

Dr. David Tuthill, Director
Idaho Dept. of Water Resources
322 East Front Street
Boise, ID 83720-0098

Re: M3 Co. application #63-32573 for water rights in Eagle, ID

Submitted
4/23/09 at a
hearing as a
public witness.

Mr. Spackman

April 24, 2009

Dear Dr. Tuthill:

We are one of the Protestants in this matter. We own property in the *Buckhorn Estates* subdivision of 48 properties@5-plus acres, each with a private well, in Eagle City's Area of Impact north of Beacon Light Road. We depend on our wells for water and we are very concerned about the future viability of our wells to be served adequately by the aquifer in our area.

Here is our experience:

Our well was drilled on September 22, 1998 and the "completed depth" was 123-ft. and the "depth to water" was 51-feet. Beginning in summer 2008, the IDWR [Dennis Owsley, P.G., Technical Hydrogeologist] began monitoring our well after we agreed to that procedure. On June 27, 2008, the depth to water was 52.67-feet. On March 24, 2009, the depth to water measured 54.74-feet. Alarmed, we paid to have a 20-ft. extension pipe attached to our well pump.

Here is our concern:

In the years prior to the recent housing market slump, the City of Eagle approved new housing developments when rezoning and annexing many large rural properties in west Eagle to higher density building lots. The noticeable wave of rezoning and annexation approvals began in 2003 with The Legacy subdivision development [up to 1,000 houses to be built]. At the end of the wave in December 2007, M3 Co. won "preliminary approval" from Eagle City to be annexed to develop land in the foothills and construct a total of about 8,000 houses. [We assume that, with precious Water Rights, M3 Co. instead might choose to sell sections of its foothills property to other eager developers.] The City recently approved a rezoning/annexation for a commercial/residential development of about 700 units called *Terra View/Flack Carlock* along Beacon Light Road extending east from Hwy. 16. [Just east of *Terra View* in Eagle, another developer is planning for an additional high density subdivision, *Hartley Lane*, currently under Ada County jurisdiction.]

Aside from the M3 Co. planned development, the fact remains that thousands of approved new houses are waiting to be built in west Eagle when the housing market improves. They will need water from the same aquifer that about 2,000 private wells currently share with area residents. If M3 Co. is granted Water Rights by the state, it is fair to predict a resultant Water Resource Tug of War involving M3 Co. [annexed or not], Eagle City, and owners of unprotected private wells. Neither jurisdiction in place [Ada County, Eagle City] has written or stated a willingness to help current private well owners in the area with future costs of drilling deeper wells when the aquifer water level likely will go down due to major increased demands on the primary water resource.

Very truly yours,

P. Minkiewicz

Vince and Patricia Minkiewicz
3047 W. Deerfield Court, Eagle ID 83616

*Buckhorn Estates sub-
properties Recorded Ada
1993-1997 County*

** application
denied on June 11,
2009, by Ada County*

Guest opinion: High-tech business requirements could mean a water war

Regarding the current IDWR hearings [Idaho Dept. of Water Resources] on the M3 Development Co. request for Idaho water rights.

Contrary to what M3 Co.'s Mr. Bill Brownlee wrote in a recent opinion piece in *Valley Times* recently, "senior" aquifer water rights are **not** held by private property owners in the Area of Impact and environs, including the several H.O.A.s in the Impact Area. IDWR did not/will not grant those rights to such properties.

Mr. Brownlee at the IDWR hearings incorrectly asserted on the record that 2,400 or so current individual wells in the Eagle Impact Area are protected by the IDWR or some other entity such as Ada County, which he said would compensate individual well owners for drilling costly deeper wells, if needed. Not true.

In a similar vein, the citizens of Eagle City may want to think carefully about the City's municipal water rights: Are those rights protected from future major development impacts in the Eagle area such as that of M3 Co. in the foothills? With all the property annexations and rezoning for housing subdivisions that have been approved by City Council since 2003 for west of Meridian Road, most yet to be built, I wonder if Eagle City would be able to provide adequate water for those approved developments waiting in the wings, particularly if M3 Co. is granted water rights. Armed with those rights, there is nothing to stop that company from selling off portions of its foothills property to other developers who covet those rights that would be passed on [sold] to them.

