

**NOTICE OF FINAL EXPEDITED RULEMAKING**

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 15. ARIZONA DEPARTMENT OF WATER RESOURCES**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R12-15-701	Amend
R12-15-704	Amend
R12-15-708	Amend
R12-15-710	Amend
R12-15-713	Amend
R12-15-729	Amend

**2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 45-105(B)(1), 45-576(H), and 45-576.09.

Implementing statutes: A.R.S. §§ 45-108.03, 45-576(H), 45-576.08, 45-579(A)(2), 45-579.01, and Laws 2021, chapter 272.

**3. The effective date of the rule:**

**4. 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: 27 A.A.R. Issue 50, dated December 10, 2021.

Notice of Proposed Expedited Rulemaking: 27 A.A.R. Issue 50, dated December 10, 2021.

**5. The agency’s contact person who can answer questions about the rulemaking:**

Name: Emily Petrick, Deputy Counsel  
Address: Arizona Department of Water Resources  
1110 West Washington Street, Suite 310  
Phoenix, AZ 85007  
Telephone: (602) 771-8472  
Fax: (602) 771-8686

Email: [Epetrick@azwater.gov](mailto:Epetrick@azwater.gov)  
Website: [www.new.azwater.gov](http://www.new.azwater.gov)

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered under A.R.S. § 41-1027, to include an explanation about the rulemaking:**

All amendments are justified under A.R.S. § 41-1027(A)(7) because they implement, without material change, courses of action proposed in the Department's Five-Year Rule Review Report approved by the Governor's Regulatory Review Council on June 1, 2021. Additionally, the amendments will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

The Department received written approval from the Governor's Office to make all the included rule amendments through an expedited rulemaking on May 20, 2021. The Department subsequently proposed making these rule amendments through an expedited rulemaking in a proposed course of action included its Five-Year Rule Review Report submitted to the Governor's Regulatory Review Council. The Council approved the report, including the proposed course of action, on June 1, 2021. The Department received final written approval from the Governor's Office to make all the included rule amendments on January 21, 2022.

The following is an explanation of each rule amendment:

Assured and Adequate Water Supply Definitions R12-15-701

R12-15-701 is amended to add three definitions related to amendments to R12-15-704, R12-15-710, and R12-15-713. The additional definitions are for "gray water" and "gray water reuse system" related to the amendments to R12-15-705 and R12-15-710 and "mandatory adequacy jurisdiction" related to the amendment to R12-15-713.

Certificate of Assured Water Supply R12-15-704 and Designation of Assured Water Supply R12-15-710

To be consistent with A.R.S. § 45-576(H), R12-15-704 is amended to allow a reduction in the estimated water demand for a subdivision enrolled as a member land in the CAGR if gray water reuse systems will be installed in the subdivision. R12-15-710 is amended to allow a reduction in the estimated water demand if the designation applicant will serve customers who install gray water reuse systems. Unlike an applicant for a certificate of assured water supply, it is not a requirement that the designation applicant show membership in the CAGR for demand to be reduced because of gray water reuse systems. This distinction is required by A.R.S. § 45-576(H).

Additionally, A.R.S. § 45-576.08, added by SB 1274 (Fifty-fifth Legislature, First Regular Session, 2021) provides that the Director shall not review the physical availability of groundwater and stored water to be recovered outside of the area of impact for an application to modify a designation of assured water supply in the Pinal Active Management Area if certain criteria are met. R12-15-710 is amended to provide the criteria under which the Director shall not

review the physical availability of groundwater and stored water to be recovered outside the area of impact for applicants seeking to modify a designation of assured water supply. The rule applies to all Active Management Areas.

#### Material Plat Change R12-15-708

R12-15-708 is amended to be consistent with A.R.S. § 45-579.01, which was added by SB 1274 (Fifty-fifth Legislature, First Regular Session, 2021). A.R.S. § 45-579.01 provides that for the purpose of determining whether changes to a plat for which a certificate of assured water supply has been issued are material, the Director shall not consider any change in the number of housing units or lots if there is a reduction in the total demand for the subdivision. Additionally, R12-15-708 is amended to provide that an increase in the total number of housing units or lots constitutes a material plat change only if the water demand for the revised plat is equal to or greater than the water demand for the original plat.

#### Water Report R12-15-713

R12-15-713 is amended to provide criteria under which the Director will determine whether to grant an exemption from the adequate water supply requirements pursuant to A.R.S. § 45-108.03. The first change provides an exemption for proposed subdivisions where the municipal provider currently has an entitlement to Colorado River water, does not currently have the legal right to serve the water to the subdivision, but will have the legal right to serve Colorado River water to the subdivision within 20 years. The second change is to provide an application for an exemption for proposed subdivisions where the physical works for delivering water to the subdivision are not complete but are under construction and will be completed within 20 years.

#### Remedial Groundwater R12-15-729

R12-15-729 is amended to make it consistent with SB 1366 (Fifty-fifth Legislature, First Regular Session, 2021) by extending the end date for which use of remedial groundwater by a municipal provider under R12-15-729 will be deemed consistent with the management goal to January 1, 2050.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or 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.

