

Meeting #30
February 11, 2015
MEETING SUMMARY

Meeting Attendees

Community Working Group members present:

Nancy Vogler – LOST Trail
Fred Gaudet – Arizona Trail Association alternate
Rick Cartier – Superior Chamber of Commerce alternate
Pam Bennett – Queen Valley Homeowners Association
Roy Chavez - Concerned Citizens and Retired Miners
Bill Vogler – Superior Copper Alliance
Bruce Wittig – Queen Valley Water Board
Michael Lira – Central Arizona College
Anthony Huerta – Town of Superior
George Martin – JF Ranch
Lynn Martin – JF Ranch
JoAnn Besich – Superior Optimist Club
Mark Siegarth – Boyce Thompson Arboretum
Neal Jensen – Cobre Valley Regional Medical Center
Jeff Bunkelmann – Central Arizona College

Community Working Group members not present:

Mark Nipp – Town of Superior
Matt Nelson – Arizona Trail Association
Evelyn Vargas – Cobre Valley Medical Center
Kiki Peralta – Superior Rotary Club
Nina Crowder – Superior Rotary Club alternate
Patrick O'Donnell – Superior Unified School District #15
Cecil Fendley – Queen Valley Water Board
Pamela Rabago – Superior Chamber of Commerce

Resolution Copper Company:

Jim Schenk – Manager for Communities & Social Performance
Kami Ballard – environmental permitting
David Stanley – Principal advisor infrastructure
Heather Gluski - Hydrologist
Ian Edgar – Studies manager

Facilitators – Godec, Randall & Associates (GRA)

John Godec
Debra Duerr

Guest Speaker:

David Brown, Esq.

Public Guests:

Michaele Cozzi
Stan Schepers
Hank Gutierrez
Tina Gutierrez
Jerome F. Smith
Nancy Freeman – Groundwater Awareness League

Introductions & Housekeeping

New 2015 notebooks for group members were distributed to those in attendance. Those who did not attend may pick up their notebooks at a future meeting. John Godec referred members to a draft letter in the packet for this meeting that will be sent to all members reminding them of the attendance policies the group has established, and encouraging members who are regularly absent to find a replacement representative from their organizations. The group concurred that this is an appropriate thing to do.

He noted that the group has always wanted to have representation from the San Carlos Apache Tribe, so he has prepared a letter of invitation on behalf of the CWG to be sent to the Chairman and Tribal Council members asking them to appoint a member. The group endorsed this approach.

The next meeting on Thursday, March 19 will include a talk by Tom Torres of the Tonto National Forest. For the April meeting we have invited Grady Gammage, Jr., a noted Arizona attorney and water policy expert, to continue the discussion on water resources.

Godec passed out copies of the book *Boom, Bust, Boom* by Bill Carter for each member, noting that it has a great deal of information about the copper industry, historical copper mining in Arizona, and a chapter specifically on the proposed Resolution project near Superior. If the group is interested, Godec will invite the author, currently a Flagstaff resident, to speak at a future meeting. CWG members not present at the February meeting can get a copy at the March meeting.

He introduced the speaker for the evening, Mr. David Brown, an attorney who has extensive experience in rural Arizona water law and is a fifth generation Arizonan and rancher as well as having served in a variety of elected and appointed positions.

Water "101"

Presenter: David Brown, Esq.

David Brown introduced himself, saying that he is a long-time rancher from the St. Johns area in Apache County, where his family has lived since early settlement days. He described some of his legal experience and civic service appointments. He noted that his firm represents various irrigation districts, rural communities, and water districts as well as the Arizona Cattle Growers Association. He has been involved in many water rights adjudications including the three Native American water rights settlements (Zuni, Gila River, White Mountain Apache) in Arizona.

Brown gave a brief overview of Arizona water law. He described four main water laws in Arizona:

- Law of the Colorado River – applies in the western part of the state, mainly. He explained how this law divided up the rights to the river in the upper and lower basin states, which we now know were determined during a particularly wet climate period.