As I have mentioned in the past, until the IDWR takes an in-depth look at the aquifer's future viability, and Eagle City takes a hard look at its future ability to provide adequate water to the approved new subdivisions and the proposed new business corridor including a vintner industry, there could be a future water war with major developers in the Eagle foothills. In turn, publicity of such a local confrontation over a crucial shared resource likely will discourage businesses from moving to the Eagle area.

In particular, many kinds of high-tech manufacturing require a lot of water usage. As M3 Co. has testified, pulling water from the Boise River for its foothills development would entail millions of dollars. If M3 Co. wins Idaho water rights, there would be a good chance Eagle City would have to spend that kind of money in the future to draw from the river to support its housing and business sectors.

Patricia Minkiewicz, Eagle AOI



WHAT THE CITY OF EAGLE APPROVED

⊙ = water usage

After a two-year process and over 35 public meetings, the Eagle City Council, on December 18, 2007, approved a Zone Change and a Pre-Annexation and Development Agreement for M3 Eagle that provides for:

- ⊙ A maximum of 7,153 dwelling units.
- ⊙ A maximum of 245 acres of commercial, office and mixed-uses.
 - A minimum of 20% of the project area, or 1,201 acres, as open space.

Note: The goal of the project is to have 40% open space, or 2,400 acres. Approximately 15% of the open space, or 880 acres, is planned to become part of the 2,715-acre Eagle Regional Park and Willow Creek Road open space corridor. The master plan also calls for the development of:

- ⊙ Four elementary schools, a middle school and a high school. *[+ landscaping]*
 - A public library, two fire stations and a police station.
- ⊙ One regional park, five community parks and 13 neighborhood parks.
 - Public trails for walking, cycling and horseback riding.
- ⊙ One or more golf courses.
 - A full-service equestrian center with indoor and outdoor arenas, boarding facilities, and links to outdoor riding trails.
- ⊙ One or more hotel/resort(s) with up to 500 rooms.

The development agreement commits M3 to do the following:

- Donate land for schools, police and fire stations, parks and open space, a library and other public and civic uses.
- Contribute funding toward the construction and operation of the police and fire stations.
- Design and build roadways, sewer, water, drainage facilities and other improvements on the property.
- ⊙ Provide evidence that adequate water to serve M3 Eagle has been secured prior to the start of construction.
 - Work with the City to establish an ongoing funding mechanism for the regional open space.
 - Create enforceable planning and design standards that will apply to all development within M3 Eagle.

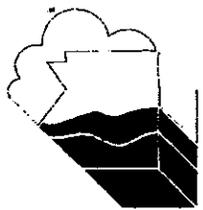
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Assured Water Supply Program Summary

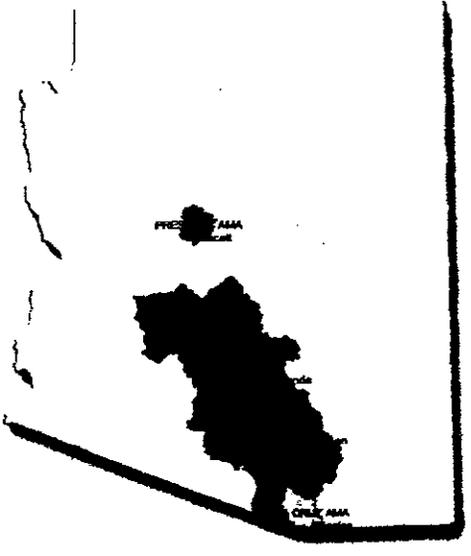
Arizona Department of Water Resources

2008
November 2001

still in effect

Introduction

Arizona's Assured Water Supply Program is designed to sustain the State's economic health by preserving groundwater resources and promoting long-term water supply planning within the state's five Active Management Areas (AMAs). This is accomplished through regulations which mandate the demonstration of sufficient water supplies for new subdivisions. The program is an integral component of Arizona's 1980 Groundwater Code. AMAs are areas which have experienced significant groundwater depletion, and include the urban areas within Maricopa, Pinal, Pima, Santa Cruz and Yavapai Counties.



