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To the Arizona Corporation Commission  
5-10-2006

W-20380A-05-0490

Re; Docket Number: SW-20379A-05-0489  
and, Letter to the ACC dated 4-10-2006  
and, ASU letter "Water In Perpetuity" vs. "A 100-Year Supply,  
Future planning vs. status quo,  
May-June edition of "Arizona Water Resource" newsletter

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First, I want to say that there is likely no other time in Arizona's history that such an important decision, with far reaching consequences will be made than this water issue before you at this particular time. Facing huge growth, limited water resources and a drought of monumental proportions and likely duration, we need to look forward to your leadership and courage in an action to convey a message that the Arizona Corporate Commission will face this uncertain future with clear insight. That insight will resonate with all government officials and our community at large, in a solid determination to do what is right for the state. Here and now, the future of the state is in the hands of you few who will ultimately send a message as to how we in the state will go forward in a balance of growth, water and the long-term health, safety and welfare of all the people.

Your decision in this matter and the language you use in the support of your decision will establish a framework for all to see, where your strength from an unbiased conviction will forge our future. You have in your hands the ability to conclude who is responsible to manage our growth within water availability, by clearly stating how you interpret the legal responsibility, authority and oversight of the ACC, ADWR and Boards of Supervisors and how the layers of current law point clearly in the direction of self-determination through local elected officials in our rural, not-AMA locations. And you also have the ability and insight to bring in outside legal expertise where it is necessary.

Having that power to interpret or reinterpret is unique at this point in time and being committed to a selfless interest in the future, all generations to come will look back on this moment as a particular turning point where we will no longer look at the water of the future in crisis but that of sensible state and local management without the burden of outside influences. Now is that single opportunity that may not happen again. I think the entire west is watching how you plan to go forward.

I am writing this to place a more global context to the issues I have presented earlier regarding water management in Mohave County. This more detailed dialog will also apply in principle to other parts of the state if not the entire state. Previously, at the ACC meeting, I had time constraints, and had "length of presentation" constraints for the ASU "Guest Writer" presentation. With this writing, I have neither.

To place this issue in perspective, I think it is necessary to think of the state water laws and applicable regulations in some order of generation, what they circumscribe and where elected and appointed official's responsibility begins and ends for the many pieces of state and local water law. Each defined watershed geographic boundary can present separate and unique sets of oversight responsibilities depending on a variety of situations and interrelated water issues. Specific agency authority assists and/or demands compliance within their own applicable way.

First, the 1980 Groundwater Act, 45-401 was initiated to delineate the state's position on groundwater. It is an overview of legal philosophy and an enactment of responsibilities in broad terms so as to allow both state agencies and rural officials, elected and appointed, to each understand their position as to their responsibility for conformance to the Act. The 1980 Groundwater Management Act states,

A. The legislature finds that the people of Arizona are dependent in whole or in part upon groundwater basins for their water supply and that in many basins and sub-basins withdrawal of groundwater is greatly in excess of the safe annual yield and that this is threatening to destroy the economy of certain areas of this state and is threatening to do substantial injury to the general economy and welfare of this state and its citizens. The legislature further finds that it is in the best interest of the general economy and welfare of this state and its citizens that the legislature evoke its police power to prescribe which uses of groundwater are most beneficial and economically effective.

B. It is therefore declared to be the public policy of this state that in the interest of protecting and stabilizing the general economy and welfare of this state and its citizens it is necessary to conserve, protect and allocate the use of groundwater resources of the state and to provide a framework for the comprehensive management and regulation of the withdrawal, transportation, use, conservation and conveyance of rights to use the groundwater in this state.

This Act sets the stage for what is to follow, that of two defined classes of groundwater management, those of an AMA and that of all-other than an AMA. These two delineations are significant because an "AMA" (Active Management Area) removes local water management from the local government officials but in non-AMA rural Arizona, local officials are to remain in charge through their General Plan. Further, each, AMA and non-AMA have multiple agencies that can be responsive to water management and in particular, ADWR, ADEQ, ACC and the Board of Supervisors as having the primary responsibilities.

