

**Agenda Number 6.**

**CONTACT:** Jay Johnson  
623-869-2374  
jjohnson@cap-az.com

**MEETING DATE:** February 2, 2017

**AGENDA ITEM:** Report on Agreement on Principles for Arizona State Party Participation in Adopting Contingency Plan to Protect Lake Mead between the United States and Gila River Indian Community, dated January 18, 2017

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

- CAWCD Board of Directors 2016 Strategic Plan
  - Reliability of the CAP Water Supply
  - Optimize reliability and sustainability of CAP water supply
  - Reduce risk associated with CAP's junior priority

**PREVIOUS BOARD ACTION/ACTIVITY:**

January 5, 2017—Board Meeting, Review and Update on Lower Basin Drought Contingency Plan and DCP Plus Plan

**ISSUE SUMMARY/DESCRIPTION:**

For nearly a year, parties within Arizona have been negotiating terms for an intrastate plan to implement the Lower Basin Drought Contingency Plan. This intrastate plan is known as “DCP Plus”. The parties have been negotiating a number of difficult issues that need to be worked out before the DCP Plus program can become a reality. Parties to the negotiations include CAWCD, ADWR, the Bureau of Reclamation (“Reclamation”), the Gila River Indian Community (“GRIC”), the cities of Phoenix and Tucson, AMWUA, SAWUA, CAP agricultural users and the Tohono O’odham Nation. Among those issues are funding for compensated system conservation, a workable program for tribal ICS, and dedication of CAP excess water for additional conservation, to name a few. The parties worked on these issues into the final days of the last presidential administration, but could not achieve closure.

However, on January 18, 2017, as federal officials were about to depart, Reclamation and GRIC executed an agreement that purports to establish a framework for Arizona’s implementation of DCP Plus. The “Agreement on Principles for Arizona State Party Participation in Adopting Contingency Plan to Protect Lake Mead between the United States and Gila River Indian Community” (“Agreement”) is attached to this Information Brief.

The Agreement poses a number of concerns. It stretches beyond negotiations to date. While it does not bind any parties other than Reclamation and GRIC, the Agreement attempts to set parameters for the future trajectory of DCP Plus. Many of the provisions in the Agreement are unacceptable to CAWCD. Further, the Agreement imposes strict limitations on Reclamation, with respect to what type of terms it may agree to in an ultimate DCP Plus agreement. Finally, in an effort to imply CAWCD's approval of the Agreement, Reclamation attached as an exhibit to the Agreement, a letter that CAWCD wrote to Commissioner Lopez on January 17, 2017. CAWCD provided this letter at the request of Reclamation on the understanding that it would help bridge the transition to the new administration and show ongoing work and support for DCP and DCP Plus. The letter was never intended to express support for the Agreement, nor was CAWCD advised how the letter would ultimately be used.

Staff is committed to continuing its efforts with Arizona stakeholders and the United States to create an implementation plan for Arizona's share of DCP, but it may end up looking quite different than the Agreement between GRIC and Reclamation.

Attachment.

**AGREEMENT ON PRINCIPLES FOR ARIZONA STATE PARTY PARTICIPATION IN  
A DROUGHT CONTINGENCY PLAN TO PROTECT LAKE MEAD**

January 18, 2017

This Agreement on Principles for Arizona State Party Participation in a Drought Contingency Plan to Protect Lake Mead (“DCP+ Principles Agreement”) is entered into between the Gila River Indian Community, a federally recognized Indian tribe located in the State of Arizona (the “Community”), and the United States, acting through the Bureau of Reclamation (“United States”).

**1. PURPOSE.** AZ DCP+ (as further defined below) is a program intended to conserve substantial amounts of water within Lake Mead in order to decrease substantially the risk of Lake Mead elevation levels dropping below 1075 feet. AZ DCP+ is part of a comprehensive effort to address drought issues in the Colorado River Basin, including the LB DCP (as further defined below). This DCP+ Principles Agreement sets forth the commitments made by the United States and the Community to: (1) provide bridge commitments to the Community to allow it to reserve sufficient water supplies in 2017 for the proposed AZ DCP+; and (2) set forth the principles that the United States and the Community have discussed with other Arizona entities. The United States and the Community agree these principles constitute the basis for additional Arizona entities and parties to subsequently enter into a proposed DCP+ Agreement, or a similar agreement with terms that conform to all substantive agreements set forth in this DCP+ Principles Agreement in all material respects with language that is substantially similar to the language set forth herein, no later than March 31, 2017. The AZ DCP+ is intended to complement efforts by the parties in the Lower Basin of the Colorado River encompassed in the LB DCP (as further defined below), and enable the State of Arizona to participate in the LB DCP, to the extent the LB DCP is adopted in the future.

**2. DEFINITIONS.**

2.1 “2007 Interim Guidelines” means the December 2007 Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead.

2.2 “ADWR” means the Arizona Department of Water Resources.

2.3 “AF” means an acre-foot of water.

2.4 “AZ DCP+” means the program comprised of the Lower Basin Drought Contingency Plan plus the Arizona State Plan for the creation of Intentionally Created Surplus (DCP+ ICS Program) and the Arizona State Plan for System Conservation (DCP+ SC Program) to help keep Lake Mead above or at an elevation of 1075.

2.5 “Bridge System Conservation Agreement for 2017” means the System Conservation Implementation Agreement between the Community and the United States to be executed on the same date as this DCP+ Principles Agreement, the form of which is attached as Exhibit B.

2.6 “CAP Water” means that water defined as “Project Water” in the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

2.7 “CAWCD” means the Central Arizona Water Conservation District, the political subdivision of the State of Arizona that is the contractor under the CAP repayment contract.

2.8 “Community” means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

2.9 “Contractor” means the definition set forth in the 2007 Interim Guidelines. For purposes of this DCP+ Principles Agreement and the DCP+ ICS Program described herein, the Parties agree that the Community meets the definition of Contractor under Section 5.3.4 of this DCP+Principles Agreement.

2.10 “DCP+ Agreement” means the future agreement contemplated with other Arizona principles with the terms set forth herein.

2.11 “DCP+ Principles Agreement” means this agreement.

2.12 “DCP+ ICS Program” means the program described in Section 5.3

2.13 “DCP+ SC Program” means the program described in Section 5.2.

2.14 “Effective Date” means the date on which both Parties have executed this DCP+ Principles Agreement.

2.15 “Exhibit” means an exhibit to this DCP+ Principles Agreement.

2.16 “Forbearance Agreement” means the December 13, 2007, Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement entered into among the State of Arizona, acting through the Arizona Department of Water Resources, the Palo Verde Irrigation District, the Imperial Irrigation District, the City of Needles, the Coachella Valley Water District, the Metropolitan Water District of Southern California, the Southern Nevada Water Authority, and the Colorado River Commission Nevada.

2.17 “ICS” means surplus Colorado River System water available for use under terms and conditions of a Delivery Agreement (an agreement consistent with the 2007 Interim Guidelines entered into between the Secretary of the Interior and one or more Contractors creating ICS), a Forbearance Agreement (an agreement under which one or more Contractors agree to forbear a right to ICS, under a water delivery contract or the Consolidated Decree entered by the United States Supreme Court in Arizona v. California, 547 U.S. 150 (2006)), and the 2007 Interim Guidelines.

2.18 “LB DCP” means the Lower Basin Drought Contingency Plan, the plan developed by the United States and the lower basin states, which is currently under consideration by the United States and the seven basin states. “Non-Federal Contributors” means any non-Federal entity that subsequently agrees to contribute funds for the DCP+ SC Program.

2.19 “Party” means a Party to this DCP+ Principles Agreement.

2.20 “P4 water” means 4<sup>th</sup> Priority for Arizona Colorado River Water, under Arizona v. California, which is held by water users with contracts, Secretarial Reservations or other rights established by the United States after September 30, 1968. The Central Arizona Water Conservation District’s entitlement is a 4<sup>th</sup> Priority Arizona Colorado River water.

2.21 “Reclamation” means the Bureau of Reclamation, an Agency within the United States Department of the Interior.

2.22 “SC Funding Agreement” means the agreement described in Section 5.2.4.8.

2.23 “SC Implementation Agreement” means the agreement described in Section 5.2.4.7.3.

2.24 “Secretary” means the Secretary of the United States Department of the Interior.

2.25 “Section” means a section or subsection of this DCP+ Principles Agreement.

2.26 “System Conservation” means the creation of Colorado River System water through voluntary water conservation and reductions in use.

2.27 “System Conservation Coordinating Committee” means the Committee established pursuant to Section 5.2.6.1.

**3. DESCRIPTION OF THE AZ DCP+.** The total goal for the AZ DCP+ is to conserve approximately 1,234,000 AF of water through the DCP+ ICS Program, the DCP+ SC Program, and the DCP reductions. The table on the following page outlines the overall plan that the Parties have discussed. The final numbers are subject to change as the documents implementing the AZ DCP+ are finalized.