Active Management Areas

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The Groundwater Code establishes management goals for each AMA. The goal for the Phoenix, Tucson, and Prescott AMAs involves attaining "safe-yield" by the year 2025. Safe-yield is the long-term balancing of groundwater withdrawals with the amount of water naturally and artificially recharged to AMA aquifers. The Pinal AMA goal is to preserve existing agricultural economies for as long as feasible, while preserving future water supplies for non-irrigation uses. The Santa Cruz AMA goal is to maintain a safe-yield condition and to prevent long-term local water table declines. The AWS program is a key tool designed to assist in the achievement of these goals.

History

In 1973, the Arizona Legislature enacted a statewide water adequacy statute as a consumer protection measure (A.R.S. § 45-108). The law was passed in response to incidences of land fraud involving the sale of subdivision lots that were later found to have insufficient water supplies. This law requires developers to obtain a determination from the State regarding the availability of water supplies prior to marketing new subdivision lots. Developers are then required to disclose any "inadequacy" of the supply to potential lot buyers.

The 1980 Groundwater Code contains more rigorous provisions for new subdivisions in AMAs. The 1980 Code prohibits the sale or lease of subdivided land in an AMA without demonstration of an assured water supply (A.R.S. § 45-576). The 1973 law requiring disclosure of an inadequate water supply continues in effect outside of AMAs, and is summarized in a separate document.

summarized in

Arizona

* Assured Water Supply Rules

ADWR adopted the Assured and Adequate Water Supply Rules in 1995. The rules are primarily intended to support achievement of management goals by reducing dependency of groundwater. Through these rules, developers or water providers must acquire renewable water supplies such as surface water, Central Arizona Project water or effluent to qualify for an assured water supply. A small quantity of groundwater is allocated to most assured water supply determinations. This groundwater allocation allows for the gradual phasing of renewable supplies, and acts as a reserve in times of surface water shortages. Prior to these rules, an assured water supply was typically demonstrated by pledging "mined" groundwater (i.e., that which exceeds natural and artificial recharge) as the primary source.

* Subdivision Requirements and Assured Water Supply

An assured water supply determination is required to gain approval of a subdivision plat by local governments, and to obtain authorization to sell lots by the Department of Real Estate. A subdivision is defined as land divided into six or more parcels where at least one parcel is less than 36 acres. Land divisions resulting in parcels larger than 36 acres are classified as "unsubdivided" lands and do not require an assured water supply determination.

* Assured Water Supply Criteria

To obtain an assured water supply determination, the statute requires a demonstration that:

1. Physical, legal and continuous availability of the water supply for 100 years (A.A.C. R12-15-703).
2. Sufficient quality of the water supply (A.A.C. R12-15-704).
3. Water use must be consistent with the management goal of the AMA (A.A.C. R12-15-705).
4. Water use must be consistent with the management plan of the AMA (A.A.C. R12-15-706).
5. Financial capability to construct any necessary water storage, treatment and delivery systems (A.A.C. R12-15-707).

A developer may obtain an assured water supply determination for a subdivision by applying to the Arizona Department of Water Resources (ADWR) for a Certificate of Assured Water Supply and demonstrating that these criteria have been met. As an alternative, the water provider may acquire a Designation of Assured Water Supply for the entire service area. If the subdivision will be served by a designated provider, the developer need only obtain a written commitment of service from the provider. The most populous cities within most AMAs have obtained a Designation of Assured Water Supply, thereby qualifying a majority of new subdivisions.

* Meeting the Assured Water Supply Criteria

Developers seeking a Certificate of Assured Water Supply must demonstrate that sufficient qualifying water supplies are available to meet subdivision demands for at least 100 years. Water providers seeking a Designation must demonstrate that sufficient qualifying supplies are available to meet current demand, committed demand (i.e., that which is associated with recorded, undeveloped lots) and at least two years of projected growth for a 100 year period. The criteria are described further in Table 1. Options for meeting the consistency with the management goal requirement are listed in Table 2. Both can be found on the next page.

