

PRESCOTT CITY COUNCIL
JOINT WORKSHOP WITH
PRESCOTT VALLEY TOWN COUNCIL
TUESDAY, AUGUST 12, 2008
PRESCOTT, ARIZONA

MINUTES of the Prescott City Council Joint Workshop with Prescott Valley Town Council held on August 12, 2008 in the Marina Room of the Hassayampa Inn, 122 E. Gurley, Prescott, Arizona.

1. Call to Order - Mayor Wilson, City of Prescott
- Mayor Skoog, Town of Prescott Valley

Prescott Mayor Wilson and Prescott Valley Mayor Skoog called the meeting to order at 1:00 p.m.

2. Roll Call - Liz Burke, City of Prescott
- Diane Russell, Town of Prescott Valley

Prescott City Clerk Elizabeth Burke took the roll for Prescott:

Council Present:

Council Absent:

Mayor Wilson
Councilman Bell
Councilman Lamerson
Councilwoman Lopas
Councilman Luzius
Councilman Roecker
Councilwoman Suttles

None

Prescott Valley Town Clerk Dianne Russell took the roll for Prescott Valley:

Council Present:

Council Absent:

Mayor Skoog
Vice Mayor Schumacher
Councilman Baker
Councilman Edwards
Councilman Flannery
Councilwoman Nye
Councilman Wise

None

Mayor Wilson recognized State Representative Andy Tobin, Chino Valley Mayor Karen Fann, and County Supervisor Carol Springer.

3. Introduction & Purpose - James Holt, Project Manager

Jim Holt introduced everyone that would be speaking today and said the purpose of the meeting was twofold: (1) to update both councils regarding the progress being made on the Big Chino Water Ranch project; and (2) to obtain feedback from the councils. He asked that everyone reserve their questions for the end of the presentations, and noted that the presentations were available in paper form, and also on the City's website. He then recognized Lisa Jackson of Black & Veatch.

Prescott City Attorney Gary Kidd recognized Mike Pearce, Norm James and Rita Maguire, and noted that because of the nature of public meetings they don't want to waive confidential privilege, so some of their responses to questions may be general in nature.

4.* ~~Staff~~ **Team Member** Presentations

A. History: Prescott AMA Safe Yield Requirement and Big Chino Importation Authorization

Rita Maguire then began a PowerPoint presentation, Exhibit A attached hereto and made a part hereof, on the history of the project, which covered the following:

▶ 1980 GROUNDWATER MANAGEMENT ACT

She said that in the early 80's and late 70's there were 2.5 million acre feet of water being overdrafted, and after three sessions, the Groundwater Management Act of 1980 was passed, creating four of the five state's AMA's (active management areas).

She said that for four of the five AMA's the goal was to reach Safe Yield by 2025, with Safe Yield being "to achieve and thereafter maintain the long-term balance between pumping water and its natural/artificial recharge."

▶ ACTIVE MANAGEMENT AREAS

Ms. Maguire said that all new subdivisions built in the State after 1995 have to be served with a 100-year supply of renewable water supplies. Ninety percent of the water budget in the Prescott AMA (PrAMA) is groundwater, while only 40% in Phoenix is groundwater.

▶ DECLARATION OF GROUNDWATER MINING IN PRESCOTT AMA

At that time, they didn't feel groundwater mining was occurring in the Prescott AMA, but after a period of years, in 1998, they determined it was occurring so the Assured Water Supply (AWS) program and its requirements would go into effect in the PrAMA.

Prescott and Prescott Valley took a number of steps to address the issue, including the purchase of the Big Chino Water Ranch, to mitigate the impact of long-term groundwater mining.

▶ TRANSPORTATION OF GROUNDWATER

She said that there were five different basins from which they could transport groundwater from to the four initial AMA's. After the Groundwater Transportation Act was created, and a compromise was reached where the five were grandfathered in. A number of limitations were placed, including that only a city or town that purchases land, or with the consent of a landowner in that basin, can move water from that land, and there was a restriction on the amount of groundwater that could be pumped.

▶ BIG CHINO SUB-BASIN ARS 45-555

Ms. Maguire then reviewed the subsections of ARS 45-555 pertaining to the Big Chino Sub-basin. She said that Subsection E permits the transportation of up to 14,000 ac. ft./year in exchange for replacement or substitution of CAP supplies, which were sold to Scottsdale. The funds received from that sale are used to fund alternate water supplies. The settlement with the Yavapai-Prescott Indian Tribe referred to in Subsection E has been settled, but the claim with the Camp Verde Yavapai-Apache Indian Community has yet to be settled. She explained that the quantities under A and E are the subject of an application before the Arizona Department of Water Resources (ADWR) for Assured Water Supply, which process Mr. Pearce will be reviewing.

