

**Final Report and Recommendations
for a Riparian Area Protection Program
for the State of Arizona**

**Submitted by the
Riparian Area Advisory Committee**

December 30, 1994



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Fife Symington, Governor Edward Z. Fox, Director

December 30, 1994

Honorable Fife Symington
Governor of Arizona

Honorable Speaker Mark Killian
Arizona House of Representatives

Honorable President John Greene
Arizona State Senate

On behalf of the Riparian Area Advisory Committee (RAAC), I am pleased to submit to you the *Final Report and Recommendations for a Riparian Area Protection Program for the State of Arizona*. This report and the development of recommendations were requirements of Senate Bill 1030 passed by the legislature in 1992. The committee voted 25 yes 1 no that Sections I through II.G, as drafted in the report, are the recommendations to be acted upon by the legislature this session. This would establish a local riparian planning process with state agency technical assistance. The committee also voted 18 yes 8 no that this report and the recommendations accurately reflects the overall work of the RAAC and the report and recommendations should be forwarded to the legislature. I believe the difference between the votes is explained by the individual stakeholders' concern about selected portions of the report other than Sections I through II.G.

I have been impressed with the diligence of committee members in looking for ways to structure a program that would satisfy a broad range of interests and diverse philosophies. I believe this document reflects that thoughtfulness and provides a high degree of agreement on a riparian program approach. The RAAC is proud of its accomplishments to date, but feels its work is incomplete as the all-important economic analysis was not done due to a lack of funding. We are requesting an extension of time and funding to do the economic analysis. The extension will also allow us an opportunity to discuss issues that are still unresolved. The present report includes:

- recommendations on which there is full agreement and which the RAAC strongly urges the Legislature to enact into law this session. This includes the Conservation Goal and Policies, the planning process and non-regulatory authorities.
- preliminary recommendations that have varying levels of agreement (from 100% to a small majority). Fiscal and economic analyses and, in some cases, further discussion, are in order before finally recommending specific legislation. This will be a charge to RAAC if the time extension is approved. The Executive Summary outlines these areas specifically. The roll call votes on some of the controversial items are included with this letter for your information.



- a list of unresolved issues which are important to consider but that the RAAC did not have time to discuss thoroughly.

The RAAC joins me in asking the Legislature for a year's extension and an appropriation to do an economic analysis of the proposed recommendations. With the information provided by an economic analysis and with discussion of unresolved issues, the RAAC would submit additional recommendations, if any, to the Legislature by December 31, 1995.

RAAC is aware that legislation creating local water management areas is currently being drafted by representatives of Sierra Vista and the Arizona Department of Water Resources (ADWR). The purpose of this legislation is to create a statutory mechanism for locally established water management programs designed to secure long-term water supplies for the community. ADWR has expressed serious concerns about the possibility that the legislation drafted pursuant to the RAAC recommendations, particularly II. C, may duplicate and/or conflict with the water management concepts contained in the Sierra Vista proposal. Consequently, the RAAC has agreed that any legislation drafted pursuant to its recommendations be consistent with the Sierra Vista Legislation.

Arizonans, as you are aware, have long recognized the value of riparian areas to the State, and have sought ways to protect them that would not cause undo hardship or infringe on private property rights. We see the agreement on a State Conservation Goal and Policies, a planning process and technical assistance as major steps toward addressing this important state issue. Legislation incorporating our recommendations will give us a structure for a riparian protection program that can be a model of cooperative planning for others to follow. We look forward to your support and working with you during the coming session.

Sincerely,



Edward Z. Fox
Chair, Riparian Area Advisory Committee

EZF:KR

Attachments

cc: Members of the Riparian Area Advisory Committee



Attachment 1

Roll Call votes
12/01/94 RAAC meeting

	Changes in Diversion Points	401 Proposal	Instream Flow	Management of exotic plant species
Barbara Tellman	Y	Y	Y	Y
Eva Patten	Y	Y	Y	Y
Bill Caskey	N	N	N	N
DOC Lane	N	N	N	N
Stu Bengson	N	N	N	N
Bob Yount	N	N	Y	Y
Jim Burton	N	Y	Y	Y
Marty Jakle	Y	Y	Y	AB
Matt Chew	N	Y	Y	AB
Stephanie Ostrom	AB	Y	*	*
Jim Slingluff	AB	Y	Y	Y
Anita MacFarlane	Y	Y	Y	Y
Julie Stromberg	*	*	Y	Y
Bill Chase	Y	Y	Y	N
Herb Dishlip	Y	Y	Y	N
Ed Fox	Y	Y	Y	N
TOTAL				
Y = YES	7	11	12	7
N = NO	6	4	3	6
AB = ABSTAIN	2	0	0	2
	Motion Passes	Motion Passes	Motion Passes	Motion Passes

* = absent at time of vote



Motion 1: Do you agree that the Final Report and Recommendations for a Riparian Protection Program for the State of Arizona accurately reflects the work of the RAAC and should be forwarded to the legislature?

Motion 2: Do you agree the Sections I through II. G, of the report, are the recommendations to be acted upon by the legislature this session?

Roll Call vote for Final Report and Recommendations

RAAC Member/Alternate	Motion #1	Motion #2
Stuart Anderson	N	Y
Judy Gignac	Y	Y
Dave Smutzer	Y	Y
Bill Chase	Y	Y
Clinton Pattea/Stephanie Ostrom	Y	Y
Bill Jeffers	N	N
Lewis Tenney/Bill Caskey	N	Y
Connie Wilhelm	N	Y
Jack Metzger/DOC Lane	N	Y
Roger Hooper	N	Y
David Chavez	N	Y
Pat Maley/Stu Bengson	N	Y
John Keane	Y	Y
Julie Stromberg	Y	Y
Marty Jakle	Y	Y
Anita MacFarlane	Y	Y
Eva Patten	Y	Y
Barbara Tellman	Y	Y
Jim Slingsluff	Y	Y
Ed Fox	Y	Y
Keith Kelly/John Hagen	Y	Y
Bill Belt	Y	Y
Rita Pearson/Herb Dishlip	Y	Y
Duane Shroufe	Y	Y
Bob Yount/Jean Hassel	Y	Y
Ken Travous/Matt Chew	Y	Y
TOTAL Y = YES N = NO AB = ABSTAIN	18 8	25 1



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for the State of Arizona**

**Submitted by
Riparian Area Advisory Committee**

December 30, 1994

Development and preparation of this report was made possible with funds from a grant from the Identification, Inventory, Acquisition, Protection and Management of Sensitive Habitat (IIPAM) portion of the Heritage Fund administered by the Arizona Game and Fish Department.

Copies of this report may be obtained by phoning the Arizona Department of Environmental Quality at (602)207-2202 or by writing to ADEQ, 3033 N. Central Ave., Phoenix, AZ 85012.

Printed on recycled paper.

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**Final Report and Recommendations
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Executive Summary

Created in 1992 by the Arizona Legislature under Senate Bill 1030 (ARS 45-101), the Riparian Area Advisory Committee (RAAC) presents its Final Report and Recommendations to the Legislature and to the Governor after concluding a two year period of study and discussion. The RAAC, consisting of 34 members broadly representative of federal and state agencies, tribal government, counties, municipalities, major economic resource user groups as well as environmental and recreational organizations, has agreed on a Conservation Goal and on the broad outlines of a riparian area protection strategy, as charged by the Legislature.

The Conservation Goal, adopted by unanimous agreement, is to sustain and enhance Arizona's riparian areas by managing land, water, and resource uses to protect ecological integrity and functionality.

The RAAC members agreed that the State should seek to establish a well-balanced riparian protection program which gives due consideration to the impact of various activities on riparian areas, as well as their environmental and economic values on various classes of landowners and land users in the State of Arizona. Full consideration of environmental, social and economic impacts of all affected/potentially affected entities, including Indian tribes, should be a part of decision-making. Legal property rights and the sovereign rights of Indian governments must be protected.

To achieve this policy, the RAAC recommends cooperative efforts with local, state, federal governments and Indian tribes in the protection, maintenance and enhancement of riparian areas. Direct involvement of local groups and citizen participation should be a cornerstone of these efforts.

There was broad agreement among the members about the desirability of adapting riparian protection solutions to the unique circumstances of each area of the state. Therefore, the Committee outlined a local riparian planning process to emphasize a partnership among all levels of government and interest groups to define meaningful solutions at the local level. There was unanimous support for this fundamental concept within the Committee.

One of the recommendations of the Final Report asks the Legislature to extend the life of the Committee by one year and to provide funding for economic analysis studies. Senate Bill 1030 required the RAAC to consider the fiscal, economic, and environmental

impacts of its proposed riparian area protection program. Yet, the legislation did not provide funding for this purpose nor did it mandate any state agency to provide this service to the Committee. The RAAC was unable to obtain independent funding for economic analysis of potential impacts of new programs. As explained below, the Committee found that many of the possible recommendations that might create significant impacts were exactly those areas on which there was least agreement. Therefore, the Committee recommends that these issues be deferred for consideration into a third year and that the Legislature provide appropriate funding to complete an economic analysis of these issues. From the beginning the RAAC has agreed that economic analysis of any potential riparian protection program was essential to present a balanced picture to the Legislature. The Committee believes it has reached agreement on important concepts that would have relatively small impacts, and additional time and resources are needed to look at the remaining issues.

For clarification, the Committee provides a summary of the issues dealt with in three broad categories: 1) those on which there was full agreement and which the RAAC strongly recommends to the Legislature to enact into law this session; 2) those about which there was some level of agreement (ranging from 100% to bare majority) resulting in recommendations but which require economic analysis; and 3) those which remained unresolved and were never brought to a vote. Each recommendation in the full report is flagged with the word **ACTION** if it belongs in the first category or with the word **ANALYSIS** if it belongs in the second. Issues in the third category are listed in Appendix C. The following is a summary which breaks out the **ACTION** and **ANALYSIS** recommendations for ease of reference.

RECOMMENDATIONS FOR ACTION DURING THIS SESSION

SECTION I. POLICY AND GOALS

As indicated above, the RAAC reached broad agreement on the Conservation Goal and the general principles of a local planning process.

SECTION II. A RIPARIAN PLANNING PROCESS

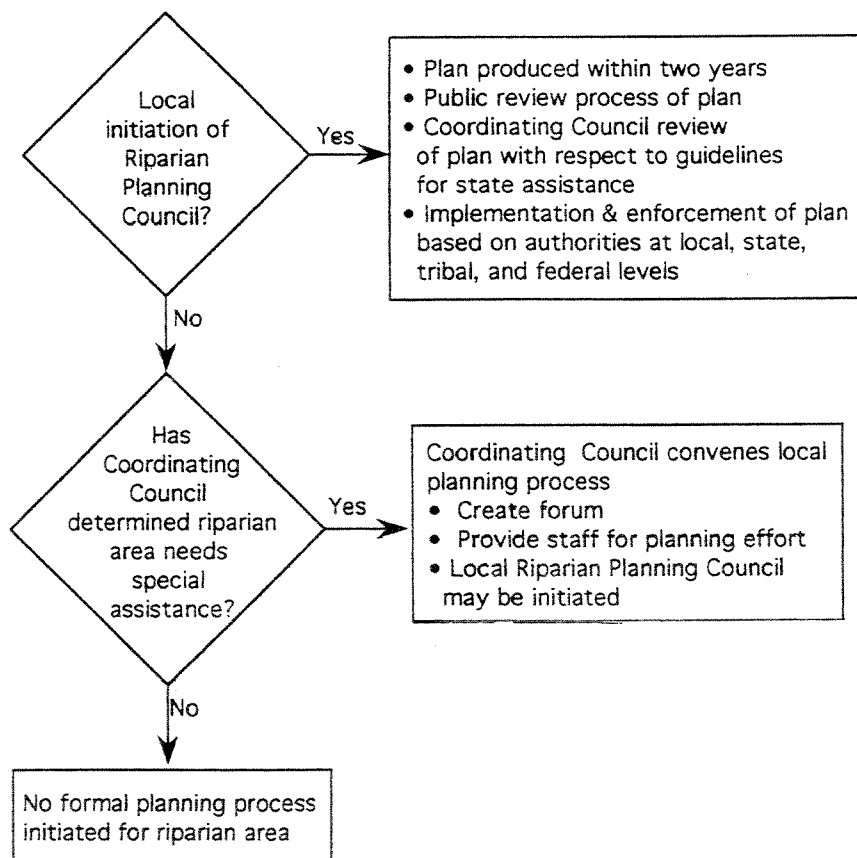
The RAAC reached broad agreement on many specifics of the riparian planning effort. Section II, subsections A through G, present an overview of the philosophical approach to riparian planning, methods for convening a local riparian planning process, the local, state, tribal, and federal roles in such a process, and the currently available authorities that could be used for planning purposes.

