

## Prescott wins a battle in groundwater fight

**SRP, environmentalists decry state OK to tap nearby aquifer**

by [Shaun McKinnon](#) - Dec. 23, 2008 12:00 AM

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Prescott scored an important victory in its fight to draw water from an aquifer that sits above the fragile Verde River, but a judge may have the final say on when, or whether, the city can turn on the pumps.

The Arizona Department of Water Resources decided that water tapped from the Big Chino aquifer will count toward the Prescott area's 100-year assured water supply. Without that decision, the costly import plan would have lost its value toward meeting state-mandated water rules.

At stake are future water sources for both Prescott, which would build a pipeline to use the Big Chino groundwater, and Phoenix, whose Verde River supplies already are threatened by wells in rural Yavapai County.

The plan has stirred opposition from a Phoenix water provider, environmental groups and some Prescott residents. Several have already filed appeals of the state decision, and it's likely one or more of those foes will sue Prescott to block or alter the

project.

Embedded in the state's decision, meanwhile, were two other rulings that could ripple far beyond water-starved Prescott, demonstrating again how tightly the state's often far-flung water resources are linked:

- The state agency said Salt River Project, the Valley's largest water supplier, did not qualify as a resident of the affected area and could not continue to appeal decisions on the aquifer case. SRP, which delivers Verde River water to Phoenix customers, says that the Prescott plan threatens the river's flow and that the giant utility is prepared to sue.

- The department seemed to undermine arguments by environmental groups that pumping water from the Big Chino would drain the Verde's headwaters. Under the law, the state ruled that water from the aquifer is groundwater and, so far, fails to pass legal tests that would link it to the river.

"I think it's essentially a political decision," said Michelle Harrington, rivers program director for the Center for Biological Diversity, an advocacy group that has lobbied to protect the Verde River. "It's obvious this will impact the Verde River, and we don't think the water is going to be there for 100 years anyway."

## Tapping water source

Prescott needs to shore up its 100-year assured water supply to comply with Arizona groundwater laws. The state declared several years ago that the Prescott area was not meeting requirements to balance the water used with water returned to local aquifers.

In late 2004, Prescott proposed to draw water from the Big Chino aquifer, an ambitious plan whose estimated price tag has ballooned to more than \$200 million. Prescott partnered with Prescott Valley to share costs, and the two cities purchased a ranch on the Big Chino and started looking for ways to pay for the 30-mile pipeline.

The pipeline could deliver as much as 3 billion gallons a year, water that would meet the 100-year supply rule as a result of last month's state water agency ruling.

## Opposition to ruling

Environmentalists objected immediately, producing geologic studies that said a well as big as Prescott proposed could reduce the flow of the upper Verde River, which bubbles up from springs at the base of the Big Chino. The conservation groups were joined by SRP, which argued that the well and pipeline would rob its Valley customers of water from the Verde.

But state officials decided the law in the case allowed for no such link.

"The legal presumption is that the water in wells is groundwater unless the party who claims that it is surface water can prove otherwise," said Sandra Fabritz-Whitney, deputy director of the state water agency. "We make our decision based on factual information we have in front of us today."

In general, state law doesn't recognize a direct link between groundwater and rivers, though science can draw the connection. The courts also have devised a test that has been used along the San Pedro River, but it likely wouldn't affect the Big Chino case.

SRP officials have amassed geologic studies that back up the utility's arguments, but the state also barred any non-Prescott residents from appealing the recent decision. That means SRP must first appeal for a right to further appeal.

The utility also is prepared to sue over the project's merits and the water rights, which SRP says are critical to metro Phoenix's water supply.

"We expected the department to say they weren't going to address the environmental issues, the groundwater-surface water issues or things like climate change," said Dave Roberts, SRP's water-rights manager.

"Those are all the arguments that will eventually be made in Superior Court. We want to make sure everybody understands right up front the breadth of concerns SRP has and all the issues that will affect the use of water in the Big Chino."

## Effect on water rights

Prescott officials believe the decision was not only clear-cut in the city's favor but wide-ranging in its effects on Arizona water policy.

"This is a huge milestone with respect to the nature of that water supply," said Rita Maguire, Prescott's Phoenix-based attorney and a former director of the state water agency. "It succinctly defines the relationship between pumping in the Big Chino and the upper Verde River."

Maguire said SRP's arguments ignore the rights of other communities to grow, and she said the final outcome of this case could affect the way water is delivered across Arizona.

She compared the issues to those Arizona raised in securing a share of the Colorado River in a fight with California.

"There is merit to the notion of sharing the water," she said. "The parochial view of the world is not going work in Arizona. If the

Supreme Court had ruled in California's favor, we wouldn't have the Central Arizona Project, and we'd be in a world of hurt."

But this case won't close the chapter on dividing limited water supplies. No matter who wins, the final decision won't prevent other wells from being drilled in the Big Chino aquifer or along the upper Verde River, wells that could draw as much or more water with little or no state oversight.

Harrington, of the Center for Biological Diversity, said even if the cities win this case and the lawsuits expected to follow, they could find themselves on the other side of the issue some day.

"They don't have any power over other wells," she said. "We might end up with them lobbying for stronger laws. But it shouldn't be so they can pump the aquifer dry and kill the river. There needs to be a regional plan."