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### Non-Indian Agricultural Priority Central Arizona Project Water Reallocation Final Process and Evaluation Criteria February 2013

#### Introduction and Goals

On December 10, 2004, the Arizona Water Settlements Act, Public Law 108-451 (Settlements Act), was enacted. The Settlements Act ratified the Arizona Water Settlement Agreement (Agreement) between the United States, the Arizona Department of Water Resources (Department), and the Central Arizona Water Conservation District (CAWCD) and provided for the reallocation of 96,295 acre-feet of Non-Indian Agricultural Priority Central Arizona Project Water (NIA Priority CAP water) for municipal and industrial uses in the state of Arizona

Both the Settlements Act and the Agreement required the Secretary of the Interior (Secretary) to reallocate the 96,295 acre-feet of NIA Priority water to the Department "to be held under contract in trust for further allocation."<sup>1</sup> Both the Settlements Act and the Agreement also specified that the Director of the Department shall submit a recommendation for reallocation to the Secretary, and any reallocation shall be based on the Director's recommendation or revised recommendation.<sup>2</sup> The Agreement further provided that the Department develop eligibility criteria and make the NIA Priority water available for reallocation "at periodic intervals, starting in 2010."<sup>3</sup> On August 22, 2006, the Secretary reallocated the 96,295 acre-feet of NIA Priority water to the Department acknowledging that "before the water may be further allocated the Director of ADWR shall submit to the Secretary of the Interior a recommendation for reallocation."<sup>4</sup>

The Department has identified the following goals for this reallocation:

- 1) Reduce groundwater overdraft,
- 2) Provide an additional source of water to areas with limited physical availability of groundwater, and

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

<sup>2</sup> Settlements Act § 104(a)(2)(C); see also Agreement Paragraph 9.3.4. The Department has traditionally provided recommendations of allocations of CAP water to the Secretary, consistent with its authority in A.R.S. § 45-107.

<sup>3</sup> Agreement Paragraph 9.3.4.

<sup>4</sup> *Notice of Modification to the Secretary of the Interior's Record of Decision, Publication of a Final Decision of CAP Water Reallocation*, 71 Fed. Reg. 50449, 50451 (Aug. 25, 2006).

- 3) Meet the near-term demands for existing municipal water providers (not including irrigation districts that serve non-irrigation uses) and industrial users of groundwater or Excess Central Arizona Project (CAP) water that have permanent demands.

The Department has received letters of interest for this reallocation water in volumes that exceed the amount available for reallocation and expects that a greater volume will be requested through the application process. Therefore, requested volumes may not be fully met for all applicants in this process.

This reallocation is for NIA Priority water which has a lower priority than Indian and Municipal and Industrial (M&I) Priority CAP water. This water is expected to have reduced availability, especially during times when Arizona is affected by shortage operations on the Colorado River. The Department's analysis of the average availability of this 96,295 af of NIA Priority water predicts that an average of about 64,000 af will be available over the next 100 years, assuming a moderate development schedule on the mainstem of the Colorado River. This availability is expected to reduce to an average of about 58,000 af after 2030 due to projected increases in use for all Colorado River water users. Within this average availability over the next 100 years, it is anticipated that this NIA water supply will be fully available in some years, partially available in other years, and in some years it will not be available at all. Recipients of this reallocation will need alternate water supplies and the necessary infrastructure to use those alternate water supplies in order to meet future firm demands in years of reduced or no availability of this NIA Priority water.

### **Structure of the Reallocation Process**

The reallocation will be structured so that volumes of water will be available at periodic intervals as follows:

1. The Department will offer the 96,295 acre-feet of CAP NIA Priority entitlement to existing non-Indian M&I water providers and industrial water users in a tiered process with phases starting in 2013, 2021 and, if needed, in 2030. The timing will coincide with necessary actions required to meet requirements of the Agreement, as well as other considerations.

Different types of water users are eligible for this reallocation. Several different 'pools' have been created within this reallocation process to acknowledge these different types of water users and to allow applicants to compete more fairly within their own category.