The approach presented in these sections of the Report envisions the creation, at local or at legislative initiative, of **local riparian planning councils**. These councils would be broadly representative of the local, state, tribal, and federal agencies affected by riparian

decisions as well as of the various resource user and citizen groups with a stake in the future of riparian areas. These councils, defining a study area in terms that is locally meaningful, would produce a plan in a two year period to achieve goals of local definition. By taking advantage of authorities already available to existing agencies, the councils could help produce Intergovernmental Agreements that would be the mechanism for implementing planning goals.

The state would participate in such councils and would also create a Coordinating Council, consisting of the Arizona Department of Environmental Quality, the Arizona Department of Water Resources and the Arizona Game and Fish Department, for the purpose of providing technical assistance and other support to the local riparian councils. This Coordinating Council would use the riparian mapping and inventory information which the Game and Fish Department has already been directed by the Legislature to prepare, to assess riparian areas on an on-going basis. The Coordinating Council would be able to convene a local riparian planning process, one outcome of which may be the formation of a riparian planning council, but would have no new authority to impose goals for riparian protection on local areas. This riparian planning process is outlined in the following figure.

ALTERNATIVE WAYS TO CONVENE RIPARIAN PLANNING PROCESSES



SECTION III. STATEWIDE ISSUES

In addition to the need for local riparian planning efforts, the RAAC discussed preliminary statewide proposals for dealing with five key issues affecting the health of riparian areas: water availability, adjacent land uses, large scale destruction of river channels, restoration of riparian habitat, and effluent discharges.

EFFLUENT: The Committee reached unanimous agreement on the wording of a proposed memorial from the Legislature to the Congress regarding revisions to the Clean Water Act that would encourage greater recognition for the importance of discharges of treated wastewater to riparian areas and would call for a "net ecological benefit" approach to analyzing the impacts of such discharges.

SECTION IV. AGENCY AUTHORITIES AND COORDINATION

There was a high level of agreement on the Committee for recommendations dealing with local, state, tribal and federal governmental coordination.

SECTION V. FUNDING/INCENTIVES

ECONOMIC STUDY AND EXTENSION OF COMMITTEE LIFE: The RAAC unanimously adopted a recommendation asking the Legislature to fund economic impact studies regarding unresolved issues and to extend the life of the Committee for an additional year to complete this work.

EXISTING SOURCES OF FUNDING: There were high levels of support for recommendations to provide full funding for existing funding sources at the state level that are available for riparian protection projects and to urge the Legislature to protect the integrity of those funds.

SECTION VI. PUBLIC OUTREACH/EDUCATION

The RAAC gave unanimous support to a recommendation calling on state agencies to work with existing environmental education programs in the state to develop riparian education materials for widespread use by the public.

PRELIMINARY RECOMMENDATIONS REQUIRING ECONOMIC ANALYSIS

SECTION II. RIPARIAN PLANNING PROCESS - NEW AUTHORITIES

Perhaps the fundamental area of continuing disagreement centered on the extent of the

new authorities that should be established by the Legislature for the local riparian councils. Preliminary recommendations in Section II. H., which require economic and fiscal analysis, state that the Legislature adopt legislation permitting riparian councils to make use, under restrictive conditions, of new authorities in water and land management. Such authorities would permit the local councils to create water banking programs, to provide for regulation of new water appropriations, to collect water fees, to devise a permit system for new groundwater uses that would affect riparian areas, and other activities. Such authorities could be used in the context of local plans and would not be available for statewide use. These recommendations were adopted by a majority of the RAAC, but there was significant opposition to the concept.

SECTION III. STATEWIDE ISSUES

Regarding recommendations for dealing with statewide issues, the RAAC adopted several recommendations that require economic analysis.

WATER AVAILABILITY - INSTREAM FLOW RIGHTS: Regarding water availability, the RAAC expressed a high level of support for modifications to the instream flow rights laws that would add "riparian vegetation" as a beneficial use and allow private as well as public entities to convert consumptive water rights to instream rights.

WATER AVAILABILITY - CHANGES IN POINTS OF DIVERSION: There was majority support to regulate certain changes in points of diversion for water rights.

ADJACENT LAND USES - LIVESTOCK GRAZING: There was majority support to require preparation of Coordinated Resource Management Plans on state lands containing riparian areas and to revise and monitor performance of many other aspects of livestock grazing on private, state, federal and tribal lands.

ADJACENT LAND USES - WILDLIFE GRAZING: There was broad support for a procedure to control the impact of wildlife grazing on riparian areas.

LARGE SCALE DESTRUCTION: There was majority support to formalize the coordination between ADEQ and AGFD for state water quality certification Section 401 program and to create a new permit program modeled on the state water quality certification process.

RESTORATION: There was majority support to achieve more effective restoration of riparian areas by requiring state agencies to use native plant species, rather than exotic ones, in projects involving the introduction of seeds or plants into watersheds containing riparian ecosystems.

SECTION V. FUNDING/INCENTIVES

PROPERTY TAX INCENTIVE: There was also unanimous support for a recommendation to create a new property tax classification for "environmental preservation/enhancement" that would give an incentive for riparian protection of private lands.

The Committee feels it has made important progress in clarifying these areas of agreement and disagreement. Broad support for the Conservation Goal, which would focus the state's policy on protecting the ecological integrity and functionality of riparian areas, and for the local riparian planning process, which would create local working partnerships, are especially significant. The RAAC strongly supports adoption of these fundamental principles as a way to achieve the maximum protection for riparian areas of the state through careful coordination and imaginative new uses of existing agencies and programs. The Committee strongly recommends extension of the life of the RAAC for one more year in order to complete economic study and consideration of numerous controversial and unresolved issues.

INTRODUCTION

Purpose of Report

The need to develop riparian area protection for the State of Arizona has been identified as an important issue. State efforts on this issue have been on-going since 1985. Previous studies include the 1986 *Arizonans Recreation Needs on Federal Lands*, the 1988 *Arizona Wetlands Priority Plan* (addendum to the 1983 SCORP), the 1988 *Report of the Commission on the Arizona Environment*, the 1989 *Statewide Comprehensive Outdoor Recreation Plans* (SCORP), and the 1990 *Final Report and Recommendations of the Governor's Riparian Habitat Task Force*. Governor Rose Mofford issued Executive Order 89-16, *Streams and Riparian Resources*, of June 10, 1989, and Executive Order 91-6, *Protection of Riparian Areas*, of February 14, 1991 to address this important state issue. She also created the Governor's Riparian Task Force, which issued its *Report* in 1990. Other studies include *The Interrelationship Between Federal and State Wetlands and Riparian Protection Programs* (Steiner, et al. 1991) and *Analysis of Water Quality Functions of Riparian Vegetation* (Engineering-Science, Inc. 1994).

In an effort to resolve the many issues that surround riparian areas, the Arizona legislature passed a measure in 1992 which amended Arizona Revised Statute (ARS) 45-101. (See Appendix A for a copy of Senate Bill 1030.) It called for the collection of scientific and economic data and the development of reports on riparian areas in the state of Arizona. The reports were to be used by the Riparian Area Advisory Committee (hereafter referred to as RAAC) to make recommendations to the legislature concerning protection of riparian areas.

Scientific data was collected and analyzed by three State agencies. The Arizona Game and Fish Department identified and classified riparian areas along perennial stream reaches (Valencia, et al. 1993). The Arizona Department of Water Resources assessed the impact of withdrawals of surface water and groundwater on riparian areas (Arizona Department of Water Resources 1994 a,b,c,d). The Arizona Department of Environmental Quality (Arizona Department of Environmental Quality 1993) assessed the impact of land use activities on riparian areas. The three agencies each submitted reports to the RAAC and to the Governor, President of the Senate, and Speaker of the House.

The legislation directed RAAC to prepare an Interim Report in which the components of a riparian area protection program were studied, alternative regulatory and nonregulatory strategies to protect riparian areas were compiled, and the reports produced by the three agencies were evaluated. The RAAC presented its *Interim Report* to the Governor, President

of the Senate, and Speaker of the House on August 11, 1994. The legislation also directed RAAC, based on the findings of the Interim Report and the identification, classification and mapping of riparian areas in this state, to prepare recommendations for proposed statutory provisions for an Arizona riparian area protection program. These recommendations are presented in this report.

One of the recommendations asks the Legislature to extend the life of the Committee by one year and to provide funding for economic analysis studies. Senate Bill 1030 required the RAAC to consider economic, fiscal and environmental impacts of its proposed riparian area protection program. Yet, the legislation did not provide funding for this purpose nor did it mandate any state agency to provide this service to the Committee. The RAAC was unable to obtain independent funding for an economic analysis of potential impacts of new programs. As explained below, the Committee found that many of the possible recommendations that might create significant impacts were exactly those areas on which there was least agreement. It is therefore proposing that these unresolved issues be deferred for consideration into a third year and that the Legislature provide appropriate funding to complete an economic analyses. From the beginning the RAAC has agreed that an economic analysis of any potential riparian protection program was essential to present a balanced picture to the Legislature. The Committee has reached agreement on important concepts that would have relatively small impacts and needs additional time and resources to look at the remaining issues.

Members of the Riparian Area Advisory Committee

Thirty-four people comprised the RAAC and represented varied interests in riparian area issues. Nineteen members, appointed by the governor, represented industry, environmental organizations, user groups, agricultural improvement district, Natural Resource Conservation Districts, and Indian tribes. Seven state agencies were represented. Eight federal agencies were named as *ex officio* members and were not eligible to vote. These agencies were consulted during the development of recommendations in order that anything proposed at the state level would be coordinated and consistent with existing federal programs that impact riparian areas. A list of the members and their alternates of the RAAC is contained in Appendix B.

Areas of Agreement and Disagreement

During the course of discussions over a two year period, the balanced membership of the Committee reached agreement on some basic concepts but also realized that philosophical

differences over many issues could not be resolved. Toward the end of the process, as noted above, the Committee adopted a resolution asking the Legislature to prolong the life of the group for one more year in recognition of the fact that some of the unresolved issues as well as the economic impacts of some of the recommendations demanded further study.

The issues examined by the committee fall into three major categories: 1) those on which full agreement has been reached and which RAAC urges the Legislature to enact during this session; 2) those which passed as recommendations by varying margins (ranging from 100% to bare majority) and which require economic analysis; and 3) those unresolved issues which never came to a vote and which require further discussion. Each recommendation in the report is flagged either with the word **ACTION** if it belongs in the first category or with the word **ANALYSIS** if it belongs in the second. A list of unresolved issues belonging in the third category is found in Appendix C.

This report of the Committee captures both the areas of agreement and the areas of disagreement. Preceding each major recommendation there is an indication of the measure of support it received from the RAAC; this provides guidance in identifying those issues which had broad support and those which passed by narrow margins. One of the most important areas of unanimous agreement was captured in the Conservation Goal in Section I. This recommendation asks the State of Arizona to make a goal of protecting "ecological integrity and functionality" of riparian areas. Throughout the RAAC sessions and the open house meetings held with the public around the state (Folk-Williams and Randall 1994), there was unanimous support for protecting riparian health despite sharp differences on the means to realize that goal.

There was broad agreement among the members about the desirability of adapting riparian protection solutions to the unique circumstances of each area of the state. Therefore, the Committee outlined a local riparian planning process to emphasize a partnership among all levels of government and interest groups to define meaningful solutions at the local level. There was unanimous support for this fundamental concept within the Committee.