**AZ DCP+**

<b>Program</b>		<b>2017 KAF</b>	<b>2018 KAF</b>	<b>2019 KAF</b>
DCP Reductions				
	Pursuant to LB DCP	0	192,000	192,000
DCP+ System Conservation				
	Compensated SC	93,333	165,000	151,677
	Uncompensated SC	185,000	0	0
DCP AZ ICS				
	ICS	50,000	97,500	107,500
	Total = 1,234,000 AF	328,333	454,500	451,167

**4. AZ DCP+ BRIDGE.**

4.1 On the date of execution of this DCP+ Principles Agreement, the United States and the Community shall enter into the Bridge System Conservation Agreement for 2017. If the State of Arizona and ADWR agree to execute a DCP+ Agreement with terms that conform to all substantive agreements set forth in this DCP+ Agreement in all material respects with language that is substantially similar to the language set forth in this DCP+ Principles Agreement no later than March 31, 2017, then the compensation that the United States shall have paid to the Community pursuant to this Bridge System Conservation Agreement for 2017 shall count toward the United States' commitment to fund the DCP+ SC Program and the conserved water shall be considered as compensated System Conservation under Section 5.2 below.

4.2 The United States shall assist and support the Community in its efforts to obtain funding from the U.S. Department of Agriculture that would allow the Community to increase its water conservation programs for purposes of its intended participation in the DCP+ SC Program and the DCP+ ICS Program.

**5. PRINCIPLES FOR SUBSEQUENT DCP+ AGREEMENT.** The Parties have discussed this DCP+ Principles Agreement with numerous other entities and parties in the State of Arizona and agree that the provisions set forth below, along with those set forth in Sections 1, 2 and 3 above, set forth the basis for a DCP+ Agreement into which they would enter should other parties and entities in Arizona, including without limitation the State, ADWR and CAWCD agree, provided that such parties agree no later than March 31, 2017. The Parties have a reasonable expectation that such agreement will be forthcoming by such date due to the attached letters of support shown in Exhibit A.

**5.1 Conditions Precedent**

All obligations to be set forth in the proposed DCP+ Agreement shall be contingent on the following conditions precedent:

- 5.1.1 Approval by the seven Colorado River Basin States and the United States of LB DCP.
- 5.1.2 Funding being made available by one or more funders in 2017 in an amount and in time to implement the DCP+ SC Program.
- 5.1.3 Approval of Exhibit C (Community SC Proposal) and Exhibit D (Community ICS Plan of Creation).

## **5.2 DCP+ SC PROGRAM**

- 5.2.1 The DCP+ SC Program shall have two components. The first component is to be a program of coordinated System Conservation through which the parties to the DCP+ Agreement intend to compensate entities in Arizona in exchange for such entities' commitment to undertake conservation activities through which all or a portion of their water entitlement is left in Lake Mead. The second component is to be a commitment from CAWCD to leave certain amounts of Excess CAP Water in Lake Mead without compensation as set forth below in Section 5.2.5.
- 5.2.2 Under the DCP+ SC Program, it is anticipated that there will be up to approximately 410,000 acre-feet of compensated System Conservation over a 3-year period (2017, 2018, and 2019).
- 5.2.3 Under the DCP+ SC Program, it is anticipated that CAWCD will leave a minimum of 185,000 AF of uncompensated System Conservation in Lake Mead, based on their 2017 water delivery schedule, and that CAWCD shall make other commitments regarding its potential conservation to Lake Mead as set forth in Section 5.2.5. To do so, CAWCD shall amend their order with Reclamation to reflect the conservation.
- 5.2.4 Compensated System Conservation.
  - 5.2.4.1 Under the proposed DCP+ SC Program, it is anticipated that there will be up to 410,000 AF of compensated System Conservation water over a 3-year period (2017, 2018, and 2019).
  - 5.2.4.2 All commitments of water for System Conservation pursuant to the proposed DCP+ Agreement are explicitly conditioned on continued availability of funding to compensate contributing parties for the water committed.
  - 5.2.4.3 A party to the DCP+ Agreement may withdraw its commitment of water to System Conservation as set forth in Section 5.2.4.11 if it determines that its own needs for the water committed would not be fulfilled without use of such water. Once a party contributing water to System Conservation enters into a SC Implementation

Agreement, such water shall be committed and cannot be withdrawn.

5.2.4.4 In addition to the commitments of water set forth below, subject to the availability of funding for the DCP+ SC Program, any water right holder in Arizona may seek to contribute such water to System Conservation pursuant to the DCP+ Agreement for compensation from funds contributed pursuant to the proposed DCP+ Agreement.

5.2.4.5 The compensation amount for water contributed for the DCP+ SC Program shall be \$150 per AF contributed.

5.2.4.6 The total cost of the DCP+ SC Program is estimated at approximately \$61.5 million, with approximately \$45 million expected to come from the United States and approximately \$16.5 million expected to come from Non-Federal Contributors.

5.2.4.7 The DCP+ Program shall be implemented by Reclamation's Lower Colorado Region in coordination with the System Conservation Coordinating Committee. For purposes of implementation of the DCP+ SC Program, in consultation with the System Conservation Coordination Committee, Reclamation shall prepare the following, among other things:

5.2.4.7.1 A process for soliciting proposals from water right holders in Arizona for System Conservation;

- (i) All parties to the proposed DCP+ Agreement shall agree that the Community's proposal for System Conservation, attached as Exhibit C to this DCP+ Principles Agreement, meets the requirements to qualify for the DCP+ SC Program and shall be deemed accepted and funded with first priority in any given year.
- (ii) Reclamation may develop a simple, one-page form for conserving entities to use to apply to the DCP+SC Program.

5.2.4.7.2 For each System Conservation project that Reclamation approves, Reclamation shall execute an SC Implementation Agreement between the United States and the conserving entity that includes provisions addressing the following, among other, topics:



- (i) the amount of System Conservation that will be achieved based on the proposal;
- (ii) if the water conserved is CAP Water, how and when the conserving entity's water order gets adjusted to reflect the conservation;
- (iii) if the water conserved is water delivered pursuant to a water delivery contract with the Secretary or the Consolidated Decree, how and when the conserving water order gets adjusted to reflect the conservation;
- (iv) the method of conservation;
- (v) a process to verify the conservation;
- (vi) access for Reclamation to any lands that may be associated with the proposed conservation project; and
- (vii) details regarding payments to the conserving entity.

5.2.4.7.3 For each System Conservation project that Reclamation approves, CAWCD shall execute an SC Letter Agreement, between the United States and CAWCD, wherein CAWCD agrees to not order the water that is being made available for System Conservation by the approved project in the year created.

5.2.4.7.4 Reclamation shall prepare an annual schedule of proposed System Conservation based upon the commitments for System Conservation set forth herein which are implemented and proposals subsequently received and approved. Reclamation shall present such annual schedule to the System Conservation Coordination Committee for its review and consideration. Reclamation shall consider any comments received from the System Conservation Coordination Committee and determine whether any adjustments should be made in the annual schedule that it has proposed.

5.2.4.8 Funds contributed by Non-Federal Contributors to the DCP+ SC Program shall be contributed in accordance with a separate SC Funding Agreement to be developed between the United States and each such funder. Such SC Funding Agreement shall contain provisions addressing the following topics, among others:

5.2.4.8.1 the amount to be contributed by such funder;

5.2.4.8.2 the role such funder has on the System Conservation Coordinating Committee;

5.2.4.8.3 a process for refunding to such funder any sums that ultimately cannot be used for System Conservation, for whatever reason; and,

5.2.4.8.4 a process for including in the DCP+ SC Program any funders who agree to provide funds to the DCP+ SC Program after the effective date of the proposed DCP+ Agreement.

5.2.4.9 To be eligible for the DCP+ SC Program the conserved water must have a history of use and shall be retained in Lake Mead as system water. Unlike ICS created pursuant to the DCP+ ICS Program, water conserved in Lake Mead pursuant to the DCP+ SC Program shall not be subsequently delivered to a specific user.

5.2.4.10 The legal authorities pursuant to which the United States shall participate in and implement the DCP+ SC Program are as follows:

5.2.4.10.1 Section 101(c) of the Colorado River Basin Salinity Control Act of 1974 (88 Stat. 266) (authority for Reclamation to replace Wellton-Mohawk drainage bypassed to the Santa Clara Slough which helps keep more water in Lake Mead to mitigate the impacts of the ongoing drought);

5.2.4.10.2 the Act of March 4, 1921 referred to as the Contributed Funds Act (41 Stat. 1404) (authority for Reclamation to accept non-federal funds);

5.2.4.10.3 the Act of January 12, 1927 (44 Stat. 957) (authority for Reclamation to accept non-federal funds); and

5.2.4.10.4 the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-325 §206, (128 STAT. 2312) (2014).

5.2.4.11 Specific commitments of water to DCP+ SC Program

5.2.4.11.1 Subject to the provisions set forth herein, the Community shall agree to commit a total of approximately 300,000 of its CAP Water entitlement in annual amounts to be determined in consultation with Reclamation during the period from the effective date of the proposed DCP+ Agreement through December 31, 2019.

