

ARIZONA DEPARTMENT OF WATER RESOURCES  
LEGAL DIVISION

M E M O R A N D U M

TO: David Johnson, IPR Members

THROUGH: W. Patrick Schiffer, <sup>WPS</sup> Herb Dishlip <sup>AD</sup>

FROM: Ken Slowinski <sup>KS</sup>

DATE: October 10, 1991

RE: Secondary Uses of Groundwater Withdrawn Pursuant to Type 2 Rights for Mineral Extraction and Electrical Energy Generation Type 2 Rights

By memorandum to me dated September 4, 1991 (a copy of which is attached) David Johnson requested answers on several questions related to secondary uses of groundwater withdrawn pursuant to type 2 non-irrigation grandfathered rights for mineral extraction and electrical energy generation. Those questions, and the answer to each, are set forth below.

I. Issue No. 1

1. Facts - Space Biosphere Ventures ("S.B.V.") is planning to construct a resort near the space biosphere in the Tucson AMA, which will include an 18-hole golf course. During the construction of the resort, S.B.V. will operate a sand and gravel facility near the construction site. Groundwater will be withdrawn for use by the sand and gravel facility pursuant to a type 2 right for mineral extraction. S.B.V. has contacted the Tucson AMA to find out if wash water from the sand and gravel facility can be delivered to the golf course for turf-related watering purposes.

2. Issue. Does Section 6-503 of the Second Management Plan allow the Director to relieve the sand and gravel facility from the requirement to reclaim and reuse its wash water for a purpose related to the facility's operation if the sand and gravel facility agrees to deliver the wash water to the golf course for turf-related watering?

3. Answer. No. Section 6-502 of the Second Management Plan for the Tucson AMA requires a sand and gravel facility to reclaim and reuse its wash water "for any purpose related to the facility's operation." The facility must achieve this requirement either by discharging its wash water into a disposal

pond equipped with a barge pump or sump pump, or by using a clarifier. Section 6-503 of the Second Management Plan allows the Director to approve the use of conservation technologies other than those prescribed in Section 6-502 if the Director determines that: 1) the owner or operator of the sand and gravel facility has filed with the Director a detailed description of the proposed alternative technologies and the water savings that can be achieved by the use of those technologies, and 2) the owner or operator of the sand and gravel facility has demonstrated to the satisfaction of the Director that the alternative conservation technologies will result in a water savings equal to or greater than the savings that would be achieved by the conservation requirements prescribed in Section 6-502. As explained below, the delivery of wash water by the sand and gravel facility to the golf course would not qualify as an alternative conservation program under Section 5-103.

The alternative conservation technologies contemplated by Section 6-503 are limited to those that are used for saving water in the sand and gravel facility's operation. Delivery of wash water to a golf course would not result in any savings of water by the sand and gravel facility. On the contrary, the sand and gravel facility would use far more water than it would if it used the conservation technologies prescribed by Section 6-502. For that reason, the sand and gravel facility should not be allowed to deliver its wash water to the golf course under an alternative conservation program pursuant to Section 6-503. Instead, the sand and gravel facility should be required to reclaim and reuse the wash water for a purpose related to the facility's operation. (Even if Section 6-503 allowed the sand and gravel facility to deliver its wash water to the golf course, the golf course would be required to obtain a type 2 right or groundwater withdrawal permit of its own before it could receive and use the wash water. See issue No. 2 below).

## II. Issue No. 2

1. Facts - Arizona Public Service ("APS") owns a type 2 right in the Tucson AMA for the withdrawal of groundwater for the generation of electrical energy. APS withdraws groundwater pursuant to the right and uses it primarily for cooling purposes at an electrical power generation plant which is not yet in operation. After use in the plant, some of the water is discharged into a holding pond, and then delivered to a farm for irrigation purposes. The owner of the farm owns an irrigation grandfathered right, and reports the water received as groundwater pursuant to that right.

2. Issue. A.R.S. § 45-471.A.2 provides that the owner of a type 2 right for the generation of electrical energy "may use groundwater withdrawn pursuant to the right only for electrical energy generation." Does this statute limit secondary uses of the water withdrawn by APS to electrical energy generation, or does the limitation apply only to the initial use of the water?

3. Answer. The limitation imposed by A.R.S. § 45-471.A.2 on the use of water withdrawn pursuant to a type 2 right for electrical energy generation applies to all subsequent uses of the water, unless a subsequent use is made pursuant to a different grandfathered groundwater right or a groundwater withdrawal permit. For example, an owner of a type 2 right for electrical energy generation may reuse water withdrawn pursuant to the right only for the generation of electrical energy unless the person also owns a grandfathered groundwater right or groundwater withdrawal permit for a purpose other than electrical energy generation. In that case, the person may reuse the water for any purpose authorized by the grandfathered groundwater right or the groundwater withdrawal permit, as long as the water is reported as having been withdrawn and used pursuant to that right or permit. Similarly, a person who withdraws groundwater pursuant to a type 2 right for electrical energy generation may use the water for that purpose and then deliver the water to another person for a use other than electrical energy generation only if the recipient holds a grandfathered groundwater right or groundwater withdrawal permit for the purpose for which the water will be used and reports the water as being withdrawn and used pursuant to that right or permit. Under both situations, the groundwater which is used for a purpose other than electrical energy generation is considered to have been withdrawn pursuant to the grandfathered groundwater right or groundwater withdrawal permit which authorizes the use, rather than pursuant to the type 2 right for electrical energy generation.

With regard to APS, it may continue to withdraw and use water pursuant to its type 2 right for electrical energy generation and then deliver the water to the farm for irrigation purposes - as long as the owner of the farm continues to report the water as having been withdrawn and used pursuant to its irrigation grandfathered right.

### III. Issue No. 3

1. Issue. Does the time when a secondary use of groundwater began have any bearing on whether the use can continue? (E.G., if an owner of a type 2 right for mineral extraction or electrical energy generation began delivering groundwater withdrawn and used for such purpose to another person prior to the enactment of the Groundwater Code in 1980 or prior to the enactment of the Effluent Bill in 1991, can the person continue delivering the water to the other person regardless of any restrictions on the use or reuse of the water contained in the Groundwater Code or management plan?)

2. Answer. No. The fact that an owner of a type 2 right for mineral extraction or electrical energy generation began delivering water withdrawn and used for such purpose to another person prior to the effective date of the Groundwater Code or Effluent Bill does not mean that the person can continue to dispose of the water in such a manner after the effective date of

those acts if the Groundwater Code or a management plan requires that the water be used for another purpose.