

June 30, 2020

VIA ELECTRONIC MAIL

Thomas Buschatzke, Director
Arizona Department of Water Resources
1110 W. Washington St. Ste. 310
Phoenix, AZ 85007

RE: Comments of Communities Southwest, Inc. on the Draft Substantive Policy Statement, “Priority of Issued Assured Water Supply Demands for Assured Water Supply Applications located in the Pinal Active Management Area”

Director Buschatzke:

On behalf of Communities Southwest, Inc. and its affiliates (“CSW”), we appreciate the opportunity to comment on the Draft Substantive Policy Statement, “Priority of Issued Assured Water Supply Demands for Assured Water Supply Applications located in the Pinal Active Management Area” (“Draft Policy”). CSW has pending applications for certificates of assured water supply in the Pinal Active Management Area (“AMA”) which are based the Analysis of Assured Water Supply No. 42-401951.0001 issued for Villago Phases 2, 3, 4 and Villago Village. The Villago Analysis was issued effective March 7, 2006 and subsequently extended to March 21, 2021.

We believe that the priority policy enunciated in the Draft Policy is sound and reflects a legal position embedded in the existing rules, *i.e.*, that the amount of groundwater deemed physically available in an Analysis is “reserved for the use of the proposed development in subsequent determinations of physical availability” and is presumed available when applying for a certificate of assured water supply for land covered by the Analysis. A.A.C. R12-15-703.F.1. and F.2. The presumption is undermined only if “the Director has received new evidence demonstrating that the criterion is not satisfied.” Applying the Draft Policy ensures that the protections of A.A.C. R12-15-703.F.1. are maintained.¹

We are concerned that *not* applying the Draft Policy would mean that no certificates could be issued until all issued assured water supply determinations are made whole (*i.e.*, eliminate all assured water supply “unmet demand”). It is entirely possible that this goal cannot be achieved and that there are insufficient supplies to meet all issued assured water supply approvals. It is essential to the economic vitality of the Pinal AMA that certificates be issued assuming there is groundwater or other supplies available to meet the projected demand.

¹ We recognize that in treating later issued certificates and designations ahead of analyses is inconsistent with 703.F.1 and are not now objecting to that treatment, although we reserve the right to do so in the context of issuance of a certificate of assured water supply, should it become relevant.

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We appreciate the opportunity to comment and urge the Department to adopt the Draft Policy.

Sincerely,

FENNEMORE CRAIG, P.C.

A handwritten signature in black ink, appearing to read "Rob Anderson", written in a cursive style.

Robert D. Anderson

cc: Mike Kern, Communities Southwest (via email)
Sharon Scantlebury (via email)
David McKay (via email)