C.B. Current ADWR Proceedings: Prescott AWS Application and Proposed Groundwater Transportation Rules

Mr. Pearce said that about two years ago the City decided to include water that could be imported under ARS 45-555 and qualify that water as a 100-year water supply to be used for new growth, or anything the City saw fit. Under the Intergovernmental Agreement with Prescott Valley that water will be shared at a 46/54% rate.

▶ MODIFICATION OF DESIGNATION OF ASSURED WATER SUPPLY

Mr. Pearce reviewed the application, noting that it was filed October 12, 2007, requesting 26,342.46 ac. ft. average, which includes 9,570 ac. ft. comprised solely of water to be transported under ARS 45-555(E).

▶ MODIFICATION OF DESIGNATION OF ASSURED WATER SUPPLY
(Continued)

Mr. Pearce said that ADWR has reviewed the application, and has been requesting more information. They have been having extensive meetings with ADWR to bring the model in a shape that ADWR was able to say it was complete and correct, and he was pleased to say that they have accomplished that. He said that the ADWR's hydrologists have determined that it is suitable and ready to be turned over for public comment.

He said that the application itself is still pending and there are a few remaining questions to be resolved in the next few days. Then it is publically noticed and residents of the Prescott AMA are invited to comment, and they do anticipate that there will be comments. ADWR has gone through the application in considerable detail and asked many appropriate and intelligent questions. He said that in about ten days they hope to have the complete status.

Mr. Pearce said that one of the issues raised was the quantification of the amount of water that can be transported under ARS 45-555. He said that it says up to 14,000 ac. ft. depending on conditions noted, and those notations are complicated and need interpretation. They have been working with ADWR to analyze those terms. He said that they have asked for the 9,570 ac. ft. and think they are close to the mark with that number.

He said that Arizona asserted its police power to control water in 1980 with the Groundwater Management Act and it was contested, with at least two lawsuits that went to the appellate level. Both concluded that Arizona had the regulatory authority to control and allocate groundwater in Arizona, and ARS 45-555(E) is but one example of the State's exercise of that authority.

▶ GROUNDWATER TRANSPORTATION RULES

Mr. Pearce said that ARS 45-555(A) talks about the ability to import from the Big Chino basin to the Prescott AMA with the historically irrigated acres (HIA's). They have run into some controversy in determining the HIA's and at which location the water may be produced and imported.

ADWR realizes this is an important aspect and set about to set policy, and adopted a policy statement. It was challenged by Salt River Project (SRP) and others. The Department has now taken that into a rule package and is making its way through the process. Prescott and Prescott Valley will be commenting on that as well as the public. The rules are consistent with his interpretation of the statutes, so his comments on the rule package will be favorable.

He said that the City of Prescott has the ability to import HIA's, but has not decided to do so now, or to use for the Assured Water Supply purposes. The water available to the City of Prescott and Town of Prescott Valley under the terms of the IGA represented by the HIA's is a "reserve" that could be imported immediately or later.

In summary, he said that the hydrology study is well done; it is conservative and shows water they believe to be available is in fact available. The application has been reviewed by ADWR and they are prepared to find it administratively complete. The rule package they adopted on interpretation and implementation of ARS 45-555 is consistent with the City's, so at the moment the regulatory atmosphere is good.

B.C. Project Design: Engineering, Permitting and Property Acquisition

Mr. Holt then began review of the PROJECT DESIGN: ENGINEERING, DESIGN AND PROPERTY ACQUISITION.

▶ ENGINEERING & DESIGN

Mr. Holt said that engineering and design is about 90% complete. They are anticipating 30 miles of new pipelines, 3 pump stations and 8-10 wells at the well field site, each capable of pumping 200 gpm. They also anticipate they will need six new APS substations and they continue to coordinate with APS with respect to their requirements, as well as the energy requirements for other APS customers in the region.

▶ EASEMENT AND PROPERTY ACQUISITION

Mr. Holt said that they have been negotiating the acquisition of easements for 116 private parcels. They have conducted 40 appraisals for those acquisitions and from those they were able to generate worksheets and bid sheets for the remainder. They have presented offers to approximately 95% of those property owners and anticipate bringing 30 transactions to the Council in September that have property owners willing to convey easements. In addition, they also continue to work with the State Land Department on five leases for the pipeline itself, and another one re an

easement for ingress/egress for access to the intermediate pump station north of the City of Prescott and west of the Airport.

He said that all of the leases with State Land total over 30 acres. They are anticipating acquiring land for the intermediate pump station, and anticipate conducting an appraisal on ten acres of land on the Deep Well Ranch. In addition to the pump stations, they are anticipating three 3 mg storage facilities as well.

