

Agenda Number 8.

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MEETING DATE: May 7, 2015

AGENDA ITEM: Discussion and Consideration of Action to Approve the Memorandum of Understanding among the United States Bureau of Reclamation, the Arizona Department of Water Resources, and the Central Arizona Water Conservation District for Preparation of an Environmental Assessment Supporting the Reallocation of Non-Indian Agricultural Priority Central Arizona Project Water

RECOMMENDATION:

Staff recommends that the Board approve the Memorandum of Understanding among the United States Bureau of Reclamation, the Arizona Department of Water Resources, and the Central Arizona Water Conservation District for Preparation of an Environmental Assessment Supporting the Reallocation of Non-Indian Agricultural Priority Central Arizona Project Water

FINANCIAL IMPLICATIONS:

None at this time. CAWCD staff intends to return to the Board to seek approval to award a contract for the preparation of an environmental assessment supporting the reallocation of non-Indian priority Central Arizona Project water.

LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:

2010 CAWCD Board of Director Strategic Plan

- Water Supply: Prepare for CAP NIA Reallocation
- Finance: Maintaining CAP's Financial Health
- Project Reliability: Effectively Operate and Maintain CAP Assets

PREVIOUS BOARD ACTION/ACTIVITY:

April 2, 2015 – Report at Board Meeting

ISSUE SUMMARY/DESCRIPTION:

The Arizona Water Settlements Act of 2004 ("Settlements Act") was enacted on December 10, 2004. The Settlements Act ratified the Arizona Water Settlement Agreement ("Agreement") between CAWCD, the United States, and the Arizona Department of Water Resources ("ADWR"), which made available CAP Non-Indian agricultural priority water ("NIA Priority Water") for reallocation by the Secretary of the Interior ("Secretary"). Among others things, the Settlements Act and the Agreement required the Secretary to reallocate 96,295 acre-feet ("AF") of NIA Priority Water to ADWR to be held in trust for further reallocation to non-Indian municipal and industrial users in Arizona,¹ which the Secretary did on August 25, 2006.

The Settlements Act and the Agreement further required ADWR to submit to the Secretary a recommendation for reallocation of the 96,295 AF of NIA Priority Water. The Agreement also required ADWR to develop eligibility criteria and make such NIA Priority Water available for reallocation to non-Indian M&I users in Arizona "at periodic intervals, starting in 2010."² ADWR began this process in 2012 and 2013 with stakeholder meetings that established a reallocation process in three phases, with the first phase in 2013, the second phase in 2021, and, if necessary, a third phase in 2030.

In its January 16, 2014 recommendation to the Secretary, ADWR recommended the reallocation of 46,629 AF of NIA Priority Water. Of that amount 34,629 AF was recommended for municipal and industrial water providers within the CAP service area and the Central Arizona Groundwater Replenishment District and 12,000 AF was recommended for industrial water users within the CAP service area. A copy of that recommendation is attached for your information as Attachment 1.

Final reallocation of the 46,629 AF of NIA Priority Water by the Secretary requires the retention of a third party consultant to prepare an environmental assessment ("EA") on the proposed action of allocating water to each of the recommended parties. After meeting with the United States Bureau of Reclamation and ADWR, CAWCD agreed that it would be the point of contact on the EA solicitation, execute the contract with the selected contractor, pay for the EA, and work with Reclamation and ADWR on the finalization of the EA. These duties, among others, are outlined in the Memorandum of Understanding that is attached as Attachment 2. The Scope of Work for the EA is attached as Attachment 3.

SUGGESTED MOTION: I move that the Board approve the Memorandum of Understanding among the United States Bureau of Reclamation, the Arizona Department of Water Resources, and the Central Arizona Water Conservation District for Preparation of an Environmental Assessment Supporting the Reallocation of Non-Indian Agricultural Priority Central Arizona Project Water.

Attachments.

¹ Settlements Act § 104(a)(2)(A) and Paragraph 9.3 of the Agreement.

² Paragraph 9.3.4 of the Agreement.

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JANICE K. BREWER
Governor

SANDY FABRITZ-WHITNEY
Director

ARIZONA DEPARTMENT of WATER RESOURCES

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602.771.8500

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January 16, 2014

The Honorable Sally Jewell
Secretary of the Interior
Interior Building
Washington, D.C. 20240

Re: Arizona Department of Water Resources Recommendation for Reallocation of Non-Indian Agricultural Priority Central Arizona Project Water

Dear Secretary Jewell:

This letter transmits the state of Arizona's recommendation for Reallocation of Non-Indian Agricultural Priority Central Arizona Project water (NIA Priority CAP water) pursuant to Section 104(a)(2)(C)(i)(I) of the Arizona Water Settlements Act, Public Law 108-451 (Settlements Act). Section 104(a)(2)(C)(i)(II) of the Settlements Act provides that as soon as practicable after receiving the recommendation, the Secretary of the Interior (Secretary) shall carry out all necessary reviews of the proposed reallocation in accordance with applicable Federal law. Section 104(a)(2)(C)(i)(III) of the Settlements Act provides that if the recommendation is rejected by the Secretary, the Secretary shall request a revised recommendation from the Director of the Arizona Department of Water Resources (ADWR) and proceed with any necessary reviews in accordance with applicable Federal law.

The Settlements Act was enacted on December 10, 2004. The Settlements Act ratified the Arizona Water Settlement Agreement (Agreement) between the United States, the ADWR, and the Central Arizona Water Conservation District (CAWCD) and provided for the reallocation of up to 96,295 acre-feet of NIA Priority CAP water for non-Indian municipal and industrial uses in the state of Arizona.

