SALMON, LEWIS & WELDON, P.L.C.

Attorneys at Law

Riney B. Salmon II, P.C.
John B. Weldon, Jr.
Lisa M. McKnight
James R. Huntwork
Ronnie P. Hawks
Kristin D. Magin
Maxine M. Becker

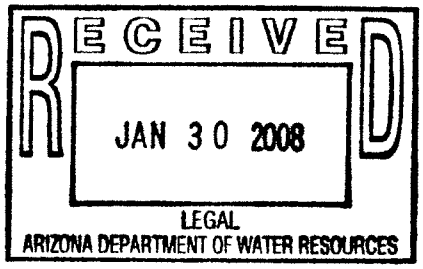
2850 E. Camelback Road, Suite 200
Phoenix, Arizona 85016
Telephone 602-801-9060
Facsimile 602-801-9070

M. Byron Lewis
Stephen E. Crofton
Mark A. McGinnis
Karen S. Gaylord
Elizabeth M. Behnke
Rebecca C. Goldberg
Douglas J. Kunath

Writer's Direct Line
(602) 801-9063
Writer's Internet Address
jbw@shwplc.com

January 29, 2008

Of Counsel
Richard N. Morrison
Janis L. Bladine



Gary D. Kidd
City Attorney
City of Prescott
221 South Cortez
P.O. Box 2059
Prescott, AZ 86302

Rita P. Maguire, Esq.
Maguire & Pearce, P.L.L.C.
2999 North 44th Street, Suite 630
Phoenix, AZ 85018

W. Patrick Schiffer
Chief Counsel
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, AZ 85012

Re: A.R.S. § 45-555(E)

Dear Mr. Kidd, Ms. Maguire and Mr. Schiffer:

This law firm represents the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association (collectively, "SRP") in opposing ongoing efforts by the City of Prescott to withdraw water from the Big Chino Sub-basin and transport the water for use by the City's customers in the Prescott Active Management Area ("AMA").

At a recent meeting with representatives of Prescott and its attorneys, SRP expressed its intention to present to the City our interpretation of the provisions of A.R.S. § 45-555(E) as it pertains to Prescott's ability to withdraw and transport groundwater from the Big Chino Sub-basin to the Prescott Active Management Area ("AMA") for use by municipal customers in disregard of the Arizona Groundwater Code's groundwater transportation prohibition. SRP's position on this issue is set forth in this letter.

SRP has also recently met with the Arizona Department of Water Resources ("ADWR") on this question and is aware that ADWR is considering changes to its assured water supply rules to take into account the ADWR's interpretation of A.R.S. § 45-555(E). Because our interpretation of this statute differs significantly from past statements of position by ADWR on this question, and because of the importance of this issue to the regulatory changes presently being considered by ADWR, we have addressed this letter to both Prescott and ADWR.

I. Introduction

A.R.S. § 45-555(E) is an exemption to the prohibition against the withdrawal of groundwater for transportation to active management areas, set forth in A.R.S. § 45-551(B). The exemption provided for in A.R.S. § 45-555(E) extends only to the City of Prescott or the United States "in cooperation with the City of Prescott." Under A.R.S. § 45-555(E):

> This article [the groundwater transportation prohibition] does not apply to the withdrawal and transportation of up to fourteen thousand acre-feet per year of groundwater by the City of Prescott or the United States in cooperation with the City of Prescott, from the Big Chino sub-basin of the Verde River groundwater basin if the groundwater is withdrawn and transported either:
>
> 1. In exchange for or replacement or substitution of supplies of water from the central Arizona project allocated to Indian tribes, cities, towns or private water companies in the Prescott Active Management Area or in the Verde River groundwater basin.
> 2. For the purpose of directly or indirectly facilitating the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe and the Camp Verde Yavapai-Apache Indian community.

