NEWS RELEASE

Arizona House of Representatives
Speaker Steve Montenegro (R-29)
1700 West Washington • Phoenix, Arizona • 85007

Monday, March 10, 2025
FOR IMMEDIATE RELEASE

Arizona House of Representatives Sues Rogue Water Agency for Illegal Rules that Increase Housing Costs

STATE CAPITOL, PHOENIX – Arizona House Speaker Steve Montenegro announced today that the Arizona House of Representatives, in partnership with the Home Builders Association of Central Arizona (HBACA) and the Arizona Senate, has filed a lawsuit against the Arizona Department of Water Resources (ADWR) over its adoption of an unlawful groundwater tax that threatens housing affordability across the state.

"This is government overreach at its worst," said Speaker Montenegro. **"The people of Arizona elected us to defend their interests, not allow unelected bureaucrats to impose illegal taxes that make the American Dream of homeownership even more out of reach. The 33.3% groundwater tax represents not only a blatant overreach of executive authority, but also a direct attack on hardworking Arizona families who will see the price of new homes increase by thousands. We cannot allow the executive branch to trample on the authority of the Legislature or push through extreme policies that drive up the cost of living."**

The lawsuit challenges ADWR's "Alternative Path to Designation of Assured Water Supply" (ADAWS) regulations, which mandate that developers secure 33.3% more water than necessary to meet their own needs. The purpose of the mandate is to make future homebuyers subsidize the unreplenished groundwater pumping of other users. This mandate, which was imposed without legislative approval, exceeds the scope of existing law and cannot be enforced. The Legislature has repeatedly made clear that this 33.3% groundwater tax is illegal, including through a formal resolution adopted by the Joint Legislative Ad Hoc Study Committee on Water Security in December and a House Concurrent Resolution advanced by the House this session.

"This is a cut-and-dried case," Speaker Montenegro continued. **"The department has gone rogue, acting as if it is above the law and unaccountable to the people of Arizona. It ignored direct warnings from the Legislature, bypassed stakeholder input, and rushed through a rulemaking process that will drive up home prices for thousands of Arizonans. This is exactly why our House Republican Majority Plan focuses on reining in executive overreach, making housing affordable, and lowering taxes for Arizonans. Homebuyers should not be forced to foot the bill for illegal taxes or subsidies for other water users."**

The Legislature is taking this action to restore order and accountability to ADWR, defend the authority of the legislative branch, and prevent unnecessary costs from being passed on to Arizona homebuyers.

A copy of the lawsuit is attached.

Steve Montenegro is the Speaker of the Arizona House of Representatives and serves Legislative District 29 in the West Valley, Goodyear, and Surprise. Follow him on X at @SteveMontenegro.

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SUPERIOR COURT OF THE STATE OF ARIZONA

MARICOPA COUNTY

HOME BUILDERS ASSOCIATION OF CENTRAL ARIZONA, a domestic nonprofit corporation; STEVE MONTENEGRO, in his official capacity as the Speaker of the Arizona House of Representatives; and WARREN PETERSEN, in his official capacity as the President of the Arizona State Senate,

Plaintiffs,

vs.

ARIZONA DEPARTMENT OF WATER RESOURCES, an Arizona state agency, TOM BUSCHATZKE, Director of the Arizona Department of Water Resources in his official capacity,

Defendants.

Case No.: _____

COMPLAINT FOR SPECIAL ACTION, DECLARATORY, AND INJUNCTIVE RELIEF

(Assigned to _____)

Plaintiffs Home Builders Association of Central Arizona ("HBACA"), Arizona State Senate President Warren Petersen, and Speaker of the Arizona House of Representatives Steve Montenegro bring this Complaint against Defendant Arizona Department of Water Resources ("ADWR") and ADWR Director Tom Buschatzke in his official capacity ("Director") (collectively "Defendants") and alleges as follows:

INTRODUCTION

1. This is a case arising from ADWR's groundwater regulation and illegal amendments to Arizona Administrative Code, Title 12, Chapter 15, Article 7 ("Article 7"), which took effect on November 25, 2024 (the "Illegal Rule Amendments").

2. The Illegal Rule Amendments are improperly promulgated, contradict express statutory terms, and not authorized by statute. They are thus illegal under Arizona law and should be invalidated. A.R.S. §§ 41-1030(A); -1055(A); -1056.01(H); § 45-576(M).

3. The Illegal Rule Amendments apply to certain areas of Phoenix and Pinal County that rely heavily on groundwater for new development. These areas are known as "active management areas" ("AMAs"). *See* A.R.S. § 45-412.

4. The Illegal Rule Amendments governing these AMAs are illegal for two overarching reasons:

5. ***First***, the Illegal Rule Amendments are not authorized by, and exceed the scope of, the statutory provisions that they purport to implement. In particular, the amended R12-15-710 violates § 45-576(M) because it imposes a redistributionist 33.3% water tax (the "33.3% Water Tax") prohibited by § 45-576(M).

6. Specifically, under § 45-576(M), to obtain a designation of Assured Water Supply, a user must only demonstrate "[s]ufficient groundwater, surface water or effluent . . . continuously available to satisfy the water needs of the proposed use for at least one hundred years." The key language here is "water needs of *the proposed use*"—*i.e.*, the *applicants' water use*, *not the uses of others*.

7. The amended R12-15-710(H), however, forces new groundwater users (such as developers) to obtain water to compensate for ADWR's projected deficits caused by the historic uses of *other users*.

8. This practice violates § 45-576(M), which does not require groundwater users to produce any water for others.

9. This violation is particularly egregious because agency rules are "invalid" under Arizona law "unless [the rule] is *consistent with statute*, [and] reasonably necessary to carry out the purpose of the statute." § 41-1030(A). Additionally, "[a]n agency shall not…[m]ake a rule…that is *not specifically authorized by statute*," A.R.S. § 41-1030(D)(3) (emphasis added) or "base a licensing decision in whole or in part on a licensing requirement or condition that that is *not specifically authorized* by statute." §§ 41-1030(B) (emphasis added).

10. Here, the amended R12-15-710(H) is not even arguably "consistent with . . . statute," or "reasonably necessary to carry out the purpose of…statute" because it is *prohibited* by § 45-576(M). *See* § 41-1030(A). Moreover, no statute "specifically authorizes" ADWR to promulgate R12-15-710(H). § 41-1030(B), (D)(3).

11. ***Second*,** the Illegal Rule Amendments are procedurally defective and thus violate §§ 41-1055; and -1030(A). ADWR amended R-12-15-710 with a host of other rule changes to Article 7—R12-15-701; R12-15-710; R12-15-711; R12-15-720; R12-15-723; R12-15-724; R12-15-725. In doing so, ADWR did not comply with the procedure mandated in § 41-1055, which includes, among other things, that ADWR analyze *at least* seven separate elements, including the "probable costs" of the 33.3% Water Tax and provide "acceptable data" supporting its cost analysis—*i.e.*, studies or other replicable, empirical research. This information must be provided in an "economic, small business and consumer impact statement." § 41-1055.

12. ADWR failed to comply with § 41-1055 because "the contents of ADWR's economic, small business and consumer impact statement were insufficient and inaccurate." § 41-1055(H).

13. Specifically, ADWR blithely dismissed all such costs as "minimal" and conducted no study to justify the 33.3% Water Tax. [*See Notice of Final Rule Making Authority*, A.A.R., Vol. 30, Issue 50; p. 3755—56, relevant portions attached and highlighted as Exhibit A].

14. As explained below, *infra* ¶¶ 70–80, ADWR masked the 33.3% Water Tax as an additional "25 percent" water requirement for groundwater users. *See* R12-15-710(H). In reality, it imposes a 33.3% Water Tax. *Id.* But even the "25 percent" is not defensible, lacks rationale, and is unsupported by the "acceptable data" described above. ADWR has supplied neither "acceptable data" nor a rationale to support adoption of the Illegal Rule Amendments purportedly authorizing the 33.3% Water Tax.

15. Because ADWR failed to make a "good faith" effort to comply with the required procedures in § 41-1055 and did not explain in writing the "methodology" it used to devise the Water Tax, the Illegal Rule Amendments are also invalid for this reason. *See* §§ 41-1052(J); -1030(A) (prohibiting agencies from promulgating rules without following the procedures set forth in the Arizona Administrative Procedure Act ("APA")); *see also* A.R.S. §§ 41-1056.01(H) (permitting invalidation by "court of competent jurisdiction" where party seeks declaration that agency failed to comply with APA procedures).

16. As such, Plaintiffs seek: (1) an injunction enjoining ADWR from enforcing the Illegal Rule Amendments; (2) a declaratory judgment that the Illegal Rule Amendments violate § 45-576; and §§ 41-1034(A), 41-1055(B) and -1030(A), (D)(3); (3) a Writ of Mandamus compelling the Director, pursuant to his mandatory duties under A.R.S. §§ 45-105 (B)(1)-(2) to enforce and administer the lawful groundwater user requirements of A.R.S. § 45-576(M), and, as required by law, not enforce or administer the unlawful, amended R12-15-710(H) imposing a 33.3% Water Tax; and (4) a vacatur of the Illegal Rule Amendments.

STATUTORY AND REGULATORY BACKGROUND

I. § 45-576(M) and Article 7 Govern Assured Water Supply Designations.

17. Under § 45-576(A), a subdivider seeking approval of a plat in an AMA must receive either: (1) a certificate of Assured Water Supply ("Certificate") from ADWR; or (2) a commitment of service from a municipal provider ("Provider") (*i.e.* cities, towns, certain districts, and private companies) with a designation from ADWR that the Provider's service area has an Assured Water Supply ("Designation").

18. A city, town, or county may only approve a subdivision plat if ADWR has issued a Certificate to the subdivider or Designation to the Provider. § 45-576(B).

19. ADWR will only issue Certificates if groundwater is "physically available" for 100 years pursuant to ADWR's groundwater models—the 2024 updated Phoenix Model and 2019 Pinal Model. A.A.C R12-15-716. And because these models show that groundwater will not be physically available across the subject AMAs for 100 years, ADWR has effectively issued a moratorium on Certificates for many developers.[1]

20. Indeed, in the Phoenix and Pinal County AMAs, if ***any*** well in the Phoenix AMA shows that it will run dry at ***any time*** in the next 100 years—despite lack of proximity to the well subject to certification—no Certificate can be issued.

21. To illustrate, a developer seeking a Certificate in Buckeye will be denied if any well—including an *unrelated well* in Apache Junction—shows that it not will produce water at any time in the 100-year projection.

22. Therefore, many developers can only feasibly subdivide through obtaining water from a Provider with a Designation.

23. Thus, this litigation addresses the narrow process by which a developer must pay a Provider to obtain a Designation for the Phoenix and Pinal County AMAs.

[1] Plaintiffs maintain that this practice is also illegal. HBACA is currently challenging the Department's determination of "physical[] availab[ility]" according to its groundwater models in a separate action filed on January 22, 2025 under Case No. CV2025-002623.

A. *Laws and Regulations Governing Designations*.

24. As alleged above, *supra* ¶ 17, to obtain a Designation, a developer must obtain a "commitment of service" from a Provider with a designation from ADWR that the Provider's service area has an Assured Water Supply.

25. Under § 45-576(M), "Assured Water Supply" for a Designation means that the Provider can show that it will have "sufficient groundwater, surface water or effluent . . . continuously available to satisfy the water needs of the proposed use for at least one hundred years."

26. Section 45-576(H) directs ADWR to adopt rules by which it will issue Designations.

27. ADWR, however, may not change the statutory definition of "Assured Water Supply." *See* § 45-576(M). The power to do so lies solely with the Legislature. Ariz. Const. art. III.

28. ADWR promulgated Article 7, which provides the procedure, as well as the criteria, to obtain a Designation in an AMA.

29. Among other criteria, ADWR requires that any water supply be "physically available" for 100 years, pursuant to A.A.C. R12-15-716.

30. To demonstrate physical availability of groundwater, the Provider must submit to ADWR a "hydrologic study, using a method of analysis approved by the Director [of ADWR], that accurately describes the hydrology of the affected area," which demonstrates that after 100 years of pumping in the area, including pumping to serve the demands in the application, water will not exceed a certain depth below land surface (the "100-year depth-to-static water level")." A.A.C. R12-15-716(B)(2).

THE PARTIES, JURISDICTION, AND VENUE

31. Plaintiff HBACA is a trade association for the residential construction and housing development industry that serves its members' interests at state and local levels of government. Many of HBACA's members are subdivision developers.

32. HBACA's principal office in Maricopa County.

33. HBACA is a "person" under A.R.S. § 41-1001(17).

34. Steve Montenegro is the Speaker of the Arizona House of Representatives.

35. Warren Petersen is the President of the Arizona State Senate.

36. ADWR is an agency of the Executive Branch of the government of the State of Arizona. Its primary office is in Maricopa County, and it conducts business in Maricopa County. ADWR is the state agency responsible for groundwater usage and replenishment in the state of Arizona. ADWR promulgated the Illegal Rule Amendments.

37. Defendant Tom Buschatzke is the Director of ADWR, and as Director, has only powers and duties set forth in A.R.S. § 45-105. He is sued in his official capacity only.

38. Venue lies in Maricopa County pursuant to A.R.S. §§ 12-401(16) and 41-1034(A) because Defendant holds office in Maricopa County and Plaintiffs seek declaratory, special action, and other relief.

39. This Court has personal jurisdiction over ADWR.

40. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the Arizona Constitution and A.R.S. §§ 12-123, -1801, and -1831, § 41-1034, and Rules 2(b)(1) and 6(a)(2) of Ariz. R. P. Spec. Act.

