

Draft Substantive Policy Statement

GUIDELINES FOR REQUESTING A DROUGHT VOLUME EXEMPTION FROM ASSURED WATER SUPPLY MANAGEMENT GOAL REQUIREMENTS

An application for a determination of assured water supply¹ must demonstrate that any “projected groundwater use is consistent with the . . . achievement of the management goal for the active management area.” A.R.S. § 45-576(L)(2). The Arizona Department of Water Resources (Department) has adopted rules to define the criteria for demonstrating that groundwater use is consistent with the management goal of each active management area (AMA). See Arizona Administrative Code (A.A.C.) R12-15-722 through -729. After a determination of assured water supply has been issued, an applicant may seek certain exemptions to allow specific volumes of groundwater use to be considered consistent with the management goal. A.A.C. R12-15-722(G). One of those exemptions is commonly referred to as the “drought volume exemption.” A.A.C. R12-15-722(G)(1). The rule provides that the following volume of groundwater may be considered consistent with the management goal upon application:

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supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E), withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.

Id. The rules define “drought volume” as “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.” A.A.C. R12-15-701(35).

In general terms, the drought volume exemption is based on the volume of a surface water supply determined to be physically available in the designation (determination volume). If less than 80% of the determination volume of the surface water supply is available in a year, the applicant (typically a municipal provider) can pump groundwater to replace or “firm” up to 80% of the determination volume. The drought volume exemption must be requested on an annual basis, pursuant to A.A.C. R12-15-722(G).

Although the calculation of the amount of the drought volume exemption is clearly defined, the rule does not clearly provide for implementation when the surface water supply in

¹ Unless otherwise indicated, all terms used in this substantive policy statement have the same definition as provided in A.A.C. R12-15-701 and Arizona Revised Statutes (A.R.S.) Title 45.

question is one of multiple supplies included in the determination of assured water supply. This policy statement provides additional guidance² in that regard.

In the case of a determination of assured water supply that includes multiple water supplies,³ the applicant should maximize the use of other water supplies, including a proportionate volume of any applicable groundwater allowance, prior to applying for a drought volume exemption.⁴ The drought volume exemption is intended to be a limited exemption from the general requirement in Section 45-576(L)(2) that all groundwater use within an AMA to support new development must be consistent with the management goal of the AMA. This interpretation is also consistent with Arizona's public policy set forth in the Groundwater Management Act:

... in the interest of protecting and stabilizing the general economy and welfare of this state and its citizens it is necessary to conserve, protect and allocate the use of groundwater resources of the state and to provide a framework for the comprehensive management and regulation of the withdrawal, transportation, use, conservation and conveyance of rights to use the groundwater in this state.

A.R.S. § 45-401(B).

The Department recognizes that shortage determinations on the Colorado River may increase significantly both in volume and frequency, leading to reductions in CAP water available for delivery earlier and in greater volumes than previously anticipated. In order to allow municipal providers to adapt to these changing conditions, the Department offers the following guidance:

A. An applicant should be implementing a late-stage drought response plan prior to seeking a drought volume exemption.

Any applicant for a drought volume exemption should be implementing a late-stage drought response plan. In particular, the applicant should be taking concrete steps to further reduce or curtail water demand, well beyond increasing awareness and education and encouraging voluntary measures. Such concrete steps may include, but are not limited to

² This policy statement does not constitute a final determination regarding any application. Circumstances will differ for any applicant, particularly in times of shortage, and the Department acknowledges that extenuating circumstances may require alternative approaches.

³ Most determinations of AWS that include multiple supplies are designations of AWS. However, this policy may also apply to certificates.

⁴ Although alternative supplies should be maximized prior to applying for a drought volume exemption, the calculation of the drought volume exemption does not necessarily reduce the volume of the drought volume exemption under the rule. In other words, if an applicant is fully utilizing alternative supplies as described in this policy statement, the applicant may be entitled to withdraw groundwater as necessary to replace up to 80% of the surface water supply in question.

comprehensive distribution system water loss control, including annual audits and system improvements; limiting non-essential water use for public buildings and other public areas; restrictions on non-essential water use; implementation of measures to significantly reduce residential and commercial, institutional, and industrial water use (i.e., ordinances to restrict non-functional turf, turf buyback, water budgets, retrofit programs/requirements, etc.); or an enhanced rate structure to further disincentivize water use. Reduction of a water supply by more than 20% (the threshold for the drought volume exemption) necessitates action beyond replacing a supply with groundwater. The Department anticipates that applicants will begin implementing drought response plans well in advance of reaching that threshold, and any applicant should be implementing multiple components of a late stage drought response plan prior to seeking the drought volume exemption.

B. Groundwater allowances must be utilized before seeking a drought volume exemption.

The drought volume exemption expressly excludes groundwater that is consistent with the management goal pursuant to the groundwater allowance. A.A.C. R12-15-722(G)(1) (“other than the groundwater that is accounted for under subsection (A), (C), or (E) of this section,” where the subsections reference groundwater allowances). If the groundwater allowance is calculated as a lump sum for the 100-year period, rather than an annual volume, the applicant will be required to apply the annual average volume of the groundwater allowance over 100 years (or 1/100 of the groundwater allowance) rather than the full groundwater allowance balance.

