



4332-90-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[RR03240000, XXXR4079G1, RX.03441994.0209100]

Central Arizona Project, Arizona; Water Allocations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice; request for comments.

SUMMARY: The Department of the Interior (Department) is proposing to reallocate non-Indian agricultural (NIA) priority Central Arizona Project (CAP) water in accordance with the Arizona Department of Water Resources' (ADWR) recommendation for reallocation, as provided by ADWR's letter dated January 16, 2014, to the Department. The Department is requesting public comments on the proposed decision. If the proposed decision is implemented, the Department would offer to enter into a subcontract with the entities listed in the table below, as recommended by ADWR.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send written comments concerning the proposed decision to Ms. Leslie Meyers, Area Manager, Phoenix Area Office, Bureau of Reclamation, 6150 West Thunderbird Road, Glendale, AZ 85306-4001.

FOR FURTHER INFORMATION CONTACT: Ms. Leslie Meyers, Bureau of Reclamation, Phoenix Area Office, 6150 West Thunderbird Road, Glendale, AZ 85306-4001; telephone 623-773-6211; facsimile 623-773-6480; email lmeyers@usbr.gov.

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (Fed Relay) at 1-800-877-8339 TTY/ASCII to contact the above individual during normal business hours or to leave a message or question after hours. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Proposed Decision:

The Department is publishing this proposed decision of the reallocation of NIA priority CAP water in accordance with the Arizona Water Settlements Act (Settlements Act) (Pub. L. 108-451, 118 Stat. 3478), and the Secretary of the Interior’s (Secretary) Final Decision of CAP Water Reallocation (71 FR 50449, August 25, 2006). The following table lists the entities recommended by ADWR to receive NIA priority CAP water and the quantities proposed to be reallocated to each.

ADWR Recommendation for Reallocation of NIA Priority CAP Water

Municipal Pool		Industrial Pool	
State of Arizona Entity	Amount in Acre-feet Per Year	State of Arizona Entity	Amount in Acre-feet Per Year
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 Company	1,124
EPCOR – Sun City West	1,000	Salt River Project	2,160
Town of Queen Creek (Acquired H2O Water Company)	4,162	Resolution Copper Mining	2,238
Town of Marana	515	Freeport-McMoRan-Sierrita Inc.	5,678

Apache Junction Water Utilities Community Facilities District	817		
City of El Mirage	1,318		
Town of Gilbert	1,832		
City of Buckeye (Formerly was Town of Buckeye)	2,786		
Johnson Utilities	3,217		
Central Arizona Groundwater Replenishment District	18,185		
Total NIA Priority CAP Water Reallocated to Municipal:	34,629	Total NIA Priority CAP Water Reallocated to Industrial:	12,000
Total NIA Priority CAP Water To Be Reallocated: 46,629 Acre-Feet Per Year			

Previous Notices Related to CAP Water:

Previous notices related to CAP water were published in the **Federal Register** at 37 FR 28082, December 20, 1972; 40 FR 17297, April 18, 1975; 41 FR 45883, October 18, 1976; 45 FR 52938, August 8, 1980; 45 FR 81265, December 10, 1980; 48 FR 12446, March 24, 1983; 56 FR 28404, June 20, 1991; 56 FR 29704, June 28, 1991; 57 FR 4470, February 5, 1992; 57 FR 48388, October 23, 1992; 65 FR 39177, June 23, 2000; 65 FR 43037, July 12, 2000; 67 FR 38514, June 4, 2002; 68 FR 36578, June 18, 2003; 69 FR 9378, February 27, 2004; and, 71 FR 50449, August 25, 2006. These notices and decisions were made pursuant to the authority vested in the Secretary by the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057, 43 U.S.C. 617), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), the Settlements Act, and in recognition of the Secretary's trust responsibility to Indian tribes.

Background of CAP Water Allocations:

In a Record of Decision (ROD) published on March 24, 1983 (48 FR 12446), the Secretary, among other actions, superseded and replaced the 1980 ROD (45 FR 81265, December 10, 1980), reiterated the allocations to Indian tribes reflected in that 1980 ROD, allocated CAP water for non-Indian municipal and industrial (M&I) uses, and allocated the remaining amount for NIA uses. Subject to certain conditions, the CAP water for Indian uses was allocated to 12 Indian tribes for irrigation use or for maintaining tribal homelands. Also subject to certain conditions, the CAP water for M&I uses was allocated based on the State of Arizona's 1982 allocation recommendations for non-Indian entities that provided an amount of CAP water for M&I use to certain non-Indian entities, with the remaining amount of CAP water allocated for NIA use. The CAP NIA water was allocated to 23 non-Indian irrigation districts or other agricultural entities as a percentage of the NIA water supply that was available in any given year.

