



City Manager's Office

3939 N. Drinkwater Blvd.
Scottsdale, AZ 85251

Date: December 19, 2022
To: Honorable Mayor and City Council
Through: Jim Thompson, City Manager
From: Stephanie Zamora, Management Associate to the City Manager
Subject: Citizen Petition to enter agreement with EPCOR to provide water to Rio Verde Foothills

Petition

On November 21, 2022, a citizen petition was presented to the City Council by Paul Mann requesting that the city enter an agreement with EPCOR Water to treat and deliver water to the Rio Verde Foothills (RVF) while EPCOR constructs the necessary infrastructure to deliver water to the residents. In October 2021, customers were notified that starting January 1, 2023, the city would no longer allow non-residents to utilize the city's water supply. As such, the petitioners request that the city enter this agreement before year end.

A total of 135 signers joined the petition, of which 130 report addresses within Scottsdale city limits and five outside city limits (Attachment 1). Since 52 people signed the petition more than once, the petition has a total of 187 signatures. This petition was directed, by action of the City Council, to the city manager's office to be investigated with a written response prepared and sent to the Council and the petitioner.

Considerations

History

The city of Scottsdale has spent the last two decades developing plans to ensure the health of its water resources even through regional water challenges. The first iteration of the Drought Management Plan (DMP) was adopted in 2003 and updated in 2014 to reflect the city's development of a more robust water portfolio and improvements in modeling water supplies for projected drought scenarios. In 2015, Scottsdale Water began enforcing a 12-month limit on temporary hydrant meters, which impacted multiple meters being used by water haulers supplying the Rio Verde area.

Recognizing the immediate hardship this would place on customers who rely on hauled water, specifically in the Rio Verde Foothills, Scottsdale Water allowed the haulers to continue using the hydrant meters on Dynamite Road until the appropriate infrastructure could be put in place to accommodate both the commercial and residential water haulers. This resulted in the construction of the Jomax Road water filling station. This was not intended to provide long-term service to this area beyond city limits.

In 2016, Scottsdale made the decision to remove temporary fire hydrant meters on Dynamite Road due to safety concerns from water haulers using the hydrants as a permanent water distribution point. This was not the original intended use of the hydrants, which began to be overutilized. In accordance with Sec. 49-50 of Chapter 49 of the Scottsdale Code of Ordinances, water haulers were instructed to use Scottsdale's permanent filling station at Jomax Road and Pima Road as of October 1, 2016. To accommodate the increased water demand, Scottsdale modified the existing filling station to support the logistical and water flow capacity for both commercial and residential water haulers. Through this process, Scottsdale recognized that the Rio Verde Foothills community was increasingly reliant on water

being hauled from Scottsdale and it became evident, especially as the community continues to expand, that this was not a sustainable situation.

At around this same time in 2015-2016, the Rio Verde Foothills resident water taskforce, which later became RVF Water Resources Incorporated was created and approached Scottsdale about the options for establishing a long-term water supply solution for Rio Verde Foothills. Scottsdale told the group that “the City cannot guarantee service in the future and has advised the area residents to obtain a separate water source.” This was advised due to the persistent drought on the Colorado and the city’s commitment and legal obligation to the Drought Management Plan. This same messaging was written in communications provided in 2019, 2020, and in 2021 to the RVF community and Maricopa County officials (Attachment 2).

City Actions

Scottsdale continued to vocalize that the infrastructure and water rights have been funded entirely by rate payers in Scottsdale. The city’s primary commitment is to ensure Scottsdale customers have first priority to the city’s water supplies. These customers within Scottsdale’s service area have funded the system for almost 50 years. Additionally, the city has a 100-Year Assured Water Supply as certified by the Arizona Department of Water Resources. Scottsdale’s assured water supply designation applies to the city’s population at build out. It does not account for customers outside its service area.

