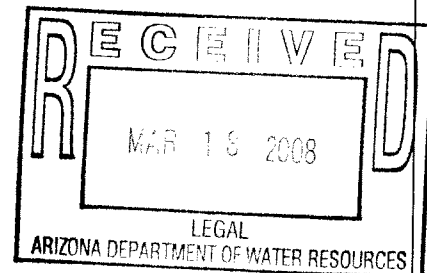


ARIZONA DEPARTMENT OF WATER RESOURCES

BEFORE THE DIRECTOR

IN THE MATTER OF THE)
MODIFICATION OF CHAPTER 5 OF)
THE MANAGEMENT PLAN FOR THE)
PRESCOTT ACTIVE MANAGEMENT)
AREA FOR THE THIRD)
MANAGEMENT PERIOD FOR THE)
PURPOSE OF ADDING A MODIFIED)
NON-PER CAPITA CONSERVATION)
PROGRAM)
_____)

ORIGINAL



THIRD MANAGEMENT PLAN MODIFICATION HEARING
PRESCOTT ACTIVE MANAGEMENT AREA

Prescott, Arizona
March 5, 2008
10:00 a.m.

PREPARED FOR:
AZ DEP. WATER RESOURCES
(Original)

PREPARED BY:
MS. TANIS EASTRIDGE-THORPE
Court Reporter

DRIVER AND NIX
COURT REPORTERS
3131 East Clarendon
Suite 108
Phoenix, Arizona 85016
(602) 266-6525

APPEARANCESNAMEAFFILIATION

MR. JOE SINGLETON

ADWR

MR. GORDON WAHL

ADWR

MR. ALAN DUBIEL

N/A

MR. DANIEL TIMMONS

TOWN OF CHINO VALLEY

MR. JOHN MUNDERLOH

TOWN OF PRESCOTT

BEFORE: MS. GERRY WILDEMAN, PRESCOTT AMA
ACTING AS HEARING OFFICER

Prescott, Arizona
March 4, 2008
10:00 a.m.

P R O C E E D I N G S

MS. GERRY WILDEMAN: This is the public hearing on the proposed modifications to the Third Management Plan for the Prescott AMA.

This is the time and place for the public hearing on proposed modifications to the Municipal Conservation Program of the Management Plan for the Prescott Active Management Area for the Third Management Period, 2000 to 2010.

My name is Gerry Wildeman. I am Area Director for the Prescott Active Management Area, and I will be the hearing officer at this hearing. With me is Joe Singleton, Assistant Area Director for the Pinal Area Management Area. Joe has been involved in the development of the proposed modifications, and he will give a brief description of the modifications after my introductory remarks.

We have a court reporter here today to take down what is being said. It is important for speakers to please speak up so that the court reporter can accurately record your comments. If anyone has difficulty hearing me

1 or a speaker, please let me know.

2 If you haven't already done so, please sign the
3 sign-in sheet on the table near the entrance. There are
4 also speaker cards on the table. If you would like to
5 speak today, please fill out a speaker card.

6 Before turning things over to Joe to describe the
7 proposed modifications, I'd like to point out that the
8 modifications relate to the conservation requirements for
9 large municipal providers. The modifications do not
10 affect small municipal providers, which are providers that
11 serve less than 250 acre-feet of water per year for
12 municipal uses.

13 I'd like to next point out that the purpose of
14 this hearing is to receive oral or written comments on the
15 proposed modification. Only comments and evidence for or
16 against the proposed modifications will be accepted at
17 this hearing. No comments or evidence will be received
18 regarding any other issues relating to the Third
19 Management Plan. If anyone has any questions or comments
20 on issues or programs that are outside the scope of this
21 hearing, they may contact me after the hearing.

22 The hearing will be conducted in an informal
23 manner. As I mentioned in the beginning, a court reporter
24 is recording everything being said. A copy of the
25 transcript of the hearing will be available for review at

1 the Department's offices and will also be posted on the
2 Department's website when it is available.

3 At the conclusion of the hearing, I will be
4 accepting any written comments or documentary evidence
5 that anyone may wish to file with the Department regarding
6 the proposed modifications. The Department will also
7 accept written comments on the proposed modification until
8 5:00 p.m. today.

9 Written comments submitted after the hearing
10 should be submitted to the Department's docket supervisor,
11 Kathy Donoghue. Ms. Donoghue's fax number is
12 602-771-8683. Her e-mail address is
13 kadonoghue@azwater.gov. I will repeat the fax number and
14 e-mail address after the completion of oral comments.

