

Memorandum
Legal Division

TO: Rita Pearson, Director

THROUGH: Tim Henley, AWBA Manager

FROM: Chuck Cahoy, Deputy Counsel *CC*

RE: Use of AWBA Funds to Construct Storage Facilities/Use of
AWBA Funds "for the benefit" of the AMA

DATE: September 6, 1996

Tim has informed me that at a recent meeting in Tucson, he was asked about the likelihood of the AWBA using its funds to develop storage facilities in the Tucson area. There was particular interest in developing storage facilities that might be used by entities other than the AWBA. When it was stated that it was unlikely that the AWBA would construct facilities for the benefit of other entities, the question was raised of how, then, the AWBA would make full use of the funds that are dedicated to the Tucson area. Tim asked me to prepare a memo reviewing the relevant aspects of the AWBA Act on these issues for your review in the event that these questions arise at next week's AWBA meeting in Tucson.

As you will recall, the original concept for the AWBA was that it would act primarily as a business, not technical, enterprise. Any technical expertise needed by the AWBA was to be provided by CAWCD and the Department. The primary activity of the AWBA was to store water. Therefore, the only Underground Water Storage Program permit the AWBA is authorized to hold is a water storage permit.

In fact, the AWBA Act specifically states that the AWBA "may not own, develop, operate or construct storage facilities." A.R.S. § 45-2455(A). That statute goes on to allow the AWBA to enter into an agreement with the holder of a storage facility permit and to pay compensation for using those facilities, but only "to the extent that the storage facility is used to store water for the purposes of the Authority." A.R.S. § 45-2455(B). Thus, this language would prohibit the Authority from building storage facilities with AWBA funds if those storage facilities were to be used primarily for entities other than the AWBA.

This answer raised the second question in Tucson of how the money dedicated to their area could fully be used. Because Tucson finds it necessary to store all of their CAP allocation,

there may be little storage capacity left for the AWBA to use in the Tucson area.

Part of the answer to this question may come from the language in the statute that the groundwater withdrawal fees collected from the Tucson AMA must be used "for the benefit" of that AMA. Similarly, the 4-cent tax assessed by CAWCD for Pima County must be used "for the benefit" of that county. A.R.S. § 45-2457(B)(6) and (7). Thus, the statutes do not require the funds to be used to store water in the location in which the funds were raised, only that they ultimately benefit that area. It is possible for the water to be stored in a location other than Pima County if a way can be found to use the water for the benefit of that area. It may, therefore, be an overly narrow view of the legislation to conclude that the money raised for the Tucson area cannot fully be used if there is not sufficient capacity to store AWBA water in the Tucson AMA.

If there is strong sentiment in the Tucson area for the use of AWBA funds for the construction of storage facilities to be used by entities other than the AWBA, the issue might be reviewed by the AWBA Study Commission to determine if the legislation should be modified to allow for this activity.