To achieve the planning goals defined by these local processes, the RAAC members recommended that numerous existing authorities, methods and procedures be used by local planning councils through the agencies already authorized to carry them out. A majority of the members felt that, in order for the local riparian planning councils to be fully effective, additional authorities should be available that would require new legislation. One of the fundamental differences within the group centered on whether it was desirable to have new authorities enacted as part of enabling legislation for the local councils or to let each council

approach the legislature in the future to obtain the specific authorities it felt it needed to accomplish its goals. Section II of this report details the concept of the riparian planning councils. Section II. G. summarizes the existing authorities which the group unanimously thought should be available to the councils. Section II. H. summarizes those authorities that would require new legislation and need further analysis by the RAAC.

The RAAC had many debates about the terminology that should be used to describe the elements of a riparian protection program. The word "protection" itself proved controversial. Some felt that use of this word might imply a desire to isolate riparian areas or "lock them up". Others felt strongly that the word captured the fundamental charge to the Committee by the legislature (Senate Bill 1030 asks the Committee to study the components of a "riparian area protection program.") The RAAC decided to retain the usage of the original legislation but wanted to specify that the word "protection" should not be interpreted to suggest a segregation or "listing" of riparian areas that might be interpreted to automatically isolate their uses for narrow purposes. The Committee has recognized throughout its discussions that the Legislature directed it to consider riparian protection in the context of the broad social, environmental and economic importance of these areas to the entire state.

I. RECOMMENDATIONS FOR POLICY AND GOALS

Conservation Goal

[The recommendation for the Conservation Goal was adopted unanimously.]

ACTION

The Conservation Goal is to sustain and enhance Arizona's riparian areas by managing land, water and resource uses to protect ecological integrity and functionality.

Policies to Implement the Conservation Goal

[There was a high level of agreement about the following policy recommendations.]

ACTION

The Riparian Area Advisory Committee recommends that the State of Arizona adopt the following policies to implement the Conservation Goal:

The State of Arizona recognizes the significant environmental, economic, recreational and aesthetic values of riparian areas. In order that future generations may enjoy the benefits and appreciate the intrinsic and resource values of these areas, the State actively encourages the protection and maintenance of the functionality of riparian areas and management to improve degraded areas.

The State will seek to establish a well-balanced riparian protection program which gives due consideration to the impact of various activities on riparian areas, as well as their environmental and economic impacts on various classes of landowners and land users in the State of Arizona. Full consideration of environmental, social and economic impacts of all affected/potentially affected entities, including Indian tribes, should be a part of decision-making. Legal property rights and the sovereign rights of Indian governments must be protected.

The State will seek to achieve this policy through cooperative efforts with local and federal governments and Indian tribes in the protection, maintenance and enhancement of riparian areas. Direct involvement of local groups and citizen participation will be a cornerstone of these efforts. This process will involve all relevant entities, including affected and

potentially affected Indian tribes. The best available scientific and technical information should form the basis for riparian area management decisions.

The State will promote public awareness through the development of education programs of the functions and values of riparian areas and the need for their protection and careful management.

II. RECOMMENDATIONS FOR A RIPARIAN PLANNING PROCESS

A. Approach to Riparian Planning

[There was a high level of agreement about the riparian planning process recommendation].

ACTION

The Committee agrees that there needs to be a local riparian planning process that incorporates state and other interests to achieve the Conservation Goal. The Committee further agrees that there needs to be some mechanism to bring people to the table, that there should be a balance of power between state and local governments in the planning process and that all stakeholders should be included in the planning process to achieve the Conservation Goal.

The Committee believes that some areas of the state need more riparian area protection than others. The riparian management solution should be locally-based, using authorities and methods available at the local, state, tribal, and federal levels through relevant agencies. The management solutions should be developed by a locally initiated planning entity utilizing the state classification system described below. The Committee favors the concept of a local Riparian Planning Council (RPC) with enforcement vested in existing local and state agencies.

The roles of the state and of local agencies would be as described below.

B. Convening a Local Riparian Planning Process

[The following recommendation was adopted unanimously.]

ACTION

A Riparian Planning Council could be formed through local initiative by such means as petitions from governing bodies representing a legislatively determined percentage of the population of the proposed area, or water providers serving a legislatively determined percentage of the population of the proposed area, or direct petition to the state Coordinating Council from a legislatively determined percentage of the qualified voters of the proposed area, or by act of the legislature.

In the absence of local action concerning the protection, maintenance or enhancement of riparian areas, a Coordinating Council, consisting of the Arizona Department of Environmental Quality, the Arizona Department of Water Resources and the Arizona Game and Fish Department, may convene a local planning process. This process would be initiated by a finding of need based on an analysis of the riparian ecosystem as determined and recommended by the Coordinating Council. The Coordinating Council would create a forum and provide staffing for a planning effort by local units of government, citizens and all stakeholders, including Indian tribes, to consider what action, if any, should be taken to respond to the concerns identified by the state agencies. This process would create a public record about the values of the riparian area(s) in question and would explore coordination of the implementation of all relevant existing laws. The process may or may not, according to local determination, result in creation of a Riparian Planning Council. A decision not to create an RPC through this local planning process would not preclude the creation of one through local initiative at a later time.

C. Local Role

[There was a high level of agreement about the following recommendations.]

ACTION

The Committee agrees that, because riparian conditions and problems and the measures needed to respond to them differ markedly from one region to another, the principal means for addressing these issues should be a locally initiated planning council utilizing technical information provided by the AGFD mapping and classification system. This entity would be known as a Riparian Planning Council and would be broadly representative of all affected governments and interests. The management solutions should be locally-based, using authorities available at the local, state, tribal, and federal levels, and enforcement should be vested in existing local and state agencies.

The rationale for this approach is to tailor management measures to local riparian situations and to define solutions through an inclusive process that respects and protects the values, property rights and governmental policies relevant to each area.

The role of the RPC will be to produce a plan within two years to coordinate the management of resources for the purposes of achieving goals defined by the RPC, including but not limited to protecting the riparian ecosystem and long-term water supply for the area. Technical expertise, legal advice, and public participation must be integral parts of the

planning process, and the plan must be presented through a legally defensible process. In general, the geographic area of the RPC should follow accepted surface water basin or subbasin boundaries, unless local circumstances dictate otherwise.

The plan must contain a clear and implementable goal which must include protection of the riparian area and a method of management that will meet the goal within a specified number of years (with incremental goals and deadlines as appropriate). The plan must contain a method for enforcement and for review and updating of the plan every five years. The plan must also be approved by the Coordinating Council with respect to guidelines for state assistance. The plan may contain additional goals and methods to achieve other aspects of riparian protection.

Implementation and enforcement of the plan should be based on authorities at local, state, tribal and federal levels, utilizing Intergovernmental Agreements within the guidelines of an adopted plan.

D. State Role

[There was a high level of agreement about the following recommendations.]

ACTION

1) Mapping and Classification of Riparian Areas

The Arizona Department of Game and Fish will complete the inventory, mapping and hierarchical classification system of perennial and intermittent stream riparian areas, as called for in the current legislation.

2) Riparian Assessment for State Resource Allocation

A Coordinating Council, consisting of the Arizona Game and Fish Department, the Arizona Department of Environmental Quality, and the Arizona Department of Water Resources would utilize the AGFD mapping and classification information to develop criteria and a clear process for determining whether a particular riparian area is of such distinctive value (whether for environmental, social, economic, recreational, wildlife or other purposes) or is being threatened so as to need protection, management, maintenance or enhancement. This process could identify specific objectives of riparian protection based on multiple factors, including condition, threat, recovery potential, specific function, etc. and could result in a grouping of riparian areas based on varied objectives rather than a rigid classification scheme. Assessments of riparian areas made by the Coordinating Council should be

regularly reassessed and modified in light of new data. The Coordinating Council can also give consideration to existing methodologies for assessment of the functions of riparian areas, such as the one summarized by the Bureau of Land Management in a report entitled *Process for Assessing Proper Functioning Condition*. This method outlines attributes and processes that serve as indicators of riparian health or condition and can be useful for both state and local planning efforts.

The members of the Coordinating Council would use these criteria to justify specific allocation of state agency resources to achieve riparian protection, maintenance or enhancement under existing laws.

3) Technical Assistance

The Coordinating Council will act as a source of technical assistance to local governments and landowners. Here are examples of the types of technical assistance that might be provided:

- a) Permits: information about what permits (state or federal) are needed in order to accomplish a desired goal as well as assistance in applying for the appropriate permits.
- b) Analysis of riparian functions: expert assistance in analysis of the resources of a specific area.
- c) Technical advice: suggestions for methods on how best to achieve a goal and relevant tools, such as best management practices, guidance practices, incentive programs, regulatory requirements, water conservation plans, and many others.
- d) Funding assistance: suggestions on outside sources of funding and assistance regarding the application process.
- e) Network process: development of a network process to exchange information among people or agencies working on riparian issues.

4) Participation in Riparian Planning Councils

To assist local jurisdictions which have formed Riparian Planning Councils (as described below), the Coordinating Council will develop guidelines for provision of technical assistance and funding. The Coordinating Council members will participate as members of Riparian Planning Councils and will review the plans developed by Councils to determine if they meet the guidelines for state assistance.

E. Tribal Role

[The following recommendation was adopted unanimously.]

ACTION

Since over 20% of Arizona's riparian resources are found on Tribal lands, coordinated planning and management involving tribes is essential for attainment of the Conservation Goal. Individual Indian tribal governments would be requested to participate in regional riparian planning efforts where their resources are/could be impacted. Tribal governments, being sovereign nations, do have regulatory authority and are able to implement resource planning and management measures on their lands. Tribal governments would have the option of entering into cooperative agreements with local/regional/state/federal entities, but would not be subject to state regulation.

F. Federal Role

[The following recommendation was adopted unanimously.]

ACTION

A substantial proportion of riparian areas are also found on federally managed lands. Coordination with federal planning processes is necessary for attainment of the Conservation Goal. Appropriate federal agencies would be requested to participate in regional riparian planning where federal land resources would be affected or where non-federal lands would be affected by federal actions. Federal agencies are required to implement resource planning and management on federal lands, and to exercise certain regulatory authorities over federal land users. Federal agencies would be encouraged by local planning processes to enter into cooperative agreements with local, regional, state, and tribal entities.

In some cases federal agencies have regulatory responsibilities extending beyond federally managed lands. Management of resources such as waters of the U.S. and endangered species are examples. Federal agencies also provide technical assistance on riparian planning and management that is available to agencies, groups and individuals.

G. Powers and Authorities Currently Available for Use by Riparian Planning Councils

[The following recommendations were adopted unanimously.]

ACTION

The Committee believes that Riparian Planning Councils should make full use of the land and water management authorities that are available under state law. These authorities can be implemented whether or not local Riparian Planning Councils come into existence.

WATER MANAGEMENT AUTHORITIES

1. Water Information Gathering Authorities

Riparian Planning Councils may take advantage of current laws which permit existing agencies to:

- a. install stream gages and collect flow records (where not already existing).
- b. inventory and monitor riparian area conditions.
- c. establish a baseline registry of water rights including ownership information, type of use, if for irrigation acreage amount and location, water supply source, location of wells and diversion points.
- d. perform hydrologic modeling studies to determine a threshold volume that could trigger additional programs. Until threshold volumes were reached, new uses could be treated like existing uses.

2. Surface Water Management Authorities

Riparian Planning Councils may take advantage of current laws which permit existing agencies to:

- a. establish instream flow water rights for specific perennial stream segments.

3. Groundwater Management Authorities

Riparian Planning Councils may take advantage of existing laws which permit existing agencies to:

- a. provide incentives for conservation of groundwater.

4. Conjunctive Management Authorities

Riparian Planning Councils may take advantage of current laws which permit existing agencies to:

- a. provide incentives for use of alternate water sources that would not create a potential adverse impact on baseflow or riparian vegetation water needs.

- b. develop a conservation program for all water users with technical assistance from the Coordinating Council.

