NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the Register first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Register after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

[R06-336]

PREAMBLE

1. Sections Affected
   - R12-15-701
   - R12-15-702
   - R12-15-703
   - R12-15-703.01
   - R12-15-704
   - R12-15-705
   - R12-15-706
   - R12-15-707
   - R12-15-708
   - R12-15-709
   - R12-15-710
   - R12-15-711
   - R12-15-712
   - R12-15-713
   - R12-15-714
   - R12-15-715
   - R12-15-716
   - R12-15-717
   - R12-15-718
   - R12-15-719
   - R12-15-720

   Rulemaking Action
   - Amend
   - Repeal
   - New Section

September 29, 2006  Page 3475  Volume 12, Issue 39
2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
   Authorizing statute: A.R.S. §§ 45-105(B)(1) and 45-576(H)

3. The effective date of the rules:
   September 12, 2006
   These amendments are effective immediately upon filing with the office of the Secretary of State, pursuant to A.R.S. § 41-1032(A)(1), because the amendments will preserve the public peace, health or safety. The rule package includes rules that replace ADWR’s emergency rules, which closed a potential loophole in the permanent rules for Assured and Adequate Water Supply that might be construed to require an over-allocation of groundwater supplies. See 11 A.A.R. 2706, July 22, 2005; 12 A.A.R. 144, January 13, 2006. The emergency rules expired on June 21, 2006. Additionally, the rule package reorganizes and clarifies the current rule provisions for the benefit of the public and applicants and will provide for extensive streamlining of the application process, thereby allowing ADWR to focus on and promote the fundamental purpose of the Assured and Adequate Water Supply Programs: to protect the public by ensuring that water supplies are available to meet the demands of new subdivisions in Active Management Areas (“AMAs”) and to provide notice to home buyers of available water supplies in areas outside AMAs.

4. A list of all previous notices appearing in the Register addressing the final rule:
   Notice of Rulemaking Docket Opening: 11 A.A.R. 2392, June 24, 2005

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
   Name: Sandra Fabritz-Whitney
   Address: Department of Water Resources
            3550 N. Central Ave.
            Phoenix, AZ 85012
   Telephone: (602) 771-8500
   Fax: 602) 771-8690
   E-mail: wrsaf@azwater.gov

6. An explanation of the rule, including the agency’s reason for initiating the rule:
   GENERAL EXPLANATION OF THIS RULEMAKING
   The assured water supply program was created as part of the 1980 Groundwater Management Act, and operates within Arizona’s five Active Management Areas (“AMA”). The adequate water supply program was created in 1973 and applies in all other areas of the state. Assured and Adequate Water Supply rules were adopted and effective February 7, 1995.

   The assured water supply program has two primary purposes. First, the program facilitates the achievement of the AMA water management goal. For the Prescott, Tucson, and Phoenix AMAs, the management goal to be reached by the year 2025 or earlier is “safe-yield,” a groundwater management goal that attempts to achieve and thereafter maintain a long-term balance between the amount of groundwater withdrawn in an active management area and the annual amount of natural and artificial recharge in the active management area. See A.R.S. § 45-561(12). The management goal of the Pinal AMA is to allow development of non-irrigation uses and to preserve existing agricultural economies in the AMA for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. The second purpose of the assured water supply program is to protect consumers purchasing homes by requiring developers to demonstrate a 100-year water supply before selling lots.

   The adequate water supply program is also intended to protect consumers. The adequate water supply program, however, only requires that a determination of inadequate water supplies be included in the public report and any promo-
Proposed rule R12-15-714 is substantially similar to proposed rule R12-15-710. This proposed rule, based upon current rule R12-15-716(2), makes the rule easier to read and understand, and also increases the effectiveness and efficiency of the designation process.
Subsections (A) through (E) clarify and reorganize current rule R12-15-716(B)(2), but do not substantively change the rule. Subsections (A) and (B) specify what information the applicant shall include in its application. Subsection (D) explains what criteria the applicant shall meet before the Director will issue the designation. Subsection (E) details what the applicant must demonstrate in order to obtain a designation from the Director.

Proposed rule R12-15-715 reorganizes current rule R12-15-722 to make the rule easier to read and understand, but does not substantively change the current rule.

R12-15-716. Physical Availability
This proposed rule is included in current rule R12-15-703. This proposed rule completely reorganizes the physical availability requirement. The rule includes editorial changes to make the rule easier to read and understand. Additionally, as explained below, this rulemaking adds new as well as clarifying language that will make the rule more efficient and effective.

The Department’s emergency rules, R12-15-701(10), R12-15-703(B)(1)(d)(iii) and R12-15-717(B)(1)(d)(iii), for which a Notice of Proposed Rulemaking was published on January 6, 2006, has been incorporated into this rulemaking as proposed R12-15-716(B)(3)(d). The emergency rules were necessary after the Department discovered an omission in the current rules that could have forced ADWR to ignore the projected demand of designated providers and the demand of issued certificates and water reports for which plats had not been recorded when reviewing subsequent applications for the physical availability of groundwater. Failure to consider those demands in a review of physical availability could lead to over-allocation of groundwater supplies. This situation would have removed the certainty of the existence of a designated provider or the issued certificate or water report. The proposed rule removes this omission, thus protecting the program’s effectiveness.
Subsection (K) revises rule R12-15-703(G) to clarify the procedure for determining a priority date for competing applications. This rulemaking will increase certainty for applicants who are concerned about reserving water for a proposed subdivision. Subsection (K) also explains the meaning of the phrase “complete and correct” for purposes of that subsection.

R12-15-717. Continuous Availability
Proposed rule R12-15-717 was previously included in current rule R12-15-703(C). This proposed rule reorganizes the continuous availability subsection of R12-15-703. This proposed rulemaking includes editorial changes to make the rule easier to read and understand. This rulemaking was not intended to make any substantive changes to the continuous availability subsections of R12-15-703.

R12-15-718. Legal Availability
This proposed rule was previously included in current rule R12-15-703(D). This proposed rule reorganizes the legal availability subsection included in R12-15-703 to make the rules easier to read and understand.
Subsection (D) of the proposed rule incorporates the Department’s current practices regarding pending service area rights used to support a certificate of assured water supply or a designation of assured water supply.
Subsection (G)(2) is a new section that explains what information an applicant must submit to prove legal availability if the proposed source is Colorado River water, and the applicant has obtained an allocation from an entity that holds a contract for Colorado River water with the Secretary of the Interior. Because any use of Colorado River water requires a contract with the Secretary of the Interior, ADWR requires evidence of the contract. This subsection is intended to clarify the application requirements for these applicants, which in turn will make the application process more efficient for both the applicant and the Department.

R12-15-719. Water Quality
Proposed rule R12-15-719 replaces current rule R12-15-704. This proposed rule significantly simplifies and streamlines the process for demonstrating water quality as a component of any application for assured and adequate water supply.
Subsection (A)(1) allows the applicant to self-certify on the application that the designation applicant, or the certificate applicant’s municipal provider, will be regulated by the Arizona Department of Environmental Quality (“ADEQ”), or another agency with equivalent jurisdiction, pursuant to A.R.S. § 49-351 et seq. This is a substantive change from current rule R12-15-704, which requires that the applicant submit information to the Director for review to determine whether the proposed water sources met existing state water quality requirements. Subsection (A)(1) eliminates the duplication of efforts between the Department and ADEQ, or its equivalent agency.
If the applicant will not be served by a municipal provider regulated by ADEQ or its equivalent agency, then, pursuant to subsection (A)(2), the applicant must submit an analysis of water quality according to ADEQ regulations set by the Safe Drinking Water Act.