D. General Status of Issues Raised: ~~ADWR~~, USF&W, ADWR, SRP, CBD, and Town of Chino Valley

Mr. James said that he was there to give a general status of issues raised by environmental groups, etc. and basically there has been no change in the status. He was originally retained in 2005 after there was a Notice of Intent to Sue served on Prescott and Prescott Valley, but no suit has been filed and he doubts if there will be a suit filed.

▶ OVERVIEW OF ENDANGERED SPECIES ACT

Mr. James said that the primary basis of the Notice was an alleged violation of Section 9 of the Endangered Species Act. (ESA) He explained that the species has to be on the list of endangered or possible endangered species, and there are only certain species on the list. In looking at the definition of “take” the term “harm” is the only place that adverse modification of habitat factors in.

▶ INCIDENTAL TAKE PERMITS

Mr. James said that under the ESA, if a “take” were anticipated they could seek an Incidental Take Permit (ITP) based on a Habitat Conservation Plan, but it would be a voluntary action and the time and expense of an ITP would be inconsistent with a project designed to avoid a “take” in the first place.

▶ ENVIRONMENTAL IMPACT STATEMENTS

He said that some comments have been made in the past with regard to Environmental Impact Statements, but EIS's only apply to federal agencies and actions.

E. Project Financing: Expenditures to Date and Financing Alternatives

John Munderloh then addressed the GENERAL STATUS OF ISSUES RAISED: ADWR, SRP, AND CHINO VALLEY.

▶ AGENCY COORDINATION

Mr. Munderloh said that they have been meeting with SRP, coordinated by ADWR, and the meetings have included the USGS, Chino Valley, Prescott Valley and Prescott. They are working and moving forward with good faith discussions. He said that they cannot talk much about them, but they have been meeting steadily since April and they have also met with Chino Valley regarding the regional community coordination.

▶ PROJECT FINANCING

Mr. Norwood said that one question that comes up every meeting is what the costs are and how much has been spent. He said that the total cost to date has been \$23.3 million, including the actual purchase of the ranch. He said that the engineering and design is 95% completed and the bulk of that money is included in that total. They have just started the easement acquisitions, with the first of many being brought before the City Council in September.

▶ PROJECT FINANCING (Continued)

Mr. Norwood said that they can do this project through traditional financing like a revenue bond, but as they are looking at a project of this magnitude, it is fair and reasonable to look at other options. He said that they are obtaining information on different methods and doing so concurrently, but ultimately they would like direction from the councils.

▶ COUNCIL FEEDBACK & CLOSING

Mr. Tarkowski noted that in the 30-year history of Prescott Valley this was the first time they have had a joint meeting on a project. He applauded the councils for coming together to work on the most significant project in the history of the tri-city area. He believed that future generations will applaud the decisions they are making now.

He said that without this project they will not be able to fulfill the ADWR recommendation to reach safe yield. He added that they are the only AMA in the state that has taken steps recognizing that they can get there.

Mr. Tarkowski said that the different types of financing options are being explored, and they will bring those back to the councils in January. The first step will be to get an RFP out in September to receive some proposals from private equity groups. He said that they will be consulting with John Sellers of Prescott, who has a great deal of experience in this area, and also consulting with a number of firms that do this routinely. He

said that in January they will be looking for a decision and will then actually develop a construction schedule for the project.

5. Council Discussion

Councilwoman Suttles said that it was noted that this was the first time in years that the councils met regarding a project, and it sounds like it is very successful. She said that she found out more information today than all of the other meetings they have had, and coming together at the same time was a plus. She appreciates Prescott Valley working with Prescott. She said that the project is moving, there are a lot of things where they should be and with the next meeting in January, she hopes at that time they will be able to get it going.

Councilman Roecker asked Mr. Pearce to elaborate on the other “minor” things needing to be done. Mr. Pearce said that the City received a certain amount of cash to be used for a number of things, as long as they related to water, but some was used to purchase the Big Chino Water Ranch water rights, the lakes/dams and Granite Creek. It has come to the attention of ADWR that the ability to purchase in-basin water should be subtracted from the amount importable because it was a choice made to buy in-basin water rather than take out-of-basin. They have contested that, but ADWR does believe it was a voluntary choice made by the City of Prescott and that accounting needs to be made. It has proven to be a very difficult financial process. Mr. Woodfill has done a good job of reconstructing ancient history and the accounting process. They have a few remaining questions on line items. He said that it is indicative of the amount of detail on their review of the application. He met with them last evening, went over the questions, and he believes those are the last two remaining items. He will be submitting a letter to them with those answers.

Councilman Lamerson said that he also appreciates Mr. Tarkowski’s comments, but their friends in Chino Valley aren’t the bad guys either, or in Dewey-Humboldt. He said that in no way does he suggest that the progress they see today is seen as taking the pressure off. He appreciates the councils keeping their feet to the fire, and they want the letter from ADWR. He said that today was some good news and he is feeling better, but it does not mean they are taking their feet out of the fire.