Both the Settlements Act and the Agreement require the Secretary to reallocate up to the 96,295 acre-feet of NIA Priority CAP water to ADWR "to be held under contract in trust for further allocation (Trust Water)."¹ Both the Settlements Act and the Agreement also specified that the Director of ADWR shall submit a recommendation for reallocation to the Secretary. The Agreement further provided that ADWR shall make the NIA Priority CAP water available for reallocation "at periodic intervals, starting in 2010," and that "...only those M&I users that meet the criteria established by ADWR shall be eligible to receive Trust Water."² On August 22, 2006, the Secretary reallocated 96,295 acre-feet of NIA Priority

¹ Settlements Act § 104(a)(2)(A); see also Agreement Paragraphs 3.1 and 9.3.1.

² Agreement Paragraph 9.3.4.2.

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CAP water to ADWR acknowledging that "...before [the] water may be further allocated the Director of ADWR shall submit to the Secretary of the Interior a recommendation for reallocation." This letter shall serve as ADWR's recommendation for an initial phase of the reallocation of 46,629 acre-feet of NIA Priority CAP water.

ADWR initiated the process of developing reallocation recommendations on October 2, 2012 with a public meeting to discuss its Proposed Process and Evaluation Criteria with stakeholders. At that meeting, ADWR identified the goals for reallocation as follows: to reduce groundwater overdraft; to provide an additional source of water to areas with limited physical availability of groundwater; and to meet the near-term demands for existing municipal water providers and industrial users of groundwater or Excess CAP water that have permanent demands. ADWR also outlined the plan to offer the NIA Priority CAP water to existing non-Indian municipal and industrial water providers and industrial water users both within and outside the CAP service area in a tiered process beginning in 2012 (later changed to 2013). The public meeting also included presentations by CAP staff regarding the proposed costs associated with the reallocation of this water and by Bureau of Reclamation (Reclamation) staff regarding the contracting process and necessary environmental compliance actions. ADWR accepted written comments from interested parties through November 9, 2012.

ADWR responded in writing to public comments on January 18, 2013. In response to the public comments, ADWR made two substantive changes to its Proposed Process and Evaluation Criteria. The changes were made to maintain flexibility to adapt to changing water management goals, and economic and hydrologic conditions.

In February 2013, ADWR posted the Non-Indian Agricultural Priority Central Arizona Project Water Reallocation Final Process and Evaluation Criteria (Final Process and Evaluation Criteria). This document set forth specific information regarding the final structure of the reallocation process and the final selection criteria for the 2013 CAP Service Area Reallocation phase. The Department stated in the document that it would recommend the reallocation of a total of 46,629 acre-feet of NIA Priority CAP water in this reallocation phase, consisting of the following two pools: (1) a Municipal Pool of 34,629 acre-feet for municipal and industrial water providers within the CAP service area and the Central Arizona Groundwater Replenishment District; and (2) an Industrial Pool of 12,000 acre-feet for Industrial water users within the CAP service area. A copy of the document is attached for your information as Attachment 1.

In March 2013, ADWR made available the Requirements for NIA Reallocation Application at a public meeting and announced that June 14, 2013 would be the deadline for application submittal. The public meeting was also attended by CAP and Reclamation staff who responded to questions from stakeholders regarding the contracting process and required environmental compliance actions. In April, ADWR staff met with Reclamation staff from the Lower Colorado Regional Office to update them on ADWR's progress.

In this reallocation phase, ADWR is recommending reallocation of 46,629 acre-feet per year of NIA Priority CAP water. ADWR received 17 applications for the Municipal Pool supplies requesting a total of 93,879 acre-feet per year. Six applications were received for the Industrial Pool requesting a total of 41,248 acre-feet per year. As stated above, the volumes available for

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the pools were 34,629 acre-feet per year and 12,000 acre-feet per year, respectively. No applications were received that would qualify for the water held for reallocation in the Central Arizona Irrigation and Drainage District (CAIDD) or the Maricopa Stanfield Irrigation and Drainage District (MSIDD) areas as specified in the Agreement. In September 2013, ADWR requested additional information from a number of applicants to facilitate further evaluation of the applications. Responses were submitted to ADWR by October 15, 2013.

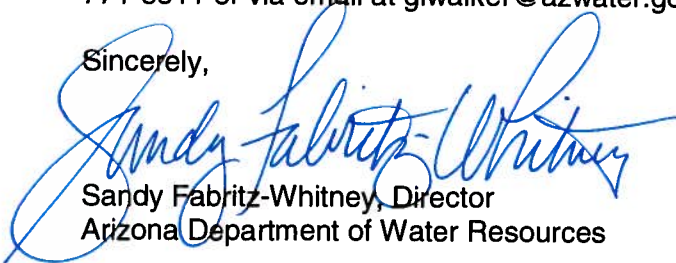
On October 29, 2013, ADWR again met with staff from Reclamation's Lower Colorado Regional Office and Phoenix Area Office to further update them on ADWR's progress and to receive their feedback regarding ADWR's analysis of the reallocation applications.

Table 1 details ADWR's recommendation for reallocation of 46,629 acre-feet of NIA Priority CAP water for 2013. The criteria and assumptions utilized by ADWR in making this recommendation are presented in the Final Process and Evaluation Criteria and in the document titled Non-Indian Agricultural Priority Central Arizona Project Water Reallocation Application Evaluation Criteria and Assumptions, which is attached for your information as Attachment 2.

