

PUBLIC MEETING: DRAFT SUBSTANTIVE POLICY STATEMENT ON THE DROUGHT VOLUME EXEMPTION FOR ASSURED WATER SUPPLY



Arizona Department of Water Resources
1110 W. Washington, Suite 310
Conference Room 3175
Phoenix, Arizona 85007

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Meeting Agenda

1. Welcome
2. Presentation
 - a. Background
 - b. Policy Statement Overview
3. Public Comments
4. Next steps



What is the Drought Volume Exemption?

The “drought volume exemption” (or DVE) is based on the Assured Water Supply (AWS) Rules and creates an exemption from the requirement to replenish groundwater.



Drought Volume Exemption

A.A.C. R12-15-701(35):

“Drought volume” means 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. R12-15-722(G)(1) provides that the following volume of groundwater is 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supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E), withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.



Drought Volume Exemption

In general terms (i.e., translated from legalese):

- Based on the volume of a surface water supply determined to be physically available in the AWS determination (“determination volume”)
- If less than 80% of the determination volume of the surface water supply is available in a year
- The applicant (typically a water provider) can pump groundwater to “backfill” or “firm” the supply up to 80% of the determination volume
- Application must be submitted annually and should be filed concurrently with the applicants’ annual report



Policy Statement Background

- The calculation of the amount of the drought volume exemption is clearly defined in the rule.
- However, the rule does not clearly provide for implementation when the surface water supply in question is one of multiple supplies included in the determination of AWS.
- The draft policy statement provides additional guidance. *It does not constitute a final determination regarding any application.*
- Circumstances will differ for any applicant, particularly in times of shortage, and extenuating circumstances may require alternative approaches.



Policy Statement

In the case of a determination of AWS that includes multiple water supplies:

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.

The DVE is intended to be a **limited exemption** from the general requirement that all groundwater use within an AMA to support new development must be consistent with the management goal of the AMA. A.R.S. § 45-576(L)(2)



Policy Statement

This is also consistent with Arizona’s public policy set forth in the Groundwater Management Act:

“It is therefore declared to be the public policy of the state that 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).

Reductions in Colorado River supplies 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.

The policy statement offers guidance to allow municipal providers to adapt to these changing conditions.



Drought Response Plan

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

- The reduction of a water supply by more than 20% (the threshold for the DVE) necessitates additional action beyond replacing a supply with groundwater.
- The Department anticipates applicants will begin implementing drought plans well in advance of this threshold and should be implementing multiple components of a late stage of their drought response plan.



Drought Response Plan

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

- Demand reduction measures should go well beyond increasing awareness and education and encouraging voluntary measure and may include but are not limited to:
 - 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.



Groundwater Allowance First

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

- The DVE 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.



Maximize Other Supplies

- C. Applicant should maximize use of all other supplies available to them prior to requesting a drought volume exemption, unless an insurmountable barrier precludes the use of a supply.**
- All renewable supplies included in the applicant’s determination of AWS—including groundwater to be withdrawn outside an AMA and effluent for direct or indirect potable reuse—must be fully put to beneficial use prior to requesting a DVE for groundwater use.
 - The determination of an AWS may acknowledge certain limitations to use, such as restricting use of entitlement water to eligible lands, or the direct use of effluent to serve non-potable demands.
 - To the extent limitations are recognized in the determination of AWS, the applicant must maximize the use of the water supply subject to those defined limitations.



Insurmountable Barriers

- In some cases, reductions in a surface water supply (i.e., 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 consider, on a case-by-case basis, granting a drought volume exemption to a designated provider 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 use within a reasonable timeframe (3-5 years).



Insurmountable Barriers

If these two conditions are met and the Director approves the DVE:

- The DVE for subsequent years must be requested on an annual basis and should be filed concurrently with the applicant's annual report.
- Applicant must update both the justification and the timeframe to include a description of progress achieved, for each year that an application is submitted.
- 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 determination of AWS pursuant to A.A.C. R12-15-711(C) to determine whether the alternative supply should continue to be included in the determination.



Based on Historical Use

- 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 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 DVE should not be sought to relieve the applicant from replenishment requirements or other costs that it would face regardless of shortage.

(Example on following slide)



Based on Historical Use

Example:

Applicant has a determination of AWS that includes:

1,000 AF/yr of groundwater (subject to groundwater allowance & replenishment) and
500 AF/yr of CAP water

Typically, Applicant uses:

1,000 AF/yr of groundwater and **300 AF/yr of CAP water**

Due to shortage reductions, Applicant is only able to order up to:

250 AF/yr of CAP water (50% of the designation volume)

Applicant is only eligible for a DVE of 50 AF/yr to replace their historical average use of CAP water (rather than 150 AF/yr, which would exempt groundwater that is typically subject to replenishment)



No DVE When Accruing LTSCs

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

If an applicant has accrued LTSCs 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.)

- Accrual of long-term storage credits is a beneficial use of water. The State of Arizona established an underground storage program to:

*“Protect 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.” A.R.S. § 45-801.01*

- Permitting an exemption for groundwater use due to shortage while the groundwater user is accruing LTSCs with non-groundwater supplies would conflict with the policies and laws regarding underground water storage and with the purpose and policies of the GMA and the AWS program.



Use Pledged Back-up Supplies

- F. A drought volume exemption is not available to an applicant that has pledged an alternative supply, including the use of LTSCs, 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.



Voluntary System Conservation

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

The Department, CAWCD, BOR, and others have compensated Colorado River water users for voluntarily reducing their use of Colorado River water or CAP water 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 groundwater and protecting the Colorado River System to determine if a DVE is available to the applicant under the circumstances at a given point in time.

- 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.



Questions

- We have reserved time for questions from the audience, both in person and online.
- For those attending in person, please raise your hand if you have a question.
- For those joining us online, please submit an online speaker card. The link will be posted in the chat box.
- Public comments on the draft may be sent to Sharon Scantlebury by December 7, 2022.
- Details available at <https://new.azwater.gov/laws-rules-policies>



Next Steps

- The draft policy statement and information regarding comments will be available at <https://new.azwater.gov/laws-rules-policies>
- ADWR anticipates adopting a substantive policy statement by the end of the year. It will take effect on the date signed by the Director.
- The final substantive policy statement will be posted on ADWR's website here: <https://new.azwater.gov/laws-rules-policies/substantive-policy-statements>
- ADWR will file the final substantive policy statement with the Secretary of State and publish notice in the Arizona Administrative Register pursuant to A.R.S. § 41-1013(B).



Written Comments

- Information related to today's meeting will be posted on ADWR's website here: <https://new.azwater.gov/laws-rules-policies>
- As a reminder, comments on the draft policy statement should be submitted no later than December 07, 2022, and should be sent to:

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