Councilman Luzius said that Mr. Pearce talked about the groundwater rules and he felt they would be approved. He asked Mr. Pearce, once they are approved, where that would put them in position of being challenged by SRP. Mr. Pearce said that rules themselves only implement the HIA portion of the statutes, not the Assured Water Supply, and those two items are not linked together. The rules are moving forward and the comments have not been a surprise or inconsistent with the comments received.

Mr. Pearce said that the deeper subject is that there have been many claims made that the percolated groundwater in the Big Chino is linked to the surface flows in the Verde River. He said that Arizona does recognize some limited connection between the two and they recognize the principle that an upstream user cannot affect surface water, and they could not interfere with the downstream flows. That issue has not come to a head yet; it has not been asserted in any forum. He does know that Arizona law is very specific regarding percolated groundwater, and he believes that the water is percolated groundwater and they have made extensive efforts to purchase and locate production wells where the only water will be percolated groundwater. To the extent that SRP has a factual claim that they are intercepting surface water, he suspects they will be in court. However, that day is not here yet, and it is the City's intention to ensure to the best of their ability that they have no impact on the Verde River or on users downstream. He said that they hope that their good faith efforts will forestall legal challenges.

Councilman Luzius thanked them for the presentations, noting that they were very informative.

Mayor Wilson asked Ms. Maguire what implications there are from a settlement with the Camp Verde Yavapai-Apache Indian Tribe in terms of the current application and future reduction of that application. Ms. Maguire said that because the Camp Verde Yavapai-Apache Indian community has not initiated a settlement discussion it is hard to predict the impact. Subsection E allows up to 14,000 ac. ft. so at least it is probable that when it does occur, that water could impact the amount of water available to be imported from the Big Chino basin to the Prescott AMA.

Mayor Wilson asked if anyone has ever contacted the Tribe. Ms. Maguire said that she could not answer that, but ADWR does have a person that deals directly with Tribes in the state.

Mayor Wilson suggested that they not wait until January to learn about the other financial options, and have Mr. Sellers come in and educate the two councils on the process. He said that waiting until January to present potential solutions is one thing, but he would like to see some education take place before then. Mr. Tarkowski said that they could have Mr. Sellers at another session similar to today. He said that they won't have a lot of the answers until they go out for RFP and receive responses, but they could provide the education sooner.

Councilwoman Nye said that they have been talking about the Big Chino Water Ranch for a long time and they are at a critical juncture. They have gotten some positive, forward motion news today and she doesn't want any of them to hold that forward motion progress up. They will always have questions without answers. SRP is always going to be SRP. She said that she served on commissions in Phoenix where they did battle and she is ready to do battle up

here. She said that all through the process she has been very disappointed with the press and she hopes no one will misstate the facts as the citizens are due the facts. She said that she would like to explore all of the options for financing.

Councilman Wise said that he appreciated the opportunity for the councils to meet together. They are partners working for the common good of Prescott and Prescott Valley, and more than that it is for the economic health of the region. He said that the information they received today will help the decisions made in the future and he appreciates the information given.

Councilman Flannery thanked everyone for the information presented, adding that it was very good. He thanked both councils for the opportunity to get together and work on the project, and it was refreshing to have the public involved. He said that the financing will be a very complex issue and he would like as much information and advance notice as possible, and would appreciate having a session prior to January.

Councilman Flannery said that he is very pleased that the application is near the finish line. He never anticipated it would be a sprint, but rather an endurance race; it has been even longer than what he anticipated.

Councilman Edwards said that he thinks the meeting today shows there is cooperation and teamwork between the councils. He would hate to see them slow down to a slower pace, but it has to be done right; they don't need to redo something. As far as SRP and groups with their own agendas wanting to slow the process down, they need to get by that. This is about the survival of Prescott Valley, Prescott, Chino Valley and everyone in that end of the state. He doesn't think SRP cares about anything other than where the water flows. He said that they can fight their personal agendas in their own court; they need to move forward and keep everyone up to date.

Councilwoman Schumacher said that she was pleased they were able to pull together and sit down as councils. It is a great way to show everyone that they get along and they are partners. She said that it is an important project and they need to move forward as quickly as possible. She said that it will ensure the vitality of the whole region and for them to reach safe yield. Councilwoman Baker agreed with all that had been said.

Mayor Skoog said that he was very pleased with the news they heard and it brought them up to speed on critical concerns. He thanked all of the presenters for their information. Mayor Wilson thanked staff for their work as well. He agreed that there are always going to be questions, but they need to move forward.

6. Adjournment

There being no further business to be discussed, the Joint Workshop of the Prescott City Council and Prescott Valley Town Council of August 12, 2008 adjourned at 2:20 p.m.

JACK D. WILSON, Mayor

ATTEST:

ELIZABETH A. BURKE, City Clerk