



**STATE OF ARIZONA**

**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>August 4, 2020</p>	<p>No. I20-011 (R19-017)</p> <p>Re: Interpreting provisions in A.R.S. Title 48, Chapter 6, Articles 1 and 4 Concerning A County Board of Supervisors Establishing A Domestic Water Improvement District</p>
---	---

To: Allister Adel  
Maricopa County Attorney

**Questions Presented**

As it relates to a county board of supervisors establishing a Domestic Water Improvement District (“DWID”) upon petition by property owners in the proposed district pursuant to A.R.S. Title 48, Chapter 6, Articles 1 and 4:

1. What is the meaning of “noncontiguous areas” as used in A.R.S. § 48-902(G)?
2. What is the meaning of a “domestic water delivery system”?
3. May the board of supervisors establish a DWID that does not plan to “build or maintain any infrastructure to deliver water directly to” the property owners in the district?

**Summary Answer**

1. “Noncontiguous areas” as used in A.R.S. § 48-902(G) means areas whose boundaries are not contiguous to each other.

2. In the context of a board of supervisors forming a DWID, a “domestic water delivery system” must 1) include “waterworks ... for the delivery of water for domestic purposes,” *see* A.R.S. § 48-909(A)(6), and 2) function as a “system” to deliver domestic water to property owners in the district. In addition, there are alternative statutory mechanisms that permit converting an existing county improvement district to a DWID, or an existing DWID expanding to a new area, that do not require a “domestic water delivery system.” *See* A.R.S. § 48-1018(A), § 48-1014(B).

3. The pertinent statutory requirements for the establishment of a DWID are described in response to Question 2, and there is no additional textual requirement in Title 48, Chapter 6, Articles 1 and 4 of “infrastructure to deliver water directly to” the property owners in the district.

### **Background**

#### **A. Constitutional and Statutory Background of the Powers, Purposes, and Requirements of DWIDs**

A DWID is a type of county improvement district, which in turn is a type of special taxing district, meaning it has certain constitutional powers and privileges resulting from a 1940 constitutional amendment. *See* Ariz. Const. art. XIII, § 7 (“[T]ax levying public improvement districts ... shall be political subdivisions of the state, and vested with all the rights, privileges and benefits, and entitled to the immunities and exemptions granted municipalities and political subdivisions” under the U.S. Constitution and the Arizona Constitution and laws). This provision also exempts these districts from the Gift Clause and Local Debt Limits Clause. *See* Ariz. Const. art. IX, §§ 7-8. By conferring the “exemptions granted municipalities,” it also qualifies a district’s property for possible exemption from property taxes under Article IX, § 2(1), superseding *State v. Yuma Irrigation District*, 55 Ariz. 178 (1940). These districts may

also have constitutional power to condemn private land for governmental purposes, including for well-drilling. *See Pinetop Lakes Ass'n v. Ponderosa Domestic Water Imp. Dist.*, No. 1 CA-CV 09-0395, 2010 WL 2146415, at \*3, ¶15 & n.3 (Ariz. Ct. App. May 27, 2010). In sum, significant constitutional consequences result from establishing such a district.

County improvement districts, now codified in Title 48, Chapter 6 (A.R.S. § 48-901 *et seq.*), date back to the district improvement Act of 1945. 1945 Ariz. Sess. Laws, ch. 43 (Reg. Sess.). As originally enacted, “[a]n improvement district may be established in any unincorporated town or settlement by the [county] board of supervisors ... for the purpose of making street, sewer and other local improvements by special assessments in such districts, issuing bonds for such improvements and levying taxes to operate and maintain said improvements and the streets within such districts.” *Id.* § 2. The relevant county board of supervisors was deemed to be the board of directors of the district. *Id.* § 8. As amended two years later, the powers of the board of directors included ordering, “[w]henever the public interest or convenience may require, ... 6. the construction, reconstruction or repair of waterworks for the delivery of water for domestic purposes....” 1947 Ariz. Sess. Laws, ch. 20, § 1 (Reg. Sess.) (emphasis added). “[W]aterworks’ means works for the storage or development of water for domestic uses, and includes wells, pumping machinery, power plants, pipelines and all equipment necessary for the purpose.” *Id.* § 2. “[W]ork’ or ‘improvement’ includes any or all of the improvements mentioned and authorized to be made in this Act; also the construction, reconstruction and repair of all or any portion of any such improvements and also all labor, services, incidental expenses and material necessary or incidental thereto.” *Id.* These powers and definitions have not materially changed for purposes of this opinion. *See* A.R.S. § 48-909(A)(6) (setting forth powers related to “waterworks ... for the delivery of water