41. Under the Arizona Rules of Civil Procedure, this case qualifies as a Tier 2 case.

42. HBACA has standing to bring this Complaint under both: (1) associational and organizational standing; (2) mandamus action under Rules 2(b)(1) and 4(a) of Ariz. R. of Spec. Act.; and (3) under the statutory cause of action in A.R.S. § 41-1030(A) and (E). The Legislature has standing because ADWR's unauthorized and *ultra vires* exercise of legislative power in promulgating the Illegal Rules inflicts an institutional injury on the legislative branch. In addition and alternatively, the Legislature is "affected by" ADWR's contravention of clear legislative directives that prescribe and limit the agency's powers, and thus has standing to seek declaratory relief under A.R.S. §§ 41-1030(A), (E) and -1034.

I. Associational and Organizational Standing.

43. *First,* HBACA has organizational and associational standing to bring this Complaint.

44. HBACA's members include developers within the Phoenix and Pinal County AMAs.

45. Many of HBACA's members are developers. They are currently subject to the Illegal Rule Amendments when they attempt to secure water from a Provider with a Designation.

46. Because the Designations impose a 33.3% Water Tax, *infra* ¶¶ 70–80, Providers must pay more for water, thereby increasing the overall price of a Designation. And as alleged above, *supra* ¶¶ 17–23, because Developers in the Phoenix and Pinal County AMAs effectively cannot secure a Certificate, Designations are their only feasible path to subdividing and developing their land.

47. Providers will pass the increased cost of Designations onto HBACA's members, as set forth below.

48. Those developers are members of HBACA. Their increased costs establish associational standing for HBACA.

49. ADWR has admitted that Providers may expect developers to cover the increased costs of the Designation resulting from the 33.3% Water Tax. [Ex. A, p. 3755 (admitting that subdivision developers will "bear the costs" of Illegal Rule Amendments).

50. The 33.3% Water Tax is an obstacle to obtaining a Designation, rendering development under Designated Providers cost prohibitive and imposing an immediate threat of harm. Unless the Illegal Rule Amendments are enjoined, HBACA's members will: (A) lose substantial financial resources; and (B) be unable to develop their land altogether.

51. As an organization, HBACA has already suffered concrete harm by being forced to pay specific costs arising from the Illegal Rule Amendments. HBACA was forced to hire an outside consultant to conduct a study—ADAWS Cost of Water for New

Development Analysis dated November 18, 2024 (the "Study")—of the costs imposed by the Illegal Rule Amendments. ADWR should have conducted that study to justify the 33.3% Water Tax. *See* § 41-1055(B); *supra* ¶ 13; *infra* ¶ 84. Absent that study, HBACA would not know the cost it (or its members) will be expected to bear under the Illegal Rule Amendments.

52. As an organization, HBACA has also suffered a substantial disruption in its mission to secure and provide affordable housing in Arizona, because the 33.3% Water Tax will imminently increase the cost of securing water for developers to provide housing in Arizona. This mission is germane to its purpose to encourage and facilitate housing development.

53. Additionally, the results of the Study establish that developers will pay more to develop land in Arizona.

54. Therefore, HBACA faces a real threat and controversy caused by Illegal Rule Amendments. As such, HBACA has associational and organizational standing to bring this Complaint, based both on the injury to members and itself.

II. Standing to Allege a Mandamus Action under A.R.S. § 12-2021.

55. *Second*, HBACA has standing to allege a mandamus action under Ariz. R. Spec. Act 3(a); A.R.S. § 12-2021. This is a separate count — Count III—alleged in the alternative to the other counts alleged in this Complaint.

56. Under § 12-2021, any person "beneficially interested" in a public officer's performance of a specified, legally required duty (arising from his public office) may sue for mandamus relief. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62, ¶ 11 (2020) (stating the "mandamus statute [§ 12-2021] reflects the Legislature's desire to broadly afford standing to members of the public to bring lawsuits to compel officials to perform their public duties.") (citations and internal quotation marks omitted).

57. Pursuant to A.R.S. §§ 45-105 (B)(1)-(2), the Director has a mandatory, nondiscretionary duty to adopt and administer rules that comply with §§ 45-576 and -1055.

58. As alleged *infra* ¶¶ 70–80, the Director must, pursuant to his mandatory, nondiscretionary duties under A.R.S. §§ 45-105 (B)(1)-(2), enforce and administer the lawful groundwater user requirements of A.R.S. § 45-576(M), and, as required by law, he has no lawful authority to enforce or administer the Illegal Rule Amendment set forth in R12-15-710(H) imposing a 33.3% Water Tax.

59. HBACA is subject to ADWR's unlawful, amended R12-15-710(H) imposing the 33.3 Water Tax. Specifically, HBACA and its members must comply with unlawful amended R12-15-710(H) to, among other things, subdivide land and develop residential property. For many developers, this can only be done through the Designation process.

60. HBACA is an Arizona association of developers seeking to compel the Director to perform its non-discretionary duty to enforce and administer rules that comply with § 45-576.

61. Thus, HBACA has a sufficient beneficial interest to establish standing for a mandamus action.

III. Statutory Standing Under A.R.S. § 41-1030(A), (E) and A.R.S. § 41-1034(A).

62. *Third*, Plaintiffs have standing pursuant to A.R.S. § 41-1030(A) and (E), which establish standing for a "private civil action . . . against the state" to invalidate any rule that is: (1) not compliant with portions APA, including, § 41-1055; or (2) is otherwise illegal. Plaintiffs bring this suit on those grounds. *E.g.*, *Infra* ¶¶ 84–93, 138–140.

63. "Any person who is or may be affected by a rule may obtain a judicial declaration of the validity of the rule." A.R.S. § 41-1034(A).

64. HBACA and its members are directly governed by the Illegal Rule Amendments, and thus are "affected by" them.

65. The Legislature's institutional interests are "affected by" agency actions, such as the Illegal Rule Amendments, that exceed or conflict with statutory directives enacted by the Legislature pursuant to constitutional lawmaking powers. *See generally Welch v. Cochise Cnty. Bd. of Supr'rs*, 251 Ariz. 519, 526, ¶ 25 (2021) (explaining broad scope of the phrase "affected by").

66. Thus, Plaintiffs also have standing under § 41-1030(A), (E).

IV. Legislative Standing.

67. As the leaders of their respective chambers, the Speaker and President are authorized to bring claims arising out of institutional injuries to the Arizona Legislature's sovereign and constitutional lawmaking authority. *See Forty-Seventh Legislature v. Napolitano*, 213 Ariz. 482, 486–87, ¶¶ 14–15 (2006); State of Arizona, *Senate Rules*, 56th Legislature 2023-2024, Rule 2(N), https://bit.ly/3WXFLDv (authorizing the President "to bring or assert in any forum on behalf of the Senate any claim or right arising out of any injury to the Senate's powers or duties under the constitution or laws of this state"); State of Arizona, *Rules of the Ariz. House of Representatives*, 56th Legislature 2023-2024, Rule 4(K), https://bit.ly/3HuL9bz (authorizing the Speaker to do the same on behalf of the Arizona House of Representatives); Ariz. Const. art. IV, pt. 2, § 8 (authorizing each house of the Legislature to "determine its own rules of procedure").

68. The ADWR's unauthorized exercise of lawmaking power that is vested exclusively in the legislative branch inflicts an institutional injury on the Arizona Legislature. *See Roberts v. State*, 253 Ariz. 259, 268, ¶ 34 (2022) ("A unilateral exercise of legislative power by an executive agency violates the separation of powers.").

69. Even in the absence of an actual injury, the Legislature is "affected by" ADWR's promulgation of defective and unlawful regulations that are contrary to the Legislature's express statutory directives. The Speaker and President accordingly have standing to seek declaratory remedies. *See* A.R.S. § 41-1034; *Ariz. Creditors Bar Ass'n. v. State*, 257 Ariz. 379, ¶ 12 (App. 2024) (actual injury is not a precondition to declaratory relief).

GENERAL ALLEGATIONS.

I. The Amended R12-15-710(H) is an Illegal 33.3% Water Tax.

70. The amended R12-15-710(H) temporarily offsets the volume of water required for Providers by imposing a 33.3% Water Tax on new users.

71. Under the amended R12-15-710(H), ADWR will deem existing groundwater[2] as "physically available" to grant a Designation, even though the groundwater is not "physically available" according to ADWR. In other words, ADWR will excuse a lack of "physical availability."

72. In exchange for the ADWR's grant of "physical availabil[ity]," the Provider must obtain water from a newly created category called "New Alternative Water Supplies." *See* A.A.C. R12-15-701 (including effluent water, surface water, Central Arizona Project Aqueduct, and transported groundwater).

73. In exchange, the amended R12-15-710(H)(1)–(3) requires that Providers secure an *additional* 25% of a category called "New Alternative Water Supply." This requires an increased quantity of water beyond the needs of the applicant's *proposed use.*

74. Despite ADWR's use of the phrase "25 percent" in the amended R12-15-710(H), the rule effectively imposes a **33.3%** Water Tax on new users. It requires applicants to obtain 4/3 of their projected water use (or 133%) to break even once ADWR requires the additional 25% of water listed in Subsection (H)(2).

75. This mathematical calculation is best understood through an example. Suppose a Provider seeks to secure 150 acre-feet of water for a subdivision to account for the subdivision's anticipated water use of 150 acre-feet. Under the Illegal Rule Amendments, that Provider must obtain not 150 acre-feet but instead *200.* When the additional 25% is required under R12-15-710, that 200 acre-feet becomes 150 acre-feet: *i.e.*, 150 for the actual water uses of the new subdivision and 50 more (25%) to compensate for the historic overuses of groundwater stemming from non-replenished sources (as opposed to homebuilding from replenished sources).

76. In other words, 4/3 (or 133%) of 150 acre-feet will be used to cover *others' uses*. This amounts to 200 acre-feet total.

[2] This includes quantities of non-groundwater recovered outside the area of impact. *Id.* (H), (I).

77. This is the 33.3% tax: not only accounting for the 150 acre-feet for the subdivision's own water use but, in addition, securing another 50 acre-feet (*i.e.*, an additional 33.3% beyond the subdivision's own uses) to backfill the water deficits created by others.

78. This calculation can be shown through the following formula:

Y = X — .25(X), where:

Y represents the amount of water a developer needs for a subdivision; and

X represents the total water that must be provided in light of the 33.3% Water Tax.

79. Thus, the Provider must secure 133% of the volume it originally sought.

80. The additional 33.3% Water Tax necessarily requires more water than the 100-year supply for the applicant's *own* use for 100 years. Therefore, it violates § 45-576(M).

II. ADWR Ignored the Procedure in § 41-1055 and Haphazardly Sent the Illegal Rule Amendments to GRRC.

81. As part of the APA, § 41-1055 sets part of the procedure ADWR must follow to amend rules. Under § 41-1055, ADWR must comply with detailed procedural requirements when submitting rule amendments to Governor's Regulatory Review Council ("GRRC") for review.

82. The complete procedure for an agency's submissions to GRRC is set forth in the APA, Title 41, Article 6, Chapter 5, A.R.S. § 41-1051 *et. seq.*

83. Prior to adopting any rule, ADWR must submit to GRRC an economic, small business, and consumer impact statement analyzing the cost of the rule.

84. Among other things, this economic, small business, and consumer impact statement must analyze *at least* seven ***separate*** elements:

(a) the "probable costs and benefits" to any political subdivision and businesses (including anticipated impact on revenue and payroll expenditure) and the probable impact on separate private persons, consumers, and small businesses (§ 41-1055(B)(3)(b),(c), (B)(5)(b), (d));

(b) the administrative and other compliance costs (§ 41-1055(B)(3)(a));

(c) a statement of the probable impact on "small businesses" with a description of the "methods" the agency may use to "reduce the impact on small businesses," with reasons for the "agency's decision to use or not use each method" under § 41-1035 (§ 41-1055(B)(5)(c));

(d) "less intrusive or costly alternatives" to "achiev[e] the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option (and ADWR's reasons not to use less intrusive alternatives) (§ 41-1055(B)(5)(c); (B)(7));

(e) data on which the rule is based (§ 41-1055(B)(8));

(f) a detailed explanation of how the data was obtained and why the data is "acceptable data" (§ 41-1055(B)(8)); and

(g) "the limitations of the data" and the "method[ology] that were employed in the attempt to obtain the data" (if such adequate data cannot be obtained) *and instead* analysis of the probable impacts "in qualitative terms" (§ 41-1055(C)).

85. "Acceptable data" is defined as empirical, replicable, and testable data as evidenced in supporting documentation, statistics, reports, studies or research. *Id.* (B)(8).

86. On August 7, 2024, ADWR initiated the formal rulemaking process for the Illegal Rule Amendments by filing a Notice of Docket Opening and Notice of Proposed Rulemaking, and a separate Notice of Docket Opening and Notice of Proposed Rulemaking for commingling for certificates, with the Secretary of State's Office.

87. ADWR submitted the Illegal Rule Amendments to GRRC on October 7, 2024.

88. In submitting the Illegal Rule Amendments to GRRC, ADWR failed to follow the APA's statutory procedures, specifically §§ 41-1055 and -1052(A) (requiring economic, small business and consumer impact statement"); *see also* -1052(D) (prohibiting rule amendments that fail to analyze the cost in such a statement).

89. ADWR is also obligated to maintain a complete record of this process to facilitate judicial review. A.R.S. § 41-1029(A) ("An agency shall maintain an official rule making record.").

90. ADWR did not provide an economic, small business and consumer impact statement compliant with the requirements in § 41-1055 above.

91. Instead, ADWR stated only that the: (1) "benefits for those directly affected . . . are expected to be substantial" and "significant"; and (2) the costs are expected to be "minimal." [*See* Ex. A, p. 3755–56]. ADWR's sparse analysis continues: "Any costs associated" with the Illegal Rule Amendments will be "outweighed by the benefits." *Id.*

92. ADWR's bald conclusion fails under § 41-1055 in numerous respects.

93. *First*, ADWR made no attempt to quantify costs of the Illegal Rule Amendments. ADWR's use of the word "minimal" is not a calculation; it is a "rubberstamp" giving a cursory reference. Obtaining an additional 33.3% in water beyond what the proposed applicants will use cannot be "minimal." Such a conclusion is unjustified, arbitrary, and capricious.