The amount of 14,000 acre-feet referred to in the statute is *not* an entitlement to water. Rather, it sets an upper limit on the amount of groundwater that may qualify for an exemption from the transportation prohibition of the Groundwater Code, depending on application of the criteria set forth in subsections (1) and (2) of A.R.S. § 45-555(E). The amount of groundwater that actually qualifies for the exemption based on application of these criteria is considerably less than 14,000 acre-feet.

As discussed in detail below, under the statute's criteria, the amount of groundwater exempted from the groundwater transportation prohibition is limited to no more than 4,081 acre-feet, rather than the range of 9,570.7 acre-feet —14,000 acre-feet sought by Prescott, or the 8,717 acre-feet postulated by ADWR. This lesser amount reflects the deduction of the following quantities from ADWR's figure of 8,717 acre-feet: (1) 3,861 acre-feet, representing the rights to surface water and irrigation grandfathered rights purchased by Prescott from the Chino Valley Irrigation District ("CVID"), using the proceeds of the sale of its CAP allocation to the City of Scottsdale; and (2) 1,050 acre-feet, which ADWR has erroneously

characterized as Prescott's water delivery obligation to Yavapai Prescott Indian Tribe (the "Tribe") pursuant to the Yavapai Prescott Indian Tribe Water Rights Settlement Act, P.L. 103-434; 108 Stat. 4526 (the "Settlement Act"). As explained below, neither of these quantities qualifies for the exemption from the groundwater transportation prohibition set forth in A.R.S. § 45-555(E). This amount also reflects the addition of up to 275 acre-feet, which represents Prescott's contribution of effluent to Chino Valley Irrigation District in replacement of water provided by CVID to the Tribe in satisfaction of its Granite Creek water rights under the settlement. [1]

SRP also disagrees with Prescott's more recently articulated contention that, as part of the settlement of the Tribe's claims, Prescott agreed to meet all of the potable water demands on the Reservation, and that, therefore, as the Tribe's water demand grows over time, "Prescott is entitled to increase the amount of groundwater it imports from the Big Chino Sub-basin" pursuant to A.R.S. § 45-555(E) (2).[2] As discussed below, Prescott's obligation to meet the Reservation's potable water demand predated the settlement of the Tribe's water rights, and the contract that is the source of Prescott's obligation remains unchanged by the settlement. Because Prescott did not assume this water delivery obligation in settlement of the Tribe's claims, Prescott cannot rely upon the obligation as the basis for an exemption from the groundwater transportation provision under A.R.S. § 45-555(E) (2).

II. The Amount of the Exemption Extended to Prescott Under A.R.S. § 45-555(E) is Far Less Than Either the 8,717 Acre-Feet Proposed by ADWR, or the 14,000 Acre-Feet Proposed by Prescott.

A. A.R.S § 45-555(E) (1)

Groundwater exempted from the groundwater transportation prohibition under A.R.S. § 45-555(E)(1) must be withdrawn and transported by Prescott in "exchange for replacement or substitution of supplies of water from the central Arizona project allocated to Indian tribes, cities, towns or private water companies in the Prescott Active Management Area or in the Verde River groundwater basin." Both Prescott and ADWR have taken the position that, under this subsection, Prescott is entitled to withdraw and transport 7,667 acre-feet of water from the Big Chino to replace CAP water supplies allocated to Prescott and the Yavapai Prescott Indian Tribe, which were sold to the City of Scottsdale pursuant to the Yavapai Prescott Indian Tribe Water Rights Settlement. As explained below, Prescott has already replaced a portion of these water supplies with water from other sources; therefore, only the amount remaining to be replaced is eligible for the exemption provided in this subsection.