In recognition of the intense competition for scarce renewable water supplies in an era of increasing demand, ADWR undertook a careful evaluation in the course of developing its recommendation. Additionally, ADWR involved stakeholders, CAWCD, and Reclamation throughout the process to ensure that criteria were developed that resulted in a recommendation that met the water management needs of the state of Arizona. ADWR recommends that the proposed allocations listed in Table 1 be approved, and that each applicant for NIA Priority CAP water listed in Table 1 be offered a CAP water service sub-contract for the water amount shown for that applicant in Table 1.

Please contact Gerry Walker, ADWR Colorado River Management Section Manager at 602-771-8511 or via email at glwalker@azwater.gov if you require additional information.

Sincerely,



Sandy Fabritz-Whitney, Director
Arizona Department of Water Resources

Attachments (2)

cc: Terry Fulp; Bureau of Reclamation Regional Director, Lower Colorado Regional Office
Steven Hvinden; Bureau of Reclamation Area Manager, Boulder Canyon Operations Office
Randy Chandler; Bureau of Reclamation Area Manager, Phoenix Area Office

Table 1. ADWR Recommendation for Reallocation of NIA Priority CAP water

Municipal Pool		Industrial Pool	
Applicant	Volume (acre-feet)	Applicant	Volume (acre-feet)
Carefree Water Company	112	Viewpoint RV and Golf Resort	400
Metropolitan Domestic Water Improvement District	299	New Harquahala Generating Company	400
Town of Cave Creek	386	Rosemont Copper Co.	1,124
EPCOR – Sun City West	1,000	Salt River Project	2,160
H ₂ O Water Company ¹	1,000	Resolution Copper Mining	2,238
Town of Marana	515	Freeport-McMoRan – Sierrita Inc.	5,678
Apache Junction WUCFD	817	Total	12,000
City of El Mirage	1,318		
Town of Gilbert	1,832		
Town of Buckeye ²	2,786		
Town of Queen Creek	3,162		
Johnson Utilities	3,217		
Central Arizona Groundwater Replenishment District	18,185		
	34,629		

¹H₂O Water Company has been acquired by Town of Queen Creek since the application was made and ADWR anticipates that the Bureau will contract this volume of reallocation recommendation to the Town of Queen Creek.

²The Town of Buckeye is now the City of Buckeye.

Memorandum of Understanding

Among the U.S. Department of the Interior, Bureau of Reclamation,

the Arizona Department of Water Resources, and

the Central Arizona Water Conservation District for

Preparation of an Environmental Assessment Supporting the Reallocation of

Non-Indian Agricultural Priority Central Arizona Project Water.

1. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Bureau of Reclamation, Lower Colorado Region, Phoenix Area Office (Reclamation), and Arizona Department of Water Resources (ADWR). Further, it establishes a cooperating agency relationship with Central Arizona Water Conservation District (CAWCD) in the preparation of an Environmental Assessment (EA) to analyze potential impacts resulting from a recommendation from ADWR for the reallocation of Non-Indian Agricultural Priority Central Arizona Project (CAP) water in accordance with the Arizona Water Settlements Act (AWSA). The Scope of work is attached to this document as a reference.

2. Purpose

The purpose of this MOU is to define the relationships and duties of the Lead and Cooperating Agencies in the preparation of an EA to evaluate impacts of a recommendation provided to Reclamation by ADWR for the reallocation of Non-Indian Agricultural Priority (NIA) CAP water in accordance with the Arizona Water Settlements Act. It is understood by all Parties that this MOU provides the framework to fulfill compliance requirements for the National Environmental Policy Act (NEPA) and other applicable environmental laws and regulations. Completion of NEPA does not imply that there will be a favorable decision to authorize the recommendation.

3. Authorities for the MOU

- A. Activities contemplated under this MOU are authorized under:
- B. The National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. § 4321-4347).
- C. Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 Code of Federal Regulations [CFR] §1500-1508; especially 40 CFR. §1501.5 on lead agencies, and 40

C.F.R. §1508.5 on cooperating agencies).

- D. Department of the Interior (DOI) Regulations for the Implementation of the National Environmental Policy Act of 1969 (43 CFR § 46; especially 43 C.F.R § 46.220 on lead agencies and 43 C.F.R. § 46.225 on cooperating agencies).
- E. The Arizona Water Settlements Act (AWSA) (Public Law 108-451) December 10, 2004.

4. Definitions

- A. "Contractor" shall mean the consultant hired to perform the EA.
- B. "Cooperating Agency" or "Cooperating Agencies" shall mean ADWR and/or CAWCD.
- C. "Lead Agency" shall mean the United States Bureau of Reclamation.
- D. "Parties" shall mean the United States Bureau of Reclamation, ADWR, and CAWCD.
- E. "Public Participation Plan" shall mean a plan for scoping and/or public meetings as required.
- F. "Peer Review" shall mean a process in which the scientific merit of scientific information and the appropriateness of methods used and strength of the author's inferences are critically evaluated by independent peers.
- G. "Peer Review Plan" shall mean a plan that documents the purpose of the Peer Review and the process that will be followed.
- H. "Work Plan" shall mean the plan the Contractor provides which includes a planned schedule of events that includes scoping, responding to any scoping comments and creating a scoping report data collection, drafting the first version the Environmental Assessment for review by Cooperating Agencies, making revisions based on comments, publishing a Public Draft, holding public meetings if necessary, and a timeline schedule for these events.