for domestic purposes”); *id.* § 48-901(21) (defining “waterworks,” to include “wells, pumping machinery, power plants, [and] pipelines”); *id.* § 48-901(22) (defining “work” or “improvement”).

Thirty years later, the legislature created DWIDs as a subtype of county improvement district, with a key distinction that it could be governed by a separately elected board. *See* 1977 Ariz. Sess. Laws, ch. 104, § 12 (1st Reg. Sess.). This subtype was defined as “a county improvement district formed for the purpose of purchasing an existing **domestic water delivery system** within the district.” *Id.* (now codified as amended at A.R.S. § 48-1011(3)) (emphasis added). The Legislature did not define “domestic water delivery system.” The purpose was broadened to include “if necessary, making improvements to the system[,]” 1978 Ariz. Sess. Laws, ch. 59, § 3 (2d Reg. Sess.), and later to also permit converting an existing county improvement district that “has acquired, has constructed or owns **a water system that provides domestic water to residents of that district**” to a DWID. A.R.S. § 48-1018(A) (emphasis added); *see* 1990 Ariz. Sess. Laws, ch. 295 (2d Reg. Sess.).<sup>1</sup> Unlike most other county improvement districts, a DWID is governed by a separately elected board of directors rather than the county board of supervisors. *See* A.R.S. § 48-1012(A); *see also id.* § 48-908. A DWID board has “all of the powers and duties of the board of supervisors sitting as the board of directors of a county improvement district formed for the purposes prescribed in [§ 48-909(A)(1)-(6),] including the related powers and duties prescribed in § 48-909[(B)] and § 48-910, and that are not in conflict

---

<sup>1</sup> The legislature expanded county improvement districts and DWIDs to specifically include wastewater treatment facilities. *See* 1996 Ariz. Sess. Laws, ch. 84 (2d Reg. Sess.); 1997 Ariz. Sess. Laws, ch. 36, §§ 6-7 (1st Reg. Sess.). In 2006, the Legislature authorized boards of supervisors to expand the purposes of DWIDs that provide water service to include providing domestic wastewater service. 2006 Ariz. Sess. Laws, ch. 57 (2d Reg. Sess.). This opinion’s focus is water, and it does not address or analyze wastewater service.

with this article.” A.R.S. § 48-1014(A). Section 48-910 relates to the authority of DWID boards to set fees.<sup>2</sup>

Importantly for purposes of the present opinion, in 1997 the Legislature amended the statutes 1) to permit noncontiguous county improvement districts; 2) to permit purchasing or acquiring domestic water delivery systems outside the district; and 3) to permit establishing a DWID to construct a domestic water delivery system, rather than just acquire one. 1997 Ariz. Sess. Laws, ch. 237 (1st Reg. Sess.). The Legislature amended § 48-902(A) to state, “[a]n improvement district may be established in any unincorporated area, whether or not contiguous” (addition underlined), and added § 48-902(G) to provide: “A domestic water improvement district may be formed or expanded in noncontiguous areas. If the proposed boundaries of a noncontiguous district are located within six miles of an incorporated city or town, the district shall obtain the consent of the governing body of the city or town prior to the formation or expansion of the district.” *Id.* § 1. The Legislature also amended § 48-909(A)(6) and (C) to include purchasing, constructing or improving an existing domestic water delivery system “outside the district,” and removed “within the district” from the definition of DWID in § 48-1011(2). *Id.* §§ 3, 27. The Legislature also amended § 48-1011(2) to include “constructing or improving a domestic water delivery system,” not just “purchasing an existing domestic water delivery system.” *Id.* § 27.