15 I would now like to go over the process that will
16 be followed after the close of the hearing record, which
17 is today at 5 o'clock p.m. Within 30 days after the close
18 of the hearing record, the Director will make and file in
19 the Department a written summary and findings with respect
20 to the comments and evidence received prior to the close
21 of the record, including any written comments or evidence
22 received before 5 o'clock p.m. today.

23 If in the findings, the Director decides to adopt
24 the modifications, the Director will make and file in the
25 Department an order adopting the modifications with any

1 changes made in response to the comments and evidence
2 received before the close of the hearing record. Notice
3 of the order will be sent to all persons who signed the
4 attendance sheet today and to all persons who submitted
5 comments or evidence prior to the close of the record.

6 The Director will also publish a summary of the
7 modifications, findings and order of adoption once a week
8 for two consecutive weeks in a newspaper of general
9 circulation within the Prescott Active Management Area.
10 Any person may file a request for rehearing or review of
11 the order of adoption within 30 days after the second
12 publication of the notice. The last day for filing
13 requests for rehearing or review will be identified in
14 both the mailed and published notices of the order of
15 adoption. If no one files a timely request for rehearing
16 or review, the modifications adopted by the order of
17 adoption will become final.

18 If a timely request for rehearing or review is
19 filed, the Director will have 60 days after receiving the
20 request to issue a decision on the request. The Director
21 may grant a rehearing, grant review without a rehearing,
22 or deny the request. Following the Director's decision on
23 a request for rehearing or review, the Director will issue
24 a final order of adoption adopting the modifications with
25 any changes made in response to the request for rehearing

1 or review. Notice of the final order of adoption will be
2 published in a newspaper of general circulation within the
3 AMA once a week for two consecutive weeks. The
4 modification will become final upon the second
5 publication.

6 Regardless of whether anyone files a request for
7 rehearing or review, any person may seek judicial review
8 of the Director's decision to adopt the modifications as
9 provided in the Arizona Revised Statutes.
10 §45-114, subsection C.

11 Within 30 days after the modification has
12 become final, the Department will mail notice of the
13 modifications to all municipal providers that will be
14 affected by the modification. A provider that receives
15 the notice may request an administrative review of the new
16 requirements within 90 days after receiving the notice, as
17 provided in Arizona Revised Statute §45-575, subsection A.
18 If the provider demonstrates that it would be unreasonable
19 to require the provider to comply with the new requirement
20 because of the provider's unique circumstances, the
21 Director may modify the requirements.

22 A provider may also request additional time
23 to come into compliance with the new requirements by
24 filing a variance from the requirement within 90 days
25 after receiving the notice, as provided in Arizona Revised

1 Statute §35-574. The Director may allow the provider up
2 to five additional years to come into compliance with the
3 requirement if the provider demonstrates that compelling
4 economic circumstances preventing it from complying by the
5 date set forth in the requirement.

6 At the present time, the Department expects
7 the modifications to be final by the middle of this year.

8 I will now turn the hearing over to Joe
9 Singleton, who will describe to proposed modifications in
10 greater detail.

11 MR. JOE SINGLETON: Thanks, Gerry.

12 The Third Management Plan was adopted by the
13 Director of Water Resources in December of 1999. It
14 contains conservation requirements for agricultural,
15 municipal and industrial ground water users in the
16 Prescott AMA. The requirements became effective in 2002,
17 and will remain in effect until the Fourth Management Plan
18 is adopted and becomes effective some time after 2010.

19 The Third Management Plan currently requires
20 most large municipal providers, providers serving more
21 than 250 acre-feet of water per year for municipal uses to
22 be regulated under the total gallons per capita per day,
23 or total GPCD program. The total GPCD program limits the
24 total amount of water a large provider may deliver during
25 a year to a volume base on its service area population

1 and total GPCD requirement.

2 The plan also provides that a large
3 municipal provider regulated under the total GPCD program
4 may apply to be regulated under one of two alternative
5 programs. One of those programs is the Non-Per Capita
6 Conservation Program which requires a large provider to
7 implement specific conservation measures within its
8 service area and to comply with a stringent groundwater
9 cap.

10 But the provider is not required to comply
11 with the GPCD requirement. Last year, the Legislature
12 enacted into law Senate Bill 1557, which requires the
13 Director of Water Resources to modify the Non-Per Capita
14 Conservation Program so that it requires a large municipal
15 provider regulated under the program implement a public
16 education program, a metering program and one or more
17 additional water conversation measures to be selected in a
18 list of measures adopted in the plan.

