

# SUSTAINABILITY POLICIES STAKEHOLDERS PROCESS

## White Paper on CAGR D Enrollment “Final” Draft 06/30/08

### Introduction

On May 9, 2007, the Board of Directors of the Arizona Municipal Water Users Association (AMWUA)<sup>1</sup> adopted Policies Concerning Sustainable Water Supplies<sup>2</sup> addressing, among other things, enrollment in the Central Arizona Groundwater Replenishment District (CAGR D). The Board directed its staff to convene a Sustainability Policies Stakeholders Process to discuss these policies and related issues. This White Paper was drafted by representatives of CAGR D, the Arizona Department of Water Resources (ADWR), AMWUA, the City of Tucson and the development community, and has been reviewed and confirmed by the Stakeholder Group. It describes CAGR D’s enrollment process, CAGR D’s Plan of Operation and ADWR oversight of the Plan in relationship to enrollment. It also includes the Stakeholders’ recommendations for statutory and administrative changes.

### Background

Since passage of the Groundwater Management Act of 1980 (Act), Arizona has been committed to reducing reliance on groundwater and transitioning to renewable water supplies to meet the needs of water users in the state’s Active Management Areas (AMAs). The Act prescribes the goal of safe-yield by 2025 for the Phoenix, Tucson and Prescott AMAs. “Safe-yield” is “a groundwater management goal which attempts to achieve and thereafter maintain a long-term balance between the annual amount of groundwater withdrawn in an AMA and the annual amount of natural and artificial recharge in the AMA.”<sup>3</sup> The management goal for the Pinal AMA is to allow development of non-irrigation (non-agricultural) uses and preserve agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses.<sup>4</sup>

Although groundwater pumping has decreased in the AMAs since 1980, withdrawals still exceed recharge.<sup>5</sup> Despite the use of renewable water supplies, such as Central Arizona Project (CAP) water and effluent, groundwater overdrafts could continue past 2025.<sup>6</sup>

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<sup>1</sup> AMWUA is a voluntary, non-profit corporation established by municipalities in the urban area of Maricopa County, Arizona for the development of an urban water policy. The members of AMWUA are the cities of Avondale, Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, and Tempe and the Town of Gilbert. The mayors of these municipalities serve as the Board of Directors of AMWUA.

<sup>2</sup> See Appendix A.

<sup>3</sup> A.R.S. § 45-561.

<sup>4</sup> Ibid.

<sup>5</sup> Final Report & Recommendations, Governor’s Water Management Commission, December 2001, p. 14.

<sup>6</sup> Ibid.

Additionally, safe-yield is an AMA-wide goal, which means that groundwater mining may still be occurring in some parts of the AMA even if safe-yield is achieved.

One of the Act's most important tools for reducing municipal reliance on mined groundwater is the requirement that an assured water supply must be demonstrated before subdivided lots may be sold in an AMA. An assured water supply means that sufficient water of adequate quality will be physically, legally and continuously available to satisfy the needs of the proposed use for at least 100 years.<sup>7</sup> In 1995, ADWR adopted rules to implement the assured water supply requirement. These rules mandate that an assured water supply must be demonstrated primarily with renewable water supplies.<sup>8</sup>

Many municipal water providers in the AMAs, including all of the AMWUA members, are designated as having an assured water supply. Each of the AMWUA members has an allocation of CAP Municipal and Industrial (**M&I**) water. The total volume of CAP M&I allocations held by AMWUA members is 297,267 acre-feet or 47 percent of the CAP supplies available to all M&I water users in the CAP's three-county service area (which includes most of the Phoenix, Tucson and Pinal AMAs). Since 1980, AMWUA members and other designated providers have invested substantially in projects and programs to make use of CAP water and other renewable water supplies.

Not all landowners and water providers currently have access to CAP water or other renewable water supplies. In response to the pending adoption of the assured water supply rules, in 1993 the legislature established CAGR D to assist developers and certain water providers to demonstrate an assured water supply.<sup>9</sup> Membership in CAGR D allows more groundwater to be pumped to serve new subdivided lots than would otherwise be allowed under the assured water supply rules (**excess groundwater**<sup>10</sup>) as long as ADWR determines that the excess groundwater is physically available. CAGR D must replace the excess groundwater that is pumped to serve CAGR D members by replenishing (recharging) an equal amount of water. While replenishment must occur in the same AMA, CAGR D is not required to replenish in the area from which the excess groundwater is withdrawn.

AMWUA and other water users have worried that rapid enrollment in CAGR D, and the fact that CAGR D is not required to replenish where its members pump groundwater, may pose risks to the sustainability of the water supplies of the AMAs. They have expressed concern about the physical consequences associated with localized groundwater mining, including land subsidence, diminished water quality, and, ultimately, the lack of a viable water supply for the future. They also recognize that, as growth continues, there may be intense competition for imported water supplies to meet future needs.

The Stakeholders held a series of meetings to discuss these issues and concluded that a common understanding of CAGR D enrollment and ADWR oversight of CAGR D's Plan

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<sup>7</sup> A.R.S. § 45-576.

<sup>8</sup> Final Report & Recommendations, p. 14.

<sup>9</sup> *Ibid.*

<sup>10</sup> A.R.S. § 48-3701.

of Operation was necessary to determine whether changes to the current laws are warranted.<sup>11</sup>

## **I. CAGRD Enrollment**

### **A. General Overview of the Purpose of CAGRD**

In 1993, the Arizona legislature passed the Groundwater Replenishment District Act. This Act created a groundwater replenishment authority to be undertaken by the Central Arizona Water Conservation District (**CAWCD**) throughout its three-county service area: Maricopa, Pinal and Pima. This replenishment authority is commonly referred to as CAGRD.

CAGRD's role in water resource management cannot be fully understood without a basic understanding of the state's Assured Water Supply (**AWS**) Rules, which became effective in February 1995. The AWS Rules are designed to protect groundwater supplies within each AMA and to ensure that people purchasing subdivided land within an AMA have a water supply of adequate quality and quantity. Thus, in each AMA, the developer of a new subdivision must demonstrate to ADWR that a 100-year assured water supply is available to serve the subdivision before sales can begin. An AWS can be demonstrated in two ways. First, a municipal water provider may apply for and obtain a Designation of Assured Water Supply (**DAWS**) for its service area. In this case, new subdivisions that will be served by the designated provider need not independently demonstrate an AWS. Alternatively, if the municipal water provider that will serve a new subdivision has not received a DAWS, the developer of the subdivision must apply for a Certificate of Assured Water Supply (**CAWS**) and prove an AWS for the individual subdivision.