94. *Second*, ADWR failed to distinguish between private persons, consumers, businesses, and small businesses under the statute. [*Id.*]. It similarly failed to distinguish the cost of business "revenue and payroll expenditure." [*Id.*].

95. *Third*, ADWR failed to describe any "less intrusive or costly" alternatives. [*Id.*]. Such alternatives must be able to "achiev[e] the purpose of the proposed rule making." § 41-1055(B)(5)(c), (B)(7). ADWR also failed to "monetiz[e] . . . the costs and benefits for each option." [*Id.*; s*ee also* Ex. A, p. 3755–56].

96. *Fourth*, ADWR failed to explain its reasons for not using "less intrusive or costly" alternatives. [*Id*; s*ee also* Ex. A, p. 3755–56].

97. *Fifth*, ADWR failed to provide *any* data, research, or study on which the Illegal Rule Amendments are based. [*Id.*] As a result, ADWR also did not provide a "detailed explanation" of why the data meets the statutory requirements for "acceptable

data," defined as empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research. [Ex. A, p. 3755–56].

98. *Sixth*, ADWR failed to explain its "methodology" and why it did not use "acceptable data" and what efforts it made to obtain such data and why those efforts were unsuccessful. [*Id.*].

99. Here, the complete absence of acceptable data to impose the 33.3% Water Tax is particularly egregious. The Phoenix Model (updated in 2024) projects only an overall 4% deficit in groundwater supplies through the Phoenix AMA over 100 years. The 33.3% Water Tax wildly exceeds the 4% projected deficit and is thus arbitrary and excessive. [*See* Transcript of GRRC Session Dated October 29, 2024 attached as Exhibit B (relevant portions highlighted), p. 23:22–24:5 (ADWR counsel admitting before GRRC that the models do not justify the percentages in the 33.3% Water Tax)].

100. The failures of the economic, small business and consumer impact statement became apparent when GRRC Members questioned ADWR counsel in Study Sessions on October 29, 2024 and November 5, 2024.

101. During the Study Session on October 29, 2024, GRRC Council Member Bentley asked ADWR Counsel why ADWR chose a "25% increase, which actually looks like a 33-percent increase" in New Alternative Water Supply. [*See* Ex. B, p.13:22–15:12].

102. ADWR counsel responded by stating that the 25% increase was a product of the "discussions" within their committee. [*Id.* p. 15:12]. Those "discussions" were not disclosed or explained in the proposed Illegal Rule Amendments. ADWR never explained why it came up with the "25 percent requirement" (i.e. 33.3% Water Tax) as the proper amount, rather than say 10% or 40%.

103. Because ADWR counsel provided a non-answer, Member Bentley followed up, "But, again, to my original question, how did you get to 25%?" [*Id.* p. 18:4–9]. ADWR counsel responded, "As I said that was a product of the discussions within the Assured Water Supply Committee. . ." [*Id.* p. 18: 10–12].

104. ADWR counsel provided no study or empirical tool it used to select 25% requirement in the amended R12-15-710(H)(2).

105. During the same Study Session on October 29, 2024, Member Wilmer also asked whether ADWR Counsel could cite "any calculations" to defend the Illegal Rule Amendments. [Ex. B, p. 24:16–18]. ADWR could not. [*Id.* p. 25:3–22].

106. Member Wilmer also asked for the "models . . . [used] to get a reference to how [ADWR] is calculating [the] numbers." [*Id.*]. ADWR agreed to provide "the calculations . . . [or] the data . . . used to show that the 25% or 30% would result in less groundwater usage." [*Id.* p. 26:4–9].

107. On information and belief, ADWR has not provided the "models" or "data" requested by GRRC. During the following session on November 5, 2024, Member Bentley reiterated that they only saw "a PowerPoint slide" but no "real studies kind of showing how they mathematically" arrived at "the 25 percent increase." [*See* Transcript of GRRC Sessions Dated November 5, 2024 attached as Exhibit C (relevant portions highlighted), p. 9:21–10:3].

108. In fact, § 41-1052(D)(8) requires that ADWR disclose in its Preamble to the economic, small business and consumer impact statement any "study relevant to the rule that the agency reviewed" and whether ADWR "did or did not rely on it."

109. Under Section 8 of the Preamble, ADWR admitted that it relied on "no[]" study. [Ex. A, p. 3755].

110. To the extent that ADWR relied on no study, it acted arbitrarily and capriciously in randomly adopting the 25% increase (which imposes a 33.3% Water Tax) in the Illegal Rule Amendments.

111. That ADWR had no model or study that it could cite to is ultimately unsurprising: ADWR has publicly admitted that its number presents a *political* compromise, rather than the product of any defensible rulemaking. It is not the job of ADWR to make political compromises; that is the Legislature's responsibility.

112. Despite the lack of analysis and empirical support required by § 41-1055, GRRC voted to approve the Rule Amendments on November 22, 2024.

113. ADWR filed with the Secretary of State its Notice of Final Rulemaking on November 25, 2024. The Illegal Rule Amendments became effective on that date.

III. The Amended R12-15-710(H) is the Only Path to Designation.

114. ADWR attempts to justify the Illegal Rule Amendments as only an "alternative" path to Designation. [Ex. A, p. 3755]. This characterization is false. It is the only feasible path for developers to obtain water through a Provider with a Designation.

115. According to ADWR publications, no applicant has received a Designation in Pinal County or Phoenix AMAs since at least 2018.

116. As a result, subdivision growth has substantially slowed in the Pinal County and Phoenix AMAs.

117. ADWR has admitted as much. Nicole Klobas, ADWR's Chief Counsel admitted in the GRRC October 29 Study Session that proposed Rule Amendments are the only "feasible path" for many Providers. [Ex. B, p. 33:21–25].

COUNT I

Violations of §§ 45-576(M) and 41-1030
(Declaratory and Injunctive Relief)

118. Plaintiffs incorporate the paragraphs above as if alleged here.

119. The amended R12-15-710 imposes a 33.3% Water Tax by requiring Providers to obtain 33.3% more groundwater to obtain a Designation. *Supra* ¶¶ 70–80.

120. The amended R12-15-710 is contrary to and inconsistent with § 45-576(M), which provides that applicants need only show physical availability for 100 years for "the proposed use." By contrast, the 33.3% Water Tax necessarily requires that applicants secure 33.3% more water than what would be necessary to cover their own "proposed use." § 45-576(M).

121. ADWR does not have statutory authority to enact rules that violate Arizona statutes, including § 45-576(M).

122. Additionally, the amended R12-15-710 is invalid under § 41-1030(A) because it is not consistent with § 45-576(M) and is not "reasonably necessary" to carry out the purposes of that statute.

123. ADWR also does not have statutory authority to make rules or impose licensing conditions unless "specifically authorized" statute. § 41-1030(B), (D)(3).

124. ADWR has admitted that the Illegal Rule Amendments impose licensing requirements. The Illegal Rule Amendments explicitly say that "a designation of Assured Water Supply … *is a license*." [Ex. A, p. 3760]. The 33.3% Water Tax in R12-15-710 *is a condition* of that license.

125. There is no statute that "specifically authorize[s]" ADWR to impose the 33.3% Water Tax in amended R12-15-710. § 41-1030(D)(3).

126. Similarly, whether Designation applicants can be required to secure a water supply in excess of the applicant's own proposed use and whether Designation (but not Certificate) applicants can be exempted from the physical availability requirement must be "consistent with statute," "reasonably necessary to carry out the purpose of the statute," and "specifically authorized by statute." A.R.S. § 41-1030(A); (D)(1).

127. These decisions also embody major policy questions that only the Legislature can resolve. Because the Legislature has not "plainly authorize[d]" ADWR's amendment to R12-15-710, it is *ultra vires* and invalid. *See Roberts v. State*, 253 Ariz. 259, 268 ¶ 30 (2022).

128. In addition, Arizona law prohibits an agency from "adopt[ing] any new rule that would increase existing regulatory restraints or burdens on the free exercise of property rights," unless the rule is either (1) "a component of a comprehensive effort to reduce regulatory restraints or burdens," or (2) "necessary to implement statutes or required by a final court order or decision." A.R.S. § 41-1038(A). The ADWR rules package that included the amended R12-15-710 does not, and was never intended to, reduce regulatory restraints or burdens. Further, the amended R12-15-710 is not "necessary" to implement A.R.S. § 45-576, and indeed directly contravenes it.

129. As such, amended R12-15-710 is invalid and ADWR has no authority to enforce it.

130. The amended R12-15-710 is the only feasible path for obtaining a Designation for many Providers and developers. [Ex. B, p. 33:21–25].

131. ADWR has further admitted that Providers will pass on the costs of the 33.3% Water Tax to developers.

132. Therefore, HBACA is harmed by the amended R12-15-710 because its members will not be able to develop their land and will be forced to pay increased funds to Designated Providers to develop land within those Provider's Designations. HBACA will also be forced to bear costs as an organization, as shown by the study it was already forced to pay for and commission.

133. As a result, Plaintiffs seek declaratory relief pursuant to §§ 12-1831 and 41-1034(A) and -1030, as well as injunctive relief under § 12-1801 to enjoin R12-15-710 and prevent its enforcement.

COUNT II (HBACA Only)

Violations of § 41-1055
(Declaratory and Injunctive Relief)

134. HBACA incorporates the paragraphs above as if alleged here.

135. The Illegal Rule Amendments are "rules" under the APA because they are "agency statement[s] of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency." A.R.S. § 41-1001(21).

136. The Illegal Rule Amendments are subject to the APA and must be submitted to GRRC pursuant to specified procedures, including § 41-1055.

137. Under § 41-1055, ADWR must separately analyze at least seven separate elements. ADWR failed to do so. *Supra* ¶¶ 84–98.

138. A rule is subject to immediate judicial challenge and invalidation if the agency did not "make[] a good faith effort to comply with" the controlling procedural statutes, including A.R.S. § 41-1055, or "has not explained in writing the methodology

used to produce the economic, small business and consumer impact statement." A.R.S. § 41-1052(J).

139. ADWR did not make a good faith effort to separately analyze the required elements under § 41-1055 and did not provide a written explanation of the methodology (if any) that it used to compute the 125% water supply multiplier (which, as set forth above, is functionally a 133% multiplier) mandated by the Illegal Rule Amendments.

140. ADWR does not have statutory authority to enact rules that are not consistent with or that violate Arizona statutes, including § 41-1055. *See* § 41-1030(A) (providing that an agency cannot promulgate rules that are inconsistent with statute or that are not made in accordance with the APA).

141. As such, the Illegal Rule Amendments are invalid and ADWR has no authority to enforce them.

142. HBACA is harmed by the Illegal Rule Amendments because its members will be subject to illegal state action, which will increase the cost of developing their land or, in some cases, render development impossible. HBACA will also be forced to bear costs as an organization, as shown by the study it was already forced to commission.

143. As a result, Plaintiffs seek declaratory relief pursuant to §§ 12-1831 and 41-1034(A) and -1030, as well as injunctive relief under § 12-1801 to enjoin the Illegal Rule Amendments and prevent their enforcement.

COUNT III (HBACA Only)

(Against ADWR — Regulatory Taking in Violation of Ariz. Const. art. 2, § 17)

144. HBACA incorporates the paragraphs above as if alleged here.

145. Under the Ariz. Const. art. II, § 17, "No private property shall be taken or damaged for public or private use without just compensation having first been made…"

146. ADWR may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government.

147. ADWR's has imposed a 33.3% Water Tax under the Illegal Rule, which will be passed on to members of Plaintiff HBACA by Providers as a condition for those members to develop their property.

148. The 33.3% Tax does not serve a legitimate public purpose because it is contrary to Arizona law and the groundwater code.

149. Any asserted public purpose for the Illegal Rule is not supported by the agency and is an arbitrary attempt to take private property.

150. By imposing the 33.3% Water Tax, ADWR is forcing private property owners, including members of HBACA, to bear the cost of public burdens that should be borne by the public as a whole.

151. Additionally, there is no essential nexus between any stated interest of ADWR in imposing the Illegal Rule and the 33.3% Water Tax because the 33.3% is necessarily more than is necessary to meet any groundwater replenishment goals.

152. The 33.3% Water Tax demanded by ADWR through the Illegal Rule bears a disproportionate relationship to the impact of proposed water uses and is unrelated to and in excess of proposed groundwater uses.

153. Consequently, the Illegal Rule constitutes an unconstitutional exaction by ADWR against Plaintiff HBACA and its members.

COUNT IV (HBACA Only)

(Against Director Only)

Application for a Writ of Mandamus Under § 12-2021

154. HBACA incorporates the paragraphs above as if alleged here.

155. This mandamus actions is alleged as a count in the alternative.

156. The Director, in performance of his duties under A.R.S. §§ 45-105 (B)(1)-(2) and Article 7, has a mandatory, nondiscretionary duty to adopt and administer rules that comply with § 45-576. As such, the Director has a nondiscretionary duty to require that developers show only that groundwater will be physically available for 100 years for their own use.

157. As set forth above, *supra* ¶¶ 59–61, HBACA has a beneficial interest in lawful rules being adopted and administered by the Director.

158. HBACA is therefore entitled to and requests that this Court issue a Writ of Mandamus under § 12-2021 directing the Director to enforce and administer the lawful groundwater user requirements of A.R.S. § 45-576(M), and, as required by law, not enforce or administer the unlawful amended R12-15-710(H) imposing a 33.3% Water Tax.

