

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TOWN OF CHINO VALLEY
AND
THE U.S. FISH AND WILDLIFE SERVICE**

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to establish a framework for cooperation between the Town of Chino Valley (Town) and the U.S. Fish and Wildlife Service Arizona Ecological Services Office (FWS) (collectively "Parties") for the conservation of native species and their habitats in the Verde River watershed in conjunction with water development by the Town through its water sustainability and conservation plan. This MOU identifies and supports joint activities based on the shared commitment of the Parties to sound water resources management, water conservation strategies, and conservation of imperiled species and their habitats.

II. STATEMENT OF MUTUAL INTEREST

The Town is proposing a unique water sustainability and conservation plan wherein the Town will pump, transport, and replenish water from the groundwater aquifer within the Big Chino Sub-Basin. The Town is committed to ensuring its actions do no harm to the water resources, hydrology, species, and habitats of the Verde River.

The Town recognizes the regulatory and statutory responsibilities of the FWS for the conservation of species listed under the Endangered Species Act. These responsibilities include assisting, coordinating, and forming partnerships with private entities to conserve native species. FWS recognizes the Town's need to develop a reliable source of water to meet its current and future needs.

The Parties both desire their cooperation to be transparent regarding monitoring efforts, reports, and public information and data releases, and to illustrate the benefits of cooperative and collaborative planning.

III. AUTHORITIES

The authority of the FWS to enter into this MOU includes, but is not limited to, the Fish and Wildlife Coordination Act (16 U.S.C. 661) and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

The Town is authorized to enter into this MOU by Title 9 of the Arizona Revised Statutes.

IV. IMPLEMENTATION AND RESPONSIBILITIES

- A. The Town agrees to confer with FWS in developing its water development plan in terms of assessing potential impacts to the Verde River, its native species and habitats, and cooperate with FWS to remove or reduce impacts.
- B. The Town agrees to share its monitoring plan regarding proposed pumping, cone of depression, the extent of the area monitored, and affected groundwater levels for FWS review and comment, and will work with FWS to resolve issues prior to finalizing the plan.
- C. FWS will share historic, current, and future monitoring reports and data with the Town regarding the status and trends of species and habitat along the Verde River that may be impacted by the water development plan.
- D. The Parties will work in good faith to identify additional monitoring needs, data gaps, and potential impacts from the Town's water development plan, and will work cooperatively to address these information needs, including seeking to develop separate funding agreements or providing in-kind services.
- E. The Town has initiated development of a sustainability "mitigation" plan that will provide a source of water for recharge back to the groundwater aquifer from which pumping occurs. Providing funding is available, the Town will include a hydrologic study as part of this plan to determine if the currently proposed recharge site and practicable engineering technology will be effective at offsetting the effects of pumping on the Verde River. The Town has completed a preliminary feasibility study for water recharge and has provided that plan to FWS. The Town will continue to share pertinent plans and studies with FWS for review and comment.
- F. The Town plans to work with state and federal agencies to generate a groundwater model within part of the Big Chino aquifer that will be used to show the net effects of the pumping and recharge system through time. The groundwater model would include the impacts of cumulative pumping from current and projected future sources within the aquifer to the groundwater system and potential changes to natural aquifer recharge that could be due to climate change, current and future development, or other factors through time. The FWS may propose specific model components to assist in the data interpretation, future monitoring, and prediction capabilities. The Parties will work in good faith towards development of the model.
- G. If groundwater pumping may result in the take of Federally-listed species, the Town will consider applying for an incidental take permit through a Habitat Conservation Plan (HCP). The Parties understand that preparing a HCP is a

voluntary process. The Parties understand that other entities also plan to import water from this basin and that cumulative pumping from the aquifer could affect the Verde River, endangered or threatened species, and their habitats. These effects must be considered in a biological opinion and other documents associated with the HCP, but effects caused by activities outside of the Town's control would not be a mitigation responsibility for the Town.

- H. If the Town applies for an incidental take permit, FWS agrees to work with FWS Region 2 to expeditiously process the application as long as sufficient cooperation with the Town on data analysis, recommendations, and planning has occurred during the pre-application process.
- I. Whether or not the Town chooses to apply for an incidental take permit, the Town may cooperate with FWS to develop and implement habitat improvement and other actions that would promote species recovery in the watershed.
- J. The Commitment to share information and data shall not apply to privileged communications or information, if any.

V. PRINCIPAL CONTACTS

The Parties hereby designate the following as their initial principal contacts for activities under this MOU.

FWS: Assistant Field Supervisor, Arizona Ecological Services Flagstaff Suboffice

Town: Water Resources Director

VI. TERMS OF AGREEMENT


A. The Parties agree to the following:

1. This MOU shall take effect on the date of the last approving signature specified in Section VII, below, and shall remain in effect for five years. The MOU may be modified or renewed upon written agreement by both Parties. The MOU may be terminated at any time by mutual agreement or by 30 days advance written notice by either Party.
2. Nothing in this MOU shall require the Parties to expend funds not appropriated for the purposes of this MOU. Implementation of specific actions under this MOU is contingent upon availability of funds and staff.

3. Information exchange between the Parties shall be in full compliance with, and in consideration of, all State and Federal laws pertaining to public records, and in compliance with applicable State and Federal regulations.
4. To carry out its intent, this MOU may be supplemented by subsequent agreements between the Parties to allow for funding specific activities.
5. Nothing in this MOU prevents either Party from participating in similar activities with other public or private agencies, organizations, or individuals.
6. This MOU is a voluntary agreement and applies to only those actions for which the Parties have management authority.
7. Nothing in this MOU is intended to limit the authority of the U.S. Government to fulfill its enforcement responsibilities under the ESA or other applicable laws.

VII. SIGNATORIES


U.S. Fish and Wildlife Service by:



Steven L. Spangle, Field Supervisor

Date: 6/10/09

Town of Chino Valley by:



Karen Fann, Mayor

Date: MAY 28, 2009