There are five basic criteria for proving an AWS. An applicant for an AWS must demonstrate all of the following:

1. A sufficient quantity of water is physically, legally and continuously available to satisfy the water demands of the subdivision or service area for 100 years.
2. The water source meets water quality standards.
3. The proposed use of water is consistent with the management plans adopted by ADWR for the AMA. Among other things, the management plans prescribe conservation requirements for water users in the AMA.
4. The proposed use is consistent with the management goal of the AMA.
5. The applicant is financially capable of installing the necessary water distribution and treatment facilities.

ADWR's AWS Rules explain how an applicant for a DAWS or CAWS may satisfy these five basic criteria. The consistency with the management goal section of the AWS Rules limits

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<sup>11</sup> The Stakeholders Process may address other issues in addition to CAGRD enrollment and ADWR oversight of the Plan of Operation.

the quantity of mined groundwater that an applicant may use to demonstrate an AWS.<sup>12</sup> The effect of this groundwater pumping limitation is to prevent new subdivided lots, particularly in the safe-yield AMAs, from relying primarily on mined groundwater to meet water demands.<sup>13</sup>

Development, however, is not necessarily stymied for those landowners and water providers who lack direct access to CAP water or other renewable supplies. Membership in CAGRD provides a means by which an AWS applicant can satisfy criterion number 4 above, which requires that the proposed water use be consistent with the management goal of the particular AMA. By joining CAGRD, a water provider or a landowner can meet the consistency with the management goal requirement of the AWS Rules based on the proposed use of excess groundwater if it can demonstrate that the excess groundwater is physically available. As a member of CAGRD, the landowner or provider must pay CAGRD to replenish excess groundwater pumped by the member in the same AMA in which it is pumped. CAGRD must replenish this excess groundwater within three calendar years of the time it is pumped.

## **B. CAGRD Membership Enrollment**

Membership in CAGRD is voluntary and is limited to a city, town, district, water company, subdivision, or homeowner's association located in the Phoenix, Tucson or Pinal AMA. CAGRD is comprised of two types of members: Member Lands and Member Service Areas. Each of these types is further described below.

### **1. Member Lands**

A parcel of land qualifies as a Member Land (**ML**) of CAGRD when (1) its owner executes and records an irrevocable declaration of covenants, conditions and restrictions (**ML Declaration**) running with the land that includes the land in CAGRD and subjects the land to the replenishment assessment, and (2) the owner and the municipal provider that will supply water to the land execute and record an agreement (**ML Agreement**) under which the water provider agrees to submit the water delivery information necessary to calculate the replenishment assessment for each tax parcel annually to CAGRD.

Currently, CAGRD's ML enrollment process calls for submitting an enrollment application to CAGRD along with a per-housing-unit enrollment fee. CAGRD staff reviews the application to ensure that (1) the provided legal description is complete and accurate, (2) the title report is up-to-date and matches information provided in the application, (3) the vested landowner is accurately identified and a representative authorized to execute the enrollment documents has been identified, and (4) a CAWS application for the land has been submitted to ADWR. After the review is completed and all deficiencies are corrected, CAGRD prepares originals of the ML Declaration and ML Agreement and sends them to the applicant for execution by the landowner's and the municipal water provider's authorized representatives. Once executed, the documents are returned to CAGRD, the ML Agreement is executed by CAWCD and the documents are recorded in the County Recorder's Office, thus completing the enrollment process. It should be noted that current statutes do not specify that a landowner must submit

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<sup>12</sup>A.A.C. R12-15-724.A.

<sup>13</sup> Effective October 1, 2007, ADWR modified the AWS Rules to further limit the amount of mined groundwater that may be used to demonstrate an AWS is the Pinal AMA.

an application to CAGR D in order for its land to qualify as an ML. Arguably, a landowner could execute and record an ML Declaration and an ML Agreement and the land would qualify as an ML under the statutes with no action by CAGR D. However, to the best of CAGR D's and ADWR's knowledge, all land that has qualified as an ML to date has complied with CAGR D's enrollment process.

The commitment made by CAGR D upon enrollment of an ML is quite clear. This is because the boundaries of the real property are clearly identified and, once the real property is enrolled, the boundaries may not be modified without approval by CAGR D and ADWR. In addition, the applicant must establish the number of individual units (homes, businesses, etc.) that are to be built on the land before it can receive a CAWS from ADWR. Upon issuance of a CAWS, ADWR notifies CAGR D that the CAWS has been issued and identifies the projected groundwater use on the land at build-out. This provides CAGR D with a projection of its ultimate replenishment obligation for the land.

After land has qualified as an ML, the municipal water provider serving that land must annually report to CAGR D and ADWR the volume of groundwater and excess groundwater delivered to each parcel. The volume of excess groundwater delivered to the parcel becomes CAGR D's replenishment obligation for that parcel. CAGR D establishes the replenishment assessment for each parcel based on the volume of excess groundwater delivered to that parcel. The replenishment assessments for all CAGR D parcels in a county are reported by CAGR D to the County Assessor and are collected by the Assessor along with that parcel's annual property tax. CAGR D's replenishment assessment shows up as a line item on the parcel owner's property tax statement. Once collected, the County Treasurer transmits all CAGR D replenishment assessments to the bank account maintained by the State Treasurer for CAGR D. CAGR D uses the replenishment assessments and other revenue to acquire and replenish renewable water supplies in order to meet the statutory requirement to satisfy its replenishment obligation within three years of incurring the obligation.<sup>14</sup> CAGR D's revenue sources are explained in more detail in Section I. C of this White Paper.

There is currently no statutory provision to "de-enroll" an ML from CAGR D.<sup>15</sup> However, if the water provider that serves the ML is subsequently issued a DAWS by ADWR, or the ML is later served by a water provider that has been issued a DAWS, the parcel-by-parcel annual reporting requirement for the ML is relieved and CAGR D cannot levy a replenishment assessment against the parcels as long as the DAWS is in place.<sup>16</sup> The municipal provider then assumes the responsibility for meeting the consistency with the management goal requirement for such ML either through direct delivery of supplies that are consistent with the management goal or, if the water provider is a member service area of CAGR D, as part of CAGR D's commitment to replenish on behalf of the water provider.

## **2. Member Service Areas**

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<sup>14</sup> This three-year window for replenishing was established in part because revenue collection lags behind the actual use of excess groundwater.

