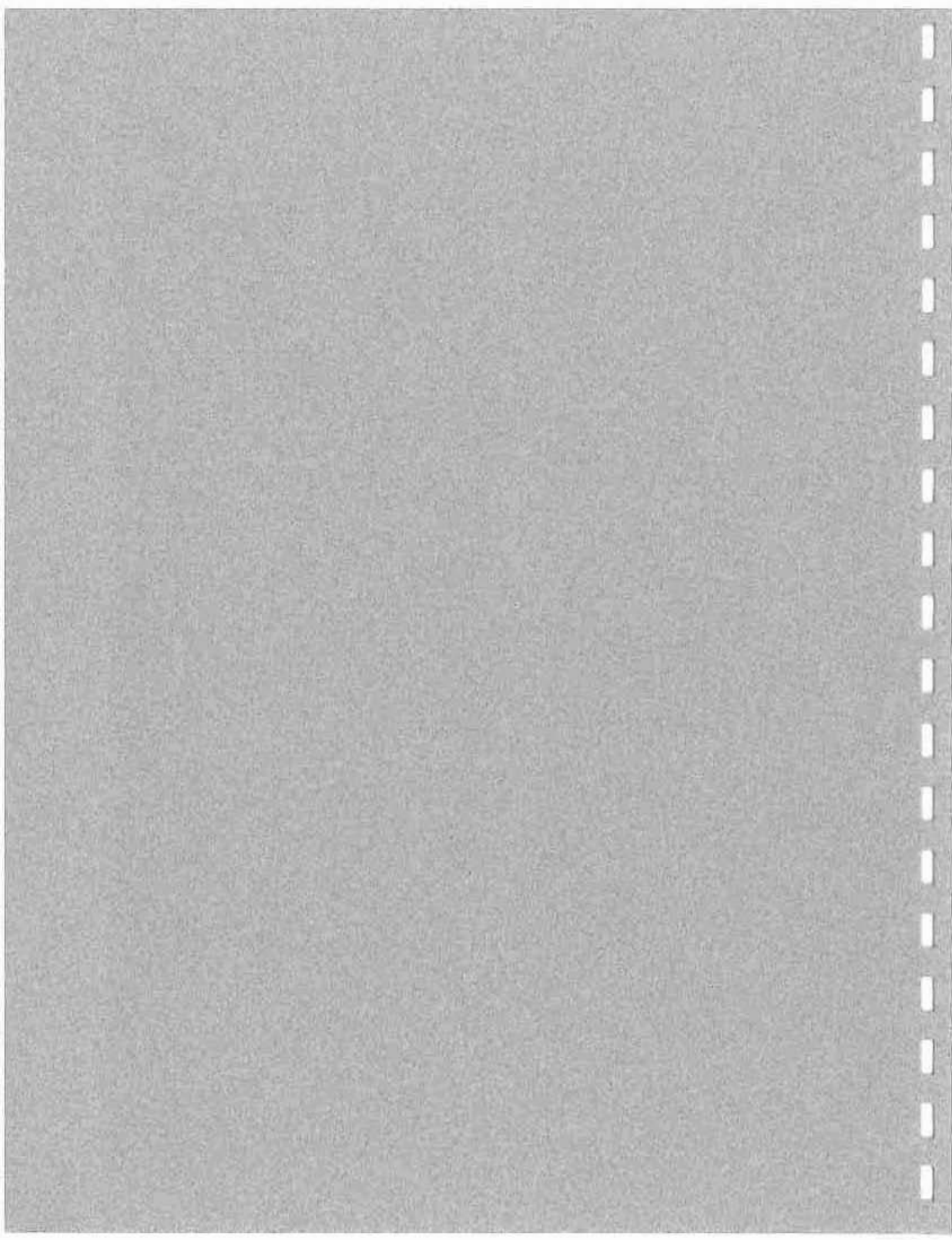


**Appendix H. Comments on the Draft Environmental  
Assessment and Responses**

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# List of Persons and Agencies Commenting on the Draft Environmental Assessment

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## VERBAL COMMENTS RECEIVED AT THE JUNE 28, 1997 PUBLIC MEETING

### Public Speakers

Hank Lacey  
Austin Carter  
Al Barber  
Jerry Jacka  
Bill Dossett  
Larry Speer  
Betsy Dossett  
Steve Brittle  
Gloria Dossett  
Roberta Bramlet  
Wally Goldsmith  
Marilyn Goldsmith  
Harry Thurston  
Gary Giordano  
Mary Beth Baker  
Mike Fiflis  
John Sokol  
Irene Semeniuk  
Carol Zimmerman  
Charles Collins  
Lynn DeMuth  
Chris Gehlker  
Frank Henderson  
Gary Schmitt  
Gwen McAlister

### Comment Cards

Elizabeth Vaughan  
Gary Giordano  
Marlene McLellan  
Andrea Ouse  
Don Steuter  
Marge Otto  
Ernest G. Garcia  
Marcia Janssen  
N. Fern Statten  
Paula Kulina  
Renee Guillom  
Austin Carter  
Robert Otto  
Peggy Hicks  
Leo Stout  
Margie Stout  
Walter B. Gura  
Richard Jutzi  
Doug Robinson  
L. Tevipesto  
June Ashton  
Carol Zimmerman  
Frank and Joan Landino  
Michael Cobb

## WRITTEN COMMENT LETTERS RECEIVED

1. U.S. Department of the Interior, Bureau of Indian Affairs - Deannette Hanna, Acting Area Director
2. Advisory Council of Historic Preservation - Don L. Klima, Director
3. Arizona Game & Fish Department - Timothy Wade, Habitat Evaluation Specialist
4. Henry B. Lacey - Attorney at Law
5. Arizona Center for Law in the Public Interest - David S. Baron, Assistant Director
6. U.S. Department of the Interior, Fish and Wildlife Service
7. Save New River Coalition
8. John J. Ward
9. Leo and Margie Stout
10. Robert D. Cocke
11. Horst Kraus
12. Marilyn De Moss
13. Helen Stephenson
14. Fred Troy
15. Amy Little
16. Andrea J. Ouse
17. Carol Zimmerman
18. Marge Cornell
19. Ann Caylor
20. Vicki Y. Myers
21. Valerie Pieraccini
22. Elizabeth Bucklew Vaughan
23. Mr. and Mrs. David C. Richmond
24. Repair-It Industries, Inc. - Larry Speer
25. Arizona Department of Water Resources - Steve Rossi, Manager, Office of Assured Water Supply
26. Henry B. Lacey - Attorney at Law
27. Michael P. Fiflis - Attorney at Law
28. Art Coates
29. Raymond and Connie Crandell
30. City of Peoria - William J. Mattingly, P.E., R.L.S., Acting Utilities Director
31. Bernice Guddall
32. Charles M. Collins
33. Brian LaPlante
34. Bob Henke
35. Mr. and Mrs. Cecil Grant
36. U.S. Environmental Protection Agency

These letters are included in this appendix, beginning on page H-9. Each letter is followed by responses to comments in that letter.

## Responses to Verbal Comments Received at the June 28, 1997 Public Meeting on the Draft Environmental Assessment

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Comments received during the draft environmental assessment (EA) public hearing included testimony from 25 speakers and written comments on 24 comment cards, as listed above. Comments were received on the merits of the Ak-Chin Option and Lease Agreement and The Villages at Desert Hills (The Villages) development and on the content and approach of the draft EA. These included:

1. requests for an environmental impact statement (EIS) to be prepared on the lease agreement, water delivery facilities, and The Villages development;
2. concerns that the approach of the draft EA, focusing on evaluation of the provision of settlement water under the Ak-Chin Option and Lease Agreement and subsequent water delivery facilities under the proposed action, was too limited;
3. concerns that the alternative water supply options presented as support for the draft EA approach are not viable;
4. questions about the appropriateness of evaluating The Villages development as part of the No-Action Alternative;
5. questions and concerns about interim use of groundwater during water delivery facility construction and the resulting effects on existing private wells;
6. concerns about whether the National Environmental Policy Act (NEPA) public and agency involvement process was adequate and whether scoping comments were considered; and
7. concerns about effects of The Villages development on air quality, traffic, special-status wildlife species, desert habitat and archaeological resources.

The public meeting began at approximately 10:00 a.m. on Saturday, June 28, 1997, and concluded at approximately 11:40 a.m. U.S. Bureau of Reclamation (Reclamation) staff was available following the meeting to answer individual questions.

The following is a general response to the comments related to the approach and content of the EA (comments 1 through 4, listed above). Comments 5 through 7 are addressed below under "Responses to Other Comments Made During the Public Hearing."

## **RESPONSE TO COMMENTS ON THE NEPA COMPLIANCE APPROACH (PUBLIC MEETING COMMENTS 1-4)**

Reclamation has received a number of comments during public testimony and in letters indicating disagreement with and confusion about the overall approach to the draft EA. Comments are generally related to:

- confusion about the purpose of an EA and content requirements for an EA;
- preparation of a draft EA versus an EIS;
- treatment of The Villages in the draft EA; and
- consideration of alternatives in the draft EA.

### **Purpose and Scope of the Environmental Assessment**

The EA has been prepared to assess and disclose the environmental consequences of Reclamation's provision of leased settlement water under the 1994 Ak-Chin Option and Lease Agreement among the Ak-Chin Indian Community, United States of America, and Del Webb. As indicated in the final EA on page 1-2, second paragraph, Reclamation determined that an EA according to NEPA should be prepared to determine whether a finding of no significant impact (FONSI) is appropriate or if an EIS should be prepared. Reclamation disagrees with comments indicating that preparation of an EA is inappropriate. As indicated in Section 2-4, first paragraph, of Reclamation's October 1990 NEPA Handbook, "[t]he purpose of an EA is to allow the responsible Federal official to determine whether to prepare a FONSI or an EIS. In addition, an EA may be prepared on any action at any time to assist in planning and decision making." Section 2-4B of Reclamation's NEPA Handbook further indicates that "[a]n EA shall not, in and of itself, conclude whether an EIS shall be prepared. This conclusion shall be made when the responsible officials review the EA." This guidance indicates that preparation of an EA is clearly an appropriate and necessary action to fully implement the letter and spirit of NEPA and its implementing regulations.

The EA addressed direct, indirect, and cumulative effects of the federal action. Because NEPA applies only to federal actions, the first step in determining the scope of the EA was to determine the precise scope of activities included within the federal action. In this case, the federal action consists of Reclamation's provision of leased settlement water. Reclamation next needed to identify factors of the existing environment that might influence or be affected by the federal action. For Reclamation, this meant determining whether or not development of The Villages would be a consequence of the federal decision to provide leased settlement water to the Del Webb Corporation (Del Webb). To that end, Del Webb identified alternative water supply options (Appendix A of the EA), at least one of which could reasonably be implemented in the absence of receiving the leased Ak-Chin settlement water. Reclamation has independently verified the validity of three of the options with the Arizona Department of Water Resources (Please refer to comment letter 25 in this appendix), and has independently verified the feasibility of extending service to The Villages from the City of Phoenix water system with city officials. Based on information provided and independently collected, Reclamation determined that it is reasonable to conclude that development of The Villages

would occur in the absence of the proposed federal action. Reclamation has considered an adequate amount of information on this subject and does not believe it is reasonable to expect Del Webb to secure binding contracts for alternative water supply options, as suggested by several commenters, merely to show that other water supply options would be available in the absence of the federal action.

Reclamation has concluded, based on its consideration of alternative water supply options, that the EA should focus on the direct, indirect, and cumulative impacts of providing leased settlement water under the Option and Lease Agreement and the subsequent water delivery facilities. The Villages development is not considered a consequence of the proposed action but is evaluated under the No-Action Alternative as a condition that would be present regardless of the occurrence of the federal action.

In making this determination, Reclamation has considered guidance given in its draft NEPA Handbook (August 1996) Section 3.14.13 on pages 3-62 and 3-63, which further addresses approaches to water transfer-type actions and local growth issues.

One way to determine if the transfer is causing growth is to use the EA to determine whether the urban growth is a consequence of the project water supply, or whether the growth will occur anyway, even in the absence of the project water. If alternative water supplies are reasonably available, then the "future without" scenario is probably very similar to the proposed action, at least with respect to population growth issues. This can be documented in the "no action" ("future without") alternative, thereby avoiding a detailed discussion of issues and impacts which are not a consequence of the Federal action.

### **The Villages at Desert Hills Analysis**

Some commenters have suggested that Reclamation has not considered the environmental effects of The Villages in the EA and that Reclamation should have considered the effects of The Villages in determining whether its provision of leased settlement water would constitute a "major federal action significantly affecting the human environment." As indicated above, Reclamation has carefully considered its proposed approach to evaluating The Villages development in the EA and has concluded, based on the best available information, that The Villages development would occur regardless of whether the proposed federal action occurs. Thus, The Villages is not an effect of Reclamation's proposed action. The EA nevertheless includes in the discussion of the No-Action Alternative a description of the affected environment of The Villages development site and a summary of the environmental issues related to the inevitable development of The Villages, including construction of an alternative water delivery system. The analysis includes parallel discussion for all of the environmental issues addressed under the proposed action. The EA also includes information on the environmental consequences of The Villages in the cumulative impacts analysis, because The Villages constitutes part of the background of past, present, and reasonably foreseeable actions against which the incremental effects of the proposed action are assessed.

Reclamation's approach is fully consistent with NEPA, the Council on Environmental Quality's NEPA regulations, and NEPA case law. Reclamation further believes that The Villages analysis under the No-Action Alternative is adequate and, in fact, has actually exceeded the requirements and standards for evaluating consequences of the No-Action Alternative. Through this approach, Reclamation has adequately evaluated all of the potential environmental effects associated with its decision to provide leased settlement water under the Option and Lease Agreement.

### **Consideration of Alternatives**

Some commenters have questioned the adequacy of Reclamation's consideration of alternatives. Reclamation considered a No-Action Alternative to the proposed action, which is evaluated in detail in the EA. Reclamation has considered a reasonable range of alternatives. A thorough investigation was conducted for feasible water delivery alternatives that could reasonably meet the objectives of the Ak-Chin Option and Lease Agreement. Reclamation's NEPA Handbook (October 1990) recognizes in Section 4-9B, "Reasonable Alternatives" that:

In examining the range of reasonable alternatives, the CEQ [Council on Environmental Quality] memorandum of July 22, 1983, states in part that "an agency's responsibilities to examine alternative sites has always been bounded by some notion of desirability." CEQ stresses that agencies should not disregard the "common sense realities" of a given situation in the development of alternatives.