**Table 1.
Criteria for Demonstrating Assured Water Supply**

	Statutory Criteria	Description
1	Physical, Legal and Continuous Water Availability	Physical availability of the water supply is typically demonstrated through a hydrologic study. For groundwater, the study must consider demands of area users for a 100 year period, and projected water levels may not exceed depth limitations specified in the rules. For all sources of water, legal rights must exist, and adequate delivery, storage and treatment works must be either in place or financed.
2	Water Quality	Proposed sources of water must satisfy existing state water quality standards and any other quality standards applicable to the proposed use after treatment.
3	Financial Capability	Water providers or developers must demonstrate financial capability to construct the water delivery system and any storage or treatment facilities. Financial capability for developers is typically considered through the local government's subdivision review process.
4	Consistency with the Management Plan	Each AMA's Groundwater Management Plan prescribes water conservation requirements for municipal water providers. Water demand associated with proposed subdivisions is evaluated in accordance with these conservation requirements.
5	Consistency with the Management Goal	To be consistent with the management goal of an AMA, developers or water providers seeking an assured water supply determination must demonstrate that renewable water supplies will be available.

**Table 2.
Options for Meeting Consistency with Management Goal Requirement**

Method of Obtaining Water	Available Options
Pumpage of Water from Wells	<p>Groundwater Allowance Credits allow a small percentage of total demand to be supplied from groundwater wells with without incurring an obligation to replace the water. For Designations, an incidental recharge credit is included.</p> <p>Extinguishment Credits are obtained by permanently eliminating a grandfathered groundwater right, which allows for the pumping of a specific amount of groundwater without a replenishment obligation.</p> <p>Storage Credits accrue from the recharge of surface water or effluent, and may be pumped or "recovered" from wells. Recovered water retains the legal nature of the water stored.</p> <p>Exemption Credits may be authorized for pumpage of poor quality groundwater, water withdrawn from an established "waterlogged" area, and any groundwater withdrawn during a declared surface water shortage.</p> <p>Central Arizona Groundwater Replenishment District membership allows for any "excess" groundwater usage (usage in excess of allowable groundwater credits) to be replaced by recharging renewable water. (See the section below for more information.)</p>
Direct Use of Renewable Supplies	<p>Surface Water/CAP may be treated for potable direct delivery, or may be delivered directly for non-potable uses such as golf courses and parks.</p> <p>Effluent may be delivered for non-potable uses.</p>

2001

2008 still in effect

**Arizona Department of
Water Resources**

Groundwater Management Division
Office of Assured and Adequate Water Supply
500 N. Third Street
Phoenix, Arizona 85004-3921
Phone: 602.417.2465
Fax: 602.417.2467

Securing Arizona's Water Future



We're on the web!
www.water.az.gov

Central Arizona Groundwater Replenishment District

Through a statutory mechanism established in 1993, a demonstration of Assured Water Supply in the Phoenix, Tucson and Pinal AMAs may include mined groundwater if the subdivision or water provider has joined the Central Arizona Groundwater Replenishment District (CAGRDR). The CAGRDR, which is operated by the Central Arizona Water Conservation District, is responsible for acquiring renewable water supplies to replace groundwater pumped by members. The replacement water is then recharged into aquifers within the AMA. The CAGRDR allows new development to occur in areas which have access to ample groundwater supplies, but lack access to renewable supplies.

Costs of the CAGRDR are covered by an annual replenishment tax levied on "excess" groundwater use by its members. The tax is based on the CAGRDR's cost of obtaining and recharging replacement water. For each subdivision lot within a Certificate of Assured Water Supply, the property tax assessment will reflect the cost of excess water delivered to the lot. Water providers that join the CAGRDR and obtain a Designation of Assured Water Supply pay the assessment directly to the CAGRDR based on excess water delivered in the provider's service area.

For more information regarding CAGRDR, call (623) 869-2333

Applications

A developer may obtain a Certificate of Assured Water Supply by filing an application and a preliminary subdivision plat, evidence of financial capability service agreement, etc. with the Department of Water Resources. The application review process typically requires 90 days. If a subdivision plat is not available, an Analysis of Assured Water Supply may be applied for. The Analysis is used for master plan communities and is a preliminary step toward obtaining a Certificate of Assured Water Supply. Water providers who are currently not designated may apply for a designation at any time. Applications can be found on the web at the Department's website or can be picked up at our offices.



Assistance

For more information regarding assured water supply determinations, contact the following ADWR offices:

Office of Assured and Adequate Water Supply
(602) 417-2465

Active Management Area Offices

Hydrology Division
(602) 417-2448

Phoenix (602) 417-2465 • Pinal (520) 836-4857 •
Prescott (928) 778-7202 • Santa Cruz (520) 761-1814 • Tucson (520) 770-3800