<sup>15</sup> However, CAWCD can handle de-enrollment administratively to take care of the situation in which member land is denied a CAWS.

<sup>16</sup> A.R.S. § 45-3771.D & E.

A city, town, water district or water company enrolls in CAGR D when it adopts a resolution and executes an agreement that declares its service area to be a Member Service Area (MSA) of CAGR D (MSA Agreement). Under an MSA Agreement, the municipal provider is required to submit annual reports to CAGR D identifying the volume of excess groundwater<sup>17</sup> delivered within the service area. The MSA Agreement also includes a covenant by the municipal provider that it will pay CAGR D replenishment taxes based on the amount of excess groundwater delivered within its service area each year.

Currently, CAGR D's MSA enrollment process calls for submitting an enrollment application to CAGR D along with an enrollment fee to cover the administrative costs of processing the application. CAGR D staff reviews the application to insure that (1) the legal status of the water provider is clearly defined (i.e., whether it is a private water company, municipality, domestic water improvement district, etc.), (2) a representative authorized to execute the MSA Agreement on behalf of the water provider has been identified, and (3) the water provider has submitted a DAWS application to ADWR. Once the review is completed and all deficiencies are corrected, CAGR D prepares an MSA Agreement and an appropriate resolution (corporate, municipal, district, etc.) and sends them to the applicant. The resolution must be published for two consecutive weeks, and the municipal provider's governing body must adopt the resolution and execute the MSA Agreement. In addition, the CAWCD Board of Directors approves the execution of each MSA Agreement individually, thus completing the enrollment process.

The ultimate commitment made by CAGR D upon enrollment of an MSA is not always well defined. This is because, by statute, a water provider's service area is not static, but may be extended to serve new customers. CAGR D's ultimate replenishment obligation for each MSA enrolled from 1995 to 2000<sup>18</sup> was not defined in the corresponding MSA Agreements. However, beginning in May 2000, in order to facilitate better planning, MSA Agreements included a maximum volume of excess groundwater deliveries that may be reported to CAGR D. Upon issuance of a DAWS, ADWR identifies the projected volume of groundwater deliveries that may be made by the water provider under that DAWS. This provides CAGR D with a projection of its maximum replenishment obligation for the service area under the DAWS.

Once a service area has qualified as an MSA, the water provider must annually report to CAGR D and ADWR the volume of groundwater and excess groundwater delivered within the provider's service area. CAGR D's replenishment obligation is equal to the volume of excess groundwater delivered. The replenishment tax is based on this replenishment obligation and must be paid by the water provider directly to CAGR D. Once collected, CAGR D deposits the

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<sup>17</sup> It should be noted that the MSA Agreements between CAGR D and its members generally identify a minimum volume that must be reported as excess groundwater in each calendar year. This minimum volume is calculated based on the total volume of groundwater used by a member in that year. If a member uses no groundwater in a given calendar year, then its excess groundwater use is also zero for that year.

<sup>18</sup> Fourteen MSAs were enrolled in CAGR D between 1995 and March 2000. Those MSAs are: Vail Water Company, Marana, Metropolitan Domestic Water Improvement District, Apache Junction, Tucson, Oro Valley, Peoria, Spanish Trail Water Company, Avondale, Surprise, Florence, Rancho Sahuarita Water Company, El Mirage, and Eloy. Only Tucson's MSA included an upper limit in that, for any reported volume of excess groundwater exceeding 12,500 acre-feet, Tucson must provide the water supply necessary for replenishment.

taxes into the bank account maintained by the State Treasurer for CAGR. CAGR uses the taxes to acquire and replenish renewable water supplies in order to satisfy its replenishment obligations within three years of incurring the obligation.

An MSA may be “de-enrolled” from CAGR if a substitute renewable water supply has been obtained to serve the service area, thereby eliminating the municipal water provider’s reliance on MSA status to maintain a DAW. The municipal provider must apply to ADWR to modify its DAW to eliminate reliance on CAGR, it must submit an application to CAGR requesting termination of its membership status, and it must adopt a resolution declaring that CAGR is no longer obligated to perform groundwater replenishment on behalf of the service area.

### **C. General Overview of CAGR’s Plan of Operation**

In order for any parcel or service area to qualify for membership in CAGR, CAGR (1) must have a Plan of Operation (“Plan”) in place, that has not expired, and that has been determined by the Director of ADWR to be consistent with the management goals of the Phoenix, Pinal and Tucson AMAs; and (2) must be in compliance with its groundwater replenishment obligations.<sup>19</sup> The Director of ADWR determined that CAGR’s current Plan<sup>20</sup> was consistent with the management goals on October 31, 2005. The Plan will expire no later than January 1, 2016. CAGR is required by law to submit a new Plan to the Director of ADWR every ten years<sup>21</sup>, with the next Plan due at any time during calendar year 2014. As explained in more detail in Section II. C of this White Paper, ADWR may require CAGR to submit a revised Plan before the current Plan expires.

#### **Purpose and Components of the Plan**

The purpose of the Plan, as defined by statute, is to describe the activities that CAGR proposes to undertake during the 100 calendar years following submission of the Plan. The Plan must include the following information for the Phoenix, Pinal and Tucson AMAs<sup>22</sup>:

1. CAGR’s groundwater replenishment obligations and the extent to which those obligations have been met in the ten years preceding plan submittal (*see Section 2 of the current Plan*).
2. An estimate of CAGR’s current and projected groundwater replenishment obligations for current members for the twenty calendar years following the submission of the Plan (*see Section 3.3 of the current Plan*) and an estimate of CAGR’s projected groundwater replenishment obligations for the one hundred calendar years following the submission of the Plan for current members and potential members based on reasonable projections of real property and service areas that could qualify for membership in the ten years following the submission of the Plan (*see Section 3.4 of the current Plan*).

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<sup>19</sup> A.R.S. § 45-576.06.

<sup>20</sup> CAGR Plan of Operation, Submitted Draft, November 8, 2004.

<sup>21</sup> A.R.S. § 45-567.02.C.

<sup>22</sup> A.R.S. § 45-576.02.C.2.

