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### Effluent: Making Use of a Valuable Resource in Arizona

Kathleen Ferris

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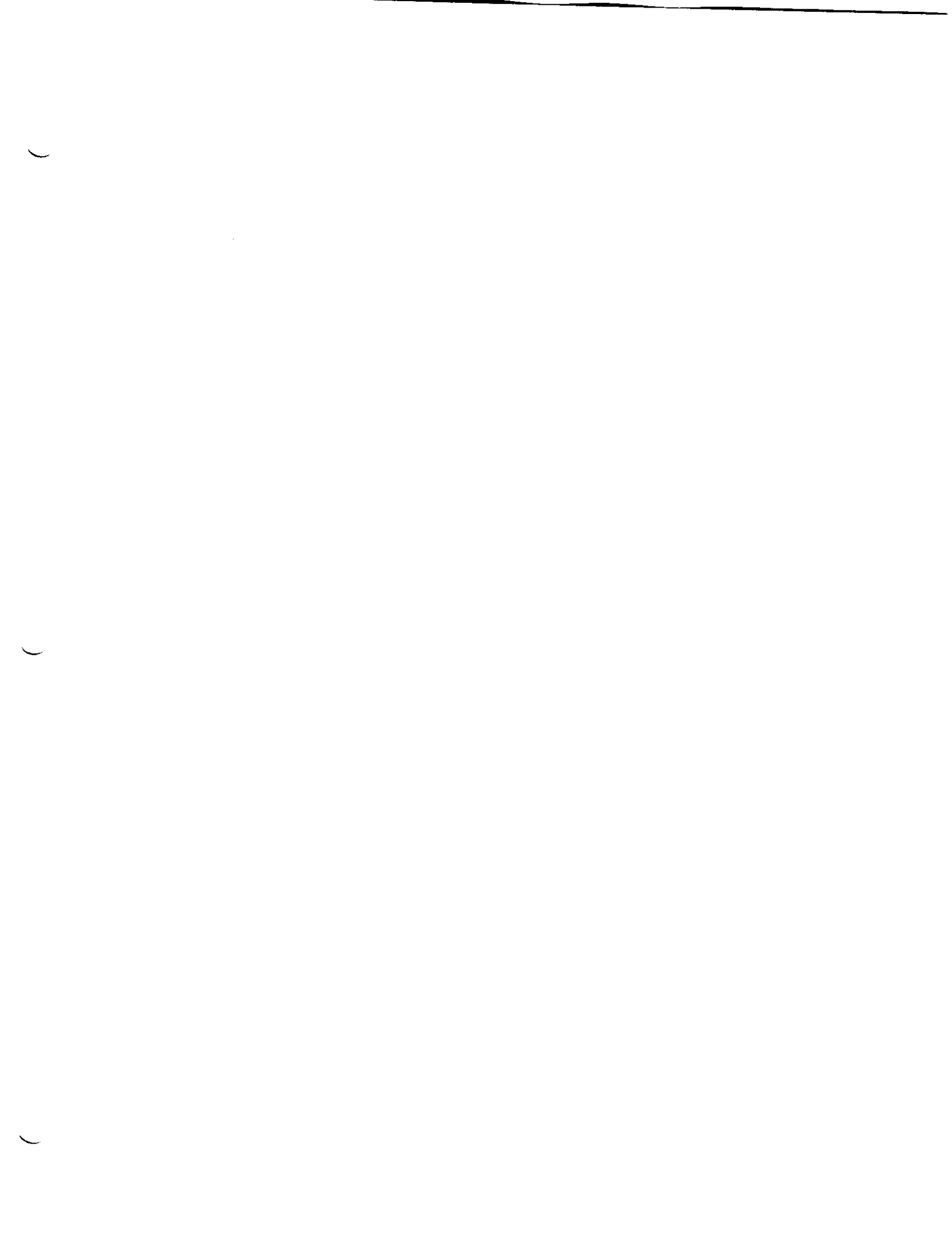
**EFFLUENT: MAKING USE OF A VALUABLE RESOURCE IN ARIZONA**

Kathleen Ferris  
Bryan, Cave, McPheeters & McRoberts  
Phoenix, Arizona

**WATER QUALITY CONTROL:  
INTEGRATING BENEFICIAL USE & ENVIRONMENTAL PROTECTION**

Ninth Annual Summer Program  
Natural Resources Law Center  
University of Colorado  
School of Law