The Yavapai Prescott Indian Tribe Water Rights Settlement Agreement ("Settlement Agreement") and the Settlement Act authorized the sale of Prescott's CAP allocation (7,167

---

[1] *But see* footnote 16, *infra.*

[2] *See* Letter from the City of Prescott to ADWR dated October 12, 2007 (the "2007 Letter").

acre-feet) and the 500 acre-feet CAP allocation of the Tribe. The Settlement Act further provided for the establishment of the "Verde River Basin Water Fund" (the "Fund") whose purpose was to "provide replacement water for the CAP water relinquished by the Tribe and by Prescott."[3] Notably, the development of alternative water sources with Fund moneys could not be inconsistent with the "preservation of the riparian habitat, flows, and biota of the Verde River and its tributaries."[4]

As contemplated by the Settlement Act, Prescott subsequently sold its CAP allocation to the City of Scottsdale; the Tribe's CAP allocation was likewise sold to Scottsdale. The proceeds from these sales were then deposited in the Fund. Prescott's share of the funds were then used to purchase rights to surface water and irrigation grandfathered groundwater rights in the amount of 3,861 acre-feet from the Chino Valley Irrigation District ("CVID").[5] The CVID water replaced this portion of Prescott's CAP allocation; *accordingly, only 3,306 acre-feet of Prescott's CAP water allocation remains to be "replaced" or "substituted for" with Big Chino groundwater, as these terms are used in A.R.S. § 45-555(E)(1).*

It is not immediately apparent how Prescott's withdrawal and transportation of water from the Big Chino Sub-basin is in substitution for the Tribe's 500 acre-foot CAP allocation. While the proceeds from the sale of Prescott's CAP allocation were to be used for the development of alternative water supplies, the Settlement Act required that the proceeds from the sale of the Tribe's allocation were to be given to the Tribe, and could be used by the Tribe either to pay Prescott for potable water service on the Reservation, or for the development of on reservation water facilities.[6] Neither of these purposes contemplates the withdrawal and transportation of Big Chino water by Prescott as a replacement supply for the Tribe's CAP allocation. For this reason, we do not believe that Prescott can claim an exemption from the groundwater transportation provision under A.R.S. § 45-555(E) (1) based on any "replacement" of the Tribe's CAP allocation.

Even if a credible basis exists for Prescott's claim that the Big Chino water is in replacement of the Tribe's CAP water, the amount of such replacement is limited to actual water deliveries to the Tribe of not more than 500 acre-feet, bringing the maximum potential amount of Prescott's exemption under this subsection to 3,806 acre-feet. This amount of water represents the upper limit of what Prescott is eligible to withdraw and transport from the Big Chino Sub-basin under A.R.S. §45-555(E) (1).

---

[3] Settlement Act, § 106(a).

[4] *Id.*, § 108.

[5] *See* Intergovernmental Agreement between the Town of Prescott and CVID dated March 27, 1998, Article III.

[6] Moneys obtained from the assignment or purchase of the Tribe's and Prescott's CAP allocation were to be deposited in the Fund, and paid to the Tribe or Prescott for specific uses authorized by the act. *Id.*, § 106(b). All moneys paid to Prescott for the relinquishment of its CAP contract were required to be used to develop "alternative sources of water to replace the CAP water relinquished under this title." *Id.*, § 107(a). All moneys paid to the Tribe for the relinquishment of its CAP contract were to be used to "defray its water service costs under the Water Service Agreement [with Prescott] or to develop facilities for on-reservation water or effluent use." *Id.*, § 107(b).

Finally, to the extent that any moneys in the Fund remain unspent, the development of additional water sources by Prescott using these moneys, including Big Chino water supplies, cannot affect the riparian habitat, flows or biota of the Verde River.[7] In our view, this effectively precludes the use of these moneys for Big Chino groundwater withdrawal and transport, as numerous scientific reports have established that such withdrawal and transport would adversely affect Verde River habitat, flows and biota.[8]

B. A.R.S. § 45-555(E) (2)

Groundwater exempted from the groundwater transportation prohibition under A.R.S. § 45-555(E) (2) must be withdrawn and transported "for the purpose of directly or indirectly facilitating the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe and the Camp Verde Yavapai-Apache Indian community."[9] In 2003, ADWR tentatively concluded that Prescott is entitled to withdraw and transport 1,050 acre-feet of water from the Big Chino Sub-basin under this exemption. This conclusion is apparently premised on the notion that the proposed withdrawal and transportation of this amount of water is for the purpose of "facilitating the settlement" of the Yavapai-Prescott Indian Tribe's water rights claims. More recently, Prescott has taken the position that, because of its obligation pursuant to the Settlement Agreement to serve all water uses on the Reservation, Prescott is entitled to the full 14,000 acre-feet exemption provided for in the statute, as necessary, to satisfy this water demand. As explained below, there is no support for either position.

