

Water Committee Report for May, 2009

I attended the Verde Valley Water Users (VWU) annual meeting held April 2, at the Camp Verde School District Multi-Use Complex. The size of the crowd was a bit disappointing considering how much outreach the group had done recently with neighborhood groups and the press. I also thought more people would attend because the agenda was to include speakers from Salt River Project.

The meeting began with a report from the President Ray Wrobly. The group currently has almost \$33,000 in the bank. Ray explained that this amount could easily be used up this year and it was important to get more members if they were to successfully fight the upcoming court battle. Some of the activities occurring now:

- The Arizona State Survey continues to map the Holocene Alluvium. This is a geologic formation that has already been determined by the courts as contributing underground water to rivers and streams.
- VWU continues their well monitoring program to establish what effects wells may have to nearby rivers and streams. Basically they compare seasonal changes in well depths with those in nearby water courses.
- VWU continues to speak to groups throughout the Valley and helps people file claimant forms with ADWR.
- Salt River continues its court case against 3 Verde Valley Ranch families ahead of the Statewide Adjudication Case. (more recent info on this later in the report)

Then the election of new board members was handled very quickly. They are actually short board members so people may wish to apply.

Then the speakers from SRP gave a presentation. Although they were going to talk mainly about the Big Chino Basin and their shareholders rights, they did touch briefly on how SRP came into being, and what the adjudication case was about. First to speak was Greg Kornrumpf of SRP.

SRP was formed early in the 20th century as part of the 1902 Reclamation Act. Farmers in the Phoenix Valley area had been irrigating crops since 1869, but their efforts were small. They petitioned the government to loan them money to build Roosevelt Dam and a canal system and they would put their lands up as collateral on the loan. So this is how SRP came into being. They did build Roosevelt Dam and a series of canals. At this same time the Kent Decree of 1910, stemming from a court case concerning water rights (Hurley vs. Abbott) formalized surface water rights for the State of Arizona and water rights were assigned to various groups and individuals. SRP getting the lion's share.

Surface Water Law works on the assumption of "First in time, first in rights". So whoever had put the water into use first had a greater right than subsequent users. Although it is still a very grey area as specific amounts are not decreed. If the water is used for a "beneficial purpose", which is very broadly interpreted, than a surface water user can use as much as they deem necessary for that beneficial purpose. Ground water works on the assumption of "Reasonable Use".

Starting in 1974 SRP began to make claims that some ground water could be considered surface water in that the ground water contributed to the flow of the streams. And pumping too close to a stream could effect that zone. They contested that the Holocene Alluvium, a geologic formation that surrounds many streams and rivers was such a zone. And even wells that fell outside of the Holocene Alluvium, if they were close enough could cause a "cone of depression" that could draw water out of the formation.

At the same time the Gila Indians were suing for their share of water with the federal government under treaty rights. They won that case in 1987 and the Adjudication of all state streams fell under that case. So that is when SRP started their suit for their water rights. And in 2000, they won a Supreme Court decision that accepted that water that flowed through the Holocene Alluvium was part of surface water. So SRP is now suing to prioritize this water as surface water rights.

Then Greg changed the subject to the fight SRP was currently having with Prescott and Prescott Valley over the pumping of the Big Chino Aquifer. He explained that those cities had a right under state law to import water from the Big Chino, but with the caveat that the pumping would not affect the flow of the Verde River. Prescott and Prescott Valley wish to pump 8000 acre feet a year. (An acre foot of water is 325,851 gallons). When the two cities started their pipeline project SRP objected in court. The court would not hear their objection as they are not located in the Prescott AMA so they had no standing. So SRP sued in Maricopa County on the grounds that the statute that allowed the importation of water was not constitutional.

Greg also went on to explain that currently SRP believes the Verde is in equilibrium as of now, but pumping of the aquifer will definitely affect the springs in the upper reaches of the river.

Then a man named Gary, (didn't catch the last name) a farmer from Chino Valley spoke. He said that 16% of the base flow of the Verde River occurs in these first 24 miles. At Verde Springs, located in the Mormon Pocket, six miles upstream of Sycamore Creek the flow of the river was 29 cfs in 1940. Today it is at 22-23 cfs. If the Big Chino was to be pumped, this first 24 miles could become a dry streambed. He believed that pumping has major affects. He stated that the current pumping of the Little Chino aquifer had a detrimental effect to his well. He also said that the pumping of the Big Chino aquifer was to meet growth demands of Prescott, not merely to supply the existing population.

The upper reaches of the Verde, though not as heavily visited as the lower reaches was important to the ecology of the region. There are 10 endangered species that make their home there. He urged people to join the Verde Valley Citizens Alliance and announced a presentation to be held at Mingus High School that Saturday.

Then Greg Kornrumpf took the podium again to take questions from the audience.

