



Arizona State Senate *Issue Brief*

September 14, 2007

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

ARIZONA'S GROUNDWATER MANAGEMENT CODE: *Lot Splits and Subdivisions*

Lot split and subdivision statutes are increasingly being examined for potential changes to provide increased management of groundwater resources. The reason for this is the common tie between lot splits and exempt wells – where you find a lot split you are likely to find an unregulated, exempt well that provides water to the homeowner.

An exempt well is a well with a maximum pump capacity of 35 gallons per minute (gpm). Unlike wells that have a maximum pumping capacity greater than 35 gpm, exempt wells are exempt from needing a groundwater withdrawal authority, complying with the Arizona Department of Water Resources' (ADWR) well spacing rules, using a water measuring device, paying groundwater withdrawal fees and filing annual groundwater withdrawal reports.

There are important differences in the way that groundwater management is approached in statute as it pertains to subdivisions and lot splits.

GROUNDWATER MANAGEMENT IN LOT SPLITS

A lot split, or "land division" by statute, is land in an unincorporated area of a county that has been divided into five or fewer parcels, any of which is ten acres or smaller in size. Once approved, the land divider is able to build and sell houses on the divided land even though a reliable water supply might not service the land.

Unlike their authority over subdivisions, in most circumstances county boards of supervisors do not have the discretion to prevent a lot split from occurring. A lot split must be approved if the divider's application meets certain minimum requirements outlined in statute, without regard to water supply. Counties are permitted by statute to adopt ordinances for staff review of lot splits, but only to determine compliance with minimum applicable county zoning requirements and legal access. According to the Arizona County Supervisors Association, only Coconino and Pima counties have adopted lot split ordinances.

An affidavit of disclosure (affidavit) is required for all lot split sales. The affidavit must be provided to the buyer at least seven

days prior to the transfer of property. The affidavit is required to disclose pertinent information regarding the property, including whether the property is served by a well, municipal water provider or private water provider.

In 2006, the Arizona Legislature expanded water disclosure requirements for land that has been divided. H.B. 2431 added elements to the affidavit requiring disclosure of whether the property is served by a private water company or a municipal provider, and whether the property is served by a water supply that requires transportation of water to the property. H.B. 2431 also requires the affidavit to include a statement notifying the buyer that if the property is served by an exempt well, private water company or municipal provider, then the ADWR may not have made a water supply determination and advises the buyer to contact the water provider for more information.

GROUNDWATER MANAGEMENT IN SUBDIVISIONS

County boards of supervisors are required by statute to regulate the subdivision of all lands within their corporate limits, except those regulated by municipalities. Statute defines subdivision as “improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests.” Subdivisions must be approved by the board of supervisors, and if the subdivision is within an Active Management Area (AMA), the board cannot permit the subdivision unless the plat is accompanied by a certificate of assured water supply from the ADWR or the subdivider has a written commitment of water service from a city or town or private water company that has an assured water supply, also known as a *designated water provider*. However, denial of a subdivision for lack of an assured water supply does not prohibit lot splits from occurring on the same land.

To obtain a certificate of assured water supply, a subdivider or designated water provider must meet the following five criteria: 1) physical, legal and continuous availability of

the water supply for 100 years; 2) sufficient quality of the water supply; 3) water use must be consistent with the AMA’s management goal; 4) water use must be consistent with the AMA’s management plan; and 5) the applicant must demonstrate financial capability to construct any necessary water storage, treatment and delivery system.

Outside of AMAs, subdivision developers must obtain an adequacy determination from the ADWR concerning the quantity and quality of water available before the Arizona Department of Real Estate (ADRE) will allow any lot sales. If the application demonstrates that water of sufficient quality will be physically, legally and continuously available for the next 100 years, then the ADWR will determine the water supply to be adequate. If the water supply is determined to be inadequate the developer may still sell lots, unless the subdivision is located in a city, town or county that has adopted an ordinance requiring an adequate water supply for new subdivisions, but the inadequate determination must be disclosed to the initial buyers in the public report approved by the ADRE and in all promotional material and must be noted on the face of the plat. The inadequacy determination is not required to be disclosed to subsequent purchasers of the divided land. If the subdivision is located in a city, town or county that has adopted an adequate water supply ordinance, the subdivision must have an adequate water supply as determined by ADWR or a written commitment for water from a designated water provider before the city, town or county may issue final plat approval or the Real Estate Commissioner may issue a public report. Arizona statute establishes two exceptions to any local ordinance requirement that may be approved by the Director of ADWR if: 1) substantial capital investment has already been made in the subdivision prior to the adoption of the ordinance or 2) physical works for delivering the water are not complete but will be within 20 years or legal rights to Colorado River water are not available but will be within 20 years. An ordinance may include an additional exemption for subdivisions with an inadequate water supply where the water must be hauled to the subdivision by train or motor

vehicle. Any exemptions from an adequate water supply requirement must be noted on all promotional material and the face of the plat for the subdivision.

ADDITIONAL RESOURCES

- “*Arizona’s Groundwater Management Code: Active Management Area*,” Arizona State Senate Issue Brief
www.azleg.gov/briefs.asp
- “*Arizona’s Groundwater Management Code: Exempt Wells*,” Arizona State Senate Issue Brief
www.azleg.gov/briefs.asp
- Groundwater Code: Arizona Revised Statutes, Title 45, Chapter 2
- Arizona County Planning and Zoning law: Arizona Revised Statutes, Title 11, Chapter 6
- Arizona Conveyances and Deeds law: Arizona Revised Statutes, Title 33, Chapter 4
- Department of Real Estate
<http://www.re.state.az.us/>
- Department of Water Resources
<http://www.azwater.gov/dwr>