The Settlement Agreement incorporates a Water Service Agreement ("WSA") between Prescott and the Tribe, which confirms Prescott's preexisting contractual obligation to satisfy the potable water demand on the Reservation. Under an Agreement with the Tribe dated November 20, 1980 ("the 1980 Agreement"), Prescott is required to provide "water service for residential, commercial and industrial use on the Yavapai-Prescott Indian Reservation"[10] and to "serve as the delivery agent for the delivery of all surface water and Central Arizona Project water claimed by or on behalf of the Yavapai-Prescott Indian Tribe, whether under State or Federal law."[11] The 1980 Agreement further provides that, during times of shortage, the Reservation "shall have an absolute prior right...over any other user

---

[7] Settlement Act, § 108.

[8] *See* SRP's letter to Prescott dated December 11, 2007.

[9] To date, there has been no settlement of the water right claims of the Camp Verde Yavapai-Apache Indian Community, since renamed the Yavapai Apache Nation.

[10] 1980 Agreement, Recitals, ¶ 5.B.(1).

[11] 1980 Agreement, Main Body, ¶ 9. *See* Oral Testimony of Robert C. Morgan, Mayor, City of Prescott, before the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs on H.R. 5063, the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (July 17, 1990). Mayor Morgan testified that "Prescott and the Yavapai Prescott Tribe now have a 1980 agreement under which Prescott is committed to deliver the Yavapai all of the water they use at the same rates charged to City residents; the agreement also calls for Prescott to deliver the Tribe's CAP water at operation, maintenance and replacement costs, but without capital costs."

of water supplied by the City," to delivery of its surface water and Central Arizona Project water rights.[12] The WSA, subsequently entered into by Prescott as part of the Settlement Agreement did not rescind the 1980 Agreement; to the contrary, it affirmed the rights of the Tribe to continue to receive domestic water service on the Reservation pursuant to the terms of the 1980 Agreement. Specifically, the WSA provides that its provisions shall not "modify, change or abrogate the rights of the Tribe or its members" to domestic water service under the provisions of the 1980 Agreement.[13]

The Settlement Agreement also provides for satisfaction of the Tribe's right to Granite Creek (in an amount not to exceed 1,000 acre-feet annually) through its storage, diversion and use of a portion of the CVID Granite Creeks rights.[14] In turn, Prescott agreed with CVID to replace 50 percent of actual diversions by the Tribe or Prescott on behalf of the Tribe from Granite Creek, up to 275 acre-feet per annum, using effluent or recharged water.[15]

The satisfaction of the Tribe's Granite Creek rights through the storage, diversion and use of CVID water and effluent or recharged water deliveries by Prescott, were components of the settlement of the Tribe's claims. Consequently, Prescott's contribution of up to 275 acre-feet of effluent to CVID in replacement of a portion of the Granite Creek water delivered to the Tribe, might fairly be characterized as "facilitating the settlement" for purposes of A.R.S. § 45-555(E) (2), but only in an amount that corresponds to 50 per cent of actual Granite Creek diversions by the Tribe.[16] By contrast, water delivered to the Tribe by Prescott under the WSA does not qualify for the exemption. As the WSA itself recognizes, the source of this obligation is the preexisting 1980 Agreement. The WSA did not rescind the 1980 Agreement; to the contrary, WSA specifically states that it does not modify the provisions of 1980 Agreement entitling the Tribe to domestic water service.