LAND MANAGEMENT AUTHORITIES

1. Information Authorities

Riparian Planning Councils may take advantage of current laws which permit existing agencies to:

- a. establish an education program to disseminate information regarding the needs of the riparian area and appropriate regulatory requirements for the affected and interested public and private groups and industries within the planning area.
- b. develop a training program for local land managers on the functions and values of riparian areas and the range of appropriate land use measures for riparian protection.
- c. encourage and provide information about the donation of conservation easements.
- d. work with AGFD to develop information on wildlife habitat needs associated with the riparian area for incorporation into local planning.
- e. develop information about the functional condition of riparian areas (using standard methodology) in order to assist in understanding how the riparian area operates and to implement proper management tools.

2. Management Authorities

Riparian Planning Councils may take advantage of current laws which permit existing agencies to:

- a. provide assistance and/or information about sources of funding to landowners for restoration/enhancement work on identified riparian areas through loans, grants or cost-share programs.
- b. provide technical assistance and/or information about sources of technical assistance to private and public landowners for restoration/enhancement work on identified riparian areas.
- c. work with ADEQ to develop Best Management Practices (BMPs) appropriate for nonpoint source pollution control and activities located within and adjacent to riparian areas.
- d. develop a local riparian mitigation banking program
- e. develop a policy and mechanism to encourage cooperative planning and sharing of technical expertise among state, federal, tribal and local agencies.

H. Powers and Authorities to be Made Available for Use by Riparian Planning Councils

[There was majority support for the following recommendations.]

ANALYSIS

Other powers and authorities which the Committee feels should be available for use by these Councils would require changes in state law and need to be analyzed further. The Riparian Area Advisory Committee recommends that these changes in law permit use of the proposed authorities only under the following conditions. [These restrictions apply only to proposed authorities for use by the Riparian Area Councils; the Committee recommends other statewide measures summarized in Section III below ("Preliminary Recommendations to Deal with Statewide Issues") which would not be subject to these restrictions.]

- 1) Any newly authorized planning and management authorities for use by Riparian Planning Councils only become effective in the context of plans developed in accordance with the process outlined above.
- 2) These new authorities can only be implemented and enforced under the terms of the Intergovernmental Agreements by which the RPC plans are to be enforced.
- 3) Any state agency utilizing these new authorities may do so only at the direction of an RPC plan and Intergovernmental Agreement and may not apply them in any other circumstances or regard them as statewide changes in law.

ADMINISTRATIVE AUTHORITIES

Riparian Planning Councils should have authorities necessary to conduct business, including the authority to sign intergovernmental agreements and memoranda of understanding, contract for services, conduct public hearings and other appropriate authorities.

WATER MANAGEMENT AUTHORITIES

1. Water Information Gathering Authorities
Riparian Planning Councils, working with the appropriate state or local agencies:
 - a. may require accurate measurement of withdrawals and diversions, subject to a locally determined *de minimis* limitation, using approved measuring devices.

- b. may require filing of water use information with ADWR annually for amounts exceeding a *de minimis* level determined locally.

2. Surface Water Management Authorities

Riparian Planning Councils, working with appropriate state or local agencies:

- a. may establish a water bank which would allow water rights holders to voluntarily forego water use without fear of loss of their rights. A more advanced concept would allow purchase and retirement of existing rights.
- b. require ADWR, when any new appropriation, change in use or place of diversion is being considered, to evaluate the impacts on riparian areas for mitigation opportunities.

3. Ground Water Management Authorities

Riparian Planning Councils working with appropriate state or local agencies:

- a. may create a permit system for new groundwater uses or expansion of existing uses, subject to *de minimis* standards to be determined locally. Permit evaluation criteria may require ADWR to determine if the new uses would assure sufficient baseflow and/or healthy riparian vegetation compared with existing conditions. If the RPC wishes, approval may be denied unless adverse impacts are adequately mitigated. Permits could be issued under set conditions.

4. Conjunctive Management Authorities

Riparian Planning Councils, working with appropriate state or local agencies:

- a. may provide incentives to encourage effluent to be recharged to protect water levels or to be discharged directly to streams to enhance stream flows.
- b. may collect local water use fees to fund local conservation, recharge, augmentation or water bank programs.
- c. may require that water supplies for new subdivisions be consistent with the Riparian Planning Council's management plan and basin management goals.

LAND MANAGEMENT AUTHORITIES

Under new legislation Riparian Planning Councils would be required to consider the following measures but could choose to adopt them or not at local discretion.

Riparian Planning Councils:

- a. should consider that riparian area protection be part of the comprehensive plan and zoning.
- b. should consider that when land use activities (including flood control structures) are planned that might adversely impact riparian areas, those impacts be

considered in the decision-making process. Riparian Planning Councils should consider a policy of using structural flood control measures, such as channelization, in identified riparian areas only in extreme circumstances when no other flood control alternatives are available.

- c. should consider that rezonings and permits for new construction in and adjacent to riparian areas take into consideration the impacts on the riparian area and either avoid or mitigate damage.
- d. should consider developing a funding source to assist local governments in planning for riparian area protection and for implementation of protection plans, including the use of tax incentives.

III. PRELIMINARY RECOMMENDATIONS FOR DEALING WITH STATEWIDE ISSUES

Preliminary recommendations that have varying levels of agreement (from 100% to a small majority) are presented below. Fiscal and economic analyses and, in some cases, further discussion is in order before finally recommending specific legislation. This will be a charge to the RAAC if a time extension and funding for an economic and fiscal analysis is approved.

In addition to the concept of the Riparian Planning Councils, the Committee recommends that the following specific steps be taken at a statewide level to address five major issues affecting the health of riparian areas. These issues are: 1) water availability, 2) adjacent land uses, 3) large scale destruction, 4) restoration and enhancement, and 5) effluent discharges.

A. Water Availability

1. Instream Flow

ANALYSIS

Although Arizona has recognized instream flow water rights for many years, these rights need to be revised to specifically protect riparian areas. For instance, fish, wildlife and recreation are listed as beneficial uses, but riparian vegetation is not. As the present law reads, private property owners are precluded from converting a consumptive right to an instream flow water right, and thus we are losing important opportunities to protect riparian areas.

Additionally, there is a need to help private landowners who wish to protect stream flows. Many landowners do not have the expertise to apply for, quantify, and monitor instream flow rights and need assistance. There are also instances of multiple landowners having property along a stream segment who need to work cooperatively to protect stream flows. We also need ways to assist them in securing instream flow rights. And lastly, a landowner's only recourse in protecting instream flow rights once they have them is to go to court. This is prohibitive for many.

[The following recommendation was adopted by a vote of 12 to 3 with 0 abstentions.]

Therefore, RAAC recommends legislation or agreements to:

- a. add "riparian vegetation" as a beneficial use;
- b. allow both public and private entities to convert a consumptive water right to an instream flow water right;
- c. allow AGFD to act as the agent of private landowners at the landowners' request to pursue instream flow rights. The water rights would still be issued in the name of the landowner.
- d. give ADWR enforcement authority against illegal diversions which impact instream flow water rights.

2. Changes in Diversion Points

ANALYSIS

Current law requires applicants for new appropriations to identify both the type of diversion and the location of these works. Once the permit has been granted and certificate issued, however, the permittee may change the location or type of diversion without seeking approval of ADWR. A person may make the change as long as there is not an impact on other vested water rights holders. There is no consideration given if the change would have an impact on riparian areas. In situations, however, where the diversion point is moved upstream of a riparian area, the riparian area could be dewatered. Moving a diversion downstream could benefit a riparian area. A change from a diversion which pumps subflow to a direct surface diversion could impact riparian areas by removing more water immediately, resulting in more frequent dewatering. Similarly, changing from surface diversion to pumping could help a stream. Since applications are considered in terms of how and where the diversion occurs, it is reasonable to expect that changes undergo scrutiny for ADWR not only for impacts on other users, but also for impacts on riparian areas.

[The following recommendation was adopted by a vote of 7 to 6 with 2 abstentions.]

The RAAC recommends legislation in which:

1. Certain future changes in points of diversion would be subject to regulatory oversight to determine if adverse impacts will occur to others or the environment.
2. The burden of proving that the proposed action will not create an adverse impact on others or riparian areas rests with the person proposing the change.
3. Minor changes in location (less than 1/4 mile) and small uses would not be subject to review.
4. Mitigation of adverse impacts should be allowed and recognized.

5. Other people should have the opportunity to object to a proposed change if for a valid reason.

B. Adjacent Land Uses

1. Livestock Grazing

ANALYSIS

[The following recommendations on livestock grazing were adopted by a majority vote.]

The policy of the State of Arizona toward livestock grazing is reflected in its overall riparian policy statement. Grazing within the state occurs on federal, tribal, state and private lands. Because of these different types of land ownership, the opportunities to improve grazing management will vary.

A. On all lands within the state

1. Development of management plans for rangeland management units ("ranch units" on state land; "grazing allotments" on federal land) containing riparian areas as defined in §45-101 is strongly encouraged. Plans would include objectives for maintaining and improving riparian areas, actions to meet objectives and monitoring plans to determine progress toward meeting objectives. Riparian areas are defined by §45-101 for the purposes of this proposal. Where management plans are initiated, AGFD will support development of basic riparian condition monitoring plans in cooperation with other management agencies. Actions would include planned grazing that would recognize the physiological needs of riparian vegetation and would time grazing to account for those needs. Incentives and directives for developing such management plans vary depending on landownership and are described under the headings below.

2. The extensive acreage that is needed to support livestock grazing in desert environments, and the intermingled land status in the state creates many rangeland management units with mixed ownership. When a landowner in a rangeland management unit containing riparian areas and intermingled land ownership conducts an assessment or evaluation of rangeland condition for the purpose of re-evaluating existing grazing use, other landowners in the unit are encouraged to participate. The intent of their participation is to use all available data to develop consistent terms and conditions for all leases affecting riparian areas in the unit. Any resulting changes in grazing management would be

implemented cooperatively at the earliest practical time.

3. Best management practices (BMPs) and associated guidance practices for grazing developed by the Arizona Department of Environmental Quality in the non-point source pollution control program contribute to improvement and maintenance of riparian areas.

The Director of the Arizona Department of Environmental Quality is in the process of establishing BMPs for non-point source pollution from grazing operations. BMPs are being adopted into rule. The adoption of BMPs in rule would require application of BMPs on all grazing operations.

4. The success of a riparian protection program based largely on incentives and voluntary action depends on the knowledge of its participants. A statewide education program in riparian protection will be established to: a) increase awareness of the importance of riparian areas to the overall health of Arizona's environment, and b) educate our livestock owner/operators about the opportunities and methods for riparian area maintenance and enhancement. Affected agencies will coordinate an interagency effort to prepare a program that would emphasize riparian function, conservation methods and use of available incentive programs.

B. Actions recommended on federal and tribal lands (approximately 51 million acres)

The State has little or no regulatory authority over Federal and tribal lands. However, by having the State adopt a policy directed to protect and maintain riparian areas, sound riparian area management should be given a high priority by federal agencies.

Encourage all federal and tribal land managers to maintain or improve riparian areas through development and implementation of appropriate coordinated resource management plans and planned grazing as described above in II. A.1. Resource management planning would include goals for air and water quality, development of standards and guidelines and BMPs for effective rangeland management practices.

C. Actions recommended on state lands (8.5 million acres on which the Arizona State Land Department administers grazing leases)

1. Arizona State Land Department would require Coordinated Resource Management Plans on Ranch Management Units that include riparian areas. Plans would include

objectives of protecting the health and function of riparian systems. Monitoring to measure progress toward meeting riparian objectives would be performed by the lessee with technical assistance from Arizona Department of Environmental Quality, Arizona Department of Game and Fish, State Land Department and Natural Resource Conservation Service. A report will be published every five years on monitoring results and progress made toward meeting riparian and other management objectives.

2. Development of coordinated resource management plans on all ranch units with riparian areas are encouraged and should be supported by a funding incentive. Riparian areas managed under cooperative resource management plans will be eligible for funding through a variety of sources described in Section V.B. below..