June 1-3, 1988



EFFLUENT: MAKING USE OF A VALUABLE RESOURCE IN ARIZONA  
Kathleen Ferris

I. Introduction

A. Summary

Arizona is a water-short state. In many areas demand for water far exceeds the dependable supply. As a result, water users have mined groundwater at alarming rates to meet new and expanded demands. Recognizing that groundwater mining could not go unabated, in 1980 Arizona enacted a revolutionary groundwater management code designed to reduce Arizona's reliance on groundwater. In order to meet the goals of the Code, Arizona must use all of its water resources - including effluent - wisely. The Arizona Department of Water Resources currently estimates that by 2025 between 600,000 and 700,000 acre feet of effluent will be generated annually in the State's most heavily populated areas. Ideally, this effluent should be used in place of groundwater. Unfortunately, there are currently many obstacles to full use of effluent.

This outline addresses the major obstacles to using effluent. It discusses current litigation over the legal character of effluent and explores the potential consequences of alternative decisions in this litigation. It also addresses other obstacles to effluent use and suggests some possible solutions to these obstacles.

B. General References

1. Ariz. Rev. Stat. Ann.:
  - a. Sections 45-401 through 45-655 (Arizona Groundwater Code)
  - b. Sections 45-131 through 45-139.02 (Use of Water in Manmade Lakes and Lagoons)
  - c. Sections 45-801 through 45-819 (Underground Water Storage)
2. A Tumbling T Ranches v. City of Phoenix, No. C 473318 and No. C 505023 (consolidated) (Super. Ct. of Ariz. Oct. 2, 1985) (Minute Order)

3. A.C.R.R. 9-20-401 through 9-20-406 (Arizona Rules for Reuse of Wastewater)
4. Arizona Department of Water Resources, Draft Management Plan, Second Management Period: 1990 - 2000, Phoenix Active Management Area (February, 1988)

## II. Background

### A. Management of a Scarce Water Supply

1. Arizona's major water problem is an imbalance between the water we consume and our dependable supply. Averaging less than ten inches of rainfall per year, Arizona relies on groundwater for over sixty percent of its water supply. To keep pace with expanding water uses Arizonans annually consume approximately 2 million acre feet more groundwater than is replenished by nature. This is enough water to meet the yearly needs of over 10 million people.
2. After nearly fifty years of inaction, in 1980 the Arizona Legislature enacted a new Groundwater Code designed to reduce the State's reliance on groundwater. (A.R.S. §§45-401 through 45-655) The primary goal of the Code is to halt by the year 2025 the mining of groundwater in areas of the State where the overdraft is most severe. These areas known as Active Management Areas or

AMAs contain eighty percent of the State's population. To reduce groundwater withdrawals the Code requires the Department of Water Resources to adopt a series of five management plans for each AMA. (A.R.S. §§45-563 through 45-568) The plans include mandatory conservation requirements for all water users which will become more stringent over time.

3. Beginning with the second management period (1990 - 2000), the Department must include a program for augmentation of the water supplies of the AMA. (A.R.S. §45-565) The Department has recently released draft management plans for the second management period. The plan for the Phoenix AMA points out:

As the population of the Phoenix Active Management Area (AMA) grows, reclaimed water will become an increasingly important resource. Using reclaimed water to the fullest extent possible will help to assure safe-yield by the year 2025 . . . Effluent is the only increasing water source within the AMA yet it is currently significantly underutilized. It is therefore critical to address and develop this resource within the early years of the second management period. (pp. 329 - 330)

B. Legal Character of Effluent

1. Several years ago several major cities in the Phoenix area contracted to sell to the owners of the Palo Verde Nuclear Power Plant, then being constructed west of Phoenix, effluent to be used for cooling purposes at the Plant. In 1983, a Phoenix homebuilder, John F. Long, filed lawsuits in state and federal court against the cities and the participants in the Nuclear Plant alleging the contracts were void. Water users downstream from the wastewater treatment plant owned by the cities also filed a lawsuit attacking the validity of the contracts. The participants in the Nuclear Plant countered the lawsuits by filing a declaratory judgment action in state court against the downstream users and John Long. The cities were joined as indispensable parties and the participants' lawsuit was consolidated with the one previously filed by the downstream users.
2. The downstream users then filed a Motion for Summary Judgment alleging that effluent is subject to regulation either as surface water or groundwater depending on its



original source. John F. Long and the Department, which filed an amicus brief, essentially agreed with the downstream users. The Nuclear Plant participants and the cities, however, argued that effluent is neither groundwater nor surface water, but private property which the cities may use or dispose of as they see fit.

