



Legislation and Law

Court Action Sought to Prevent State Taking Water Banking Funds

by Melissa L. Lamberton

Arizona is in the midst of a tug of war over funds for a commission designed to protect the state against future shortages on the Colorado River. On Feb. 3, the Central Arizona Water Conservation District filed a lawsuit against Governor Jan Brewer and Treasurer Dean Martin, claiming that a series of funding sweeps that occurred in 2009 are unconstitutional.

The lawsuit seeks to protect funds held by the Arizona Water Banking Authority, a commission that stores unused Central Arizona Project water underground. In January 2009, Governor Brewer signed a bill that authorized sweeping nearly \$12.6 million from various accounts held by the commission. Another sweep in July took \$5.4 million, and a third in December transferred \$684,700 into the state's general funds.

Susan Bitter Smith, president, Central Arizona Water Conservation District Board of Directors, said there's no question that these funding sweeps will affect the water banking operations. "We have water sent to us to use for a specific purpose," she said. "We shouldn't be treated as a slush fund."

The crux of the case is a series of agreements between Arizona and Nevada for Colorado River water. The Law of the River, which divided Colorado River water among seven states, tribal groups and Mexico, entitles Arizona to 2.8 million acre feet annually. While originally the state didn't need its full allotment, the possibility of future droughts was worrisome. The Central Arizona Project has a junior priority on the river, so if shortages arise, CAP water is the first to go.

The Arizona Water Banking Authority, created in 1996, mitigates this risk by purchasing excess CAP water and storing it underground. This creates "credits" that can be redeemed if future shortages disrupt the state's supply of CAP water.

Enter Nevada, which was looking for more water supplies to serve its rapidly growing population. In 2005, Arizona agreed to bank a total of 1.25 million acre feet for Nevada's benefit. In exchange, Nevada gave \$100 million to AWBA and promised to pay an additional \$230 million over a 10 year period to cover the costs of delivering and recharging CAP water. Those payments began in 2009.

This is the money the Legislature has dipped into to patch the state's budget deficit. Attorney Robert Lynch, who represents the

water district, argues that the Legislature has no authority to take funds acquired per the interstate agreement. "We've got to figure out what to do with this \$230 million that's on its way from Nevada," Lynch said. "This is very serious business that affects the entire future of Central Arizona."

When Nevada needs water, Arizona is obliged to reduce diversions from the Colorado River and supply Arizona users with banked water instead. Nevada can then pump additional water upriver on the Colorado River. This obligation to Nevada must be met even if AWBA can't afford to bank water, leaving Arizona users high and dry. That's why Nevada paid the initial \$100 million, to ensure the commission can purchase alternative supplies for Arizona if necessary. The agreement specifies that this money is supposed to stay intact for the life of the contract.

Bitter Smith says the funding sweeps are problematic because Nevada has paid Arizona to bank water, and AWBA must perform that service even though the money isn't in their account. "Should Nevada call and say we need our water now, we have to produce it. The state has really put us in a bind," she said.

Lynch argues that because the Legislature's authority is limited to state revenues, i.e. taxes and fees, it has no right to claim the money from Nevada. Moreover, the appropriation bills siphoning off AWBA's accounts in effect override the laws that direct how those funds should be used, a situation the Arizona Constitution does not condone.

Meanwhile, the Legislature has continued to fill its budget deficit with funds from the commission, sweeping another five million in March 2010. Bitter Smith hopes a decision from the Maricopa County Superior Court will prevent the sweeps from continuing. "The best outcome would be for the court to do two things: Return the monies swept and preclude any future sweeps," she said.

Lynch said that it's unlikely the water district will recover all of the funds, some of which has already been spent. He has asked the court, however, to stop the executive branch from spending the funds swept in July and December. More importantly, Lynch hopes that the court will settle the issue of what the Legislature can and can't do in its search for funding once and for all. "As far as I'm concerned, the law is crystal clear: This isn't legal," Lynch said. "But the court hasn't said so." ■

Mapping...continued from page 1

Lake with the Bay of San Francisco. John Robinson's 1819 map shows no less than three rivers flowing to the Pacific.

The myth was laid to rest by Explorer John Fremont who regretfully concluded at the end of his journey that the Buena Ventura never existed. He had difficulty convincing President Polk that so many official maps were wrong.

Consider also case of California, shown on many old maps as an island. Its actual attachment to the mainland, the next-door neighbor to Arizona, has been the cause of many interstate

conflicts, the most acrimonious having to do with water. Many Arizona officials, no doubt, have longingly reflected on those old maps that display a California Island.

In a much different cartographic category is the Water Resources Research Center's water map. Despite Arizona's longing for additional water resources the map provides no mythical water body that would offer the state a new water source. Instead, accuracy is stressed, both cartographically and hydrologically. (See insert after page 6 to learn about the new WRRC water map.)