**B. Processes for County Boards of Supervisors to Establish DWIDs, and the Powers of County Boards of Supervisors After Establishing DWIDs**

There are multiple ways for a county board of supervisors to establish a DWID, which are: acting on a petition by property owners to establish a DWID, *see* A.R.S. §§ 48-902 to -906;

---

<sup>2</sup> It is also worth noting that the establishment of a DWID may have statutory tax implications, *see, e.g.*, A.R.S. § 42-5301; trigger the ability to participate in borrowing from the Water Infrastructure Finance Authority, *see, e.g.*, A.R.S. §§ 48-909.01, 49-1201(13); and have many other legal consequences that are beyond the scope of this opinion.

*id.* § 48-1012(A); converting an existing county improvement district to a DWID, A.R.S. § 48-1018(A); and approving the merger of two or more DWIDs, including in different counties, A.R.S. § 48-1020. Also, an established DWID can itself expand, including into noncontiguous areas. A.R.S. § 48-1014(B); *id.* § 48-902(G).

Most relevant to the questions presented is a board of supervisors acting on a petition by property owners. The petition must be signed by a majority of the persons owning real property or by owners of 51% or more of the real property. A.R.S. § 48-903(A). The petition shall set forth among other things: the name of the district; necessity for the district; that the public convenience, necessity or welfare will be promoted by the establishment of the district and that property to be included in the district will be benefitted; the boundaries of the district; and a general outline of the proposed improvement. A.R.S. § 48-903(C). For districts whose purposes include wastewater treatment or domestic water delivery, the petition must also indicate if the proposed district is wholly or partially within the territories of any public service corporations. A.R.S. § 48-903(D).<sup>3</sup> The property owners must also file a bond. A.R.S. § 48-904.

The district may be established in any unincorporated area, whether or not contiguous. A.R.S. § 48-902(A). It may include state lands or state land trust lands with the written consent of the state land commissioner. A.R.S. § 48-902(B). For districts whose purpose includes (among others) the delivery of water for domestic purposes, the district may include areas in an incorporated city or town with the consent of the city or town's governing body. A.R.S. § 48-902(C). There are certain lands that are excluded or can object to inclusion. A.R.S. § 48-902(D)-(F). The statute also reiterates that DWIDs may be formed in "noncontiguous areas,"

---

<sup>3</sup> Also, if the "petition request[s] the establishment of an improvement district for the purpose of purchasing an existing domestic water delivery system, [it] shall provide that the district be governed by a board of directors elected pursuant to article 4 of this chapter." A.R.S. § 48-903(F).

and if the proposed boundaries of a noncontiguous district are within six miles of an incorporated city or town, the district shall obtain the consent of the governing body of the town or city prior to formation or expansion of the district. A.R.S. § 48-902(G).

After receiving a petition in proper form, the board of supervisors then provides public notice and holds a hearing. A.R.S. § 48-905. After the hearing, the board of supervisors makes the determination whether “the public convenience, necessity or welfare will be promoted by the establishment of the district.” A.R.S. § 48-906(A). If the board of supervisors determines it will be, then it declares the district organized, and thereafter the district is a body corporate with powers of a municipal corporation. *Id.* There is a statutory right to judicial review. A.R.S. § 48-907. The board of supervisors may also determine that the DWID shall be governed by a separately elected board of directors. A.R.S. § 48-1012(A).

Once a DWID is established by the county board of supervisors, the decisions to make additions or alterations to the DWID are made by the governing board of the DWID, *see* A.R.S. § 48-1014(B), subject to any other required consents, *see, e.g.*, A.R.S. § 48-902(B)-(G). There is also a process for a landowner whose land is adjacent to the district to request their land be included. A.R.S. § 48-1014(C).