Two-party CAP water service contracts were executed between the United States and individual Indian tribes in 1980 pursuant to the 1980 ROD. CAP non-Indian M&I water service subcontracts and CAP NIA water service subcontracts were executed with those entities desiring to enter into subcontracts for CAP water. The CAP water service subcontracts for the non-Indian M&I water and the NIA water are three-party subcontracts among the entity, the Central Arizona Water Conservation District (CAWCD), and the Bureau of Reclamation (Reclamation). Some of the entities that were allocated NIA water and M&I priority water elected not to contract for the offered allocations. After completing the initial subcontracting process, 29.3 percent of the NIA

water supply and 65,647 acre-feet of M&I water was not under contract.

Congress enacted the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (102 Stat. 2558) (SRPMIC Act). Pursuant to section 11(h) of the SRPMIC Act, the Secretary was required to request a reallocation recommendation from ADWR for the remaining NIA water that was not under contract. The Secretary was also required to reallocate the uncontracted CAP water for NIA use and to offer new or amendatory subcontracts for such water.

By letter dated January 7, 1991, ADWR recommended an allocation to the Secretary. The Secretary published a notice on June 20, 1991 (56 FR 28404), inviting public comments on the proposed reallocation of CAP water. After considering the public comments, the Secretary published a final decision on February 5, 1992 (57 FR 4470). That decision contemplated that new or amendatory CAP water service subcontracts would be offered soon thereafter.

CAP water service subcontracts for the reallocated water were not executed for several reasons, including but not limited to the following: (1) Some entities could not meet the financial feasibility requirements for receipt of CAP water; (2) lack of agreement on the form of the CAP water service subcontract, and (3) financial difficulties in the CAP NIA sector.

Beginning in the early 1990s, long-term utilization of the CAP water available for reallocation under the 1992 decision and of the uncontracted CAP M&I priority water was a central issue in negotiations to resolve various operational and financial disputes between Reclamation and CAWCD. After attempts at negotiations failed, water

contracting issues were included in litigation and the resulting stipulated settlement between the United States and CAWCD. To implement some of the conditions contained in the stipulated settlement, new Federal legislation was required.

After the 1992 decision but before Federal legislation was enacted, the Secretary published on June 4, 2002 (67 FR 38514), a notice of proposed modification to the 1983 decision. The 1983 decision provided that the M&I allocation can be made more firm by execution of feasible non-potable effluent exchanges with Indian tribes and the M&I allocation was subject to adoption of a pooling concept, whereby all M&I entities share in the benefits of effluent exchanges. The pooling concept provision was included in the CAP M&I water service subcontracts. The 2002 proposed modification to the 1983 decision was to delete the mandatory effluent pooling provision in M&I subcontracts with the cities of Chandler and Mesa, and from other M&I water service subcontracts upon request. That provision in the CAP M&I water service subcontracts was an impediment to effluent exchanges and effective water management in central Arizona. After review and consideration of the public comments, the final decision was published on June 18, 2003 (68 FR 36578), deleting the mandatory effluent pooling provision.

The Settlements Act was enacted on December 10, 2004, and provides, among other things, for: (1) A final allocation of CAP water, with a CAP supply permanently designated for Indian uses and a CAP supply designated for non-Indian M&I or NIA uses; (2) a reallocation by the Secretary of 65,647 acre-feet of currently uncontracted CAP M&I water to 20 specific M&I entities; (3) ratification of the Arizona Water Settlement Agreement (the “Master Agreement”) among the United States, ADWR, and CAWCD,

which provides a statutory-based framework to enable the CAP NIA districts to relinquish existing rights to the delivery of CAP NIA priority water under their CAP water service subcontracts, including their rights, if any, to the reallocated water; and, (4) a reallocation of the relinquished and uncontracted NIA water supply to various Arizona Indian tribes and ADWR for future M&I use.