PRAYER FOR RELIEF

Plaintiffs request that the Court provide the following relief:

A. A declaratory judgment under A.R.S. §§ 12-1831 and 41-1034(A) providing that amended R12-15-710 contradicts and exceeds statutory authority under § 45-576(M), and attempts to institute an illegal license and rule that is inconsistent with statute, is not reasonably necessary to carry out that purpose of statute, and is not specifically authorized by statute under § 41-1030, and is therefore void;

B. For HBACA, a declaratory judgment under A.R.S. §§ 12-1831 and 41-1034(A) providing that the Illegal Rule Amendments violate § 41-1055, and were not promulgated according to the APA, and are therefore void;

C. For HBACA, a declaratory judgment under A.R.S. §§ 12-1831 and 41-1034(A) providing that ADWR's requirement that developers provide a 33.3% Water Tax in amended R12-15-710 is an unconstitutional taking;

D. For HBACA, a Writ of Mandamus compelling the Director to enforce and administer the lawful groundwater user requirements of § 45-576(M), and, as required by law, not enforce or administer the unlawful, amended R12-15-710(H) imposing a 33.3% Water Tax.

E. An injunction against the application and enforcement of amended R12-15-710.

F. Vacatur of the Illegal Rule Amendments;

F. An award of Plaintiff HBACA's reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341, -348, -1840; 41-1030(E); the private attorney general

doctrine, or any other applicable law; and

G. Any other relief as the court deems necessary, equitable, proper, and just.

DATED this 10th day of March, 2025.

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ORIGINAL of the foregoing electronically filed this 10th day of March, 2025.

/s/ Lisa F. Charette

EXHIBIT A

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ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS

R9-22-1413. Time-frames, Reinstatement of An Application

A. The Administration or its designee shall complete an eligibility determination under R9-22-306(A)(1) unless:
1. The applicant is pregnant. The Administration or its designee shall complete an eligibility determination for a pregnant woman within 20 days after the application date unless additional information is required to determine eligibility; or
2. The applicant is in a hospital as an inpatient at the time of application. Within seven days of the Administration or its designee's receipt of a signed application the Administration or its designee shall complete an eligibility determination if the Administration or its designee does not need additional information or verification to determine eligibility.

B. The Administration or its designee shall ~~reopen or reinstate~~ redetermine eligibility of an individual who is discontinued for failure to submit the renewal form or necessary information, without requiring a new application, if the individual submits the renewal form or necessary information within 90 days after the date of discontinuance.

R9-22-1421. ~~MAGI based~~ MAGI-based Income Eligibility

A. In determining eligibility, if an individual would otherwise be ineligible under this Article due to excess income, the Administration or its designee shall subtract an amount equivalent to five percentage points of the Federal Poverty Level (FPL) from the household income.

B. A person is eligible under this Article when:
1. Subject to subsection (A), the monthly household income does not exceed the appropriate percentage of the FPL under R9-22-1427;
2. If ineligible under (B)(1), the household income determined in accordance with 26 CFR 1.36B–1(e) is below 100 percent FPL; or
3. For eligibility under R9-22-1437, the person's income during the period defined in R9-22-1437(C) does not exceed the percentage of the FPL under R9-22-1437(B).

C. The Administration or its designee shall consider the following factors when determining the income period to use to determine monthly income:
1. Type of income,
2. Frequency of income,
3. If source of income is new or terminated, or
4. Income fluctuation.

R9-22-1432. Young Adult Transitional Insurance

An individual is eligible for AHCCCS medical coverage when the individual meets all of the following eligibility requirements:
1. Is 18 through 25 years of age;
2. Was in ~~the custody of the Department of Economic Security under A.R.S. Title 8, Chapter 5 or Chapter 10~~ foster care under the responsibility of the State or Tribe within the State on the individual's 18th birthday;
3. Was eligible for and receiving AHCCCS Medical Coverage on the individual's 18th birthday; and
4. Is not eligible for AHCCCS Medical Coverage under 42 U.S.C. 1396a(a)(10)(A)(i)(I) - (VII).

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

[R24-280]

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039(B) by the governor on:
October 7, 2024

2. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R12-15-701	Amend
R12-15-710	Amend
R12-15-711	Amend
R12-15-720	Amend
R12-15-723	Amend
R12-15-724	Amend
R12-15-725	Amend

3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. §§ 45-105(b)(1) and 45-576(H)
Implementing statute: A.R.S. § 45-576

4. The effective date of the rule:
November 25, 2024

a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

To provide a benefit to the public and a penalty is not associated with a violation of the rule and to adopt a rule that is less stringent than the rule that is currently in effect.

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

5. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the current record of the final rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 2640; Issue date: August 23, 2024; Issue number: 34; File number: R24-156
Notice of Proposed Rulemaking: 30 A.A.R. 2623; Issue date: August 23, 2024; Issue number: 34; File number: R24-154

6. The agency's contact person who can answer questions about the rulemaking:

Name:	Emily Petrick
Title:	Deputy Counsel
Division:	Legal
Address:	Arizona Department of Water Resources 1110 W. Washington, Suite 310 Phoenix, AZ 85007
Telephone:	(602) 771-8472
Fax:	(602) 771-8686
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7. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Prior to seeking approval of a plat or a public report, A.R.S. § 45-576 requires the developer of a subdivision to obtain a certificate of Assured Water Supply ("certificate") from the Arizona Department of Water Resources ("ADWR") or a commitment of service from a municipal provider with a designation from ADWR that its service area has an Assured Water Supply ("designation"). In order to obtain a certificate or a designation, an applicant must satisfy several criteria, set forth in the Arizona Administrative Code, Title 12, Chapter 15, Article 7. Among those criteria is a requirement that any water supply be physically available for 100 years, pursuant to A.A.C. R12-15-716.

To demonstrate physical availability of groundwater, "the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area" which demonstrates that after 100 years of pumping in the area, including pumping to serve the demands in the application, water will not exceed a certain depth below land surface (referred to in the rule as "100-year depth-to-static water level"). A.A.C. R12-15-716(B)(2). In areas where ADWR has a numerical groundwater flow model, including all of the initial active management areas ("AMAs") the applicant is expected to use ADWR's most recent model and the associated Assured Water Supply projection run as the method of analysis.

In ADWR's 2019 Assured Water Supply projection run for the Pinal AMA ("2019 Pinal model"), the model was unable to simulate the withdrawal of all groundwater to meet demands over the 100-year projection period, resulting in substantial "unmet demands" throughout the Pinal AMA. Additionally, the 100-year depth in a large region of the AMA exceeded the 1,100-foot limit for the Pinal AMA set forth in A.A.C. R12-15-716(B)(2)(b). As a result, the 2019 Pinal model could not be used to support applications for Assured Water Supply determinations, including designations and certificates, based on groundwater in the Pinal AMA. Although certain statutory and regulatory changes have been made to allow some flexibility, subdivision growth outside designations has substantially slowed in the Pinal AMA.

In June 2023, ADWR released an updated groundwater flow model for the Phoenix AMA, including an Assured Water Supply projection run ("2023 Phoenix model"), which, like the 2019 Pinal model, was unable to simulate the withdrawal of all groundwater necessary to meet demands over the 100-year projection period, and showed exceedance of the 1,000-foot depth limit for the Phoenix AMA set forth in A.A.C. R12-15-716(B)(2)(a). As with the 2019 Pinal model, the 2023 Phoenix model could not be used to support applications for Assured Water Supply determinations, including designations and certificates, based on groundwater in the Phoenix AMA.

Although the program rules allow for the use of supplies other than groundwater withdrawn in the AMA, there are substantial barriers to obtaining those supplies and the infrastructure necessary to satisfy the rule requirements. Groundwater has been inexpensive as an Assured Water Supply source, relative to other water supplies. Additionally, many alternative water supplies face legal, financial and infrastructure barriers.

For example, surface water supplies from an in-state stream would likely require the acquisition of land with an appurtenant right to retire the existing use, as well as an authorization by ADWR of the severance and transfer of the right for use on the intended lands. Any infrastructure required to divert from the stream and deliver the water to the proposed subdivision or service area may be subject to separate permitting requirements, financing challenges, and time for construction. The acquisition of on-River Colorado River water for use in central Arizona (to be delivered through the CAP system) requires a recommendation from ADWR in order to begin the process with the Secretary of the Interior to transfer the contract entitlement – which faces significant hurdles that have yet to be completed. The transportation of groundwater from other basins into the Phoenix and Pinal AMAs is subject to the requirements in Title 45, Chapter 2, Article 8.1, but also faces substantial infrastructure hurdles. The most cost-effective method, delivery through the CAP system, requires approval of and/or agreements with the Secretary and the Central Arizona Water Conservation District ("CAWCD"). At this time, such agreements cannot be finalized until the Secretary approves certain water quality requirements and an agreement with CAWCD. Even for the use of effluent, a water treatment facility must be con-

structed and, if the water will not be used directly after treatment, an underground recharge facility and recovery wells must be permitted and constructed. Financing for significant infrastructure costs for all of the options described is often dependent on obtaining some or all of the necessary approvals, and the time for construction varies depending on the nature of the project.

Additionally, ADWR must consider all water supplies in the system that are used to serve all water demands. If a municipal provider is relying on groundwater withdrawn within the AMA to serve its customers in combination with other supplies (often referred to as "commingling"), the groundwater must satisfy the Assured Water Supply criteria, including physical availability. Alternatively, sufficient alternative supplies must be obtained to replace all groundwater use. Therefore, an application for a certificate or a designation under the current rules would require the replacement of all AMA groundwater supplies in the municipal provider's system in order to satisfy the physical availability criteria in the Phoenix and Pinal AMAs.

Some stakeholders have suggested that ADWR could consider only the availability of the new supplies relative to the new demands, particularly for certificate applicants. However, such an approach ignores the reality that when the groundwater supply is no longer available to that provider, the municipal provider will be forced to reduce deliveries to *all* customers. Absent some legal constraint that requires the delivery of the alternative supply to the new subdivision (such as a surface water right that is appurtenant only to the subdivision lands), the new subdivision would be subject to the shortage associated with the groundwater supply just like all other customers in the service area. Therefore, even a developer that is willing to work with a municipal provider to bring in new, non-groundwater supplies cannot proceed with subdivision development if the municipal provider will continue to serve some volume of groundwater to the subdivision.

Governor's Water Policy Council Recommendation:

On January 9, 2023, Governor Katie Hobbs issued an Executive Order to establish the Governor's Water Policy Council ("Council"). The Council encompassed a diverse group of stakeholders with representation from agriculture, water providers, Tribes, executive agency cabinet officers, cities, the business community, industry, conservation organizations, university experts, and the Arizona legislature. Governor Hobbs charged the Council with two objectives, one of which was to produce a package of policy recommendations which strengthen the Assured Water Supply Program and ensure the protection of groundwater resources while enabling continued, sustainable growth.

The Council and its committees met 20 times between May 17, 2023, and November 29, 2023. Members were asked to reach out to their constituents throughout the process to receive additional perspectives on the Assured Water Supply Program, and to bring those perspectives to each meeting. The Assured Water Supply Committee met seven times over the course of six months to develop recommendations for the Council for changes to Assured Water Supply policies - legislatively, administratively, or by executive action - to address the challenges revealed by Assured Water Supply modeling projections, while continuing to:

- Strengthen the integrity of the Assured Water Supply program.
- Protect consumers and aquifers.
- Ensure future growth is not reliant on mined groundwater.

The Committee developed several Assured Water Supply Program recommendations that were approved by the Council as recommendations to the Governor, including a recommendation to amend the Program rules to create an alternative means to obtain a designation of Assured Water Supply, creating a pathway for water providers to grow incrementally on alternative supplies while reducing groundwater mining. This proposed rulemaking is an implementation of that recommendation.

Given the commingling constraints and the legal barriers and costs of acquiring alternative water supplies, the Committee focused on the municipal provider, and the potential for designation, as the path most suited to transitioning to non-groundwater supplies in the Phoenix and Pinal AMAs. However, many undesignated municipal providers with anticipated growth also have existing "legacy" customers that pre-date the Assured Water Supply rules (first adopted in 1995), or even the 1980 Groundwater Management Act. These legacy customers have relied on groundwater without any replenishment requirements or associated costs. Therefore, a sudden imposition of replenishment requirements for all groundwater use would create a financial shock for the municipal provider and, depending on how those costs are managed, potentially their customers. This financial impact is addressed in the rulemaking through the granting of a groundwater allowance in R12-15-724 and R12-15-725. While there may be additional hurdles for private water companies subject to regulation by the Arizona Corporation Commission, the initial costs of enrollment as a member service area and the overall costs of replenishment of groundwater uses apply to cities and towns, as well as private water companies.

In the development of a path to designation, members of the Committee recognized the importance of replacing existing groundwater use in addition to acquiring new supplies for growth. This component is significant because this alternative path to designation allows the applicant to demonstrate an assured water supply by showing it will reduce that groundwater use over time despite current projections. The declining availability of groundwater in the Phoenix and Pinal AMAs necessitates a shift from reliance on groundwater to alternative supplies for existing uses as well as any new growth. Moreover, while the alternative path to designation might include a component to reduce the financial burden of replenishment, the most cost-effective way to do so is by using an alternative supply in the first place.

Rule Amendments:

The alternative designation of Assured Water Supply ("ADAWS") concept creates a pathway for water providers historically reliant on groundwater to grow incrementally on alternative supplies while reducing groundwater mining. Existing groundwater pumping is grandfathered into the Designation. Physical availability is grandfathered, and a groundwater allowance is granted to provide consistency with the goal without replenishment. "New Alternative Water Supplies" can be added to the Designation portfolio. Groundwater can be used in the interim period before supplies are delivered. A portion of the new supplies (25%) will be used to substitute for existing groundwater pumping to facilitate a transition away from groundwater.

R12-15-701:

Two new definitions are added. "New Alternative Water Supplies" is a defined term used in the ADAWS concept and rule language. "Unreplenished groundwater" is a defined term intended to capture legacy groundwater uses that are not subject to replenishment because they predate the Assured Water Supply rules. The term is used for purposes of calculating the groundwater allowance for ADAWS designations pursuant to the amendments in R12-15-724 and R12-15-725.