Even after a DWID’s creation, the county board of supervisors has power to review and comment on the financial transactions of the board of a DWID (with a population of 10,000 or fewer). A.R.S. § 48-1015. The board of supervisors also has the power (regardless of the DWID’s population) to revoke the authority of an elected board of directors “at any time ... in order to protect the residents of the district.” A.R.S. § 48-1016.

**C. Facts Relating to the Establishment of the Particular DWID Prompting the Opinion Request**

The request for Attorney General opinion sets forth the following facts. Two groups of citizens have approached Maricopa County regarding their respective plans to propose to the Board of Supervisors the creation of a DWID. Generally, each of the citizen groups is intending to utilize a water hauler to deliver water to the DWID members. Each group has stated it may install a standpipe.<sup>4</sup> The DWIDs plan to have a water hauler deliver water to the members of the DWID from that standpipe or other, currently unidentified water source by either: (1) contracting with a water hauler or (2) each of its individual members contracting with the water hauler.

Based on citizen comments received by the Attorney General's Office related to the opinion request, it appears that the proposed DWID relates to approximately 700 homes in the Rio Verde Foothills, which lies directly east of the incorporated City of Scottsdale and west of Rio Verde Proper, which is unincorporated. The citizen comment states that residents have hauled their own water from a standpipe for over 20 years, and they intend to seek approval for a DWID that owns, operates, and maintains a set of standpipes for both commercial and private water haulers.

Therefore, this opinion assumes that the proposed DWID's purpose is to provide water for drinking and other household purposes to residents in an unincorporated area within six miles of an incorporated city or town; that the proposal would include delivery trucks hauling water from a source to residents; and that it would include a standpipe, a pump, and a well or connection to another water source, but it may not include any other planned improvements.

---

<sup>4</sup> In this opinion, "standpipe" is understood to mean a vertical pipe or reservoir that is installed outdoors to deliver water in areas that do not have a running water supply to buildings.



## Analysis

### **I. The Meaning of Certain Statutory Terms as They Apply to a County Board of Supervisors Authorizing a DWID Upon Petition by Property Owners**

This opinion interprets the meaning of two statutory terms in A.R.S. Title 48, Chapter 6, Articles 1 and 4—“noncontiguous areas” and “domestic water delivery system”—as those terms relate to whether a county board of supervisors may lawfully establish a DWID upon petition by property owners in the proposed district. It also addresses whether a board of supervisors may establish a DWID that does not plan to “build or maintain any infrastructure to deliver water directly to” the property owners in the district. All other issues, including those related to proprietary/governmental distinctions, the financing of improvements and issuance of bonds, imposition of assessments and fees, tax treatment of any property or revenues, and any condemnation or expansion by such districts are beyond the scope of this opinion.

It is also important to distinguish between the legal requirements for a county board of supervisors to establish a DWID upon petition by property owners (which is the subject of this opinion), and the discretionary decision by the board of supervisors whether to approve establishing a DWID in any particular instance because the board determines that “the public convenience, necessity or welfare will be promoted by [its] establishment.” A.R.S. § 48-906(A); *see also supra* Background Part A (outlining some of the constitutional and statutory powers that an established district will wield). The latter is a policy determination and is beyond the scope of any legal opinion.

