

## ARIZONA DEPARTMENT OF WATER RESOURCES SUBSTANTIVE POLICY STATEMENT

*This substantive policy statement is advisory only. A substantive policy statement does not include procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedures act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.*

### **INTERPRETATION OF A.R.S. § 45-454(D)(4) RELATING TO EXEMPT WELLS**

#### **I. Background**

Generally, A.R.S. § 45-454(B) states that non-irrigation wells drilled after April 28, 1983, which have a pump capacity of not more than 35 gallons per minute and for which a notice of intention to drill is filed with the Department, are exempt from the provisions of the Groundwater Code. In 2005, the Legislature passed S.B. 1190, which amended A.R.S. § 45-454 to prohibit the drilling of an exempt well in initial Active Management Areas ("AMA's") on land within 100 feet of the operating water distribution system of a municipal provider with an assured water supply designation. *See* A.R.S. § 45-454(C). However, S.B. 1190 also included a provision that states that on request from the owner of the land on which an exempt well is prohibited under subsection (C), the director shall issue an exemption from the prohibition if the landowner demonstrates to the satisfaction of the director that any of the following apply:

1. The landowner submitted a written request for service to the municipal provider that operates the distribution system and the municipal provider did not provide written verification to the landowner within thirty calendar days after receipt of the request that water service is available to the landowner after payment of any applicable fee to the municipal provider.
2. The total capital cost and fees for connecting to the operating water distribution system exceed the total capital cost and fees for drilling and fully equipping an exempt well.
3. If the applicant must obtain an easement across other land to connect to the water distribution system of the municipal provider, the applicant sent the owner of the land a request for the easement by certified mail, return receipt requested, and either the applicant did not receive a response to the request within thirty calendar days of mailing the request or the request was denied.
4. The landowner does not qualify for an exemption pursuant to

paragraphs 1, 2 or 3 of this subsection and the landowner provides written verification from the municipal provider that the landowner shall not receive or request water service from the municipal provider while the exempt well is operational. The exemption for that well is revoked if the landowner or any subsequent landowner receives water service from the municipal provider. In determining whether to approve or reject a permit application filed under § 45-599, the director shall not consider any impacts the proposed well may have on an exempt well drilled pursuant to this paragraph.

During the past year, the Arizona Department of Water Resources (“ADWR”) has received several requests from landowners for an exemption pursuant to A.R.S. § 45-454(D)(4) (referred to herein as “subsection (D)(4)”). ADWR granted three exemptions under subsection (D)(4) without requiring that the landowner provide written verification from the municipal provider that the landowner shall not receive or request water service from the provider while the exempt well is operational. At the time the exemptions were granted, ADWR interpreted subsection (D)(4) to require only that the landowner verify in writing that he or she shall not receive or request water service from the provider while the exempt well is operational. ADWR has reconsidered its interpretation of subsection (D)(4) and has determined that its interpretation should be changed.

## **II. A.R.S. § 45-454(D)(4) Requires Written Verification from the Municipal Provider**

Subsection (D)(4) provides that the Director shall grant an exemption under that subsection if “the landowner provides written verification from the municipal provider that the landowner shall not receive or request water service from the municipal provider while the exempt well is operational.” The subsection also provides that “[i]n determining whether to approve or reject a permit application filed under § 45-599, the director shall not consider any impacts the proposed well may have on an exempt well drilled pursuant to [subsection (D)(4)].” Thus, subsection (D)(4) allows a landowner to drill an exempt well on land within 100 feet of a designated provider’s operating water distribution system, while also overcoming the provider’s concern that the exempt well may interfere with the provider’s ability to drill a new non-exempt (e.g., service area) well.

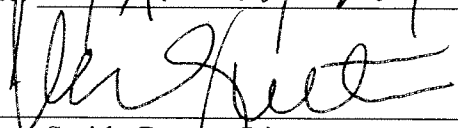
It is the Department’s position that subsection (D)(4) requires *both* the landowner *and* the water provider to understand and agree to the exercise of the exemption. The landowner must agree not to *request* service while the exempt well is operational, and the municipal provider must agree that the landowner will not *receive* water service while the exempt well is operational. Subsection (D)(4) makes it clear that the landowner is responsible for providing the written verification of this to the Department, but that submission requirement does not

grant the landowner the ability to exercise the exemption unilaterally. On the contrary, the statute clearly requires an affirmative action *from the municipal provider*. This arrangement protects the interests of the landowner and the provider, specifies what each party is agreeing to, and ensures that neither binds the other against their will. In addition, the landowner waives future claims against “unreasonably increasing harm” caused by a well permitted under A.R.S. § 45-599. As the statute intends, this exemption is both narrow and specific. It does not grant landowners an automatic exemption, but provides an *opportunity* for the parties to reconcile their competing interests.

For the foregoing reasons, ADWR shall implement subsection (D)(4) as follows: A landowner requesting an exemption pursuant to subsection (D)(4) must submit to ADWR a letter or other document from the municipal provider, signed by a representative of the municipal provider, verifying that the landowner shall not receive or request water service from the municipal provider while the exempt well is operational. ADWR shall not grant an exemption pursuant to subsection (D)(4) unless the landowner requesting the exemption submits such written verification to ADWR.

### **III. EFFECTIVE DATE**

This substantive policy statement shall become effective immediately.

Date: 29 August 2007  
  
\_\_\_\_\_  
Karen Smith, Deputy Director  
Arizona Department of Water Resources