On August 25, 2006, the Secretary published a final reallocation decision (71 FR 50449) that, among other things, reallocated the CAP NIA water and the uncontracted CAP M&I water. The August 2006 reallocation decision is summarized below:

The Secretary's decision reallocated up to 96,295 acre-feet of agricultural priority water per year to ADWR, pursuant to section 104(a)(2)(A) of the Settlements Act and subject to subparagraph 9.3 of the Master Agreement, to be held under contract in trust for further allocation pursuant to section 104(a)(2)(C) of the Settlements Act. Direct use of the agricultural priority water by ADWR is prohibited under the Master Agreement and this notice.

In accordance with section 104(a)(2)(C) of the Settlements Act, before water may be further allocated the Director of ADWR shall submit to the Secretary of the Interior a recommendation for reallocation. After receiving the recommendation, the Secretary shall carry out all of the necessary reviews for the proposed reallocation in accordance with applicable Federal law. If the Director's recommendation is rejected, the Secretary shall request a revised recommendation from the Director of ADWR and proceed with any reviews required.

The reallocation of agricultural priority water to ADWR pursuant to section

104(a)(2)(A) and section 104(a)(2)(C) of the Settlements Act is subject to the Master Agreement, including certain rights provided by the Master Agreement to water users in Pinal County, Arizona. The agricultural priority water reallocated to the ADWR shall be subject to the condition that the water retain its non-Indian agricultural delivery priority.

As required in Section 104(a)(2)(C)(i)(I) of the Settlements Act and the August 25, 2006 final reallocation decision, ADWR submitted to the Secretary a recommendation for reallocation of agricultural priority water. This recommendation was transmitted by letter dated January 16, 2014, and ADWR requested the Secretary carry out all of the necessary reviews of the proposed reallocation in accordance with applicable Federal law.

Reclamation prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and pursuant to Section 104 of the Settlements Act. Public scoping was initiated on November 30, 2015, with a newsletter that was sent to interested parties and published on Reclamation's website. Scoping comments were accepted via facsimile, email, U.S. mail, and in-person at the scoping meetings, which were held on December 8-10, 2015, in Phoenix, Casa Grande, and Tucson, Arizona, respectively. Reclamation received two public responses during this initial scoping period, one of which resulted in Reclamation honoring a request for a comment period extension to January 18, 2016.

In June 2016, Reclamation mailed Notices of Availability (NOA) of the Draft Environmental Assessment (EA) to Federal, state, and local agencies, Indian tribes, organizations, proposed recipients, and other interested stakeholders. A public meeting

was held on June 22, 2016, in Casa Grande, Arizona, and the commenting period closed on July 22, 2016. Reclamation conducted in-person consultation with the Tohono O’odham Nation on February 17, 2017, and with the San Carlos Apache Tribe on June 16, 2017. The draft EA was revised in response to the comments received. A NOA for the *Final Environmental Assessment – Arizona Department of Water Resources Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona Project Water in Accordance with the Arizona Water Settlements Act of 2004* was issued on November 15, 2019, and the *Final Finding of No Significant Impact – Arizona Department of Water Resources Recommendation for the Reallocation of Non-Indian Agricultural Priority Central Arizona Project Water in Accordance with the Arizona Water Settlements Act of 2004* was signed on November 8, 2019.

Rationale for Proposed Decision:

The Department is proposing to allocate CAP NIA water in accordance with ADWR’s recommendation. The ADWR recommendation covered the initial phase, reallocating 46,629 acre-feet per year of NIA priority CAP water of the 96,295 acre-feet per year to be reallocated, as shown in the table above. The total of 46,629 acre-feet per year of CAP NIA priority water in this phase is in two pools: (1) A municipal pool of 34,629 acre-feet for M&I 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. The rationale for the proposed decision is based on the following:

- (1) ADWR’s extensive public outreach, in consultation with Reclamation, to

interested parties regarding its recommendation.

- (2) An EA evaluating impacts of the proposed reallocation, in accordance with NEPA, and the resulting FONSI.

The Final EA and FONSI can be found on Reclamation's website at:

<https://www.usbr.gov/lc/phoenix/reports/reports.html>.

Request for Public Comments:

We request public comments on the proposed reallocation prior to the Department making a final decision. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Timothy R. Petty,

Assistant Secretary for Water and Science.

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