



June 18, 2008

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Re: Comments on Groundwater Transportation to an Active Management Area Draft Rules

Dear Mr. Dunham,

Thank you for the opportunity to comment on the Department's draft rules on transportation of groundwater to an Active Management Area (AMA). As has been previously established, the Center for Biological Diversity is keenly interested in preserving the base flows of the upper Verde River and is particularly interested in the rules as they pertain to groundwater transportation from the Big Chino Sub-basin into the Prescott AMA, A.R.S. § 45-555(A)-(D). The Center for Biological Diversity is a national, nonprofit organization based in Arizona whose mission is to protect and restore endangered species and wild places through science, policy, education, advocacy, and environmental law. On behalf of our more than 40,000 members, we submit the following initial comments.

A.R.S. § 45-555(A)-(D) is very specific in regards to identifying what constitutes a "farm" and that groundwater, rather than appropriated subflow, was the source for irrigation of that farm. The statute clearly states that the groundwater be transported from the farm for which documentary evidence has been provided that historically irrigated acres have been retired from irrigation.

There exists a major difference between A.R.S. § 45-555(B)(2) and A.R.S. § 45-552(B)(2)-(3). A.R.S. § 45-555(B) for the Big Chino Sub-basin states:

The director shall determine the annual transportation allotment as follows:

1. Determine each farm or portion of a farm owned or leased by the city or town in the sub-basin.

2. For each such farm or portion of a farm, determine the historically irrigated acres retired from irrigation. Multiply the sum of those historically irrigated acres by three acre-feet per acre.

Whereas A.R.S. § 45-552(B) for McMullen Valley states:

The director shall determine the annual transportation allotment for land that is subject to this section as follows:

1. Determine each farm or portion of a farm on that land.
2. For each such farm or portion of a farm, determine the historically irrigated acres.
3. Multiply the sum of those historically irrigated acres **for all such farms or portions of farms** by three acre-feet per acre. *(emphasis added)*

Note that these statutes were passed during the same legislative session as part of the same package. Rather than assuming that the legislature had no intent to differentiate between conditions of the two basins, as they could have simply copied the sentences outright, one must assume that the difference was intended.

Additionally, not interpreting the statute as written could have devastating impacts on the base flow of the upper Verde River. The locations of HIA lands overlaying the Big Chino Sub-basin are of varying distances from the headwater springs of the Verde. Pumping groundwater from HIA lands closer to the springs could not only capture subflow but also have more immediate impacts on the upper Verde's base flow. Pumping groundwater from HIA lands farther from the springs may also capture water flowing underground toward the river, causing a reduction in base flow in the future.

Correct interpretation of the statutes reflecting legislative intent and providing maximum protection for the Verde River base flow should be a priority in drafting these rules.

Please contact me should you have any questions or comments, (602) 628-9909 or mharrington@biologicaldiversity.org.

Sincerely,



Michelle T. Harrington
Rivers Conservation Manager