

Real Estate Industry: Perspectives on Water Supply Issues

Presented to WRRC Conference
April 8, 2014

Maggie Gallogly
Fennemore Craig, P.C.
602.916.5468
mgallogly@fclaw.com

Disclaimer

The views presented here are the personal views of the author and do not necessarily reflect the opinions of Fennemore Craig, the attorneys of Fennemore Craig, or the clients of Fennemore Craig, all of whom reserve the right to disavow any and all of this presentation.

Overview

- Industry concerns about water supply acquisition
- Existing mechanisms for proving water supply work, but . . .
- Possible shift in responsibility for acquiring water supplies

Some Caveats

- Focus on AMAs
- Varied perspectives within industry
- Varied willingness to engage

Current Challenges

- Industry in recovery mode

Single-Family Building Permits – Greater Phoenix

2007	--	31,000
2008	--	12,500
2009	--	8,000
2010	--	6,800
2011	--	6,800
2012	--	11,600
2013	--	12,800

Current Challenges

- 'Bottom line' impact of water supply development efforts
 - Amount of fees
 - Transparency and accuracy of fee development
 - Possible duplication with CAGR
- Regulatory requirements
 - Proven impact
 - Local control = inconsistencies

Current Challenges (cont.)

- Assured Water Supply
 - At present, new development can proceed under this program
 - Groundwater physical availability will likely be an issue
 - model sophistication
 - model assumptions

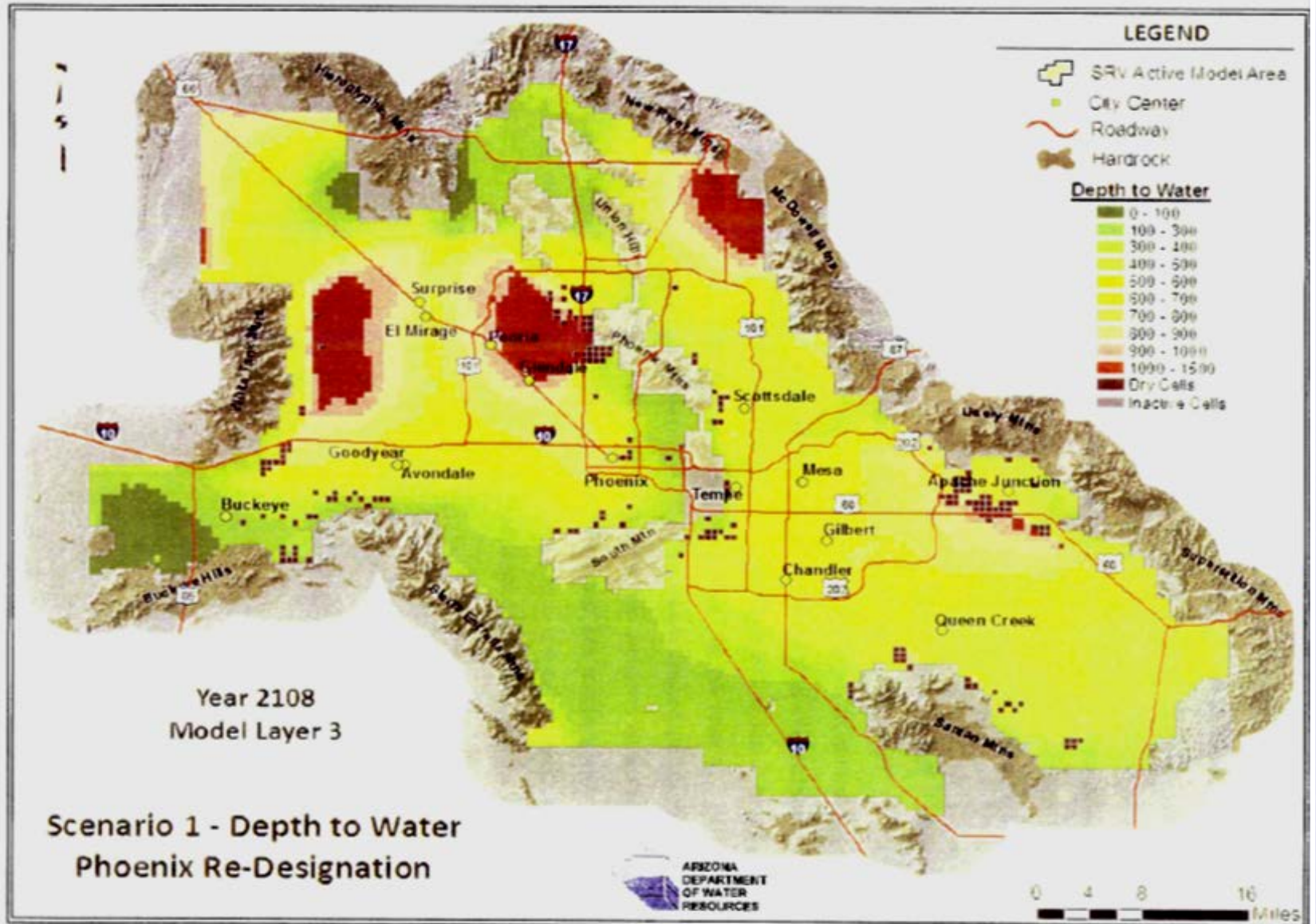


Figure 18. Scenario 1 - Depth to Water (DTW) of Layer 3 for the year 2108.