R12-15-710:

The groundwater volumes associated with existing certificates and existing groundwater pumping and non-groundwater recovered outside the area of impact based on annual reporting for 2023 will be "grandfathered in" for purposes of physical availability. Analyses of Assured Water Supply are not included. The volume of groundwater and stored water recovered outside the area of impact calculated in R12-15-710(H) and (I) represents a volume of water that will be deemed physically available for an applicant for a new designation of assured water supply. Although the volume calculated in R12-15-710(H) and (I) uses estimated demand associated with unbuilt certificates of assured water supply as a metric for the total volume that will be deemed physically available, the rules do not require or provide for any transfer or pledging of those certificates to the applicant's designation. In the event a designation expires or is otherwise terminated, any certificate previously issued in the designated provider's service area would remain in effect.

The grandfathered volume is subject to reduction under the provisions related to alternative supplies. New growth will be supported by alternative supplies. The ADAWS applicant must enroll as a member service area of the CAGRD. Pursuant to Arizona Senate Bill SB 1181 (2024), the municipal provider may exercise an option to transition customers that are already enrolled as member lands from their member land status into the member service area status over a ten-year period. The water provider will also receive a lump sum groundwater allowance, based on deliveries in 2023. The water provider will then decide how to manage groundwater allowance usage, water supply deliveries, CAGRD reporting, and billing individual customers for CAGRD assessments.

"New Alternative Supplies" refers to water supplies other than groundwater withdrawn in the Phoenix or Pinal AMA (subject to the location of the application) that were not served in 2023, including effluent, surface water, CAP water, and transported groundwater. ADWR has acknowledged that if an ADAWS applicant (including for a modification) has an existing water supply that is recovered outside the area of impact (and therefore part of the grandfathered groundwater volume), then the municipal provider may subsequently construct and obtain a permit for a recovery well within the area of impact of storage. In such a scenario, the water supply to be recovered within the area of impact becomes a New Alternative Water Supply.

New Alternative Supplies may be delivered directly or stored and recovered within the area of impact. They may be added to the Designation to serve new growth. The grandfathered groundwater volume will be reduced by 25% of the new supplies to facilitate an incremental transition away from groundwater over time. In the case of a New Alternative Water Supply that is created by the establishment of a recovery well within the area of impact of storage, the grandfathered groundwater volume will be reduced by 25% of the New Alternative Supply thus created.

New Alternative Supplies must meet AWS requirements for designations, including physical, continuous, and legal availability and financial capability. Adding New Alternative Supplies to the Designation that will require future infrastructure construction would be evaluated under ADWR's existing rules for designations. The provider must include a construction plan and schedule demonstrating that construction will be completed in a timely manner. All major permits and approvals and environmental compliance necessary for the unbuilt water infrastructure must be completed before the designation is issued.

R12-15-711:

The term of an ADAWS designation issued under R12-15-710(H) or (I) may not be greater than 15 years. The rule is also being amended to allow for an "expedited modification" during the term of the designation to include an additional non-groundwater supply. For an expedited modification, ADWR would review only AWS requirements for that additional supply (and the associated reduction in the grandfathered groundwater volume) and the demand schedule. The determinations regarding all other water supplies in the most recent designation would not be subject to review. This rule amendment applies to all designated providers, not just those with an ADAWS designation. This will reduce the administrative burdens for ADWR and applicants, without reducing protections to consumers.

R12-15-720:

ADWR's current financial capability rule for designations allows for flexibility on financing for cities and towns. Under the rule, a city or town may submit evidence demonstrating that "financing mechanisms are in place to construct adequate delivery, storage and treatment works in a timely manner." This flexibility is extended to private water companies. In recent years, private water companies have identified alternative financing mechanisms that may not require approval by the Arizona Corporation Commission or otherwise fall within a strict reading of the financial capability rule. Extending this flexibility to private water companies acknowledges the constant changes in financing mechanisms while maintaining consumer protections.

R12-15-723:

To ensure that ADAWS provisions, including the groundwater allowance, could be fairly applied within the Pinal AMA, ADWR needed to address historic extinguishment credits in the Pinal AMA. The original rules adopted in 1995 provided for generous calculation of extinguishment credits in the Pinal AMA, including a volume of water that renews annually, and any unused volume "rolls over" for use in subsequent years. In combination with a similarly generous groundwater allowance for certificates, the resulting volume could exceed the actual demands of the subdivision. In 2007, ADWR modified the rules for consistency with the management goal in the Pinal AMA, revising the calculation of extinguishment credits and groundwater allowances in the Pinal AMA to a lump sum. Inclusion of the groundwater allowances associated with certificates issued prior to 2007 in the groundwater allowance for ADAWS could potentially reduce other replenishment requirements in the service area. To avoid this outcome, while maintaining the status quo, R12-15-723 is modified to clarify that in the Pinal AMA, such extinguishment credits will maintain their value but may only be applied to groundwater use within the subdivision to which they are pledged.

R12-15-724 and R12-15-725:

As mentioned above, the rules for groundwater allowances in the Phoenix AMA and in the Pinal AMA are modified to allow for a volume of groundwater to be used consistent with the management goal and not subject to replenishment. The provider may choose one of two calculations, both based on water deliveries in calendar year 2023. The municipal provider may decide how to manage this groundwater allowance. For example, a municipal provider could choose to use primarily groundwater throughout its service area in the first several years before delivering a New Alternative Supply and to use the groundwater allowance to avoid or reduce replenishment requirements. Another municipal provider might elect to preserve the groundwater allowance and apply it to legacy customers to reduce or avoid replenishment costs that might otherwise be passed on to those legacy customers.

Conclusion:

ADWR held three informal public meetings to discuss this proposed rule language and an additional rule amendment to allow a similar path for certificates based on commingled water supplies ("Commingling proposal"). At the first public meeting on April 22, 2024, ADWR described both the ADAWS concept and the Commingling proposal, as well as rule language that would implement both, answered questions, and invited written comments. At the second informal public meeting on May 1, 2024, ADWR allowed an opportunity for public comments. At the third informal public meeting on July 26, 2024, ADWR provided background information, a summary of comments received and ADWR's responses, and a description of changes to the rule language resulting from comments. Additionally, ADWR announced that the ADAWS concept would be proposed in a separate rulemaking from the Commingling proposal, though both rulemaking packages are intended to proceed in parallel. A formal public hearing on the Proposed Rulemaking was held on September 23, 2024 where ADWR received oral comments and written comments. Those comments provided general support for the rulemaking and are discussed in Section 12 of this Notice.

The ADAWS rulemaking addresses the challenges that non-designated water providers have had in obtaining a designation. It addresses previously unconstrained groundwater pumping that is not subject to the Assured Water Supply Program, reduces unmet demand by ultimately reducing groundwater pumping over the 100-year period, and facilitates incremental growth and a steady transition from groundwater to alternative supplies such as surface water, effluent, or transported supplies. ADWR anticipates that at least three municipal providers in the Phoenix and Pinal AMAs will apply for a designation under the ADAWS concept in the coming years. Additional municipal providers may also pursue the ADAWS designation based on the success of "early adopters."

The ADAWS concept will ensure that all new growth is supported by water supplies, other than groundwater withdrawn in the Phoenix and Pinal AMAs, while reducing and replenishing existing groundwater pumping. Existing customers of municipal providers who are designated under ADAWS will also benefit because their municipal provider will be less reliant on groundwater supplies and will have a more diverse portfolio. Designating these municipal providers will also subject all water uses in their respective service areas to the Assured Water Supply requirements – not just subdivisions. The replacement of existing groundwater uses, combined with the increase in replenishment for legacy groundwater uses, will also likely benefit other residents throughout the basin by extending the availability of groundwater in the Phoenix and Pinal AMAs.

8. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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

9. 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

10. A summary of the economic, small business, and consumer impact:

The ADAWS proposed rulemaking seeks to address challenges that water providers face in pursuing a new Designation of 100-year Assured Water Supply (designation) under the current rules. This rulemaking affects the Phoenix and Pinal AMAs only. It does not repeal nor substantively revise any current AWS rules. Rather, it amends the AWS rules to create an additional, alternative path for a water provider to obtain a designation in AMAs where physical availability of groundwater cannot be demonstrated in the Assured Water Supply (AWS) model. The ADAWS concept creates a voluntary path to designation for water providers historically reliant on groundwater to grow incrementally on alternative supplies while reducing groundwater mining.

Persons who will be directly affected by, bear the costs of, or directly benefit from this AWS rule modification for the Phoenix and Pinal AMAs include: (1) state agencies such as the Department; (2) political subdivisions, including counties, cities, and towns that seek economic development or provide municipal water, private municipal water providers, as well as the CAGRD; (3) land subdivision developers; and (4) homeowners and homebuyers in the Phoenix and Pinal AMAs.

The ADAWS rulemaking seeks to create an additional pathway for water providers to voluntarily seek a designation; the alternatives to ADAWS include seeking a designation under the traditional designation rules or continuing without a designation. Therefore, specific costs, benefits and impacts in the Economic Impact Statement were assessed against these two alternatives.

Benefits for those directly affected by ADAWS are expected to be substantial when compared to a designation under the traditional rules or no designation. ADAWS allows for additional development within a water provider's service area by a granting a volume of physically available groundwater and groundwater allowance while also facilitating a reduction in groundwater use over time and ensuring that some previously unreplenished groundwater pumping within a provider's service area will be replenished. ADWR has analyzed the monetary benefit afforded to providers through the groundwater allowance volume granted in ADAWS, as compared to the groundwater allowance granted under the traditional designation rules. The benefit is significant and addresses a key financial barrier that has challenged water providers seeking to achieve a traditional designation of assured water supply.

Generally, costs for those directly affected by voluntary pursuit of an ADAWS are expected to be minimal compared to the currently available alternatives: a designation under the traditional rules or no designation. However, because the proposed ADAWS rules create a new opportunity for water providers who had previously faced challenges in achieving designation, and creates an

expedited process for all designated providers that reduces the regulatory burden for designation modification, state agencies such as ADWR may incur costs when hiring additional staff necessary to process an increase in applications.

Any costs associated with ADAWS are outweighed by the benefits when compared to the available alternatives.

11. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Not applicable

12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment: ADWR received 233 total comments, with 226 of those comments in support of the ADAWS rules. Four comments asked questions or raised concerns with the rulemaking, and three comments were neutral. Examples of supportive comments include statements that the implementation of ADAWS will ensure that both current and future developments are supported by a reliable water portfolio and that ADAWS will facilitate a sustainable water supply that is crucial to long-term growth and economic stability.

Response:

ADWR appreciates the large number of supportive comments.

Comment: Five water providers expressed support for the ADAWS rules, with two expressing a desire to apply for an ADAWS designation expeditiously.

Response:

ADWR appreciates the support and is pursuing an immediate effective date for the proposed rules. ADWR has also begun meeting with water providers interested in pursuing an ADAWS designation to discuss the application process.

Comment: Developers, and water providers interested in pursuing ADAWS, requested removing the 25% reduction in the groundwater calculation or reducing the percentage considerably ((including a request that it be reduced to 4% and below). Some water providers interested in pursuing ADAWS, and some developers, recommended limiting the 25% reduction in the groundwater calculation to no more than the unreplenished groundwater use within the ADAWS provider's service area.

Response:

The ADAWS rules provide an option for designation if physical availability of groundwater cannot be demonstrated through hydrologic modeling. R12-15-710(H) deems a volume of groundwater as physically available according to the calculation in the rule. The percentage reduction in the calculation of physically available groundwater must strike a balance between supporting new growth and reducing existing and approved groundwater uses in the long-term to provide an assured water supply. A reduction of only 4% would likely have little effect on ensuring physical availability of groundwater and would not offer sufficient protection to consumers. Under current assured water supply rules (and without the ADAWS rules), if a water provider seeking a designation is unable to demonstrate physical availability of groundwater through a hydrologic model, the provider would be required to obtain alternative water supplies sufficient to cover 100% of its demands. This would be significantly more costly to providers than the ADAWS option.

The 25% reduction in the groundwater calculation relates to demonstrating physical availability of groundwater, regardless of whether the groundwater is replenished or unreplenished (which relates to consistency with the management goal). Initial ADAWS applications and designations are unlikely to include large volumes of New Alternative Water Supplies. ADWR can evaluate the program over time, as well as aquifer conditions in the Phoenix and Pinal AMAs, and may consider creating a maximum volume or other limitation on the 25% reduction in the groundwater calculation.

In response to the suggestion that a 4% reduction in groundwater use is appropriate because the recent Phoenix AMA assured water supply model run shows that 4% of groundwater demands are unmet, this does not address the larger deficit in the Pinal AMA, nor does it acknowledge that the unmet demand is concentrated in the areas where growth is likely to occur in the Phoenix AMA, particularly within ADAWS-eligible service areas.

Comment: Several commenters refer to the 25% reduction in the physically available groundwater calculation as a "tax" that the Department does not have the authority to authorize. Some developers commented that the 25% reduction in the groundwater calculation is unreasonable and unconstitutional, and reference *Sheetz v. El Dorado County*, California, 601 U.S. 267 (2024).

Response:

The 25% reduction in the physically available groundwater calculation is not a tax. It also imposes no fee on developers. The rules deem an initial volume of groundwater as physically available based on the calculation in the rule, and that volume reduces over time as new growth and supplies are added to the water provider's designation. The ADAWS rules are available when a volume of groundwater cannot be demonstrated as physically available in a hydrologic model. Therefore, it is important that the rules provide a pathway to reducing groundwater use over time as new supplies become available to provide an assured water supply to residents. ADWR will not collect any revenue based on this rulemaking, other than the existing application fees authorized by statute and rule.

Comment: Developers, and some providers interested in pursuing ADAWS, stated they believed effluent was being "taxed" twice, and expressed a desire to see effluent exempt from the 25% reduction.

Response:

The 25% reduction in the groundwater calculation relates to how the initial physically available volume of groundwater will be calculated and reduced over time as new growth and supplies are added to the designation. It does not impose a tax on any of the water supplies.

Comment: Several commentors expressed a desire to see an incentive included in the ADAWS rules for the conversion of agricultural lands to urban uses. Additionally, some water providers requested to allow groundwater volumes resulting from such an "Ag to Urban" program to be added to an ADAWS designation.