3. A description of the water resources that CAGR D plans to use for replenishment purposes during the twenty calendar years following submission of the Plan and water resources potentially available to the conservation district for groundwater replenishment purposes during the subsequent eighty calendar years (*see Section 4 of the current Plan*).<sup>23</sup>
4. A description of CAGR D's current replenishment reserve activities in each active management area for the ten years preceding the current Plan and planned replenishment reserve activities for the ensuing ten years (*see Section 5 of the current Plan*).
5. A description of any facilities and projects to be used for replenishment and the replenishment capacity available to CAGR D during the twenty calendar years following submission of the Plan (*see Section 6 of the current Plan*).
6. An analysis of potential storage facilities that may be used by CAGR D for replenishment purposes (*see Section 6 of the current Plan*).
7. A description of CAGR D's capability to meet the current and projected groundwater replenishment obligations for the twenty calendar years following the calendar year in which the Plan is submitted to ADWR (*see Section 7 of the current Plan*).
8. Any other information that the Director may require.

Some of these requirements are critical to an examination of the adequacy of the current enrollment and planning process. Paragraph 2 has two important components. First, CAGR D must include in the Plan an estimate of its current and projected replenishment obligations for current members for the next 20 years. The statutes do not define what members qualify as "current members." The current Plan defines this term as those members enrolled through December 31, 2003. CAGR D estimated in the Plan that the current and projected replenishment obligations for these members in 2025 (the 20<sup>th</sup> year following submission of the Plan) would be 90,500 acre-feet annually.<sup>24</sup> CAGR D estimated that when the Plan expires on January 1, 2016, the actual replenishment obligation at that time for members enrolled through 2003 would be 43,100 acre-feet annually or approximately half of the 20-year obligation.

The second important component of paragraph 2 is that the Plan must include an estimate of CAGR D's projected groundwater replenishment obligations for current members and potential members for the 100 calendar years following submission of the Plan. In the current Plan, CAGR D estimated that the replenishment obligation at build-out for current members and potential members expected to enroll through 2015 would be 226,800 acre-feet annually.<sup>25</sup> CAGR D estimated that when the Plan expires on January 1, 2016, the actual replenishment obligation at that time for members enrolled through 2015 would be 95,800 acre-feet annually.

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<sup>23</sup> See Appendix B, which is Table 4.2 from the Plan.

<sup>24</sup> See Appendix C, which is Table 3.5 of the Plan.

<sup>25</sup> See Appendix D, which is Table 3.6 of the Plan.

Paragraph 3 similarly has two components. The Plan must include a description of the water resources CAGRDR *plans to use* to meet its 20-year replenishment obligations and a description of the water resources *potentially available* for groundwater replenishment for the subsequent 80 years.<sup>26</sup> Thus, the water resources that CAGRDR plans to use to meet its 20-year replenishment obligations must be defined with more certainty than those sources of water that might be available to meet the longer-term replenishment obligations.<sup>27</sup>

Paragraph 4 refers to an important concept that was added to the statutes in 2003 requiring CAGRDR to establish a **replenishment reserve** of long-term storage credits.<sup>28</sup> The purpose of the replenishment reserve is to insure that CAGRDR will always be able to meet its replenishment obligations while enhancing rate stability for its members. During future times of water supply shortage or infrastructure failure, CAGRDR will be able to use credits from the replenishment reserve to meet its obligations rather than purchase water that is temporarily high-priced (or unavailable) due to extreme conditions. CAGRDR may use credits from the replenishment reserve beginning in 2030, or earlier if approved by ADWR for good cause and if CAGRDR has an adequate plan for replacing the credits.<sup>29</sup>

The volume of credits to be stored in the replenishment reserve is known as the “**reserve target.**” Conceptually, the purpose of the reserve target is to create a 20-year reserve to back up the portion of CAGRDR’s replenishment water supplies that are short-term. The reserve target must be identified in the Plan specifically for each AMA and is calculated based on the projected obligations and water supply acquisitions described in the Plan. The reserve targets identified in the current Plan are as follows:

AMA	Reserve Target (AF)
Phoenix	1,279,400
Pinal	93,000
Tucson	179,700
<b>Total</b>	<b>1,552,100</b>

By the end of 2008, CAGRDR will have about 70,000 acre-feet of credits in its replenishment reserve account. In addition, through Board policy, CAWCD has dedicated about 660,000 acre-feet of its existing long-term storage credits for use in

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<sup>26</sup> See Appendix E, which is Figure 4.3 of the Plan.

<sup>27</sup> It should also be noted that CAGRDR is not required to submit the information required by item 3 and 7 to the extent that it has obtained a CAP allocation or other water supplies determined by the Director to be consistent with the AWS requirements in an amount that equals or exceeds the 100-year projected replenishment obligations.

<sup>28</sup> A.R.S. § 48-3772.E. The establishment of a CAGRDR replenishment reserve was recommended by the Governor’s Water Management Commission in its Final Report & Recommendations dated December 2001.

<sup>29</sup> A.R.S. § 45-859.01.K.

establishing the replenishment reserve.<sup>30</sup> In the event that CAGR D ever has to use credits from the replenishment reserve to meet its replenishment obligations, CAGR D is required to replace the credits as soon as possible so that the reserve remains whole.

Finally, paragraph 7 requires CAGR D to describe its capability to meet its current and projected replenishment obligations for the 20 years following submission of the Plan. CAGR D and ADWR have interpreted “capability” to mean financial capability. The current Plan estimates that CAGR D will have to spend more than \$260 million through 2027 to fund the water supply acquisition plan.<sup>31</sup> This figure, however, does not include the costs of taking delivery of and replenishing the water supplies.

The law requires that all operations of CAGR D be funded completely by its members. The statutes authorize CAWCD to advance funds to the CAGR D to help cover necessary expenses, provided that all advances from CAWCD are fully repaid with interest at a rate determined by CAWCD’s Board of Directors.<sup>32</sup> CAWCD advanced funds for start-up operations of CAGR D and those advances have been fully repaid (with interest). CAGR D has the authority and responsibility to establish and collect all fees, assessments and taxes necessary to meet its replenishment obligations. CAGR D’s Board of Directors has adopted policies for establishing its fees and rates on a biennial basis, thus providing CAGR D with flexibility as economic and operational conditions change.

CAGR D’s sources of revenue are enrollment fees, activation fees, replenishment reserve fees, replenishment assessments, and replenishment taxes and interest derived from these funds. CAGR D collects three different fees from its members: an enrollment fee, an activation fee and a replenishment reserve fee. The **enrollment fee** is required by Board policy and must be paid with an application to enroll land or a service area. The enrollment fee for MLs is based on the number of housing units in a subdivision and revenues generated from the ML enrollment fee are to be used to purchase water rights and develop infrastructure necessary to meet replenishment obligations. The MSA enrollment fee is to be used to cover the administrative costs of processing the specific enrollment application.

