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August 14, 2008

Mr. Doug Dunham  
Deputy Assistant Director  
Arizona Department of Water Resources  
3550 North Central Avenue  
Phoenix, AZ 85012  
dwdunham@azwater.gov

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

Dear Mr. Dunham:

Please accept these comments on behalf of the Sierra Club's Grand Canyon Chapter and our 14,000 members in Arizona. The Sierra Club's mission is *to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.* Our members use and enjoy the Verde River for a variety of recreational purposes including wildlife viewing, kayaking, hiking along its banks, and fishing, among others, plus our members also drink its water. We have a significant interest in these draft Rules on Transportation of Groundwater to an Active Management Area.

The Sierra Club is strongly opposed to the provisions in the underlying statute, A.R.S. §§ 45-555, which allow for this transfer of groundwater from the Big Chino Sub-Basin to the Prescott Active Management Area. The statute clearly promotes unsustainable growth in the area and harm to the Verde River and its associated springs. That being said, we understand it is the law and as such the Arizona Department of Water Resources must develop rules to implement its provisions.

Our comments focus on the June 18, 2008 draft of the rule about which we have several concerns. Our biggest concern is the transportation allotment for lands in the Big Chino Sub-Basin. The rules appear to be contrary to the statute and could result in even more significant harm to the Verde River. A.R.S. §§ 45-555(B) states:

- B. 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.

Our reading of this suggests that the annual allotment for each farm or portion of a farm has to come from the historically irrigated acres (HIA) of that farm or portion of that farm, not from elsewhere. It does not include provisions that provide for aggregating the HIA and allowing pumping from one location. This makes the draft rule section R12-15-1405(C) inconsistent and contrary to the statute.

Another concern is that the Department of Water Resources is not asking for adequate information to determine which parcels were historically irrigated. It does include provisions for determining which parcels are included as part of the same farm. We encourage the Department to reevaluate this and to take a more conservative approach in interpreting the statute, in order to ensure that the Verde River is better protected.

There is also the issue of when groundwater transportation can begin. Because the Director's decision is an appealable agency action, no transportation should begin until appeals and legal options have been exhausted.

The draft rule should be amended to address these issues and to require that applicants provide enough information to the Department of Water Resources, including location of the farms and portions of farms owned or leased by the applicant, so the agency can verify which parcels were irrigated. It should also determine which lands are included as part of the same farm. The rules should be amended to make it clear that all the transportation allotments cannot be aggregated and thus pumped from a single well. This last item has serious implications and again is contrary to the law and could promote even greater harm to the springs, streams, and the Verde River, not to mention existing wells in the area. Finally, the rule should be amended to address the issue of possible administrative or legal challenges to a decision by the Director of the Department of Water Resources. Transportation of the groundwater should not commence immediately upon the Director's decision, but only after the decision is final.

Thank you for the opportunity to comment. Please keep us apprised of any developments relative to this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandy Bahr".

Sandy Bahr  
Chapter Director  
Sierra Club – Grand Canyon Chapter