

POLICY GUIDANCE MEMORANDUM # 2
July 20, 1981IRRIGATION GRANDFATHERED GROUNDWATER RIGHTS
BASED ON SUBSTANTIAL CAPITAL INVESTMENT

A person claiming an irrigation grandfathered right on the basis of substantial capital investment¹ for land which was not irrigated between January 1, 1975 and January 1, 1980, must submit a grandfathered right application no later than September 14, 1981. In addition, the applicant must attach to the application a sworn statement setting forth in narrative form essential facts showing that the applicant has made a substantial capital investment prior to June 12, 1980 for the subjugation or improvement of the land. The applicant should also attach legal documents, receipts, maps, photographs and any other material in support of the claim.

The applicant has the responsibility of proving that a substantial capital investment has been made. The applicant must show that:

- 1) The well which will serve the land for which an irrigation grandfathered right is claimed was in existence as of June 12, 1980 or had been substantially commenced between June 12, 1979 and June 12, 1980.
- 2) Within an area which was previously a critical groundwater area², the investment must have been made between June 12, 1979 and June 12, 1980.
- 3) Within an area which was not previously a critical groundwater area, the investment must have been made between January 1, 1975 and June 12, 1980.

1 Section 45-452, subsection A, Arizona Revised Statutes, as amended by S.B. 1409, Chapter 192, Laws 1981, 35th Legislature, First Special Session

2 Section 45-301 to 45-324, (repealed 1980)

The types of investments which will be considered by the Department include:

- 1) improvements to the land such as land clearing and leveling, construction or improvement of irrigation systems
- 2) fencing
- 3) drilling, deepening or refurbishing of wells

Fees for leasing, professional services, and purchase of supplies coincidental to these improvements are not alone sufficient to constitute substantial investment, but may be considered by the Department in addition to the other investments. The cost of acquiring land may not be claimed as part of the substantial capital investment; however, the portion of the purchase price which represents improvements for irrigation purposes may be claimed.

The Department may request additional information from the applicant. The application will be processed in the same manner as other applications for grandfathered rights..