3. After extensive briefing and oral argument, the court issued a comprehensive minute order ruling that "The effluent which is the subject of the sales contracts between the cities and the utilities in this case is not subject to regulation under the surface water or groundwater laws of the State of Arizona." A Tumbling T Ranches v. City of Phoenix, No. C 473318 and No. C 505023 (consolidated) (Minute Order at p. 19) Perhaps indicating some sympathy to the goals of sound water management, the court stated that "A comprehensive plan to further the goal of using effluent as one element in the total water resources of the State could prove to be a valuable tool in Arizona's never-ending battle to provide adequate water to its citizens." (Minute Order at p. 18) However, the court

concluded "Such a plan or regulation is solely a legislative function."

4. Several parties to the lawsuit appealed the Superior Court's decision to the Arizona Court of Appeals. At the request of one of the parties, the Arizona Supreme Court accepted jurisdiction of the case. In 1987, the Supreme Court held oral arguments. Ten months later three members of the Court recused themselves from ruling in the case. The Court again held oral arguments in February of this year, but has yet to issue a decision.

### III. Implications of the Legal Character of Effluent

#### A. Effluent as Surface Water or Groundwater

1. The consequences of a ruling that effluent is surface water or groundwater and therefore subject to regulation under the state's water laws, are not altogether clear.
  - a. The downstream users claim that the cities are required to return the effluent to the riverbed so that it will be available for their use under appropriable water rights.

- b. John F. Long argues that the cities are prohibited from returning the effluent to the riverbed, but must, instead, make a beneficial use of the effluent.
  - c. The Department of Water Resources contends that the cities may and, if possible, should reuse effluent in a beneficial manner. However, the Department further argues that, notwithstanding the original source of the water, if the cities discharge the effluent into a natural channel it will become surface water and if the effluent is allowed to percolate underground it will become groundwater.
2. Without further elaboration, a court ruling that effluent is groundwater or surface water will raise many additional questions. For example:
- a. Under the Groundwater Code there are several different rights and permits to withdraw groundwater, each with its own restrictions on use of the groundwater once withdrawn. If effluent that was originally groundwater may be used only

- as the groundwater could have been used, what do the cities do with any excess effluent that cannot be so used?
- b. The right of a city to withdraw groundwater is known as a "service area right." (A.R.S. §45-492) This right allows a city to withdraw groundwater only for the benefit of landowners and residents within the city's service area. If effluent that was originally groundwater withdrawn pursuant to a service area right may be used only within the city's service area, the city may not sell the effluent to farmers for use on their crops or to industrial users located outside the city's service area. If the city cannot find a buyer for the effluent within its service area or cannot use the effluent directly, such as on city parks and golf courses, is it required to recharge the effluent back to the groundwater table?
- c. If effluent that was originally surface water retains its character as

surface water and no uses for which the surface water could have been used can be found, the city may be required to discharge the effluent into the river or stream from which the water was originally diverted. This may pose serious problems for a city operating a sewage treatment plant far away from the river or stream.

d. Additionally, if effluent was originally surface water, a city may not legally be able to store underground effluent that is unable to put to beneficial use at the present time.

B. Effluent as Private Property

1. A ruling by the Arizona Supreme Court that effluent is not subject to the surface water and groundwater laws of the State poses fewer obstacles to effluent use, but may pose obstacles to sound water management. Arizona water law restricts the type and place of use of water withdrawn or diverted pursuant to a water right or permit and, in some cases, limits

the quantity of water that may be used for particular purposes. If effluent is private property, these restrictions and limitations would not apply. A city might sell its effluent for uses outside of the AMA. Additionally, a city might allow effluent to be used in excessive amounts and for purposes which are less beneficial.

2. If effluent is not regulated as a water resource, it is available to anyone with the resources to purchase it. As the downstream users fear, the result will be decreased protection for long-standing rights to use water.

C. Need for Legislative Action.

Whether the Arizona Supreme Court holds that effluent is groundwater or surface water or private property, the ruling will likely raise as many issues as it solves. Without legislative action years of additional litigation will ensue and the ability of cities and other water users to make full use of effluent will continue to be unclear. Only the Legislature can balance the needs of all concerns and develop a comprehensive approach.