Selection of the proposed pipeline alignment evaluated in the EA occurred as the result of a detailed feasibility evaluation of the possible alternative alignments. Criteria for evaluating the alignment alternatives, as described beginning on page 2-11 of the EA, included: constructability of the turnout structure and pipeline, permit requirements, construction schedule considerations, right-of-way issues, water quality and supply reliability issues, and costs.

Although the proposed alignment was not the least expensive, it was selected in part because it would utilize a relatively disturbed corridor along the Arizona Public Service (APS) electric transmission line corridor and the abandoned Reclamation haul road for much of its right-of-way. All other alternative alignments considered would involve greater disturbance of previously undisturbed land, including native upland Sonoran desert habitat. Table 2-1 of the EA provides a summary of the feasibility evaluation carried out for the various pipeline alignments considered. Because the other pipeline alignments evaluated at this feasibility level appeared to involve greater environmental effects than the proposed action, no other pipeline alignment alternatives to the proposed action warranted further evaluation in the EA. Please refer also to response to comment 4-3 below.

An alternative intake structure location was considered during the development of the EA, involving construction of a turnout structure on Lake Pleasant. Evaluation of this alternative was dropped from further consideration before finalizing the draft EA because of noise and recreational effects on Lake Pleasant.



Considering alternatives involving delivery of less water under the Option and Lease Agreement is not reasonable and would not meet the objectives of the proposed action. The amount of water to be delivered is contractually agreed upon, consistent with the Ak-Chin Indian Community's congressional authority to lease its surplus settlement water. Reclamation has also found that the entire amount of the water to be provided could be replaced by alternative supplies in the absence of the federal action.

## **RESPONSES TO OTHER COMMENTS MADE DURING THE PUBLIC MEETING (PUBLIC MEETING COMMENTS 5-7)**

Comments were received during the draft EA public hearing concerning the effect of interim groundwater use on private wells, the NEPA public involvement and EA scoping process, and the effects of The Villages on air quality, traffic, wildlife, desert habitat, and archaeological resources.

### **Interim Groundwater Use**

Several speakers expressed concern about the interim use of groundwater for water delivery system construction and short-term construction activities on The Villages site. The local groundwater aquifer utilized by private wells in the vicinity of the proposed water delivery facilities and The Villages site was analyzed. The analysis indicated that the anticipated use of approximately 50 acre-feet per year (af/yr) of groundwater for pipeline construction and 150 af/yr of groundwater for construction and interim uses for 18 months would not adversely affect private wells because of the small amount of groundwater involved and because Del Webb would pump from a lower water bearing unit than surrounding private wells. Please refer to the additional information presented on page 3-6 of the final EA and in response to comment 7-5, below.

### **Public Involvement and Scoping**

A number of speakers questioned the adequacy of the NEPA public involvement and scoping process. Reclamation has exceeded the requirement for public involvement and scoping in its NEPA process in the interest of providing an open, full disclosure process. Reclamation conducted a public scoping meeting at New River Elementary School on November 2, 1996, early in the EA process. Reclamation also extended the deadline for written scoping comments to December 13, 1996, to ensure that adequate time was provided to receive written scoping comments. Reclamation considered all of the EA scoping comments received before publishing the draft EA. Reclamation also provided a public forum for comment on the draft EA on June 28, 1997, at the New River Elementary School. All of the hearing testimony and written comments on the draft EA have been considered, and revisions to the draft EA have been made where appropriate. Reclamation has gone beyond what is required by regulation, as well as what is normally conducted for public involvement

and scoping of an EA by providing for public scoping and draft EA hearings. Please refer also to responses to comments 4-23 and 4-25, below.

### **Effects of The Villages at Desert Hills**

Several commenters made reference to the environmental effects that could result from development of The Villages site. Reclamation has provided a summary of the site conditions and a discussion of environmental issues that would result from The Villages development under the No-Action Alternative. Please refer to the "Response to Comments on the NEPA Compliance Approach" above for an explanation of the EA analysis approach. All of the relevant resource areas were addressed under the No-Action Alternative, including air quality, traffic, wildlife, desert habitat, and archaeological resources issues. The final EA adequately addresses all of the environmental effects that could result from the No-Action Alternative, including The Villages, as presented in Section 3.0, "Affected Environment and Environmental Consequences."

## **Responses to Written Comment Letters Received**

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This section includes the comment letters with individual comments numbered in the right margin. Responses to the comments follow each comment letter.





We recommend the Reclamation reconsider the proposed action and whether the EA should also analyze the impacts associated with the proposed "Villages" development and not just the pipeline proposal for delivering the water and ancillary facilities. 1-2

3. On pages 1-3 and Section 5.0 lists and discusses the laws, regulations and executive orders that were evaluated in preparation of the EA. We recommend the following laws and executive orders also be addressed: Clean Air Act; Executive 12898 Environmental Justice; Executive Order 31007 Indian Sacred Sites; and Secretarial Order 3206 regarding Trust Responsibilities and the Endangered Species Act. 1-3

4. On page 2-2, the Figure 2-1 should show where the Ak-Chin Indian Reservation is located in relation to the proposed project. 1-4

5. On page 2-6, it discusses the proposed location of the 9-mile pipeline crossing various Federal, State, and County lands along with required right-of-way easements. Are any of the lands associated with the Bureau of Land Management's Saguaro National Park/Lake Pleasant Land Exchange affected by the proposed pipeline alignment? If so, this needs to be discussed in the EA. We recommend that Figure 2-2 show the various land status. 1-5

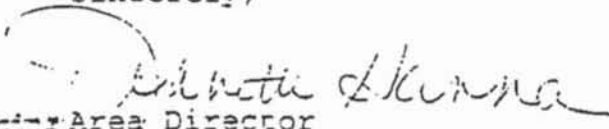
6. Sections 1 and 2 of the EA do not mention anything associated with the use of 10,000 acre feet of water by the Ak-Chin Indian Community if the 1994 Lease Agreement was terminated by the parties. Does the Tribe have the ability to use the water on their reservation or market it to another entity if the Del Webb proposed development does not use this water? 1-6

7. On page 3-22, under the paragraph discussing Traditional Cultural Properties (TCPs) it states that the proposed water delivery pipeline and water treatment facility will have no effect on known TCPs. When will consultation take place with the seven Tribes that have been identified to have ancestry ties to the area concerning unknown TCPs? Will this occur prior to a decision on the EA? 1-7

8. On page 5-5, we recommend that the Ak-Chin Indian Community and the BIA be included in the list of Federal, State, Tribal and Local agencies contacted and consulted. Also any other Tribes that are to be consulted concerning TCP's should be included in this listing. 1-8

We appreciate the opportunity to comment on the Draft EA. If you have any questions concerning the above, please contact the PAO Environmental Quality Services staff at (602) 379-6750.

Sincerely,

  
Diana Skanna  
Section Area Director

## Letter 1: Responses to Comments made by Bureau of Indian Affairs

- 1-1. Comment noted. No change to the cover of the EA has been made because the focus of the EA is on provision of settlement water under the Ak-Chin Option and Lease Agreement.
- 1-2. As noted above in the "Response to Comments on the NEPA Compliance Approach", Reclamation has concluded that The Villages development is not an effect of its proposed action because The Villages (a private project) would occur regardless of whether the proposed federal action occurs. Reclamation nevertheless has included in the EA a summary of environmental issues related to The Villages as part of the discussion of the No-Action Alternative and as part of the cumulative impacts analysis. As a result, Reclamation believes it has adequately evaluated the relevant environmental effects of its proposed action.
- 1-3. The EA does address the Clean Air Act on pages 3-22 and 3-23. Additional references to the Clean Air Act have been incorporated into the final EA on page 1-3 and in Section 5.0. Reference to Executive Order 12898 - Environmental Justice has been added to Section 5.0 of the EA. Impacts on "sacred sites", as defined by Executive Order 13007, were considered in the cultural resources section under the heading of "Traditional Cultural Properties". No requirements of Secretarial Order 3206 regarding trust responsibilities and the ESA pertain to this proposed action as no formal consultation has been initiated.
- 1-4. Comment noted. The Ak-Chin Indian Reservation is not located in the vicinity of the Central Arizona Project (CAP) facilities that are applicable to the proposed action or in the vicinity of the proposed water delivery facilities. Therefore, the reservation boundary has not been included on location maps included in the EA.
- 1-5. None of the project alignments would affect lands associated with the Bureau of Land Management's (BLM's) Saguaro National Park/Lake Pleasant Land Exchange. Additional detail of key state and BLM landownerships crossed by the proposed pipeline corridor has been added to the EA as Figures 2-3, 2-5, and 2-6.
- 1-6. Reclamation assumes that if the Option and Lease Agreement were terminated, sufficient water demand exists in central and southern Arizona that the water supply could be leased to another entity by the Ak-Chin Indian Community. The final EA has been revised to reflect this.
- 1-7. In June 1997, Reclamation initiated consultation with eight Indian tribes that claim ancestral ties to the New River area, as required by the National Historic Preservation Act. A written response was received from the Yavapai-Prescott Indian Tribe. During August 1997, a field inspection of the archaeological properties was conducted with members of the Ak-Chin Indian Community and Salt River Pima-Maricopa Indian Community. Input was provided on the proposed historic property treatment plan. Traditional Cultural Properties (TCP) consultation with tribes was included during the National Historic Preservation Act (NHPA) Section 106 consultation process. The final EA has been revised to reflect this consultation, which will be taken into consideration during the decision-making process.

1-8. The additions to the list on page 5-6 of the final EA have been made.



**Advisory  
Council On  
Historic  
Preservation**

**LETTER 2**

OFFICIAL	ACTION BY
RECORDS	DATE
JUL 10 '97	
DATE	RIGHT TO INITIAL

The Old Post Office Building  
1100 Pennsylvania Avenue, NW, #809  
Washington, DC 20004

7/10	10/15	303
	1500	
CLASSIFICATION	CONTROL NO.	FOUNDER
UPDATE	KEYWORD	

June 20, 1997

Dennis Schroeder  
Area Manager  
Bureau of Reclamation  
Phoenix Area Office  
P.O. Box 9980  
Phoenix, AZ 85068-0980

*REF: Provision of Leased Ak-Chin Indian Community Water to Del Webb Corporation for Use at The Villages at Desert Hills, Maricopa County, Arizona.*

Dear Mr. Schroeder:

On June 16, 1997, the Council received your request that we review the draft Environmental Assessment (EA) for the referenced project.

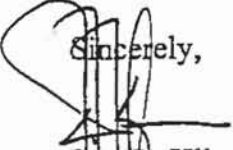
We are pleased that the Bureau is taking the steps to comply with Section 106 of the National Historic Preservation Act. We agree with Reclamation's consideration of the project's Area of Potential Effects as including the pipeline corridor and related facilities, the water treatment plant, and The Villages' development for the purposes of Section 106 compliance, as noted on page 5-2 of the draft EA. We look forward to consulting with your agency on the effects of this undertaking on historic properties included in or eligible for the National Register of Historic Places.

Further, we note that the Villages at Desert Hills project will require a Section 404 permit from the Army Corps of Engineers, a right-of-way or easement from the Bureau of Land Management, and likely other Federal actions, possibly including a NPDES permit from the Environmental Protection Agency and approvals from the Bureau of Indian Affairs, in addition to your agency's actions. In this regard, we would like clarification as to whether the Bureau of Reclamation is acting as lead agency for these other agencies for the purpose of compliance with Section 106 of the National Historic Preservation Act.

2-1

If you have any questions or wish to discuss this further, please contact Ms. Marjorie Ingle Nowick of the Council's Denver office at 303-969-5110 or via email at [mnowick@achp.gov](mailto:mnowick@achp.gov).

Sincerely,



Don L. Klima  
Director

Office of Planning and Review

**Letter 2: Response to Comments made by the Advisory Council on Historic Preservation**

- 2-1. Reclamation is acting as lead agency for compliance with Section 106 for other federal agencies, including the U.S. Army Corps of Engineers.



GAME & FISH DEPARTMENT

2221 West Greenway Road, Phoenix, Arizona 85023-4399 (602) 942-3000

Governor  
Fife Symington

Commissioners  
Chairman, Nonie Johnson, Snowflake  
Michael M. Golightly, Flagstaff  
Herb Guentner, Tucson  
Fred Belman, Tucson  
M. Jean Hassell, Scottsdale

Director  
Duane L. Shroule

OFFICIAL	ACTION BY	Deputy Director
		Thomas W. Spalding

Mesa Office, 7200 E. University, Mesa, Arizona 85207 (602) 981-9400

July 11, 1997

Mr. Bruce Ellis  
Chief  
Environmental Resource Management Division  
Bureau of Reclamation  
P.O. Box 9980  
Phoenix, Arizona 85068-0980

JUL 14 '97		
DATE	ROUTE TO	INITIAL
7/14	10/15	RACE
	15/10	
CLASSIFIED	EX-116-00	
CONTROL NO.	9703673	
AK-CHIN Indian	779	
RESERVES Villages at		

Re: Comments on Draft Environmental Impact Statement on the Provision of Leased CAP Water from the Ak-Chin Indian Community to Del Webb Corporation for Use at Desert Hills

Dear Mr. Ellis:

The Arizona Game and Fish Department (Department) has reviewed the Draft Environmental Impact Statement on the provision of leased CAP water from the Ak-Chin Indian Community to Del Webb Corporation for use at The Villages at Desert Hills. The Department provides the following comments concerning this proposal.

Although the Bureau assumes that development of the Villages at Desert Hills will occur in the absence of the transfer of CAP water to Del Webb, the Department believes that the alternative water sources cited may not be viable ones at this point in the process. The viability of alternative sources of water is an important element in determining whether the Villages is a consequence of the Federal approval of provision of leased water. We believe that construction of this development may be linked to the federal action of the CAP water transfer. The draft EA should therefore, address the viability of those alternative sources of water, along with a detailed analysis of the resulting development, either as a direct or indirect effect.

3-1

A Finding of No Significant Impact (FONSI) may not be appropriate at this time due to the narrow focus of the draft EA. If indeed the Villages Development is either a result of a federal action, or is a "precedent setting action", the EA must cover the entire project, including the residential development, to determine if a more detailed study (EIS) is required.

3-2

Mr. Bruce Ellis  
July 11, 1997  
2

### Special Status Species

The Department's Heritage Data Management System has been accessed and current records show that the special status species listed below have been documented as occurring in the project vicinity.

