

**MINUTES OF THE REGULAR MEETING
TOWN COUNCIL WATER AND UTILITIES SUBCOMMITTEE
TOWN OF CHINO VALLEY**

**TUESDAY, MAY 11, 2021
4:00 P.M.**

**CHINO VALLEY COUNCIL CHAMBERS
202 N. STATE ROUTE 89, CHINO VALLEY, AZ**

Present: Lon Turner, Chair; Corey Mendoza, Councilmember

Absent: Eric Granillo, Councilmember

Staff Present: Frank Marbury (remotely), Public Works Director / Town Engineer; Mike Bovee, Utilities Manager

Attendees: Bill Staudenmaier (remotely), Water Attorney, Mark Holmes, Water Services Consultant, Kim Schonek (remotely), Member of the public

1) CALL TO ORDER

Chair Turner called the meeting to order at 3:33 p.m.

2) ROLL CALL

3) APPROVAL OF MINUTES

- a)** Consideration and possible action to approve February 9, 2021, regular meeting minutes.

MOVED by Councilmember Corey Mendoza, seconded by Chair Lon Turner to approve the February 9, 2021, regular meeting minutes

AYE: Chair Lon Turner, Councilmember Corey Mendoza

2 - 0 PASSED - Unanimously

4) ENGINEER'S REPORT

5) CALL TO THE PUBLIC

Call to the Public is an opportunity for the public to address the Subcommittee concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 15 minutes per meeting. Subcommittee action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

6) OLD BUSINESS

7) NEW BUSINESS

- a) Discussion regarding recent legislation of current water and sewer processes, and the potential effects for Chino Valley.

Mark Holmes reported that Bill Staudenmaier would be reporting on the adjudication process that could have a direct impact on the Town and future water importation of the Big Chino.

Bill Staudenmaier reported on the following:

- Provided a history of his experience in the States water issues.
- The legal concept of self-flow. In Arizona groundwater and surface water were separately and differently regulated. Surface water was regulated through the doctrine of appropriations, or on a seniority system. The first to use the water from the surface stream or the original appropriators in Prescott in the 1860s had seniority on the streams. Groundwater was regulated by the doctrine of reasonable use, which had no priority rights. The basic concept was individuals shared an equal right to withdraw water from an aquifer through their well system.
- Problems arose when the two clashed. Did pumping water from a well impact surface streams, and if it did, to what extent? That had been the struggle over the legal concept of self-flow for over 30years.
- The proposition was t the boundary around any flowing stream, such as the Verde River, would be considered the sub-flow zone. This would be done by the Department of Water Resources (DWR) by drawing lines on a map a certain distance away from the southern and northern sides of the river. That boundary would be considered the sub-flow zone. Wells inside that sub-flow zone, once it was established, would be automatically presumed to be pumping sub-flow water or the legal equivalent of surface water, and would be subject to the doctrine of appropriation. Wells outside the boundary might also be found to be pumping sub-flow water if their cones of depression reached into the sub-flow zone and were taking self-flow out of that zone.
- Those were the wells at risk in the adjudication process.
- The Town had three municipal wells, with the well near Yavapai College the closest to the Verde River at a distance of approximately 6miles south. It was difficult to put a distance on any well that could possibly avoid the adjudication process because the task for depleting the self-flow zone was still in the early stages of development. DWR were doing studies and models to be used for that purpose. It was currently being used for the San Pedro River and presumably the same type of model would be used in the Verde River in the future.
- At some distance away from the river, the amount of water being pulled from the sub-flow would be so small, it would be left alone. But that distance is not currently known.
- Another complicated issue was Granite Creek, which was closer to the Town's wells. Although the creek was dry most years, historically prior human impacts and use, such as

upstream dams, could be considered appropriable use to have a sub-flow zone, even if it were dry today.

