

ARIZONA DEPARTMENT OF WATER RESOURCES

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FIFE SYMINGTON
Governor

RITA P. PEARSON
Director

November 24, 1993

Mr. James R. Livingston
President
Community Water Company of Green Valley
Post Office Box 1078
Green Valley, AZ 85622-1078

Re: Use of Purchased Stored Water Credits to Offset
GPCD Violations

Dear Mr. Livingston:

The purpose of this letter is to confirm in writing our response to your letter of October 1, 1993 regarding whether and to what extent you may use Indirect Groundwater Storage and Recovery Project (IS&R) stored water credits purchased from CAWCD to offset your GPCD violations. As Placido Dos Santos of our Tucson AMA Office has already verbally confirmed, A.R.S. § 45-858(F) puts severe limits on the use of IS&R credits to offset the purchaser's GPCD violations. In your case, the current § 45-858(F) limits would prevent you from using purchased IS&R credits to offset future GPCD violations, for the following reasons.

First, as your letter correctly states, the law allows only the "holder" of the IS&R permit to use "its" credits to offset groundwater withdrawals in excess of the "holder's" per capita requirements. A.R.S. § 45-858(F). Because you are not the holder of the IS&R permit, this provision alone prevents you from using your credits to offset future per capita excesses.

Second, if you were somehow able to satisfy the "holder" requirement, your company would need to prove that the credits proposed for use as a GPCD offset were earned in a year in which it purchased at least 20% of its CAP subcontract amount of CAP water for direct use. A.R.S. § 45-858(F)(2).

Third, there are time limitations on the use of stored credits for GPCD offset. The offsets may only be made to Second Management Plan violations that occur prior to the year 2000, as you mention in your letter. Note also that the credits must be earned prior to the year 2000 (extended last legislative session from 1995).

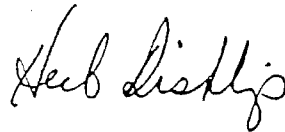
Although § 45-858(F) does not allow you to offset per capita excesses, there is

an alternative method of escaping per capita requirements. A.R.S. §§ 45-857 and 45-858(B) allow the sale of IS&R credits and the purchaser of the credits may pump the credits as if it were the source water (CAP water in your case). ADWR does not apply per capita requirements to an entity that does not use any groundwater in a calendar year. Therefore, despite the unavailability of stored water credits for direct GPCD offset, you could escape per capita requirements by replacing all groundwater use in a calendar year with pumped stored water credits.

In response to your question regarding possible amendment of A.R.S. § 45-858 to allow purchased credits to be used for GPCD offsets, we will not be pursuing any recharge amendments in this year's Omnibus Bill, but we will consider this issue in connection with our planned comprehensive revision of the recharge laws in a separate bill this session.

For now, it does not appear that § 45-858 will allow you to make the planned use of purchased stored water credits, unless you completely replace all groundwater pumping with the credits in a given calendar year. If you have any further questions concerning this or any other matter, please write or call.

Sincerely,



Herb Dishlip
Deputy Director
Water Management

cc: Placido Dos Santos, TAMA
Patrick Schiffer, Legal Division