<u>COMMON NAME</u>	<u>SCIENTIFIC NAME</u>	<u>STATUS</u>
bald eagle	<u>Haliaeetus leucocephalus</u>	LT,WC,S
California snakewood	<u>Columbrina californica</u>	S
lowland leopard frog	<u>Rana yarabaiensis</u>	WC,S
Sonoran desert tortoise	<u>Gopherus acassizii</u>	WC,S

### STATUS DEFINITIONS

- LT - Listed Threatened.** Species identified by the U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act (ESA) as being in imminent jeopardy of becoming Endangered.
- WC - Wildlife of Special Concern in Arizona.** Species whose occurrence in Arizona is or may be in jeopardy, or with known or perceived threats or population declines, as described by the Department's listing of **Wildlife of Special Concern in Arizona** (WSCA, in prep.). Species included in WSCA are currently the same as those in **Threatened Native Wildlife in Arizona** (1988).
- S - Sensitive.** Species classified as "sensitive" by the Regional Forester when occurring on lands managed by the U.S.D.A. Forest Service.

In addition, we recommend contacting USFWS, at the address listed below, for additional information regarding ESA and how it applies to the species listed above as "LT".

Mr. Sam Spiller  
Field Supervisor  
Arizona Ecological Services State Office  
U.S. Fish and Wildlife Service  
2321 West Royal Palm Road, Suite 103  
Phoenix, Arizona 85021-4951  
Phone: (602) 640-2720

Mr. Bruce Ellis  
July 11, 1997  
3

The Department recommends that the above listed special status species are considered in the planning and implementation of the proposed provision of leased CAP water. Suitable habitat for special status wildlife listed above should be surveyed in order to accurately assess potential impacts of the proposed project to these species.

3-3

In the instance that an individual tortoise or its burrow is encountered prior to or during any construction related to this project, we further recommend that the Department's "Guidelines for Handling Sonoran Desert Tortoises Encountered on Development Projects" be used. A copy of these recently updated guidelines has been enclosed for your information.

3-4

#### **Habitat**

The project area is located in the Arizona Upland Sonoran Desert scrub biotic community as described by Brown and Lowe (1980). Wildlife species known to inhabit the area include javelina, mule deer, coyote, raptors, and a variety of small mammals, songbirds, and reptiles.

Sonoran desert habitats are categorized as Resource Category III as defined in the Department's Wildlife and Wildlife Habitat Compensation Guidelines (Arizona Game and Fish Department Operating Manual, I2.3). Anticipated losses to Category III habitats are recommended to be compensated for by replacement of habitat values in-kind, or by substitution of high value habitat types, or by increased management of replacement habitats, so that no net loss occurs.

The Department recommends that unavoidable impacts to upland habitats be mitigated. A mitigation plan specifying the mitigation project location and area, implementation time line, monitoring requirements, and mitigation success criteria should be developed.

3-5

We also recommend that the removal of native vegetation be limited to the minimum amount feasible. When removal of vegetation cannot be avoided, plant species protected under the Arizona Native Plant Law, ARS Title 3, Chapter 7, such as cacti should be relocated to an appropriate revegetation site. Revegetation of disturbed sites should be accomplished using locally native plant species.

#### **Wildlife**

Individual animals may become trapped or killed in excavated sites associated with water transfer facilities. The Department

3-6

Mr. Bruce Ellis

July 11, 1997

4

recommends that trenches, pits, or holes excavated in association with this project be designed, fenced, or covered to avoid entrapment or death of wildlife.

3-6

The pipeline is also in the vicinity of one or more water catchments which currently provide water to both wildlife and cattle. If these are destroyed as a result of the construction, they would need to be rebuilt as soon as possible in other locations, as approved by the Department. Attached is a copy of one of the location maps with the approximate locations noted in red ink.

3-7

The Department further recommends that all hazardous wastes including waste motor oil should be safely stored to prevent spills and be properly disposed of at a designated waste disposal site. Hazardous waste generated in association with water transfer facility construction could enter the watershed or directly affect individual animals by contact or ingestion.

3-8

#### **Department Properties**

The proposed pipeline would be constructed just north of the Department's Ben Avery Shooting Facility. The Department requests that we be informed of all proposed construction activities, including implementation schedules, in the vicinity of our property boundary.

3-9

The Department appreciates the opportunity to comment on this draft EA for the proposed provision of leased CAP water from the Ak-Chin Indian Community to the Del Webb Corporation. We look forward to continued cooperation as this project continues.

Sincerely,



Timothy Wade  
Habitat Evaluation Specialist

TPW:tw

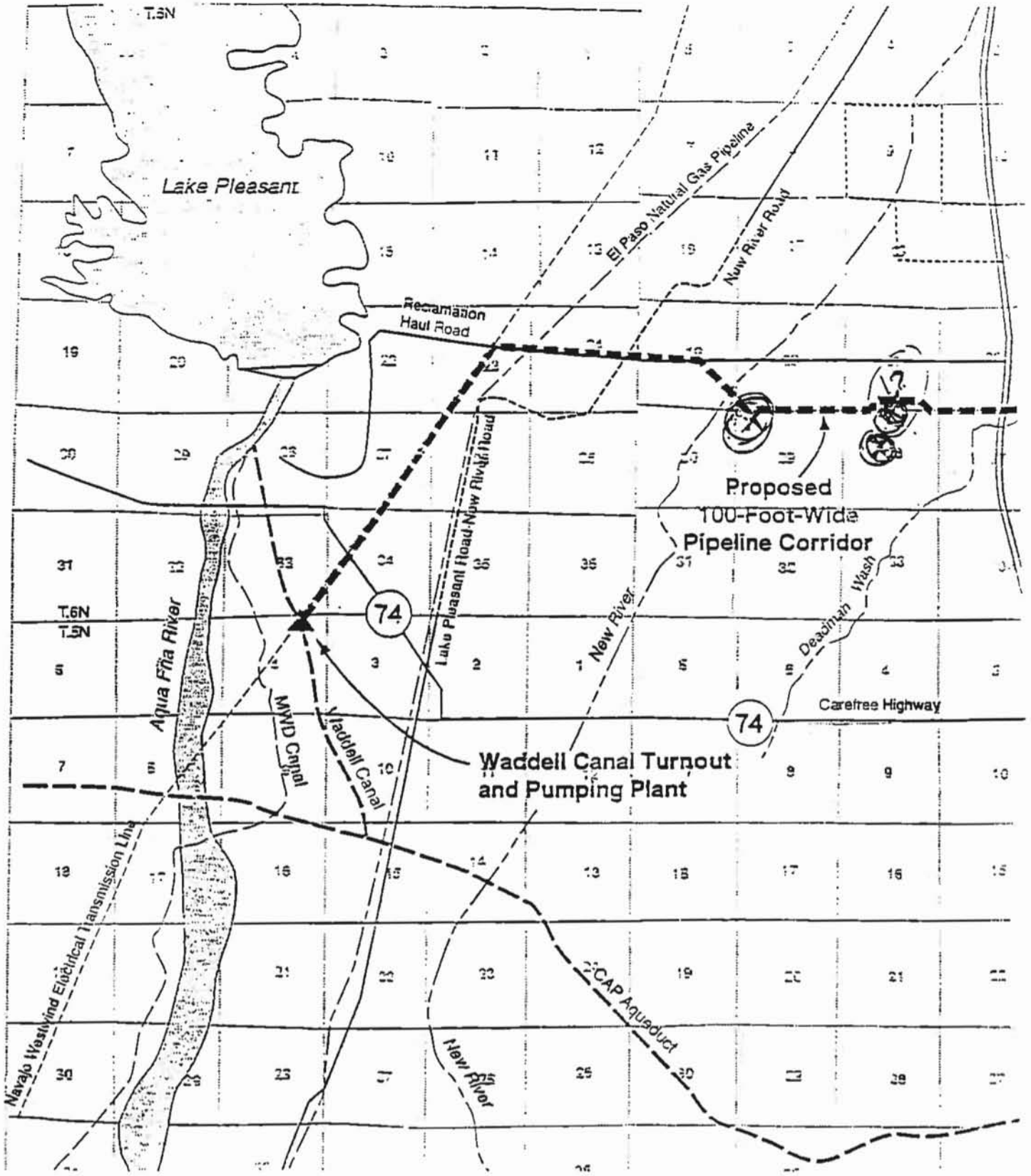
cc: Kelly Neal, Regional Supervisor, Region 6  
Russell Haughey, Habitat Program Manager, Region 6  
David L. Walker, Project Evaluation Program Supervisor,  
Habitat Branch  
Sam Spiller, Ecological Services, US Fish and Wildlife  
Service

Mr. Bruce Ellis  
July 11, 1997  
5

Shelly Shepherd, Wildlife Manager, Northwest Phoenix  
District

enclosure





GUIDELINES FOR HANDLING SONORAN DESERT TORTOISES  
ENCOUNTERED ON DEVELOPMENT PROJECTS

Arizona Game and Fish Department

Revised January 17, 1997

The Arizona Game and Fish Department (Department) has developed the following guidelines to reduce potential impacts to desert tortoises, and to promote the continued existence of tortoises throughout the state. These guidelines apply to short-term and/or small-scale projects, depending on the number of affected tortoises and specific type of project.

Desert tortoises of the Sonoran population are those occurring south and east of the Colorado River. Tortoises encountered in the open should be moved out of harm's way to adjacent appropriate habitat. If an occupied burrow is determined to be in jeopardy of destruction, the tortoise should be relocated to the nearest appropriate alternate burrow or other appropriate shelter, as determined by a qualified biologist. Tortoises should be moved less than 48 hours in advance of the habitat disturbance so they do not return to the area in the interim. Tortoises should be moved quickly, kept in an upright position at all times and placed in the shade. Separate disposable gloves should be worn for each tortoise handled to avoid potential transfer of disease between tortoises. Tortoises must not be moved if the ambient air temperature exceeds 105 degrees fahrenheit unless an alternate burrow is available or the tortoise is in imminent danger.

A tortoise may be moved up to two miles, but no further than necessary from its original location. If a release site, or alternate burrow, is unavailable within this distance, and ambient air temperature exceeds 105 degrees fahrenheit, the Department should be contacted to place the tortoise into a Department-regulated desert tortoise adoption program. Tortoises salvaged from projects which result in substantial permanent habitat loss (e.g. housing and highway projects), or those requiring removal during long-term (longer than one week) construction projects, will also be placed in desert tortoise adoption programs. *Managers of projects likely to affect desert tortoises should obtain a scientific collecting permit from the Department to facilitate temporary possession of tortoises.* Likewise, if large numbers of tortoises (>5) are expected to be displaced by a project, the project manager should contact the Department for guidance and/or assistance.

Please keep in mind the following points:

- These guidelines do not apply to the Mohave population of desert tortoises (north and west of the Colorado River). Mohave desert tortoises are specifically protected under the Endangered Species Act, as administered by the U.S. Fish and Wildlife Service.
- These guidelines are subject to revision at the discretion of the Department. We recommend that the Department be contacted during the planning stages of any project that may affect desert tortoises.
- Take, possession, or harassment of wild desert tortoises is prohibited by state law. Unless specifically authorized by the Department, or as noted above, project personnel should avoid disturbing any tortoise.

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### **Letter 3: Response to Comments made by the Arizona Game & Fish Department**

- 3-1. Appendix A of the EA includes additional detail in the analysis and substantiation of the alternative water sources that would be available to The Villages development in the absence of federal action. Based on independent verification with the Arizona Department of Water Resources (ADWR) and the City of Phoenix, Reclamation has concluded that at least one viable alternative to the proposed action exists. For example, extension of the City of Phoenix water distribution system north along I-17 is an alternative the Del Webb Corporation could reasonably implement. Substantial evidence has been presented in the EA to indicate that water would be available to the Del Webb Corporation under one or more of these options in the absence of the federal action. Please refer to the supplemental information provided in Appendix A to this EA.
- 3-2. Please refer to the "Response to Comments on the NEPA Compliance Approach", above. Reclamation has considered the effects of The Villages development under the No-Action Alternative for each topical area discussed for the proposed action. The Villages is not a result of the federal action to provide leased settlement water under the Ak-Chin Option Lease Agreement. While potential environmental impacts associated with The Villages development are presented under the No-Action Alternative, impacts associated with The Villages are not considered either direct or indirect effects of Reclamation's proposed action for the purpose of determining whether that action will have "significant" environmental effects. The effects of The Villages are relevant, however, as part of the background, or context, against which the incremental, or cumulative, effects of Reclamation's action are assessed. The discussion of the No-Action Alternative also provides a baseline against which the proposed action is evaluated. Please also refer to response to comments 4-27 and 26-4.
- 3-3. The EA considers all of the special-status species identified in Arizona Game & Fish Department's (AGFD's) letter and presents a similar listing of species received from AGFD in Appendix C. Reclamation has confirmed the results of the special-status species surveys conducted by Jones & Stokes Associates and SWCA in October 1996 and early 1997. No state or federal special-status species were observed during field surveys of the pipeline corridor and water treatment plant site. Reclamation does not anticipate any adverse impacts on special status species resulting from construction of the pipeline or water treatment plant. Please refer also to response to comment 4-8 regarding Endangered Species Act compliance.
- 3-4. The EA indicates in Section 4.0, "Environmental Commitments" under "Biological Resources" (page 4-1) that Del Webb will conduct preconstruction surveys for desert tortoise burrows along the proposed pipeline alignment. If desert tortoises are found, Del Webb will follow AGFD guidelines for handling desert tortoises and will contact AGFD for recommendations and the appropriate permits. The EA also addresses the potential biological and special-status species effects for the Option 1 water supply alternative alignment (as described in Appendix A) and The Villages under the No-Action Alternative.
- 3-5. The EA indicates on page 3-14 that the pipeline project could result in temporary effects on approximately 5.75 acres of xeroriparian scrub and 51 acres of Sonoran desertscrub habitat

within the proposed pipeline right-of-way and could result in the permanent loss of 44 acres of Sonoran desertscrub habitat at the proposed water treatment plant site as shown in Figure 3-1. Del Webb has agreed to recontour and reseed areas of the pipeline corridor not needed for permanent facilities and will reseed upland areas as necessary. The EA indicates in Section 4.0, "Environmental Commitments", under "Biological Resources" that Del Webb will conduct preconstruction surveys for native plants in the water delivery and treatment system impact areas. If Del Webb cannot avoid native plants, it will comply with applicable state law concerning native plants.