19 The Director is required to design the
20 modified Non-Per Capita Conservation Program to achieve
21 water use efficiency in the service areas of municipal
22 providers regulated under the program equivalent to the
23 water use efficiency assumed by the Director in
24 establishing the total GPCD requirement for those
25 providers. The legislation requires all large municipal

1 water providers that are not designate as having an
2 assured water supply and that cannot qualify as a large
3 untreated water provider to submit a provider profile to
4 the director by July 1st, 2009, and to be regulated under
5 the modified Non-Per Capita Conservation Program,
6 beginning January 1, 2010, or the date that the Director
7 approves the provider's profile, whichever is later.

8 The large municipal providers designated as
9 having an assured water supply are not required to be
10 regulated under the modified Non-Per Capita Conservation
11 Program. Those providers will continue to be regulated
12 under the conservation program they were regulated under
13 as of January 1st, 2008. But they may elect to be
14 regulated under the modified Non-Per Capita Conservation
15 Program if they wish to be regulated under that program.

16 The proposed modifications promulgated by
17 the Director are for the purpose of implementing Senate
18 Bill 1557. These modifications seek to change the
19 Municipal Conservation Program chapter to include a
20 modified Non-Per Capita Conservation Program for large
21 municipal providers.

22 The modified Non-Per Capita Conservation
23 Program was developed in concert with stakeholders after
24 an extensive public process. The chapter will also be
25 amended to require all large municipal water providers

1 without a designation of assured water supply except those
2 regulated as large untreated providers to be regulated
3 under the modified Non-Per Capita Conservation Program.

4 Providers regulated under the Institutional
5 Provider Program will also be allowed to continue to be
6 regulated under the existing provisions of that program.

7 Providers with a designation of assured
8 water supply will be able to choose between the current
9 regulatory structure and the new program. The modified
10 Non-Per Capita Conservation Program is a performance-based
11 program. Program requirements call for the submittal of
12 the provider profile and the Annual Conservation Efforts
13 Report, the provider's current water rate structure, and
14 implementing a public water conservation education
15 program.

16 The program also requires a provider to
17 implement an additional number of measures based on the
18 number of service connections in the system from a list of
19 measures that is included within the program.

20 Systems with up to 5,000 connections must
21 implement at least one additional measure. Those with
22 5,001 to 30,000 connections must implement five additional
23 measures, while those systems with more than 30,000
24 connections must implement at least ten measures in
25 addition to the public education program.

1 For existing large municipal water providers
2 that are already implementing one or more water
3 conservation practices that are on the list of water
4 conservation measures, those measures will count towards
5 the total minimum program requirements.

6 The provider profile must describe the water
7 use patterns and the characteristics of the provider's
8 service area. Additionally, the profile must contain a
9 description of what conservation measures are being
10 implemented, what additional measures, if any, will be
11 implemented to comply with the program requirements and an
12 explanation as to how those water conservation measures
13 are relevant to the provider's existing service area
14 characteristics for water use patterns.

15 ADWR will review and approve the provider
16 profiles. The Annual Conservation Efforts Report will
17 contain a description of conservation measures implemented
18 during the year and an assessment of the outcome of
19 implementing those measures. The report must also detail
20 any additional measures that were substituted for previous
21 measures during the year and an explanation on how the new
22 measures are relevant to the service area characteristics
23 for water use patterns of the service area. The report
24 must also include a plan for implementing conservation
25 measures that the provider is using for the current year.

1 MS. GERRY WILDEMAN: Thank you, Joe. I will now
2 call the names of persons who filled out speaker cards.
3 If you wish to speak and have not filled out a speaker
4 card, please fill one of them out. They are on the table
5 near the entrance.

6 When I call your name, state your name,
7 identifying the person or entity that you represent and
8 then give your comments.

9 So the first name is John Munderloh.

10 MR. JOHN MUNDERLOH: Do I have to restate my
11 name? Okay. I'm John Munderloh.

12 MS. GERRY WILDEMAN: I had to read mine.

13 MR. JOHN MUNDERLOH: My name is John Munderloh.
14 I represent the Town of Prescott Valley. We have two
15 service areas that are reflected by the new legislation.
16 Hopefully those will be combined into one soon; just so
17 you all know. I don't know if that's necessary for the
18 record.

19 And then, we are having to figure out what we do
20 with you guys to turn that into one.

21 But I did have a number of comments prepared,
22 comments in letter form addressed to Kathleen Donoghue.
23 Some of the comments I had were carry overs from comments
24 voiced by the Prescott AMA Ground Water Users Advisory
25 Counsel, but not all of them. Basically I have four

1 comments.

