



Maricopa County Attorney

BILL MONTGOMERY

August 18, 2017

William Gates, Supervisor District 3
Maricopa County Board of Supervisors
301 W. Jefferson Street
Phoenix Arizona

RE: Water Issues – New River area

Dear Supervisor Gates:

You have requested guidance with respect to an issue related to homeowners in the New River/Desert Hills area of unincorporated Maricopa County who face either a shortage of potable water, increased costs for potable water, or both. It is the understanding of this office that these homeowners have no individual source of potable water but rely upon private haulers to supply water. The haulers who service these homeowners obtained water from the City of Phoenix, but the City has given written notice that the water source will be terminated effective 12/31/17. The concern is that these haulers will find it economically infeasible to continue to service the noted area, or the cost to the homeowners will make it economically infeasible for these homeowners to afford potable water.

Initially, it must be understood that the properties which are affected by this issue were never subdivided pursuant to statute (A.R.S. §11-821 – 823) or the subdivision requirements contained in the Zoning Ordinance for the Unincorporated Areas of Maricopa County. Instead, the separate properties were created by the splitting of lots pursuant to what is now A.R.S. §11-831. Maricopa County has no regulatory authority over the creation of lots via lot splitting. While one of the requirements for approval of a subdivision is demonstration of an available and viable source of potable water, no authority exists that would allow the County to condition the issuance of a building permit on a lot that was created outside of the subdivision process on providing water. As these homeowners know too well, for a home on a lot split property the provision of potable water falls to each individual property owner. These properties have been provided for many years with potable water by contract with private haulers.

While Maricopa County, through the Environmental Services Department, has jurisdiction to inspect the trucks hauling water for limited purposes, the County has no jurisdiction over the haulers concerning such things as the source from which they obtain the water or the cost of providing services to homeowners. The City of Phoenix's decision to

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terminate whatever agreements it may have with private haulers to supply water is a decision wholly within the jurisdiction of the City of Phoenix. Maricopa County has no part in any decision by a municipality to sell or not to sell water to private haulers.

It is the understanding of this office that these homeowners have contacted Maricopa County seeking assistance with this problem. Unfortunately, there is nothing the County can do but offer sympathy and some guidance how these homeowners can privately resolve the matter. This office strongly suggests that these homeowners band together and hire an attorney versed in issues related to water and water rights. Private counsel will then be in a position to offer advice and outline the options available.

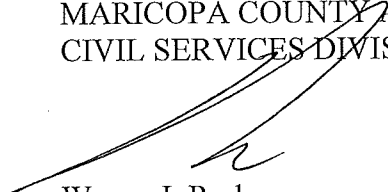
Unlike some cities, Maricopa County is not a water provider. The ability of the County to regulate the provision of water is non-existent. In the County, private companies provide water services and they are regulated by the State (ADWR). While the County must do studies and adopt a plan concerning water usage as part of its comprehensive planning requirement, that plan merely serves as a blueprint for the future. The County does not zone or institute regulations based upon such a plan. In unincorporated Maricopa County, platted subdivisions must make accommodations to provide water to their future property owners. This is done either through a community well, which is difficult to obtain, or by entering into contracts with private water providers. For areas which are not platted subdivisions, it is the responsibility of individual property owners to obtain a source of water. Maricopa County is never the source of water to any property.

The County maintains no water utilities and cannot require the availability of potable water as a condition to issuance of a building permit outside an approved subdivision. Unfortunately, there is no role the County can assume in assisting these people, or others apparently similarly situated in the Rio Verde area of unincorporated Maricopa County. The homeowners must find a non-governmental solution and the best advice to be provided to this is to seek private counsel.

Of course, if you require anything further from this office, please do not hesitate to contact me.

Sincerely,

MARICOPA COUNTY ATTORNEY'S OFFICE
CIVIL SERVICES DIVISION



Wayne J. Peck
Deputy County Attorney

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