5. Reclamation's Responsibilities

As Lead Agency, Reclamation shall:

- A. As the Lead Federal agency, Reclamation is responsible for assuring the appropriate scope and content of the NEPA analysis and for providing technical guidance to the Contractor. Reclamation has assigned an EA project coordinator and will make available an interdisciplinary team of competent resource specialists to oversee and coordinate with the Contractor in identification and development of resource analyses and preparation of the EA. As Lead Federal Agency, Reclamation is responsible for compliance with NEPA, Council on Environmental Quality (CEQ) regulations, DOI

regulations, Executive Orders, and all applicable federal laws and regulations.

- B. Reclamation is responsible for the final scope and contents of the EA, including but not limited to adequacy of data and analysis; development of alternatives and conclusions, review of documents, description of the proposed action, purpose and need, and review and disposition of comments.
- C. Involve the public as defined in the Council on Environmental Quality regulations at 40 CFR § 1500-1508 and Section 106 of the National Historic Preservation Act. Also, as defined at 43 CFR 46.110, be responsible for incorporating Consensus Based Management into the NEPA analyses and for involving persons, organizations, or communities who might be interested in or affected by the project. Reclamation will determine the extent of public participation and scoping to be conducted. Consistent with the scheduled timeline, the Contractor will have primary responsibility for completing a Public Participation Plan and related scoping document and materials. As directed by Reclamation in consultation with CAWCD and ADWR during preparation of the draft EA, the Contractor will carefully consider all relevant input received during the scoping process.
- D. Sponsor meetings planned and coordinated by the Contractor or Cooperating Agencies, as appropriate, either individually or as a group, and work with the Contractor to provide advance information for discussions at these meetings when possible.
- E. To the fullest extent possible consistent with its responsibility as Lead Agency, use the data, environmental analyses, and technical studies of each Cooperating Agency, giving particular weight to those topics on which the Cooperating Agency is acknowledged to possess special expertise, and/or jurisdiction by law. As appropriate, ensure that Cooperating Agency's comments, including divergent views, are appropriately documented.
- F. Following the Parties' agreement on the Work Plan that describes the process for conducting the EA as defined in the attached Scope of Work, and finalized after completion of projects scoping, if Reclamation determines a change to the Work Plan is needed, Reclamation will promptly notify the Cooperating Agencies. No work related to the proposed change will proceed prior to necessary budget authorization being provided by the Cooperating Agencies to the Contractor. The Cooperating Agencies recognize this could result in delays to the completion or cessation of the NEPA process.
- G. Reclamation will treat specific data, which are clearly marked as confidential and proprietary, as such to the extent permitted by law. This responsibility extends to both internal Reclamation and Contractor use of the data. In the event that any information marked confidential or proprietary is required by law to be released, Reclamation will provide written notice to the appropriate Party in advance of such release.
- H. Reclamation will have overall responsibility for ensuring all data and analyses, either

existing and provided to the Contractor, or developed specifically for use in obtaining compliance with NEPA for the NIA Reallocation Recommendation project, have been verified or reviewed as appropriate to ensure the quality of scientific information conforms to the standards of the scientific and technical community. This verification process, including the checking of reference material cited, will be consistent with a Peer Review Plan that will be prepared with input from the Cooperating Agencies. Reclamation will implement this plan to ensure all scientific and technical work products used to assess impacts anticipated to result from the project are based upon sound science and acceptable practices, and are supported by the original source documents. Reclamation will direct how the Contractor is to consider existing data, environmental descriptions, and analyses available from all sources, including Reclamation to ensure the rigorous analysis required by NEPA, CEQ, and DOI regulations is met.

- I. Provide the Cooperating Agencies with advance copies of the draft and final EA and Finding of No Significant Impact (FONSI), if appropriate and related compliance documents for review (normally 30 days).

6. ADWR's Responsibilities

As a Cooperating Agency, ADWR shall in accordance with 40 CFR 1501.6 and 43 CFR 46.230, perform the following:

- A. Designate a separate single point of contact on all matters relating to this MOU, and federal environmental compliance efforts and preparation of the EA.
- B. Provide sufficient knowledgeable and competent staff to review and comment on the draft EA, participate in the scoping process, and attend all public meetings and hearings.
- C. To the extent practicable, submit to Reclamation any existing information, studies, or other documentation that might be relevant to analysis of the environmental impacts of the project. ADWR will identify what, if any, Peer Review was conducted on the studies. Reclamation is responsible for providing this information, as it deems appropriate, to the Contractor in a timely manner.
- D. Assist with identification of significant environmental issues to be addressed, especially those areas where ADWR has specific expertise or jurisdiction by law.
- E. At the request of Reclamation, and to the extent practicable, provide any related study data, or assist in recommending other agencies and partners which may have available data, assist in development of information and data analysis related to ADWR's field of expertise or jurisdiction.
- F. At the request of Reclamation, and to the extent practicable, assist in the development and evaluation of alternatives, and the estimation of the effects of implementing each alternative on resources for which the cooperating agency has jurisdiction or special expertise.

- G. Provide timely review of draft documents when requested.
- H. Retain the right to comment on all issues related to the EA through the normal EA public review and comment process.
- I. Promptly inform Reclamation of concerns related to the EA process.
- J. Treat specific data which are clearly marked as confidential and proprietary, as such to the extent permitted by law. This responsibility extends to both internal ADWR and Contractor use of the data. In the event that any information marked confidential or proprietary is required by law to be released, ADWR will notify Reclamation of any such request and provide written notice to the appropriate Party in advance of such release.
- K. At the request of Reclamation, and to the extent practicable, provide and develop data or information with respect to those areas where ADWR has jurisdiction or special expertise. ADWR will identify whether the information provided has been verified for accuracy and is consistent with the Work Plan.
- L. To the extent practicable, attend progress conference calls and meetings with Reclamation and the Contractor, and will review documents and provide comments within the time limits established by Reclamation to the extent reasonably possible (or the schedule will be adjusted accordingly).