5.2.4.12 The party contributing water in any given year for compensated System Conservation shall be paid \$150 for each AF of water contributed. Unless otherwise agreed with the contributing party, such payment shall be made in advance of the water being contributed to System Conservation. Reclamation shall be responsible for making such payments.

5.2.5 Uncompensated System Conservation.

5.2.5.1 CAWCD has made its water order for 2017 and Reclamation has approved CAWCD's water order. Not later than March 31, 2017, CAWCD shall commit 185,000 AF of CAP Water to remain in Lake Mead in 2017 by amending its order to so reflect the uncompensated system conservation and Reclamation shall approve such amended order. If, after committing the 185,000 AF of uncompensated water, there is Excess CAP Water available in an amount in excess of 42,000 AF in 2017, then CAP shall meet and consult with the Parties as to its disposition, such disposition to include possibly leaving such additional Excess CAP Water in Lake Mead. In 2019 and 2020, in addition to any water left in Lake Mead pursuant to DCP, if there is any Excess CAP Water, CAWCD shall, in order of priority: (i) restore any reductions made to any CAP contractor due to DCP reductions or otherwise that were not the result of forbearance, ICS creation, or System Conservation; (ii) restore any reductions in the Ag Pool that were not the result of forbearance or System Conservation; and (iii) meet and consult with the Parties as to the disposition of any other Excess CAP Water that remains available after the restorations made pursuant to clauses (i) and (ii) above, such disposition to include possibly leaving such additional Excess CAP Water in Lake Mead.

5.2.6 System Conservation Coordinating Committee.

5.2.6.1 There shall be established a System Conservation Coordinating Committee, the composition, responsibility, and operation of which shall be further defined in the final DCP+ Agreement.

5.2.7 Funding Commitments for Compensated System Conservation.

5.2.7.1 Funding by the United States. The total federal funding expected for this DCP+ SC Program is \$45 million. The Department of the Interior, acting through Reclamation shall make \$6 million available in 2017 under the current federal budget as authorized by the existing continuing resolution for 2017. This is the same funding that is to be used to fund the Bridge System Conservation Agreement for 2017 described in Section 4.1. If there is a subsequent DCP+ Agreement, the \$6 million paid by the United States pursuant to the Bridge System Conservation Agreement for 2017 shall count toward this initial commitment of \$6 million. Reclamation shall make an additional \$6 million available for compensated System Conservation in 2017 and \$12 million in 2018 and \$12 million in 2019, provided that the LB DCP is adopted and finalized by the seven basin states not later than June 1, 2017. In addition to the \$36 million committed to this DCP+ SC Program by the United States, the Department of the Interior shall work with other federal agencies and entities for an additional \$9 million in federal funding. Specifically, the Department of the Interior will work with other federal agencies and offices, such as the Department of Defense (see Exhibit E), to explore mechanisms to arrange for potential additional funding mechanisms or actions to fund the DCP+ SC Program in a manner consistent with the goals of the proposed DCP+ Agreement. All Parties recognize that any and all federal commitments and activities under this DCP+ SC Program are contingent on the availability of appropriated funds.

5.2.7.2 Funding by Non-Federal Contributors. The Parties shall work with non-federal entities to identify non-federal contributors to the DCP+ SC Program. The total amount of non-federal contributions expected to make the DCP+ SC Program succeed is approximately \$16.5 million.

**5.3 DCP+ ICS PROGRAM**

5.3.1 The purpose of the DCP+ ICS Program is to encourage more entities in Arizona, especially the Community and Section 5.3.4 Tribes (as defined in

such section), to create ICS in Lake Mead. The DCP+ ICS Program shall have a term through 2026.

- 5.3.2 Prior to the finalization of the DCP+ Agreement, ADWR shall have prepared a single draft “Arizona Extraordinary Conservation ICS Exhibit to the Forbearance Agreement”, which specifically sets forth the kinds of conservation measures that shall qualify as ICS, based on the current 2007 Interim Guidelines. The parties to the DCP+ Agreement shall agree that the draft “Arizona Extraordinary Conservation ICS Exhibit to the Forbearance Agreement”, sets forth a list of methods through which water users in Arizona can measurably conserve water in a manner that will qualify as ICS under the current 2007 Interim Guidelines. The parties to the proposed DCP+ Agreement shall agree that their support of the DCP, and of the DCP+ Principles Agreement, is contingent on the “Arizona Extraordinary Conservation ICS Exhibit” to the Forbearance Agreement being approved by all parties to the Forbearance Agreement as part of the overall LB DCP package.
- 5.3.3 The parties to the DCP+ Agreement, including the United States, shall have reviewed the Community’s ICS Plan of Creation, which shall be attached to the DCP+ Agreement, and agree that it meets the standards for creation of ICS in accordance with the attached draft “Arizona Extraordinary Conservation ICS Exhibit to the Forbearance Agreement”.
- 5.3.4 The parties to the proposed DCP+ Agreement shall acknowledge and agree that any tribe in the State of Arizona with a federally enacted settlement of its claims to water rights that includes a statutory entitlement to mainstem Colorado River water to be delivered to the tribe pursuant to a statutorily authorized contract for the delivery of CAP Water, with such water to be held in trust by the United States, meets the definition of "Contractor" for purposes of the creation of ICS pursuant to the 2007 Interim Guidelines. For purposes of the DCP+ Agreement, a tribe that meets the criteria set forth in this Section shall be referred to as a "Section 5.3.4 Tribe".
- 5.3.5 To encourage the creation of ICS by Section 5.3.4 Tribes, the parties to the DCP+ Agreement shall agree that they shall seek agreement from the other Colorado River Basin States with the position set forth in Section 5.3.4, and shall further seek the establishment of a process for such tribes to create ICS for their own account. The parties to the proposed DCP+ Agreement shall also seek inclusion of Section 5.3.4 Tribes in any ICS or other storage program included in any guidelines that are to replace the 2007 Interim Guidelines.

- 5.3.6 Pending the agreement of the Colorado River Basin States and the creation of the process described in this Section 5.3.6, all ICS created by a Section 5.3.4 Tribe shall be created and held in a sub-account of the CAWCD ICS account. Upon establishment and implementation of the process for Section 5.3.4 Tribes to create ICS for their own account pursuant to Section 5.3.5:
- 5.3.6.1 all ICS held in a sub-account of the CAWCD ICS account for the benefit of a Section 5.3.4 Tribe shall be transferred to the newly established account of the Section 5.3.4 Tribe; and
- 5.3.6.2 the process set forth below for the creation and delivery of ICS for the account of a Section 5.3.4 Tribe shall be modified to allow for the direct creation of ICS by the Section 5.3.4 Tribe to its own account.
- 5.3.7 ADWR shall serve as coordinator for the development and submission to Reclamation of an annual Arizona ICS Creation Plan. The Arizona ICS Creation Plan will identify Arizona Contractors participating in ICS creation through the verified reduction of existing beneficial use, including any 5.3.4 Tribes desiring to develop ICS; anticipated conservation volumes and anticipated methods. ADWR will consult and confer with Reclamation, CAWCD and 5.3.4 Tribes regarding any tribal ICS identified in the ICS Creation Plan.
- 5.3.8 In its role as coordinator, ADWR shall assist any Arizona entity in the preparation of a proposal for ICS creation to be submitted to Reclamation for its consideration and approval pursuant to the attached “Arizona Extraordinary Conservation ICS Exhibit to the Forbearance Agreement”. ADWR will consult and confer with Reclamation and CAWCD in its role as ICS coordinator.
- 5.3.9 Reclamation shall promptly consider the ICS proposal and present any concerns or objections to ADWR and the conserving entity within thirty (30) days of its receipt of same.
- 5.3.10 Upon approval of an Arizona entity’s proposal for creation of ICS, the Arizona entity shall enter into an ICS Implementation Agreement with Reclamation, unless otherwise provided by the Arizona Extraordinary Conservation ICS Exhibit to the Forbearance Agreement, that shall include provisions governing the following:

- 5.3.10.1 For each year that the entity seeks to create ICS, the entity shall coordinate with ADWR on the development of the Arizona ICS Creation Plan for that year;
- 5.3.10.2 For each year that the entity creates ICS, the entity shall cooperate with ADWR in its preparation of the annual Arizona ICS Certification Report.
- 5.3.11 ADWR shall serve as coordinator for development and submission to Reclamation of an annual Arizona ICS Certification Report. The Arizona ICS Certification Report will demonstrate volumes of ICS created by all Arizona Contractors and any Section 5.3.4 Tribes. ADWR will consult and confer with Reclamation, CAWCD and Section 5.3.4 Tribes regarding any tribal ICS identified in the ICS Certification Report.
- 5.3.12 Of the 500,000 AF cumulative ICS maximum for Arizona Contractors that is anticipated to be available under an adopted LB DCP, Arizona Indian tribes shall have first priority for 255,000 AF of ICS creation through December 2019. The parties to the AZ DCP+ Agreement will agree to meet and confer in August 2019 to determine if the shared goals for conservation in the first three years have been successful, and if there is agreement on the program's success, the parties agree that this provision shall continue until 2026.
- 5.3.13 In each year in which ICS is available to CAWCD, CAWCD may call for the delivery of at least 150,000 AF of ICS in its account unless the parties agree otherwise; provided that this provision does not provide CAWCD with any preference for capacity in the CAP canal and simply relates to a commitment by the parties to the proposed DCP+ Agreement that CAWCD shall have equal entitlement to the quantity of ICS available for delivery to Arizona as a whole during such year.
- 5.3.14 There will be a single ICS Delivery Agreement covering the delivery of all Arizona ICS (Amended CAWCD ICS Delivery Agreement). The Amended CAWCD ICS Delivery Agreement shall be an exhibit to a final AZ DCP+ Agreement. The Amended CAWCD ICS Delivery Agreement will clarify that ICS is not P4 water, but a new, administrative category known as "ICS Water". As such, ICS Water shall be treated as Non-Project Water, not subject to the CAP shortage sharing formula in CAP long-term contracts. CAWCD has discretion to determine who receives its ICS Water; any Section 5.3.4 Tribe with ICS Water has discretion to determine who receives its ICS Water.