Each of these governmental bodies have different response methodologies from which to support the Groundwater act and other laws in setting priorities of importance. Each has some ability to be a part of the tasks within water management oversight as it relates to water budgeting and the long-term health, safety and welfare of the people it geographically represents.

In addition to the Groundwater Act there is ARS 11-821.C.3 stating, "An analysis of how the demand for water that will result from future growth projected in the comprehensive plan will be served by the water supplies identified in subdivision (a) of this paragraph or a plan to obtain additional necessary water supplies." The operative words here are "or a plan to obtain." It could not be more clear.

Here, 11-821.C.3 addresses "The Comprehensive Plan" which applies directly to the "General Plan" for individual areas whereby each non-AMA location requires first, a General Plan and planning horizon, second, an analysis of existing and anticipated growth and water resources within that planning horizon and third, a determination of water adequacy for that growth within that defined water availability, consistent with its CURRENT local requirements and state law. This is then consistent with the Groundwater Act and ARS 11-821.C.3 and the state's position of management through implied water budgeting (as in "or a plan to obtain") within a planning model horizon, with revisiting updates for inclusion. Nowhere in any of these state or local requirements and applications does a 100-year supply appear, as a determination for adequacy.

In fact, it states that if supplies do not exist, (at any point in time) they are "to be obtained." "To be obtained," is not defined or delineated because there are enormous innovative, creative and technological ways to do this in a dynamic environment where new methodologies are being created all the time and as we go forward, further advancements will be creatively made. For instance, through these "undetermined obtainment possibilities" the models for what now constitutes a "family usage rate" may be changed from one acre foot pr year to maybe .5 acre feet pr year (through new technologies and regulations) and so on. It is left open to expand "incentives" (such as ARS 43-1090.01 (rainwater harvesting) and ARS 43-1182 (greywater plumbing stubouts) through innovation for compliance. Altering the farming to development ratio of water use is another incentive possibility. Lawns, trees and plants may be restricted to some specific types and area containments. The list is unlimited when the desire to use water effectively is the primary consideration. This is after all, a desert. One should not expect to bring the tropics into this environment, which is now permitted.

Further, 11-202. "County as corporate body; name A. Each county is a body politic and corporate, possessing all the powers expressly provided in the constitution or laws of this state and such powers as are necessarily implied there from."

Here we are being told the county's oversight and legal authority is to support the state's legal position for groundwater management, and is to be done through their General Plan and BOS resolution. Zoning is a tool to control land use and is designed to protect the "general welfare" and is a function of the State's delegated police power to cities and counties. And where the state takes on water management in some locations through an AMA, the non-AMA rural locations are fully capable of legal oversight when absent of state AMA's. Here, non-AMA

locations possess all the powers expressly provided in the constitution or laws of this state.

If that is not clear enough, next came the legislation for Growing Smarter where it specifically requires a water budget and requires the BOS to bring their General Plan into compliance, requiring a water budget, balancing water and growth.

Through that state legislation, when Growing Smarter was enacted, counties were allowed time to bring their General Plans into compliance where necessary. For an AMA location, the water provisions are state controlled. In non-AMA locations, Mohave County accepted Growing Smarter's water budgeting provisions as "Water in Perpetuity." "Water in perpetuity" was chosen because it goes beyond the AMA concept of 100 years. The BOS adopted this language on December 17, 2001 via Resolution 2001-365.

Again, nowhere in the water budgeting provisions is a 100-year requirement even suggested. In fact, the budget is to be made to balance growth with water availability within our local acceptance through resolution as "Water in Perpetuity." The Mohave Board of Supervisors through their legislative ability has made a far-sighted provision for water management, not as a 100-year supply but as "Water in Perpetuity," a far-reaching budgeting proposition consistent with the legal philosophy of the Groundwater Act. By that resolution, they now have judicial authority to preserve and protect our water in perpetuity rather than by any other standard.