Because Prescott's obligation to satisfy all tribal water uses on the Reservation predated the settlement itself, Prescott's delivery of potable water to the Reservation did not facilitate the settlement, and Prescott is not entitled to recover potable water delivered to the Reservation through the withdrawal and transportation of water from the Big Chino sub-basin. Moreover, the provisions of the Settlement Agreement confirming the rights of the Tribe to water from Granite Creek state that such rights shall be satisfied from of the water rights of the CVID. Prescott's present plan to withdraw and transport Big Chino water

---

[12] *Id.*
[13] WSA, ¶ 2.4.
[14] Settlement Agreement, ¶¶ 1.3, 4.2, 6.2, 6.3.
[15] Settlement Agreement, Exhibit 3.
[16] Pursuant to a March 27, 1998 Intergovernmental Agreement between Prescott and CVID, Prescott purchased CVID's water rights, including the rights to Granite Creek described in Paragraph 6.0 of the Settlement Agreement. The purchase of these rights by Prescott arguably extinguished any obligation, as between Prescott and CVID, to replace water diverted by the Tribe with effluent from Prescott. Assuming that such obligation no longer exists, Prescott would not be entitled any exemption from the groundwater transportation under A.R.S. § 45-555(E) (2).

supplies for its own use thus does not "directly or indirectly" facilitate the settlement of the Tribe's water rights; rather, the contribution of the CVID Granite Creek water facilitated such settlement. Only the effluent contribution by Prescott, which is based on 50 per cent of actual Granite Creek diversions by the Tribe and cannot exceed 275 acre-feet per year, arguably qualifies for the exemption under A.R.S. § 45-555(E) (2).

In 2003, ADWR tentatively concluded that Prescott qualified for an exemption in the amount of 1,550 acre-feet under A.R.S. § 45-555(E) (2), based on: (a) the water service contract between Prescott and the Tribe for up to 550 acre-feet per year; (b) Prescott's support of the sale of the Tribe's 500 acre-feet CAP contract; and (c) Prescott's "contribution" to the Tribe of 500 acre-feet per year under the settlement. The sale of the Tribe's CAP contract is addressed in our discussion of A.R.S. § 45-555(E) (1), above. Thus, including this amount in the 45-555(E) (2) exemption double-counts the 500 acre-feet per year to be replaced with funds from the sale of the Tribe's CAP allocation. As to the remaining 1,050 acre-feet, it is not clear how ADWR could have concluded that either of these arrangements relates to the proposed withdrawal and transportation of water by Prescott from the Big Chino. As we have already established, the Settlement Agreement did not impose an obligation upon Prescott to deliver potable water to the Tribe; that obligation predated the Settlement Agreement and was unaltered by its provisions. And the contribution by CVID, which, in any event, was in satisfaction of the Tribe's claims to Granite Creek, was not a contribution by Prescott and cannot be used as a basis for an exemption under A.R.S. § 45-555(E) (2).[17]

Finally, to the extent that any portion of Prescott's water deliveries to the Tribe qualifies as part of the A.R.S. § 45-555(E) (2) exemption, it would only be for the amount of water actually being used by the Tribe, not some theoretical use.

III. A.R.S. § 45-555(E) is an Unconstitutional Special or Local Law

In addition to taking issue with the amount of the exemption claimed by Prescott and postulated by ADWR, SRP also strongly questions whether A.R.S. § 45-555(E), which exclusively benefits the City of Prescott and leaves out other similarly situated water providers, is a legally valid enactment at all. Well settled Arizona jurisprudence suggests that A.R.S. § 45-555(E) constitutes an impermissible "special or local law," which, under Article 4, Part 2, Section 19(20) of the Arizona Constitution, shall not be enacted "when a general law can be made applicable." Because the statute is likely unconstitutional on its face, Prescott is not entitled to rely on it as the basis for a claimed "exemption" from the groundwater transportation prohibition in any amount.