The **activation fee** is required by statute and must be paid to CAGR D on behalf of the owner of a subdivision within an ML or MSA before the Arizona Department of Real Estate will issue a public report allowing the sale of parcels of land in the subdivision.<sup>33</sup> The activation fee is based on the number of housing units in a subdivision. Revenues generated by the activation fee are to be used to purchase water rights and develop infrastructure necessary to meet replenishment obligations.

The **replenishment reserve fee** is required by statute and is levied against MLs and MSAs.<sup>34</sup> Revenues generated from the replenishment reserve fee are to be used to accrue long-term storage credits for use in establishing and maintaining the replenishment reserve in the AMA

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<sup>30</sup> The Board policy, dated October 6, 2005, requires that CAGR D pay CAWCD for the credits in the year in which they are transferred from CAWCD’s long-term storage account into CAGR D’s replenishment reserve subaccount.

<sup>31</sup> CAGR D Plan of Operation, p. 50.

<sup>32</sup> A.R.S. § 48-3713.B.9&10.

<sup>33</sup> A.R.S. § 48-3772.A.7.

<sup>34</sup> A.R.S. § 48-3772.E.

where the fee was levied. For an ML subdivision, the fee is based on the estimated excess groundwater demand at build-out for the subdivision and must be paid to CAGR D on behalf of the owner before the Arizona Department of Real Estate will issue a public report for the subdivision. For an MSA, the fee is paid annually by the water provider to CAGR D based on the incremental increase in the use of excess groundwater in the water provider's service area in the prior year.

After excess groundwater is actually being used within an ML or an MSA, CAGR D must also establish and levy an **annual replenishment assessment** against the ML and an **annual replenishment tax** against the MSA, which, when combined with revenues from the fees described above, must cover all of CAGR D's costs of performing its replenishment obligations.<sup>35</sup> CAGR D accomplishes this by establishing per-acre-foot assessment rates on a biennial basis for each AMA that are levied against the actual volume of excess groundwater used by the members in that AMA. In accordance with current Board policy, CAGR D assessment rates consist of four rate components that are designed to cover different costs incurred by CAGR D. These four components are:

- **Water & Replenishment:** based on the given year's estimated cost of acquiring, transporting and replenishing adequate water supplies to meet replenishment obligations for the reporting year. The up-front cost, if any, to acquire the rights to renewable water supplies is not included in this component.
- **Administrative:** based on the costs of administering CAGR D, including salaries, benefits, training, overhead, special studies, etc.
- **Replenishment Reserve:** based on the costs of acquiring, transporting and replenishing water to establish and maintain a replenishment reserve of long-term storage credits.
- **Infrastructure & Water Rights:** based on the anticipated up-front costs of acquiring rights to renewable water supplies and developing necessary infrastructure to perform required replenishment activities.

The cost that is most difficult for CAGR D to project is the cost to acquire and develop the rights to renewable water supplies and development of infrastructure necessary to meet replenishment obligations over the long-term. The water supply acquisition plan outlined in the current Plan was projected to cost more than \$260 million through ~~2025~~ 2027. As indicated above, revenues to fund this acquisition plan will come from a combination of enrollment fees, activation fees, the infrastructure & water rights component of annual assessments and taxes, and interest derived from these funds. Consistent with the Plan, as of 2007, CAGR D had collected approximately \$17 million for water supply acquisition and had spent about \$2 million to acquire an entitlement to 7,746 acre-feet of CAP M&I priority water.

As indicated in the Conclusion section of the current Plan, CAGR D is continuously monitoring its projected groundwater replenishment obligations and the availability of water

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<sup>35</sup> A.R.S. § 48-3772.A.3.

supplies to meet CAGRD replenishment obligations and will continue to provide reports to the CAWCD Board of Directors at least once per year. In addition, the Board adopted a new Strategic Plan in November 2006 that confirmed its desire to continue to review the status of CAGRD's Plan and update it as necessary.

## **II. ADWR OVERSIGHT OF PLAN IN RELATIONSHIP TO ENROLLMENT**

### **A. Plan Submittal and Approval**

Within 60 days of receiving the proposed Plan from CAGRD, ADWR must determine whether CAGRD has submitted sufficient information for the Director to make a determination that the Plan is consistent with the management goals of the Phoenix, Pinal and Tucson AMAs.<sup>36</sup> If the Director determines that the information submitted in the Plan is insufficient for making such a determination, ADWR must notify CAGRD of the deficiencies in writing and must specify what additional information is required. CAGRD must provide the additional information to ADWR within a reasonable time, as specified by the Director, after receiving the notice of deficiencies.

Once ADWR determines that the Plan is complete, it must publish a public notice requesting comments on the Plan and setting a date for a hearing on the Plan. ADWR must hold a hearing within 60 days after the last public notice. Any person may comment or present evidence on the Plan and CAGRD must respond in writing to ADWR to every comment received. After the public hearing, ADWR has 120 days to issue a decision for each AMA. ADWR must determine that the Plan is consistent with the management goal of each AMA if all of the following have been demonstrated:

1. The Plan identifies sufficient water supplies to meet the replenishment obligations for current members during the 20 years following submission of the Plan;
2. The Plan identifies additional water supplies potentially available for the projected groundwater replenishment obligations for 100 years following submission of the Plan for current and potential members (based on reasonable projections of real property and service areas that could qualify as members in the ten years following submittal of the Plan);
3. The replenishment reserve for each AMA has been calculated and CAGRD is developing the required replenishment reserve for each AMA;
4. The Plan identifies sufficient capacity at storage facilities and projects to be used for replenishment purposes for the 20 years following submission of the Plan; and
5. CAGRD has made a reasonable estimate of the projected replenishment obligations for the 100 years following submittal of the Plan.

If the Director determines that the Plan is consistent with the management goal for each AMA, the Plan remains effective for that AMA until January 1 of the year following the

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<sup>36</sup> A.R.S. § 45-576.03.

year in which CAGR D is required to submit the next Plan unless the Plan expires sooner as explained in Section II.C.<sup>37</sup>

## **B. Annual Plan Review**

Each year, ADWR reviews the Plan to determine that: 1) on an annual basis, CAGR D has met its replenishment obligation within three years after the obligation is incurred; 2) there has not been an unexpected increase in the projected groundwater replenishment obligation; 3) credits are being transferred to the replenishment reserve account; and 4) the water supplies identified to meet the current member's obligations for the 20 years after the submittal of the Plan are being acquired as presented in the Plan. ADWR performs this review using a combination of continuous monitoring of CAGR D enrollment activities and annual reports submitted by CAGR D.