C. An applicant for a drought volume exemption should maximize the beneficial use of all other supplies available to them prior to requesting an exemption, unless an insurmountable barrier precludes the use of a supply.

All renewable supplies included in the applicant’s determination of assured water supply, including groundwater to be withdrawn outside an AMA and effluent for direct or indirect potable reuse, must be fully put to a beneficial use prior to requesting a drought volume exemption for groundwater use. The Department recognizes that the determination of assured water supply may acknowledge certain barriers to use, such as entitlement water that is restricted to use on eligible lands, or the direct use of effluent to serve non-potable demands. To the extent these barriers are recognized in the determination of assured water supply, the applicant must maximize the use of the water supply subject to those defined limitations.

As stated above, the Department recognizes that in some cases, reductions in a surface water supply, such as CAP water, may occur earlier or in substantially larger volumes than previously anticipated, and earlier than alternative water supplies and/or infrastructure may be available to replace the reduced supply. The Department will therefore consider, on a

case-by-case basis, granting a drought volume exemption to an applicant under the following conditions:

1. The applicant must provide a compelling justification for the inability to fully put the alternative supply to beneficial use; and
2. The applicant must provide and implement a plan to fully put the supply to beneficial use within a reasonable timeframe (3-5 years).

The drought volume exemption must be requested on an annual basis, and the applicant must update both the justification and the timeframe to include a description of progress achieved, for each year that the application is submitted. Furthermore, failure to make reasonable progress, or failure to maximize the use of the alternative supply in a reasonable timeframe, may necessitate a review of the designation of assured water supply pursuant to A.A.C. R12-15-711(C) to determine whether the alternative supply should continue to be included.

D. If an applicant has not historically used the determination volume of the surface water supply subject to drought, then the drought volume exemption is limited based on the average use of the highest 3 of the last 5 years.

In the event a provider has not previously used the full determination volume of the surface water supply, the drought volume exemption should not be sought to relieve the applicant from replenishment requirements or other costs that it would face regardless of the shortage.

For example: Applicant A has a determination of assured water supply that includes 1,000 acre-feet per year of groundwater (subject to groundwater allowance and replenishment) and 500 acre-feet per year of CAP water, but Applicant A typically uses 1,000 acre-feet per year of groundwater and 300 acre-feet per year of CAP water. A Colorado River shortage is declared, and Applicant A is will only be able to order up to 250 acre-feet per year of CAP water (50% of the determination volume). Applicant A is only eligible for a drought volume exemption for 50 acre-feet per year to replace Applicant A's historical average use of CAP water, rather than 150 acre-feet per year, which would exempt groundwater that is typically subject to replenishment.

E. A drought volume exemption is not available to an applicant that has accrued long-term storage credits in the same year.

Accrual of long-term storage credits is a beneficial use of water. *See, e.g.,* A.R.S. Title 45, Chapter 3.1. The State of Arizona established an underground storage program to

Project the general economy and welfare of this state by encouraging the use of renewable water supplies, particularly this state's entitlement to Colorado

river water, instead of groundwater through a flexible and effective regulatory program for the underground storage, savings and replenishment of water.

Permitting an exemption for groundwater use due to shortage while the groundwater user is accruing long-term storage credits with non-groundwater supplies would conflict with the policies and laws regarding underground water storage, as well as with the purpose and policies of the Groundwater Management Act and the assured water supply program. Therefore, if an applicant for a drought volume exemption has accrued long-term storage credits in the same year for which the exemption is sought, the Department will not grant the exemption. This does not affect the ability of an applicant to rely on annual storage and recovery.

F. A drought volume exemption is not available to an applicant that has pledged an alternative supply, including the use of long-term storage credits, as a back-up supply.

Pursuant to A.A.C. R12-15-716(E) and (F)(3), an applicant may increase the volume of a surface water supply, Colorado River water supply, or CAP water supply that is physically available by pledging an alternative source of water as a “back-up supply.” Because the volume of water physically available is expressly reliant on the back-up supply, the applicant is expected to utilize that back-up supply in the event of shortage.

G. A potential applicant should consult with the Department prior to participating in a voluntary system conservation program.

For several years, the Department, the Central Arizona Water Conservation District, the Bureau of Reclamation and others have compensated Colorado River water users for voluntarily reducing their use of Colorado River water or CAP water in order to conserve water in the system and protect reservoir elevations. The Director of the Department must weigh the potential risks and benefits of both mining of Arizona groundwater and protecting the Colorado River System. This will be a case-by-case analysis. Factors to consider may include current and projected reservoir elevations; current and projected hydrology; decisions, determinations, or other guidance by the Secretary of the Interior; the status of Colorado River negotiations; local groundwater supplies. Unknown factors may also affect the consideration in the future. Prior to entering an agreement to voluntarily conserve water for the benefit of the system, a potential applicant for the drought volume exemption should consult with the Department for a determination of whether an exemption would still be available under the circumstances at that time.

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 _____, 2022.

[Insert signature]

