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February 9, 1955
Letter Opinion
No. 55-40

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ARIZONA ATTORNEY GENERAL

Mr. Roger Ernst
State Land Commissioner
State Land Department
Phoenix, Arizona

Re: Replacement wells to be used to irrigate lands other than those irrigated by the original well.

Dear Mr. Ernst:

This is in answer to your letter of January 12, 1955, in which you requested an opinion as to whether under the existing law, a replacement of an irrigation well can be granted to irrigate lands other than those which were irrigated by the original well.

The applicable law is as follows:

Section 75-153, A.C.A. 1939, as amended (1948 Code):

"75-153.* * * If the commissioner shall determine that the proposed well when constructed at the proposed new location will be used to irrigate the same lands as the original well and shall be located within the exterior boundaries of the same critical area, he shall approve the application and issue an amended permit therefor." (Emphasis supplied)

Section 75-2112, A.C.A. 1939, as amended (Senate Bill 107):

"75-2112. Replacement wells, deepening existing wells, and permits therefor.--
(a) A permit shall be granted by the state land commissioner for the replacement or deepening of an existing irrigation well upon a satisfactory showing that the well intended to be replaced or deepened will no longer yield sufficient water to irrigate the land normally supplied by it within the past five years.* * * No permit shall be issued until the commissioner has determined that the proposed deepening is

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necessary, or that the replacement well is a bona fide replacement of an existing well." (Emphasis supplied)

It would seem clear from the foregoing that a replacement well can only be used to irrigate the same land which was serviced by the original well. Even though the use to which the replacement well will be put might not further deplete the natural resources, it would still not be proper to use the waters therefrom in the way proposed, for where no exception in a statute is made in terms, none will be made by mere implication and construction, GREENLEE COUNTY v. LAIHE, 20 Ariz. 296, 180 P. 151. Nor, should an unambiguous statute be interpreted; rather, it must be enforced according to its clear language. INDUSTRIAL COMMISSION v. PRICE, 37 Ariz. 245, 292 P. 1099.

Therefore, it is our opinion that under the law, the Commissioner can not approve a replacement well which is to be used to irrigate lands other than those irrigated by the original well.

If we can be of any further assistance, please do not hesitate to call upon us at any time.

Yours very truly,

ROBERT MORRISON
The Attorney General

MELVIN J. MIRKIN
Assistant to the
Attorney General

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