#### **A. Meaning of “Noncontiguous Areas” as Used in A.R.S. § 48-902(G)**

“Noncontiguous areas” as used in A.R.S. § 48-902(G) means areas whose boundaries are not contiguous to each other. This means that a DWID may have internally noncontiguous boundaries by covering two or more different areas that are not contiguous to each other. This

conclusion is based on the plain language of § 48-902(A), (G) and made clear by the legislative history of the relevant amendment in 1997.<sup>5</sup>

Absent a specific statutory definition, courts give words their common, ordinary meaning, and often look to dictionary definitions as part of determining the common, ordinary meaning. *See DBT Yuma, L.L.C. v. Yuma Cty. Airport Auth.*, 238 Ariz. 394, 396, ¶9 (2015); *see also* A.R.S. § 1-213 (“Words and phrases shall be construed according to the common and approved use of the language.”). In light of these principles, this opinion first looks to the common, ordinary meanings of contiguous and noncontiguous. Under A.R.S. § 48-902(G), a DWID “may be formed or expanded in noncontiguous areas.” More broadly, all county improvement districts “may be established in any unincorporated area, whether or not contiguous.” A.R.S. § 48-902(A). “Contiguous” means that two or more parcels of land are “[t]ouching at a point or along a boundary,” *Contiguous*, *Black’s Law Dictionary* (11th ed. 2019), while “noncontiguous” means that two or more parcels are “not adjoining along a boundary.” *Noncontiguous*, *Merriam-Webster Dictionary* (11th ed. 2019). Both definitions focus on whether the boundaries of the parcels meet. In other words, noncontiguous parcels are separated by other parcels of land, while contiguous parcels are not so separated.

---

<sup>5</sup> There is at least some ambiguity whether “noncontiguous district” in § 48-902(G) covers both a district that is not contiguous to itself and a district that is not contiguous to an incorporated city or town. Stated differently, if “noncontiguous district” has this additional meaning, then a district that is within six miles of an incorporated city or town would require the consent of the governing body of the city or town prior to the formation or expansion of the district (regardless of whether the district is itself contiguous). While this interpretation is doubtful given the legislative history described below, it is beyond the scope of this opinion to definitively resolve the issue. It is worth noting, however, that this additional meaning of “noncontiguous district” would result in the potential absurdity that if a proposed district was internally contiguous and actually shared a boundary with a city or town, it would *not* require consent, but it would require consent if it was farther away but within six miles, *i.e.* “noncontiguous.”

Beyond these dictionary definitions, the words should also “be read in context in determining their meaning,” and the statute should be looked at “as a whole.” *Glazer v. State*, 244 Ariz. 612, 614, ¶10 (2018) (citation omitted). The most significant context is the 1997 statutory amendments, which added both the terms “contiguous” and “noncontiguous” to § 48-902(A), (G), which is the only place they appear in A.R.S. Title 48, Chapter 6. *See* 1997 Ariz. Sess. Laws, ch. 237, §1 (1st Reg. Sess.). The final Senate Fact sheet provided that the bill “[a]llows county improvement districts to include noncontiguous land, and be formed regardless of whether the land is contiguous.” *See* Senate Fact Sheet, H.B. 2508, 43rd Leg., 1st. Reg. Sess. (1997), available at <https://www.azleg.gov/legtext/43leg/1r/summary/s.2508fr.gov.htm>. In addition, the minutes of the Senate Committee on Government summarized the testimony of Sally Bender, Assistant Director of the County Supervisors Association. “Ms. Bender stated that by allowing the noncontiguous property to be included in a district, it would be a move toward efficiency and cost savings. She stated it is much more cost effective to administer several districts through a centrally located administration rather than several separate districts. The reason for requiring the approval of a city or town for the domestic water improvement district was by request of the League of Cities and Towns.” *See* Minutes of Committee on Government, H.B. 2508, 43rd Leg., 1st. Reg. Sess. 6 (1997), available at [https://www.azleg.gov/legtext/43leg/1R/comm\\_min/Senate/0324GOV.pdf](https://www.azleg.gov/legtext/43leg/1R/comm_min/Senate/0324GOV.pdf). This legislative history thus confirms the interpretation that “noncontiguous areas” means two or more different areas of a district that are not contiguous to each other.