**8. 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.

**9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2):**

This rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement pursuant to A.R.S. § 41-1055(D)(3).

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

None.

**11. A summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

There were no attendees at the oral proceeding held on December 23, 2021. The Department received two written comments during the comment period that ended at 5:00 p.m. on December 23, 2021. No changes to the rule amendments were made based on the comments received.

Entity/Individual	Summary of Comment	Department’s Response
Keith DeVore, the Town of Queen Creek	The comment proposed including new designation applications relying on issued physical availability demonstrations (“PADs”) in the physical availability exemption in proposed R12-15-710(G).	<p>The Department does not agree with this proposed change. Arizona Revised Statute (A.R.S.) § 45-576.08(A) expressly applies to “an application to modify a designation of assured water supply” and provides a physical availability exemption based on the total amount of groundwater and stored water recovered outside the area of impact included in the previously issued designation. The statute does not include a physical availability exemption based on the volume of groundwater included in any other type of previously issued assured water supply (AWS) determination, including a PAD. Further, A.R.S. § 45-576.09 only provides the Department with the authority to revise the AWS rules to apply A.R.S. § 45-576.08 to other active management areas outside of the Pinal Active Management Area, not to other types of AWS determinations such as a PAD. Lastly, A.R.S. § 45-576.08(A)(1)(b) provides that only the physical availability of the groundwater described in A.R.S. § 45-576.08 “shall not be grounds for an objection.” The Department does not have the authority to expand the exemption.</p> <p>A new designation applicant may rely on a PAD to demonstrate physical availability unless conditions</p>

		have changed since the PAD was issued. However, there is no statutory physical availability exemption for PAD groundwater and such a demonstration of physical availability may be grounds for an objection.
Warren Tenney, Arizona Municipal Water Users Association (AMWUA)	The comment expressed AMWUA's support for the rule amendments and encouraged the Department to continue to engage Phoenix Active Management Area stakeholders on further Assured Water Supply policy issues.	Thank you for submitting a comment on behalf of AMWUA supporting the proposed Assured Water Supply rule amendments. Your letter also encouraged the Department to continue to engage Phoenix Active Management Area stakeholders on further Assured Water Supply policy issues. The Department will continue to engage with stakeholders on these issues.

**12. 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 reason why a general permit is not used:**

The rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to the rule amendments.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:**

Federal law is not applicable to the subject of the rule.

**c. Whether a person submitted an analysis that compares the rules' impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None.

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A) and state where the text was changed between the emergency and the final rulemaking packages:**

The rules were not previously made as an emergency rule.

**15. The full text of the rules follows:**

**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
- R12-15-704. Certificate of Assured Water Supply
- R12-15-708. Material Plat Change; Application for Review
- R12-15-710. Designation of Assured Water Supply
- R12-15-713. Water Report
- R12-15-729. Remedial Groundwater; Consistency with Management Goal

**ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

**R12-15-701. Definitions – Assured and Adequate Water Supply Programs**

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
- 9. No change
- 10. No change
- 11. No change
- 12. No change
- 13. No change
- 14. No change

15. No change
16. No change
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34. No change
35. No change
36. No change
37. No change

38. No change
39. No change
40. No change
41. No change
42. No change
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.
4345. "Management plan" means a water management plan adopted by the Director pursuant 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 pursuant to A.R.S. § 9-463.01(J) or (O) or A.R.S. § 11-823(A).
4447. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
4548. "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.
4649. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
4750. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
4851. "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
4952. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
5053. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
5154. "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 pursuant to the designation.

- ~~5255.~~ “Perennial” means a stream that flows continuously.
- ~~5356.~~ “Persons per household” means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
- ~~5457.~~ “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).
- ~~5558.~~ “Plat” means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
- ~~5659.~~ “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.
- ~~5760.~~ “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.
- ~~5861.~~ “Proposed municipal provider” means a municipal provider that has agreed to serve a proposed subdivision.
- ~~5962.~~ “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.
- ~~6063.~~ “Remedial groundwater” means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
- ~~6164.~~ “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 pursuant 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.

- ~~6265.~~ “Subdivision” has the same meaning as prescribed in A.R.S. § 32-2101.
- ~~6366.~~ “Superfund site” means the site of a remedial action undertaken pursuant to CERCLA.
- ~~6467.~~ “Surface water” means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
- ~~6568.~~ “Water Quality Assurance Revolving Fund site” or “WQARF site” means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.
- ~~6669.~~ “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 pursuant to A.R.S. § 45-108 and this Article.

#### **R12-15-704. Certificate of Assured Water Supply**

- A.** No change
- 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 CAGRDR 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; or
    - 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 CAGRDR 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;
  - ~~4.~~ 5. A list of all proposed sources of water that will be used by the subdivision;
  - ~~5.~~ 6. Evidence that the criteria in subsections (F) or (G) of this Section are met; and
  - ~~6.~~ 7. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C.** No change
- D.** No change
- 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 CAGRDR 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 subsection (G) of this Section.

