

ARIZONA DEPARTMENT OF WATER RESOURCES

Phoenix Active Management Area
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Governor

RITA P. PEARSON
Director

February 14, 1995

Karen Barfoot
Water Resources Advisor
City of Chandler
200 East Commonwealth Avenue
Chandler, Arizona 85225

Dear Karen:

Using some of the language from your 12/5/94 draft memo to George Selvia regarding the possibility for the City of Chandler to drill a well outside the city service area, I offer the following general statements. These statements are organized around the following three scenarios; importation of groundwater from another water provider by contract, expanding the exterior boundary of Chandler's service area by natural incremental progression and expanding Chandler's service area by developing new, discontinuous service areas. Please be sure to consult your own legal advisor regarding the applicability of any statements in this letter to specific facts.

1. **Importation of Groundwater from Another Municipal Water Provider by Contract.**

The city could contract to have another municipal water provider (city, town or private water company) deliver groundwater to the City of Chandler's service area pursuant to A.R.S. § 45-492(C). The statute requires such a delivery of groundwater to the City of Chandler from outside its service area to be consistent with the management plan for the Phoenix AMA and A.R.S. § 45-576 (Assured Water Supply) and must first be approved by the Director of ADWR. All such deliveries would have to be reported on Chandler's Annual Water Withdrawal and Use Report and would be counted in Chandler's annual gallons per capita per day (GPCD) calculation.

2. **Expanding the Exterior Boundary of Chandler's Service Area by Natural Incremental Progression.**

The city may not drill a service area well under its own authority outside the exterior boundaries of its own service area. This is the result of the Arizona Court of Appeals ruling in Cortaro Water Users Association v. Steiner, 148 Arizona 343, 714 P.2d 836 (App. 1985), affirmed by the Arizona Supreme Court at 148 Ariz. 314, 714 P.2d 807 (1985). In that case, ADWR gave permission to Tucson Water to drill a service area well five miles from its service area boundary. The court's decision against Tucson Water found that a city, town or private water company could only drill a service area well within its "service area," as that term is defined at A.R.S. § 45-402. Specifically, the well must be located in an area of land actually being served water by the city, or in an area containing

an operating distribution system owned by the city. Drilling wells within a municipal water provider's existing service area and then initiating service from those wells to new development beyond but in close proximity to existing service area boundaries is considered an expansion of the exterior boundaries of a municipal service area by natural incremental progression.

3. Expanding Chandler's Service Area by Developing New, Discontiguous Service Areas.

a. How to expand Chandler's service area to a discontiguous area of land

If Chandler wishes to expand its service area to an area of land that is not actually being served water by the city, under proper circumstances it may be able to do so by drilling a well under an authority other than its service area right, without violating the decision in Cortaro, discussed above. This may be accomplished by drilling a well pursuant to a Type 1 or Type 2 non-irrigation grandfathered right and serving water pursuant to that authority for municipal purposes in the new, discontiguous area for one year. At the end of the year, if the area is within the city's natural path of expansion, ADWR would grant service area status to the well and the area it serves. The "starter" Type 1 or Type 2 non-irrigation grandfathered right would no longer be necessary to withdraw and serve water in that discontiguous location. The city would then be free to drill additional service area wells in that area of land, and expand by natural incremental progression from that area.

In addition to the T1 and T2 options, a municipal provider may expand its service area to a discontiguous area by employing a recovery well obtained via a recovery well permit. The discontiguous area being served water for municipal purposes by the recovery well would become a discontiguous portion of the provider's service area after one year of such use. This approach requires that the water withdrawn via the recovery well be used for municipal purposes in the discontiguous area and not transported from the discontiguous area back to the existing service area of the provider during the first year. Without this restriction on transportation, this method of service area expansion would be prohibited by A.R.S. § 45-836.01(B). After the first year and when the recovery well became designated as a service area well, this restriction would not exist.

A city may also expand its service area to a discontiguous area by purchasing an existing operating distribution system from a private water company that is already serving customers, thus adding an "area containing an operating distribution system owned by the city".

ADWR does not lightly allow addition of discontiguous areas of land to service areas. Any proposed discontiguous expansion of a service area is analyzed on a case-by-case basis. First, A.R.S. § 45-493(A)(1) prohibits expansion of a service area primarily to obtain a well field. Second, discontiguous expansion will only be allowed if the city's natural expansion path is actually heading toward the proposed discontiguous area or the discontiguous area is functionally tied to the existing service area and natural expansion toward the discontiguous area is not desirable. This may be the case if the discontiguous area is a wastewater treatment plant or airport.

b. How the city may obtain a Type 1 non-irrigation grandfathered right to start serving a discontiguous area of land

Pursuant to A.R.S. § 45-472, the city may purchase land with an irrigation grandfathered right and then, pursuant to A.R.S. § 45-469, may convert this right to a Type 1 non-irrigation grandfathered right. The amount of water conveyed pursuant to the right may be withdrawn by the original owner of

the Type 1 right (the city) from the land to which the right is appurtenant and used on that land or any other land. Additionally, the original owner of the Type 1 right could withdraw from land not appurtenant to the right and used only on the appurtenant acres. Another method of obtaining a Type 1 non-irrigation grandfathered right is for the city to simply purchase land outside the exterior boundaries of its service area appurtenant to a Type 1 non-irrigation grandfathered right, pursuant to A.R.S. § 45-473(D). The amount of groundwater conveyed pursuant to the right may be withdrawn by the new owner of the Type 1 right (the city) only from the land to which the right is appurtenant and used on that land or any other land in the same active management area. Section 45-473(D) may restrict the use of the Type 1 right on land that is not appurtenant to the right.

c. How the city may obtain a Type 2 non-irrigation grandfathered right to start serving a discontinuous area of land

Pursuant to A.R.S. § 45-471, the owner of a Type 2 non-irrigation grandfathered right may use groundwater withdrawn pursuant to the right for any non-irrigation use at any location in the same active management area. Additionally, the owner of a Type 2 non-irrigation grandfathered right may withdraw groundwater pursuant to the right only from those wells listed on the certificate of grandfathered right. However, the owner may request the Director to issue a revised certificate to reflect new or additional points of withdrawal (wells) on the certificate. For wells drilled after June 12, 1980, the owner must demonstrate that the new or additional wells will not cause unreasonable harm to surrounding land or other water users (well impact study).

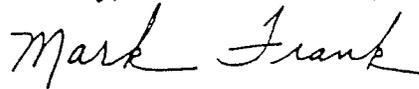
Pursuant to A.R.S. § 45-464(G), all or part of a Type 2 non-irrigation grandfathered right may be leased within the same active management area. Note that a Type 2 right may be purchased for use within the same AMA, but must be purchased in its entirety. Part of a Type 2 right may be leased, but only the entire Type 2 right may be purchased.

4. Exempt Wells

Although you did not request any information on the drilling of an exempt well, please note that the drilling and use of an exempt well does not give rise to a service area well.

I hope this letter provides you with the information you need. If there are any additional questions, please call me.

Sincerely,



Mark Frank
Director
Phoenix Active Management Area