7. CAWCD's Responsibilities

As a Cooperating Agency and the operator of the CAP, CAWCD shall, in accordance with 40 CFR 1501.6 and 43 CFR 46.230, perform the following:

- A. Designate a separate single point of contact on all matters relating to this MOU, and federal environmental compliance efforts and preparation of the EA.
- B. Execute a contract with the selected Contractor and its subcontractors who shall provide signed disclosure statements to both Reclamation and CAWCD specifying they have no financial or other interests in the outcome of the project, pursuant to and consistent with the intent of 40 C.F.R. §Part 1506.5(c).
- C. Communicate and remit payment directly to the Contractor for all costs charged by the Contractor. Nothing in this MOU shall be construed to limit the rights, under other contracts or agreements of CAWCD to receive reimbursement for portions of its costs from other entities.
- D. With the exception of contractual and billing-related matters, coordinate with Reclamation for all communications with the Contractor regarding the content of the EA.
- E. Work with Reclamation to coordinate activities with the Contractor or any other entities

involved in supplying data, studies or analyses for the EA.

- F. To the extent practicable, submit to Reclamation any information, studies, or other documentation relevant to the analysis of the environmental impacts of the project. CAWCD will identify what Peer Review, if any, was conducted on the studies. Reclamation is responsible for providing this information, as it deems appropriate, to the Contractor in a timely manner.
- G. Review documents and provide comments within the time limits established by Reclamation to the extent reasonably possible (or the schedule will be adjusted accordingly).
- H. Attend meetings and participate in discussions. Topics may include the No Action alternative, potential action alternatives, alternatives considered but eliminated from further study (and why), potential mitigation measures necessary to resolve or lessen adverse impacts, and comments on the description of the proposed action, purpose and need statements in the EA.

8. Joint Responsibilities

- A. The Parties will not release any pre-decisional draft documents to the public or other parties unless mutually agreed to by Reclamation or required through the Freedom of Information Act or state law. This is not intended to interfere with the Cooperating Agencies seeking internal input. Draft documents can be provided to such organizations as long as the Cooperating Agency abides by these non-release terms and comments are directed back to the Cooperating Agency representative or point of contact specified in this MOU.
- B. Reclamation may meet separately with any one or more Cooperating Agencies to discuss specific topics. Reclamation will inform all Cooperating Agencies of the results of these discussions.
- C. This MOU does not affect funding agreements already in place or to be executed among the parties regarding Reclamation's completion of NEPA compliance. For costs not explicitly covered under such agreements, it is understood that the respective agencies are responsible for their own costs with regard to completion of tasks outlined herein, such as attendance at meetings, assembling data, analyzing effects, writing sections and review of the EA, etc.
- D. All Parties agree that work will proceed as expeditiously as possible. The Parties agree to comply with the scheduled milestones and timeframes, including those for review and submissions.

9. Other Provisions

- A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities or responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond their respective authorities.
- B. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum or funds in excess of authorization and appropriations available, or in any other way take action in violation of the Anti-Deficiency Act (31 U.S.C. § 1341).
- C. Immunity and defenses retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU and cooperative work on the EA.
- D. Conflict of interest. The Parties agree not to utilize any individual for purposes of EA development, environmental analyses, or representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the EA
- E. Management of information. The Cooperating Agencies acknowledge that all data and information provided will become part of Reclamation's official record and will be available for public review, except as restricted by the Freedom of Information Act or the Privacy Act. The Cooperating Agencies agree that internal working draft documents for the development of the EA will not be made available for review by individuals or entities other than the Parties to this MOU, except as required by law. All draft documents are part of the official record of each Party and may only be released by a Party to the extent required by the Freedom of Information Act, the Privacy Act, or State public records law. The Cooperating Agencies agree that to allow full and frank discussion of preliminary analysis and recommendations, meetings to review such pre-decisional and deliberative documents will not be open to the public, except as required by law. If a release is required the releasing party will make all reasonable attempts to notify the Cooperating Agencies in advance of the release.
- F. Responsibility for decision making. While the Parties agree to make reasonable efforts to resolve procedural and substantive disagreements, the Cooperating Agencies acknowledge that Reclamation retains final responsibility for the decisions identified in the EA and FONSI, if a FONSI is appropriate, where applicable.
- G. Coordination with Reclamation Contractors. Cooperating Agencies may communicate with the Contractor(s) used for the EA process only through Reclamation's representative or with Reclamation's permission.

10. Resolution of Dispute

Reclamation is responsible for all decisions involving the EA and will make all final decisions on disputes arising during the NEPA process. Reclamation will document for the administrative record the nature of any dispute and the resolution process used. For disputes involving different interpretations of information, Reclamation agrees to consider different interpretations if such interpretations are supported by sufficient credible data, as determined by Reclamation. For other disputes, Reclamation and the Cooperating Agencies will use their best efforts to resolve issues in a manner agreeable to all Parties. If a disputed issue cannot be resolved in a collaborative and timely manner, Reclamation will make a final decision. The Cooperating Agencies retain the right to comment on all issues related to the EA, including those in dispute through the normal EA public review and comment process.

11. Administration of the MOU

- A. Approval. This MOU becomes effective on the date of the last signatory.
- B. Amendment. This MOU may be amended through written agreement of all signatories.
- C. Termination. Reclamation or the Cooperating Agencies may terminate its status by providing written notice of termination to the other party. Otherwise, the roles and responsibilities will terminate when a final EA is completed and a determination is issued.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the dates shown below.

