not exceed the levels prescribed in A.A.C. R12-15-716(B)(2).

On October 11, 2019, the Department revised a numeric groundwater flow model for the Pinal AMA, hereafter referred to as the Pinal Model. The most recent Pinal Model 100-year AWS scenario showed significant unmet demands of approximately 8 million acre-feet over 100 years, as well as areas in which the depth-to-static water level exceeds the maximum depth-to-static water level set forth in A.A.C. R12-15-716(B)(2) or depth to bedrock during the 100-year period. The Department views this Pinal Model AWS model run as evidence demonstrating that the physical availability criterion is likely no longer met for many issued Analyses within the Pinal Model area.

The AWS Rules include a priority system for determining physical availability among multiple, conflicting, *pending* applications. A.A.C. R12-15-716(K). However, the AWS Rules do not include a priority system for determining physical availability among multiple, conflicting, *issued* determinations. This Substantive Policy Statement provides a priority system for multiple, conflicting, *issued* determinations when applications rely on issued Analyses or issued Designations of AWS within the Pinal Model area. The Department will consider, on a case-by-case basis and after gaining experience under this Substantive Policy Statement, whether to use the same priority system in other geographic areas of the state for which the applicable hydrologic groundwater model simulates significant unmet Assured or Adequate Water Supply demands.

## II. PRIORITY SYSTEM

This Substantive Policy Statement sets forth guidelines to be used by AWS applicants for the following types of applications located in the Pinal Model area:

1. An application for a Certificate when the application relies on an issued Analysis for evidence of physical availability of groundwater, and

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<sup>2</sup> As described in greater detail in the “ADWR Substantive Policy Statement Hydrologic Guidelines for AWS” (AWS7 dated 8/31/2007) beginning on page 5, “existing uses” include all lots and parcels that receive groundwater from any provider as well as lots and parcels that are supplied by individual wells. Existing uses also include the following: agricultural, municipal, residential, industrial, and commercial uses in addition to wells exempt pursuant to A.R.S. § 45-454 and groundwater withdrawal permits issued pursuant to A.R.S. Title 45, Chapter 2, Article 7.

<sup>3</sup> As described in greater detail in the “ADWR Substantive Policy Statement Hydrologic Guidelines for AWS” (AWS7 dated 8/31/2007) on page 6, “issued demands” include the estimated water demands of issued Certificates, Water Reports, Designations of Assured and Adequate Water Supply, and Analyses of Assured and Adequate Water Supply that are not already served water and that will be met with groundwater.

2. An application for a modification of a Designation of AWS (Designation) when the current Designation includes a volume of groundwater.

An applicant for one of the types of applications listed above must include the following groundwater demands in any hydrologic study or model run:

1. Existing uses as described in “ADWR Substantive Policy Statement Hydrologic Guidelines for AWS” (AWS7 dated 8/31/2007) beginning on page 5.
2. The following issued demands:
  - a. Certificates, and
  - b. Designations.
3. All Analyses issued prior<sup>4</sup> to the Analysis or Designation on which the pending application is seeking to rely.

Analyses issued after the applicant’s previously issued Designation or Analysis may be excluded from the hydrologic study or model run of an application for a Certificate or Modification of Designation.

If an applicant for a Modification of a Designation applies for a volume of groundwater in excess of the volume previously included in the Designation, the applicant may use the guidelines contained in this substantive policy statement only for the volume of groundwater previously included in the Designation. The applicant must demonstrate that the volume of groundwater that exceeds the groundwater volume identified in the previously issued Designation is physically available without the use of the guidelines contained in this substantive policy statement.

For Designated providers with more than one previously issued Designation, the Designated provider may use the priority date and associated Designation groundwater volume of any previously issued Designation, as long as that groundwater volume does not exceed the volume of groundwater identified in the current Designation.

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<sup>4</sup> The Analysis issue date is the date the original Analysis was issued. Analyses that have been extended pursuant to A.A.C. R12-15-703(H) or (I), maintain their original Analysis issue date.

**III. EFFECTIVE DATE**

This Substantive Policy Statement shall become effective immediately. The Director may modify or revoke this Substantive Policy Statement at any time.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019

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Thomas Buschatzke  
Director  
Arizona Department of Water Resources

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