United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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MAR 16 2012

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Mr. Thomas Buschatzke, Assistant Director
Arizona Department of Water Resources
3550 North Central Avenue, Floor 2
Phoenix, Arizona 85012

Subject: Designation of Adequate Water Supply (File No. 40-700705, Pueblo del Sol Water Company) and Water Report (File No. 53-700704, The Oaks)

Dear Mr. Buschatzke:

The Bureau of Land Management (BLM) in accordance with A.R.S. § 45-101 et seq. and A.A.C. R12-15-701 et seq. objects to the issuance of a Designation of Adequate Water Supply (File No. 40-700705) and Water Report (File No. 53-700704) on the basis that a sufficient water supply is not legally available and, therefore; may also not be physically nor continuously available for the 100-year period.

The water supply is not legally available for the 100-year period for the following reasons:

1. San Pedro Riparian National Conservation Area, Pub. L. 100-696 (1988) - This area was created by Congress along with an expressed reserved water right for the purposes of the reservation. The expressed Federal reserved water right created by Congress is senior to all junior water users who initiate uses after the date of the establishment of the reservation.
2. Federal water rights are entitled to a form of protection that is broader than what may be provided to similarly-situated State law right holders, and that unique protection has a direct relation to the addition of new groundwater uses in this geographic area. Cappaert v. United States, 426 U.S. 128 (1976) sets forth the standards to be employed when there is a conflict between the pumping of groundwater and a Federal reserved water right. As provided in Cappaert, the senior Federal reserved water right holder would have an enforcement action against junior water right holders and/or pumpers whose uses adversely affect the senior entitlement.

3. Gila River Adjudication (In regard to the San Pedro Riparian National Conservation Area, Contested Case No. W1-11-232) - An ongoing judicial proceeding to determine the extent and priority of all water rights in an entire river system, meaning all water appropriable by law and all water subject to claims based upon Federal law. The Arizona Superior Court is yet to issue decrees determining the water rights in the San Pedro watershed. Both State law-based and Federal reserved water rights will be adjudicated. The adjudications are conducted pursuant to Arizona Revised Statutes Sections 45-251 to 45-264. The issuance of a Designation of Adequate Water Supply (File No. 40-700705) and Water Report (File No. 53-700704) should be withheld pending completion of the Gila River Adjudication (In regard to the San Pedro Riparian National Conservation Area, Contested Case No. W1-11-232).

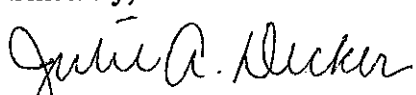
4. The Defense Authorization Act of 2004, Public Law 108-136, Sect. 321 - Required an Annual Report on the water use management and conservation measures that have been implemented and are needed to restore and maintain the sustainable yield of the regional aquifer by and after September 30, 2011.

   The 2007 report submitted to Congress indicated a 5,200 acre-feet annual reduction in stored aquifer water. The overall situation in the regional aquifer of the Sierra Vista Subwatershed today is not improving; rather, it continues to get worse at a rate slower than in 2002 (The beginning of Section 321 monitoring.). Although the annual overdraft of the aquifer has been greatly reduced from the 13,500 acre-feet originally anticipated for 2010 to 4,500 acre-feet today, this is still another 4,500 acre-feet of water that has been removed from storage in addition to the 60,600 acre-feet removed since 2002, and the hundreds of thousands of acre-feet that have been removed from storage since groundwater pumping commenced in earnest in the first half of the 20th century. Until the aquifer begins to accrete storage (the annual water budget bottom line becomes greater than zero) there will be no reduction in the cumulative deficit, and until additional management measures are undertaken, it is unlikely that there will be further progress made toward this goal.

5. Pumping in the Upper San Pedro Basin continues to have a significant indirect impact on San Pedro River flows. The number of unmetered, unregulated, private exempt wells within the Upper San Pedro Basin has more than doubled since 1980 further contributing to reduced surface flows and declining groundwater levels throughout most of the basin. As of 2009, there are 8,578 wells approved for the Upper San Pedro Basin. Of this total, 4,939 wells were approved before 1990 meaning that the remaining 3,639 wells were approved after 1990. This represents a 74 percent increase in the number of wells since 1990.

Should you have any questions or would like additional information, please contact Bill Wells, Hydrologist, at 602-417-9413 or email wewells@blm.gov.

Sincerely,



Julie A. Decker
Deputy State Director
Resources Division