- 5.3.15 CAWCD shall deliver ICS to an entity with ICS in its sub-account available for delivery that year upon request if ICS is available to that entity.
- 5.3.16 CAWCD shall deliver ICS pursuant to the Amended CAWCD ICS Delivery Agreement and the System Use Agreement. Except as provided in the succeeding sentence, delivery of ICS shall be accomplished through the federal portion of capacity identified in section 8.17 of the Master Repayment Contract, as such capacity may be available. All parties with ICS in their sub-accounts in any given year shall have a proportional entitlement to section 8.17 capacity available for that year for delivery of their ICS. Upon request of the entity requesting ICS delivery, delivery of ICS may also be accomplished through utilization of capacity described in section 8.18 of the Master Repayment Contract pursuant to a CAWCD Wheeling Contract.
- 5.3.17 Charges for delivery of ICS shall not exceed the then current charges for delivery of CAP water, and for a CAP Tribe shall not include any charges other than Energy or Fixed OM&R. The parties to the proposed DCP+ Agreement shall agree that there will be no capital charges for delivery of ICS on behalf of a Section 5.3.4 Tribe.
- 5.3.18 For any ICS created pursuant to the DCP+ ICS Program, CAWCD shall agree not to deliver any of such conserved water to other CAP customers.
- 5.3.19 Upon Reclamation's verification of the ICS Certification Report, Reclamation will identify the ICS created in that year and the amount available for delivery to the respective Arizona entity that has created such ICS, and record it in such entity's ICS sub-account.

#### 5.4 General Provisions for DCP+ Agreement

- 5.4.1 The signatories to the proposed DCP+ Agreement shall in good faith negotiate additional agreements consistent with the proposed DCP+ Agreement, and work to effectuate Arizona commitments for the LB DCP. In addition, the signatories will in good faith negotiate agreements consistent with the proposed DCP+ Agreement to include other stakeholders and tribal governments from Arizona.
- 5.4.2 The proposed DCP+ Agreement shall be subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, similar requirements of state law, the availability of appropriated funds, and any other governmental authorizations contemplated in the LB DCP or 2007 Interim Guidelines. Nothing in the proposed DCP+ Agreement is intended or will



be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or a state fund.

5.4.3 Except as explicitly agreed in this DCP+ Principles Agreement, nothing in the proposed DCP+ Agreement is intended or may be construed to predetermine the outcome of any regulatory approval or other action by an agency of the United States, the state of Arizona, or by the Gila River Community or other tribal governments.

5.4.4 The proposed DCP+ Agreement may be executed in counterparts, with separate signature pages, to be effective as of the latest signature date.

5.4.5 The target date for signing the proposed DCP+ Agreement is March 31, 2017.

5.4.6 List of exhibits for the proposed DCP+ Agreement

- Bridge System Conservation Agreement for 2017
- Arizona Extraordinary Conservation ICS Exhibit to the Forbearance Agreement
- Community SC Proposal
- Community ICS Plan of Creation
- Letter from Department of Defense

## **6. General Provisions to this DCP+ Principles Agreement**

6.1 The Parties shall work in good faith to negotiate additional agreements consistent with this DCP+ Principles Agreement and to finalize the proposed DCP+ Agreement in a timely manner, and to effectuate Arizona commitments for the LB DCP. In addition, the Parties shall in good faith negotiate agreements consistent with the proposed DCP+ Agreement to include other stakeholders and tribal governments from Arizona.

6.2 This DCP+ Principles Agreement shall be subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, similar requirements of state law, the availability of appropriated funds, and any other governmental authorizations contemplated in the LB DCP or 2007 Interim Guidelines. Nothing in the DCP+ Principles Agreement is intended or will be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or a state fund.

6.3 Except as explicitly agreed herein, nothing in this DCP+ Principles Agreement is intended or may be construed to predetermine the outcome of any regulatory

approval or other action by an agency of the United States, the state of Arizona, or by the Gila River Community or other tribal governments.


- 6.4 This DCP+ Principles Agreement may be executed in counterparts, with separate signature pages, to be effective as of the latest signature date.
- 6.5 The Parties have no intention, other than as set forth in the Lower Basin DCP, to modify or alter the 2007 Interim Guidelines in this agreement. In case of a conflict between the DCP+ Principles Agreement and the 2007 Interim Guidelines, the 2007 Interim Guidelines will control.
- 6.6 List of exhibits for the proposed DCP+ Principles Agreement
- EXHIBIT A: Letters of Support
  - EXHIBIT B: Bridge System Conservation Agreement for 2017
  - EXHIBIT C: Community SC Proposal
  - EXHIBIT D: Community ICS Plan of Creation
  - EXHIBIT E: Letter from Department of Defense

IN WITNESS WHEREOF, the Parties have executed this DCP+ Principles Agreement on the 18th day of January, 2017.


Approved as to form:

**GILA RIVER INDIAN COMMUNITY**

By:

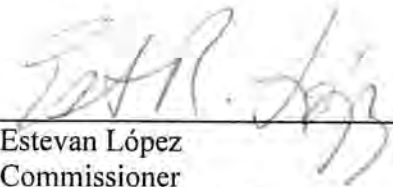
  
Linus Everling  
General Counsel

By:

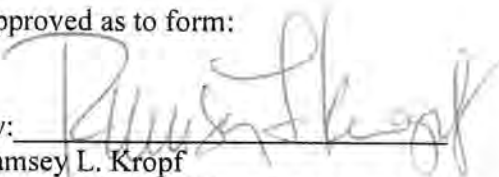
  
Stephen R. Lewis  
Governor

IN WITNESS WHEREOF, the Parties have executed this DCP+ Principles Agreement on the 18th day of January, 2017.

**UNITED STATES OF AMERICA**

By:   
\_\_\_\_\_  
Estevan López  
Commissioner  
Bureau of Reclamation

Approved as to form:

By:   
\_\_\_\_\_  
Ramsey L. Kropf  
Deputy Solicitor, Water Resources

**EXHIBIT A:**  
Letters of Support



**DOUGLAS A. DUCEY**  
Governor

**THOMAS BUSCHATZKE**  
Director

**ARIZONA DEPARTMENT of WATER RESOURCES**  
1110 West Washington Street, Suite 310  
Phoenix, Arizona 85007  
602.771.8500  
azwater.gov

January 17, 2017

***Via Email and U.S. Mail***

Commissioner Estevan Lopez  
Bureau of Reclamation  
United States Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Dear Commissioner Lopez:

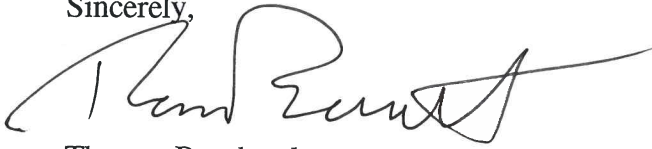
The Arizona Department of Water Resources (“ADWR”) greatly appreciates your leadership and tireless efforts in coordinating the development of the Lower Basin Drought Contingency Plan (“LBDCP”) among the Lower Basin States. As you know ADWR is supportive of the LBDCP and the protections it can afford in protecting Lake Mead from dropping to critical levels. The LBDCP will benefit Arizona and the other Lower Basin states by providing greater certainty and protection of Colorado River supplies.

ADWR recognizes that collective efforts to conserve water in Lake Mead have been hugely successful and have helped avoid shortages in 2016 and 2017. In Arizona, tribes and cities have participated in programs with CAWCD and Reclamation to keep water in the Lake and Arizona and CAWCD have foregone opportunities to store Colorado River water underground in aquifers in Central Arizona to further bolster Lake Mead elevations.

