

INTEGRATED WRITTEN COMMENTS ON APPENDIX A
“GENERAL CONCEPTS FOR A REGIONAL WATER AUGMENTATION
AUTHORITY”

Clarification of Eminent Domain Authority

The Legislative Recommendations Committee included this power in order to ensure that a regional water augmentation authority could construct any necessary infrastructure for making water available to its members.

The Legal Subcommittee determined that state law already permits the exercise of eminent domain in many circumstances. A.R.S. § 12-1111, provides that:

“ . . . the right of eminent domain may be exercised by the state, a county, city, town, village, or political subdivision, or by a person for the following uses:

...

12. Reservoirs, canals, ditches, flumes, aqueducts and pipes, for the use of a county, city, town or village, or its inhabitants, or for public transportation for supplying mines and other industrial enterprises, farms and farm neighborhoods with water for irrigation, domestic and other needful purposes, and for generating electricity.”

A.R.S. Title, 12, Chapter 8, Article 3 recognizes the right of eminent domain for public works. A.R.S. § 12-1142 allows a “state public agency” to institute condemnation proceedings to acquire real property for a public works project. A.R.S. § 12-1142 defines a state public agency to mean “the state or a county, city, town, municipal corporation, authority or any other subdivision, agency or instrumentality, thereof, corporate or otherwise.” (Emphasis added.) Since a regional water augmentation authority would be a municipal corporation, it would be a state public agency under this Article. A “public works project” includes a work or undertaking financed in whole or in part by a state public body.

Article 3 sets forth detailed procedures for how the power of condemnation may be exercised. The state public agency must file a civil complaint in the superior court of a county in which any part of the real property or proposed public works project is located. Public notice of the proceedings must be given and written objections may be filed. The court must hold a hearing and appoint a special master to fix compensation.

The statutes enabling the establishment of a county water augmentation authority (Pinal County) limit the authority's power of eminent domain. The Board of Directors of a county water augmentation authority may institute condemnation proceedings only by unanimous resolution and may not exercise the right of eminent domain:

1. Outside of the county in which the authority is located.
2. To condemn water rights or existing water systems.
3. To acquire electrical facilities.
4. Within the service area of a city or irrigation district without the city's or district's consent.