Response:

There is no agricultural to urban conversion program at this time, and therefore, this is outside the scope of this rulemaking. If there are additional volumes of groundwater that may be appropriate to include in the future, the rule can be amended in the future to address those groundwater volumes.

Comment: Some commentors stated that the Economic, Small Business and Consumer Impact Statement (EIS) lacks any quantification of the 25% "tax"; that ADWR did not adequately consider alternatives that allocate different portions of the burden to various land uses; and that the Water Infrastructure Finance Authority (WIFA) could have presented less intrusive and less costly alternatives.

Response:

As described in ADWR's responses above, the 25% reduction in the physically available groundwater calculation is not a tax. The ADAWS rules are available when a volume of groundwater cannot be demonstrated as physically available in a hydrologic model. Therefore, it is important that the rules provide a pathway to reducing groundwater use over time as new alternative supplies become available to provide an assured water supply to residents. Water providers are not required to use the ADAWS rules. As described in the EIS, if the ADAWS rulemaking did not move forward, water providers would be in the same position as they are now, but without an additional option. Water providers will retain their existing discretion and authority to determine how costs are managed and distributed. In addition, nothing in this rulemaking prevents or prohibits a water provider from utilizing opportunities offered by WIFA. Suggestions that WIFA be given additional statutory authority are outside the scope of this rulemaking.

Comment: Some commenters stated that ADWR failed to disclose any study justifying limitation of the proposed rules to only the Phoenix and Pinal AMAs.

Response:

The Phoenix and Pinal AMA assured water supply model runs have been publicly available since 2023 and 2019, respectively, as commenters acknowledge. However, the ADAWS rulemaking is limited to the Phoenix and Pinal AMAs based on interests of stakeholders and the discussions to date. If there is interest in pursuing a similar path for other AMAs in the future, ADWR will consider additional rulemakings at that time.

Comment: Some commenters stated that the 25% reduction in the physically available groundwater calculation would mean that "25% of such well and facilities will no longer be deemed 'used and useful' in the eyes of the Arizona Corporation Commission for cost recovery purposes."

Response:

This comment applies to private water providers regulated by the Arizona Corporation Commission. Water providers' wells will likely remain useful for many reasons. Water providers typically must maintain multiple wells, beyond the daily capacity requirements, to provide redundancy and security to a water system. Groundwater wells are also typically necessary to ensure there are backup supplies available. In addition, many water providers may use wells to recover water supplies that have been stored underground.

Comment: Several commentors expressed a desire to see language added to the rules affirming that certificates of assured water supply will be honored should a designation issued under the ADAWS rules lapse.

Response:

This language was included in the preamble and explains the intent of the physically available groundwater calculation in the ADAWS rules. Additionally, A.A.C. R12-15-709 provides the criteria for revoking a certificate. If a certificate is not revoked, it will remain in effect if the designation expires or is revoked.

Comment: Several commentors requested clarification on how the proposed groundwater availability reductions would function.

Response:

R12-15-710(H) provides the calculation for how the volume of groundwater deemed as physically available will be calculated. The starting volume of groundwater is totaled according to R12-15-710(H)(1). Each New Alternative Water Supply included in the designation is multiplied by twenty-five percent. The total of each New Alternative Water Supply (multiplied by twenty-five percent) is then subtracted from the starting volume of groundwater in R12-15-710(H)(1).

Comment: Some commentors expressed a desire to see additional oversight added to the rule language, such as requiring annual reports on whether an ADAWS provider is on track with acquiring New Alternative Water Supplies, building infrastructure to use these supplies, and monitoring of how its groundwater allowance is being utilized.

Response:

All designated providers are required to report according to A.A.C. R12-15-711(A). Under that rule, the Director may require "[a]ny other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of assured water supply." ADWR will evaluate whether additional reporting information should be added to annual reporting forms for designated providers with ADAWS volumes to ensure that the provider is continuing to meet the criteria in the rules.

Comment: Some commenters expressed a desire for a shorter initial designation period for an ADAWS provider, especially if the water provider's volume of New Alternative Supply is relatively small. Other comments requested that the designation term not be limited to 15 years.

Response:

A New Alternative Water Supply must meet all assured water supply requirements to be included in the designation, which ensures that speculative water supplies cannot be added to the designation to support growth. The ADAWS designation term was limited to a number of years that is typical of most designation terms. Those initial designation terms may be modified in the future. In addition, water providers may seek an expedited modification during the term to add additional alternative water supplies.

Comment: Some commenters stated that the rules are premature as to the Phoenix AMA based on ongoing discussions of "updating the model," referencing specifically the Phoenix AMA hydrologic model.

Response:

The ADAWS rules do not change the existing groundwater physical availability requirements for hydrologic modeling (in particular, A.A.C. R12-15-716(B)). Applicants seeking to demonstrate physical availability using a groundwater model may continue to apply and will receive a decision from ADWR under those rules. However, as indicated by ADWR previously, ADWR's recent hydrologic modeling projections show insufficient physical availability of groundwater for current applications in the Pinal and Phoenix AMAs. This rulemaking allows applicants to include some groundwater volume in a new designation of assured water supply without attempting to modify or update the current model and without waiting for others to do so.

Comment: Some commenters stated that the cost of the 25% reduction in the physically available groundwater calculation will be borne by landowner/developers/homebuilders and that the EIS does not adequately capture this impact.

Response:

As explained in the EIS, the water provider will decide how water supply costs are passed through to customers. This is the case for all designated providers (including those that do not include groundwater under the ADAWS rules). As water supplies diminish and become more costly, water providers must decide how to pass on those costs to existing water users and new development. Notably, in addition to the water supplies required to support new growth, this rulemaking also requires that new supplies be available to replace existing groundwater pumping. This will increase the certainty and reliability of the water supplies for existing customers, as well as new growth.

Comment: Some commentors expressed concern regarding the impact of the rules on the CAGRD replenishment obligation. Some providers interested in seeking a designation expressed a desire to see minimum reporting requirements established during a ramp up period to offset costs, while others recommended more robust reporting requirements. The CAGRD expressed support for the rulemakings based on their own analysis showing a reduction in future replenishment obligation compared to the replenishment obligation if the providers remain undesignated.

Response:

Minimum reporting requirements for water providers under Member Service Area Agreements are established by CAGRD, and are therefore outside the scope of this rulemaking. ADWR thanks CAGRD for its support.

Comment: Some developers and other commentors state that the rules exceed the Department's authority and state that AMAs having unmet demand is not a classification recognized by Arizona law.

Response:

The ADAWS rules do not define or include the term unmet demand. ADWR uses the term "unmet demand" as a shorthand way to describe water demands that are required to be included in hydrologic models but cannot be simulated in the model because insufficient water is available, and therefore relates to groundwater physical availability under A.A.C. R12-15-716(B). While the ADAWS rules do not define or include the term "unmet demand," A.R.S. § 45-576 would not limit ADWR from referencing this term in future rules because it concerns groundwater physical availability.

The ADAWS rules do not exceed the subject matters in A.R.S. § 45-576. The rules specifically provide optional criteria for demonstrating an assured water supply, as defined by A.R.S. § 45-576(M). Demonstrating physical availability of water supplies has always been incorporated as a crucial component of the assured water supply program. Providing an alternative method to demonstrate the physical availability of groundwater, therefore, is also within the scope of A.R.S. § 45-576(M).

Comment: Some developers and water providers expressed concern regarding the cost of acquiring New Alternative Water Supplies and building infrastructure. Other commenters stated that EIS should have specifically evaluated the cost of certain water supplies.

Response:

Water providers are not required to apply for an ADAWS and may continue to operate under the existing assured water supply rules. Each water provider has a unique water portfolio and unique infrastructure capabilities and may evaluate whether ADAWS provides a suitable path forward. Costs of alternative water supplies are not unique to ADAWS but are relevant to all assured water supply determinations. As groundwater supplies continue to diminish, alternative water supplies will be important for all assured water supply determinations. Under current assured water supply rules (and without the ADAWS rules), if a water provider seeking a designation is unable to demonstrate physical availability of groundwater through a hydrologic model, the provider would be required to obtain alternative water supplies sufficient to cover 100% of its demands. This would be significantly more costly to providers than the ADAWS option. As the EIS recognizes, it is difficult to predict how many applications may be received and the amount of growth that will be enabled through ADAWS. The water infrastructure that will be needed for alternative water supplies is unique to each water provider, its current portfolio and demand projections. However, ADAWS provides an additional pathway to include a volume of groundwater without hydrologic modeling.

In addition, as the EIS recognizes, the ADAWS rules provide a separate groundwater allowance to water providers (relating to groundwater replenishment), which will significantly reduce the groundwater replenishment costs compared to a pursuing a traditional designation under existing rules. Likewise, A.R.S. § 48-3771(F), et seq., provides flexibility to ADAWS water providers in

transitioning to a CAGRD member service area.

Comment: Some commenters requested that ADWR consider the impact of A.R.S. § 48-3771(F) and related provisions.

Response:

ADWR is having conversations with the CAGRD and potentially affected water providers to ensure that the transfer of the groundwater allowance associated with certificates of assured water supply is consistent with statute and does not disrupt existing accounting practices more than necessary. As ADWR, the CAGRD and water providers obtain greater understanding of the implementation requirements, ADWR will consider whether any additional clarification will require a rulemaking, substantive policy statement, or other guidance. ADWR will also ensure that subdivision residents or other landowners are not negatively affected by implementation.

Comment: Some commenters expressed concern about the timeframes associated with the application and review period.

Response:

Licensing timeframes for ADAWS applications will be subject to the same licensing timeframe rules as for other designation applications. Any changes to the licensing timeframe rules are outside the scope of this rulemaking.

Comment: One commenter stated that the potential impacts of development of alternative water supplies needs to be assessed, evaluated, and, where possible, mitigated.

Response:

Any alternative water supplies included in the designation must satisfy existing assured water supply requirements. ADWR does not have authority to require mitigation of impacts.

Comment: Some commenters expressed concern about serious consequences in both cost and regulatory time as it relates to how quickly housing projects can move forward and requested a transition period where housing development may move forward before a designation under ADAWS is issued.

Response:

ADWR may only issue assured water supply determinations that meet assured water supply requirements. ADWR also notes that the costs of eliminating assured water supply requirements for new growth (in other words, allowing growth to occur without demonstrating sufficient water is available to satisfy the new water demand) could be astronomical and would be particularly devastating to individual homebuyers who find themselves without any water supply.

Comment: Some commenters objected to using 2023 as the calculation year for the physically available groundwater volume (under R12-15-710(H)(1)) and for the groundwater allowance (R12-15-724(A)(4)(a)) and instead requested that the water provider be able to use any of the three years prior to its submission of the application.

Response:

ADWR intentionally included a specific year of groundwater pumping to avoid creating any incentive for water providers to increase their groundwater use in the short term to obtain a large starting volume of physically available groundwater or groundwater allowance. For example, using any of the 3 years prior to the application would allow a water provider to stop using existing surface water supplies and effluent, and rely entirely on groundwater for one year, then apply for an ADAWS assuming 100% groundwater use in its system. All of the surface water supplies and effluent would then be "New Alternative Supplies" and the water provider could direct those toward growth while effectively increasing its typical groundwater use in the long term. In another example, a water provider could wait until after it has begun serving groundwater to certain large water users that do not require an assured water supply, and then seek an ADAWS, in order to maximize its physically available groundwater and groundwater allowance. Using 2023 as a fixed year for determining the physically available groundwater volume and the groundwater allowance preserves the goal of the ADAWS rulemaking: to facilitate a reduction in groundwater use over time to provide an assured water supply to residents and homeowners.

Comment: Some commenters requested that ADWR require a periodic reconsideration of the amount of the percentage reduction in the groundwater calculation, if aquifer conditions improve due to replenishment or otherwise, or if groundwater modeling is updated such that there are no unmet demands attributable to municipal groundwater uses.

Response:

The ADAWS rules provide for a calculation of physically available groundwater for water providers seeking a designation when they cannot show the groundwater is physically available through a hydrologic model. Therefore, if aquifer conditions improve, water providers designated through ADAWS may seek to modify their designation using the standard method of demonstrating physical availability of groundwater. Additionally, ADWR is required to evaluate its rules every five years. If aquifer conditions improve and/or if substantial volumes of New Alternative Water Supplies are incorporated, ADWR may consider revising the rules to limit the percentage reduction of groundwater.

Comment: One commenter requested that "that the reduction to the groundwater volume calculated in proposed rule 12-15-710(H)(3) and (I)(2) occur two years after the New Alternative Water Supply meets the requirements of an assured water supply, to provide time for the Municipal Provider to bring the new supply into their system."

Response:

The supplies in a water provider's application must be sufficient to cover the current, committed and projected demands in a water provider's service area for the term of the designation. This proposal would not be consistent with how designations are issued under the AWS rules. However, the designated provider may allocate their annual use of individual supplies as they deem appropriate or necessary. The quantification of water supplies in the designation is not a limitation on the annual volume of any water supply that may be used in any year.

Comment: One commenter requested to "add to subsection (H)(1) those volumes of groundwater, reserved under one or more analysis of assured water supply for lands served or to be served by an ADAWS applicant, in amounts that the analysis holders voluntarily cut-over to the applicant's portfolio of physically-available groundwater when platting occurs on lands covered by the analysis."

Response:

The initial groundwater volume is calculated based on existing uses and issued certificates because those uses are authorized to move forward in an undesignated water provider's service area regardless of the rulemaking. If groundwater included in analyses of assured water supply were included in the volume in proposed A.A.C. R12-15-710(H)(1), a considerably larger reduction of the initial groundwater volume would be necessary for each New Alternative Supply, and it is likely that sufficient groundwater may not be available to satisfy demands in some cases.