- Arizona Groundwater Code – established the Arizona Department of Water Resources
- Groundwater Management Act - establishes Active Management Areas (AMAs) for groundwater in Pinal, Santa Cruz, Prescott, Phoenix, and Tucson. Generally, there is no governance of groundwater in rural areas of the state, where use is basically unrestricted and one can pump as much as he can reasonably use.
 - There are also Irrigation Non-expansion Areas – there are three of these, which limit future irrigation.
- Surface water law – the first person (before 1919) who used a stream obtained the water rights; after 1919 (State Water Code passed) a permit was needed. When shortages occur, they are implemented according to priority use date.

It was clarified that portions of the Resolution Copper Project lie within the Pinal AMA, and so is subject to state regulatory provisions for those areas. Brown explained that mines can get a permit to pump groundwater in an AMA if there is no reasonable access to surface water. In the case of Resolution, the only surface water might be Roosevelt Lake, which belongs to Salt River Project, so is not a reasonable supply. There is not a local source for approximately 18,000 acre-feet of water annually, which is what Resolution needs.

Freeport McMoRan pays the Apache Tribe for water from the Black River for its Miami mine. This is now done under an exchange for Central Arizona Project (CAP) water. This is similar to what Resolution is doing for this project. Resolution has bought 275,000 acre-feet of CAP water from the New Magma Irrigation District that is being banked in the district. To date, this has increased the water level in the district's groundwater by between 20 feet and 200 feet in various places. When the mine needs the water that has been banked, it will withdraw the banked groundwater, and the district farmers will resume using their CAP allocations. This is allowed under the Water Banking Authority of Arizona. Brown noted that if the Colorado River doesn't have water available for banking in future due to shortages, Resolution would need to find another source of water for purchase if they haven't banked enough by then.

Brown discussed several large water law cases in the state, and their implications, including adjudications in the Gila (1974) and Little Colorado (1978) watersheds. He also talked about the two major power plants in the Four Corners area that use water from the large Coconino Aquifer. Each of these facilities uses a comparable amount of water to what Resolution is proposing to use.

Group members had the following questions and comments:

- How can you tell groundwater from surface water, from a legal perspective?
 - This is a matter of some debate. For example, on the San Pedro there are lawsuits over wells, and whether they use surface water or groundwater. Decisions have indicated that if water is 'tributary' to the river, it is groundwater; if 50% of the yield can be considered to come from the river, it is surface water.
- What are federal reserve water rights?

- A right granted by the Supreme Court in 1908 to tribes allowing them the water they need, with a priority date of the date of creation of the reservation. Brown characterized this as a ‘super priority’.
- Could Resolution buy water from the tribes?
 - They could, but it is unlikely that the Apache have enough water to sell. The Tohono O’odham supply is mostly leased out. Gila River community probably has the most available water.
- What’s the status of the dewatering project? There isn’t enough water to sustain the needs.
 - According to Resolution managers present at this meeting, about 1000 gallons per minute (gpm) is being pumped, which may go up to about 1500 gpm during production. That is why Resolution is purchasing water.
- Is Resolution working under a permit for this?
 - There’s a dewatering permit for what’s being pumped out of the mine now. A different permit would be needed to use the water for processing.
- There was discussion about applicable laws and permits in the AMA for various mining uses.
- Heather Gluski of Resolution explained that there are four areas involved in the water scene for this project:
 - Deep water aquifer at shafts near Apache Leap
 - Superior Basin
 - Queen Valley basin
 - Beyond Queen Valley into the East Salt River Valley Basin

None of these sources are geologically connected, so the deep water aquifer at the mine is not connected to the shallow wells and springs in the Queen Valley/Whitlow Dam area.
- A member noted that the wells in Queen Valley are connected to the surface creek and are considered deep aquifer wells.
- Many in Queen Valley believe that mine activities are dewatering their wells. Please affirm that the mining location and the Queen Valley area are not physically connected, so that is not true?
 - Correct
- A member noted that water that was treated and released from the old mining operation was released to Queen Creek, so there was always a flow there. Since the Nine Shaft was dug, these releases have stopped because there was too much water being extracted to be released to the surface. This may give people the perception that Queen Creek has dried up.
- To clarify, the Queen Valley Water District said that there is a fault line east of Superior, so that the water in Queen Valley is in a separate aquifer from that where the mine is located.
- A member noted that because the groundwater levels in various areas are so high, SRP is pumping some into their canal system.
- Several members discussed how water demand has decreased. For example, Superior uses only about 250 acre feet for residential use today. Queen Valley water use has decreased as population increased.