### **1. Monitoring of Membership Enrollment**

Each time a new ML or MSA completes the enrollment process, CAGR D provides ADWR with a copy of the enrollment documents that define the member's physical boundaries and the enrollment date. Without this "proof of enrollment," ADWR will not issue a corresponding CAWS or DAWS. As part of the process of issuing a CAWS or DAWS, ADWR projects the corresponding groundwater demand for the subdivision or service area (and, thus, a projection of CAGR D's long-term replenishment obligation) and is required by statute to transmit that information to CAGR D. ADWR places this data in a database as a mechanism to monitor actual CAGR D enrollment and ultimate groundwater demands of all CAGR D members. CAGR D also maintains its own membership database. In an effort to insure that both agencies agree on the status of CAGR D membership, beginning in 2008, ADWR will require that CAGR D include a summary of annual enrollment as part of the annual report submitted to ADWR.

### **2. Annual Reporting**

By August 31<sup>st</sup> of each year, CAGR D is required to submit to ADWR an annual report for the prior calendar year (**reporting year**) that includes the following information<sup>38</sup>:

- a. The total amount of water that was stored during the reporting year for each water storage permit held by CAGR D;
- b. The amount of water stored during the reporting year to be credited to CAGR D's conservation district account, which is the master account that is used to determine whether CAGR D is in compliance with its annual replenishment obligations;<sup>39</sup>
- c. The amount of water stored during the reporting year to be credited to CAGR D's long-term storage account;

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<sup>37</sup> CAGR D must submit its new Plan in the year before the 10<sup>th</sup> calendar year. A.R.S. § 45-576.02.C.2.

<sup>38</sup> A.R.S. §§ 45-877.01 and 48-3775.E.

<sup>39</sup> A.R.S. § 45-859.01.

- d. The amount of water stored during the reporting year to be credited to CAGR D’s replenishment reserve sub-account;
- e. The amount of long-term storage credits CAGR D has transferred and credited to its conservation district account during the reporting year;
- f. The groundwater replenishment obligation for the reporting year and for the two calendar years preceding the reporting year, and the extent to which the district has completed the groundwater replenishment obligations applicable to each of those years;
- g. The amount of water replenished during the reporting year pursuant to any “contract replenishment obligation” on behalf of a municipal water provider; and
- h. Any other information ADWR may require.

**C. Maintaining Consistency with the Management Goal**

At any time between the second anniversary and the sixth anniversary of the Director’s determination that the Plan is consistent with the management goal of each AMA, the Director may determine that there has been “an unexpected increase in the projected groundwater replenishment obligations” or an “unexpected reduction in water supplies available to meet the current obligations” such that the Plan no longer demonstrates consistency with the management goal for one or more AMAs.<sup>40</sup> Upon making such a determination, the Director must require CAGR D to submit a revised Plan to ADWR that addresses those Plan elements that no longer demonstrate consistency with the management goals. The revised Plan must be submitted within two calendar years of the date that ADWR notifies CAGR D of such a determination.<sup>41</sup> The revised Plan does not extend the original termination date of the current Plan. Rather, it addresses deficiencies identified by ADWR in the current Plan. ADWR plans to adopt a substantive policy statement to formally establish how it will annually monitor the Plan and how it will determine, as described below, whether there has been an unexpected increase in projected groundwater replenishment obligations or an unexpected reduction in water supplies available to meet current replenishment obligations.

**1. Determining an Unexpected Increase in Projected Groundwater Replenishment Obligations**

ADWR will use the current Plan, the annual reports and its database to determine whether there has been an “unexpected increase in the projected groundwater

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<sup>40</sup> A.R.S. § 45-576.03.R.

<sup>41</sup> This timeframe was established by the legislature upon the recommendation of the Governor’s Water Management Commission as a result of deliberations that occurred during 2000 and 2001. It reflects the facts that (1) development of a revised Plan could take up to two years to complete, and (2) CAGR D must, by law, submit a new ten-year plan at approximately the ninth anniversary of the current Plan, preparation of which is expected to begin at approximately the seventh anniversary.

replenishment obligations.” Beginning in 2008<sup>42</sup>, ADWR will require that CAGR D provide, along with its annual report for each AMA, the results of an analysis showing the total 100-year projected replenishment obligations for all members enrolled in that AMA through the end of the reporting year (**existing members**). Each year, ADWR will verify the validity of the analyses and will compare this total 100-year projected replenishment obligation for existing members in each AMA to the total 100-year projected groundwater replenishment obligation for current and potential members in the corresponding AMA, as identified in the Plan.<sup>43</sup> If ADWR determines that, for any AMA, the total 100-year projected replenishment obligation for existing members in the AMA exceeds 90 percent of the total 100-year projected replenishment obligation for current and potential members for that AMA, as identified in the Plan, ADWR would immediately notify CAGR D in writing of its finding that there has been an unexpected increase in the projected groundwater replenishment obligation and that a revised Plan must be submitted to address this condition. Comparing the total projected replenishment obligation for existing members against a 90 percent portion of the total projected replenishment obligation for current and potential members in the Plan provides an opportunity to address potential over-enrollment problems before they actually occur. As time goes on and more is learned about CAGR D enrollment and corresponding replenishment obligations, ADWR may modify its substantive policy statement to refine the methodologies it uses to determine whether there has been an unexpected increase in the projected groundwater replenishment obligations.

## **2. Determining an Unexpected Reduction in Water Supplies Available to Meet Current Obligations**

ADWR will rely on the current Plan, annual reports, its database and other available information to determine whether there has been an “unexpected reduction in water supplies available to meet CAGR D’s current obligations.” In making this determination, ADWR will take into account all existing CAGR D members enrolled through the most recent reporting year. Beginning in 2008, ADWR will require that CAGR D provide, as part of its annual report:

- A summary showing the projected groundwater replenishment obligation for all existing members for each year through 2025 (i.e., the 20 calendar years following submission of the Plan); and
- A summary documenting CAGR D’s progress in implementing the water supply acquisition plan outlined in the current Plan of Operation.<sup>44</sup>

With this information, ADWR will reconfirm, on an annual basis, whether there are sufficient water supplies available to meet all of CAGR D’s projected replenishment obligations through 2025. If ADWR cannot make such a confirmation in its annual

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<sup>42</sup> Because the Plan was determined by the Director to be consistent with management goals on October 31, 2005, the 2008 annual review will be the first full-year review completed since the second anniversary of the Director’s determination. Reviews during the first two years after the determination were less rigorous.