Finally, terms may often be given a consistent meaning throughout a pertinent Title. *See State ex rel. Brnovich v. Maricopa Cty. Cmty. Coll. Dist. Bd.*, 243 Ariz. 539, 542, ¶12 (2018) (When the same words are used in different parts of the same title, “we construe the same words

with only one meaning if possible”). Title 48 permits other types of special districts to form or expand with either contiguous or noncontiguous boundaries.<sup>6</sup> It is evident throughout Title 48 that the Legislature contemplated that some districts could be formed with internally noncontiguous boundaries.

For all of these reasons, “noncontiguous areas” in A.R.S. § 48-902(G) means areas whose boundaries are not contiguous to each other, and a DWID may properly form with internally noncontiguous boundaries.

### **B. Meaning of “Domestic Water Delivery System”**

In the context of a county board of supervisors forming a DWID, a “domestic water delivery system” must 1) include “waterworks ... for the delivery of water for domestic purposes,” *see* A.R.S. § 48-909(A)(6), and 2) function as a “system” to deliver domestic water to property owners in the district. As noted below, however, there are alternative statutory mechanisms that permit converting an existing county improvement district to a DWID, or an existing DWID expanding to a new area, that do not require a “domestic water delivery system.” *See* A.R.S. § 48-1018(A), § 48-1014(B).

The requirement of a “domestic water delivery system” arises through A.R.S. § 48-1012(A) and § 48-1011(3). The property owners’ petition must request the “establishment of a domestic water improvement district,” A.R.S. § 48-1012(A), and a “[d]omestic water improvement district’ means a county improvement district that is formed for the purpose of

---

<sup>6</sup> *See* A.R.S. § 48-851 (noncontiguous county island fire district “consists of only noncontiguous county islands in a geographic boundary area”); A.R.S. § 48-3421 (irrigation delivery districts may be formed by “the owners of a majority of the acreage of lots or parcels, [whether] contiguous or noncontiguous”); A.R.S. § 48-5703(E) (agriculture preservation district “may include two or more areas of noncontiguous land and land from more than one county”); *cf.* A.R.S. § 48-2002 (an established sanitary district may annex additional areas that do “not have to be contiguous to any boundary of the sanitary district”).

constructing or improving a domestic water delivery system or purchasing an existing domestic water delivery system and, if necessary, making improvements to the system or a district that is converted pursuant to § 48-1018.” A.R.S. § 48-1011(3). The phrase “domestic water delivery system” is never defined in § 48-1011(3) or the other places where it appears in A.R.S. Title 48, Chapter 6, Articles 1 and 4.<sup>7</sup>

Although not completely clear due to the lack of statutory definition, the best interpretation of “domestic water delivery system” is as a reference to the powers of a county improvement district under § 48-909(A)(6) based on the statutory changes creating DWIDs in 1977 and the similarity in language. In the laws authorizing county improvement districts, the legislature conferred the power to “order: ... 6. the construction, reconstruction or repair of waterworks for the delivery of water for domestic purposes....” 1947 Ariz. Sess. Laws, ch. 20, § 1 (Reg. Sess.) (now codified as amended at A.R.S. § 48-909(A)(6)). In the 1977 amendments that authorized DWIDs as an “alternative form of government” for a subtype of county improvement district, the legislature defined a DWID as “a county improvement district formed for the purpose of purchasing an existing domestic water delivery system within the district.” 1977 Ariz. Sess. Laws ch. 104, § 12 (1st Reg. Sess.) (now codified as amended at A.R.S. § 48-1011(3)). The language of these two provisions is materially similar because they both refer to “domestic,” “water,” and “delivery.” Through the similar, albeit not identical language, it is

---

<sup>7</sup> See A.R.S. § 48-903(F), (G) (“for the purpose of purchasing an existing domestic water delivery system”); *id.* § 48-909(A)(6) (powers of county improvement district include “purchasing an existing domestic water delivery system within the district or outside the district or constructing an initial or improving an existing domestic water delivery system inside or outside the district”); *id.* § 48-909(C) (“for the purpose of purchasing an existing or constructing a new domestic water delivery system within the district or outside the district”); *see also id.* § 48-1061(4) (in a different article of Title 48, Chapter 6, defining “district” within the context of revenue bond financing as a county improvement district formed for the purpose of operating a “domestic water delivery system,” but again not defining that term).

clear that the statutory development of establishing DWIDs was closely tied to the pre-existing powers of a county improvement district in § 48-909(A)(6).

