



City Council Report

Date: January 8, 2009
To: City Council
Through: Jack Friedline, Deputy City Manager
From: Kathryn Sorensen
Subject: Resolution of White Mountain Apache Tribe Water Rights
Citywide

Purpose and Recommendation

This report documents for the Council the major points of the proposed White Mountain Apache Tribe Water Rights Quantification Agreement.

It is recommended that the Council approve the settlement and authorize the City Manager to sign the Quantification Agreement documents.

Background

Conflict and litigation regarding the legal and physical access to water from the Salt River watershed has been ongoing for decades. Historically, the United States on behalf of the White Mountain Apache Tribe (Tribe) filed Statements of Claim to between 160,000 and 175,000 acre feet of water in the General Stream Adjudication. After years of negotiations, numerous parties have reached a settlement.

Discussion

Parties to the settlement include the United States, the State of Arizona, the White Mountain Apache Tribe, the Salt River Project, the Roosevelt Water Conservation District, Arizona Water Company, the Cities of Mesa, Phoenix, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria, and Show Low, the Town of Gilbert, the Buckeye Irrigation Company, the Buckeye Water Conservation District, and the Central Arizona Water Conservation District. The parties have worked diligently to draft a Quantification Agreement.

Through the settlement the Tribe will receive a water budget of approximately 52,000 acre-feet per year, resources to construct a dam near Whiteriver to provide a municipal water supply for the Tribe's capital, resources to construct an irrigation project near Canyon Day, and other considerations. In exchange, the White Mountain Apache Tribe will waive claims to water that, if fulfilled by the adjudication court, could have jeopardized other parties' use of their own water resources. The Tribe's water budget includes approximately 27,000 acre-feet per year of surface and groundwater supplies, and 25,000 acre-feet per year of Central Arizona Project ("CAP") water that will in turn be leased to local cities.

Mesa will lease from the Tribe 866 acre-feet per year of high priority CAP water and

2,706 acre-feet per year of lower priority CAP water. Both forms of water are extremely valuable. The 866 acre-feet per year of high priority water will be available to Mesa for 100 years and will be leased at a one-time cost of \$2,550 per acre-foot in 2008 dollars, or a total of \$2,208,300. This water comes at a priority equivalent to the Municipal and Industrial priority CAP water, which is the last category of water in the CAP system to be cut during times of shortage on the Colorado River.

The 2,706 acre-feet of lower priority CAP water will also be available to Mesa for 100 years, but due to its lower priority will be leased at a one-time cost of \$2,075 per acre-foot in 2008 dollars, or a total of \$5,614,950. This water comes at a priority equivalent to agricultural priority CAP water, which is the second-last category of water in the CAP system to be cut during times of shortage on the Colorado River. Payments for the leased water will not take place until the federal legislation that enables the settlement passes both houses and is signed by the President. The price of the leased water will be adjusted for inflation at that time.

Mesa and the other parties will also receive from the Tribe permanent waivers to claims for past, present, and future water rights. This means that the Tribe will have claims to the 52,000 acre-feet of water outlined in the settlement agreement, and nothing more from the Salt River watershed. This arrangement is one of the main benefits of the settlement in that it provides certainty regarding the amount of Salt River water that will be available to the Tribe and to Mesa in the future. The Tribe will also waive claims for injury to its water rights from water use by Mesa that is not in violation of the settlement agreement. In other words, so long as Mesa abides by the terms of the agreement, it can expect not to be sued by the Tribe over water rights in the future.

The full Quantification Agreement including all of the exhibits is available in the office of Kathryn Sorensen at extension 2947 and at the offices of the City Attorney.

Alternatives

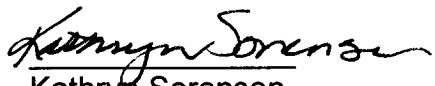
The City of Mesa could refuse to approve the settlement agreement, but then would forego the many benefits of the agreement, including the Tribe's waiver of claims against Mesa and lease of 3,572 acre-feet per year of CAP water. In the event that there is no settlement, the City would also likely face potentially significant future litigation in the General Stream Adjudication regarding the claims of the Tribe to waters of the Salt and Verde Rivers.