<sup>43</sup> See Appendix D of this White Paper.

<sup>44</sup> In its current Plan, CAGR D states that excess CAP water will not be sufficient to meet all of its obligations for the next 20 years and outlines a plan to develop a portfolio of water supplies necessary to cover any deficiencies. The Plan provides a general planning schedule for acquiring water rights necessary to meet CAGR D’s projected replenishment obligations.

review, it will immediately notify CAGR D in writing of its finding that there has been an unexpected reduction in water supplies available to meet the current obligations and that a revised Plan must be submitted to address this condition. Confirming available water supplies through 2025 (ten years beyond the date that the current Plan expires) provides an opportunity to address potential water supply problems before they actually occur. As time goes on and more experience is gained regarding CAGR D replenishment obligation trends, funding programs and new technologies for developing water supplies, ADWR may modify its substantive policy statement to refine the methodologies it uses to determine whether there has been an unexpected reduction in available water supplies.

### **3. Revised Plan**

If ADWR determines that the Plan no longer demonstrates consistency with the management goal for one or more of the AMAs, CAGR D must submit a revised Plan to ADWR within two calendar years of the date that ADWR notifies CAGR D of such a determination. The revised Plan must address those Plan elements that no longer demonstrate consistency with the management goal. Once the revised Plan is submitted, ADWR has 60 days to determine if CAGR D has submitted sufficient information to determine whether the Plan is consistent with the management goal of each AMA. If the Director determines that the information submitted in the Plan is insufficient for making such a determination, ADWR must notify CAGR D of the deficiencies in writing and must specify what additional information is required. CAGR D must provide the required additional information to ADWR within a reasonable time, as specified by the Director. If ADWR determines that the information necessary to make a determination has been submitted and is complete, a two-week public notice period must be provided for comments, as was the case for the original Plan submittal. ADWR must hold a public hearing within 60 days of the last public notice on the conditions that have changed in the revised Plan and any person may comment or present evidence at the public hearing. CAGR D must respond in writing to ADWR to every comment received. After the public hearing, ADWR has 120 days to make a determination whether the Plan is consistent with the management goal of each AMA. If the Director of ADWR makes a determination for one or more AMA that the revised Plan is consistent with the management goal, the current Plan, as modified by the revised Plan, will remain in effect until one year following the end of the original 10-year period. If the Director makes a determination for one or more AMA that the revised Plan is not consistent with the AMA management goal and CAGR D is unable to satisfy the Director's concerns within 60 days of notice of such a determination, the current Plan for the AMA will expire. The Director's determination is subject to rehearing or review and to judicial review, but the Court may not issue a temporary restraining order or preliminary injunction to prevent the Director's decision from taking effect while judicial review is pending.<sup>45</sup>

### **D. Impacts of Expired Plan**

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<sup>45</sup> A.R.S. § 45-576.03.Q.

If a Plan has expired for an AMA,<sup>46</sup> or if the Director of ADWR determines that CAGR D is not currently in compliance with its groundwater replenishment obligations for an AMA, no additional real property in that AMA may become member land and no additional service areas may become member service areas in that AMA.<sup>47</sup> Additionally, a municipal provider that received a DAWS “on the basis” that its service area was an MSA will lose its DAWS and, therefore, may not serve additional subdivisions. ADWR interprets this provision to mean that a municipal provider in the applicable AMA will lose its DAWS if, in the decision and order granting the DAWS, the Director of ADWR determined that the municipal provider’s use of excess groundwater was consistent with the management goal based on replenishment by CAGR D. The loss of a DAWS remains in effect until CAGR D submits a revised Plan that meets the criteria for demonstrating consistency with the management plan for that AMA, CAGR D successfully appeals ADWR’s determination, or the municipal provider can otherwise demonstrate to ADWR that the municipal provider’s projected use is consistent with the management goal of that AMA. In the latter case, the municipal provider would need to apply for a modification of its DAWS and demonstrate it can meet the consistency with the management goal requirement without reliance on CAGR D.

As discussed above, ADWR will notify CAGR D in writing of any finding that there has been an unexpected increase in projected groundwater replenishment obligations or an unexpected reduction in water supplies available to meet current replenishment obligations. CAGR D then has time to submit a revised Plan to correct these deficiencies. The Plan would not expire until the Director makes a final decision after the administrative process described on page 16 of this White Paper. During the time in which a revised Plan is being prepared, a municipal provider that received a DAWS on the basis that its service area was an MSA would have the opportunity to apply to modify its DAWS before the DAWS might expire to demonstrate that it can meet the consistency with the management goal requirement without reliance on CAGR D. ADWR would limit its review to the component the modification would address resulting in an expedited review.

## **Conclusion**

This White Paper has established a common understanding of CAGR D enrollment and ADWR’s oversight of CAGR D’s Plan of Operation in relationship to enrollment. In the process of developing the White Paper, and the corresponding clarification of the mechanisms that are in place to monitor enrollment and CAGR D’s compliance with the Plan, the Stakeholders’ concerns about the potential for unsustainable growth of CAGR D have been somewhat ameliorated. However, many Stakeholders agree that statutory and administrative changes could further clarify and strengthen current law. Accordingly, the Stakeholders make the following recommendations for statutory and administrative changes.

### **A. Statutory Changes**

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<sup>46</sup> A Plan may expire because ADWR does not approve a revised Plan (A.R.S. § 45-576.04.S) or because the original expiration date of a Plan passes without ADWR having approved a new Plan.

<sup>47</sup> A.R.S. § 45-576.06.

## 1. CAGR D Enrollment Process

As discussed on pages 4 and 5 of this White Paper, CAGR D has implemented a process for enrollment of member lands, which requires, among other things, an application to CAGR D and the payment of a per-housing-unit enrollment fee. The statutes do not specify that a landowner must follow this application process. Arguably, a landowner could execute and record an ML Declaration and an ML Agreement and the land would qualify as an ML without action by CAGR D. Consequently, in order to ensure that prospective MLs comply with CAGR D's enrollment process and pay an enrollment fee, the Stakeholders recommend that A.R.S. § 48-3774, which sets forth the qualifications for MLs, be amended to require that the ML Declaration be approved by CAWCD prior to recordation and that CAWCD be a party to the ML Agreement. This will ensure that CAGR D will be able to enforce its application process and monitor enrollment in CAGR D. The proposed amendment would read as follows:

“A.5 The owner of the real property, or other person or entity, such as a property owners' or homeowners' association, if the person or entity has proper authority, records a declaration, WHICH HAS BEEN APPROVED BY THE DISTRICT, against the real property in the official records of the county where the real property is located that: . . .