Comment: One commenter stated that the EIS should have contained analysis on the cost of well movement or other infrastructure improvements to improve access to groundwater supplies to achieve greater groundwater physical availability when compared to the anticipated costs of acquiring the New Alternative Water Supplies.

Response:

This is already permissible under the existing provisions of A.A.C. R12-15-716(B). Nothing in this rulemaking prohibits any applicant from relying on that option in seeking to demonstrate the physical availability of groundwater.

Comment: One commenter stated that continued reductions in the water provider's groundwater portfolio would be inconsistent with A.R.S. § 45-576(M), and invalid under A.R.S. § 41-1030(A).

Response:

Without the ADAWS rules and if the water provider cannot demonstrate physical availability of groundwater with a hydrologic model, there would not be any groundwater available for a new designated provider's water portfolio. The proposed rules provide a calculation for how a volume of groundwater may be included as physically available and consistent with the management goal in the designation and provide an assured water supply to residents. The calculation is not inconsistent with A.R.S. § 45-576(M) or invalid under A.R.S. § 41-1030(A).

Comment: Some commenters stated that the EIS did not adequately consider less burdensome alternatives.

Response:

The Governor's Water Policy Council recommended 30% as a reasonable reduction in the physically available groundwater calculation as new alternative supplies are added to the designation. ADWR further reduced the percentage to 25% in the ADAWS rules based on stakeholder input. A reduction to 25% is less burdensome to water providers but maintains the integrity of the assured water supply program and ensures that groundwater use will be meaningfully reduced as growth occurs to protect consumers and homeowners. The alternatives proposed by some commenters that would allow more groundwater in designations (such as reductions of 0%) without ensuring future groundwater availability cannot be considered as "alternatives" because they reduce the assured water supply standards required by statute. Likewise, alternatives that relate to seeking a determination using hydrologic modeling are already allowed by current assured water supply rules for physical availability, which have not changed.

13. 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 reasons why a general permit is not used:

While the proposed rules do not require a permit, they do describe the criteria for a designation of Assured Water Supply, which is a license. Arguably, a designation is a general permit as authorized under A.R.S. 45-576.

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:

Not applicable

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

Not applicable

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

Not applicable

15. 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). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

13. 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
R12-15-710. Designation of Assured Water Supply
R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation
R12-15-720. Financial Capability
R12-15-723. Extinguishment Credits
R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits
R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

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

1. No change
   a. No change
   b. No change
2. No change
3. No change
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   b. No change
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46. No change
47. No change
48. No change
49. No change
50. No change
51. No change
52. No change
53. "New Alternative Water Supply" means a volume of water that is not groundwater withdrawn from an AMA and that was not served within the service area of the municipal provider in the calendar year 2023 for the Phoenix and Pinal AMAs. The Director shall use the annual report submitted by the municipal provider for calendar year 2023, as verified by the Director, for purposes of this paragraph.

~~53~~54. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.

~~54.~~55 "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 according to the designation.

~~55~~56. "Perennial" means a stream that flows continuously.

~~56~~57. "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.

~~57~~58. "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).

~~58~~59. "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.

~~59~~60. "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.

~~60~~61. "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.

~~61~~62. "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.

~~62~~63. "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 subdivision trust agreement.

~~63~~64. "Remedial groundwater" means groundwater withdrawn according to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply according to A.R.S. § 49-282.03.

~~64~~65. "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 according to A.R.S. § 45-108(D), the area of land actually being served water for a nonirrigation 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.

~~65~~66. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.

~~66~~67. "Superfund site" means the site of a remedial action undertaken according to CERCLA.

~~67~~68. "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.

69. "Unreplenished groundwater" means the volume of groundwater withdrawn within the service area of a municipal provider after subtracting the groundwater used consistent with the management goal of the AMA pursuant to R12-15-722.

~~68~~70. "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken according to A.R.S. Title 49, Chapter 2, Article 5.

~~69~~71. "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 according to A.R.S. § 45-108 and this Article.

R12-15-710. Designation of Assured Water Supply

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

B. No change
1. No change
2. No change

C. No change

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

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 or as provided in subsection (G), (H) or (I) 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 that does not include a volume of groundwater or stored water recovered outside the area of impact pursuant to subsection (H) or (I) of this Section, 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.

H. For a new application for a designation of assured water supply in the Phoenix and Pinal Active Management Areas, a volume of groundwater and stored water recovered outside the area of impact, as calculated in subsection (H)(1), (2) and (3) of this Section, shall be deemed physically available if the Director determines that a New Alternative Water Supply included in the application meets the requirements in R12-15-716 through R12-15-720. The volume of groundwater and stored water recovered outside the area of impact shall be calculated as follows:
1. Add the total volume of groundwater withdrawn and stored water recovered outside the area of impact within the service area of applicant during the calendar year 2023 to the estimated groundwater and stored water recovered outside the area of impact demand for unbuilt portions of issued certificates of assured water supply as of 2023 that are or will be within the service area of the applicant, and multiply the sum by 100;
2. Multiply 25 percent of each New Alternative Water Supply included in the designation by 100; and
3. Subtract the total volume calculated in subsection (H)(2) of this Section from the total volume calculated in subsection (H)(1).
4. The Director shall use the annual report submitted by the municipal provider for calendar year 2023, as verified by the Director, for purposes of this calculation.

I. For an application seeking to modify a designation of assured water supply that includes a volume of groundwater and stored water recovered outside the area of impact pursuant to subsection (H) of this Section, the following apply:
1. The 100-year volume calculated pursuant to subsection (H) of this Section shall be reduced by the volume of groundwater withdrawn and stored water recovered outside the area of impact by the applicant since the previous designation order issuance date; and

2. The 100-year volume calculated pursuant to subsection (H) of this Section shall be further reduced by 25 percent of the 100-year volume of each New Alternative Water Supply included in any modified designation but not included in the previous designation.

J. The Director shall not include any additional sources of groundwater withdrawn from the AMA or stored water recovered outside the area of impact in the AMA in a designation of assured water supply that includes a volume of groundwater and stored water recovered outside the area of impact pursuant to subsection (H) or (I) of this Section.

K. An applicant that includes a volume of groundwater or stored water recovered outside the area of impact pursuant to subsection (H) or (I) of this Section must be enrolled as a member service area with the CAGRD.

R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation

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

B. No change

C. No change

D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designation that includes a volume of groundwater pursuant to R12-15-710(H) or (I) shall be for an initial term of no greater than 15 years.

E. No change

F. No change
1. No change
   a. No change
   b. No change
   c. No change
2. No change
3. No change
4. No change
   a. No change
   b. No change

G. No change

H. No change

I. No change

J. During the term of the designation, a designated provider may request an expedited modification of the designation to include additional water supplies that do not include groundwater or stored water recovered outside the area of impact from an AMA. The Director shall review only the following for an expedited modification under this subsection:
1. The proposed current, committed and projected demands under the current term of the designation; and
2. The assured water supply requirements for the additional water supply pursuant to R12-15-710(I), if applicable, and R12-15-716 through R12-15-722.

R12-15-720. Financial Capability

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

B. No change

C. The Director shall determine that an applicant for a designation has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following for each of those facilities:
1. The applicant has constructed adequate delivery, storage, and treatment works;
2. The applicant has entered into written agreements requiring a potential developer to construct adequate delivery, storage, and treatment works;
3. The applicant has submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner;

~~3~~4. If the applicant is a city or town, the applicant has~~:~~
   ~~a.~~ ~~Adopted~~ adopted a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner, and has submitted a certification by the applicant's chief financial officer that finances are available to implement that portion of the five-year plan; or
   ~~b. Submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner; or~~

~~4~~5. If the applicant is a private water company, the applicant has received approval from the Arizona Corporation Commission for financing the construction of adequate delivery, storage, and treatment works.

R12-15-723. Extinguishment Credits

A. No change
1. No change

2. No change
3. No change
4. No change
   a. No change
   b. No change
5. No change
6. No change

B. No change
C. No change
D. No change
1. No change
2. No change
3. No change
4. No change
5. No change

E. No change
F. No change
G. Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same AMA. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:
1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.
2. If extinguishment credits are pledged to a certificate for a subdivision that is later served by a designated provider or a municipal provider that is applying for a designation~~.~~:
   a. ~~any~~ Any unused extinguishment credits may be used to support the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated~~.~~;
   b. For a designation in the Pinal AMA that is issued pursuant to R12-15-710(H) or (I), the extinguishment credits may only be applied to groundwater delivered to the subdivision that is the subject of the certificate;
   c. ~~if~~ If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.

H. No change
I. No change
1. No change
2. No change
3. No change
   a. No change
   b. No change

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

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

L. No change

R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:
1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	4
Fourth	2
Fifth	1
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet, except as provided in subsection (A)(4) of this Section.
4. If the application is for a designation that includes a volume of groundwater or stored water recovered outside the area of impact pursuant to R12-15-710(H), the groundwater allowance shall be calculated as follows:
   a. the applicant may select either of the following calculations if the volume does not exceed the applicant's 2023 unreplenished groundwater deliveries multiplied by 100:
      i. multiply 30 by the total groundwater deliveries during the calendar year 2023 to customers not enrolled as a member land in the CAGRD; or
      ii. multiply 20 by the total water deliveries from any source during the calendar year 2023 to customers not enrolled as a member land in the CAGRD.
   b. add the remaining groundwater allowance for each issued certificate of assured water supply that is or will be within the service area of the applicant to the volume calculated under subsection (A)(4)(a) of this Section.
   c. the Director shall use the annual report submitted by the municipal provider for calendar year 2023, as verified by the Director, for purposes of this calculation.

4~~4~~5. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

B. No change
1. No change
2. No change
   a. No change
   b. No change

R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:
1. If the application is for a certificate:
   a. If the certificate application is filed before January 1, 2019, multiply the annual estimated water demand for the proposed subdivision by 10.
   b. If the certificate application is filed on or after January 1, 2019, the groundwater allowance shall be zero.
2. If the application is for a designation:
   a. If the applicant was designated as having an assured water supply as of October 1, 2007:
      i. Multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
      ii. Convert the number of gallons determined in subsection (A)(2)(a)(i) into acre-feet by dividing the number by 325,851 gallons.
      iii. Determine the number of residential lots within plats that were recorded as of October 1, 2007 but not served water as of that date, and to which the applicant commenced water service by January 1, 2010.
      iv. Multiply the number of lots determined in subsection (A)(2)(a)(iii) by 0.35 acre-foot per lot.
      v. Add the volume from subsection (A)(2)(a)(ii) and the volume from subsection (A)(2)(a)(iv) of this Section.
   b. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed before January 1, 2012, multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
   c. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed on or after January 1, 2012, the applicant's groundwater allowance is zero acre-feet, except as provided in subsection (A)(2)(e) of this Section.
   d. If the applicant commenced providing water to its customers on or after October 1, 2007, the applicant's groundwater allowance is zero acre-feet, except as provided in subsection (A)(2)(e) of this Section.
   e. If the application is for a designation that includes a volume of groundwater or stored water recovered outside the area of impact pursuant to R12-15-710(H), the groundwater allowance shall be calculated as follows: The applicant may select either of the following calculations if the volume does not exceed the applicant's 2023 unreplenished groundwater deliveries multiplied by 100:
      i. Multiply 30 by the total groundwater deliveries during the calendar year 2023 to customers not enrolled as a member land in the CAGRD;
      ii. Multiply 20 by the total water deliveries from any source during the calendar year 2023 to customers not enrolled as a member land in the CAGRD;
      iii. Add the remaining groundwater allowance for each issued certificate of assured water supply that is or will be withdrawn within the service area of the applicant to the volume calculated under subsection (A)(2)(e) of this Section; or

iv. The Director shall use the annual report submitted by the municipal provider for calendar year 2023, as verified by the Director, for purposes of this calculation.

3. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Pinal AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor by submitting a hydrologic study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated provider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider upon such demonstration.

B. No change

1. No change
   a. No change
   b. No change
      i. No change
      ii. No change
2. No change
3. No change
   a. No change
   b. No change

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS INSURANCE DIVISION

[R24-282]

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039 by the Governor on:
September 27, 2024

2. Article, Part, or Section Affected (as applicable) | **Rulemaking Action**

R20-6-2301	Amend
R20-6-2305	Amend

3. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 20-143(A)
Implementing statute: A.R.S. § 20-238; 45 C.F.R. 154.301(a)(5)

4. The effective date of the rule:
February 3, 2025

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):
Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):
Not applicable

5. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rule:
Notice of Rulemaking Docket Opening: 30 A.A.R. 2506; Issue date: August 2, 2024; Issue number: 31; File number: R24-144
Notice of Proposed Rulemaking: 30 A.A.R. 2494; Issue date: August 2, 2024; Issue number: 31; File number: R24-140

6. The agency's contact person who can answer questions about the rulemaking:

Name: Mary E. Kosinski
Address: Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007-2630
Telephone: (602) 364-3476
Email: mary.kosinski@difi.az.gov

EXHIBIT B

In the Matter of:

Arizona Department of Administration

Reporter's Transcript of Recorded Proceedings [Excerpt]

October 29, 2024

GRIFFIN GROUP INTERNATIONAL

3200 East Camelback Road, Suite 177
Phoenix, Arizona 85018

ARIZONA DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL

TRANSCRIPT OF DIGITALLY-RECORDED PROCEEDINGS

RE: Public Meeting and Agenda

Phoenix, Arizona

October 29, 2024

PREPARED BY:
William J. Garling
Certified Electronic
Transcriber No. CET-543

PREPARED FOR:
Andrew Gould, Esquire

(Certified Copy)

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A P P E A R A N C E S

GOVERNOR'S REGULATORY REVIEW COUNCIL MEMBERS:
Chairperson Jessica Klein
Vice Chair Frank Thorwald
Councilmember Jeff Wilmer
Councilmember Rana Lashgari
Councilmember John Sundt
Councilmember Jenna Bentley
Staff Attorney Simon Larscheidt

ALSO APPEARING:
Nicole D. Klobas, Chief Counsel, ADWR
Clint Chandler, Assistant Director, ADWR

A G E N D A

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON RULEMAKINGS

The Council may vote to go into Executive Session on any item on the agenda pursuant to A.R.S. § 38- 431.03(A)(3) to obtain legal advice from the Council’s attorney.