3. The State Land Department will make available riparian areas for conservation use leases when it is in the best interest of the trust to do so. The primary purpose of the lease would be environmental conservation which includes protection and enhancement of riparian areas. State Lands will develop a procedure for the administration of these leases to include advertisement of availability, management planning, monitoring, reassignment, and other procedures as required. Current lessees would have preference in applying for conservation use leases. Coordinated resource management plans would be required for land under conservation use lease. Livestock grazing would not necessarily be excluded, but all uses would be consistent with riparian protection objectives. Renewal of Conservation Leases will be contingent upon meeting the riparian objectives based on monitoring.

4. State Land Department will maintain an inventory of riparian areas on State Trust Lands.

5. The State of Arizona should continue to seek authority to allow land exchanges for the benefit of riparian areas and the State Trust.

D. Actions Recommended on Private Lands

1. Private land owners/operators would be encouraged to maintain or improve riparian areas through development and implementation of BMPs, and development of coordinated resource management plans and planned grazing as described above in A.1. Private riparian areas under coordinated resource management plans will be eligible for funding through a variety of sources described in Section V.B. of this report.

RAAC recommends that capital improvements such as the development of upland water sources and fencing be recognized as tools that could be used to protect and enhance riparian

areas. Management of grazing requires effective distribution of livestock within ranch units and allotments. Providing water to livestock away from riparian areas, or seasonally excluding livestock from riparian areas by fencing are examples of management techniques that could be used to meet riparian and livestock management objectives.

2. Wildlife Grazing

ANALYSIS

[The following recommendation passed by a voted of 13 to 3.]

In some riparian areas wildlife use may exceed a level that is consistent with proper riparian function.

RAAC recommends that management plans prepared for rangeland management units, including those under A.1. of the Livestock Grazing recommendation, include the following provisions:

1. The riparian area and allotment/permit would set forage allocations for each of the different species to be managed, as is currently practiced in some allotment management plans.
2. The area Wildlife Manager, Agency Range Conservationist, and the Permittee/Landowner would monitor riparian areas for depredation, based on a set of mutually agreed upon criteria.
3. If depredation occurs, and the damaging specie/species has been identified, the AGFD or the appropriate Land Management Agency must take appropriate action to limit the number of animals using the area in a timely manner. This may be done by the use of increased hunts or harvest of game species, or roundup or removal of feral species.
4. Monitoring would then resume to insure that proper and timely riparian area reclamation was occurring.

C. Large Scale Destruction

ANALYSIS

[The following recommendation was adopted by a vote of 11 to 4 with no abstentions.]

RAAC recommends reduction of impacts to riparian areas from alteration of river channels through the Section 401 Water Quality Certification Program.

At the present time, Section 401 of the Clean Water Act requires that any applicant for a federal permit or license for an activity that may discharge to waters of the United States must obtain a certification that the discharge will comply with state water quality requirements. ADEQ is the designated agency for this state for all purposes of the Clean Water Act. Most projects which alter river channels must receive Section 401 water quality certification. Certification is concerned primarily with water quality impacts. Impacts to riparian areas may be considered if water quality is affected. Conditions may be imposed that protect or minimize impacts to riparian areas. Conditions that are made by ADEQ are subject to appeal, but appeal is rare.

AGFD may submit comments to the Corps regarding riparian vegetation, wildlife, and/or remediation which may or may not be included as a condition of a 404 permit. Review for threatened and endangered species are included in permit conditions.

In order to comply with Executive Order 91-6, ADEQ inserts a condition regarding protection of riparian areas in all 401 certifications. Examples of certification conditions that ADEQ has required on past projects are as follows:

- Protect large species of vegetation
- Protect streamflow to maintain existing vegetation
- Require monitoring of watercourse to determine if there is a decline in vegetation health. If there is a decline, water must be released.
- Remediation of vegetation removed by replacing it with vegetation nearby, therefore maintaining the volume of vegetation.

Activities such as sand and gravel mining, dredging and filling, landfills, road construction, channelization and bank stabilization, and inundation by new reservoir construction and releases were identified in the ADEQ 1993 report to the RAAC may affect hydrology, channel/floodplain, biotic community, and water quality components of riparian areas. Certification of projects is primarily concerned with protecting surface water quality standards, which are in rule. Certification does protect water quality for aquatic wildlife but does not generally protect riparian areas.

Most of the impacts to water quality are nonpoint source in origin.

1. Need for a state riparian policy directing state agencies to include riparian protection within existing programs.
2. Protection of riparian areas from channel alteration activities can be achieved by

providing tools to the existing State 401 Certification program.

3. AGFD is contacted for projects larger than one acre but not for less than one acre.

At the present time, ADEQ has authority under the State Water Quality certification program to deal with protection of riparian areas. The following recommendations address staff, resource and program limitations.

1. Adopt a state riparian policy that directs state agencies to protect riparian areas in the implementation of their programs.
2. Best Management Practices are being developed for nonpoint sources of pollution which address various activities. The director of ADEQ shall adopt these BMPs into rule. ADEQ has developed BMPs for watercourse alterations and rangeland activities (which includes grazing). The schedule for the rule-making process will take 1-2 years. BMPs for other activities may take 4-5 years without additional resources. BMPs in rule would be included in the 401 certification, thereby making compliance a condition of the 401 certification.
3. Amend the Intergovernmental Agreement between ADEQ and AGFD. The agreement would have ADEQ consult with AGFD and request wildlife concerns that would be included in 401 certification.
4. General guidance could be developed for riparian area protection that would be included as conditions of 401 certification. The guidance would be performance based.
5. Develop a stand-alone "401-type" permit (using a different name) for projects not addressed or exempt by 404.

D. Restoration

ANALYSIS

[The following recommendation was adopted by a vote of 7 to 6 with 2 abstentions.]

Replacement of native vegetation by exotic (non-native) species has been recognized by RAAC as one of the issues relevant to riparian protection. Similar to other land management issues, this one needs to be addressed based on categories of land ownership. RAAC recommends legislation that:

1. The State of Arizona should encourage all *Federal Governmental Agencies and Tribal Governments* to limit the spread of non-native plant species in watersheds containing

riparian ecosystems, as identified by the Game and Fish Department. For example, rangeland restoration projects, riparian restoration projects, roadside seeding projects, or fire recovery projects should utilize native, locally grown plant species rather than species exotic to the region.

2. The State of Arizona should encourage the newly formed Federal Interagency Committee for the Management of Exotic Weeds in their efforts to work with state agencies and other interested groups to restore native plant communities to the nation's landscape.

3. The State of Arizona should encourage all Federal and Tribal governments to adopt land and water management practices that favor native over exotic species.

4. *State agencies* will be required to use native species, rather than exotic species, in any project that will involve introducing seeds, propagules, or plants into watersheds containing riparian ecosystems, as identified by the Game and Fish Department. Examples of such projects might include range recovery projects, riparian restoration projects, or roadside revegetation projects.

5. *Private landowners* should be encouraged to use native species in any revegetation or restoration project, and should be encouraged to adopt land and water management practices that favor native over exotic species.

6. Educational material should be made available through groups such as County Extension Services. This material, for example, could identify potentially harmful exotic plants; describe the value of native species and the potential harm of non-native species to regional biodiversity and ecosystem function; and indicate how various management actions can favor exotic species.

7. Important riparian tree species, including Fremont cottonwood, Goodding willow, and others, should be added to the list of "protected" species under the Arizona Native Plant Law.

8. Plant species that are determined invasive and harmful in riparian zones should be added to the State of noxious weeds.

E. Effluent Discharges

ACTION

[The following recommendation passed unanimously.]

The Committee recommends that the Legislature adopt a Concurrent Memorial containing the following language (full text included as Appendix D):

1. That the United States Congress, through reauthorization of the Clean Water Act, provide for a process by which the establishment of water quality standards will take into consideration the economic impacts involved in the development and implementation of these standards.
2. That the United States Congress, through reauthorization of the Clean Water Act, should recognize the net ecological benefits of properly treated wastewater in supporting the valuable habitats in arid and semi-arid regions and provide for further protection for wetlands and riparian habitat; and should include sufficient flexibility for the appropriate identification, classification and protection of effluent dominated wetlands and riparian areas in arid environments.

IV. RECOMMENDATIONS ON AGENCY AUTHORITIES AND COORDINATION TO IMPLEMENT POLICY

A. Arizona state agencies and political subdivisions of the state.

ANALYSIS

[The following recommendation passed unanimously.]

The RAAC recommends that the legislature consider enacting legislation that might be needed to encourage coordination of planning for natural resources among state and local governments in the following areas:

- Joint planning capability between the State and Counties
- Joint public meetings between the State and County governments
- Joint research and analysis
- Negotiations to eliminate differences between State and County plans
- State funding of County riparian planning and management activities

B. Coordination with federal agencies.

ACTION

[There was a high level of agreement about the following recommendation.]

The State and federal land management agencies share a collaborative relationship in working toward state and national water and air goals. Although the State has primary responsibilities for implementing some aspects of the federal clean air and water acts, the federal land managers also have responsibilities and can enter into agreements with the states as designated management agencies. The working relationships between the state regulatory agencies and the federal management agencies are established in these agreements.

The existing inter-agency agreement for nonpoint source pollution management between the U.S.D.A. Forest Service, Southwestern Region, and the Arizona Department of Environmental Quality could be amended to include working relationships for meeting riparian management objectives.

C. Coordination with Indian tribes.

ACTION

[There was a high level of agreement about the following recommendation. It was adapted from a statement prepared by Arizona tribes, the full text of which is printed in Appendix E.]

Arizona tribal governments desire to pursue, where feasible, the coordinated management of riparian resources with other jurisdictions in the State. It is estimated that over 20% of Arizona's riparian resources are found on tribal lands (RAAC Interim Report). The tribes, the state, and ultimately the health of the numerous riparian resources, both on and off-reservation, stand to benefit from a coordinated management approach.

The tribes desire to make clear that it remains the right of each independent and sovereign tribal government to determine the manner in which it will manage its resources, including the protection and use of its riparian areas. Also it is the sovereign right of each tribe to determine the extent to which it may wish to coordinate its efforts with the State of Arizona, or other jurisdictions, in the management of riparian resources.

Currently, Arizona's 22 Indian tribes are in varying stages of developing environmental protection programs to manage resources. While some tribes have very sophisticated environmental resource management programs, the majority are only beginning to assess their many needs, priorities, and options. With specific regard to riparian areas, it is an unavoidable fact that these unique natural communities cross jurisdictional boundaries. Thus, proper protection of the resources is obviously dependent upon intergovernmental cooperation.

Arizona tribal governments feel that excellent opportunities exist for local intergovernmental cooperation and coordination of riparian resource management. Operating within the premise that riparian areas fall within a larger watershed area, individual tribal governments can be important players in local riparian resource protection planning and management efforts.

In addition to the many local opportunities which exist for development of common resource management goals and actions, additional opportunities exist statewide, in such areas as riparian resource research, data sharing, and resource pooling efforts.

The Committee recommends that the State of Arizona work to further its efforts toward improved riparian resource management by (1) approaching the task on a watershed-by-watershed basis and (2) dealing with each tribe as an independent sovereign, in both local/statewide planning and local implementation efforts. This approach has the greatest probability of success.

V. RECOMMENDATIONS ON FUNDING/INCENTIVES

A. Economic Analysis of Costs and Funding Needs

ACTION

[The following recommendation passed unanimously.]

The RAAC recommends that the Legislature extend the Committee's life to December 31, 1995 in order to complete the tasks assigned in the current legislation and that the legislature provide sufficient funding for the economic and fiscal analysis and other tasks, including unresolved issues.

B. Existing Sources of Revenue

ACTION

[There was a high level of agreement about the following recommendation.]

An important component of a riparian protection program is adequate funding for projects which protect or enhance riparian areas. Such programs can provide valuable incentives to private landowners and local governments. Two very important funding mechanisms are established in state law at the present time - the Heritage Fund and the Water Protection Fund. In addition, there are several federal programs, such as the U.S. Fish and Wildlife Service's Partners for Wildlife Program.

A complete riparian program must not only contain full state funding for the existing state programs, but an educational component that will inform the public about various state, federal and private programs that are available to assist landowners and local governments in riparian preservation and enhancement. This type of information program will be an important function of the technical assistance provided by the state Coordinating Council as described in Section II.D.3. of this report.

