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Second round of hearings wraps up without resolution on Big Chino water

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PRESCOTT - Administrative Law Judge Thomas Shedden is hoping "the third time is the charm" in efforts to complete the arduous hearings on Prescott's right to pump Big Chino sub-basin water.

As the sixth day of the hearings neared conclusion Wednesday afternoon, it was apparent that all sides were hoping to wrap things up.

But by about 4:30 p.m. - with a rebuttal witness still testifying - Shedden conceded that the proceedings would take at least one more day, and possibly two.

"It is prudent to set at least two days, under the theory that the third time is the charm," Shedden said.

He was referring to the two rounds of hearings that already have taken place. The proceedings began in February, with three days of hearings. When that was inadequate to get through all of the witnesses, Shedden set another three-day round of hearings on April 13-15.

And now, it appears that the community will have to wait until well into the summer to get resolution on the 2008 ruling by the Arizona Department of Water Resources entitling Prescott to annually pump 8,067 acre-feet of water from the Big Chino.

Because of scheduling conflicts, Shedden said the next round of hearings might have to wait until August.

For much of the first two days, this week's round of hearings focused on the position of three local appellants - Gary Beverly, Tom Atkins, and Anthony Krzysik - who protested the ADWR ruling because of concerns about the effect of the pumping on the Verde River.

By Tuesday afternoon, the arguments moved to the case by 11 other local appellants, the Center for Biological Diversity and the Sierra Club, and ADWR.

Wednesday's testimony began with Sandy Fabritz-Whitney, ADWR's assistant director of water management, who stressed that she based her decision on state regulations for such rulings.

While Mark McGinnis, attorney for the three local appellants, brought up numerous past references by ADWR Director Herb Guenther that Big Chino pumping eventually would affect the flow of the Verde River, Fabritz-Whitney said that did not influence her decision.

"We are bound by our rules and law to make the decision," she said of the department's move to modify Prescott's assured water supply designation to reflect water from the Big Chino.

Those rules relate to the amount of "draw-down" in the aquifer that ADWR would allow. The rules require that the

city must demonstrate that after 100 years of pumping, the depth to groundwater in the aquifer would be less than 1,000 feet.

Earlier, a geological engineer testifying for the three local appellants maintained that the depth to groundwater - factoring in city pumping and that of other expected growth in the area - would be between 600 and 700 feet after 100 years.

But during rebuttal comments, the city's hydrology consultant William Greenslade countered that the depth to groundwater would be about 520 feet after 100 years.

During cross-examination by McGinnis, Greenslade said that while an impact on the flow of the Verde River is "possible, at some point," he added: "I think Prescott's pumping, because of its distance (from the river) and the volume being proposed, any effects would be relatively small."

McGinnis' questioning included repeated references to U.S. Geological Survey studies by Laurie Wirt, which contended that 80 to 86 percent of the water from the Upper Verde River Springs comes from the Big Chino.

ADWR Chief Hydrologist Frank Corkhill, however, referred to the 80-to-86-percent figure as a "ballpark number" which although "not hugely wrong, it's not perfect."

Corkhill emphasized that - although he was familiar with Wirt's study - it did not enter into his hydrological review of Prescott's application, because "it wasn't relevant."

The Wirt reports also were central to the rebuttal testimony of Prescott's witness Edwin McGavock, a retired USGS employee and current hydrologist with Errol L. Montgomery & Associates, who maintained that no scientific basis exists for the 80-to-86-percent estimate.

After the end of the appeal hearing, Shedden, a judge with the Office of Administrative Hearings, will recommend whether to uphold the ADWR ruling. Guenther will make the final determination.

The debate centers on plans by Prescott and its partner Prescott Valley to build a 30-mile pipeline to import water from the Paulden-area Big Chino.