- It was a time to be paying attention to the issue.
- The City of Prescott's attorney had moved to intervene in one of the groundwater cases in order to protect the Town's interest in Granite Creek and their well fields, including the one in Chino Valley. There were other entities that were involved, and the Town needed to watch the process and be aware of what was going on.
- Category One was the sub-flow issue and how to determine which wells were pumping sub-flow water.
- Category Two was to determine what the next step was if the well was determined to be pumping sub-flow.
- There was currently a contested case in southern Arizona in Huachuca City that had a well inside the sub-flow Zone of Babocomari River, which had been dry for over 100 years, but had development prior to the stream being intermittent, so it had a mapped sub-flow zone. The legal consequence of the Town being found to be pumping sub-flow was that the Town did not have a permit to be pumping surface water. One of two things could happen. The adjudication court could say the Town could not pump from the well any longer, or they could get a priority date based on when the well was drilled, and they would be assigned a place in line behind others using surface water within the system.
- At some point within the next year, a legal decision would be made to either require wells to be shut off that did not have an appropriation permit, or someone that did not have an appropriation permit would be given a priority date based on the date the well was drilled. From the Town's perspective, they would be better off with the second option. Whatever decision was made, would be appealed to the Superior Court, and then that decision would be appealed to the Arizona Supreme Court who would make the final decision. That decision could take three to four years. There was nothing the Town could currently do.
- Category Three was that DWR was tasked with mapping the sub-flow zone of the Verde Valley. They had a set of geology maps prepared by Arizona Geological Survey that showed a rough estimate, based on survey lines on the map, where the sub-flow zone could be. More technical analysis would be needed to know exactly where to place the lines. The original deadline for producing maps for the Verde watershed was June 2021, but the Department asked for two additional years to complete the map because they realized they had not mapped the various tributaries of the Verde River. SRP filed a response to the request, stating that the process could be done in pieces to stay on schedule. There would be a hearing in June to discuss what would happen with the maps.
- In SRP's filing, they asserted that the DWR was not going to map certain other tributaries that SRP believed needed to be mapped. One was the Big Chino Wash. SRP was stating the Big Chino Wash was perennial to streams in the area, and therefore needed a mapped sub-flow zone. It would be a topic discussed at the oral argument in June and worth the Town paying attention, because it could ultimately affect the Town's ability to withdraw water from wells located in the sub-flow zone.
- The Town had statements of claimant, asserting their claims to water in the adjudication that were filed in the 1980s. They had not been updated. At some point the Town should update them. The Town's original statement of claimant were before they had any municipal water system. Now they had a water system and the statement needed to be updated to reflect the nature of the Town's water usage. The original statement claimed that the Town owned Old Home Manor, which was an agricultural use at that time. The claims were only for agricultural uses. At some point the Town needed to update the statements of claimant to protect their interest in their current water use.
- The concept of sub-flow was first used in the 1930s. It came back to the Arizona courts in 1992, when sub-flow was further defined. In 2000, further definitions were developed through court cases for sub-flow and how sub-flow zones needed to be developed. Since then, DWR

had developed comprehensive reports that included proposed maps. Recent court cases had determined the lines for the San Pedro River sub-flow, and those lines were not appealed in the courts.

- If a well was purchased 70years ago, but had not been used for 30years, the adjudication process would look at the circumstances, but there was no clear answer to how they would make a determination. There was a statutory concept called forfeiture, that if someone had a surface water right but ceased to use it for five or more years, it was subject to forfeiture that was pursued by the DWR. It could be an argument that could be made downstream of a well not used for many years. If the well was determined to be in a sub-flow zone, and the Town did not know they had to be pumping water during that time, the forfeiture could be on nonuse going forward. There was no way to tell which of those two outcomes would prevail.
- Mr. Holmes explained that there was a dilemma that since the lands were so close to the wash, it would throw the statute that gave Prescott its water right into an appropriable water right if it was adjudicated up to the Big Chino. These issues would need to get sorted out for wells throughout the Verde Valley.
- Members questioned if the origin of the Verde River were Sullivan Lake, which at one time was an artisan well, if that would be considered a well that happened to create the river. It was explained that studies showed the base flow of the River was provided through springs that started as groundwater and flowed to become surface water at a legally defined line. It was considered surface water as long as it flowed in that channel and was appropriable water rights. The Upper Verde River never made its way to an SRP dam.
- The Town could run into issues if their wells were less than a mile from some tributaries and the wells cone depression went out and intercepted and pulled in some volume of the sub-flow, they would be pulling in appropriable waters into the well. The Big Chino was a big concern because the cone could go way out. As the Courts moved forward, they would have decisions made that would affect the Town. The decisions would affect millions of people and each would need to be adjudicated, and it was a slow process.
- The recharge credits for the Town were especially important. They could give the Town enough volume in the future that the radius for the safe harbor and the hydrologic impact could give a distance of up to one to five miles, and the wells within the hydrologic impact would be considered recharged and reclaimed water. The ability to recover the water could advert any potential issues in the future.

8) **ADJOURNMENT**

MOVED by Councilmember Corey Mendoza, seconded by Chair Lon Turner to adjourn the meeting at 4:19 p.m.

AYE: Chair Lon Turner, Councilmember Corey Mendoza

2 - 0 PASSED - Unanimously

Submitted: May 26, 2021.

By: *Traci Lavelle, Deputy Town Clerk*

Approved: June 15, 2021.