- 3-6. Adverse effects on individuals of common wildlife species at the pipeline construction site are unlikely because pipeline construction would occur in limited, defined segments, and disturbed areas would be backfilled as pipeline segments are placed in trenches.
- 3-7. Construction of the pipeline will avoid affecting all existing water catchments.
- 3-8. The EA indicates on page 4-1 under "Water Resources" that Del Webb will comply with the National Pollutant Discharge Elimination System stormwater general permit and will implement a stormwater pollution prevention plan. Standard construction practices would be implemented to minimize potential release of contaminants, and staging areas used for onsite storage of any hazardous construction materials would be located at least 100 feet from the edge of a wash or other drainage feature. Del Webb would also comply with the Flood Control District of Maricopa County's (FCDMC's) permit and license requirements. Please refer to page 3-4 of the EA for a discussion of the temporary construction-related effects on surface water quality that could result under the proposed action.
- 3-9. The Ben Avery Shooting Facility is located approximately 2 miles south of the proposed pipeline corridor and is not expected to be directly or indirectly affected by pipeline construction or operation. Reclamation will request that Del Webb forward to the AGFD any information available related to proposed construction activities or implementation schedules for the water delivery facilities.



commencing a major federal action that may have a significant effect on the environment. 42 U.S.C. § 4332(2)(C); *Robertson v. Methow Valley Citizen's Council*, 490 US 332, 336 (1989). When a federal agency is not certain whether an EIS is required, it must prepare an environmental assessment (EA). 40 C.F.R. §§ 1501.3, 1501.4, 1508.9; *Foundation for North American Wild Sheep v. US Dep't of Agriculture*, 681 F.2d 1172, 1178 (9th Cir. 1982). If the EA concludes that the proposed project will have no significant impact on the human environment, the agency may issue a "Finding of No Significant Environmental Impact" (FONSI) and proceed with the proposed action. If the agency concludes that the proposed action may result in a significant environmental impact, it must prepare an EIS. 40 C.F.R. § 1501.4; see, e.g., *Smith v. US Forest Service*, 33 F.3d 1072, 1074 n.1 (9th Cir. 1994); *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1328 n.4 (9th Cir. 1992).

When preparing an EA, agencies must take a hard look at the potential impacts of a project, and that a FONSI is issued only when the EA convincingly concludes that no significant impacts on the environment will occur. An EIS must be prepared unless the agency supplies a "convincing statement of reasons why potential impacts are insignificant." *Save the Yaak Committee v. Block*, 840 F.2d 714, 717 (9th Cir. 1988) (quoting *The Steamboaters v. FERC*, 759 F.2d 1382, 1393 (9th Cir. 1985)).

In addition, Council on Environmental Quality (CEQ) regulations recognize that intelligent decisionmaking can be derived only from high quality information. Thus, an EA must provide "evidence and analysis" to support its conclusion that issuance of a FONSI or preparation of an EIS is appropriate. 40 C.F.R. § 1508.9. In addition, information included in NEPA document must be reliable and current. "Accurate scientific analysis . . . [is] essential to implementing NEPA." 40 C.F.R. § 1500.1(b).

An EA must include a careful examination of all of the environmental impacts of a proposed action, including direct, indirect, and cumulative impacts. See 40 C.F.R. § 1508.8 (effects that must be considered are ecological, aesthetic, historical, cultural, economic, social, or health impacts, whether direct, indirect, or cumulative). Indirect effects

are caused by the action and are later in time or further removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the patterns of land use, population density or growth rate, and related effects on air and water quality and other natural systems, including ecosystems.

40 C.F.R. § 1508.8(b) (emphasis added).

The federal courts have confirmed that agencies are required to disclose all direct and indirect environmental consequences likely to result from a federal action, even those

that will occur on non-federal land. See *City of Davis v. Coleman*, 521 F.2d 631, 677-81 (9th Cir. 1975) (agency must analyze development impacts in EIS where federal approval of highway project likely to have impacts on development of surrounding area). See also *Sierra Club v. Marsh*, 769 F.2d 868, 877-89 (1st Cir. 1985) (rejecting EA where agency failed to account for private development impacts likely to result from approval of causeway and port facility); *Coalition for Canyon Preservation v. Bowers*, 632 F.2d 774, 783 (9th Cir. 1980) (reaching holding similar to that in *Coleman* case); *Mullin v. Skinner*, 756 F.Supp. 904, 920-22 (E.D.N.C. 1990) (rejecting EA where agency failed to account for private development impacts likely to result from approval of bridge project). The courts have especially emphasized the importance of such disclosure where the project's "reason for being" may be the facilitation of private development. See *Citizen's Committee Against Interstate Route 675 v. Lewis*, 542 F.Supp. 496, 562 (S.D. Ohio 1982).

4-1

An agency must consider how the impact of its proposed action may combine with "other past, present, and reasonably foreseeable future actions regardless of what agency . . . or person undertakes such actions." 40 C.F.R. § 1508.7; see, e.g., *Save the Yaak Committee v. Block*, 840 F.2d 714 (9th Cir. 1988). If the cumulative impacts of a proposed project, considered in combination, are likely to result in significant impacts to the environment, the agency must prepare an EIS. *Resources Limited, Inc. v. Robertson*, 8 F.3d 1394, 1400 (9th Cir. 1994); *Inland Empire Public Lands Council v. Schultz*, 992 F.2d 977, 981 (9th Cir. 1993).

The Bureau must prepare an EIS where there are substantial questions whether the mitigation actions planned by the developer will "completely preclude significant environmental effects." *Conner v. Burford*, 836 F.2d 1521, 1531 (9th Cir. 1988); *Friends of the Earth v. Hintz*, 800 F.2d 822, 836 (9th Cir. 1986).

4-2

The Bureau must consider all reasonable alternatives, including those that may result from the actions of other federal, state, or local agencies. As explained by one federal appellate court:

NEPA requires an integrated view of the environmental damage that may be caused by a situation, broadly considered, and its purpose is not to be frustrated by an approach that would defeat a comprehensive and integrated consideration by reason of the fact that particular officers and agencies have particular occasions for and limits on their exercise of jurisdiction.

4-3

*Henry v. Federal Power Comm'n*, 513 F.2d 395, 406 (D.C. Cir. 1975). Thus an agency must consider the consequences if another federal, state, or local agency denies a permit or other approval required by applicable federal, state, or local statutes or regulations.

The Department of Interior has issued regulations specifying that agencies within its jurisdiction, including the Bureau, should normally prepare an EIS where (1) the proposed project is a “modification[] to [an] existing project[] or [is] a proposed change[] in the programmed operation of an existing project that may cause a significant new impact;” or (2) the agency proposes to construct a project, or a major unit of a project, not already covered by an existing EIS or where significant new impacts from the project, or major unit of it, are expected. 6 US Department of the Interior Manual 516 (Appendix 9 - Department of Interior NEPA Regulations), § 9.3(4), (5).

4-4

## II. The EA Fails to Comply with NEPA

The draft EA on the Ak-Chin lease violates NEPA, and therefore the Bureau should withdraw the draft EA and prepare an EIS on this project. The draft EA fails to include some of the most basic information required by NEPA, including a reasonable range of alternatives, information about the direct and indirect impacts of the project, and the impacts of other reasonably foreseeable projects that may, together with this project, have cumulative impacts on a variety of resources.<sup>1</sup>

4-5

### A. The EA Does Not Adequately Consider a Reasonable Range of Alternatives

NEPA and its implementing regulations clearly require agencies to consider *all reasonable alternatives* to an agency action when preparing environmental review documents, including an EA. NEPA provides that agencies must “[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. §§ 4332(2)(E), 4332(2)(cc). The duty to consider reasonable alternatives is independent of and of wider scope than the duty to complete an EIS. In fact, an agency must consider all reasonable alternatives even where it decides to prepare an EA and issue a FONSI. See *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-29 (9th Cir. 1988) (“Consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process”), *cert. denied*, 489 US 1066 (1989); *Sierra Club v. Watkins*, 808 F.Supp. 852, 870 (D.D.C. 1991) (duty to consider reasonable alternatives is independent of and of wider scope than duty to complete EIS); *Sierra Club v. Alexander*, 484 F.Supp. 455 (N.D.N.Y. 1980) (same). This rule is intended to force agency decisionmakers to identify, evaluate, and take into account all possible approaches to a particular proposal, including those which would better address environmental concerns and the policy goals of NEPA.

4-6

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<sup>1</sup> Ideally, an EA should be a “concise document.” *LaFlamme v. FERC*, 945 F.2d 1124, 1129 (9th Cir. 1991). Though the draft EA’s length and complexity is not itself a reason to conclude that a significant effect on the environment will occur as a result of the Bureau’s proposed action, the length and complexity of the draft EA at issue here should reasonably lead the Bureau to conclude that an EIS is appropriate. See Council on Environmental Quality, Forty Most Asked Questions Concerning CEO’s National Environmental Policy Act Regulations, Question No. 36b.



The federal courts have explained, and the CEQ regulations implementing NEPA confirm, that an environmental review document's discussion of alternatives is "the heart" of the NEPA process. 40 C.F.R. § 1502.14. In order to "sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public," environmental review documents must explore and evaluate "all reasonable alternatives." *Id.*

4-6

As part of its analysis of the Bureau's proposed action, the EA must thoroughly examine - not dismiss after a summary review or fail to discuss at all - alternatives, including rejecting the proposed lease of Central Arizona Project (CAP) water, approving a smaller or differently located pipeline, or approving the lease subject to conditions imposing a smaller maximum water allotment to Del Webb Corporation. The Bureau has failed to even discuss these possible alternatives.

1. The Bureau Has Failed to Adequately Analyze a "No Action" Alternative

NEPA requires the Bureau to consider a "no action" alternative. As explained recently by the Ninth Circuit:

The goal of the statute is to ensure that federal agencies infuse in project planning a thorough consideration of environmental values. The consideration of alternatives requirement furthers that goal by guaranteeing that agency decisionmakers have before them and take into proper account all reasonable approaches to a particular project (*including total abandonment of the project*) which would alter the environmental impact and the cost-benefit balance.. Informed and meaningful consideration of alternatives - including the no action alternative - is an integral part of the statutory scheme.

4-7

*Alaska Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995) (quoting *Bob Marshall Alliance*, 852 F.2d at 1228) (emphasis in original).

The Bureau has included some discussion of a "no action" alternative in the draft EA, but the Bureau effectively renders its discussion meaningless by assuming that "development of the Villages [at Desert Hills] would occur in the absence of the proposed federal action."<sup>2</sup> The Bureau's belief in this regard is not supported by the administrative record before the agency and in any event is irrelevant to the agency's obligation to comply with NEPA requirements.

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<sup>2</sup> Draft EA at 1-2.

The draft EA itself makes it clear that Del Webb Corporation does *not* have any other sources of water for the Villages at Desert Hills available. Assuming that alternative sources of water for the development are relevant at all, rejection of a no action alternative is not justified where the developer offers unsupported allegations that it "could" develop this project absent the Bureau's approval of the lease.

The fact is, Del Webb Corporation has *no alternative* water supply. The City of Peoria's water distribution system currently extends no further than Beardsley Road, several miles south of the proposed development.<sup>3</sup> Peoria has planned the construction of a water treatment plant that would handle CAP water, but the draft EA contains no indication that Peoria and Del Webb Corporation have contracted for Del Webb's use of that treatment plant or that Del Webb would purchase or otherwise obtain or use a portion of Peoria's CAP allotment.

Nor is there any evidence that the City of Phoenix would provide water to the Villages at Desert Hills. The letter from Phoenix city manager Frank Fairbanks to you, dated June 11, 1996 and included as an attachment to the draft EA, plainly states that Phoenix and Del Webb Corporation have not "explored" any "details of [water] service," much less entered into any agreement or contract requiring Phoenix to provide water. In fact, no such agreement or contract could be entered into unless the Phoenix City Council approved, and no such approval has occurred. Thus, Phoenix has actually taken pains to let the Bureau know that it has made *no* promise to provide water to the Villages at Desert Hills. Mr. Fairbanks' letter clearly indicates that it "is not intended to be a commitment by the City of Phoenix to provide water service to the Villages at Desert Hills nor a binding commitment of any kind by the City of Phoenix."<sup>4</sup>

4-7

The draft EA similarly fails to demonstrate that Del Webb Corporation could obtain the water necessary to support the development through the Central Arizona Groundwater Recharge District (CAGR). There is no indication that Del Webb Corporation has entered into any leases of or contracts to purchase groundwater wells in the Phoenix active management area (AMA), attempted to obtain a permit for Type 2 non-irrigation grandfathered groundwater rights from the Arizona Department of Water Resources, or applied for membership in the CAGR. Nor does the draft EA include any evidence that Del Webb Corporation has formed, or attempted to form, a water company for the purpose of serving the Villages at Desert Hills.

It is interesting to note that the draft EA indicates that the cost to Del Webb Corporation of these alternatives is *lower* than that involved in obtaining necessary water via the Ak-Chin lease. The estimated cost to obtain water from those other possible sources ranges from \$10,203,000 to \$27,863,000,<sup>5</sup> but it would cost Del Webb Corporation approximately \$29,000,000 to obtain the water it seeks from the Ak-Chin

<sup>3</sup> Draft EA, Appendix A, at A-6.

<sup>4</sup> Draft EA, Appendix A, at A-28.

<sup>5</sup> Draft EA, Appendix A, at A-11, A-14, A-21, A-25.

tribe.<sup>6</sup> There must obviously be a good reason why the developer is willing to pay \$29 million dollars for the needed water when other alternatives would be less expensive, and it is reasonable to assume that the reason is that those alternatives are not actually available to Del Webb Corporation.

But the question whether Del Webb Corporation could get its water elsewhere is irrelevant in any event. Neither NEPA, its implementing regulations, nor any opinion of a federal court countenances the Bureau's totally unsupported claim that it need not consider the indirect and cumulative impacts of its proposed lease of CAP water because Del Webb Corporation may be able to obtain water elsewhere. The draft EA certainly contains no citation to any authority that would support the Bureau's position in this regard.

4-7

Obviously the impacts on the environment of the development itself must be thoroughly considered if the Bureau is not, as the law indicates, entitled to disregard a no action alternative. The draft EA includes some discussion of those impacts, but that discussion is inadequate.<sup>7</sup>

a. The Discussion of the No Action Alternative Does Not Adequately Address Expected Impacts of the Villages Development on Wildlife and Flora

The Bureau's analysis of impacts of the no-action alternative on vegetation and wildlife suffers from a significant procedural flaw. The Bureau has not obtained the comments of the United States Fish and Wildlife Service (USFWS) with respect to expected impacts on wildlife species listed as endangered or threatened under the Endangered Species Act (ESA). Instead, the only evidence of an effort to coordinate the study process with the USFWS is a letter addressed to Jones & Stokes Associates and dated October 23, 1996 which briefly list of endangered or threatened species, which is attached to the draft EA.<sup>8</sup>

4-8

More is required of the Bureau: the express policy of NEPA is to involve other agencies in the environmental study process. See 42 U.S.C. § 4332(2)(C); *Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988). The fact that USFWS apparently lacks adequate funding to provide project-specific species lists and information is not an excuse for the Bureau to fail to fulfill this responsibility because the cost of that effort should be borne by Del Webb Corporation, which agreed to underwrite the environmental assessment process.