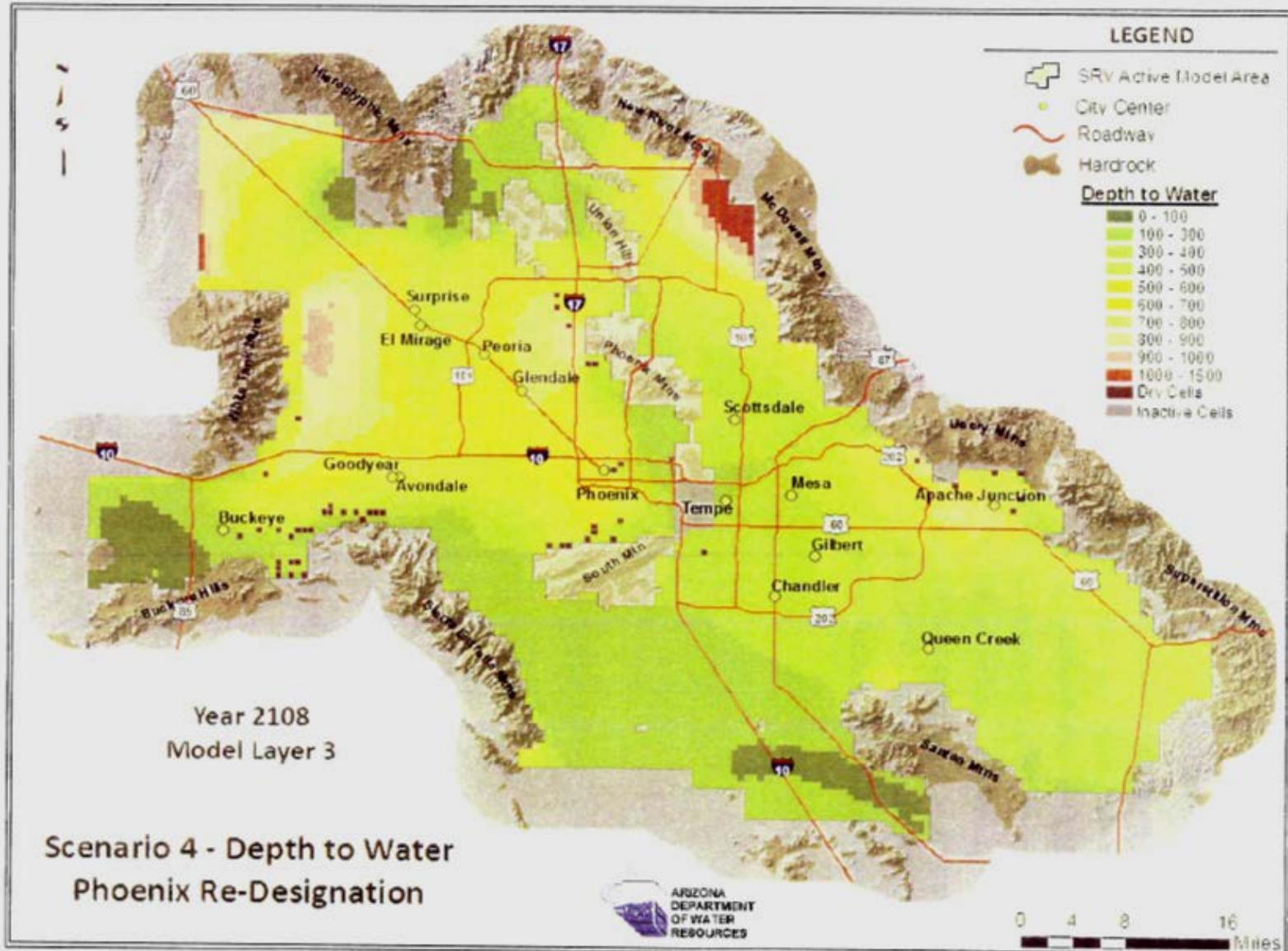


Figure 31. Scenario 4 - Depth to Water (DTW) of Layer 3 for the year 2108.

Planning for Future

- "Bring your own water"
 - No strong movement towards acquiring water supplies
 - Traditionally, a role of government
 - Continued reliance on municipal providers and CAGR
 - Groundwater availability questions may change attitude
- Some examples of exceptions
 - Anthem (lack of groundwater)
 - North Scottsdale golf courses (municipal req't)
 - Recharge efforts (conservation req'ts)

The regulatory hurdles

- Complexity of market in AZ water rights
- Use and transfer of water is heavily regulated to the point where obtaining new supplies for growth faces substantial hurdles

The maze – the Colorado River water rights example

- Acquisition generally requires:
 - Willing seller
 - Approval of the irrigation district from which the water will be moved from
 - Approval of the Bureau of Reclamation (BOR) in consultation with ADWR
 - Triggers environmental compliance
 - If supplies are to move through the CAP, a wheeling agreement is needed with CAWCD and BOR

The maze – the groundwater example

- Transportation restrictions effectively lock up substantial supplies
 - Exemptions are narrow: McMullen, Harquahala, Butler, Chino but to specific entities
 - Mining
- Groundwater within or across AMAs difficult to move because of a variety of restrictions
 - Service area rights; appurtenancy; type of right; AMA-specific

Planning for Future (cont)

- If focus shifts to private acquisition of water supplies:
 - Increased competition for water supplies
 - Possible locking up of supplies well in advance of need. Do we want to go down that road again?
 - Expensive time-consuming process that locks out smaller players

Questions

The background of the slide is a blue gradient. The top half is a lighter, hazy blue with some wispy white clouds. The bottom half is a darker, more saturated blue. On the left side, there is a bright, glowing area that looks like a reflection of the sun on water, with a white-to-yellow gradient.