The State of Arizona, with the help of Reclamation, has been working on an intra-state plan to implement the LBDCP, currently known as “DCP Plus”. It is still a work in progress. DCP Plus targets the conservation of 1,234,000 acre-feet of water in Lake Mead over the next three years (above the reductions called for in the LBDCP) for the purpose of decreasing the risk of Lake Mead dropping below elevation 1075’ through 2020. It includes provisions for compensated and uncompensated system conservation savings, intentionally created surplus and an explicit tribal intentionally created surplus package formulated pursuant to existing authorities under the Law of the River.

Arizona Governor Doug Ducey's Executive Budget for FY 18 includes funding by the State of Arizona to support this effort. Arizona entities participating in DCP Plus discussion include CAWCD, the Gila River Indian Community, the Tohono O'odham Nation, CAP agricultural districts, the City of Tucson, the City of Phoenix, other central Arizona cities, private water companies, Yuma agricultural entities, and the Mohave County Water Authority. Arizona is committed to working with Arizona stakeholders and Reclamation to complete a DCP Plus plan that will enable ADWR to garner the necessary support from its stakeholders and tribal governments and ultimately from the Arizona Legislature so that the State of Arizona can sign on to the LBDCP.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Buschatzke", written in a cursive style.

Thomas Buschatzke  
Director, Arizona Department of Water Resources



January 17, 2017

*Via Email and USPS*

Commissioner Estevan Lopez  
Bureau of Reclamation  
United States Department of the Interior  
1849 C Street NW  
Washington, DC 20240

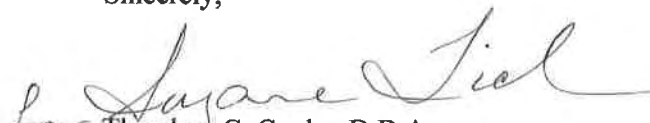
Dear Commissioner Lopez:

CAWCD greatly appreciates your leadership and tireless efforts in coordinating the development of the Lower Basin Drought Contingency Plan (LBDCP) among the Lower Basin States. As you know, CAWCD is supportive of the LBDCP and the protections it can afford in preventing Lake Mead from dropping to critical levels. The LBDCP will benefit Arizona and the other Lower Basin states by providing greater certainty and protection of Colorado River supplies.

CAWCD has shown its commitment to protecting Lake Mead in countless ways for many years. From 2014 through 2016, CAWCD voluntarily left approximately 345,000 acre-feet in Lake Mead pursuant to the Lower Basin Pilot Drought Response Actions MOU that it signed with other Colorado River parties in 2014, including Reclamation. CAWCD, with other Colorado River parties including Reclamation, funded the conservation of an additional 75,000 acre-feet in Lake Mead pursuant to the Pilot System Conservation Program. These efforts helped avert a shortage on the Colorado River in 2016 and 2017.

The State of Arizona has been working on its own intra-state plan to implement the LBDCP, which is currently known as "DCP Plus". It is still a work in progress. DCP Plus targets the potential conservation of up to 1.234 million acre-feet of Colorado River water in Lake Mead over the next three years (above the reductions called for in the LBDCP) for the purpose of decreasing the risk of Lake Mead dropping below elevation 1075' through 2020. CAWCD is committed to continuing our efforts with Reclamation, Tribal governments and Arizona stakeholders to develop an appropriate plan that will protect Lake Mead and enable the State of Arizona to participate in the LBDCP.

Sincerely,

  
Theodore C. Cooke, D.B.A.  
General Manager

## EXHIBIT B:

Bridge System Conservation Agreement for 2017



SYSTEM CONSERVATION IMPLEMENTATION AGREEMENT (SCIA)  
BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND THE  
GILA RIVER INDIAN COMMUNITY

1. PREAMBLE This SCIA is entered into this 18<sup>th</sup> day of January, 2017, by and between the United States, Department of the Interior, Bureau of Reclamation (“Reclamation”) acting through the officials executing this SCIA, and the Gila River Indian Community (“Community”), located on the Gila River Indian Reservation, Arizona, hereinafter referred to singularly as “Party” or collectively as “Parties” and pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto, the Act of December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act, and the Act of June 24, 1974 (88 Stat. 266), designated the Colorado River Basin Salinity Control Act, as amended, and consistent with the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235 §206 (128 Stat. 2312) (2014).

2. EXPLANATORY RECITALS

2.1 WHEREAS, the Colorado River Basin is experiencing the worst 17-year drought in the historical record, and Lake Mead’s elevation has dropped to levels where the Secretary of the Interior may determine a shortage condition for Lake Mead as early as 2018;

2.2 WHEREAS, on December 10, 2014, Reclamation, the Central Arizona Water Conservation District (“CAWCD”), The Metropolitan Water District of Southern California, the Southern Nevada Water Authority (“Municipal Water Agencies”), the Arizona Department of Water Resources, the Colorado River Board of California, and the Colorado River Commission of Nevada entered into a Memorandum of Understanding for Pilot Drought Response Actions (“MOU”) that will remain in effect until December 31, 2019;

2.3 WHEREAS, under the MOU, Reclamation and the Municipal Water Agencies

desire to take initial steps between 2014 and 2017 towards generating additional water to be retained in Lake Mead to reduce the risk of reaching critical reservoir elevations in a manner consistent with the Law of the River including, but not limited to, the Consolidated Decree in *Arizona v. California*, 547 U.S. 150 (2006) and the 2007 Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”);

2.4 WHEREAS, a fundamental component of Lower Basin drought contingency planning is voluntary development of additional quantities of water to be retained in Lake Mead in order to reduce the risk of Lake Mead reaching critical reservoir elevations (“Protection Volume(s)”);

2.5 WHEREAS, Protection Volumes can be generated, for example, through new or expanded programs to create Intentionally Created Surplus (as such term is defined in the 2007 Guidelines), reductions in water use, reductions in off-stream storage of Colorado River water, or other actions that result in increased Lake Mead elevations;

2.6 WHEREAS, the MOU, among other things, provides that Reclamation will use its best efforts to create 50,000 acre-feet of Protection Volume between 2014 and 2017 that will be dedicated as Colorado River System water, thereby increasing the volume of water remaining in Lake Mead, (Reclamation is anticipated to use a combination of the following to create Protection Volumes: efficiency improvements, operational improvements, and creation of system water);

2.7 WHEREAS, the MOU also provides that Reclamation will work to plan and implement actions to replace, recover and reduce system losses from the Colorado River System;

2.8 WHEREAS, recognizing the severity of the ongoing historic drought, the Community desires to help mitigate the impacts of the current drought by entering into an agreement with the United States through Reclamation making some of its Central Arizona Project (“CAP”) water entitlement under its Contract No. 3-07-30-W0284 dated October 22, 1992, as amended, (“Community CAP Contract”) available in calendar year 2017 as Colorado River System water with the intent to help Reclamation meet its commitments under the MOU;

2.9 WHEREAS, in calendar year 2017 the Community is willing to make available to Reclamation 40,000 acre-feet of the Community's CAP water entitlement, which water has a recent history of use, for the purpose of leaving such water in Lake Mead in exchange for a payment of \$150.00 per acre-foot totaling \$6,000,000.00 which is referred to herein as ("Confirmed Water");

2.10 WHEREAS, the Community is also willing to make available to Reclamation an option for an additional amount of the Community's CAP water entitlement for calendar year 2017, not to exceed 40,000 acre-feet, which is hereinafter referred to as ("Additional Water"), in the event Reclamation exercises the option provided for in Section 5 herein; and

2.11 WHEREAS, Reclamation desires to enter into a pilot project with the Community and accept the Community's offer to modify its operations for calendar year 2017 by reducing its delivery of its CAP water entitlement and allowing such volume of Colorado River System water to remain in Lake Mead.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, Reclamation and the Community agree as follows:

### 3. DEFINITIONS

3.1 Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved in Section 13(a) of the Boulder Canyon Project Act of 1968 (88 Stat. 266).

3.2 Colorado River System shall have the meaning ascribed to such term in the Colorado River Compact.

### 4. PURPOSE

4.1 The purpose of this SCIA is for Reclamation to compensate the Community \$6,000,000.00 for agreeing to modify its operations for calendar year 2017 by reducing its delivery of its CAP water entitlement by a volume of 40,000 acre-feet ("Confirmed Water"), and in the event the option is exercised by Reclamation as provided in Section 5 herein, to reduce its

delivery of additional CAP water not to exceed 40,000 acre-feet (“Additional Water”), and allow such volume to remain in Lake Mead as Colorado River System water with the intent of creating Protection Volume(s) and replacing system losses from the Colorado River System.

4.2 The Confirmed Water was initially ordered by the Community for delivery to the Gila River Indian Irrigation and Drainage District to irrigate Community lands, and the Community intended to amend its delivery schedule to have this 40,000 acre-feet of water delivered to groundwater savings facilities for the accrual of underground storage credits. The Community is foregoing storage of such water. Following such actions by the Community, CAWCD will reduce its calendar year 2017 Colorado River water order with Reclamation to ensure that the 40,000 acre-feet remains in Lake Mead in accordance with this SCIA and the letter referred to in Section 8.1 herein.