#### IV. Other Obstacles to Reuse of Effluent

##### A. Cost

1. Probably the biggest obstacle to full use of effluent is cost. Higher costs reduce the incentive to use effluent in place of inexpensive groundwater. The costs include treating wastewater and, in many cases, constructing a system to distribute the effluent produced. Distribution costs are exacerbated by the fact that most of the large wastewater treatment plants in Arizona are located downstream from the major potential users of effluent.
2. Recognizing the absolute need to put effluent to full use, Arizona is developing solutions to the problem of cost.
  - a. One solution is government regulation. The City of Tucson, for example, has adopted a policy that, in order to obtain water service from the City, any new golf course must agree to convert to effluent within two years. Failure of a golf course to convert to effluent within two years, may result in higher water rates and fines. In a similar

vein, the State of Arizona last year passed legislation banning the use of fresh water in artificial development lakes. (A.R.S. §§ 45-131 through 45-139.02) Known as the Lakes Bill, the legislation was enacted primarily to prohibit the wasteful practice in AMAs of evaporating groundwater in decorative lakes and lagoons. However, the legislation provides that new lakes and lagoons may be filled with effluent. Thus, a secondary benefit of the bill is to encourage the use of effluent in place of groundwater.

- b. Another solution to the cost of distributing effluent is on-site wastewater treatment plants. These plants treat wastewater generated at the site for use on or in proximity to the site. However, on-site plants are expensive to construct and still face some opposition from people who do not want treatment plants in their neighborhoods.
- c. A third solution to the problem of distribution of effluent is underground



storage of effluent. In 1986, Arizona enacted a comprehensive law regulating the underground storage of water. (A.R.S. §§ 45-801 through 45-819) Under this law it is possible for an entity to receive a permit from the Arizona Department of Water Resources to store underground water that the entity cannot presently use directly. The Department of Water Resources, is proposing to give cities an added incentive to store effluent underground by allowing a city to store effluent in one area and withdraw groundwater in another area if the long-term average annual rate of decline at the recovery site is less than four feet in the Phoenix AMA and three feet in the Tucson AMA. (Proposed Plans, Second Management Period)

4. While the costs of using effluent are higher than the costs of groundwater at the present time, effluent is a dependable supply. As a result, water users may be willing to incur greater expense for the certainty of a firm water supply.

## B. Quality

1. Another major obstacle to full use of effluent is quality. No entity in Arizona is yet treating wastewater sufficiently to introduce it directly into a potable water supply system. As a result, use of effluent is limited to irrigation and industrial purposes.
2. One possible solution is to treat effluent to potable standards. The City of Phoenix has recently hired a consultant to conduct a study on the feasibility of treating wastewater for direct introduction into the City's potable water system. Assuming the study is favorable, the City would then construct a demonstration project and conduct simultaneously a public involvement program aimed at gaining public acceptance. By the year 2000, the City's water management plan calls for putting 20,000 acre feet of treated effluent annually into the City's potable water system.
3. Another possible solution to the quality problem is artificial groundwater recharge of effluent. Recharge allows the possibility of indirect potable use of

effluent. The wastewater is treated before discharge, then further filtered and cleansed by percolating through the soil. Additionally, once it reaches the groundwater table the effluent blends with and becomes diluted by the groundwater.

C. Wastewater Reuse Rules

1. A fourth obstacle to effluent use is regulation by the Arizona Department of Environmental Quality pursuant to wastewater reuse rules originally adopted by the Arizona Department of Health Services. (A.C.C.R. 9-20-401 through 9-20-406) The rules specify quality standards and requirements for specific types of uses and require a permit from the Department for wastewater reuse. The rules are intended to protect public health and safety. Unfortunately, some practitioners think the rules are outdated and discourage rather than encourage effluent use.
2. A wastewater reuse advisory committee is currently studying the rules to determine what changes to the rules are advisable to