<sup>6</sup> Draft EA at 2-4.

<sup>7</sup> The discussion of flaws in the draft EA's treatment of the no-action alternative also apply to the draft EA's treatment of impacts likely to result from the pipeline itself, unless the text indicates the contrary.

<sup>8</sup> Draft EA, Appendix C. Note that NEPA's requirement that the Bureau coordinate its study efforts with other federal agencies is not satisfied by the involvement of Jones & Stokes biologists or by reliance on studies prepared by private parties in other contexts.

Even if the data and test results discussed in the draft EA are adequate to comply with NEPA, most do not relate to the impacts on wildlife caused by the Villages development. The only "study" that allegedly does so - a paper entitled "Biological Evaluation of the Proposed Villages at Desert Hills Project Site, Maricopa County, Arizona" - has not been provided as an attachment to the draft EA. Accordingly, the Bureau has offered no factual or theoretical underpinnings for its cursory conclusion that no federally listed species are likely to occur on the development site and that the Del Webb Corporation development will not adversely affect such species. Nor does the "Biological Assessment" for the proposed lease agreement provide this essential information. That document does not address the Villages development site at all.<sup>9</sup>

The Bureau concedes that several endangered or threatened species, and the habitat they depend on, may be adversely affected by the pipeline and the planned Villages development. For example, the draft EA includes a statement indicating that bald eagle and peregrine falcon foraging areas may be affected by the development.<sup>10</sup> The draft EA does not explain the specific impacts that may be expected. Moreover, although the Bureau has offered an opinion that the proposed Villages development will not affect any listed species, the draft EA does not discuss any basis for that conclusion other than that no listed species other than bald eagles and peregrine falcons were seen on the Del Webb Corporation property. This statement alone is highly suspect, since the Bureau concedes in a paragraph on the same page that [d]esert tortoise is known to occur in The Villages development area<sup>11</sup> and elsewhere that desert tortoises occur in the pipeline corridor.<sup>12</sup>

4-8

The Bureau will be obligated to consult with USFWS before approving the lease because listed species may be affected. 16 U.S.C. § 1536(b). Similarly, the Bureau must avoid any action that would jeopardize the continued existence of any listed species. 16 U.S.C. § 1536(a)(2). It therefore makes absolutely no sense to conclude that approval of the lease will have no significant environmental impact without first determining whether USFWS agrees with that view. In this case, it is clear that USFWS does *not* agree with that view. In letters addressed your office and dated November 6, 1996 and June 12, 1997, the Arizona Ecological Services Field Office of USFWS informed the Bureau of its belief that an EIS is required before approval of the lease may occur. CEQ regulations indicate that USFWS' view is correct. *See* 40 C.F.R. § 1508.27(9) (requiring agency to analyze impacts on endangered or threatened species and/or their habitats and indicating EIS may be required where adverse impacts may occur)..

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<sup>9</sup> To the extent the Biological Assessment prepared by Jones & Stokes discusses any impacts on species as a result of the pipeline itself, such discussion is woefully inadequate. The public is not told of any specific studies, literature, or field survey *results* that would support the Jones & Stokes' conclusion that the pipeline would have no impact on any listed species.

<sup>10</sup> Draft EA at 3-14.

<sup>11</sup> Draft EA at 3-14.

<sup>12</sup> Draft EA at 3-11.

In addition to the obvious flaw in the Bureau's discussion of impacts on the desert tortoise, bald eagle, and peregrine falcon, the Bureau has failed utterly to provide an adequate explanation of why the proposed lease will not adversely affect the cactus ferruginous pygmy owl. Although USFWS has not designated critical habitat for this species, the ESA nevertheless requires the Bureau to affirmatively seek to conserve the species and avoid any action that could jeopardize its continued survival, and in any event the law is clear that habitat destruction, even if not designated "critical," may be a taking under section 9 of the ESA.<sup>13</sup> See 16 U.S.C. § 1538(a)(1)(B); *Sweet Home Chapter of Communities for a Great Oregon v. Babbitt*, 115 S.Ct. 2407, 2412-18 (1995).

4-8

The draft EA's treatment of impacts on species considered of special status under Arizona law is also defective. The Bureau concedes that development of The Villages at Desert Hills will "affect a variety of native plant communities and plant species," including several protected by Arizona law.<sup>14</sup> However, the Bureau blithely assumes that Del Webb Corporation will take appropriate steps to mitigate such impacts without providing any supporting documents, study results, or other information that would justify that assumption. The Bureau must *independently* evaluate how Del Webb Corporation would mitigate or prevent losses of special status, as well as listed, species. *LaFlamme v. FERC*, 852 F.2d 399, 400 (9th Cir. 1988). Nor may the Bureau rely on *potential*, as opposed to actual, actions that may be taken by Del Webb Corporation to conclude that the planned project will not have an adverse impact on the listed and/or special status species. See *Preservation Coalition, Inc. v. Pierce*, 667 F.2d 851, 860 (9th Cir. 1982).

4-9

b. The Draft EA's Discussion of Air Quality Impacts is Deficient

The draft EA recognizes that approval of the lease will result in short-term *and* long-term increases in ozone precursor pollutants (reactive organic gases and nitrogen oxide compounds), carbon monoxide, and particulate emissions.<sup>15</sup> The Maricopa County area is designated non-attainment for carbon monoxide, particulates, and ozone. Yet the Bureau inexplicably takes the position that the federal conformity regulation does not apply to this project. The Bureau is wrong. Contrary to the Bureau's assertion,<sup>16</sup> the conformity regulation applies to any project that receives any approval from any federal government agency and is not limited in scope to federal funding or approval only from the Bureau. Because this project will indisputably occur in a region designated as a non-compliance area for several pollutants pursuant to the Clean Air Act, the Bureau may not approve the proposed lease unless the result of doing so will not contribute to continued non-compliance with national ambient air quality standards.

4-10

<sup>13</sup> The Bureau should also consider the likelihood that activity related to construction of the pipeline and of The Villages development will directly result in the death of birds protected by the Migratory Bird Treaty Act.

<sup>14</sup> Draft EA at 3-15.

<sup>15</sup> Draft EA at 3-25, 3-26.

<sup>16</sup> See Draft EA at 3-26.

The draft EA also is not supported by independent, or even proprietary, air quality impact data. There is no discussion of specific air pollution impacts, although the draft EA does indicate that a huge increase in local traffic levels and population will occur as a result of the lease approval. In fact, the draft EA does not even discuss the ongoing effort to prepare a study to determine whether the planned Del Webb Corporation development, along with other developments in Maricopa County, will cause worsening of the area's air pollution problem. This study, supervised by the Maricopa Association of Governments, is not expected to be ready for review until at least mid- to late-August.<sup>17</sup> The Bureau's failure to provide such data, or to commit to a reevaluation of the air quality section of the EA based on the results of the conformity study, renders the EA insufficient as to this issue.

4-10

With regard to mitigation of air quality impacts, this section of the EA also fails to specifically demonstrate actual commitments by Del Webb Corporation and also does not provide enough detail to determine whether such commitments, even if they can be relied upon, are in fact likely to justify the FONSI determination.

4-11

c. The Draft EA Does Not Adequately Address Traffic Impacts

The draft EA indicates that approval of the lease could result in as much as a *tripling* of traffic on I-17 in the New River area.<sup>18</sup> Yet the draft EA includes no information that indicates any definite commitment by or obligation of Del Webb Corporation or the State of Arizona to improve traffic management in the area of the proposed development. This section of the EA also fails even to mention the air quality impacts, congestion, increased accident and injury potential, and wildlife habitat losses that may be caused by increased motor vehicle use and presence in and near the development and on surrounding roadways. Nor does the draft EA include any mention of the most recent traffic impact data that may be available in the files of the Arizona Department of Transportation, Maricopa Association of Governments, or Federal Highway Administration.<sup>19</sup>

4-12

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<sup>17</sup> Personal Communication between Doug Eberhart, MAG, and Alica McMahon (Mr. Lacey's legal assistant), July 14, 1997.

<sup>18</sup> Draft EA at 3-35. The Bureau does not discuss the source of its traffic information or the methodology by which such information was obtained by the original source. This is a flaw in the draft EA that violates NEPA.

<sup>19</sup> The draft EA apparently assumes that Del Webb Corporation will finance construction of two additional interchanges and a widening of I-17 by several lanes. There is no evidence included in the draft EA that supports this assumption, and in fact it now appears that Del Webb Corporation will agree to finance only *one* additional interchange and *no* additional highway lanes on I-17. Personal Communication between Fred Garcia, Arizona Department of Transportation, and Alica McMahon (Mr. Lacey's legal assistant), July 14, 1997.

d. The Draft EA Does Not Adequately Address Impacts on Cultural and Historic Artifacts

The draft EA does not incorporate the results of the studies relied upon to conclude that The Villages development will have no effect on cultural resources. The studies, literature, or data supporting this conclusion should be provided.

The draft EA admits that impacts on cultural sites will occur when The Villages development is built, and that the site (including that area of it used for the pipeline and the water treatment plant) includes prehistoric and historic archaeological artifacts.<sup>20</sup> In fact, the draft EA recognizes that at least five prehistoric sites eligible for inclusion on the National Registry of Historic Places (NRHP) have been located.<sup>21</sup> Yet the Bureau does not provide any indication of specific, irreversible commitments by Del Webb Corporation to protect or preserve these sites or to otherwise allow mitigation of adverse impacts upon them. Nor does the Bureau adequately explain its decision to concur in a recommendation that eight of these sites be denied NRHP listing.

4-13

e. The Draft EA Fails to Adequately Analyze Impacts on Land Use and Visual Resources

The draft EA seems intent on downplaying the basic reality of The Villages development: 50,000 people are to be housed, at almost 3 homes per acre, in a town less than ten percent that number in size. Such an enormous and rapid increase in population will unquestionably cause dramatic deterioration in the scenic quality of the New River area and virtually obliterate existing rural land uses. Unfortunately, the draft EA utterly fails to recognize that this horrific urban sprawl, in a metropolitan area already cursed with worsening air pollution and traffic congestion, itself constitutes an inevitable and highly destructive environmental impact of the proposed action. More than five thousand acres of rapidly disappearing Sonoran Desert landscape are to be converted into suburban homes, golf courses, roads, and other cookie-cutter suburban developments.<sup>22</sup> The Bureau recognizes that the noise resulting from construction of The Villages development will be "typical of suburban or urban environments."<sup>23</sup> The net consequence of all these impacts, aside from the wildlife, air quality, noise, and cultural impacts discussed above, will be the loss of the quality of life and freedom now enjoyed by residents of New River.

4-14

The draft EA recognizes only that The Villages development will increase population and, consequently, demand for urban services in the area.<sup>24</sup> The Bureau has not seen fit to include any discussion of how this massive urbanization will affect existing residents' lives, livelihoods, neighborhoods, schools, businesses, or recreational

<sup>20</sup> Draft EA at 3-22, 3-23.

<sup>21</sup> *Id.* at 3-22.

<sup>22</sup> Draft EA at 3-40.

<sup>23</sup> Draft EA at 3-44.

<sup>24</sup> See Draft EA at 3-39-3.44.

activities. This oversight is a significant flaw in the draft EA and, standing alone, is enough to require preparation of an EIS.

4-14

2. The Bureau Has Not Adequately Explained Why it Did Not Consider Other Pipeline Locations or a Lease Involving Less Water

The draft EA discusses one planned location for the proposed pipeline and the associated water treatment plant. Although the draft EA briefly outlines the reasons why the Bureau believes that other locations for the pipeline are not feasible, the document includes no background on the feasibility study that determined that options A, B, D, and E are infeasible. The Bureau should explain the methodology of that study, the details as to how each factor was considered with respect to each alternative, and the technical and economic selection criteria dictated by Del Webb Corporation.

4-15

The draft EA also does not discuss any alternative that would involve a lease of less than 10,000 acre-feet of Ak-Chin CAP water. This oversight is particularly bothersome in light of the Bureau's assertion that Del Webb Corporation has alternative sources of water to support the Villages development. If Del Webb could in fact obtain all or some of its water from Peoria, Phoenix, or the CAGR, then the Bureau certainly should be able to consider leasing less than the full complement of water needed to support the development.

III. Other Comments

The Villages development will occur on and between the floodplains of various streams and intermittent water courses. Nevertheless, the draft EA contains no discussion of how Del Webb Corporation will mitigate potential increased risks of flood damages. Such information is required under NEPA, as such risks may amount to a significant environmental impact.

4-16

The draft EA contains no substantive discussion of water quality impacts, except to briefly acknowledge that increased pollution is likely as a result of pipeline construction as well as development of The Villages. The Bureau should include data and/or studies indicating whether or not the proposed action, and the development of The Villages, will cause violations of applicable water quality standards and/or regulations. The Bureau also unlawfully failed to include in the draft EA information indicating that Del Webb Corporation has made a specific and irreversible commitment to mitigate and/or prevent such water quality impacts and/or violations.

4-17

The draft EIS also fails to adequately disclose water quality impacts of the proposed pipeline, water storage tanks, and water treatment plant. For example, no anticipated specific suspended sediment runoff figures during storm events are disclosed. The Bureau also does not offer information adequate to assess the risks of increased erosion in the various washes crossed by the pipeline resulting from alteration in the



shape of swales and flood events. No technical information regarding treatment operations is included, and there is no discussion as to the pollutant levels in the CAP water being transported via the pipeline, stored in the proposed tanks, and treated in the planned treatment plant.

4-17

The draft EA does not discuss the Bureau's plans to consult with USFWS. Such consultation is required by the ESA in this case, and NEPA requires the Bureau to disclose the results of such consultation.

4-18

An EIS is required in this case because approval of the Ak-Chin lease, together with Federal Highway Administration approval of additional highway construction necessary to serve The Villages development, Corps of Engineers' and EPA approval of a wetlands permit pursuant to the Clean Water Act, and issuance of relevant ESA permits by USFWS constitute "connected actions" that will, in combination, result in adverse environmental consequences.

