



Arizona State Senate Issue Brief

November 20, 2024

Note to Reader:

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ARIZONA'S GROUNDWATER MANAGEMENT CODE: LOT SPLITS AND SUBDIVISIONS

INTRODUCTION

In areas outside of an Active Management Area (AMA), a person may utilize a well to withdraw and use groundwater for reasonable and beneficial use.¹ Wells within an AMA that have a maximum pumping capacity greater than 35 gallons per minute (gpm) must have a groundwater withdrawal right or permit, comply with the Arizona Department of Water Resources' (ADWR') well spacing rules, use a water measuring device, pay groundwater withdrawal fees and file annual groundwater withdrawal reports.² A well with a maximum pumping capacity of 35 gpm is exempt from all such requirements.^{3,4}

Statute allows a county board of supervisors (county BOS) to adopt ordinances and regulations for staff to review and approve land divisions or lot splits in an unincorporated area of the county for land to be divided into five or fewer parcels, lots or fractional interests with any of which being 10 acres or smaller in size. Once approved, the land divider may build and sell houses on the divided land, even though a reliable water supply might not service the land.⁵

GROUNDWATER MANAGEMENT IN LOT SPLITS

In most circumstances, a county BOS does not have the discretion to prevent a lot split from occurring. A lot split must be approved if the divider's application meets minimum statutory requirements, without regard to water supply.⁶

For all lot split sales, the seller must provide an affidavit of disclosure (affidavit) to the buyer at least seven days prior to the transfer of property. The affidavit must disclose pertinent information

¹ [A.R.S. § 45-453](#)

² [A.R.S. Title 45, Chapter 2](#)

³ [A.R.S. § 45-454](#)

⁴ [ADWR: Groundwater Permitting and Wells](#)

⁵ [A.R.S. § 11-831](#)

⁶ [A.R.S. § 11-831](#)

regarding the property, including if the property is served by a well, municipal water provider or private water provider, and whether the property is served by a water supply that requires transportation to the property. The affidavit must notify the buyer that, if the property is served by an exempt well, private water company or municipal provider, ADWR may not have made a water supply determination and advises the buyer to contact the water provider for more information.⁷ The Arizona Department of Real Estate (ADRE) must post information on its website advising potential buyers to investigate water supplies prior to purchasing property and post a link to the ADWR website containing definitions of related water supply terms.^{8,9}

GROUNDWATER MANAGEMENT IN SUBDIVISIONS

A county BOS must regulate the subdivision of all lands within their corporate limits, except those regulated by municipalities which are regulated by the legislative body of each municipality.^{10,11} A *subdivision* is 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.¹² Subdivisions must be approved by the county BOS and, if a subdivision is within an AMA, the county BOS may only approve the subdivision if the plat is accompanied by a certificate of assured water supply from ADWR or the subdivider has a written commitment of water service from a city, town or private water company that is designated as having an assured water supply (designated water provider).¹³

For a subdivider to obtain a certificate of assured water supply, or for a city, town or company to obtain a designation of assured water

supply, the applicant must demonstrate: 1) physical, legal and continuous availability of the water supply for 100 years; 2) adequate quality of the water supply; 3) that the proposed water use is consistent with the AMA's management goal and plan; and 4) the financial capability to construct facilities necessary to make the water available for the proposed use, including water storage, treatment works and a delivery system.¹⁴

Outside of an AMA, subdivision developers must obtain an adequacy determination from ADWR concerning the adequacy of the water supply to meet the projected needs of the developer. If the application demonstrates that water of sufficient quality will be physically, legally, financially and continuously available for the next 100 years, ADWR will determine the water supply to be adequate.¹⁵ If the water supply is determined to be inadequate, the developer may still sell lots, but the inadequate determination must be noted on the face of the plat.¹⁶

A city, town or county may adopt an ordinance or regulation requiring that new subdivisions outside of an AMA also have an adequate water supply for plat approval. 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 city, town or designated water provider before the city, town or county may issue final plat approval.¹⁷

Statute allows the Director of ADWR to grant an exemption to the water adequacy requirement if: 1) substantial capital investment has already been made in the subdivision prior to the adoption of the ordinance; or 2) the subdivider has demonstrated financial capability, but the physical works are not complete but will be within 20 years or the subdivision will be legally served by Colorado River water within 20 years.¹⁸

⁷ [A.R.S. § 33-422](#)

⁸ [A.R.S. § 32-2119](#)

⁹ [ADRE: Before Purchasing Real Estate](#)

¹⁰ [A.R.S. § 9-463.01](#)

¹¹ [A.R.S. § 11-821](#)

¹² [A.R.S. § 32-2101](#)

¹³ [A.R.S. § 11-822](#)

¹⁴ [A.R.S. § 45-576](#)

¹⁵ [A.R.S. § 45-108](#)

¹⁶ [A.R.S. § 11-823](#)

¹⁷ [A.R.S. §§ 9-463.01 and 11-823](#)

¹⁸ [A.R.S. §§ 45-108.02 and 45-108.03](#)

Any exemptions from an adequate water supply requirement must be noted on all promotional material and the face of the plat for the subdivision.¹⁹

ADDITIONAL RESOURCES

- Arizona Department of Real Estate
<https://azre.gov/>
- Arizona Department of Water Resources
[http://www.azwater.gov/Assured and Adequate Water Supply](http://www.azwater.gov/Assured%20and%20Adequate%20Water%20Supply)
- Arizona Municipal Subdivision Regulations
[A.R.S. Title 9, Chapter 4, Article 6.2](#)
- Arizona County Planning and Zoning
[A.R.S. Title 11, Chapter 6](#)
- Arizona Conveyances and Deeds
[A.R.S. Title 33, Chapter 4](#)
- The Groundwater Management Code
[A.R.S. Title 45, Chapter 2](#)

¹⁹ [A.R.S. § 45-108.03](#)