## 5. IMPLEMENTATION

5.1 Implementation begins upon execution of this SCIA and continues through December 31, 2017.

5.2 The Community agrees to modify its operations and reduce its delivery of CAP water entitlement under the Community CAP Contract by a Confirmed Water amount of 40,000 acre-feet for calendar year 2017, and if Reclamation exercises the option in Section 5 herein on or before May 15, 2017, by an Additional Water amount of not to exceed 40,000 acre-feet, in accordance with this SCIA.

5.3 Upon the SCIA becoming effective as provided in Section 11 herein, the Community will provide Reclamation with a copy of an amended CAP water order placed with CAWCD for calendar year 2017 to reflect implementation of this SCIA.

5.4 Option for Additional Water: If the contemplated “Drought Contingency Plan Plus” Agreement (“DCP + Agreement”) is executed by the necessary parties in Arizona, including the Arizona Department of Water Resources and CAWCD, among others, by March 31, 2017, the Community is willing to provide Reclamation with Additional Water in calendar year 2017, not to exceed 40,000 acre-feet.

5.4.1 Reclamation will notify the Community in writing on or before May 15, 2017, to exercise the option for the Community to provide Additional Water.

5.4.2 Once the Community is notified by Reclamation, the Community will provide Reclamation with a copy of an amended CAP water order placed with CAWCD for calendar year 2017 to reflect the amount of Additional Water.

5.4.3 CAWCD will provide Reclamation an amended calendar year 2017 CAP water order to reflect this Additional Water, in accordance with the letter referred to in Section 8.1 herein.

5.4.4 The compensation amount for the Additional Water is \$150.00 per acre-foot.

5.4.5 The terms and conditions of this SCIA shall apply to the Community for providing Additional Water in the same manner as they do for the Community providing the Confirmed Water, except as otherwise provided herein.

5.4.6 If a DCP + Agreement is not executed by March 31, 2017, and if Reclamation does not exercise the option and notify the Community on or before May 15, 2017, the Community will have no obligation to make Additional Water available under this SCIA in excess of the Confirmed Water amount of 40,000 acre-feet.

5.4.7 Reclamation and the Community shall meet prior to May 15, 2017, in the event that Reclamation desires to request the Community commit more than the Confirmed Water (40,000 acre-feet) and the Additional Water (not to exceed 40,000 acre-feet). If it is agreed by the Parties to commit more than the Confirmed Water and the Additional Water, the Parties agree that this SCIA does not need to be amended and the terms and conditions for the additional water above the amounts provided herein will apply to such additional amounts of water.

5.5 The Community will forego delivery of the Confirmed Water and the Additional Water (if agreed to by the parties) for calendar year 2017, thereby increasing the volume of water remaining in Lake Mead. Reclamation intends to apply this volume of water toward its commitment to create Protection Volume(s) under the MOU and to replace Colorado River system losses.

6. MONITORING

6.1 Reclamation will use its existing water order approval process and other authorities to ensure that the Community's CAP water under this SCIA is not ordered or used by other Colorado River water entitlement holders during calendar year 2017.

7. IDENTIFICATION AND TRACKING OF PROTECTION VOLUMES

7.1 Under the MOU, Reclamation will work with the Municipal Water Agencies to identify and track achievement of Protection Volume goals.

7.2 Reclamation and the Community agree that the water left in Lake Mead pursuant to this SCIA shall accrue to the benefit of the Colorado River System and shall not accrue to the individual benefit of the Community or any third party.

8. COMPENSATION

8.1 A payment in the amount of \$6,000,000.00 for the Confirmed Water will be made by Reclamation to the Community no later than 30 days following receipt of (1) the Community's written water order modification request referred to in Section 5.3 herein; Provided, however, that no such payment shall be made unless and until CAWCD agrees in writing to amend its 2017 Colorado River water order with Reclamation to reduce CAWCD's diversion by 40,000 acre-feet to ensure that the conserved water remains in Lake Mead and (2) receipt of a letter submitted to CAWCD and Reclamation by the Community in which the Community certifies that ground water savings facilities were physically capable of accepting delivery of the 40,000 acre-feet of CAP water that the Community is forgoing storage of in calendar year 2017 and the Community intended, absent the system conservation, to utilize the available capacity for storage in 2017, whichever of (1) or (2) last occurs.

8.2 If the option is exercised by Reclamation as provided for in Section 5.4 herein, a payment in the amount of \$150.00 per acre-foot times the amount of Additional Water the Community is providing will be made by Reclamation to the Community no later than 30 days following receipt of the Community's amended written water order modification request referred to in Section 5.4.2 herein and upon CAWCD making a similar amendment to its water order as provided for in Section 8.1.

## 9. REIMBURSEMENT FOR OVERPAYMENT

9.1 In the unanticipated and unforeseen event the Community takes action that interferes with the objective of foregoing the amount of water in Lake Mead as was paid for by Reclamation, in accordance with this SCIA, the Community agrees to reimburse for the overpayment within 30 days of receipt of a bill for collection from Reclamation.

## 10. GENERAL TERMS

10.1 The Community agrees to remain in compliance with applicable Federal, State, and local environmental, cultural, and paleontological resource protection laws and regulations throughout the term of this SCIA.

10.2 Reclamation shall be responsible to obtain any consents or forbearances required to ensure that the water left in Lake Mead by the Community remains in the Colorado River System and does not inure to the benefit of any individual Entitlement Holder.

10.3 The water left in Lake Mead under this SCIA will not be charged against the Community's use of Colorado River water or charged to Arizona's Colorado River apportionment. The quantity of water created by the Community under this SCIA shall be deemed to have been delivered pursuant to the Community's CAP water delivery contract when determining the amount of CAP Indian Priority Water available to the Community during a time of shortage, and participation by the Community in this SCIA and in providing that a portion of its CAP water entitlement will remain in Lake Mead, shall not constitute nor shall it be construed as a direct or indirect use of a portion of its CAP water entitlement outside the State which is

prohibited under subsection 309(b)(2)(E) of the Arizona Water Settlements Act (Public Law 108-451).

10.4 None of the provisions of this SCIA shall be considered waived, except when such waiver is given in writing. The failure of a party to this SCIA to insist in any one or more instances upon strict performance of any of the provisions, or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or that party's relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

10.5 This SCIA is not intended nor shall it be construed to create any third-party beneficiary rights to enforce the terms of this SCIA on any person or entity that is not a party.

10.6 The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this SCIA be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this SCIA or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this SCIA or otherwise.

10.7 Each Party to this SCIA represents that the person executing on behalf of such Party has full power and authority to do so, and that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.

10.8 This SCIA constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms. This SCIA is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

10.9 This SCIA may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by the Parties.



10.10 Any notice, demand, or request shall be deemed properly served, given, or made if delivered in person; sent by registered or certified mail, postage prepaid; or overnight delivery, charges prepaid or charged to the sender's account to the persons in the positions executing this SCIA.

10.11 All information and data obtained or developed with the performance of duties mentioned in this SCIA shall be available upon request to a Party, subject to the provisions of the Freedom of Information Act, as amended, if applicable, or other applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.

10.12 The expenditure or advance of any money or the performance of any obligation by the United States under this SCIA shall be contingent upon the appropriation or allotment of funds. No monetary liability shall accrue to the United States in case funds are not appropriated or allocated.

10.13 No member of or Delegate to Congress, Resident Commissioner, or official of the Community shall benefit from this SCIA other than as a water user or landowner in the same manner as other water users or landowners.

10.14 Nothing in this SCIA diminishes or abrogates the authority of the Secretary of the Interior under applicable Federal law, regulations, or the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.*, entered March 27, 2006, (547 U.S. 150 (2006)), or as it may be further modified.

10.15 In the event that any dispute arises regarding this SCIA, Reclamation and the Community agree to meet and attempt to resolve the dispute before seeking any remedy.

10.16 Nothing in this SCIA shall be construed as an express or implied waiver of the sovereign immunity of either Party.

## 11. EFFECTIVE DATE

11.1 This SCIA shall become effective upon its execution and remain in effect through December 31, 2017.

11.2 This SCIA may be executed in counterparts, each of which shall be an original and both of which, together, shall constitute only one SCIA.


11.3 The Parties hereto have executed this SCIA on the day and year first written above.

IN WITNESS WHEREOF, the Parties hereto have executed this SCIA No. 17-XX-30-W0620 on the day and year first mentioned above.

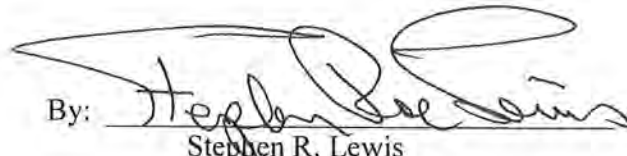
Approved as to form:

**GILA RIVER INDIAN COMMUNITY**

By:


  
Linus Everling  
General Counsel

By:

  
Stephen R. Lewis  
Governor

IN WITNESS WHEREOF, the Parties hereto have executed this SCIA No. 17-XX-30-W0620 on the day and year first mentioned above.