4-19

The draft EA does not adequately disclose, discuss, or analyze all future, related or unrelated but reasonably foreseeable consequences of the proposed project that may result in cumulative impacts. The Bureau must consider all indirect effects of the proposed action, which are those effects "caused by the action and are later in time or farther removed in distance, but [which] are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). Moreover, because the action proposed by the Bureau will combine with actions taken by other governmental agencies and by private actors to have a cumulative or synergistic effect on the environment, the Bureau must consider the impact of its decision on Del Webb Corporation's decision whether or not to proceed with The Villages development. *See, e.g., City of Tenakee Springs v. Clough*, 915 F.2d 1308 (9th Cir. 1990); *Sierra Club v. Penfold*, 857 F.2d 1307, 1320-21 (9th Cir. 1988).

4-20

An EIS must be prepared because the proposed project, as well as the indirect and cumulative results of the proposed project, are likely to result in jeopardy to species listed pursuant to the Endangered Species Act and result in "takings" of such species which are prohibited by section 9 of the ESA.

An EIS must be prepared because the proposed action, as well as the indirect and cumulative impacts of the proposed action, will result in the loss of wetlands.

4-21

An EIS must be prepared because the project will result in a worsening of air quality in Maricopa County, thereby further worsening the area's compliance with applicable ambient air quality standards, and violate the federal conformity regulation.

The Bureau is not entitled to take into account, when determining whether to prepare an EIS, the analysis and conclusions included in the Final Environmental Impact Statement for Water Allocations and Water Service Contracting, Central Arizona Project. An EIS on the proposed action is required pursuant to the Department of Interior NEPA Regulations applicable to the Bureau of Reclamation, Rules 9.3(A)(4) and 9.3(A)(5).

4-22

NEPA requires the Bureau to consult with affected private interests, including the residents of New River and other persons and/or organizations interested in the aesthetic, environmental, economic, and recreational attributes of the Sonoran Desert in and near New River, before preparing an EA and concluding that a FONSI is appropriate. Such consultation is not achieved simply by holding a public hearing on the draft EA.

4-23

The Bureau violated NEPA by closing the scoping process on this project to the public and/or by failing to inform the public of scoping meetings, the accepted scope of the project, or other opportunities to participate.

The Bureau has not made an independent evaluation of the information developed and submitted by Del Webb Corporation. Thus the draft EA violates NEPA. 40 C.F.R. § 1506.5(a).

4-24

By allowing Del Webb Corporation to select the contractor to prepare the draft EA, the Bureau violated 40 C.F.R. § 1506.5. That regulation requires the agency to select the preparer of the EA. The Bureau has violated applicable NEPA regulations by failing to take responsibility for the content of the draft EA. 40 C.F.R. § 1506.5(b).

The Bureau has not complied with applicable NEPA public notice requirements, including those relating to timeliness of notice as to scoping meetings, publication of notices in appropriate newspapers, notification of community organizations, and posting of notices on and off the site in question. 40 C.F.R. § 1506.6.

4-25

The Bureau has abused its discretion, and acted unreasonably, in issuing a draft EA because Bureau personnel have already recognized and admitted that preparation of an EIS on the proposed project is necessary and appropriate. The Bureau's awareness that USFWS believes that an EIS is appropriate, and its failure to follow that advice, is also an abuse of discretion.

4-26

An EIS is required because the proposed action is highly controversial and because the Bureau's action may establish a precedent for other, similar actions with respect to Central Arizona Project water. *See* 40 C.F.R. § 1508.27(b).

4-27

The Bureau must consider indirect and cumulative impacts of its approval of the Ak-Chin lease that may result from actions taken by other federal, state, and local government agencies in the future. Such actions may include, but are not limited to, issuance of other required permits and provision of public services or funding that may help cause such indirect or cumulative impacts.

4-28

On the other hand, NEPA does not authorize the Bureau to accept the unsupported allegations as to possible actions by other governmental agencies offered by the beneficiary of the project. The Bureau must independently investigate and evaluate such allegations and base its determination as to whether a FONSI is appropriate or an EIS

should be prepared on the results of that independent investigation, the evidence in the administrative record, and its own evaluation. Thus, the Bureau should not accept Del Webb Corporation's unsupported assertion, nor rely on its own unsupported assumption, that the developer could obtain water necessary for The Villages development from another source.

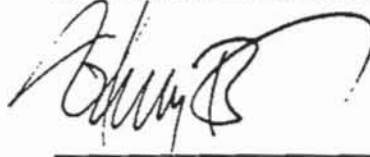
#### IV. Conclusion

The Bureau has failed to take the required "hard look" at its proposed project. The no action alternative has not been adequately analyzed or discussed, and the Bureau has not included an appropriate range of alternatives.. Nor have all of the relevant factors have been considered. In sum, the Bureau has illegally and unwisely limited the scope of its analysis to the construction of the pipeline and associated water treatment plant. But NEPA does not permit the Bureau to avoid analyzing the expected indirect and cumulative impacts of the pipeline and water treatment plant. The Bureau must consider *all* of the environmental consequences of its actions, including those caused by the development that the water provided as a result of the proposed lease, before determining whether issuance of a FONSI is appropriate. Consideration of those impacts should induce the Bureau to prepare an EIS.

The Bureau should withdraw the draft EA and prepare an EIS, after a new round of scoping and public comment, on the proposed action.

Sincerely yours,

LAW OFFICE OF HENRY B. LACEY



Hank Lacey

HL:hl  
cc: Michael Fiflis, Esq.  
Wendy Keefover-Ring  
Gary Giordano  
Chris Gehlker

4-28

Reclamation's Phoenix Area Office, 10888 N. 19th Avenue, Phoenix AZ 85029, upon request. Based on these studies, a BA was prepared which concluded there would be "no effect" to federally listed threatened and endangered species from direct or indirect impacts of the pipeline or cumulative impacts associated with The Villages. Of the 14 species listed by USFWS as threatened or endangered in Maricopa County, only four species (bald eagle, American peregrine falcon, southwestern willow flycatcher, and cactus ferruginous pygmy-owl), which could potentially occur in the project area based on their known geographic range and habitat requirements, were assessed in the BA. The BA was included in the EA sent to USFWS on June 9, 1997, as part of the general distribution for public review and comment. In addition, a separate copy of the BA was sent to USFWS on June 20, 1997, in response to a USFWS request. By regulation, USFWS has 30 days to disagree with an agency's "no effect" determination. No correspondence to that effect has been received by Reclamation, therefore, formal consultation with USFWS is not required and Reclamation has satisfied its Endangered Species Act, Section 7, requirements.

Furthermore, AGFD's comments on the EA did not express any concern pertaining to possible impacts on federally listed species. AGFD did note, however, that state special-status species may occur within the project area. Of the species listed by AGFD, only Hohokam agave and Sonoran desert tortoise were identified in the consultant's reports as either present or possibly occurring within the pipeline corridor or on The Villages site. Impacts on native plant species, including Hohokam agave, in both the pipeline corridor and on The Villages site would be minimized by compliance with the Arizona Native Plant Law, as committed to in Section 4.0 of the EA. Del Webb has also committed to conducting preconstruction surveys for desert tortoises on the pipeline corridor and The Villages site and following AGFD's guidelines to relocate any individuals encountered. In addition, possible impacts on these species would be minimized through Del Webb's compliance with its development master plan for The Villages, which contains an Ecological Resources Management Plan as well as a number of development stipulations imposed by Maricopa County.

Please refer also to response to comment letter 6, and response to comment 26-5.

- 4-9. Although it was not necessary for Reclamation to examine The Villages' effects at the level of detail presented under the No-Action Alternative, Reclamation chose to go beyond what is normally required in EAs and to develop more comprehensive information on the No-Action Alternative. The environmental commitments presented in Section 4.0, "Environmental Commitments", of the EA pertain to the *proposed action*, including construction of the delivery pipeline and water treatment plant. Reclamation intends to follow through with Del Webb to ensure these environmental commitments are implemented. Although these EA commitments do not specifically apply to Del Webb's construction of The Villages, most are in fact already required by federal and state laws and Maricopa County requirements. Development of The Villages site would be subject to the development master plan that has been approved by Maricopa County. The master plan contains an Ecological Resources Management Plan as well as a number of development stipulations imposed by Maricopa County. Effects on native plant species would be minimized by compliance with Arizona Native Plant Law, and effects on wash areas would

be minimized by compliance with U.S. Army Corps of Engineers Section 404 permit conditions as required under the Clean Water Act. Del Webb has also committed to following AGFD's guidelines for relocating any desert tortoises encountered. Please refer also to response to comment 26-5, below.

- 4-10. In general, the conformity provisions of the Clean Air Act state a federal agency may not engage in, support or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable State Implementation Plan (SIP). Where the federal action is an approval for some aspect of a nonfederal undertaking, the activity subject to conformity would be the part, portion or phase that requires federal approval (40 Code of Federal Regulations [CFR] 51.852). In the case of the Ak-Chin Option and Lease Agreement, the federal action is Reclamation's provision of leased settlement water under the Option and Lease Agreement. The leased settlement water would be carried through a nonfederal pipeline constructed by Del Webb. Reclamation has no financial or other involvement in, or control over, the construction or operation of the water delivery facilities, or the ultimate construction of The Villages. Nevertheless, because the pipeline and water treatment plant associated with the leased water would likely not be constructed without Reclamation's approval, Reclamation considered emissions associated with construction and operation of Del Webb's proposed water delivery and treatment facilities in determining whether a conformity determination is required.

The Clean Air Act conformity regulations provide that where the total of direct and indirect emissions caused by the federal action is below prescribed minimum threshold levels, called *de minimis* emission levels, a conformity determination is not required. According to data generated by Sierra Research (1997) for these facilities, construction and operation emissions would be well below the minimum threshold emissions level that would trigger the formal conformity requirement. The EA has been revised to include the calculations performed that substantiate this conclusion (see Table 3-2). Thus, no conformity determination is required for this project. In no case are the emissions associated with The Villages considered by Reclamation as the direct or indirect result of the federal action.

Please refer to response to comment 4-2 regarding mitigation measures. Environmental commitments presented in Section 4.0 of the EA have been committed to by Del Webb. Reclamation will ensure they are implemented during Del Webb's construction of the pipeline and water treatment plant.

- 4-11. No air quality mitigation measures are expected to be needed for the provision of settlement water under the Option and Lease Agreement or construction and operation of the water delivery system because of the small scale of effects expected from construction and the nature of water pipeline and treatment operational effects. Regarding the No-Action Alternative, The Villages Plan of Development requires, under Development Master Plan Stipulation "n", the following:

As required by the Federal Clean Air Act, the developer shall submit an air quality conformity statement to the Department of Planning and Infrastructure Development prior to the County's issuance of any construction permits for roads of regional significance.

As previously stated in the EA, Del Webb will also obtain all necessary permits in compliance with all applicable regulations of Maricopa County Environmental Services, Department of Air Pollution Control, and will apply dust suppression measures in accordance with Rule 310 for Fugitive Dust. Please refer to the air quality environmental commitment on page 4-3 and to Appendix E of the EA.

- 4-12. Please refer to the "Response to Comments on the NEPA Compliance Approach" above. While potential environmental impacts associated with The Villages development are presented under the No-Action Alternative, impacts associated with The Villages are not considered either direct or indirect effects of Reclamation's proposed action for the purpose of determining whether that action will have "significant" environmental effects. The effects of The Villages are relevant, however, as part of the background, or context, against which the incremental, or cumulative, effects of Reclamation's action are assessed. The discussion of the No-Action Alternative also provides a baseline against which the proposed action is evaluated. As indicated in the EA on pages 3-29 and 3-30, the provision of settlement water under the Option and Lease Agreement and construction and operation of the proposed water delivery system would have minor effects on vehicular and truck traffic and roadway conditions in the corridor area.

Effects of The Villages development as discussed under the No-Action Alternative were based on a traffic analysis conducted during the master planning process by Kirkham, Michael and Associates in 1995, as indicated on page 3-32 of the draft EA document. Since the time The Villages traffic analysis was conducted and The Villages master plan was approved by Maricopa County, the Maricopa County Department of Transportation completed the Northeast Valley Area Transportation Study (NVATS) in late 1996. The NVATS projected future average weekday traffic in 2015 in the vicinity of The Villages to be greater than previously projected in the master plan traffic analysis. In 2015, the average weekday traffic volumes on I-17 are projected to be 98,000 immediately south of The Villages, 129,000 just south of a planned new interchange at Pioneer Road, and 142,000 south of Carefree Highway. These recent projections constitute a 17-35% increase in the traffic volumes projected under The Villages master plan.

Section 3.7, "Traffic and Circulation", of the EA has been revised to provide additional information from the NVATS. Regarding footnote 19, Del Webb has indicated to Reclamation that it has never made any highway funding commitments other than participation in interchange improvements, as described in Section 3.7 of the EA.

Transportation network improvements, including widening I-17 to three lanes in each direction and construction of new interchanges and roadway improvements, are proposed to ensure that peak hour levels of service (LOS) at area intersections are acceptable. Please refer to response to comment 20-3, below, regarding the source of assumptions related to proposed future widening of I-17 to three lanes south of The Villages. Figure 14 of the NVATS indicates that most intersections located in the vicinity of I-17 would be at LOS B

and C, which are acceptable. The letters A through F describe the best to worst driving conditions, respectively. LOS A indicates free-flow operation, and LOS F indicates jammed flow with substantial delay. (Maricopa County Department of Transportation. 1996. Northeast Valley area transportation study. September 17. Prepared by Lee Engineering, Inc. and Logan Simpson & Dye, Phoenix, AZ.)

Although the new county traffic information is only relevant to the No-Action Alternative and does not change the conclusions of the EA or Reclamation's determination of impact significance under the proposed action, the relevant text and figure changes in the EA have been made to reflect the most recent transportation information available and to address this comment. Del Webb's recent decision to reduce the number of dwelling units by 2,000 indicates that the NVATS traffic modeling now likely overestimates The Villages' probable contribution to future area traffic conditions.

- 4-13. The EA indicates that construction in the pipeline corridor would have no effects on significant archaeological sites, Indian Trust Assets, or traditional cultural properties. The potential for discovery of subsurface resources is always a possibility for projects involving excavation or trenching. Reclamation has consulted with the Arizona State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) as required by Section 106 of the National Historic Preservation Act. A Memorandum of Agreement (MOA) among Reclamation, ACHP, and SHPO includes discovery provisions.