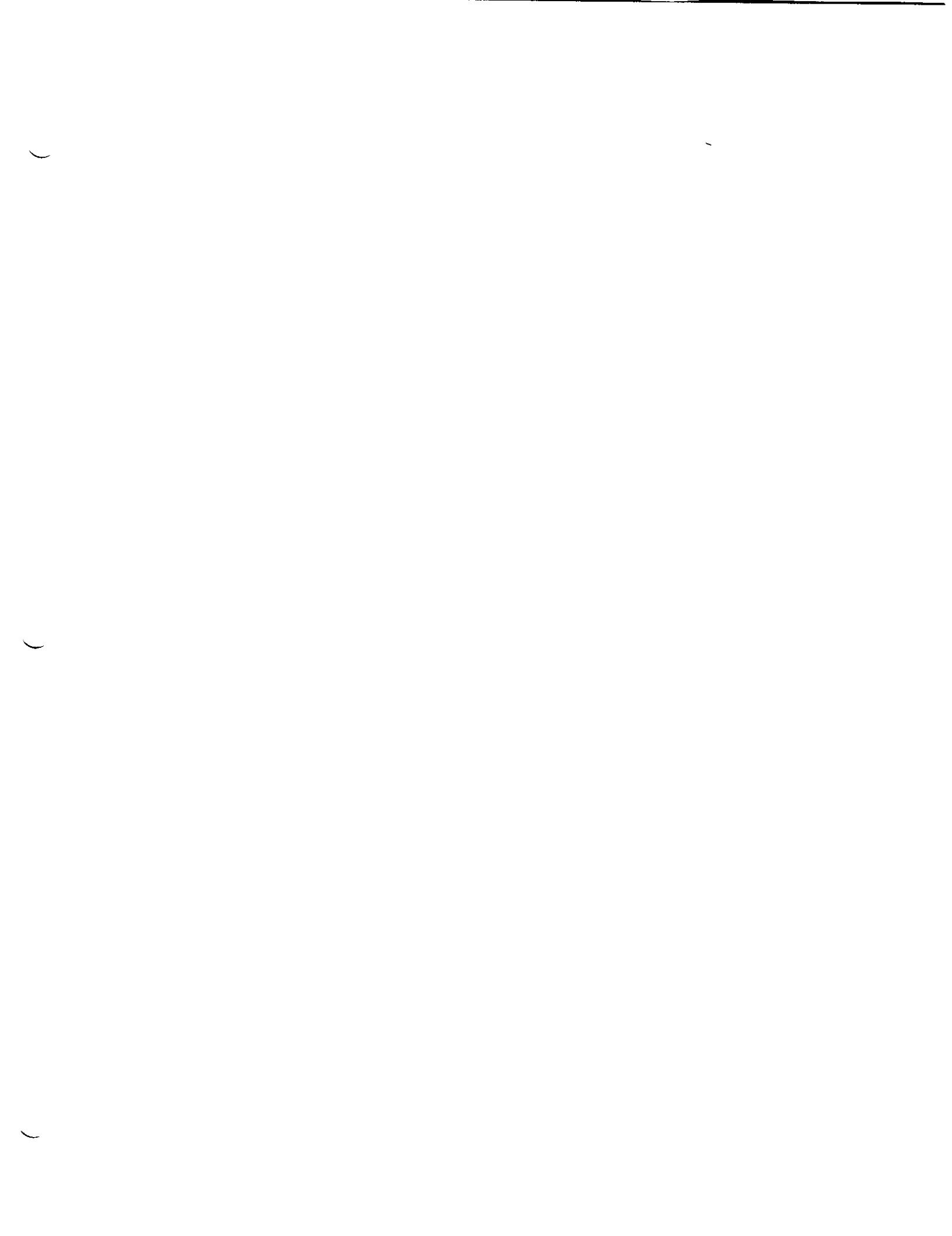
encourage reuse of effluent and at the same time protect the public health and the environment.

D. Exchanges

1. A further obstacle to full use of effluent is the fact that under Arizona law it is unclear whether a person with a right to use one source of water may exchange that water with another person for another source of water. In order to maximize efficient use of scarce water supplies, it is desirable to match the quality of the water with the type of use. Thus, it makes more sense to encourage farmers and industries to use effluent instead of groundwater so that groundwater will be preserved for drinking water.
2. The best solution to this problem is legislation setting forth guidelines for water exchanges and the circumstances under which such exchanges will be allowed. Without legislation proposed exchanges will likely be hampered by years of administrative and judicial proceedings.

## V. Conclusion

Full use of effluent in Arizona's Active Management Areas is essential to stop the groundwater overdraft in these areas. Nevertheless, the Department of Water Resources estimates that by the year 2025 only seventy-five percent of the effluent produced in the AMAs will be used. Thus, it is critical that Arizona find ways to remove obstacles to full use of effluent. Many entities are focusing considerable attention on strategies to maximize use of effluent. As with Arizona's Groundwater Code, the solutions developed will likely be of interest to other states.