**F.** No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change

**G.** No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

**H.** No change

1. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
2. No change

**I.** No change

**J.** No change

1. No change
  - a. No change
  - b. No change
2. No change
3. No change

**K.** No change

1. No change
2. No change
3. No change

**L.** No change

1. No change
2. No change
3. No change
4. No change

- M. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change

**R12-15-708. Material Plat Change; Application for Review**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
- 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 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 CAGRDR;
      - 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 6 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 CAGR, the additional land has also been enrolled in the CAGR; and
  - d. A certificate has been issued for the additional land.
- D.** No change
- 1. No change
  - 2. No change
  - 3. No change
- E.** No change
- 1. No change
  - 2. No change
  - 3. No change

**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;
  - 4. ~~5.~~ The proposed term of the designation, which shall not be less than two years;
  - ~~5.~~ ~~6.~~ Evidence that the criteria in subsection (E) of this Section are met; and
  - ~~6.~~ ~~7.~~ Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.
- B.** No change
- 1. No change
  - 2. No change
- 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) of this Section 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) of this Section.
- 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) 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, 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.

### **R12-15-713. Water Report**

- A.** No change
- B.** No change
  1. No change
  2. No change
  3. No change
  4. No change
  5. No change
  6. No change
- C.** No change
- D.** No change
  1. No change

- 2. No change
- E. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- F. No change
- G. No change
- H. No change
  - 1. No change
  - 2. No change
- I. No change
- J. No change
- 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 pursuant to A.R.S. § 45-108.03(A)(1)(b) by submitting an application on a form prescribed by the Director and demonstrating that the criteria in subsection (K)(2) of this Section 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 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) of this Section, 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) of this Section.
  - 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 pursuant 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) of this Section 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 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) of this Section, 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) of this Section.
3. If the Director determines that the criteria of subsection (L)(2) of this Section 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.

#### **R12-15-729. Remedial Groundwater; Consistency with Management Goal**

- A.** Use of remedial groundwater by a municipal provider before January 1, ~~2025~~ 2050, is deemed consistent with the management goal of the AMA in which the remedial groundwater is withdrawn and is excluded when determining compliance with management goal requirements in this Article if all of the following apply:
  1. The Director determines that the remedial groundwater use is consistent with the management goal under subsection (F) or (H) of this Section or the remedial groundwater use is consistent with the management goal under subsection (J) of this Section; and
  2. The municipal provider complies with the metering and reporting requirements in subsection (K) of this Section.
- B.** No change
- C.** No change
- D.** No change
  1. No change
  2. No change
  3. No change
  4. No change
  5. No change
  6. No change

7. No change
  8. No change
  9. No change
- E.** No change
1. No change
  2. No change
  3. No change
- F.** The Director shall approve a complete and correct application filed under subsection (B) of this Section if the Director determines that the applicant will use remedial groundwater before January 1, ~~2025~~ 2050. If the Director approves a municipal provider's application, the Director shall calculate the amount of remedial groundwater use that is consistent with the management goal of the AMA as follows:
1. The Director shall determine the total annual amount of remedial groundwater use in all AMAs that is deemed to be consistent with the management goal under this subsection and subsections (H) and (I) of this Section for applications with a priority date earlier than the priority date of the municipal provider's application.
  2. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is equal to or greater than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed to be consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year.
  3. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is less than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year up to the difference between the amount determined in subsection (F)(1) and 65,000 acre-feet, plus a percentage of the municipal provider's authorized remedial groundwater use during the year that exceeds the difference. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
  4. If the amount determined in subsection (F)(1) of this Section is equal to or greater than 65,000 acre-feet, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is a percentage of the municipal provider's authorized remedial groundwater use during the year. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
- G.** If the Director determines that remedial groundwater use by a municipal provider is consistent with the management goal of the active management area under subsection (F) of this Section, the determination shall apply to remedial groundwater used by the municipal provider between the priority date of the application and January 1, ~~2025~~ 2050.
- H.** If, before the effective date of this Section, a municipal provider filed an application with the Director requesting that the Director determine that the provider's use of remedial groundwater pursuant to an approved remedial action project is consistent with the

management goal of the active management area under Laws 1997, Ch. 287, § 52, as amended by Laws 1999, Ch. 295, § 50, the following shall apply:

1. If the Director approved the application before the effective date of this Section and determined the annual amount of remedial groundwater use by the applicant that will be considered consistent with the management goal, the Director's determination shall apply after the effective date of this Section and the Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
  2. If the Director did not approve the application before the effective date of this Section, the Director shall process the application under subsections (E) and (F) of this Section. If the Director approves the application, the Director's determination shall apply to remedial groundwater withdrawn and used by the municipal provider pursuant to the approved remedial action project from the priority date of the application until January 1, ~~2025~~ 2050.
- I.** No change
1. No change
  2. No change
  3. No change
  4. No change
    - a. No change
    - b. No change
  5. No change
- J.** Until January 1, ~~2025~~ 2050, use of remedial groundwater by a municipal provider during a year is deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:
1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
  2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
    - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
    - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
    - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;

- d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
- e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and
- f. The name and telephone number of a person the Department may contact regarding the exemption.

**K.** No change