The RAAC also recommends that the integrity of current state funding programs for conservation purposes, including the Heritage Fund and the Water Protection Fund, be protected.

C. New Sources of Revenue

ACTION

[The following recommendation was adopted unanimously.]

The RAAC recommends that a recreational equipment tax be considered as an option by the special legislative subcommittee to be established by the legislature for permanent funding for the Water Protection Fund. An example of such an option is attached as Appendix F.

D. Tax Incentive Program

1. Preservation Tax Category

ANALYSIS

[The following recommendation was adopted unanimously.]

The RAAC recommends in concept that legislation be passed to create a new tax classification for "environmental preservation/enhancement, with the assessment ratio to be no greater than that for agricultural and grazing lands." Land which is used primarily for environmental preservation or enhancement purposes should be classified with non-commercial historic properties in Class 8 of the tax code.

Current Tax Classifications and their assessment ratios: The legislature has amended the classes and assessment ratios annually for many years. This is what appears in the 1993 handbook.

1. mining and timber	30%
2. utilities	30%
3. commercial and industrial	25%
4. agricultural properties, rangelands, nonprofit and vacant land	16%
5. owner occupied residential property	10%
6. rented residential property	11%
7. railroads, etc.	24%
8. non-commercial historic and foreign trade zones	5%
9 & 10. commercial historic	25% or 11%*
11. livestock	8%

12. possessory interest	1%
C. oil and gas	100%

*This is figured based on the use. In addition all but 1% of the cash value may be subtracted for modifications to restore property for up to 10 years.

Proposed Classification:

In addition, the following criteria would apply:

a. A minimum time commitment for preservation of at least 10 years. If the land use changes before that 10 year period has elapsed, the entire difference in back taxes would be collected as if the property were managed at the new use.

b. A minimum contiguous acreage of at least 2 acres must be included. Non-contiguous acreage by one owner will not qualify unless they are managed jointly to preserve the habitat according to an approved plan. Contiguous acreage owned by more than one landowner will be included.

c. A management plan to preserve or enhance the area, such as fencing the area, replanting must be in place and approved. Approval and monitoring will be through existing agencies - NRCDS, Game and Fish, Fish and Wildlife Service acting cooperatively.

d. In the case of urban areas, the area to be given this classification must be rezoned to a highly protected category or protected through covenants that run with the land.

Background information

Classify land primarily managed for environmental preservation or enhancement purposes with non-commercial historic properties in class 8. "Historic" is currently defined as: "real property that is listed in the national register of historic places, established and maintained under the National Historic Preservation Act of 1966, as amended, that meets the minimum standards of maintenance established by role of the state parks board."

Environmental properties could be added as follows: "real property that is listed as environmentally sensitive and valuable by the Arizona Game and Fish Department or listed as habitat critical to threatened, endangered or candidate species by the U.S. Fish and Wildlife Service and maintained according to an approved management plan for the primary purpose of preserving or enhancing that habitat."

2. Exemptions for Environmental Improvements

a. For improvements made in areas included in the proposed class 8, improvements made for the specific purpose of riparian protection as part of the approved management plan shall not be added to the value of the property for tax purposes.

b. For improvements made in areas not included in the proposed class 8, improvements shall not be added to the value of the property for tax purposes if they are made as part of an overall management plan designed to enhance environmental protection. The County assessor shall consult with local Game and Fish authorities and the local Natural Resource Conservation District to determine if the specific improvements are eligible for this exemption.

VI. RECOMMENDATION ON PUBLIC EDUCATION AND METHODS FOR CREATING WIDESPREAD SUPPORT FOR PROGRAM

ACTION

[The following recommendation passed unanimously.]

The RAAC recommends that the Coordinating Council work with existing environmental education programs in the state to develop riparian education materials for widespread use by the public.

CONCLUSION

During the two years of study and discussion, RAAC has sought ways to protect riparian areas in a manner that would not cause undo hardship or infringe on private property rights. Broad support for the Conservation Goal which would focus the state's policy on protecting the ecological integrity and functionality of riparian areas, and for the local riparian planning process which would create local working partnerships, are especially significant. The RAAC strongly supports adoption of these fundamental principles as a way to achieve the maximum protection for riparian areas of the state through careful coordination and imaginative new uses of existing agencies and programs. The Committee strongly recommends extension of the life of the RAAC for one more year in order to complete economic study and consideration of numerous controversial and unresolved issues.

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APPENDICES



FILED
ARIZONA
SECRETARY OF STATE

State of Arizona
Senate
Fortieth Legislature
Second Regular Session
1992

CHAPTER 298

SENATE BILL 1030

AN ACT

AMENDING SECTION 45-101, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE RIPARIAN PROTECTION PROGRAM.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Findings and policy

3 A. The purpose of this act is to provide for collecting scientific
4 and economic data and developing analyses and reports on which the
5 legislature may base decisions concerning protecting riparian areas.

6 B. This state's riparian protection program should be based on
7 sound scientific and economic evidence. To develop an effective,
8 well-balanced riparian protection program, it is necessary to identify and
9 classify the riparian areas in this state based on functions and values,
10 to assess the impact of various activities on riparian areas and to assess
11 alternative strategies in light of their environmental costs and benefits
12 and their economic impacts on various classes of landowners and land users
13 and on this state. This act provides for reports, studies and
14 recommendations to the governor and the legislature on which a riparian
15 protection program can be developed. It is also necessary to have
16 accurate information to fully evaluate any potential impacts that a
17 riparian protection program may have on existing water rights, pending
18 water right adjudications and negotiated water settlements.

19 Sec. 2. Section 45-101, Arizona Revised Statutes, is amended to
20 read:

21 45-101. Definitions

22 In this title, unless the context otherwise requires:

- 23 1. "Commission" means the Arizona water commission.
- 24 2. "Department" means the department of water resources.
- 25 3. "Director" means the director of water resources, who is also
26 the director of the department.

1 4. "Effluent" means water that has been collected in a sanitary
2 sewer for subsequent treatment in a facility that is regulated pursuant to
3 sections 49-361 and 49-362. Such water remains effluent until it acquires
4 the characteristics of groundwater or surface water.

5 5. "Groundwater" means water under the surface of the earth
6 regardless of the geologic structure in which it is standing or moving.
7 Groundwater does not include water flowing in underground streams with
8 ascertainable beds and banks.

9 6. "Interstate stream" means any stream constituting or flowing
10 along the exterior boundaries of this state, and any tributary originating
11 in another state or foreign country and flowing into or through this
12 state.

13 7. "RIPARIAN AREA" MEANS A GEOGRAPHICALLY DELINEATED AREA WITH
14 DISTINCT RESOURCE VALUES, THAT IS CHARACTERIZED BY DEEP-ROOTED PLANT
15 SPECIES THAT DEPEND ON HAVING ROOTS IN THE WATER TABLE OR ITS CAPILLARY
16 ZONE AND THAT OCCURS WITHIN OR ADJACENT TO A NATURAL PERENNIAL OR
17 INTERMITTENT STREAM CHANNEL OR WITHIN OR ADJACENT TO A LAKE, POND OR MARSH
18 BED MAINTAINED PRIMARILY BY NATURAL WATER SOURCES. RIPARIAN AREA DOES NOT
19 INCLUDE AREAS IN OR ADJACENT TO EPHEMERAL STREAM CHANNELS, ARTIFICIALLY
20 CREATED STOCKPONDS, MAN-MADE STORAGE RESERVOIRS CONSTRUCTED PRIMARILY FOR
21 CONSERVATION OR REGULATORY STORAGE, MUNICIPAL AND INDUSTRIAL PONDS OR
22 MAN-MADE WATER TRANSPORTATION, DISTRIBUTION, OFF-STREAM STORAGE AND
23 COLLECTION SYSTEMS.

24 7- 8. "Sanitary sewer" means a pipe or other enclosed conduit that
25 carries, among other substances, any water-carried wastes from the human
26 body from residences, commercial buildings, industrial plants or
27 institutions.

28 8- 9. "Surface water" means the waters of all sources, flowing in
29 streams, canyons, ravines or other natural channels, or in definite
30 underground channels, whether perennial or intermittent, ~~flood, waste~~
31 FLOODWATER, WASTEWATER or surplus water, and of lakes, ponds and springs
32 on the surface. For the purposes of administering this title, surface
33 water is deemed to include central Arizona project water.

34 Sec. 3. Evaluation of hydrologic effect of groundwater
35 pumping and surface water appropriations on
36 riparian areas

37 A. Consistent with the definitions prescribed by section 45-101,
38 Arizona Revised Statutes, the director of water resources shall conduct
39 studies pursuant to subsection B of this section to evaluate the effect of
40 groundwater pumping and surface water appropriations on riparian areas,
41 subject to the availability of appropriated monies for that purpose.

42 B. The studies shall include evaluations of:

- 43 1. The hydrologic effect of groundwater pumping on riparian areas.
44 2. The effect on riparian areas of new surface water appropriations
45 and changes in the use or point of diversion of existing surface water
46 appropriations.

47 3. Alternative regulatory programs designed to balance the
48 protection of riparian areas with existing and future groundwater pumping

1 and new surface water appropriations and changes in the use or point of
2 diversion of existing surface water appropriations. In evaluating the
3 alternative regulatory programs, the director shall consider:

4 (a) The economic impacts on various classes of landowners,
5 including federal, state, private and Indian landowners.

6 (b) The impacts on existing water rights, pending water right
7 adjudications and negotiated water settlements.

8 (c) The availability of alternative water supplies for existing and
9 future users.

10 (d) The environmental costs and benefits of the program.

11 (e) The costs to the department of water resources of implementing
12 the program.

13 C. If such monies are appropriated for fiscal year 1992-1993, the
14 director shall complete the studies and proposed regulatory program and
15 report the results of the study on or before December 1, 1993 to the
16 governor, the speaker of the house of representatives, the president of
17 the senate and the riparian area advisory committee established under
18 section 7 of this act. The director shall provide an opportunity for
19 public comment on each proposed regulatory program and any recommendations
20 to be submitted pursuant to this subsection.

21 Sec. 4. Appropriation

22 A. The sum of two hundred fifty thousand dollars is appropriated
23 from the state general fund in fiscal year 1992-1993 to the department of
24 water resources to pay the costs of the study described in section 3 of
25 this act.

26 B. The appropriation made by this section is exempt from lapsing
27 under section 35-190, Arizona Revised Statutes, except that monies
28 remaining unexpended or unencumbered on June 30, 1994 revert to the state
29 general fund.

30 Sec. 5. Duties of Arizona game and fish department

31 A. The Arizona game and fish department shall develop a system for
32 classifying riparian areas in this state, including:

33 1. Physical and ecological criteria to be used to develop riparian
34 designations consistent with the definition prescribed by section 45-101,
35 Arizona Revised Statutes.

36 2. A hierarchical designation system according to relative
37 functions and values.

38 B. After the riparian area classification system is developed under
39 subsection A of this section, the department shall identify, classify and
40 map riparian areas in this state with the cooperation of the department of
41 environmental quality, the department of water resources and other
42 appropriate agencies, instrumentalities and political subdivisions of this
43 state. The department shall also consult with appropriate federal
44 agencies. The department shall give priority to identifying, classifying
45 and mapping riparian areas that are associated with perennial waters. In
46 addition, the department shall identify:

47 1. The land ownership of identified riparian areas as Indian,
48 federal, state or private and the current land uses of those areas.

1 2. Existing options for protecting riparian areas in each ownership
2 category that may be available under existing state and federal laws.

3 C. Not later than December 1, 1993 the department shall submit a
4 report of its findings under subsection B of this section to the governor,
5 the president of the senate, the speaker of the house of representatives
6 and the riparian area advisory committee.

7 D. Within six months after mapping and classifying riparian areas
8 in any county or a logical portion of a county, the department shall
9 publish a notice that the maps and classifications are available. The
10 notice shall be published once each week for three consecutive weeks in
11 two newspapers of general circulation in the county in which the riparian
12 area is located. In addition, the department shall establish and maintain
13 a mailing list of names and addresses of persons who request notice under
14 this subsection by mail. The mapping and classification:

- 15 1. Is for informational purposes only.
- 16 2. Shall not require any land owner to contest or accede to the
17 mapping or classification.
- 18 3. Does not preclude any land owner from subsequently contesting
19 the mapping or classification.