C. Notwithstanding subsection A of this section, no real property qualifies as member land unless the municipal provider that is subject to the declaration records in the official records of the county where the real property is located an ~~instrument~~ AGREEMENT BETWEEN THE DISTRICT AND THE MUNICIPAL PROVIDER that contains both of the following PROVISIONS: . . .”

## 2. ADWR Oversight of the Plan of Operation

One goal of the Stakeholders has been to clarify and document ADWR's oversight of the Plan to ensure that CAGR D remains in compliance with the Plan and that, as long as new members may qualify to enroll in CAGR D, the Plan demonstrates consistency with the management goals of the Phoenix, Pinal and Tucson AMAs. As discussed on page 14 of this White Paper, current law allows the Director of ADWR to determine if the Plan continues to demonstrate consistency with the management goals of the AMAs only between the second and sixth anniversary of the Director's original determination. If the Director determines that the Plan no longer demonstrates consistency with the management goal of an AMA during this period, CAGR D must submit a revised Plan to ADWR within two years pursuant to the statutory process. Many Stakeholders are concerned that the length of time between the sixth anniversary and the earliest date at which CAGR D is able to submit its subsequent ten-year Plan is too long. If the Plan becomes inconsistent with meeting the management goal of an AMA during that period, current statutes not only do not **require** that the Plan be revised, but they actually

**prohibit** the submission of a revised Plan. Accordingly, the Stakeholders recommend that A.R.S. § 45-576.03.R be amended to:

- a. Give the Director of ADWR the authority to determine any time between the second anniversary and the eighth anniversary of the Plan of Operation that the Plan is no longer consistent with the management goal for one or more AMA.
- b. Require CAGR D to submit any revised plan within one calendar year of the Director's notification to submit a revised plan, unless the Director extends this time for good cause. The statute currently gives CAGR D two years to submit a revised Plan.

### **3. Expiration of the Plan**

As discussed on page 7 of this White Paper, CAGR D is required to submit a new Plan to ADWR every ten years. ADWR must determine whether the Plan for each AMA "shall be designated as being consistent with the management goal of that"<sup>48</sup> AMA. The "designation expires on January 1 of the year following the year"<sup>49</sup> the CAGR D is required to submit its next ten year Plan. Additionally, if ADWR requires CAGR D to submit a revised Plan for an AMA and later determines that that revised Plan is not consistent with achieving the management goal of that AMA, "the district's plan shall expire."<sup>50</sup>

The Stakeholders are concerned that the statutes as now written would result in the entire Plan expiring if the Director determines that the revised Plan is not consistent with achieving the management goal for an AMA. The Stakeholders would like to ensure that the portions of the ten-year Plan that are not affected by the Director's determination on the revised Plan continue to be effective and recommend that A.R.S. § 45-576.03.S be amended to read:

"Unless the conservation district successfully appeals the director's determination pursuant to subsection Q of this section, if the director has made a determination for one or more active management areas that the conservation district's revised plan for operation is not consistent with achieving the management goal of that active management area pursuant to this section and the conservation district is unable to satisfy the director's concerns within sixty days after the director has notified the conservation district of the determination, the DESIGNATION PURSUANT TO SUBSECTION M OF THIS SECTION THAT THE district's plan IS CONSISTENT WITH THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA shall expire."

The Stakeholders also recommend that A.R.S. §§ 45-576.02.C.2 and 45-576.03.M be amended to ensure that the planning dates clearly provide that the current ten-year Plan

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<sup>48</sup> A.R.S. § 45-576.03.M.

<sup>49</sup> Ibid.

<sup>50</sup> A.R.S. § 45-576.03.S.

remains effective until at least one year after the last date that the next ten-year Plan must be submitted to ADWR.

## **B. Administrative Changes**

### **1. ADWR Oversight of the Plan of Operation**

ADWR's oversight of the Plan is critical to ensuring that the Plan is implemented and that enrollment does not continue if the Plan is not consistent with the management goals of the AMAs. As explained in detail on pages 14 through 16 of this White Paper, ADWR must review the Plan annually (between the second and sixth anniversaries) to determine whether there has been an unexpected increase in projected groundwater replenishment obligations or an unexpected reduction in water supplies available to meet the current replenishment obligations. The Stakeholders expressed concern that these critical standards, which determine whether a Plan continues to be consistent with the management goals, are not well defined in the statutes. Accordingly, the White Paper sets forth how ADWR intends to interpret these standards. ADWR plans to adopt a substantive policy statement to formally establish, as described in this White Paper, how it will annually monitor the Plan and determine whether there has been an unexpected increase in projected groundwater replenishment obligations or an unexpected reduction in water supplies available to meet current replenishment obligations.

The Stakeholders recommend that ADWR adopt a substantive policy statement that is consistent with the principles and practices contained in this White Paper.

### **2. Loss of DAWS**

As discussed on page 17 of this White Paper, if ADWR determines that the Plan is not consistent with achieving the management goal of an AMA or CAGR is not in compliance with its replenishment obligations for an AMA, a municipal provider that received a DAWS on the basis that its service area was an MSA will lose its DAWS. The loss of a DAWS has serious economic and political ramifications and municipal providers need certainty about how ADWR will interpret this provision.

The Stakeholders recommend that ADWR include in the substantive policy statement discussed under B.1 above how it will determine whether a municipal provider will lose its DAWS under A.R.S. § 45-576.06.A and how ADWR will review an application to modify a DAWS consistent with the principles and practices contained on page 17 of this White Paper.

### **3. Increasing Cap on MSA Replenishment Obligation**

When CAGR enrolls a service area, it includes in the MSA Agreement a maximum volume of excess groundwater deliveries that may be reported to CAGR. In essence, the MSA Agreement caps CAGR's replenishment obligations for the MSA. However, as explained on page 5 of this White Paper, if the MSA later begins to serve water to an ML, CAGR cannot levy a replenishment assessment against the ML. This poses a problem for the MSA that must assume the responsibility for meeting the consistency

with the management goal requirement for the ML within the cap imposed by the MSA Agreement.

The Stakeholders recommend that CAWCD adopt a policy that if an MSA begins serving an ML and such service was not contemplated when the MSA Agreement was signed, CAWCD will agree to increase the cap on its replenishment obligation under the MSA Agreement in an amount sufficient to cover the replenishment obligation associated with the ML.