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WATER RESOURCES

A TUMBLING T RANCHES, et al

Robert H. Green

vs

M. Byron Lewis

CITY OF PHOENIX, et al

Robert Hoffman

Ronald J. Cohen

Bill Stephens

Thomas Galbraith

Kathleen Ferris

James W. Johnson

Loretta Humphrey - Tucson

John S. Schaper

Motions and cross-motions for summary judgment have been under advisement. The parties and the amici curiae have filed hundreds of pages of excellent and comprehensive briefs, together with many

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C 505023  
(CONSOLIDATED)

A TUMBLING T vs CITY OF PHOENIX, continued...

exhibits. The parties espouse several diverse positions. Many implications flow from the acceptance of any one position, not all of which may be readily apparent, and some of which may affect parties not present in these proceedings. For these reasons, the court believes it important to limit its ruling to the central issue; and to attempt not to go beyond it.

THE CENTRAL LEGAL ISSUE:

In C 473318, the downstream users attacked the validity of the effluent contracts existing between the Cities and the Utilities.\* The Long parties made a similar contention in the federal court case. This led the utilities to file declaratory judgment action No. C 505023 in this court against the downstream users and the Longs. The Cities

\* The parties will be referred to in the short-hand terms which have been used throughout this litigation; thus, one designation may cover multiple parties.

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A TUMBLING T vs CITY OF PHOENIX, continued...

were joined as indispensable parties and have been realigned as plaintiffs. C 473318 and C 505023 were consolidated in this court.

With the possible exception of the forfeiture and abandonment arguments advanced by the downstream users, the sole legal reason advanced for the alleged invalidity of the effluent contracts is that there was no compliance with the surface water or groundwater law of the State of Arizona.\* Thus, the central legal issue is: Is the effluent involved in the contracts subject to regulation by the DWR as either surface water or groundwater? Some of the judgments requested by some of the parties go beyond what is necessary to decide this case. For reasons stated, the court is attempting to limit its ruling to the only issue which is necessary to decide this case.

THE POSITIONS OF THE PARTIES AND AMICI CURIAE:THE DOWNSTREAM USERS:

The first motion for summary judgment was filed by the downstream users. They contend that effluent is subject to regulation either as

\*It should be noted that all parties are in apparent agreement that the effluent in question contains elements which were originally both surface water and groundwater. Whether the effluent also contains water which was originally of other or different categories of water appears to be an open question not subject to agreement.

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A TUMBLING T vs CITY OF PHOENIX, continued...

forfeited their right to the effluent, thus requiring them to continue their past practice of returning it to the river bed.

SRP:

SRP contends that the central legal issue is not ripe for determination for a variety of reasons. Alternatively, however, SRP also seeks a declaratory judgment in accordance with its own complaint in C 505023. It contends that effluent is neither groundwater nor appropriable stream water and, therefore, is not subject to regulation as such. Therefore, the effluent contracts are valid. SRP contends that effluent becomes the personal property of the entity creating and treating it, and that such entity may dispose of it as it sees fit, subject, of course, to applicable health regulations.

THE CITIES:

The Cities appear to agree with the downstream users and the Longs that the central legal issue is ripe for decision, although they do, of course, join in the Utilities' contention that the claims of the downstream users and the Longs are barred by certain affirmative defenses. The Cities seek a determination that effluent is not subject

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 to regulation as surface water or groundwater. They point to problems  
 which would arise by subjecting the same effluent to two or more sets  
 of laws on a pro-rata basis, and to the chaotic impact such a ruling  
 would have on the present ability of cities to process, treat and  
 dispose of effluent by use of their present systems which have been  
 designed and are being operated pursuant to various health laws, but  
 not pursuant to water laws.

APS:

APS also asks for a declaration that effluent is not subject to  
 regulation as surface water or groundwater. APS argues alternatively  
 that if effluent is subject to existing water law, it should be  
 considered to be either "waste" or "developed" water. Finally, as a  
 third alternative, APS suggests that if effluent is subject to existing  
 water law, it is first necessary to trace the percentage of each  
 component. With respect to that percentage found to have been obtained  
 from appropriable surface water, there would be a duty to return only  
 an amount equal to the natural flow (not developed flood flows). To  
 the extent effluent was originally "developed" or "imported" water,

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APS argues the Cities are free to dispose of it as they see fit. To the extent effluent was originally groundwater, transportation of it across the sub-basin would still be permissible under the 1980 Groundwater Act.

APS also argues alternatively that if it cannot now get a summary judgment, the downstream users and the Longs are nevertheless barred from obtaining one by reason of the affirmative defenses and lack of standing issues previously alluded to.

