ARIZONA DEPARTMENT OF WATER RESOURCES

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RITA P. PEARSON
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November 15, 1993

Mr. John L. Keane
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Re: Department of Water Resources Interpretation of
A.R.S. § 45-497(B)

Dear John:

I am responding to your letter of November 3, 1993, to T.C. Richmond regarding the above captioned matter. Your letter has been seriously considered by the Department of Water Resources (Department). However, your interpretation of A.R.S. § 45-497(B) cannot be adopted by the Department for the reasons set forth in this letter. I anticipate further discussion of a legislative solution to this matter at the Omnibus Bill meeting on November 16, 1993, and urge you to attend.

You raise four points in your letter. We respond to those points in the following manner. First, any reliance upon the definitions of "municipal use" or "industrial use" contained in A.R.S. § 45-561 is misplaced. A.R.S. § 45-561 specifically states that these broad definitions only apply to Article 9 of the Groundwater Management Act (management plans), not to Article 6 (service area rights, including A.R.S. § 45-497). Your assumption that the Department may have relied on either of these definitions, or for that matter, the Second Management Plan, in its interpretation of A.R.S. § 45-497(B) is incorrect.

Second, if your assertion is correct that **all** deliveries of groundwater by an irrigation district to non-irrigation users are "municipal uses" (based on the Article 9 definition), the reference to "industrial users" in subsection B of A.R.S. § 45-497 would never apply. Thus, your broad interpretation of "municipal use" renders subsection B of A.R.S. § 45-497 meaningless. This violates the basic rule of statutory construction that effect must be given to every word, clause and sentence of a statute, so that no part will be inoperative or superfluous. Sutherland Statutory Construction § 46.06 (5th Ed.). Further, your attempt to define "industrial user" solely on the basis of whether the user pumps part of its groundwater from its own well, apparently based on a Second Management Plan "clarification," lacks sufficient basis in the Groundwater Code or its legislative history.

Third, the Department's position that a post-1980 industrial user must have its own, separate right to use groundwater in order to receive groundwater delivery service from an irrigation district is not a "new interpretation of A.R.S. § 45-497(B)." It was the intent of the drafters in 1979-80 to limit the ability of irrigation districts to deliver groundwater for non-irrigation use to new industrial users, unless the user holds its own right to use groundwater. As you recall in your letter, the Department allowed SRP deliveries to a residential development's lakes/common area that did not hold its own right to use groundwater. See attached letter from Wes Steiner to Charles Ditsch. At that time, the Department recognized the distinction between deliveries for purely "municipal use" and deliveries to businesses for "industrial uses."

The plain meaning of "industrial" and the history behind the drafting of the section dictate that power companies, factories, golf courses and other businesses are "industrial users" under A.R.S. § 45-497(B). Currently that subsection prohibits an industrial user from receiving groundwater delivery service from an irrigation district unless the user holds a separate right to use groundwater or has a pre-Code history of such deliveries.

The Department is supportive of a statutory change. We have proposed an amendment to A.R.S. § 45-497(B) that would allow irrigation district deliveries to new industrial users with the consent of the city, town or private water company in whose service area the user resides. This would allow continued deliveries to post-1980 industrial users already receiving irrigation district deliveries, thus resolving the immediate problem. As for new deliveries to proposed businesses, consent would usually be easy to obtain, so long as the city, town or private water company does not want to serve the user (these water-intensive users are usually not desirable customers due to the effect on the municipal provider's conservation requirements).

In conclusion, we are not inclined to change our interpretation of A.R.S. § 45-497(B) as it is currently written. However, we will be happy to work toward resolving this problem through a legislative change. You indicated a desire to work directly with the cities in an attempt to do so. Perhaps at the November 16 Omnibus Bill meeting you could provide an update on your discussion.

Sincerely,

Herb Dishlip
Deputy Director

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