I asked whether an older well, like surface water rights had more priority than a newer well?

He said he believed that is how the courts would interpret rights of wells. So that is why each well had to be reviewed on its own merits. Some may have more rights than others.

He also explained that SRP would probably not go after wells on properties where the property already had a surface water right. Because they already had the right to water in the river.

Someone asked what would happen if the courts determined that they didn't have the right to their well water. What remedy was SRP pursuing?

He said that you would probably have to buy a water right from another property that had a surface water right. State statute 45172 allowed for transfer of water rights from one property to another.

People asked who will determine where the Holocene Alluvium is?

DWR would draw the lines. Although SRP had a map there this evening, and they were pretty sure that what they had mapped out was pretty accurate.

Someone made a comment that the water was being wasted by the Phoenix area customers of SRP. But SRP said they actually use less water now than in the past, because the cotton and citrus farming were being displaced by housing, and that the domestic use of these houses was actually less than the agricultural use of the past for those crops. Plus Phoenix also used CAP and ground water sources.

People asked why they were currently suing three families in the Verde Valley now instead of lumping them into the adjudication case.

He simply said that they were using water without a water right and wouldn't elaborate.

Then Duane Wiles from VVWU spoke. Duane is the attorney for the VVWU. He said one of the strategies that the VVWU would use to fight this case lie in the geology of the region. For instance, even if a well head was located in the Holocene Alluvium, if the well was 200 feet deep it would be drawing water well below that formation. He explained that DWR would have to do their study of the Holocene Alluvium and then write up a report for each well. It would be from this report that you would have to make your argument before the court. He was hopeful that VVWU would have classes to help people prepare for these court battles. SRP was huge and had tons of money, but few individuals would have the money to pay for the research and expert testimony needed to plead their case. So that is why supporting the VVWU was so important. We can all draw off their research and any expert testimony they could generate.

With that the meeting was adjourned. Many people rushed up to look at SRP's map to see where they had drawn the Holocene Alluvium. While it was not as wide in the Wet Beaver Creek area as say around the Verde River in Camp Verde, it would still affect many homes in our area. And who knows how the "cone of depression" will be interpreted.

I asked Greg Kornrumpf if there was any restrictions on surface water users and how much water they could take. He said, no there wasn't. Then if well users could buy surface water rights, how would that preserve any more water? He seemed to think that the adjudication might push for changes in that area.

This article appeared in the Camp Verde Bugle. It concerns the 3 individual families that SRP is suing over water rights:

Court hearing leaves water users in limbo

By Steve Ayers
Staff Reporter

Saturday, April 18, 2009



A hearing in Phoenix on Wednesday over three local farming families' use of well water had a few surprises, left some unanswered questions and will take more time before a final resolution is reached.

The Kovacovich and Wiertzema families, and NBJ Ranches (Jordan Family), have wells in which they pump water they believe to be groundwater and SRP believes to be surface water.

All of their wells are in excess of 200 feet deep and pump large enough quantities to irrigate several acres of land.

The hearing was a request for summary judgment in which the three families were asking that the case be dismissed for a variety of reasons.

The common point for all three families is their belief that the legal question of what constitutes groundwater and what constitutes surface water should be determined as part of the statewide settlement of water rights and not as part of their case.

On Wednesday, the judge in the case, Eddward Ballinger, indicated he would have been willing to grant summary judgment (dismissal of the case) to the Kovacovich and Wiertzema families had there not been a previous decree regarding use of water on their land.

The Kovacovich family had a previous dispute with SRP and a ruling had been made. However, such was not the case with the Wiertzema family.

Wiertzema family attorney Richard Mabery said SRP has agreed to review the Wiertzema property and drop the case if the judge's criteria does not apply.

In addition to the judge's comments regarding previous decrees, there was a document brought into evidence that showed the Kovacovich family had sought SRP's advice as to where they should place the well the SRP is currently disputing.

According to the document, SRP's hydrologist told them to place the well where it is currently located.

According to Mabery, who also represents the Kovacovich family, SRP has agreed to interview past employees, and if the facts prove out that they had told the Kovacovich family to place the well where it is located, their case may also be dropped.

As for the NBJ Ranch, they appear to be headed to a six-day hearing scheduled for October, at which the facts concerning their claim to use the wells they are currently using will be heard, also by Judge Ballinger.

"The bottom line is, as of now, all our requests for summary judgment have been denied. That's not to say something won't happen for the other two parties before October," said MBJ Ranch attorney Doug Brown.

"In my mind NBJ Ranch may have lost for the time being, but the real winners here are the well owners in the Verde Valley.

"The judge appears to be saying that if the land was not covered by another decree he would dismiss further SRP cases prior to their being heard as part of the statewide adjudication. Most lands in the Verde Valley are not covered by a court decree."