THE UNITED STATES OF AMERICA

By: _____ Date _____
Leslie Meyers
Area Manager

Attest: _____ By: _____
Title: _____ Thomas Buschatzke
Director
Arizona Department of Water Resources
3550 North Central Avenue
Date: _____ Phoenix, AZ 85012

Attest: _____ By: _____
Title: _____ Lisa Atkins
President
Central Arizona Water Conservation District
23636 North Seventh Street
Date: _____ Phoenix, AZ 85024

**SCOPE OF WORK
FOR PREPARATION OF AN ENVIRONMENTAL ASSESSMENT to
Evaluate Arizona Department of Water Resources Recommendation for the Reallocation
of Non-Indian Agriculture Water in Accordance with the Arizona Water Settlements Act
of 2004**

Introduction and Proposed Federal Action

The Secretary of the Interior (Secretary) through the Bureau of Reclamation (Reclamation) proposes to reallocate 46,629 acre-feet per year of designated Non-Indian Agriculture (NIA) Central Arizona Project (CAP) water pursuant to the Arizona Water Settlements Act (AWSA) (Public Law 108-451, Section 104) and in accordance with the Arizona Department of Water Resources' (ADWR) recommendation.

In compliance with AWSA, ADWR analyzed the applications for the NIA Priority CAP Water and made a recommendation to the Secretary through Reclamation that distributes NIA Priority CAP water into two pools: 34,629 acre-feet for Municipal Pool water providers and 12,000 acre-feet for Industrial Pool water users, totaling 46,629 acre-feet for use within the CAP service area. Each pool further lists the individual applicants and the acre-feet to be reallocated to them and recommends that each of these applicants be offered a CAP water service subcontract for the stated amount of water. Information regarding the proposals and ADWR's process can be found at:

<http://www.azwater.gov/azdwr/PublicInformationOfficer/Non-IndianAgriculturalReallocationProcess.htm>

AWSA further designates Reclamation as the Lead Federal Agency with respect to environmental compliance. One of the environmental compliance requirements is the National Environmental Policy Act (NEPA). AWSA also states that the reallocation is subject to the condition that the Secretary "executes an appropriate document to memorialize the reallocation including an allocation decision with a prohibition of direct use by the ADWR." Both ADWR and CAWCD have been named as Cooperating Agencies in accordance with NEPA and there is an Memorandum of Understanding an attachment to this document that documents their Cooperating Agency status in accordance with NEPA Regulations (40 CFR 1500-1508) and Department of Interior NEPA Regulations (43 CFR part 46). Upon completion of the reallocation process, individual applicants recommended for receipt of the water will execute subcontracts with Central Arizona Water Conservation District (CAWCD) pursuant to AWSA and the Master Repayment Contract between the Secretary and CAWCD.

Reclamation has determined that an Environmental Assessment (EA) will be prepared to evaluate the effects of the proposed reallocation and memorialize the decision regarding the reallocation recommendation of NIA CAP water. This scope of work is to request proposals to complete that compliance.

Preparation of Environmental Assessment

CAWCD on behalf of Reclamation will hire a Contractor to prepare a detailed and robust EA in accordance with the National Environmental Policy Act, and Department of the Interior (DOI) regulations, Reclamation specific regulations, and the Reclamation NEPA Handbook. The EA preparation also includes coordination with other Federal Agencies and the preparation of all documents, and determined to be necessary. These may include but are not limited to any required for compliance with the Endangered Species Act or National Historic Preservation Act. It is not anticipated that the project will require field surveys; however, proposals may recommend specific field surveys that would be recommended. Any required field surveys would be part of a separate scope of work.

All electronic copies of deliverables will be provided in both MS Word and PDF formats. All deliverables developed for the public must follow Reclamation's Visual Identity and the Rehabilitation Act of 1973, Section 508 requirements, which will be provided to the Contractor. Should any additional Reclamation and/or Department of Interior publication requirements arise, they will be communicated to the Contractor.

Task 1. Coordination Meetings and Work Plan

- A. The Contractor shall schedule an initial meeting with Reclamation, ADWR and CAWCD to confirm project objectives, discuss the proposed action and range of alternatives to be evaluated in the EA, recommend issues that should be considered, identify additional studies or surveys that may be required, and review project timelines and milestones.
- B. The Contractor shall be expected to work closely with Reclamation, CAWCD and ADWR during the information gathering phase. Once sufficient information has been gathered, the Contractor shall prepare a draft work plan and schedule for completing the EA. The draft work plan and schedule will be adjusted on an as needed basis to reflect changes that occur during the EA process.
- C. The Contractor will provide an interdisciplinary team to complete the EA. Interdisciplinary team members must have the knowledge, skills, and experience to fulfill analysis and be familiar with the specific resources to be evaluated in the EA. The Contractor will provide the names, titles, and resumes of all personnel working on the project as part of the detailed work plan.
- D. The Contractor will set up, conduct and document all meetings and activities related to all tasks under this Scope of Work, and provide all meeting minutes and documentation to ADWR, and CAWCD for all initial and final review and comments. All final approvals of documents, and minutes will be approved by Reclamation and shall be maintained by the Contractor for integration into the final administrative record.
- E. The Contractor shall work with CAWCD, ADWR, and Reclamation to coordinate, plan, and conduct an initial kickoff meeting with all project stakeholders. The Contractor shall provide all written material, and instrumentally work with Reclamation, CAWCD,

ADWR, and the other cooperating agencies, to create presentations, provide display boards as necessary, coordinate and secure a facility, and record meeting minutes for review and approval to add to the administrative record. The Contractor will also provide public relations support of the kickoff meeting.