The city maintains a Drought Management Plan (DMP) as part of its overall water management strategy and as mandated by Arizona Revised Statutes §45-342. The statute requires communities to have a drought preparedness plan that shall have “response stages providing for the implementation of measures in response to reduction in available water supply due to drought or infrastructure failure.” The function of the DMP is to provide guidelines for implementing the appropriate series of options and actions in response to successive levels of reduction in the city’s water supply.

The current update of the Drought Management Plan 2021 or Amended DMP, was in the development process since the execution of the Lower Basin Drought Contingency Plan (DCP) in 2019. The DCP establishes additional shortage guidelines based on water elevation of Lake Mead, triggering levels of shortage for Arizona’s Colorado River allocation. The 2021 DMP was presented to the Scottsdale Environmental Advisory Commission in December of 2020 and approved by Council in April of 2021.

In August of 2021 the Bureau of Reclamation declared the first ever Tier 1 shortage on the Colorado River system, effective for calendar year 2022. In response, Scottsdale city manager Jim Thompson activated Stage One of the DMP in the same month which states “Scottsdale’s commercial and residential fill station shall be shut down or restricted at this stage. Any water hauling operations will cease unless the water hauling customer, whether residential or commercial, can prove indisputably that the hauled water is being supplied directly to a City of Scottsdale resident or business.” As such, the city’s Utility Billing department sent notices in August 2022 to all water hauling customers regarding termination of services, effective January 1, 2023, unless they can prove the water would be used within city limits (Attachment 3).

In August 2022 the Bureau of Reclamation triggered additional cuts to the system and a Tier 2a shortage will be in effect for calendar year 2023. While water restrictions are not currently in place, a voluntary 5% reduction has been asked of all Scottsdale residents and businesses. Anticipated further cuts from the federal government in 2023 and/or beyond could result in advising Council to consider heightened conversation efforts to better manage demand and best use the city’s water supplies. In fact, the Scottsdale City Council passed Resolution 12649 in October 2022 which approved a Memorandum of Understanding in which more than 30 water agencies and providers have committed to take additional actions to reducing water demands and helping protect the Colorado River system (Attachment 4). This

commits the city of Scottsdale to conserving water, decreasing water demands, and expanding water reuse and recycling in an effort to reduce demand on the Colorado River.

County Actions

The Rio Verde Foothills area is unincorporated and is therefore governed by Maricopa County and currently represented by Supervisor Tom Galvin. In May 2020 and again in May 2021, Scottsdale Water sent letters to Maricopa County Supervisor and Representative John Kavanagh about Scottsdale's stance regarding RVF. The message was consistent to Stage One of Scottsdale's Drought Management Plan in stating Scottsdale has no obligation to provide water to Rio Verde residents and reserves the right to serve only its citizens or customers in preservation of water resources. They were also notified that "it is our intention ... to require that anyone purchasing water to haul ... to demonstrate that the water will be used in the Scottsdale service area." Further stating "it is prudent for the Rio Verde residents to find a long-term water supply and distribution system to meet their needs."

Some residents in RVF heeded this advice by trying to form a Domestic Water Improvement District (DWID) to solidify a permanent water source for their community. As part of their application, Arizona law requires that the proposed DWID obtain the consent of the governing body of any municipality that is located within six miles of the proposed district area. The Fountain Hills Town Council provided consent on January 5, 2021. On February 2, 2021, the Scottsdale City Council adopted Resolution No. 12063 consenting to the formation of Rio Verde Foothills Domestic Water Improvement District, which was recommended by staff (Attachment 5). The Maricopa County Board of Supervisors voted against the formation of the DWID on August 31, 2022. Supervisor Tom Galvin instead recommended to the Maricopa County Board of Supervisors in a statement that "a professionally run, regulated utility company that is experienced and knowledgeable about providing water is the best option" in a statement posted on September 6, 2022.