Evaluation of cultural resources in The Villages development area under the No-Action Alternative is based on an archaeological survey conducted for the entire site in 1994. After conferring with the ACHP and SHPO, Reclamation defined the Area of Potential Effects (APE) to include The Villages development area for purposes of compliance with Section 106 of the NHPA. Reclamation has had extensive communication, including field visits, with the ACHP, SHPO, Indian tribes, and other affected federal and state agencies. Reclamation, with SHPO concurrence, has determined that six (6) archaeological properties are eligible for listing on the National Register of Historic Places and has recommended a historic property avoidance and treatment plan as part of the MOA among Reclamation, the ACHP, and SHPO. All parties have agreed with stipulations presented in the treatment plan and MOA. Del Webb will comply with provisions of the treatment plan. Execution of an MOA among Reclamation, the SHPO, and the ACHP indicates Reclamation's satisfaction of its historic resource identification, evaluation, and mitigation obligations.

- 4-14. While potential environmental impacts associated with The Villages development are presented under the No-Action Alternative, impacts associated with The Villages are not considered either direct or indirect effects of Reclamation's proposed action for the purpose of determining whether that action will have "significant" environmental effects. The effects of The Villages are relevant, however, as part of the background, or context, against which the incremental, or cumulative, effects of Reclamation's action are assessed. The discussion of the No-Action Alternative also provides a baseline against which the proposed action is evaluated. Please refer also to the "Response to Comments on the NEPA Compliance Approach", above. On pages 3-38 to 3-40, the EA addresses visual impacts as well as possible growth effects that could occur in The Villages area associated with schools, law

enforcement, fire protection, sewage service and solid waste disposal, water supply, and recreation resources.

- 4-15. The EA summarizes the results of a feasibility study for evaluation of alternative systems for the conveyance of leased settlement water (Bookman-Edmonston Engineering, Inc. 1996; referenced on page 6-1 of the EA) prepared as part of Del Webb's water delivery system planning. Please refer to response to comments 4-6 and 4-7 and the "Response to Comments on the NEPA Compliance Approach", above. This report is part of the public record and is available upon request.

The EA indicates on pages 1-1 and 1-2 that "[i]n 1994, the Ak-Chin Indian Community, United States of America, and Del Webb agreed to an Option and Lease Agreement for provision of between 6,000 and 10,000 af/yr of leased settlement water . . ." Because the intent of the lease agreement was to provide a contractually agreed upon amount of water to Del Webb, because the Ak-Chin Indian Community is congressionally authorized to lease surplus settlement water, and because viable alternatives to the leased supply exist, consideration of a lesser amount of water is not reasonable and does not meet the objectives of the proposed action. Del Webb decided to exercise its option for 10,000 af/yr in December 1996. Further, evaluation of effects under the No-Action Alternative are based on the approved Villages master plan, which will not vary based on which water supply option is selected. Presentation of alternative water supply options in Appendix A of the EA supports Reclamation's belief that it is reasonable to conclude that development of The Villages would occur in the absence of the proposed federal action.

- 4-16. Please refer to the "Response to Comments on the NEPA Compliance Approach", above. We would like to point out the EA on page 3-7, paragraph one, addresses the issues of flood flows at The Villages:

Construction of this residential area is not expected to substantially increase the volumes and peak rates of stormwater runoff to natural drainage channels because the requirements of the FCDMC have been incorporated into the Master Drainage Plan. These requirements limit peak runoff rates and require the use of retention/detention basins to provide for runoff control.

- 4-17. The EA indicates on page 3-4, third paragraph, that temporary construction-related effects on water quality from the provision of settlement water under the Option and Lease Agreement and the associated water delivery system would be minor:

. . . because surface flows are infrequent, construction activities would require a relatively small amount of soil disturbance, the activities would be temporary, and the potential release of contaminants could be minimized by following normal construction practices.

The water delivery system would have no direct effects on groundwater resources, and use of a surface water supply delivered through the pipeline could benefit the groundwater aquifer by providing a renewable surface water source rather than relying on individual



groundwater wells for a potable water supply. The No-Action Alternative water quality analysis, which includes The Villages discussion, is presented on pages 3-5 to 3-7 of the EA. The use of Colorado River water for municipal and industrial uses in central Arizona was evaluated by Reclamation as part of the "Environmental Impact Statement on Water Allocations and Water Service Contracting-Central Arizona Project" (Bureau of Reclamation 1982). The EIS concluded that "... CAP water from the Colorado River is expected in many instances to be of better quality than the existing sources of groundwater in central Arizona." The final EA has been revised to address this concern.

- 4-18. The Endangered Species Act (ESA), discussion in Section 5.1 of the EA, has been revised to indicate that the requirements of the ESA have been met. Please refer also to response to comment 4-8.
- 4-19. Reclamation has considered the possible actions related to the proposed action, such as other regulatory permit processes. These related actions are summarized in the EA in Section 5.0, "Consultation and Coordination", and include among others, Clean Water Act compliance, Endangered Species Act compliance and consultation, and NHPA Section 106 compliance. The current Desert Hills/I-17 interchange improvements being carried out by the State of Arizona do not include Federal Highway Administration funding (Duarte pers. comm. ADOT, July 23, 1997). See also response to comment 4-12, second to last paragraph.
- 4-20. The EA discloses the possible cumulative impacts of the proposed action on pages 3-40 to 3-43 and concludes that providing leased settlement water under the Option and Lease Agreement and constructing and operating the proposed water delivery facilities would not be expected to result in substantial incremental impacts in light of the other past, present, and reasonably foreseeable actions in the area (page 3-42, fifth paragraph). Please refer also to response to comment 4-1 and the "Response to Comments on the NEPA Compliance Approach" above.
- 4-21. Comment noted. Please refer to responses to comments 4-8 and 4-10. Reclamation has made a "no effect" determination for listed species, which has not been disputed by USFWS. No wetlands would be affected by the provision of settlement water under the Option and Lease Agreement and construction and operation of the proposed water delivery facilities. It should be noted that loss of wetlands alone does not necessarily require that an EIS be prepared. Although Del Webb has sought a Section 404 permit for impacts on certain nonwetland waters of the United States, an EIS still would not necessarily be required. EAs are often prepared to meet the U.S. Army Corps of Engineers' NEPA compliance requirements for issuance of dredge/fill permits under Section 404 of the Clean Water Act.
- 4-22. Reference in the EA to Reclamation's Water Allocations and Water Service Contracting-Central Arizona Project final EIS is intended to indicate that additional information related to growth effects from use of water delivered through CAP facilities has been previously evaluated by Reclamation and is relevant to this process. Reclamation has not "tiered" its EA analysis off the previous CAP final EIS. Please refer also to response to comment 4-1 related to major federal actions.

- 4-23. Reclamation has provided for substantial public involvement before and during preparation of the draft EA. As indicated in the EA on pages 5-4 and 5-5, Reclamation conducted a public scoping meeting at New River Elementary School on November 2, 1996. The meeting was attended by more than 60 people, of whom approximately 15 provided oral comments on the scope and content of the draft EA. During the meeting, Reclamation announced it would extend the deadline for written comments to December 13, 1996. A second notice regarding the public scoping comment period extension was sent to over 300 recipients on November 12, 1996. Reclamation received and considered approximately 68 comment letters from agencies and members of the public regarding the scope and content of the draft EA. Reclamation also provided for an open public forum to hear comments on the draft EA during the June 28, 1997 public hearing. Reclamation provided notices of the draft EA public hearing in four local newspapers and sent notices and copies of the draft EA to members of the public requesting a copy and those individuals on Reclamation's distribution list (over 300 people). During the public hearing, Reclamation heard oral comments from 25 members of the public and received comments on 24 comment cards. Reclamation also extended the draft EA comment period deadline beyond the 30-day requirement to September 8, 1997. Reclamation's public scoping and involvement program for the EA has met and exceeded the requirements of NEPA and its implementing regulations.
- 4-24. Reclamation, as lead agency for NEPA compliance, determined the scope of the EA and has reviewed and independently verified the information contained in the EA. Reclamation, as lead agency, selected the NEPA compliance consultant. Reclamation is responsible for the content of the EA.
- 4-25. Reclamation has provided adequate notices for scoping and public review meetings and has gone beyond the requirements of NEPA in providing an open forum for comment on the scope and content of the draft EA. Reclamation provided public notices on October 17, 1996, to 265 interested agencies, organizations, and persons before the November 11, 1997 EA scoping meeting, and provided a notice of the scoping process and public meeting in the *Federal Register* on October 15, 1996 (Volume 51, No. 200). A second notice regarding an extension of the public scoping process to December 13, 1996, was sent to over 300 recipients on November 12, 1996. Reclamation also provided adequate public notice of the June 28, 1997 draft EA public hearing to over 300 individuals on Reclamation's distribution list. Please refer also to response to comment 4-23.
- 4-26. As lead federal agency for this action, Reclamation has the authority and responsibility for determining the scope of the NEPA document, with input from affected and interested federal, state, and local agencies and the affected public.
- 4-27. CEQ Regulations (40 CFR 1508.27) indicate that in determining the significance of an impact, the context and intensity of the impact should be considered. When considering the intensity of an impact, two of the ten considerations listed in subpart b. (4) and (6) include: the degree to which the effects on the quality of the human environment are likely to be highly controversial and the degree to which the action may establish a precedent for future

actions with significant effects or represents a decision in principle about a future consideration.

These two factors are only a part of the overall consideration that must occur in determining significance and considered alone do not imply a requirement for an EIS. In fact, Reclamation's NEPA Handbook (October 1990) specifically states, "...the presence of controversy does not mean an EIS is automatically required." (Chapter 2, p. 2-8). With regard to precedent, Reclamation always evaluates what is the appropriate level of and approach to NEPA compliance for every potential federal action on a case-by-case basis, by applying the guidance found in its NEPA Handbook and the CEQ regulations. Accordingly, Reclamation does not view its application of NEPA in this case as precedent-setting, but rather the application of our standard procedures to a unique set of facts. Our experience in dealing with other water transfers of CAP allocations or other Reclamation water contracts has been that each proposal is unique. Therefore, we will continue to approach each situation on a case-by-case basis.

- 4-28. This comment is a summary of the preceding comments. Please refer to the previous responses to comments in this letter and the "Response to Comments on the NEPA Compliance Approach", above.

LETTER 5

ARIZONA  
CENTER FOR  
LAW IN  
PUBLIC  
INTEREST

1840 E. River Road  
Suite #207  
Tucson, Arizona 85718-5892  
(520) 529-1798  
FAX (520) 529-2927

OFFICIAL	AGENCY
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DATE	ROUTE
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DATE: 7/11/97 APPROXIMATE TIME SENT: 4:45 pm

FROM: DAVID FARON

TO: BRUCE ELLIS 602-395-5733

We are sending you 4 pages including this cover letter. If you do not receive all pages, or if you encounter any other difficulty, please telephone (520) 529-1798 at your earliest convenience.

REMARKS:  
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\_\_\_\_\_  
\_\_\_\_\_

ARIZONA
CENTER FOR
LAW <sup>N</sup> THE
PUBLIC
INTEREST

1840 East River Road  
Suite 207  
Tucson, Arizona 85718-5892  
(520) 529-1798  
FAX (520) 529-2927

July 11, 1997

BY FAX (602) 395-5723

Phoenix Area Office  
ATTN: PXAO-1500  
Bureau of Reclamation  
P.O. Box 9980  
Phoenix, AZ 85068-0980

RE: Draft Environmental Assessment (EA) - Ak-Chin Option and Lease Agreement

We believe that the draft EA is deficient, and that a full Environmental Impact Statement is legally required for the following reasons.

In 1994, the Ak-Chin Community, Del Webb and the United States agreed to an option and lease agreement under which Del Webb would receive between 6,000 and 10,000 acre feet of water per year to supply planned development at the Villages. The agreement expressly provides that no water can be delivered unless Del Webb obtains Final Environmental Clearance from the United States. It further provides that Final Environmental Clearance "will be based upon an analysis of the environmental impacts of the Company's plans for taking and using Leased Settlement Water, in accordance with the National Environmental Policy Act" Agreement ¶ 15 (emphasis added). Contrary to the explicit terms of the agreement, the Bureau is ignoring the environmental impacts of the use of the leased water, and limiting the scope of the environmental analysis to impacts associated with construction of delivery and treatment facilities.

5-1

Not only does such an approach violate the agreement, but also it also violates NEPA. No environmental analysis was prepared at the time the lease agreement was proposed and executed. The public was assured that such an analysis was unnecessary at that time, because the agreement explicitly required an environmental



## **Letter 5: Response to Comments made by Arizona Center for Law in the Public Interest**

- 5-1. Please refer to the "Response to Comments on the NEPA Compliance Approach", above, and pages 1-1 to 1-3 of the EA for an explanation of Reclamation's NEPA approach. Please refer also to responses to comments 3-1 and 4-7 regarding the issue of alternative water supply options presented in Appendix A of the EA.
- 5-2. Please refer to response to comment 4-20 and the "Response to Comments on the NEPA Compliance Approach", above.
- 5-3. The EA evaluates the direct, indirect, and cumulative effects of the proposed action. However, The Villages has been determined not to be an effect of Reclamation's action. Please refer to the "Response to Comments on the NEPA Compliance Approach", above. The EA also summarizes the environmental effects that would result from The Villages development in its analysis of the No-Action Alternative. Please refer generally to Section 3.0, "Affected Environment and Environmental Consequences", of the EA.



United States Department of the Interior

Fish and Wildlife Service  
Arizona Ecological Services Field Office  
2321 W. Royal Palm Road, Suite 103  
Phoenix, Arizona 85021-4951  
(602) 640-2720 Fax (602) 640-2730



Administrative routing stamp with a date stamp 'JUN 13 1997' and various checkboxes and lines for tracking.

In Reply Refer To:  
AESO/FA  
970579

June 12, 1997

MEMORANDUM

TO: Chief, Environmental Resource Management Division, Bureau of Reclamation, Phoenix, Arizona

FROM: Field Supervisor

SUBJECT: Draft Environmental Assessment (EA) on the Provision of Leased Ak-Chin Indian Community Water to the Del Webb Corporation for Use at The Villages at Desert Hills, Maricopa County, Arizona

The Fish and Wildlife Service has reviewed the subject EA and offers the following comments for your consideration.

On November 6, 1996, the Service provided a memorandum to your Area Manager regarding scoping issues for this EA. In that memorandum we stated that:

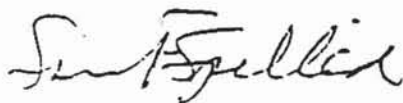
- 1) The Service does not believe the scope of analysis for this EA should exclude the Villages as a consequence of the Federal approval to provide leased CAP water to Del Webb simply because Del Webb has alternative water supplies for their development.
- 2) The Service believes that if Del Webb uses leased CAP water to develop the Villages, the EA will need to include the impacts of that development as a consequence and result of this Federal action.
- 3) The conclusion and result of this Federal action is not only the delivery and treatment facilities, but the use and/or development of the Villages.