- F. The Contractor shall assist with the identification of other cooperating agencies, and prepare appropriate notice letters and memoranda of understanding (MOU) with all identified cooperating agencies. The Contractor will submit the draft MOUs and letters for review, comments, and final approval. The Contractor shall be responsible for timely delivery of the letters and memos and shall record them both digitally and in paper format for the administrative record.
- G. The Contractor will work together with CAWCD, ADWR and Reclamation to compile a mailing list (both electronic and paper) that will identify stakeholders, interested parties, and members of the public that express interest in the project. The mailing list will be revised and updated throughout the entire EA process. The Contractor will also be responsible for keeping all the stakeholders informed of the progress of the EA.

Task 2. Description of Project Purpose/Background and Alternatives

As a first step toward preparation of the EA, Contractor shall provide a developed outline of Chapters 1 and 2:

- A. Describe the background including legal framework of the project, the ADWR reallocation process and recommendation, project locations, public involvement and media relations;
- B. Define the purpose and need for the project;
- C. Provide descriptions of the alternatives to be considered in as much detail as possible, including the no action alternative;
- D. Provide descriptions of the alternatives dropped from further consideration and indicate why they were dropped; and
- E. Provide a list of the resources to be included in the EA, as well as resources not to be included in the EA and the reasoning for their omission.

Task 3. Public Scoping Process

Although public scoping is not required for an EA, Reclamation sometimes provides the public this opportunity. The Contractor will provide recommendations on public scoping for the EA. It is anticipated that a minimum of two public scoping meetings will be required; however the Contractor should provide recommendations for how they would encourage maximum public involvement for the EA.

- A. The Contractor shall provide recommendations for locations, coordinate and secure locations for scoping meetings in order to provide maximum public involvement opportunity. The Contractor shall develop a media relations plan that establishes a process to engage the public and all forms of media engagement. This includes materials that explain the project and process, a strategy for how to engage the media in both print and broadcast, and develop a messaging strategy for how the project will be communicated and how the public can become and remain involved in the reallocation process and submit for review, comment, and approval.
- B. The Contractor shall prepare a Scoping Notice and associated materials for distribution to the public. Once approved the Contractor shall distribute notices in both electronic and paper formats as required.
- C. The Contractor will also provide Reclamation, ADWR and CAWCD with both an electronic Microsoft Word version and an OCR searchable PDF of the Scoping Notice, including all graphics.
- D. Once text and dates of notice publication are reviewed by ADWR and CAWCD, then approved by Reclamation, the Contractor shall take out advertisements for the public scoping meetings. The Contractor will be responsible for arranging, noticing, moderating, and assist with conducting public scoping sessions, and workshops. The Contractor will be responsible for compiling public comments during the meetings and providing copies to CAWCD and ADWR for review and comment. The Contractor will also be responsible for assisting Reclamation with formally and informally addressing any comments received, and finalizing Reclamation approved scoping report.
- E. The Contractor shall reserve meeting room facilities, provide for a court reporter (if used), provide for translators for the hearing impaired (if requested), and handicap accommodations (if requested). Two hard copies and an electronic copy of public meeting transcripts will be provided to Reclamation if a court reporter is used.
- F. Upon request by Reclamation the Contractor shall provide display board and prepare presentations to be made at the scoping meetings and provide any required equipment. These presentations may require the use of electronic media, such as PowerPoint, or other media development provided by the Contractor. The Contractor will provide all materials needed for scoping.
- G. The Contractor shall prepare an initial draft scoping summary report for review by Reclamation, CAWCD, and ADWR that summarizes all comments received during the scoping process and identifies significant issues/concerns raised. Reclamation, CAWCD, and ADWR will provide input on how to address comments made in the summary report. The Contractor will be responsible for making sure that all cooperating agencies receive a copy of the approved draft in order to provide comments and work with Reclamation, ADWR and CAWCD to resolve any cooperating agency comments. The Contractor will be responsible for creating and submitting for approval by Reclamation a final scoping report.

Task 4. Data Collection

- A. The Contractor will identify and compile all existing data sources and baseline information. The Contractor shall identify those subject areas where existing data may be lacking or difficult to obtain, and will provide recommendations on how to proceed. After conferring with Reclamation, ADWR, CAWCD, and any other identified Cooperating Agencies with special expertise or legal jurisdiction, the Contractor shall collect relevant data on subject areas where such data is lacking.
- B. The Contractor shall identify and recommend the major issues and concerns to be addressed and the methodology or approach to be used in evaluating the potential impacts from the proposed project.
- C. The Contractor shall identify resource areas that are recommended to not be addressed, including the rationale for not addressing them.
- D. The Contractor shall identify past, present, and reasonably foreseeable future actions that will need to be taken into consideration when describing cumulative impacts resulting from the proposed action and alternatives.
- E. The Contractor will identify and compile all existing data sources including existing conditions and baseline data about the environmental effects of implementing the proposed Federal action and alternatives. The Contractor will identify areas requiring the generation of primary data. Information collected must be sufficient to identify and analyze the direct, indirect, short term long term and cumulative effects of the proposed action and alternatives, including the no action alternative. Some of the potential resources include but are not limited to: air and air quality, soil, water, biological resources including state listed species, federally listed, threatened, and candidate species, land use and ownership, socioeconomic, cultural, resources Environmental Justice, and Indian Trust Assets. The Contractor will also review resources and make recommendations for further analysis.