---

[17] As we have noted, Prescott purchased CVID's rights to Granite Creek in 1998, which were subject to the Tribe's rights to divert Granite Creek water under the Settlement Agreement. *See* March 27, 1998 Intergovernmental Agreement between Prescott and CVID; Settlement Agreement, ¶ 6.0. The purchase of the CVID rights by Prescott was not a "contribution" to the Settlement; such contribution had already been made by CVID, and is reflected in the value of the water rights purchased by Prescott.

Article 4, part 2, Section 19(20) of the Arizona Constitution provides that "[n]o local or special laws shall be enacted...when a general law can be made applicable." Prohibited special legislation "unreasonably and arbitrarily discriminates *in favor of* a person or class by granting them a special or exclusive immunity, privilege or franchise."[18] The Arizona Supreme Court has clearly articulated the intent of the framers of Arizona's Constitution in prohibiting special and local laws:

> Our Constitution's framers were well aware of the dangers inherent in special legislation. By including prescriptions against special laws, they sought to avoid the evils created by a patchwork type of legal system where some laws applied in a few locations while other laws applied elsewhere. *The legislature may classify, but it cannot make a classification based on a decision that a law should apply to a particular individual or group. Rather, the legislature must enact laws that apply to all individuals who may benefit from its attempt to remedy a particular evil.*[19]

In determining whether a law is of general application, rather than special legislation, two specific factors are considered: "(1) whether the legislation encompasses all members of the relevant class; and (2) whether the class is elastic, allowing members to move into and out of the class."[20] A statute "relating to particular persons, places or things of a class is a special or local law."[21]

In recent correspondence to ADWR, Prescott characterized the practical effect of the exemption granted to it by A.R.S. § 45-555(E) as follows:

> When determining an adequate water supply in the Big Chino Sub-basin, the practical effect of the statute was to reserve 1.4 million af of groundwater for Prescott's exclusive use (14,000 af/yr X 100 years = 1.4 million af).[22]

According to Prescott, this reading of the statute "insures that the Department's subsequent determinations of water adequacy in the Big Chino Sub-basin will not be based

---

[18] *Arizona Downs v. Arizona Horsemen's Foundation,* 130 Ariz. 550, 557, 637 P.2d 1053, 1060 (1981). *See Republic Investment Fund I v. Town of Surprise* and *Petitioners for Deannexation v. City of Goodyear* (Consolidated) ("*Republic Investment Fund*"), 166 Ariz. 143, 148, 800 P.2d 1251, 1256 (1990); *Town of Gilbert v. Maricopa County,* 213 Ariz. 241, 246, 141 P.3d 416, 421 (App. 2006).

[19] *Republic Investment Fund,* 166 Ariz. At 149, 800 P.2d at 1257 (emphasis added).

[20] *Id.* To survive a challenge under either the Equal Protection Clause or the special legislation prohibition of Arizona's Constitution, a law must, as a threshold matter, be "rationally related to a legitimate governmental objective." *Long v. Napolitano,* 203 Ariz. 247, 253, 53 P.3d 172, 178 (App. 2002). In this case, it is not clear what governmental purpose could be accomplished by enacting a law that benefits only one municipality in the entire state. Even if a legitimate public purpose can be articulated, however, the special and local law analysis requires the consideration of the additional two factors described here. *Republic Investment Fund,* 166 Ariz. at 150, 800 P.2d at 1258. As explained below, application of these factors to A.R.S. § 45-555(E) leads to the inescapable conclusion that the statute is a special or local law.

[21] *Id.*

[22] October 12, 2007 letter from the City of Prescott to ADWR, at 2.

on groundwater *set aside for Prescott's later use."*[23] By Prescott's own admission, A.R.S. § 45-555(E) constitutes a prohibited special or local law. As Prescott correctly notes, the statute grants only one entity, the City of Prescott, the exclusive privilege of withdrawing groundwater from the Big Chino Sub-basin and transporting it to the Prescott AMA in disregard of the groundwater transportation prohibition, under the circumstances set forth in the statute. Other municipalities in the AMA, most notably the towns of Chino Valley and Prescott Valley, who are similarly situated to Prescott are excluded from the benefits of the exemption granted by A.R.S. § 45-555(E). Likewise, other water users in the AMA who might rely upon water from the Big Chino Sub-basin as the basis of an adequate water supply determination are passed over in favor of the 1.4 million acre-feet "reservation" of water made by the Legislature for the benefit of Prescott. Clearly, not all members of the relevant class have been extended the benefits of the exemption granted by A.R.S. § 45-555(E).