20 Sec. 6. Duties of department of environmental quality

21 A. Consistent with the definitions prescribed by section 45-101,
22 Arizona Revised Statutes, the department of environmental quality shall
23 identify activities, operations and uses that occur on land in riparian
24 areas of federal, state and private property in this state that involve
25 removing or depositing material, removing vegetation or otherwise
26 obstructing, altering or destroying riparian areas. The department shall
27 evaluate at least the following activities:

- 28 1. Timber harvesting.
- 29 2. Agricultural land clearing.
- 30 3. Recreational use and development.
- 31 4. Commercial, industrial and residential development.
- 32 5. Road and bridge construction.
- 33 6. Dam and reservoir construction and operation.
- 34 7. Channelization and bank stabilization.
- 35 8. Sand and gravel extraction.
- 36 9. Wetland drainage.
- 37 10. Grazing.
- 38 11. Landfills and sewage treatment facilities.
- 39 12. Mining and metallurgical operations.

40 B. The department shall complete the tasks prescribed under
41 subsection A and submit a report evaluating the identified activities to
42 the governor, the president of the senate, the speaker of the house of
43 representatives and the riparian area advisory committee not later than
44 October 1, 1993.

45 Sec. 7. Riparian area advisory committee

46 A. The riparian area advisory committee is established consisting
47 of the following members:

- 48 1. The director, or the director's designee, of:

- 1 (a) The Arizona department of agriculture.
- 2 (b) The department of environmental quality.
- 3 (c) The department of transportation.
- 4 (d) The department of water resources.
- 5 (e) The game and fish department.
- 6 (f) The state land department.
- 7 (g) The state parks board.

8 2. The following members appointed by the governor:

9 (a) Two members representing counties in this state having
10 populations of less than five hundred thousand persons according to the
11 most recent United States decennial census.

12 (b) One member representing counties in this state having
13 populations of five hundred thousand or more persons according to the most
14 recent United States decennial census.

15 (c) One member representing a municipality that owns and operates a
16 wastewater treatment plant that is regulated pursuant to sections 49-361
17 and 49-362, Arizona Revised Statutes, and that is located in an active
18 management area with a population exceeding one million five hundred
19 thousand persons according to the most recent data compiled by the
20 department of water resources.

21 (d) One member representing an Indian tribe in this state.

22 (e) The president of the Arizona association of conservation
23 districts, or the president's designee.

24 (f) One member representing the timber industry.

25 (g) One member representing the real estate development industry.

26 (h) One member actively engaged in livestock ranching as the major
27 source of income.

28 (i) One member actively engaged in farming as the major source of
29 income.

30 (j) One member representing sand and gravel operations.

31 (k) One member representing the metal mining industry.

32 (l) One representative of an agricultural improvement district.

33 (m) One riparian researcher from a state university.

34 (n) One representative of the Arizona riparian council.

35 (o) One representative of an environmental organization who resides
36 in Apache, Navajo, Coconino, Yavapai or Greenlee county.

37 (p) One representative of an environmental organization who resides
38 in Gila, Maricopa, Mohave, LaPaz or Yuma county.

39 (q) One representative of an environmental organization who resides
40 in Pinal, Graham, Cochise, Pima or Santa Cruz county.

41 (r) One representative of a recreational users organization.

42 3. In order to coordinate with existing federal programs that
43 impact riparian areas, the chief federal administrative officer in this
44 state of the following federal agencies, or that officer's designee, or,
45 if there is no chief federal administrative officer for this state, an
46 administrative officer in this state designated by the head of the
47 appropriate federal administrative region in which this state is located
48 shall serve as ex officio members:

- 1 (a) The army corps of engineers.
- 2 (b) The bureau of land management.
- 3 (c) The bureau of reclamation.
- 4 (d) The environmental protection agency.
- 5 (e) The fish and wildlife service.
- 6 (f) The forest service.
- 7 (g) The national park service.
- 8 (h) The soil conservation service.

9 B. The director of environmental quality shall chair the committee
 10 and the department of environmental quality shall provide staff support
 11 and meeting space for the committee. Members of the committee are not
 12 eligible for compensation or reimbursement of expenses.

13 C. Ex officio members of the committee representing federal
 14 agencies are not eligible to vote and are not members for purposes of
 15 determining the presence of a quorum, but the committee shall cooperate
 16 with and seek advice from the ex officio members in order to consider the
 17 relationship between existing and recommended future state and federal
 18 programs that impact riparian areas. The committee shall meet at least
 19 quarterly and may meet more often as called by the chairman or as
 20 requested by at least six of the members eligible to vote. Beginning
 21 November 1, 1993 the committee shall meet at least monthly to review and
 22 evaluate the information presented in the agencies' reports and may meet
 23 more often as called by the chairman or as requested by at least six of
 24 the members eligible to vote.

25 D. The committee shall:

26 1. Study the components of a riparian area protection program,
 27 including the provisions and activities conducted under this act, in
 28 comparison with other state and federal programs, including goal
 29 statements, regulatory methodologies, evaluation criteria, coordination
 30 with existing state and federal programs and guidelines, mitigation,
 31 incentives, funding mechanisms, public notification, education and
 32 involvement, enforcement and other elements that are essential to a
 33 successful riparian area protection program.

34 2. Assess alternative regulatory and nonregulatory strategies to
 35 protect riparian areas with an analysis of the fiscal, economic and
 36 environmental impacts associated with each alternative and consider
 37 whether the alternatives should vary based on different classes of
 38 landowners to address impacts on private property rights and the potential
 39 for multiple land use planning.

40 3. Evaluate the reports submitted pursuant to sections 3, 5 and 6
 41 of this act.

42 4. Submit an interim report of the committee's findings under
 43 paragraphs 1 and 2 of this subsection to the governor, the president of
 44 the senate and the speaker of the house of representatives not later than
 45 July 1, 1994.

46 5. Based on the findings of the interim report and the
 47 identification, classification and mapping of riparian areas in this

1 state, prepare recommendations for proposed statutory provisions for a
2 riparian area protection program in this state.

3 6. Submit a final report and recommendations with respect to the
4 scope and parameters of any necessary regulatory program and additional
5 statutory provisions that may be necessary to implement the
6 recommendations to the governor, the president of the senate and the
7 speaker of the house of representatives not later than December 1, 1994.

8 Sec. 8. Repeal

9 Section 7 of this act is repealed from and after December 31, 1994.

APPROVED BY THE GOVERNOR JULY 10, 1992.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 10, 1992.



APPENDIX B

MEMBERS OF THE RIPARIAN AREA ADVISORY COMMITTEE

Thirty-four people comprise the Riparian Area Advisory Committee and represent varied interests in riparian area issues. Nineteen members, appointed by the governor, represent industry, environmental organizations, user groups, agricultural improvement district, and Indian tribes. Seven of the members represent state agencies. In order to coordinate with existing federal programs that impact riparian areas, eight members from federal agencies were also represented. The following is a list of the members and their alternates of the RAAC.

Governor Appointed Members

Stuart Anderson
County w/ population less than
500,000

Judy Gignac
County w/ population less than
500,000

Dave Smutzer
County w/ population more than
500,000

Bill Chase
Municipality owns & operates
wastewater treatment plant in AMA w/
pop. > 1.5M

Clinton Pattea
President
Ft. McDowell Indian Community
(alternate - Stephanie Ostrom)

Bill Jeffers
President
Arizona Association of Conservation
Districts
(alternate - Mary Ann Black)

Lewis Tenney
Vice President
Precision Pine & Timber, Inc.
Timber Industry
(alternate - Bill Caskey)

Connie Wilhelm
Executive Director
Home Builders Association
Real estate development industry

Jim Slingluff
Recreational Users Organization

Jack Metzger
Arizona Cattlemen's Association
Actively engaged in livestock ranching
as major source of income
(alternate - C. B. "DOC" Lane)

Roger Hooper
Actively engaged in farming as major
source of income

David Chavez
CalMat
Sand and gravel industry

Patrick Maley
ASARCO
Metal mining industry
(alternate - Stu Bengson)

John Keane
Water Policy Executive
Agricultural improvement district

Juliet Stromberg
Arizona State University
Riparian researcher

Marty Jakle
President
Arizona Riparian Council
(alternate - Duncan Patten)

Anita MacFarlane
Northern Arizona Audubon Society
Environmental organization - Coconino
County

Eva Patten
The Nature Conservancy
Environmental organization - Maricopa
County
(alternate - Jim Walsh)

Barbara Tellman
Native Plants Society
Environmental organization - Pima
County

State Agency Members

Edward Z. Fox - Chair of RAAC
Director
Arizona Dept. of Environmental
Quality
(alternate - Brian Munson)

Keith Kelly
Director
Arizona Dept. of Agriculture
(alternate - John Hagen)

Bill Belt
Arizona Dept. of Transportation

Rita Pearson
Director
Arizona Dept. of Water Resources
(alternate - Herb Dishlip)

Duane L. Shroufe
Director
Arizona Dept. of Game and Fish
(alternate - Bruce Taubert)

Jean Hassell
Arizona State Land Dept.
(alternate - Robert Yount)

Kenneth E. Travous
Director
Arizona State Parks Board
(alternate - Matt Chew)

Federal Agency Members (serve as ex officio members)

Humberto Hernandez
U.S. Soil Conservation Service
(alternate - Mitch Flanigan)

Lester K. Rosenkrance
Bureau of Land Management
(alternate - Jim Renthal)

Kathy Davis
National Park Service

Sam Spiller
U.S. Fish and Wildlife Service
(alternate - Frank Baucom)

Doug Shaw
Southwestern Region,
Watershed and Air Management
USDA Forest Service

Dennis E. Schroeder
Bureau of Reclamation
(alternate - Jennifer Gillaspie)

Ronald MacDonald
US Army Corps of Engineers
(alternate - Cindy Lester)

Harry Seraydarian
U.S. Environmental Protection Agency
(alternate - Mary Butterwick)

APPENDIX C
LIST OF UNRESOLVED ISSUES FOR FURTHER STUDY

Stuart Anderson - representing county with population less than 500,000 persons

After two years of study and discussion, the RAAC has reached consensus on some issues, determined majority support for some, and has determined disagreement on others. There remain a number of issues for which there has been no determination of either agreement or disagreement, including those unresolved issues outlined below:

1. There has not been agreement on the method by which Riparian Planning Councils would have access to state powers and authorities that are not currently authorized by the legislature.
2. The scope of new powers and authorities that may be necessary to achieve the conservation goal has not been fully resolved.
3. Economic and fiscal analyses have not been conducted, reviewed, or discussed in any depth by the RAAC. None of the RAAC members have had the advantage of consideration of economic in the development in the development of the final recommendation.
4. Economic and fiscal impacts of the livestock grazing components of the recommendation have not been presented, analyzed, or considered by the RAAC.
5. Analysis of all the agency findings has not been possible. The final ADWR report has not been released. The mapping and classification by Arizona Game and Fish is still underway.
6. It has not been fully resolved whether the coordinating council should have the authority for approval and disapproval of plans advanced by local riparian planning councils.
7. The methodology for protection of private property rights has not been resolved.
8. RAAC needs to discuss taxation on improvements to lands. Improvements such as fences, water tanks, and pumps are used to divert livestock and wildlife from riparian areas. Currently these items are taxed as personal property.

Lewis Tenney - representing the timber industry

1. Private property rights have not been adequately discussed. The methods for protecting those rights have not been identified.
2. Analysis of all agencies reports were not possible during regular RAAC meetings. Mapping and classification mandated by Senate Bill 1030 has not been completed. The ADWR report has never been approved. Only a draft was discussed.

3. The requirement to provide an economic analysis and determine fiscal impacts caused by riparian area management considerations has not been completed or analyzed by the RAAC. This is a requirement of Senate Bill 1030 and leaves the report incomplete and the final recommendations without merit.
4. It was never resolved whether the Coordinating Council made up of the three state agencies should have authority to approve or disapprove local Riparian Planning Council riparian management plans.
5. There was no agreement reached by the RAAC resolving the issue of how to empower local Riparian Planning Councils with laws and rules that are proposed for implementation under new legislation.