Task 5. Prepare Preliminary EA Drafts

- A. The Contractor shall prepare an initial preliminary draft EA (PDEA) for review by Reclamation, CAWCD, and ADWR, that follows Reclamation standards, the NEPA handbook, and Department of the Interior regulations at 43 CFR Part 46. The Contractor shall provide a reasonable number of paper copies of the initial PDEA for review (estimated up to 5 for Reclamation and 2 for CAWCD, and ADWR), and electronic versions. The contractor shall make revisions in response to comments from Reclamation, CAWCD, and ADWR.
- B. The Contractor shall prepare a revised PDEA for review by Reclamation, CAWCD, ADWR and the other cooperating agencies. The Contractor shall provide a reasonable number of paper copies and an electronic version of the revised PDEA for review (estimated up to 7 for Reclamation and 2 for CAWCD, ADWR and each other cooperating agency). The Contractor at the direction of Reclamation shall make revisions in response to comments from CAWCD,

Reclamation, ADWR or the other Cooperating Agencies. The Contractor shall arrange meetings meeting with and communicate regularly with Reclamation, CAWCD, ADWR and the other cooperating agencies to discuss comments and revise the document as necessary.

- C. The Contractor can expect up to two additional reviews by Reclamation, ADWR and CAWCD (with revisions as necessary) of the post cooperating agency-reviewed revised PDEA to achieve a print-ready copy of the Draft EA.

Task 6. Prepare Draft EA (DEA) for Public Review and Comment

- A. The Contractor will be responsible for electronic and paper copy distribution of the DEA for public comment. The Contractor shall provide an as-yet-to-be-determined number of paper copies (estimated up to 30) and electronic disk copies (estimated up to 75) of the DEA for distribution to the public. The document and its appendices shall be sized to be easily accessed, with web links to files and sections as appropriate. The Contractor shall use the previously developed and maintained mailing list to ensure that all appropriate stakeholders receive a copy of the DEA for comment.
- B. The Contractor shall provide a MS Word version and a web-ready, searchable (Adobe Acrobat) version of the draft DEA for placement onto Reclamation's website. This version shall include an introductory "read me" HTML and shall have links to each chapter, as well as thumbnail images.

Task 7. Conduct Public Meeting for Draft EA

- A. If required by Reclamation, the Contractor shall make necessary arrangements for a public meeting for review and comment on the DEA. Once the text and dates of publication are approved, the contractor shall advertise the public meeting.
- B. Upon request by Reclamation, the Contractor shall provide displays and all materials for the public hearing. The Contractor shall also provide any and all notification materials, informational materials, or any other necessary communication and/or media relations support needed to present a successful public meeting. The Contractor shall reserve public hearing facilities, provide for hearing impaired translators (if requested), and if necessary, provide a moderator, meeting facilitator, media relations management, and/or security as needed.
- C. The Contractor shall attend and provided a detailed report of the public meeting including discussion, comments raised by the public, and materials presented.
- D. At the end of the public review period, the Contractor will review public comments, and working with CAWCD, Reclamation, ADWR and the other cooperating agencies, assist in preparation of responses to relevant comments. The Contractor shall prepare a unique response to each comment unless the comments are identical (or so similar) where the same response can be referenced. Revisions of the Public Draft and responses to comments will be incorporated into a preliminary final EA (PFEA).

- E. The Contractor shall prepare an initial PFEA for review by CAWCD, Reclamation, and ADWR. The Contractor shall provide a reasonable number of paper copies and electronic copies of the initial preliminary final EA for review (estimated up to 7 for Reclamation and 2 for CAWCD and, ADWR). The Contractor at the direction of Reclamation shall make revisions in response to comments from Reclamation, CAWCD, and ADWR.
- F. The Contractor shall prepare a revised PFEA for review by Reclamation, CAWCD, ADWR and the other cooperating agencies. The Contractor shall provide a reasonable number of paper copies and an electronic version of the revised PDEA for review (estimated up to 7 for Reclamation and 2 for CAWCD, ADWR and each other cooperating agency). The Contractor at the direction of Reclamation shall make revisions in response to comments from CAWCD, Reclamation, ADWR or the other cooperating agencies.
- G. The Contractor can expect up to two fairly brief additional reviews by Reclamation (with revisions as necessary) of the post cooperating agency-reviewed revised PFEA to achieve a print-ready copy.

Task 8. Prepare Final Environmental Assessment (FEA)

- A. The Contractor initially will provide a reasonable number of paper copies, electronic versions of the FEA to Reclamation, ADWR and CAWCD.
- B. The Contractor shall provide a reasonable number of paper copies (estimated up to 30) and electronic disk copies (estimated up to 75) of the FEA for distribution to the public. The document and its appendices shall be sized to be easily accessed, with links to files as appropriate.
- C. The Contractor shall provide a final MS Word version and a web-ready, searchable (Adobe Acrobat) version of the FEA for placement onto Reclamation's website. This version shall include an introductory "readme" HTML and shall have links to each chapter, as well as thumbnail images. The Adobe document shall be OCR edit and searchable ready. The Final EA must comply with Reclamation's Visual Identity Standard and The Rehabilitation Act of 1973, Section 508.

Task 9. Prepare Administrative Record.

The Contractor shall provide copies of the administrative record, including copies of cited references that are not publicly available, technical analyses that support conclusions contained in the EA, meeting notes, and any other back-up documentation considered pertinent to the analysis and decision-making process. The administrative record shall include sufficient information to document the rationale for the decisions made during the EA development process. The administrative record shall include copies of cited materials that are not in publications of general circulation. The contents of the administrative record will be indexed.