The classification imposed by the statute is likewise inelastic in its application. "A statute is special or local if it is worded such that its scope is limited to a particular case and it `looks to no broader application in the future.' "[24] Here, the exemption from the groundwater transportation prohibition granted under A.R.S. § 45-555(E) extends only to Prescott. The statute is narrowly drawn and not susceptible of an interpretation that would permit other water users to take advantage of the exemption at any time in the future.

Could a general law have been made applicable in this case? Could A.R.S. § 45-555(E) have been written so as to apply its exemption from the groundwater transportation prohibition to a class of entities including Prescott and others similarly situated? The answer is undeniably yes. As already noted, other entities in the Verde River Sub-basin were the holders of CAP contracts that could have been sold and ultimately replaced with water from the Big Chino Sub-basin. And other water users in the Prescott AMA could have taken actions facilitating the settlement of the water right claims of the Yavapai Prescott Indian Tribe and the Yavapai Apache Nation, then seek to recover water that they contributed to the settlement through the withdrawal and transportation of water from the Big Chino Sub-basin.[25] Yet only Prescott can take such actions and reap the benefits of the exemption from the groundwater transportation prohibition provided in A.R.S. § 45-555(E).

Arizona courts have repeatedly invalidated laws such as this, which single out a particular group or individual for a benefit, while leaving out other "members of the relevant

---

[23] *Id.* (emphasis added). In its recent Denial of SRP's Petition to Initiate Rulemaking regarding the identification of historically irrigated acres in the Big Chino Sub-basin, ADWR made a similar characterization of what it called the "City of Prescott Exemption." According to ADWR, "The second exception in A.R.S. § 45-555 to the general prohibition on transporting groundwater from a groundwater basin outside of an initial AMA to an initial AMA is for the City of Prescott." Denial of Petition for Rulemaking (January 17, 2008), at 3.

[24] *Republic Investment Fund,* 160 Ariz. At 150, 800 P.2d at 1258.

[25] CVID actually did take such actions, in making a contribution to the Yavapai Prescott Settlement. *See* discussion of the provisions of the Settlement, *supra.*

class."[26] As the statute benefits Prescott, and excludes other municipalities similarly situated, its purported "reservation" of groundwater from the Big Chino Sub-basin is a special or local law, invalid under Article 4, part 2, Section 19(20) of the Arizona Constitution.

IV. Conclusion

It is our position that the amount of water that Prescott may withdraw and transport pursuant to this statutory exemption is limited to not more than 4,081 acre-feet. Further, we believe that A.R.S. § 45-555(E) is a special or local law prohibited by the Arizona Constitution, and that, therefore, Prescott is precluded from relying on this invalid enactment as the basis for any exemption from the groundwater transportation prohibition.

Please call if you have questions or would like to discuss these conclusions further.

Very Truly Yours,

Salmon, Lewis & Weldon, P.L.C.

John B. Weldon, Jr.
Lisa M. McKnight

Cc: John Sullivan
Fritz Beeson
Dave Roberts

[26] *See Republic Investment Fund*, 166 Ariz. at 151, 800 P.2d at 1259 (statute's deannexation provisions, which applied only to territories within municipalities satisfying certain population criteria and excluded all others, constituted special or local law); *Town of Gilbert*, 213 Ariz. at 246, 141 P.3d at 422 (statute benefiting county islands meeting population classifications that could only apply to those within the Town of Gilbert was special or local law, where it there was not an "actual probability that the legislation will eventually apply to other county islands").