**UNITED STATES OF AMERICA**

By:   
Terrance J. Fulp, Ph.D.  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation

**EXHIBIT C:**  
Community SC Proposal

# GILA RIVER INDIAN COMMUNITY

*Executive Office of the Governor & Lieutenant Governor*

“Putting Our People First”

*Stephen Roe Lewis*  
Governor



*Monica Lynn Antone*  
Lieutenant Governor

January 17, 2017

Terry Fulp  
Regional Director, Lower Colorado Region  
U.S. Bureau of Reclamation  
P.O. Box 61470  
Boulder City, NV 98006

Regional Director Fulp:

As you are aware, the Gila River Indian Community (Community) has participated in discussion related to the Lower Basin Drought Contingency Plan (LB DCP) and the effort to keep the elevation of Lake Mead from falling under 1075 feet over the next three years, (a/k/a/ DCP+). The Community and Bureau of Reclamation, on behalf of the United States, intend to execute the DCP+ Principles Agreement, under which Reclamation and the Community will enter into the Bridge System Conservation Implementation Agreement (SCIA) for 2017, for a minimum of 40,000 AF, with compensation to be paid to the Community at \$150 per acre-foot.

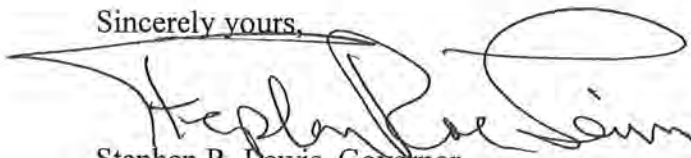
This letter serves as the Community's proposal for 2017 system conservation anticipated under the DCP+ Principles Agreement:

1. Term: From the date of execution to January 1, 2018.
2. Volume:
  - a. A confirmed amount of 40,000 acre-feet of Community CAP water for system conservation for calendar year 2017 (Confirmed Water).
  - b. Provided a final DCP+ Agreement is agreed to by the necessary parties in Arizona, including the Arizona Department of Water Resources and the Central Arizona Water Conservation District, among others, by March 31, 2017, an option for an additional amount not-to-exceed 40,000 acre feet of Community CAP water for calendar year 2017 (Additional Water). Reclamation must exercise the option for Additional Water by May 15, 2017. If Reclamation does not exercise the option for Additional Water by May 15, 2017, the Community will have no obligation to make any of its water available for system conservation in excess of the 40,000 acre-feet of Confirmed Water.
  - c. If Reclamation desires to have the Community commit more than 80,000 acre-feet of Confirmed and Additional Water available for system conservation, it shall meet and confer with the Community prior to the option deadline set forth in paragraph above.

3. Consideration: A unit price of \$150 per acre-foot.
4. Creation of System Conservation: The Community will modify its operations for calendar year 2017 by reducing its delivery of its CAP water entitlement by a volume of up to 80,000 acre-feet of CAP water. The Confirmed Water and Additional Water is currently scheduled by the Community for delivery to the Gila River Indian Irrigation and Drainage District to irrigate Community lands, and the Community intends to amend its delivery schedule to have some or all 80,000 acre-feet of Confirmed Water and Additional Water to be delivered to groundwater savings facilities for the accrual of long-term storage credits in the event that a SCIA is not entered into between Reclamation and the Community.
  - a. Confirmed Water: Once the SCIA is executed, the Community will amend its schedule to make 40,000 acre-feet available for System Conservation. Following such actions by the Community, CAWCD will reduce its calendar year 2017 Colorado River water order with Reclamation to ensure that the 40,000 acre-feet remains in Lake Mead under the SCIA.
  - b. Additional Water: Community will retain 40,000 acre-feet of CAP to be delivered to Gila River Indian Irrigation and Drainage District after May 15, 2017, but if Reclamation exercises its option for Additional Water by May 15, 2017, the Community will amend its schedule to make up to 40,000 acre-feet of Additional Water available for System Conservation. Following such actions by the Community, CAWCD will reduce its calendar year 2017 Colorado River water order with Reclamation to ensure that the Additional Water remains in Lake Mead under the SCIA.
5. Use of Water: The water is to be used for conservation efforts in Lake Mead to benefit the Colorado River System pursuant to the SCIA.

I appreciate your consideration of this proposal as part of the DCP+ Principal Agreement.

Sincerely yours,



Stephen R. Lewis, Governor  
Gila River Indian Community

Cc: Steven Hvinden  
Lisa Lance  
Linus Everling  
Don Pongrace  
Jason Hauter

# EXHIBIT D:

Community ICS Plan of Creation

**GILA RIVER INDIAN COMMUNITY ICS PLAN OF CREATION  
JANUARY 18, 2017**

The Gila River Indian Community (Community) proposes creating Intentionally Created Surplus (ISC) pursuant to this Plan of Creation (Plan).

**I. Project Description.**

The Community has an entitlement to 311,800 acre-feet per year (AFY) of mainstem Colorado River water delivered via the Central Arizona Project (CAP Water). During calendar year 2017 the Community will reduce the quantity of CAP Water requested for delivery from Lake Mead via the Central Arizona Project. The Community will conserve CAP Water by forgoing opportunities to deliver this water to Groundwater Savings Facilities (GSF) and Underground Storage Facilities (USF) where the Community would have otherwise stored water for the purpose of creating long-term storage credits, the future sale of which would have generated revenue. Further, the Community will also conserve CAP Water through increased pumping from on-Reservation groundwater sources in lieu of CAP Water and take such other actions as are necessary to ensure the viability of pumping from such sources of groundwater.

Specifically, under its current 2017 CAP Water Delivery Schedule the Community has scheduled delivery of all 311,800 acre-feet of its annual entitlement to CAP Water as follows:

<u>Location of Deliveries</u>	<u>Volume (in acre-feet)</u>
<b>Off-Reservation Deliveries: 3rd Party Use</b>	
Lease	54,000
Exchange	13,598
<b>Off-Reservation Deliveries: Storage</b>	
USF	-
GSF	87,951
<b>On-Reservation Deliveries</b>	
Irrigation	146,251
USF	10,000
<b>Total 2017 CAP Water Order</b>	<b>311,800</b>

With respect to the 146,251 acre-feet of CAP Water the Community currently has scheduled for delivery to its Reservation for on-Reservation irrigation, it originally scheduled a significant portion of this water for delivery to GSFs/USFs, but amended its water delivery order at the end of 2016 in order to have the ability to use some of this supply for ICS creation. The Community now intends to reschedule a portion of this water as follows:



**A. System Conservation:** The Community has entered into a 2017 System Conservation Implementation Agreement (SCIA) to provide between 40,000 and 80,000 acre feet of CAP Water to be retained in Lake Mead in order to reduce the risk of Lake Mead reaching critical reservoir elevations. Pursuant to the SCIA the Community:

1. Will amend its 2017 CAP Water Delivery Schedule to forgo delivery of 40,000 acre-feet of its CAP Water entitlement for calendar year 2017 thereby increasing the volume of water remaining in Lake Mead, and reduce the volume of water scheduled for on-Reservation irrigation by 40,000 acre-feet (which would leave a balance of 106,251 acre-feet scheduled for on-Reservation irrigation); and
2. Will amend its 2017 CAP Water Delivery Schedule to forgo delivery of an additional amount of water not to exceed 40,000 acre-feet of its CAP Water (Additional Water) entitlement for calendar year 2017 thereby increasing the volume of water remaining in Lake Mead, and reduce the volume of water scheduled for on-Reservation irrigation by 80,000 acre-feet (which would leave a balance of 66,251 acre-feet scheduled for on-Reservation irrigation); provided, that the United States exercises its option for the Additional Water by May 15, 2017, in accordance with the SCIA.

**B. ICS:** Pursuant to this Plan the Community intends to amend its 2017 CAP Water Delivery Schedule to forgo delivery of 50,000 acre-feet of its CAP Water entitlement for calendar year 2017 to create ICS, which would reduce the volume of water scheduled for on-Reservation irrigation by 50,000 acre-feet (which, when coupled with the anticipated reductions under the SCIA described in Paragraph I. A. above, would leave a balance of 16,252 acre-feet scheduled for on-Reservation irrigation).

**C. GSF/USF Storage:** If for whatever reason the Community does not enter into agreements in 2017 to forgo delivery of all, or some of, 130,000 acre-feet of its CAP Water intended for the creation of system conservation water and/or ICS, as described in Paragraphs I. A. & B. above, the Community:

1. Intends, in the event that only 40,000 acre-feet of water is left in Lake Mead under the SCIA and no water is left in Lake Mead under this Plan, to amend its 2017 CAP Water Delivery Schedule to reduce its use for on-Reservation irrigation by 90,000 acre-feet and increase its off-Reservation storage in USFs/GSFs by 90,000 acre-feet;
2. Intends, in the event that only 40,000 acre-feet of water is left in Lake Mead under the SCIA and 50,000 acre-feet is left in Lake Mead under this Plan, to amend its 2017 CAP Water Delivery Schedule to reduce its use for on-Reservation irrigation by 40,000 acre-feet and increase its off-Reservation storage in USFs/GSFs by 40,000 acre-feet; or
3. Intends, in the event that 80,000 acre-feet of water is left in Lake Mead under the SCIA but no water is left in Lake Mead under this Plan, to amend its 2017 CAP

Water Delivery Schedule to reduce its use for on-Reservation irrigation by 50,000 acre-feet and increase its off-Reservation storage in USFs/GSFs by 50,000 acre-feet.