- Is Coolidge Dam on San Carlos regulated by the tribe or the federal government?
 - The federal Bureau of Indian Affairs and the Bureau of Reclamation operate it for the tribe.
- What's included in the San Carlos Irrigation District?
 - Farmers in Pinal County near Florence and Coolidge
- What's the likelihood of Resolution getting an allocation of Non Indian Agricultural (NIA) water (2300 acre feet per year requested)?
 - Ian Edgar of Resolution noted that the company has applied for NIA water rights. Resolution feels there's a better than 50% chance of being granted these rights, and a NEPA environmental process is underway for this.
 - Brown said that the state is able to allocate supplies of this. It could be delivered physically, or via an exchange. He noted that 2300 acre-feet is a substantial amount. This water is subject to shortages on the Colorado.
- Has a mine ever been denied water use, through litigation?
 - Yes, Peabody Coal on the Navajo Reservation is no longer in operation. A potash mine in Apache County is on hold, mainly due to the market price of potash. Rosemont Mine is the subject of much controversy but not as a result of litigation.
- Are there restrictions on the use of banked water?
 - No, if you own it you can use it for anything.

Open Discussion

John Godec told the group that he has had conversations with Resolution about the issue of community investments. An idea might be to form a subcommittee of this group to work more closely on this initiative. He suggested that co-chairs could be selected from the existing group members with the intent of starting the discussion and then determining who and how additional subcommittee members might be selected. Godec asked the group to indicate which two people they would suggest as co-chairs. This was done using a paper ballot form, and results will be discussed with the group at the next meeting.

The group briefly discussed the site visit to the tailing site. Participants thought this field trip was quite valuable in allowing people to get a true feel for the size and magnitude of the proposed facility. It was also mentioned that there were a number of Queen Valley residents who showed up at the site during the group's site visit. CWG members questioned the appropriateness of one of the group member's previous announcement at a Queen Valley meeting about the CWG tour. A member observed that the tailings pile would be visible from the Arizona Trail for about 3 miles.

Public Questions & Comments

- A public visitor mentioned that she was at a Central Arizona Project (CAP) Board meeting in Phoenix several years ago, and Resolution was represented there, as were farmers from the Magma Irrigation District. The farmers said that they need the CAP water, and are using it.
 - That's correct, they are using the CAP water while not using groundwater.

- What is the purpose of the 4-inch pipe in Devil's Canyon?
 - An aquifer test is being conducted now. That pump will be shut down in a few days.
- A public visitor noted that you can't have a wet surface for block cave mining, so how will Resolution handle that?
 - That's one of the reasons the company is testing the formations for connectedness between aquifers now.
- Does Devil's Canyon Creek connect with the Gila River?
 - Ultimately. Water from Devil's Canyon is from Apache Leap, and any loss would need to be mitigated through the NEPA process.
- Where does runoff from Apache Leap go? East?
 - It depends on where you are – either to Queen Creek or Devil's Canyon from Oak Creek.
- Is Resolution measuring flows during rain events? Does Resolution need to replace that water?
 - That's being studied now. There are rain gauges at some of the well sites.
- The Apache are concerned about losing water.
 - Because they have an 1848 water right, they 'trump' every other right and so will not lose it.
- Native Americans who lived on rivers that had dried up fought for many years to get water. Sen. Kyle arranged for them to get rights to the CAP.
 - This legislation was introduced under the Arizona Water Rights Settlement Act, and that allowed the federal legislation to be passed.
- To clarify, Resolution is not taking any Queen Valley water for this project, correct?
 - Correct.

Future Meeting Planning

The next meeting will vary from the regular date. It will be held on a Thursday, on March 19.

Next Meeting:

5:30 PM

Thursday, March 19, 2015

Superior Chamber of Commerce

**** Correction to 1/14/15 CWG Meeting Summary***

A copy of a flyer included in the member packets for the last meeting was distributed by an individual at a Queen Valley informational meeting; it was not prepared by Queen Valley HOA or specifically for the CWG. The flyer was provided to the CWG for informational purposes only.