This issue has been a concern throughout the greater Phoenix Metropolitan Area. In 2017, the City of Phoenix discontinued water hauling to unincorporated areas of New River as similar concerns were echoed by Phoenix. The county and the state hold ultimate responsibility and authority over areas with unfettered growth that have limited to no long-term access to water.

Current Water Agreements

Scottsdale currently has several agreements in place with surrounding government bodies to accommodate treat and transport agreements. However, the potential agreement with city of Scottsdale would not be in partnership with RVF's governing body (Maricopa County) but instead the private water company. EPCOR is regulated by the Arizona Corporation Commission and has no jurisdiction over RVF. The agreements currently in place are:

1. Tonto Hills – In 2000 Tonto Hills Utility Company entered into an agreement with Scottsdale to treat and transport their Central Arizona Project (CAP) subcontract water. Eventually this subcontract was assigned to the Tonto Hills Domestic Water Improvement District (DWID) to which the agreement with Scottsdale was amended and updated in 2009 and 2019.
2. Carefree – Since 1998, Scottsdale has had an agreement to treat and transport Carefree's CAP subcontract water. The Carefree Water Company is a Utility Facility District (UFD) that is governed by their town's Council
3. City of Phoenix – In 2008, Scottsdale and Phoenix entered a Treat and Transport Agreement to be able to provide emergency backup water at an interconnect between the two systems. This Intergovernmental Agreement (IGA) was amended in 2011 and 2020 and will continue to be a long-standing relationship with the City of Phoenix.

EPCOR as a Solution

The County continues to approve building permits for this community while being aware of the serious challenges in access to a long-term water supply—an issue the city of Scottsdale has alerted in multiple communications. The unlimited and unregulated growth of this surrounding community is also not calculated in Scottsdale’s General or Master Plan regarding an assured water supply. In late summer of 2022, the Arizona Corporation Commission contacted regulated water companies that operate near the Rio Verde Foothills to ask for interest in providing service to the community. In August 2022, EPCOR submitted a letter indicating interest that it may be able to assist. EPCOR’s concerns mirror that of the city of Scottsdale—growth in the area is unchecked and continues even with limited supplies. This is a factor that can only be addressed by Maricopa County officials.

EPCOR communicated interest to the Arizona Corporation Commission in 2022 in a written communication to provide a possible long-term water solution to RVF, voicing concerns in that letter that their solution would not be viable for at least two years pending plans for infrastructure construction. The proposal put forth to the Arizona Corporation Commission does not offer an interim solution from the company. The city of Scottsdale was then approached as that possible interim solution but uncertainties regarding this are still outstanding. There is limited understanding about the short and long-term implications and logistics of the EPCOR plans. Some of the unknown factors and challenges include:

1. Providing water to a community outside city of Scottsdale limits is a violation of the city’s Drought Management Plan. The city has been in violation of its own Stage One declaration by continuing to provide water to RVF after its official adoption in August 2021.
2. Limited information about the extent to which Scottsdale property would be used including purchasing, renting, and infrastructure.
3. Without said details, it is difficult to know if a temporary and/or permanent solution would utilize Scottsdale resources and infrastructure and possibly burden the system.
4. With unlimited and unregulated growth in RVF, this increased water use could stress the city’s system and resources, and Scottsdale would not be able to regulate water consumption at its standpipe.
5. EPCOR is a private company with no jurisdiction over this region. Without a DWID, and no County involvement, the issue of the unlimited and unregulated growth would still be left unaddressed.