Fiscal Impact

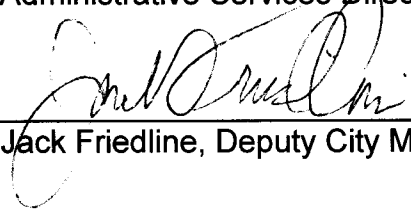
There is no cost to Mesa to approve the settlement per se, but through the settlement Mesa expects to lease 3,572 acre-feet per year of CAP water at a total cost of \$7,823,250 in 2008 dollars. As the timing of passage of the federal enabling legislation is uncertain, it is not yet known when Mesa will need to make its payment to the Tribe for the leased water. However, bond counsel has indicated that bond funds can be utilized for the acquisition of the water, and staff is carefully reserving the money in the existing bond authorization so that Mesa can be ready to pay the bill for the water when due.

Coordinated With

The City Attorney's Office participated extensively in the negotiations and drafting of the Quantification Agreement, and has reviewed it as to form and as to the City's authority to do so.



Kathryn Sorensen
Administrative Services Director



Jack Friedline, Deputy City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION AGREEMENT AND EXHIBITS THERETO.

WHEREAS, the City of Mesa ("City") is a claimant of water rights in the General Stream Adjudication of All Rights to Use Water in the Gila River and Source in Maricopa County Superior Court ("Adjudication") wherein the United States has asserted claims on behalf of the White Mountain Apache Tribe ("Tribe") to substantial water rights; and

WHEREAS, recognizing that final resolution of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and impair the long term economic well-being of the parties, the Tribe, the City and the other named parties have agreed to permanently settle the claims of the Tribe as provided in the White Mountain Apache Tribe Water Rights Quantification Agreement; and

WHEREAS, the best interests of the City will be served by entering in the approving and entering into the White Mountain Apache Tribe Water Rights Quantification Agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mesa, Maricopa County Arizona, as follows:

Section 1: The City Council hereby approves the White Mountain Apache Tribe Water Rights Quantification Agreement Among the United States of America; the State of Arizona; the White Mountain Apache Tribe; the Salt River Project Agricultural Improvement and Power District; the Salt River Valley Water Users' Association; the Roosevelt Irrigation District; the Roosevelt Water Conservation District; Arizona Water Company; the Arizona Cities of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria and Show Low, the Arizona town of Gilbert; Buckeye Irrigation Company; the Buckeye Water Conservation and Drainage District; Central Arizona Water Conservation District; and the Central Arizona Water Conservation District. The White Mountain Apache Tribe Water Rights Quantification Agreement and the Exhibits thereto is on file at the City Attorney's Office or at such location as is directed by the City Attorney's Office.

Section 2: That the City Manager or his designated representative is hereby authorized on behalf of the City to execute the White Mountain Apache Tribe Water Rights Quantification Agreement and the Exhibits thereto, including but not limited to, the Lease Agreement for CAP Water Among the City of Mesa, the White Mountain Apache Tribe, and the United States, and the Waivers and Release of Claims for Injury to Water Rights by Parties other than WMAT and the United States.

Section 3: The City Manager or his designated representative is authorized to approve and execute the documents with such minor revisions or non-substantive amendments as are necessary and appropriate and approved as to form by the City Attorney or her designated representative. Execution by the City Manager or his designated representative shall constitute conclusive evidence of this City Council's approval thereof, and the City Clerk is authorized and directed to approve attest to the signature of the City Manager or his designee thereon.

Section 4: That the various City officers and employees be and hereby are authorized and directed to perform all acts necessary to give effect to this Resolution, the White Mountain Apache Tribe Water Rights Quantification Agreement and Exhibits thereto.

PASSED AND ADOPTED by the City Council of the City of Mesa, Arizona, this _____ day of _____, 2009.

APPROVED:

MAYOR

ATTEST:

CITY CLERK