**II. Term of the Activity.**

The Community will begin its ICS creation plan on or about April 1, 2017, and continue through December 31, 2017.

**III. Estimated Amount of ICS.**

The Community estimates that it will conserve 50,000 acre-feet of CAP Water.

**IV. History of Use of CAP Water.**

Not including leased or exchanged water, from 2012-2016 the Community used an average of 234,916 AFY of CAP Water (*i.e.*, actually delivered to Community on-Reservation agricultural activities or to GSFs/USFs for storage). The baseline for on-Reservation use and for off-Reservation GSF and USF will be calculated as the average of 2012-2016 CAP Water deliveries, which are shown in the table below:

Year	Deliveries to Off-Reservation USFs/GSFs	Deliveries to On - Reservation Irrigation	Deliveries to On-Reservation USF	Total
2012	198,874	74,304	-	273,178
2013	189,652	58,569	-	248,221
2014	170,592	56,843	-	227,435
2015	166,018	28,794 <sup>1</sup>	3,194	198,006
2016	163,295	59,181 <sup>2</sup>	5,265	227,741
<b>Average</b>	<b>177,686</b>	<b>55,538</b>	<b>1,692</b>	<b>234,916</b>

<sup>1</sup> CAP deliveries in 2015 were abnormally low because of localized rains during the growing season, which resulted in lower irrigation demand and decisions by on-Reservation farmers to forgo planting winter crops. As a rule, the Community strives to find alternative uses for Community CAP water that has been scheduled for delivery but that is not needed for beneficial use. In 2015, and to lesser degree in 2014, the weather conditions that resulted in reduced on-Reservation water needs also affected off-Reservation water users and, as a result, the Community was unable to find alternative uses and was forced to turn the water back to CAP.

<sup>2</sup> This includes 10,000 acre-feet of CAP Water left in Lake Mead pursuant to a 2016 System Conservation Implementation Agreement between the Community and the United States.

Based on the table above, the average volume of off-Reservation GSF/USF delivery is 177,686 acre-feet (Off-Reservation Baseline), the average volume of on-Reservation irrigation and USF delivery is 57,230 acre-feet (On-Reservation Baseline), and the Community's average total use, both on and off of its Reservation, is 234,916 acre-feet (Total Use Baseline).

**V. Methodology for Verification of the Amount of Conserved Water.**

The Community proposes the following process for Reclamation's verification of the amount of water conserved to create ICS.

**A. Schedule ICS:** Subject to the limitation expressed in Paragraph V. B. below, the Community will schedule 50,000 acre-feet of its CAP Water to be left in Lake Mead for ICS as described in Paragraph I.B. The CAP Water that the Community intends to leave in Lake Mead to create ICS under this Plan is currently scheduled to be used for on-Reservation irrigation as set forth in the table in Paragraph I. Pursuant to this Plan the Community intends to amend its 2017 CAP Water Delivery Schedule to forgo delivery of 50,000 acre-feet of its CAP Water entitlement for calendar year 2017 to create ICS, which would reduce the volume of water scheduled for on-Reservation irrigation by 50,000 acre-feet (which, when coupled with the anticipated reductions under the SCIA described in Paragraph I. A. above, would leave a balance of 16,251 acre-feet<sup>3</sup> for on-Reservation irrigation).

**B. Total Volume of Colorado River Available for ICS:** In calendar year 2017 the Community may request ICS in an amount equal to the lesser of 50,000 acre-feet or the Total Baseline, less:

1. CAP Water used on-Reservation in 2017;
2. CAP Water delivered to off-Reservation GSFs in 2017;
3. CAP Water delivered to off-Reservation USFs in 2017; and
4. CAP Water conserved pursuant to the SCIA described in Paragraph A.I. above.

**C. Verification of Ability to Use CAP Water in 2017:** By February 28, 2018, the tribe will provide Reclamation with a Certification Report containing the following Documentation:

1. The Community's written amended 2017 CAP Water Delivery Schedule referred to in Paragraph V. A. above;
2. The Community's letter submitted to CAWCD and Reclamation in which the Community provides documentation demonstrating that the 50,000 acre-feet of CAP Water to be used to create ICS:

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<sup>3</sup> In 2017 the Community will increase pumping from on-Reservation groundwater sources and take such other actions as are necessary to ensure the viability of pumping from such sources of groundwater as an in-lieu supply for CAP Water needed in prior years to irrigate lands with limited groundwater supply.

- a. Is available due to a reduction in the volume of CAP Water used on-Reservation for irrigation compared to the On-Reservation Baseline; and/or
  - b. GSFs/USFs were physically capable of accepting delivery of CAP Water, the Community is forgoing storage in calendar year 2017, and the Community intended, absent ICS, to utilize the available capacity for storage in 2017;
3. Documentation, attached to the Community's letter described in Paragraph C.2.b. above that will demonstrate that the Community could have had CAP Water delivered to GSFs/USFs in calendar year 2017, shall include letters from GSFs/USFs identified in the Community's certification letter that indicate GSF's/USF's:
- a. Total permitted storage capacity;
  - b. Total available storage capacity; and
  - c. Desire to take delivery of the Community's CAP Water in calendar year 2017, absent ICS; and
4. A letter agreement from CAWCD to amend its 2017 CAP Water order with Reclamation to reduce CAWCD's diversion by 50,000 acre-feet to ensure that the water intended to create ICS remains in Lake Mead.

**VI. Documentation Regarding Necessary Permits.**

The Community will provide Reclamation with the Community Water Storage Permits for all USFs/GSFs where the Community intends to store water in 2017, absent ICS.

## EXHIBIT E:

Letter from Department of Defense



ENERGY,  
INSTALLATIONS,  
AND ENVIRONMENT

## OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

3400 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3400

JAN 13 2017

The Honorable Estevan Lopez  
Commissioner  
United States Bureau of Reclamation  
1849 C Street, N.W.  
Washington, DC 20240

Dear Commissioner Lopez:

I would like to thank you and your team for updating my office on the Department of the Interior's ongoing drought response and planning activities for the Colorado River, including efforts by the States of Arizona, California, and Nevada to promote water conservation and lessen the risk of water shortage for the Lower Basin of the Colorado River. We understand the importance of these issues and are assessing our ability to respond to your request for support as you move forward on these efforts.

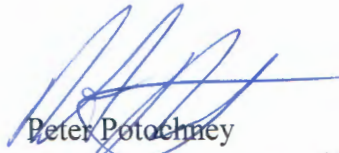
The recent discussions between our offices have helped us better appreciate the risks faced by all users of the Colorado River, including the many Department of Defense (DoD) facilities served by surface water from the Colorado River. If reservoirs continue to decline, the reductions may affect water delivery to DoD installations and, if water levels in critical reservoirs continue to decline, hydropower resources that serve those installations and areas across the Southwestern United States will also be adversely affected.

The DoD is very interested in enhancing the resiliency of the water and power supplies for our installations. In recent years, we have made significant progress in water conservation while also enhancing our reliance on sustainable energy supplies. We remain dedicated to further improving the water and energy security of our installations and increasing water and energy efficiency. Given the number of DoD facilities and neighboring communities that are dependent on Colorado Riverwater, we believe that ensuring the continued availability of that resource warrants action now.

We would like to become more involved in the regional discussions to improve the sustainability of Colorado River water supplies. We will also assess our authority and ability to contribute funding for the Drought Contingency Plan Plus (DCP+) Program effort in light of other demands on our limited budget resources. Any such contribution will need to be carefully analyzed in light of the risks faced by our installations based on current and projected estimates of water and power consumption, and must be first coordinated with our relevant congressional committees. As we assess our ability to provide funding, we will continue to work with your staff, led by Deputy Commissioner David Palumbo, in Washington, D.C. We would also like to work with your office to build relationships among our installation commanders, Reclamation staff, and water providers and leaders in Arizona to ensure water supply reliability in support of operations at DoD facilities. We ask that you provide us with a point of contact that we may work with to schedule appropriate discussions.

We believe that solutions like DCP+ can help to delay the onset of water shortages while we all seek to solve the hydrologic challenges of the Colorado River. We thank you for your continued leadership on western water issues and look forward to our continued and enhanced working relationship.

Sincerely,



Peter Potochney  
Principal Deputy Assistant Secretary of Defense  
(Energy, Installations, and Environment)  
Performing the Duties of the Assistant Secretary of Defense  
(Energy, Installations, and Environment)