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SRP says Prescott has no right to Big Chino water

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Phoenix's largest water provider has upped the ante in its attack on Prescott's pipeline plans, contending now that Prescott has absolutely no right to any groundwater from the Big Chino Sub-basin under a special state law.

Salt River Project's latest letter to Prescott and the Arizona Department of Water Resources says that the state law that grants Prescott the exclusive right to transfer as much as 14,000 acre-feet of Big Chino groundwater each year to its neighboring basin is unconstitutional.

Prescott officials obviously disagree, and so does the state.

"While the [City of Prescott](#) appreciates Salt River Project's opinion, it is the Arizona Department of Water Resources that will make determinations regarding the city's entitlement to Big Chino Sub-Basin groundwater," said Jim Holt, manager of the city's Big Chino Water Ranch.

Prescott Valley Mayor Harvey Skoog said the three Prescott-area mayors and staff members just talked about the SRP letter in a meeting Thursday morning. Prescott Valley is a partner in the Prescott pipeline. Chino Valley is working on its own pipeline, using a related state law.

"We're kind of concerned about what SRP is saying," Skoog said. "They're trying to scare us, I guess. It's just not the right way to go about it."

The Arizona Legislature approved a law in 1991 that generally prohibits the transfer of groundwater from one basin to another.

However, the Legislature provided several exceptions. Phoenix-area providers could use groundwater from three nearby basins.

A fourth exception for Prescott says the city has the right to pump as much as 14,000 acre-feet of groundwater annually from the Big Chino to supplement its Little Chino Sub-basin supplies. Another exception for all Prescott Active Management Area municipalities allows them to "retire" irrigation uses and convert them to municipal use. SRP isn't challenging that section of the law in this letter.

Yavapai County Supervisor Carol Springer, who helped author the 1991 law as a state senator, said SRP's argument about the Prescott exception being unconstitutional is "ludicrous."

Springer figures SRP must be thinking, "If you throw enough stuff on the wall, some of it might stick."

How much water

The Department of Water Resources has preliminarily concluded that Prescott actually has the right to 8,717 acre-feet of Big Chino water annually under that law (Arizona Revised Statutes 45-555(E)). Prescott estimates it's at least 9,571 af.

SRP also argues that, even if the law did give Prescott the right to Big Chino water, it's far less than estimates from the state or Prescott.

SRP puts the number at 4,081 acre-feet annually.

Competing calculations of Prescott's Big Chino allocation relate to its status as a water provider for the Yavapai-Prescott Indian Tribe under the tribe's water rights settlement. Springer also helped forge that settlement in the 1990s. It was the first Indian water rights settlement in Arizona.

Other parts of the calculations relate to the amount of Central Arizona Project water that Prescott and the Yavapai-Prescott Indian Tribe received but were unable to use.

Now that Prescott has applied formally to the state to use the Big Chino water, the state will make a final conclusion about Prescott's allocation.

"Obviously, we disagree with SRP on some of those points," Arizona Department of Water Resources Director Herb Guenther said Thursday in response to SRP's letter. "Our legal department is reviewing it to make sure they haven't overlooked anything."

The state will respond to the letter in writing, he added.

SRP has written a series of letters to Prescott and the state in recent months that relate to plans by Prescott-area communities for Big Chino pipelines. The state concluded in 1999 that the Prescott Active Management Area is depleting its own groundwater supplies.

SRP officials say they are concerned about the pipeline plans because SRP gets 40 percent of its surface water from the [Verde River](#). Scientists generally agree that the Big Chino supplies about 80 percent of the baseflow for the first 24 miles of the Verde River above Clarkdale, where numerous tributaries start to supplement the river.

Legal history

The latest 10-page letter from SRP's attorneys contains complicated calculations about how much water Prescott would get even if the law is constitutional.

One portion of the letter argues that the 1991 law is unconstitutional because it gives a special right to Prescott above other municipalities in the Prescott Active Management Area (AMA).

"We have special interest kinds of legislation everywhere," Springer countered. "And Prescott wasn't given a new right - it actually let them retain and quantify the right they already had."

Springer said she helped negotiate the exception for Prescott because it's so dependent on groundwater and has no access to Central Arizona Project (CAP) water from the Colorado River.

She noted that the City of Prescott was the only Prescott AMA municipality that applied for and received an allocation of CAP water. Prescott later sold it because of the expense of getting it up here.

At the time she was helping to write the legislation, Springer said she figured the pipeline would end up being a regional project anyway because of its cost.

Dave Roberts, SRP's manager of water rights and contracts, said the Prescott language in the 1991 law stemmed from an effort to settle water rights claims of the Fort McDowell Yavapai Nation. One option under consideration was to pump groundwater out of the Big Chino aquifer and send it down to Fort McDowell via the Verde River.

However, SRP and the U.S. Fish and Wildlife Service had concerns about this proposal, Roberts said. A Bureau of Reclamation study indicated that putting the extra water into the river could harm native fish, and taking water from the Big Chino also could reduce the river's flow and hurt the fish, he said.

"The fish up there came to be know as the 'Goldilocks' fish," Roberts said, because they didn't like too much or too little water at certain times of the year.

The Fort McDowell Nation ended up settling its rights another way, but the special law for Prescott stayed.

"Right now, people are thinking that wasn't such a good idea," Roberts said.

Contact the reporter at jdodder@prescottaz.com

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