Further, Senate Bill 1001 passed in 2000 by then Governor Hull presents near identical language. Where current ARS 11-821C.3 states; "An analysis of how the demand for water that will result from future growth projected in the comprehensive plan will be served by the water supplies identified in subdivision (a) of this paragraph or a plan to obtain additional necessary water supplies" --- becomes current by following the Senate Bill 1001 by stating a further clarification refinement;

**3. PLANNING FOR WATER RESOURCES THAT ADDRESSES:**

- (a) THE CURRENTLY AVAILABLE SURFACE WATER, GROUNDWATER AND EFFLUENT SUPPLIES.
- (b) AN ANALYSIS OF HOW THE FUTURE GROWTH PROJECTED IN THE COUNTY PLAN WILL BE ADEQUATELY SERVED BY THE LEGALLY AND PHYSICALLY AVAILABLE WATER SUPPLY OR A PLAN TO OBTAIN ADDITIONAL NECESSARY WATER SUPPLIES.

Here, 11- 821.C.3 addresses "The Comprehensive Plan" and SB 1001 addresses the "General Plan" making them identical by requiring the General Plan UPDATES to obtain water when necessary. That then is a local function in a non-AMA defined location. The water budget provisions of Growing Smarter further strengthen these with the budgeting "balance" provisions.

And further, within that same Bill, should a developer attempt to convince a city or municipality to extend its boundaries or use existing land to develop properties which requires the same inadequate groundwater source as does the county, and the water is deemed inadequate, those cities and municipalities are bound by the same FORWARD LOOKING water requirements and the necessity to provide protection for the health, safety and general welfare of those constituents. Should a city extend its boundaries, it should then be required to have its water supply again be certified. Their authority and legal oversight is demonstrated in the same Bill 1001 as having the same water requirements but further, the authority stating as,

"9-463.01. Authority

A. Pursuant to the provisions of this article, the legislative body of every municipality shall regulate the subdivision of all lands within its corporate limits.

B. The legislative body of a municipality shall exercise the authority granted in subsection A of this section by ordinance prescribing:

C. By ordinance, the legislative body of any municipality shall:

4. Determine that certain lands may either not be subdivided, by reason of adverse topography, periodic inundation, adverse soils, subsidence of the earth's surface, high water table, lack of water or other natural or man-made hazard to life or property, or control the lot size, establish special grading and drainage requirements, and impose other regulations deemed reasonable and necessary for the public health, safety or general welfare on any lands to be subdivided affected by such characteristics." (End Bill 1001) These are Planning and Zoning functions (Quasi-legislative) which result in recommendations within conformance for the commissioners and then the BOS to act upon.

So you can see that each governmental body and state agency as well as state legislators all have responsibilities and where some may overlap and some do not, each has a responsibility for legal oversight to the people within any jurisdiction for compliance. Within local laws, where state laws may conflict, the more restrictive will apply, as is the case for water management in Mohave County in its forward looking self-determination. Mohave County has adopted, legally, through legislative action, "Water in Perpetuity" as its resolution and it is the local AND state responsibility that these provisions not be circumvented.

Where ADWR and ADEQ may not have any water budgeting oversight, the ACC and BOS do. The ACC and others have a responsibility to aid and assist rural areas to water budgeting management by recognizing defined water limitations when determining if the growth and water availability are or are not in compliance with state and local laws, regulations and resolutions REGARDLESS of local "outside" influences.

Further, both ACC and BOS have legal, moral and ethical responsibilities for oversight in consideration of the long-term health, safety and welfare of the constituents of the state in which they reside, as the Groundwater Act and other laws require. Health, safety and welfare are directly tied directly to infrastructure in water for fire protection, water in medical support for an aging population, water in hospitals and water for the overall health of individuals in every aspect of their human existence among other reasons. Should we excuse foresight and replace it with inaction and the stupidity of an outdated 100-year supply in the belief that something magic will happen in 100 years? I think not.