2 The most significant change caused by Senate Bill
3 1557 results in removing the requirement that a municipal
4 provider regulated under the new -- I guess modified
5 Non-Per Capita Conservation Program limit its ground water
6 use to specified unit volume; however, ARS §45-566.01(D)
7 contains language that could alter that interpretation.
8 And although I think it's relatively clear within the
9 language, within the modified TNP Chapter 5, I just wanted
10 to make sure this was part of the record.

11 The Town suggests that ADWR clearly state that
12 the point of compliance is the number of conservation
13 programs implemented and not the specified unit volume
14 water use.

15 Okay. Want me to keep going? Or are there
16 questions?

17 Okay. The other three comments relate more
18 specifically to Appendix 5H, which are the conservation
19 programs listed by ADWR. So Appendix 5H, Section 3,
20 contains a provision whereby the regulated community can
21 petition ADWR to add water conservation measures to the
22 already established list; however, there is no language in
23 there allowing for modifications or deletions of
24 conservation programs from that list. Since some of those
25 programs suggested are not necessarily scientifically

1 proven to conserve water or may not be appropriate for
2 water conservation in all areas, the Town suggests that
3 ADWR allow modifications or deletions as well as additions
4 to the list.

5 Comment number three, in Senate Bill 1557, the
6 Legislature modified ARS §45-566.01(C)(1), specifically to
7 encourage the use of inverted or tiered water rate
8 structures. The conservation measures in Appendix 5H do
9 not list water rate structures as a conservation measure.
10 It seems that the Legislature was specifically interested
11 in water rate structures as a measure, and the Town
12 suggests that water rate structures be added to the list
13 of water conservation measures allowable.

14 Just to be clear, that citation I read from the
15 statute, that was from 1557.

16 Finally, in Appendix 5H, Category 1, the
17 subcategory is entitled Market Surveys to Identify
18 Information Needs/Assess Success or Messages. The Town
19 believes that should be expanded to allow market surveys
20 to identify the whole gamut of water conservation programs
21 that may be most needed or most acceptable on the surface
22 area. In other words, the market survey is too narrowly
23 focused on information needs and doesn't focus on or does
24 not allow inclusions of, say, technology needs or water
25 marketing ideas or anything like that. So the Town

1 suggests that that be expanded.

2 Again, this kind of goes back to comment number
3 two, whereby you can allow modifications or deletions.
4 Currently there is no provision for that, as I already
5 said.

6 Then, also, based on that same program, if DWR
7 does expand the focus of the allowable survey, ADWR should
8 also expand the allowable conservation program so that it
9 can be expanded based on that survey. Right now, it only
10 allows categories one through two from the list of
11 conservation measures to be implemented. And that should
12 be expanded to categories one through seven.

13 That's the limit of my comments at this time.

14 MS. GERRY WILDEMAN: Thank you, John.

15 The next name is Daniel Timmons.

16 MR. DANIEL TIMMONS: My name is Daniel Timmons
17 and I have no additional comments at this time. I just
18 put my name on there just in case.

19 MS. GERRY WILDEMAN: And if you want to note,
20 Daniel is from the Town of Chino Valley.

21 Is there anyone else who would like to speak?

22 Let the record reflect that no one else wishes to
23 speak.

24 Then I have to go into the written. Is there
25 anyone here that wishes to submit any written comments or

1 evidence that they have brought with them?

2 MR. JOHN MUNDERLOH: I do.

3 MS. GERRY WILDEMAN: Let the record show that a
4 letter was written from John Munderloh, Town of Prescott
5 Valley, to Kathy Donoghue.

6 As I mentioned earlier, written comments on the
7 proposed rules may be submitted until 5 o'clock p.m.
8 today. If you would like to submit written comments after
9 the hearing, please fax or e-mail them to Kathy Donoghue,
10 the Department's docket supervisor. Ms. Donoghue's fax
11 number is 602-771-8683. And her e-mail address is
12 kadonoghue@azwater.gov.

13 This public hearing is now adjourned. Thank you
14 all for attending.

15 (10:21 a.m.)

16

17

18

19

20

21

22

23

24

25

1 STATE OF ARIZONA.)
2) ss.
3 COUNTY OF YAVAPAI)
4
5
6

7 I HEREBY CERTIFY that the foregoing was
8 taken before me, TANIS EASTRIDGE; that all proceedings had
9 upon the taking of said hearing were recorded and taken
10 down by me on a steno machine as backup and thereafter
11 reduced to writing by me; and that the foregoing 18 pages
12 contain a full, true, and correct transcript of said
13 record, all done to the best of my skill and ability.
14

15 WITNESS my hand this 15th day
16 of March, 2008.
17
18

19 
20 TANIS EASTRIDGE-THORPE
21 Court Reporter
22
23
24
25