Therefore, the best interpretation of “domestic water delivery” is in reference to “waterworks ... for the delivery of water for domestic purposes” and those terms are statutorily defined. A.R.S. § 48-909(A)(6). “‘Waterworks’ means works for the storage or development of water for domestic uses, including drinking water treatment facilities, wells, pumping machinery, power plants, pipelines and all equipment necessary for those purposes.” A.R.S. § 48-901(21). And a “[w]ork’ or ‘improvement’ includes any of the improvements mentioned and authorized to be made in [Title 48, Chapter 6, Article 1], the construction, reconstruction and repair of all or any portion of any such improvement, and labor, services, expenses, and material necessary or incidental thereto.” A.R.S. § 48-901(22).

The remaining interpretive question is what is required by the word “system” in “domestic water delivery system.” The best interpretation, although not free from doubt, is that there must be a “system,” including the waterworks described in the previous paragraph, to deliver domestic water to property owners in the district. Absent a specific statutory definition, courts give words their common, ordinary meaning, and often look to dictionary definitions. *See DBT Yuma, L.L.C.*, 238 Ariz. at 396, ¶9; *see also* A.R.S. § 1-213. In addition, the words should “be read in context [to] determin[e] their meaning,” and the statute should be looked at “as a whole.” *Glazer*, 244 Ariz. at 614, ¶10 (citation omitted). A “system” is defined as “1a: a complex unity formed of many often diverse parts subject to a common plan or serving a common purpose b: an aggregation or assemblage of objects joined in regular interaction or interdependence: a set of units combined by nature or art to form an integral, organic, or

organized whole: an orderly working totality: a coherent unification.” *System, Webster’s Third New International Dictionary* at 2322 (Unabridged ed. 1993).

Applying the common definition to the facts here, waterworks, such as one or more standpipes, pumps, and wells or connections to other water sources, combined with water haulers delivering the water from the standpipe to the property owners in the district for domestic uses would likely qualify as a “system” for purposes of “domestic water delivery system” and therefore meet the statutory definition in § 48-1011(3). First, the standpipe, pump, and well or other connection to a water source fall within the plain language of a “waterworks,” which “include[es] ... wells, pumping machinery, power plants, pipelines and all equipment necessary for those purposes.” A.R.S. § 48-901(21). Second, the combination of these “waterworks” with water haulers to deliver domestic water to property owners in the district would be a “system,” within the common dictionary definition of the word. For example, it would be “an aggregation or assemblage of objects joined in regular interaction or interdependence.” *System, Webster’s Third New International Dictionary* at 2322 (Unabridged ed. 1993). While it might be considered a very basic “system,” compared to water delivery systems in large municipalities, there is no indication that the text of § 48-1011(3) requires more, and indeed the reason for county improvement districts dating back to 1945 was to permit improvement districts in an “unincorporated town or settlement.” 1945 Ariz. Sess. Laws, ch. 43, § 2 (Reg. Sess.). There is thus no basis to conclude the legislature intended to require a higher minimum amount of infrastructure that might be impracticable for less populated or more diffuse settlements. And there is similarly no clear indication that in authorizing an “alternative form of government” for a subtype of county improvement district, as amended over time, the legislature intended a higher

minimum amount of infrastructure. *See supra* Background Part A, at pp. 4-5 (discussing 1977, 1990, and 1997 amendments).