6-1

The Service continues to believe this is a Federal action, tiered down from the 1982 CAP Water Allocation and Water Service Contracting Environmental Impact Statement. The Service believes that this proposed action, including the Villages, is not only subject to the National Environmental Policy Act but also subject to the Endangered Species Act of 1973, as amended, and the Fish and Wildlife Coordination Act.



The Service appreciates the opportunity to provide these comments. If you have any questions, please contact Don Metz.

A handwritten signature in cursive script, appearing to read "Sam F. Spiller".

Sam F. Spiller

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (GM:AZ)(AES)  
Director, Arizona Game and Fish Department, Phoenix, AZ



## **Letter 6: Response to Comments made by the U.S. Fish and Wildlife Service**

- 6-1. Please refer to the "Response to Comments on the NEPA Compliance Approach", above. Reclamation does not agree with USFWS' position. This EA is not tiered from the 1982 CAP Water Allocations and Water Service Contracting EIS (please refer also to response to comment 4-22). The water being leased under the Option and Lease Agreement is water the Ak-Chin Indian Community received as part of its Water Settlement Act. Although this water is Colorado River water, it has a higher delivery priority than CAP water.

Because the proposed action would not impound or divert, or modify surface streams as described in the Fish and Wildlife Coordination Act (FWCA), Reclamation has determined the FWCA does not apply. The proposed action is subject to the ESA; in compliance with the ESA, Reclamation provided its BA. Impacts from development of The Villages were considered in the BA as part of the analysis of cumulative effects, as required by the ESA. The BA concludes there would be no effect on federally listed threatened or endangered species, including no cumulative effect resulting from The Villages. Formal consultation with USFWS under the ESA is not required. Reclamation has nevertheless provided USFWS a copy of the BA and has solicited, received, and considered USFWS' comments on the proposed action.

## LETTER 7

# *S*<sub>ave</sub> *N*<sub>ew</sub> *R*<sub>iver</sub> *C*<sub>oalition</sub>

P.O Box 42033-137  
Phoenix, AZ 85080-2033  
602-465-2695

### ***WILL THE BUREAU OF RECLAMATION ANSWER THESE QUESTIONS ON THE PUBLIC RECORD?***

#### **If Water Options are the Answer:**

- ? Where are the **signed, sealed, and delivered** contracts for these other water sources?
- ? Why are the Bureau and Del Webb **wasting** both taxpayer and Federal Agency time and money if they really have four other water sources that don't require citizen or agency review?
- ? How will this not set the **precedent** for everyone else to **get out of having to do an EIS** simply by claiming they have other water sources when they apply to get federally administered CAP water?

7-1

#### **EIS on the Whole Project Being Avoided!**

A full Environmental Impact Statement (EIS) is required for federal actions that can result in impacts on the public. **We are the public!** The Ak-Chin lease approval is a federal action! They are required to do a **full-blown EIS!**

7-2

The law says that potential impacts that must be evaluated, among others, are **changes in land use patterns, effects of changes in population growth, changes in population density, increased traffic, increased air pollution, impacts on the quantity and quality of water, negative economic effects, effects on public health or safety, and destruction of ecosystems and wildlife habitats.**

We all know that some of these negative impacts are **already** under way since the approval of this project:

- **Changes in land use patterns:** By getting our land use plan changed for themselves, the **precedent** is set. Other big developers that want to do the same thing can't be turned down anymore.
- **Changes in population growth:** Until Webb got our land use plan changed, the projected population for our area by 2010 was for fewer than 10,000 people. When Webb got their way, the population projection in the land use plan was modified to **over 100,000 people** for our area by 2010!
- **Changes in population density:** Our land use plan previously allowed a maximum of one home per acre until Webb got it changed for themselves to allow **6 to 12 homes per acre**. The **precedent** has been set for the county to continue to approve more of these density changes!

7-3

The remaining impacts are soon on their way in our community:

- **Increased Traffic:** This project alone will put 40,000 more cars on the roads in our area daily.
- **Increased Air Pollution:** This project will ruin our clean air and add to the already serious pollution rating in Maricopa County

- **Quantity and quality of water:** Del Webb can use as much groundwater as they want. hundred of millions of gallons. They can go down to 1,500 feet to get it. What will that do to our well water?
- **Negative economic effects:** Our taxes will go up to pay for the additional 13 schools that will be needed, to pay for additional police and fire protection, and for the enormous infrastructure and freeway expansion costs that will result. We know that Webb won't be paying for these things in the future, just as they haven't been paying their fair share of property taxes all along, at 25 cents an acre per year.
- **Effects on public health or safety:** Violence, drugs, gangs and other crimes from 50,000 more people will endanger our safety and destroy the rural lifestyle of our entire community. Our health will be directly impacted by the destruction of our air quality, and health care costs will rise as a result.
- **Destruction of ecosystems and wildlife habitats:** Del Webb will completely bulldoze and scrape every living thing from the desert floor to build their homes. Even the Draft EA tells us on page 3-4 that "inadvertent release of construction materials, such as fuels and oil-based materials" "...could affect aquatic organisms and wildlife and have downstream impacts."

7-3

- ? Ask them why is Del Webb trying to get out of doing a full EIS on the entire project?
- ? Ask the Bureau officials why they are intentionally violating the law and making it easy for Del Webb to circumvent full environmental compliance?

7-4

We already know why...Because Webb will not get federal approval of the Ak-Chin CAP water lease if they are forced to play by the rules!

## Groundwater

Webb can use unlimited amounts of our groundwater. This is fact, not conjecture. The same stipulation "r" that prohibits them from using groundwater for golf courses, residential, commercial, and industrial uses, places no limit on how much groundwater or time they can use to build their water and waste treatment facilities, throughout the property (5,661 acres).

Webb has applied to ADWR to drill 2 more wells on the property to pump 200 acre feet or 65,170,200 gallons of groundwater in just the first two years. They claim they need 150 gallon per minute (gpm) pumping capacity to build the water delivery system.

7-5

- ? What guarantee is there that any well they drill can produce 150 gpm? How many wells will they end up with while looking for that magical pumping power?
- ? Ask them to prove that using 65,170,200 gallons (200 acre feet) of our groundwater just to start with won't have any effect on our wells.
- ? Ask them why they need to pump our groundwater to build a pipeline, when they should be getting the water through the pipeline as they build it!
- ? Ask them why they also need 48,877,650 gallons (150 acre feet) of our groundwater for initial construction and interim public uses as provided in zoning stipulation "r"?

**Submit your written comments, concerns, and encouragement for a full-blown EIS on the entire project prior to July 14, 1997 to:**

**Mr. Bruce Ellis, Chief, Environmental Resource Management Division  
P.O. Box 9980  
Phoenix, AZ 85068-0980  
Attn: PXA0-1500**

Please contact *SNRC* for more information or to find out how you can help!

602-465-2695



## Letter 7: Response to Comments made by the Save New River Coalition

- 7-1. Please refer to the "Response to Comments on the NEPA Compliance Approach", above. The EA presents substantial evidence that at least one of the alternative water supply options, as presented in Appendix A, would be available for The Villages development in the absence of the proposed action. Although Reclamation is aware that finalized contracts to secure the viable water supply options have not been obtained by Del Webb, a reasonable effort has been made to show that other feasible options do exist. It is unreasonable to expect or require that Del Webb obtain multiple finalized contracts solely to demonstrate that water supply options are viable. Please refer also to responses to comments 3-1 and 4-7 regarding Del Webb's preference for the Ak-Chin settlement water and response to comment 4-27 regarding precedence.
- 7-2. Comment noted. Please refer to response to comment 4-1 and the "Response to Comments on the NEPA Compliance Approach", above.
- 7-3. Please refer to response to the "Response to Comments on the NEPA Compliance Approach", above. Reclamation has evaluated the full range of impacts that could result from providing settlement water under the Option and Lease Agreement and construction and operation of the proposed water delivery facilities under the discussion of the Proposed Action in Section 3.0 of the EA and has evaluated effects of The Villages under the No-Action Alternative. Information on The Villages has also been provided under the cumulative impacts discussion because The Villages is part of the background of past, present, and reasonably foreseeable actions against which the incremental effect of the proposed action is measured. Analysis of The Villages' effects includes discussion of effects related to water resources; vegetation, wildlife and special-status species; cultural resources; air quality; noise; traffic and circulation; and land use and visual resources.
- 7-4. Please refer to the "Response to Comments on the NEPA Compliance Approach", above.
- 7-5. The final EA has been modified to include additional information related to interim use of groundwater in The Villages development area under the No-Action Alternative. The June 1997 draft EA did not make complete reference to Stipulation "r" and has been corrected to indicate that except for water needed for construction of the main water delivery pipeline and water and wastewater treatment facilities, the interim pumping of construction groundwater shall not exceed a maximum construction period of 18 months nor a maximum amount of 150 acre-feet (af). Additional interim supplies may be pumped for construction of the pipeline and are currently estimated to be approximately 50 af, although this amount is not restricted by Stipulation "r".

Adverse effects on surrounding wells are unlikely because two primary water-bearing units exist beneath The Villages site, an upper unit from 300 to 700 feet below land surface and a lower unit from 1,100 to 1,500 feet or more below land surface. Separating these two units are poorly permeable horizons of dolomite, clay, silt, and basalt flows. The surrounding residences pump water from wells typically 500 feet in depth from the upper unit. Del Webb would pump interim groundwater for pipeline construction from the lower unit. Because of

the poor permeability of the horizons separating the upper and lower units, no detectable impacts are expected on surrounding wells from Del Webb pumping water for construction. The final EA has been revised to include additional information regarding use of groundwater during construction.

Stipulation "r" as presented in the Plan of Development for The Villages at Desert Hills also states on page 81 that "All interim pumping of groundwater shall comply with ADWR's regulations providing for protection of existing groundwater users in the area. At a minimum this interim supply of groundwater shall be recharged into the aquifer as soon as the recharge facility described in the DMP has been fully permitted and constructed."



LETTER 8

OFFICIAL	ACTION BY	
FILE COPY-APG	DUE DATE	
JUL 8 '97		
DATE	ROUTE TO	INITIALS
7/10	Hand	[Signature]
	Hand	[Signature]
CLASSIFICATION	2001/10	
CONTROL NO.	9702259	
FOLDER NO.	9702259	
UPDATE	7/25/97	
KEYWORD	7/25/97	

1 July 1997

Mr. Bruce Ellis, Chief  
 Environmental Resource Management Division  
 P. O. Box 9980  
 Phoenix, Arizona 85068-8080

Subject: Draft EA Del Webb/Ak-Chin Water Farce

Dear Mr. Ellis:

The inflated Draft Environmental Assessment which references the option of leased Ak-Chin water to the Del Webb Corp for delivery to the Villages (nay, City) at Desert Hills is institutionalized irresponsibility. What's wrong with doing your job properly for once?

It's irrelevant that the great Del Webb Corporation claims to have other water sources, however fraudulent. What does that have to do with laying waste to some of the best remaining sections of the Great Sonoran Desert in Maricopa County? They won't leave a living thing, flora or fauna, remaining during construction of the high density city with three water-guzzling golf courses.

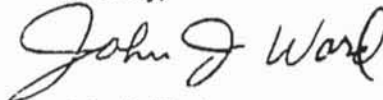
The system is like a vending machine. Giant corporations (developer in this case) put money in one side and out comes, on the other, favorable rulings and legislation from the political establishment. Bureaus should be a buffer between such shameful manipulations, but obviously your agency is in bed with the high-rolling scoundrels.

This is not only a huge (city-making) project, but a precedent for an area with vast areas of state land. In this shameful fiasco, we all saw how easily the developers (nay destroyers) flimflam the politicians.

Ms. Eto exemplified your agency's attitude when she asked my wife, "Why are you doing this. Don't you know you can't win?" Come on!

We demand you do your honest duty for once and order a full EIS (Environment Impact Study.) It's the least you can do.

Sincerely,



John J. Ward

8-1



**Letter 8: Response to Comments made by John J. Ward**

- 8-1. Your comments on the merits of The Villages development are noted. Please refer also to the "Response to Comments on the NEPA Compliance Approach", above, and response to comment 3-1 related to the issue of preparing an EIS and the availability of alternative water supplies.

To members of the Bureau of Reclamation  
 like provided over the meeting at Four River  
 Kansas June 28-29.  
 "My husband and I were very  
 pleased of the "New River" group.  
 in an opinion of the Red Lake  
 reputation, we feel he has done every  
 thing possible. He has been very  
 the area.  
 We attended many meetings, and the  
 among our personal meetings, the  
 separation period is not general  
 regular if they could find a way  
 They have advised to keep their word  
 we feel that the project should not  
 be held up by any further action.  
 Plans for the Village of West Nile  
 already in print plan to keep the  
 level as indicated as possible, as a  
 plastic and extra and kind home  
 and bathroom with color of the dust  
 Truck already has gone into what the  
 compact will be during and after construction

So out I move to River City, at least

year. We are the result of long form

planning and we enjoy and reap the

benefits everyday. We wish are a

simple job of looking into the future

in 1960

The exhibit comparison is still going

to take and ~~participate~~ participate are

decision making organization - also

to this aspect will be in the state. There

is not "PR" that concern for your

clear man. There are ~~some~~ ~~issues~~ ~~concerns~~

suspending the Village project. They may

come from the meetings, simply because

of the next acts of a few.

We ask you to have a statement of the

significant impact. There are two hours

avoided to death. If you want an impact

statement then make our thin slip to

bring out all future construction in all the

new River Area.

Sincerely, Joe and Maggie Stout  
New River Council for 23 yrs.



**Letter 9: Response to Comments made by Leo and Margie Stout**

9-1. Your comments on the merits of the NEPA process and The Villages development are noted.





## **Letter 10: Response to Comments made by Robert D. Cocks**

- 10-1. Please refer to the "Response to Comments on the NEPA Compliance Approach", above, concerning Reclamation's EA approach and the need for an EIS. The analysis of the effects of provision of settlement water under the Option and Lease Agreement, including construction of the water delivery pipeline, contained in Section 3.0 of the EA, addresses traffic, air quality, noise, water quality, wildlife habitat, cultural resources, land use, and visual resource effects of the proposed action. The EA also provides a summary of the environmental issues related to actions, including development of The Villages, that would occur under the No-Action Alternative. The reference to an Inspector General opinion on the proposed action is in error. No such opinion exists. The comments of the AGFD and USFWS, and Reclamation's response are included in this Appendix (please refer to comment letters 3 and 6).