DWR:

The Department of Water Resources, with leave of court, has filed an amicus curiae brief. DWR seeks jurisdiction over effluent on the theory that effluent is subject to the law of appropriable surface waters and to the 1980 Groundwater Act. While at first blush, the Department's position appears to coincide with that of the downstream users and the Long parties, it is, in fact, significantly and drastically different. DWR contends that effluent is either surface water or groundwater "depending on whether it was originally surface water or groundwater and whether it has been discharged into a natural channel or has percolated underground." DWR's Amicus Brief, P. IV.

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A TUMBLING T vs CITY OF PHOENIX, continued...

can dispose of effluent, prior to any such discharge, without compliance with the Groundwater Code and the Surface Water Code.

CITY OF TUCSON:

The City of Tucson has also filed an amicus curiae brief. It was tendered only a few days before the oral arguments and no party has had an opportunity to respond to it either orally or in writing. Tucson, which is solely dependent upon groundwater, expresses its position essentially as follows: It contends that "imported" and "developed" waters are artificial waters. It contends that, as a "developer" of water, it has a property right to use and reuse the treated and reclaimed water notwithstanding that some other entity may have processed it, and the Groundwater Code should not be held to limit such use and reuse. Additionally, Tucson contends that natural waterways and underground reservoirs may be used to transport and store water without losing the right to reuse such water, provided the transportation and storage is done without intent to abandon the water. To a considerable extent, the Tucson brief raises questions and issues the parties have not themselves raised, at least directly.

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SHOULD THE COURT DECIDE THE CENTRAL LEGAL ISSUE?

Several reasons have been advanced by some of the parties as to why this court should not now decide what all parties agree to be the central legal issue. Among these reasons are laches, prior settlements and judgments, lack of standing for alleged inability to prove present or imminent damage, necessity to first litigate certain appropriative rights of some of the parties, estoppel, alleged lack of irreparable injury, and the possible presence of an adequate remedy at law.

The court has concluded that it should render a ruling on the central legal issue. In reaching this conclusion, the court has considered, among other things, the following factors:

1. All parties have requested a declaratory judgment on the central legal question in one form or another, albeit that some requests are alternative to the party's primary position that the court should not now decide the issue.

2. The central legal issue is as ripe for determination in this case as it is likely ever to be in any case. It is presented in a case

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in which several representative parties have participated at great length and in which the court has received the benefit of amici briefs from other interested parties, including the State agency which would have jurisdiction over effluent if the court answers the central legal question affirmatively.

3. The Federal Court is presently abstaining from proceeding in the Long litigation to give the state court an opportunity to rule upon the state law issue presented relative to the legal status of effluent. That abstention was obtained at the urging of the parties who now request this court not to rule upon the issue. This comment is not intended as a criticism of those parties, since the court understands that laches, estoppel, standing, and related issues also raise issues of state law. However, it points out that there is an urgent need for the state courts to resolve the central legal issue both for the benefit of this litigation and the Federal Court litigation.

4. Some of the reasons advanced for not now deciding the central issue are not, in the court's opinion, appropriately disposed of by summary judgment and could, in themselves, require extremely extensive

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RESOLUTION OF THE CENTRAL LEGAL ISSUE:

THE ARIZONA STATUTES AND LEGISLATIVE INTENT.

All parties contend that various Arizona statutes lend support to their respective positions. An analysis of the statutes and arguments leads this court to the conclusion that the statutes and the legislative intent to be derived therefrom heavily favor the position advanced by the Cities and the Utilities, viz., that effluent is not subject to regulation under the Surface Water Code or the Groundwater Code. Without attempting to deal with each inference raised by the many briefs, the court makes the following general observations which have assisted it in arriving at its conclusion that the statutory analysis favors a finding of non-regulation:

1. The 1980 Groundwater Code defines "effluent" in such a manner that the court can only conclude that the legislature assumed or intended that "effluent" was something other than "groundwater" or "surface water".

2. The 1980 Groundwater Act recognizes that effluent is a valuable resource and may be an important consideration in the allocation of groundwater in the future. In some instances, the Code

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Div Date Judge or Commissioner

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Deputy

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provides that permits for groundwater may be conditioned upon the unavailability of either effluent or surface water of a suitable quality for the same use. To the court's mind, this clearly indicates that the legislature considered effluent to be something other than surface water or groundwater. Moreover, the types of entities subject to these groundwater restrictions (mines and general industrial users) are not the types of entities one would expect to be treaters of effluent. Clearly, it was intended that they would have the ability to acquire such effluent from some source to use in lieu of surface water or additional groundwater.