In any event, there is a statutory alternative that appears to avoid the legal issue of whether the improvements under consideration here are enough to constitute a “domestic water delivery system”: establishing the district as a county improvement district and then converting it to a DWID under § 48-1018(A) after the county improvement district has acquired, constructed, or owns the standpipe, pump, and well or other connection, as well as arranging for the water haulers. Unlike § 48-1012(A), which speaks in terms of a “petition requesting the establishment of a domestic water improvement district,” § 48-1018 speaks in terms of “convert[ing]” a “county improvement district that has acquired, has constructed or owns a water system that provides domestic water to residents of that district.” In other words there is no reference to a “delivery system.” Similarly, the definition of “domestic water improvement district” in § 48-1011(3) has an alternative of “a district that is converted pursuant to § 48-1018” that never references “domestic water delivery system.” This alternative procedure is a result of amendments in 1990 and 1997. *See* 1990 Ariz. Sess. Laws ch., 295 (2d Reg. Sess.); 1997 Ariz. Sess. Laws, ch. 237 (1st Reg. Sess.). And interpreting it as being somewhat more lenient than the procedure in § 48-1012(A) comports with the canon that “[i]n construing [a provision, courts] look to the [statutory scheme] as a whole and attempt to give meaning ‘to every word and provision so that no word or provision is rendered superfluous.’” *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234, 239, ¶16 (2019) (citation omitted). This may also have the practical benefit of permitting the board of supervisors to evaluate what is actually constructed or acquired before determining whether to authorize a separately elected board. As a final alternative, an existing DWID could expand under § 48-1014(B) to a new area, and there does



not appear to be a statutory requirement that the new area itself must be a “domestic water delivery system.”

Finally, it is very important to note that although the best reading is that water delivery trucks can be part of the “system” for purposes of forming or converting a DWID, other legal issues relating to the water trucks (*e.g.*, taxation, financing through bonding, and the DWID’s ability to charge fees for the trucks) are beyond the scope of this opinion. Thus, the mere establishment of a DWID does not mean water delivery trucks necessarily become tax exempt. That is a different legal question and one that this opinion expressly does not reach.

**C. Whether the Board of Supervisors May Establish a DWID That Does Not Plan to “Build or Maintain Any Infrastructure to Deliver Water Directly to” the Property Owners in the District**

As previously stated, in the context of a board of supervisors forming a DWID, a “domestic water delivery system” must 1) include “waterworks ... for the delivery of water for domestic purposes,” *see* A.R.S. § 48-909(A)(6), and 2) function as a “system” to deliver domestic water to property owners in the district. In sum, these are the relevant statutory requirements for the establishment of a DWID, and there is no additional textual requirement in Title 48, Chapter 6, Articles 1 and 4 of “infrastructure to deliver water directly to” the property owners in the district. Moreover, the legislature knows how to require more when it wants to. *See, e.g.*, A.R.S. § 42-5301 (defining “municipal water delivery system” as “an entity that distributes or sells potable water primarily through a pipeline delivery system”); *see also* A.R.S. § 49-1201(13) (citing § 42-5301).<sup>8</sup> It did not do so here.

---

<sup>8</sup> It is appropriate to at least consider § 42-5301 because it references Title 48, Chapter 6 and can reasonably be read *in pari materia*. *See David C. v. Alexis S.*, 240 Ariz. 53, 55, ¶9 (2016) (“Statutes that are in *pari materia*—those of the same subject or general purpose—should be read together and harmonized when possible.”).

Finally, there may be requirements related to “infrastructure” in regards to borrowing from a county revolving fund, *see, e.g.*, A.R.S. § 48-986.01, but as noted above multiple times, these types of questions are beyond the scope of this opinion, which is limited to the legal requirements for a county board of supervisors to establish a DWID pursuant to Title 48, Chapter 6, Articles 1 and 4.

### **Conclusion**

The relevant statutory terms have the meanings described in this opinion in the context of a county board of supervisors establishing a DWID upon petition by property owners in the proposed district pursuant to A.R.S. Title 48, Chapter 6, Articles 1 and 4.

Mark Brnovich  
Attorney General