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June 30th, 2020

Via E-mail to: sscantlebury@azwater.gov

Thomas Buschatzke, Director
c/o Ms. Sharon Scantlebury
Arizona Department of Water Resources
1110 West Washington, Suite 310
Phoenix, Arizona 85007

Re: Comments on the November, 2019, draft substantive policy statement (“Draft Policy”) outlining a proposal for addressing the priority of issued assured water supply demands in hydrologic studies for assured water supply applications located in the Pinal Active Management Area (“Pinal AMA”).

Dear Director Buschatzke:

I’m filing these comments on behalf of two entities, Southwest Environmental Utilities, LLC (“SEU”) and Johnson Ranch Estates, LLC (“JRE”).

By way of background, JRE was issued an Analysis of Assured Water Supply No. 28-700773.0000 on July 17th, 2014, for the development of Johnson Ranch Estates, south of Florence, Arizona, on the east side of Arizona State Route 79. At build-out, Johnson Ranch Estates will consist of 4,264 single family residences, and 244.6 non-residential acres of commercial area, parks and a school, having a total water demand of about 2,072.30 acre-feet per year. In 2015, JRE initiated development of this property by applying for a Certificate of Convenience and Necessity for SEU from the Arizona Corporation Commission, and then filing an Application with ADWR for designating SEU as having an assured water supply. See Application No. 26-700868.0000. The Application for Designation was based, in part, on the groundwater model that had already been approved by ADWR when it issued Analysis No. 28-700773.0000.¹

The following comments on the Draft Policy rely on the background information outlined in the preceding paragraphs:

1. The first comment concerns the omission of the type of Application described above from the short list of the types of Applications addressed in the Draft Policy. The types of Applications outlined in the Draft Policy are limited to: (i) an application for a Certificate when the Application relies on an issued Analysis for evidence of physical availability of groundwater; and (ii) an application for a modification of a Designation of AWS when the current Designation includes a volume of groundwater. As drafted JRE and SEU would have to abandon the Application for Designation No. 26-700868.0000 in favor of filing for a Certificate of Assured Water Supply. JRE and SEU would also have to seek revocation of the 2016 Member Service Area Agreement. Abandonment of these efforts would not serve any purpose, especially since ADWR would apply

¹SEU and JRE also took other steps to fully comply with all of the requirements necessary for the designation of SEU as a designated water provider. For example, on November 3, 2016, the Central Arizona Water Conservation District approved a member service area agreement for SEU. SEU took steps to establish a service area right, etc.

the same standards to review an Application for a Certificate as it already applied to the review of the Application for Designation.

This issue can be resolved by amending the second type of application so that it reads:

. . . (ii) an application for either a new Designation that relies on an issued Analysis for evidence of physical availability of groundwater, or a modification of a Designation of AWS when the current Designation includes a volume of groundwater.

2. Second, the Draft Policy might require entities like JRE and SEU to rerun the groundwater model upon which the Analysis of Assured Water Supply No. 28-700773.0000 is based. As currently drafted, the Draft Policy would require the applicant for a Certificate or for Modification of Designation (but see comment no. 1, above) to run a groundwater model that incorporates “existing uses and issued demands” that existed on the date that the Analysis was issued, but excludes the analyses that were issued after the date that the applicant’s Analysis was issued. If our understanding of the Draft Policy is correct, the applicant for a Certificate would also have to include in the “existing and issued demands” those demands attributable to issued Certificates or Designations, notwithstanding the fact that such demands arose after the date on which the applicant’s Analysis was issued. This proposed requirement raises serious concerns.

The owner of real property that has an Analysis has a property interest that exists solely for the purpose of using, subdividing or developing that owner’s real property. Requiring the owner to prepare additional groundwater modeling studies before the owner can rely on his property interest is a regulatory taking which is prohibited by Arizona law. See A.R.S. § 12-1134.²

In some cases, there is also a question about why any such additional groundwater modeling should even be required. Table F-3 of Appendix F to ADWR’s October 11, 2019 Pinal Model summarizes Pinal AMA Issued Designations and Results of the Model Run. ADWR’s own model determined that there is no “unmet demand” within SEU’s service area. See page F-10 of Appendix F. If ADWR’s 2019 model shows no unmet demand, that should be a sufficient basis for designating SEU as a designated water provider.

3. Finally, adding a requirement that the owner of real property that currently has an Analysis rerun a groundwater model is contrary to the existing rules of ADWR. A substantive policy that does not go through formal rule-making as required by A.R.S. §§41-1021, et seq. should not be used as a way of amending an existing rule. At a minimum, if ADWR intends to amend its rules, it should do so in accordance with proper rule-making procedure.

² Subsection A of A.R.S. §12-1134 provides: “If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.” A “land use law” is defined in A.R.S. §12-1136 as “any statute, rule, ordinance, resolution or law enacted by this state or a political subdivision of this state that regulates the use or division of land or any interest in land”

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Notwithstanding the foregoing comments, both JRE and SEU understand the need for a resolution of this issue. Both JRE and SEU are available to discuss any of these comments and to work on a solution that furthers the groundwater management goals of the Pinal AMA.

Thank you for the opportunity to provide ADWR with these comments.

Sincerely,



Carlos D. Ronstadt

cc: Ayesha Vohra, ADWR Deputy Counsel (by e-mail)
Gary Drummond, Esq. (by e-mail)
Jeff Crockett, Esq. (by e-mail)