Stu Bengson - representing the metal mining industry

1. No consensus on RPC access & use of authorities not currently authorized by statute.
2. Scope and necessity of new powers & authorities not fully resolved.
3. No fiscal & economic analysis of any of the recommendations.
4. Complete RAAC analysis of the agency reports was not completed. In fact the DWR report was only presented in "draft" form. The AGF report still lacks the complete inventory of intermittent riparian and there is still no "hierarchical" classification of riparian.
5. There is no complete consensus on whether the Coordinating Council shall approve or disapprove of a RPC plan.
6. Methods to assure protection of private property rights still remains unresolved.

Anita MacFarlane, Eva Patten and Barbara Tellman

Representing Environmental Organizations from the northern, central, and southern regions of the state.

The major issues facing riparian areas are loss of water supply, destruction of riparian vegetation and loss of water quality (especially sedimentation and erosion). A comprehensive riparian area protection plan must address these issues. The following unresolved issues should be considered and implemented in order to fully protect Arizona's valuable and increasing scarce riparian resources.

1. The Arizona Department of Water Resources should be given the authority and resources to fully enforce current surface water laws and water rights.
2. Instream flow rights should be embedded in the statutes as a policy of the legislature.

3. ADWR should have the authority to regulate groundwater pumping near perennial or intermittent streams, where such pumping would have an adverse impact on streamflow. This will protect riparian areas and the rights of existing surface water rights holders.
4. We fully support the concept of local planning, as recommended by RAAC. We believe, however, that the proposed measures do not go far enough. Local riparian planning councils should have a full range of management tools with which to manage their areas, under the guidance of ADWR. These tools should include the following (which were not voted on by RAAC):
 - a. The right to set restrictions on sever and transfer of water rights within appropriation permits, giving consideration to the needs of the riparian area to be protected.
 - b. The right to evaluate applications for new surface water appropriations using evaluation criteria developed in the plan.
 - c. The right to impose a temporary or permanent moratorium on new surface water appropriations. This would require new users to either use augmented supplies or purchase existing rights.
 - d. The right to evaluate new wells or replacement wells in new locations to determine if those actions would create an increased adverse impact on baseflow or riparian vegetation compared with existing conditions. Deny approval unless impacts are adequately mitigated.
 - e. The right to impose a temporary or permanent moratorium on new groundwater pumping. This would require new users to either use augmented supplies or purchase existing rights.
 - f. Provide incentives for conservation where saved water is dedicated to riparian vegetation needs and baseflow protection.
 - g. Develop a mandatory conservation program for all water users.
 - h. Levy and collect a water use tax to fund conservation, recharge, augmentation or water bank programs. (Possible now in AMAs)
 - i. Create a basin wide general mitigation program rather than require each new user to provide its own mitigation.
 - j. Where appropriate, require new water users to use alternate sources such as properly treated effluent.
5. In situations where the locals fail to take action to protect high quality riparian areas, the state should have both the right and the duty to intercede and take the necessary measures to ensure that no more streams dry up as have the Santa Cruz (through Tucson) and the Salt River (through Phoenix).
6. The Groundwater Management Act should be amended to include riparian values in water supply equations. Pumping that could affect riparian areas should be limited in AMAs.
7. Riparian area protection should have to a part of city and county comprehensive plans.

8. When land use activities (including flood control structures) are planned that might adversely impact riparian areas (including downstream riparian areas) in terms of water quality, water supply, or riparian vegetation, those impacts should have to be considered in the decision making process. The legislature should require this of counties and cities.
9. The State should designate certain streams as of prime importance and develop a program to protect them where existing measures are inadequate.
10. The State should have a strong policy of protecting riparian areas on State Trust Lands. The Legislature should try once again to obtain passage of a Land Trades bill, this time with the question phrased so that people are voting on whether to maintain the status quo and forbid land trades. A "no" vote changes the constitution.
11. The State should have a clear policy for construction of roads, bridges and other structures by state agencies. This policy should state that such construction must be done in a way to avoid or least minimize damage to riparian areas. Where such damage is unavoidable (e.g. bridge construction) mitigation measures should be used and the sensitivity of the area considered.

Marty Jakle - representing the Arizona Riparian Council

1. RAAC may want to address in future sessions is the prioritization of impacts to riparian areas. I raised this issue several times including my May 31, 1994 letter to RAAC. This issue does not fall squarely into the "unresolved issues category" because RAAC, in its later stages of discussion, did poll its membership to see what issues they felt should receive the most emphasis. This poll reflected what I perceived to be the major issues affecting riparian habitats and served us well to guide our efforts.

However, to be as scientific and objective as possible, it would be best if our prioritization efforts are based on sound science. I understand that Dr. Duncan Patten and Dr. Robert Ohmart have completed (or will do so soon) a report that identifies stressors to riparian habitats which I believe is titled "the Arizona Comprehensive Environmental Risk Program". I suggest that RAAC, in its future discussions, should evaluate this report to see if it would be helpful in ranking riparian impacts.

John Hagen - representing Arizona Department of Agriculture

1. The Arizona Department of Agriculture is aware of the lack of adequate economic analysis - a shortcoming that renders the Final Report and Recommendations incomplete. We believe any extension of the RAAC must provide for funding of an economic analysis. Also, we believe any new authorities or obligations on the part of state agencies must be accompanied with adequate appropriations.

Julie Stromberg - representing riparian researcher from a state university

1. RAAC did not systematically address all of the five issues recognized as being important to riparian protection. Specially, although a "working group" addressed the livestock grazing subset of issue 2 (adjacent land uses), RAAC did not address other land use issues such as recreation. With regard to issue 1 (water availability), several important potential water law changes were not discussed by RAAC as a whole, in part due to time constraints and in part due to a perceived need to focus on only the "essentials" rather than on all possible management tools. Thus, this area needs further examination. Due to time constraints, issues 3,4, and 5 (large-scale destruction, restoration and enhancement, and effluent discharges) also received less discussion than was warranted.

APPENDIX D
A CONCURRENT MEMORIAL

**URGING THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES TO
CONSIDER THE ENDEMIC NEEDS OF ARID REGIONS WITHIN THE STATE OF
ARIZONA IN FEDERAL REAUTHORIZATION OF THE CLEAN WATER ACT**

To the President and Congress of the United States of America:

Your memorialist respectfully represents:

Whereas, the economy, health and welfare of the people of the State of Arizona depend upon a secure and stable supply of water; and

Whereas, the discharge of properly treated wastewater to ephemeral watercourses within the State of Arizona is beneficial to aquatic and riparian habitat which would otherwise not exist; and

Whereas, the State of Arizona recognizes the intrinsic differences between water bodies throughout the state; and

Whereas, efforts are currently under way in the United States Congress to review and consider conditions specific to the arid States of the United States, including Arizona, in order to achieve a relevant and concise reauthorization of the Clean Water Act.

Wherefore your memorialist, the _____ of the State of Arizona, the _____ concurring, prays:

1. That the United States Congress, through reauthorization of the Clean Water Act, provide for a process by which the establishment of water quality standards will include consideration of costs and the economic impacts involved in the development and implementation of these standards.

2. That the United States Congress, through reauthorization of the Clean Water Act, should recognize the net ecological benefits of properly treated wastewater in supporting the valuable habitats in arid and semi-arid regions and provide for further protection for wetlands and riparian habitat; and should include sufficient flexibility for the appropriate identification, classification and protection of effluent dominated wetlands and riparian areas in arid environments.

3. That the Secretary of State of the State of Arizona transmit copies of this Concurrent Memorial to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, the United States Environmental Protection Agency and to each Member of the Arizona Congressional Delegation.

APPENDIX E

POLICY STATEMENT BY INDIAN TRIBAL GOVERNMENTS

Introduction

Arizona tribal governments desire to pursue, where feasible, the coordinated management of riparian resources with other jurisdictions in the State. It is estimated that over 20% of Arizona's riparian resources are found on tribal lands (RAAC Interim Report). The tribes, the state, and ultimately the health of the numerous riparian resources, both on and off-reservation, stand to benefit from a coordinated management approach.

The tribes desire to make clear that it remains the right of each independent and sovereign tribal government to determine the manner in which it will manage its resources, including the protection and use of its riparian areas. Also it is the sovereign right of each tribe to determine the extent to which it may wish to coordinate its efforts with the State of Arizona, or other jurisdictions, in the management of riparian resources.

In this regard, the assignment of one individual to the Arizona Riparian Area Advisory Committee to represent the concerns and desires of all 22 separate and sovereign tribal governments, relative to the management of their riparian resources statewide, ignores the vast diversity and sovereignty of the indigenous peoples of Arizona.

This paper offers insight into the manner by which the State of Arizona might enter into a new framework of mutual recognition and cooperation with Arizona tribal governments, in the integrated management and protection of precious riparian areas.

Riparian Resource Management on Tribal Lands in Arizona

Recent environmental protection efforts have been slow to take effect on tribal lands. Many of our people have long borne the brunt of environmental pollution and resource overutilization, while receiving little of the financial support which was provided to states and other governments to build environmental management programs. Currently, Arizona's 22 Indian tribes are in varying stages of developing environmental protection programs to manage our resources. While some tribes have very sophisticated environmental resource management programs, the majority of us are only beginning to assess our many needs, priorities, and options.

With specific regard to riparian areas, it is an unavoidable fact that these unique natural communities cross jurisdictional boundaries. Thus, proper protection of the resources is obviously dependent upon intergovernmental cooperation.

Intergovernmental Management of Riparian Resource Areas

Arizona tribal governments feel that excellent opportunities exist for local intergovernmental cooperation and coordination of riparian resource management. Operating within the premise that riparian areas fall within a larger watershed area, individual tribal governments can be important players in local riparian resource protection planning and management efforts.

In addition to the many local opportunities which exist for development of common resource management goals and actions, additional opportunities exist statewide, in such areas as riparian resource research, data sharing, and resource pooling efforts.

In closing, we recommend that the state of Arizona work to further its efforts toward improved riparian resource management by (1) approaching the task on a watershed-by-watershed basis and (2) dealing with each tribe as an independent sovereign, in both local/statewide planning and local implementation efforts. In our view, this approach has the greatest probability of success.

The following Arizona Indian Tribes have sent official notification of endorsement of the Inter-Tribal Position Paper regarding Riparian Resource Management on Indian Lands in Arizona:

Fort McDowell Indian Community	5/4/94
Hualapai Tribe	5/13/94
Gila River Indian Community	10/13/94
Yavapai-Prescott Indian Tribe	10/20/94

APPENDIX F
RECREATIONAL EQUIPMENT TAX OPTION

[The following option was presented by the Recreational Users Organization Representative and is offered here as an example of a potential new funding source. The RAAC has not adopted this option as a recommendation.]

A permanent, value driven, excise tax could be placed on all outdoors recreational equipment and on prepared foods marketed to outdoor recreationists which are not already covered by some user-fee type of tax. For at least five years after the funds become available almost all the revenue generated by that tax should be spent through one or more of a variety of possible sources to support activities in the public and private sector which benefit riparian zones and wetlands. After that time, more of the revenue could be spent in other conservation or recreation areas.

- A tax could be set as a percentage of a sale, but only on selected products. A ceiling on the tax in the purchase of a specific item might be necessary since the price of outdoors gear ranges from pocket change to thousands of dollars.

- Included items could be: boats (typically driven by human muscle) and related boat gear (oars, paddles, etc.), climbing gear, specialized clothing and safety gear (helmets, wetsuits, biking shorts, paddle jackets, etc.), camping gear (tents, sleeping bags, pads, etc.), bug repellent, hiking gear (boots, packs, canteens, etc.), optics, dehydrated food marketed to recreationists, etc.

- Not included in the tax would be: ammunition, archery gear, fishing gear, motor boats, OHVs, etc.

- Further exploration would be required regarding potential inclusion of other items: mountain bikes, running shoes, sailboats, etc.