As Herb Guenther of ADWR said, "Counties should manage themselves." Here, Herb is clearly pointing to local zoning as the "preferred management" for rural not-AMA Arizona to manage themselves and not to the state for some draconian measures.

So I see "Water in Perpetuity" as a legal support "vehicle/mechanism" for groundwater act/management in non-AMA locations, just as an AMA is a legal support "vehicle/mechanism" for groundwater act/management in a more critical-water defined locations. An AMA is supported in one venue and non-AMA's are supported in other venues. Both manage water. Each agency has specific oversight responsibilities.

But the single point is that for non-AMA locations, the application of all law must be consistent with the progression of mandates starting with federal, then state, then local, least current definition discarded to most current definition used and all agencies must support those within their particular expertise regardless of local legal misunderstandings. Without the proper zoning district designation, very little development can legally occur. Nowhere in ARS does it say a county is prohibited from denying a rezone (legislative act) if it finds water supplies to be inadequate.

The 100 year provision when applied as some absolute functional application could appear to circumvent counties from managing their growth by placing an unnecessary "level of state scrutiny and approval" burden of proof which has the appearance of absolving local authorities from deciding how to create and support a water budget when the delineation of pure water availability is not clearly represented through scientific study. Where it is delineated reasonably and clearly, no state intervention is required or needed unless rural areas are unwilling to manage themselves. Where it is not reasonably delineated, some state agencies such as ADWR or the ACC may apply AMA-like considerations or developmental moratoriums when the shortsightedness of local government acts not in accordance with law, but in a reckless manner inconsistent with the overall general long-term health safety and welfare of the people. And in an extreme, the state, through ADWR, may define the area as an AMA as also can the people through 45-415. "Local initiation for active management area; procedures."

As Herb Guenther, Director of ADWR said, "Counties should manage themselves." I agree with him. Not only is it that they SHOULD manage themselves but also it

appears that they are legally required to manage themselves in these critical water issues.

Lastly, nowhere does it say that counties cannot bring in outside science, law or state agencies to assist them in managing their General Plans. In fact, it would be quite ill advised to not have outside help in these complex issues and situations.

So it is my opinion after extensive study, that I am unable to find intelligent support for any 100-year supply outside of an AMA nor do I find any reason that local authorities do not now have the authority and responsibilities to manage growth within water availability in perpetuity through their legislative and judicial authority in the corporate administration of their General Plan. It appears that the 100-year supply for Mohave County is now a myth perpetuated by those unwilling to take appropriate actions to clearly delineate their water supplies and to create a water budget to support "water in perpetuity" as Growing Smarter legislation and other legislation mandates. Further, any county can do the same.

Our aquifer water in Mohave County is carbon dated (a small sampling but consistent with other science for the west) at some 12000 to 30000 years old and these local aquifers are, and have been in a state of water mining for some 30 years, year over year. Recharge is now considered quite negligible relative to water mining history and current growth expectancies. Water is a limited RESOURCE OF THE PEOPLE to which we must do everything to protect and preserve. Any 100 year supply must be forever meaningless to which our Supervisors in Mohave County have agreed in their unanimous Resolution 2001-365 of "Water in Perpetuity."

Please help us in this endeavor. I ask that you not approve any water/development related petition for Mohave County and it is my further recommendation to the ACC that at least, you place a lengthy moratorium in our area. More appropriately, I feel that the outright rejection of any further water approvals until the entire ADWR and USGS study is complete and the issue of water budgeting through "Water in Perpetuity" can be sorted out. Please do not let the long-term health, safety and welfare of the citizens of Mohave County be at risk. No one should ever have to live in fear of ever running out of water, never ever!

Sincerely

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LIST OF SUPPORTERS.