7. DEPARTMENT OF WATER RESOURCES

Title 12, Chapter 15

Amend: Article 7; R12-15-701; R12-15-710; R12-15-711; R12-15-720; R12-15-723; R12-15-724; R12-15-725

So there's an ultimate drop date in February, but it could be heard in January, and if it was not resolved, if people felt uncomfortable in a January cycle, it could be pushed, again, to February.

CHAIRPERSON KLEIN: It's actually a November cycle or pushed to the January/February cycle, just looking at our current calendar.

Did we have another comment or question on this procedural side of Agenda Item D(7)?

(No verbal response.)

CHAIRPERSON KLEIN: Okay. Do we have substantive questions regarding the rulemaking itself from members of the council?

MEMBER BENTLEY: Madam Chair, Member Bentley.

I had a couple of questions, if that's okay?

CHAIRPERSON KLEIN: Of course. Please proceed.

MEMBER BENTLEY: So, yeah, I guess two questions for the Department.

The first one is, in reviewing the material, can they kind of talk a little bit more of how they get to the 25-percent increase, which actually looks like 33-percent increase, and then the 30-percent increase for the commingling. I guess as I was going through the

materials, I was having a hard time ascertaining how they got to those exact numbers.

CHAIRPERSON KLEIN: Is there a member of the Department of Water Resources here who can respond to these questions?

MR. KLOBAS: Yes, I am Nicole Klobas and I am the chief counsel for the Department. I also have our deputy director, Clint Chandler, here with me. And we're both available to answer questions.

I'll start with the second question first, which goes to the commingling rulemaking. We have not brought the commingling rulemaking forward to the council, so that is not up for consideration at this time; instead, we are only proceeding with the Alternative Designation of Assured Water Supply, or ADAWS rulemaking.

Then, going back to your first question about the 25-percent increase, I would say it's not really an increase; it's actually an offset. So, the genesis of this rulemaking began with the Arizona Governor's Water Policy Council discussions, particularly, within the Assured Water Supply Committee and the concern that with a limited physical availability of groundwater in the Phoenix AMA, which also applies in the Pinal AMA, it has been much more challenging for developers to move forward and get certificates of assured water supply.

We, within that committee, there was consideration of a few different paths and some of those are still under consideration, but one of the paths identified was an alternative path to designation and it addresses not just the physical availability issue that's outstanding, but also another issue that was raised by water providers who were seeking a designation of their entire system and that has to do with the obligation to replenish any groundwater that is used and enrollment in the Central Arizona Groundwater Replenishment District, or CAGRD, and the costs associated with that.

So we found through our discussions that by looking at the issue from the perspective of a water provider-centric approach, there were more opportunities for the water provider to manage its entire portfolio, rather than individual developers having to negotiate to acquire water supplies on behalf of the water provider. And what this rulemaking does is it essentially allows the water provider to apply for a designation for its entire system as having an assured water supply; this will allow any subdivision that will be served by that water provider to move forward without obtaining an individual certificate.

The water provider will not be required to demonstrate physical availability of groundwater under the

MEMBER BENTLEY: Yeah, I appreciate it. Thank you for that background. I probably would disagree with the characterization that this is an offset.

But, again, to my original question, how did you get to 25 percent? I mean, I do think that this is a substantial burden to place on, you know, people who are trying to build homes in this area. How do you get to that specific number? Do you have a study or, like, where did that come from?

MR. KLOBAS: As I said, that was a product of the discussions within the Assured Water Supply Committee of the Governor's Water Policy Council and that was developed through the consideration of volume, you know, the consideration of a combination of what volume of water would ensure that we're seeing a reduction in groundwater use overall, combined with the calculation of the groundwater allowance that is permitted through this rulemaking, which ranges -- it can be either 20 percent of their entire water portfolio use in 2023 or 30 percent of their groundwater use over the 100-year period.

And so we're, again, trying to ensure that the mined groundwater is going to be reduced, overall, over the 100-year period of the designation.

CHAIRPERSON KLEIN: Thank you, Chief Counsel Klobas.

Can you hear me now? I think my mute was not working earlier when you were doing roll call.

CHAIRPERSON KLEIN: Oh, great. So we'll make sure that you are marked as present for this meeting.

MEMBER WILMER: Sorry about that.

CHAIRPERSON KLEIN: You've been present the entire time?

MEMBER WILMER: Yes.

CHAIRPERSON KLEIN: Thank you.

MEMBER WILMER: Thanks for all this information. And I've really started looking at a lot of the opposition only because it seemed that those that were for it were kind of a standard form.

There was a reference to an AMA groundwater model 2023 Phoenix, which wasn't part of this, so I went and researched it and found it on the web. And I noticed that on there, you're projecting a 4-percent deficit in water supplies.

Is that what you're going off of for these changes in the water usage where you're adding another 33 percent?

MR. KLOBAS: Madam Chair and Councilmember, I -- that is one groundwater model. The groundwater model for the Phoenix AMA, yes, projects, overall, a 4-percent decline throughout the Phoenix AMA.

There is also the Pinal AMA groundwater model, which is implicated. These are not the -- these models do not necessarily support the rulemaking and that is not the basis for the percentage of the groundwater offset. As I said, the groundwater offset a calculated in a way that it's intended to ensure that the, that the groundwater that will be used by the water provider in the long term will be less groundwater than would have been used if that provider had not already been designated.

Additionally, I would point out that in the Phoenix AMA, in particular, the areas where there is unmet demand, while it might be 4 percent overall of the Phoenix AMA demand, that unmet demand tends to be concentrated in areas where we're seeing the most interest in growth at the eastern and western edges of the Phoenix AMA.

MEMBER WILMER: Okay. So, do you have the other calculations that you're going off of, because when I see 4 percent and then I see that we're having a 4-percent decrease, but you're asking for a 33-percent increase from, I guess, is this just applied to property owners, homeowners? Does this apply to --

MR. KLOBAS: No, this -- absolutely --

MEMBER WILMER: -- apartments or industries?

MR. KLOBAS: No, absolutely not.

And the offset is not applied to homeowners

or property owners --

MR. CHANDLER: Or developers.

MR. KLOBAS: -- specifically. This is an offset for water providers to offset their groundwater use to ensure that while we're essentially allowing them to bypass the demonstration that groundwater is physically available through a groundwater model; instead, we're allowing them to demonstrate that they would be using less groundwater overall than they would if they did not get designated under this program.

And I would -- but I would say that, you know, we don't think it's necessarily appropriate to ask, we're not seeking to have the water providers resolve the unmet demands. That is certainly an option that remains available to any applicant for a certificate or a designation. If they wish to proceed under existing Rule 12-15-716(B) to use a model to demonstrate that groundwater is physically available, but we're not asking anyone to do that through this rulemaking. We're giving water providers an alternative path to obtain a designation by showing that they're using less groundwater than they would have otherwise.

MEMBER WILMER: Okay. Back to the my previous question, the models that you're using, is that something that you can provide to us so we get a reference

of how you're calculating your numbers? Is that something that we might be able to see (indiscernible) meeting before?

MR. KLOBAS: Oh, the calculations, the data to show that we used to determine that the 25 or 30 percent would result in less groundwater use; yes, we can share that.

MEMBER WILMER: Okay. I look forward to that.

That's all my questions, Madam Chair. Thank you.

CHAIRPERSON KLEIN: Thank you, Member Wilmer.

And for the record, those last few questions were also from Member Wilmer.

Just a quick follow-up question to Member Wilmer's question, I'm just wondering if those models are going to show, you know, we talk about 4 percent for the overall water supply and then there's this probably smaller percentage of developers that would use the Alternative Designation of Assured Water Supply that would created by this rulemaking.

I'm just wondering if you've got something to show the relative volumes, because I think the percentages might be a little bit misleading. I'm not

that we are nearing the maximum use of that finite supply in two AMAs in particular, and yet, we still want to ensure that we have responsible, sustainable growth in those AMAs. And in order to find a path to do that, we're finding a path for those providers that wish to become designated, to transition away from groundwater as their path to growth.

MR. CHANDLER: And that's what it is, it's a transition. It's, in broadest brush terms, it's moving away from growth on groundwater, which is a finite and diminishing resource, to sustainable, renewable sources.

CHAIRPERSON KLEIN: Thank you both.

Member Lashgari, please proceed.

MEMBER LASHGARI: Thank you, Chair Klein.

I actually had a follow-up to the comment you just made. There are some providers right now, however, that cannot get a designation because they, given the water studies that we've referenced, they cannot show a 100-year supply; is that correct? So this alternative path would be their only path?

MR. KLOBAS: I think that, realistically, there are certainly providers -- I'm sorry, Madam Chair, Councilmember Lashgari, I believe that there are certainly providers that would say that this is their only feasible path to designation.

Technically speaking, as Deputy Director Chandler mentioned earlier, those water providers could replace all of their groundwater supplies with new alternative supplies. That would be a very expensive prospect in the short term to completely replace groundwater for those particular water providers that are interested, so I think this is probably the only feasible path, yes.

MEMBER LASHGARI: Thank you.

CHAIRPERSON KLEIN: Are there any further questions from councilmembers?

(No verbal response.)

CHAIRPERSON KLEIN: Thank you Chief Counsel Klobas and Deputy Director Chandler.

We're now going to move to comments from members of the public.

(Audio concludes at 1:02:00)

BE IT KNOWN that the foregoing audio/video recording was transcribed by me, William J. Garling, a Certified Reporter; that the 34 pages contained herein are a true and correct transcript of the recording, all done to the best of my skill and ability.

I FURTHER CERTIFY that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome hereof.

Dated this 22nd day of January, 2025.

/s/ William J. Garling
WILLIAM J. GARLING, CET
Certified Electronic
Transcriber CET-543

EXHIBIT C

In the Matter of:

Arizona Department of Administration

Reporter's Transcript of Recorded Proceedings [Excerpt]

November 5, 2024

GRIFFIN GROUP INTERNATIONAL

3200 East Camelback Road, Suite 177
Phoenix, Arizona 85018

ARIZONA DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL

TRANSCRIPT OF DIGITALLY-RECORDED PROCEEDINGS

RE: Public Meeting and Agenda

Phoenix, Arizona

November 5, 2024

PREPARED BY:
William J. Garling
Certified Electronic
Transcriber No. CET-543

PREPARED FOR:
Andrew Gould, Esquire

(Certified Copy)

A P P E A R A N C E S

GOVERNOR'S REGULATORY REVIEW COUNCIL MEMBERS:
Chairperson Jessica Klein
Vice Chair Frank Thorwald
Councilmember Jeff Wilmer
Councilmember Rana Lashgari
Councilmember Jenny Poon
Staff Attorney Simon Larscheidt

ALSO APPEARING:
Nicole D. Klobas, Chief Counsel, ADWR
Drew Ensign, public speaker
Spencer Kamps, public speaker

A G E N D A

CONSIDERATION, DISCUSSION, AND POSSIBLE ACTION ON RULEMAKINGS

The Council may vote to go into Executive Session on any item on the agenda pursuant to A.R.S. § 38- 431.03(A)(3) to obtain legal advice from the Council’s attorney.

1. DEPARTMENT OF WATER RESOURCES

Title 12, Chapter 15

Amend: Article 7; R12-15-701; R12-15-710; R12-15-711; R12-15-720; R12-15-723; R12-15-724; R12-15-725

it corresponds with the voting session on February 4th.

CHAIRPERSON KLEIN: Member Bentley, from my perspective -- this is Chair Klein -- I think we've received, you know, we've received over 200 comments. We've received advice from counsel on this. From my perspective, there are not open questions and as a council, we will, you know, vote as we see appropriate, as each councilmember sees appropriate.

One thing that we had talked about in the study session that I think is still applicable today is that sort of question mark, you know, are we exactly at the 30 days or are we one day short of the 30 days? And out of an abundance of caution, and to make sure that we meet the statutory requirement for 30 days of receiving comments, I think it would be appropriate to look at a motion to table Agenda Item E to our next study session.

Are there any voices in opposition to that amongst our councilmembers?

MEMBER BENTLEY: Madam Chair, if I may follow up?

Yeah, I would support that. I understand that we wouldn't probably want to bring it to the very last deadline, but I do still have concerns. I don't feel that the Department has -- I looked through the material that they sent about how they get to the 25 percent

increase and I mean there was a PowerPoint slide, but I didn't see any, like, real studies kind of showing how they mathematically got there.

I still have concerns about if what they're doing is, you know, creating a license. I do think that -- I know that this was brought up that if we are creating a new fee increase, that we might additionally need a majority vote of the GRRC councilmembers. So I think we might need more than 30 days to kind of have these questions resolved and additional information.

So, I don't know how the other members feel. I would kind of be leaning towards holding this off until -- and, Simon, correct me if I have the dates incorrect -- but, like, the December 31st, study session, January 7th voting session.

CHAIRPERSON KLEIN: Member Bentley, we do have a member of the Department of Water Resources here. It sounds like we really only have two open questions based on your comment and just, personally, I think GRRC operates most efficiently when we don't simply delay things for the sake of delaying them. And we have someone here from the Department who can respond to the questions.

I know we've already received advice, with regard to the licensing portion that we can rely on, but if the Department of Water Resources is available, if you

vote?

MEMBER POON: Aye.

CHAIRPERSON KLEIN: Member Wilmer, how do you vote?

MEMBER WILMER: Aye.

CHAIRPERSON KLEIN: And this is Chair Klein, I also vote aye.

We will table Agenda Item E to our next study session.

(Audio concluded at 1:02:11)

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Dated this 22nd day of January, 2025.

/s/ William J. Garling
WILLIAM J. GARLING, CET
Certified Electronic
Transcriber CET-543