3. The legislature has expressly authorized non-municipal entities to dispose of effluent, including by sale. Nothing in these statutes provides any suggestion that such dispositions are to be governed by either the Surface Water Code or the Groundwater Code.

4. The legislature has enacted numerous statutes regulating effluent from a health standpoint. There is nothing in these statutes indicating an intent to also regulate effluent under the Surface Water Code or the Groundwater Code.

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ADMINISTRATIVE INTERPRETATION:

The court accepts the proposition that, absent judicial precedent, a long-standing administrative interpretation by an agency charged with administering the law under consideration is entitled to great weight. The downstream users and the Longs argue that the DWR's position and ruling in what has been called the "Tucson case" constitutes such an administrative interpretation. An examination of that case, however, reveals that the DWR took no position and made no ruling which supports the present arguments of the downstream users and the Longs. In that case, the DWR ruled that when control over effluent was relinquished by discharging it into a river bed with no present intention to reclaim it for reuse, the effluent becomes appropriable under the broad definition contained in ARS Section 45-131(A), which definition includes waste or surplus waters. In the same case, the Department made it abundantly clear that it was its position that a city is not required to discharge such effluent but may, instead, itself reuse it. Thus, the position of the DWR in the Tucson case is consistent with the position they have advanced in the amicus brief here and is not inconsistent with anything being advanced by the Utilities or the Cities in this case.

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Insofar as any long-standing administrative interpretation is concerned, what is clear is this: Effluent has been around for a number of years as have contracts for its sale. In no instance cited to the court has the DWR or its predecessor agency ever questioned a contract for the sale or purchase of effluent on the ground that the Surface Water Code had not been complied with. Equally clear is the fact that no challenges to any such contracts have been made by the Department under the Groundwater Code of 1980. In short, the long-standing administrative practice cuts against the contentions of the downstream users and the Longs, and the single cited instance of affirmative action does too.

PUBLIC POLICY CONSIDERATIONS:

Each party asserts that acceptance of its view will coincide with the advancement of the sound public policy of this state. The record in this case does show that effluent is a valuable resource and that its importance as such will increase in the future. At present, there are many laws and regulations in effect regulating effluent from a public health standpoint. There may well be sound public policy reasons why it should also be regulated as a water resource. The downstream users and the Longs contend this can and should be done judicially by declaring that effluent is either surface water or

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groundwater depending on its source. It is obvious to this court that vastly different considerations apply to the use of effluent as a water resource than apply to the use of either surface water or groundwater. As but one example, there would be an obvious need to correlate laws and regulations governing use of effluent as a water resource with the health laws and regulations applicable to effluent. Any regulation of effluent as a water resource would also have to take into account the present methods and technology of processing and disposing of effluent by the many existing sewage treatment plants. A host of other considerations could easily be listed. Placing a judicial name tag of "surface water" or "groundwater" upon effluent is not going to solve anything. A comprehensive plan to further the goal of using effluent as one element in the total water resources of the State could prove to be a valuable tool in Arizona's never-ending battle to provide adequate water to its citizens. Consideration of such a plan of regulation is solely a legislative function, and such a plan cannot possibly be effectively promulgated in the context of this single piece of litigation. The public policy arguments are appropriately addressed to the legislature.

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CONCLUSION:

The court will enter a declaratory judgment in substance as follows: <sup>cc</sup> The effluent which is the subject of the sales contracts between the Cities and the Utilities in this case is not subject to regulation under the surface water or groundwater laws of the State of Arizona. Therefore, those contracts are not void, unenforceable or enjoined by reason of not having complied with such laws. <sup>)</sup>

To the extent the Utilities and Cities have sought summary judgments consistent with the above declaration, their motions for summary judgment are granted. The motions for summary judgment filed by the downstream users and the Longs are denied. Since the foregoing ruling disposes of all issues in these consolidated cases, the form of judgment to be prepared shall appropriately provide for the foregoing declaratory judgment and final disposition of all related claims.

Counsel for the Cities and the Utilities shall prepare and submit a proposed form of judgment in accordance with the foregoing which need not recite the reasoning of the court, for which the

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minute order will suffice. Counsel are encouraged to attempt to prepare a judgment which may be approved as to form so this matter may be placed in appealable form as soon as possible. If such is not possible, the proposed judgment shall be lodged and served.