Continued Water Hauling

Dynamite Water Company has proposed that they can purchase a one-year lease from the San Carlos Apache Tribe (SCAT). There are several points to consider in this concept. While this has been proposed on a very high level, the city has not seen the agreement, or the conditions of the agreement (Attachment 6). The additional points to consider are the following:

1. SCAT annual leases would be subject to potential future reductions to the Colorado system which is highly uncertain at this time and therefore this proposal is viewed as somewhat unstable. The city has redundancy in its supply and holds an Assured Water Designation with the State. This proposal is a singular source that is susceptible to even mid-year reductions by the federal government.
2. Treat and Transport agreements through our system with non-regulated or non-governmental entities (e.g., a commercial entity) have been viewed as risky. It has been clearly stated that this is not an agreement the city is interested in pursuing.
3. Such an agreement would create a monopoly among the water haulers in this area. There is no guarantee that SCAT will renew in 2023 especially as the condition on the Colorado River continues to degrade.

4. This type of agreement would still require transporting water through the city of Scottsdale's system and is similar to what EPCOR proposed in the interim. Accepting this scenario means the city of Scottsdale would be with a non-regulated commercial customer that has no long-term plan.

Conclusion

For nearly a decade, Scottsdale has warned and advised the citizens of Rio Verde and Maricopa County officials that the city cannot be responsible for the water needs of a separate community especially given its unlimited and unregulated growth. Land subdivided into 6 or more lots must demonstrate a 100-year water supply before any homes can get built. Many lots in the RVF skirt this by being under the threshold, adding to continual and unfettered growth all the while relying on Scottsdale's water and infrastructure.

EPCOR answered the call to work alongside RVF residents to find a solution to its water crisis, which can also be pursued with other neighboring governments. For example, the Town of Fountain Hills would not require any franchising agreements from EPCOR so long as the appropriate permits are secured by the company to use public right-of-way to conduct its service (Attachment 7). EPCOR currently services the Town of Fountain Hills. In addition, there is knowledge of a tentative agreement with the San Carlos Apache Tribe and Dynamite Water Company to provide water to RVF, which EPCOR can pursue at their discretion.

Scottsdale does have partnership agreements with other governments in the surrounding community. The EPCOR agreement, however, would be with a private company, which does not have governmental oversight for the residents or its growth. While the city was willing to work with RVF should a DWID be approved, that option is no longer viable given the decision of County Supervisors to not establish it despite residents' efforts.

Many uncertainties are still left unanswered by both Scottsdale and EPCOR about the actual execution of any agreement. Further, Scottsdale has no authority to allocate use amounts per resident which may cause issues in overall caps created by Scottsdale that would protect its water supply for residents and businesses paying into its system.

Scottsdale's priority is to its citizens. With an updated Drought Management Plan, Council has approved the shutoff of water to outside communities in Stage One, which was made official on August 21, 2021. This allows for the City to focus on water conservation and possible future restrictions, and to account for future supply uncertainties. Although the city had authority and capacity to stop water to RVF when this decision was made in 2021, it still continued to provide water while providing ample warning that it would not be able to beyond 2022. The city's water future must remain within the city's limits with continued efforts based on the Drought Management Plan.

Scottsdale has been a generous and accommodating neighbor for years, providing approximately 117 acre-feet of water to the RVF community annually. Scottsdale captures all in-city wastewater, treats it to high levels and recycles it for beneficial use. During the many years that RVF has been using Scottsdale's water, the city did not have the ability to recycle this water for its own use. Traffic and noise are also a concern and have increased; in the month of November 2022 alone, 335 water hauls took place within the city. The city is now limited in extending previous accommodations due to regional drought issues for which its leadership has prepared for the last two decades. As the government of the Rio Verde Foothills community, Maricopa County should exercise its authority and responsibility to establish stable, long-term solution that accommodate this growing community and ensure its self-sufficiency

Attachments

1. Citizen Petition
2. Written Communications from the City of Scottsdale to Rio Verde Foothills
3. Letter of Intent to Shut-off Water
4. Resolution 12649 Memorandum of Understanding Among Colorado River Basin Municipal and Public Water Providers
 - a. Press Release Regarding MOU
5. Council Report to Adopt Resolution No. 12063
6. San Carlos Apache Tribe Press Release
7. Town of Fountain Hills legal option regarding franchise agreements