2. First, the reallocation is divided between potential applicants within the three-county CAWCD service area (CAP service area), including the Central Arizona Groundwater Replenishment District (CAGR), and potential applicants outside the CAP service area. The Agreement provides that the Department "shall make [NIA Priority water] available for reallocation to non-Indian M&I water users *within* the State of Arizona."<sup>5</sup> Neither the Agreement, to which the State of Arizona, CAWCD, and Reclamation are parties, nor the Settlement Act limit the reallocation to the CAP service area.<sup>6</sup> Allocating CAP water outside the CAP service area is also consistent with state statute and with previous allocations. Section 48-3707(A), A.R.S. provides that "Water users outside the district may contract for a water supply from the central Arizona project directly with the secretary or with the district on the basis of paying costs allocated by the secretary." In 1983, the Secretary allocated CAP water to 13 entities outside the CAP service area.<sup>7</sup>

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<sup>5</sup> Agreement, Paragraph 9.3.4.2 (emphasis added).

<sup>6</sup> Compare Agreement, Paragraphs 9.3.4.3 and 9.3.4.4, in which the parties agreed to provide a right of first refusal for a volume of water in each of two specified areas.

<sup>7</sup> 48 Fed. Reg. 12446, March 24, 1983.

3. The full reallocation volume of 96,295 af has been divided into these two pools. Water demand studies and population projections for 2020 were analyzed with the final assessment indicating that approximately 18% of the state's population will be outside of the CAP service area and 82% will be within the CAP service area. This ratio was applied to the full reallocation volume to derive the distribution of 78,962 af to be available within the CAP service area and 17,333 af available for outside of the CAP service area.
4. A pool of 12,000 af has been identified for Industrial water users within the CAP service area. This volume was determined by applying an average percentage of industrial water demands compared to municipal water demands to the pool of water available for reallocation within the CAP service area. This pool of water will be made available for the 2013 phase of the reallocation and is part of the CAP service area reallocation amount of 78,962 af.
5. A pool of 34,629 af has been identified for M&I water providers within the CAP service area and the CAGR. CAGR member service areas and water providers that serve member lands can compete in the process, as well as the CAGR itself. This pool of water will be made available for the 2013 phase of the reallocation and is part of the CAP service area reallocation amount of 78,962 af.
6. Another pool of 17,333 af has been identified for M&I water providers within the CAP service area and the CAGR and will be made available in the 2021 phase of the reallocation. This pool is also part of the CAP service area reallocation amount of 78,962 af.
7. The amount identified for outside of the CAP service area (17,333 af) will be offered in the 2021 phase of the reallocation. Anticipated applicants in this category have indicated that this timing will allow for the technical, engineering, and financial planning that may be required to utilize this water supply. Whether the resulting acquisition of the entitlement is diverted from the Colorado River or utilized in an exchange for other locally available surface water supplies with an entity that has a right to that water, the acquired entitlement can be used to augment existing M&I water supplies to address near-term water needs. The Department will develop selection criteria and process details in a timeframe closer to the initiation of this phase of the process.
8. The Agreement provides that M&I water providers serving two defined areas in the Pinal AMA (the Central Arizona Irrigation and Drainage District (CAIDD) area and the Maricopa Stanfield Irrigation and Drainage District (MSIDD) area, as defined in Exhibits 9.3.4.3 and 9.3.4.4 in the Agreement) have a right of first refusal to 7.8% of the water in each phase of the reallocation for each area, up to 7,500 af for each area. A total of 15,000 af has been reserved for water providers in the CAIDD area and the MSIDD area, with 4,313 af reserved for each area for the 2013 phase of the reallocation. This total 15,000 af is within the CAP service area and is a segregated pool of water within the CAP service area reallocation amount of 78,962 af.
9. The Agreement provides that beginning in 2021, the remaining amount of the 15,000 af reserved for water providers in the CAIDD and MSIDD areas (6,374 af), plus any of the 4,313 af that had been previously offered to the CAIDD and MSIDD areas separately that has not been contracted, will be offered for reallocation to all water providers within either of those two areas under criteria determined by the Department.
10. The Agreement further provides that beginning in 2030, any water held for first refusal by water providers within the CAIDD and MSIDD areas and not yet contracted will be offered to the Pinal County Water Augmentation Authority consistent with their right of second refusal.
11. If NIA Priority water (other than the 15,000 af held for first refusal by the CAIDD or MSIDD areas) is not contracted during the 2013 and 2021 phases, a second phase of the 2021 reallocation may be initiated. This remaining NIA Priority water and the water management needs of the state will be assessed, and the reallocation process and criteria for this remaining water will be determined at that time. The Department will develop selection criteria and process details at a time closer to the initiation of this phase of the process.

## **Selection Criteria for 2012 CAP Service Area Reallocation**

The following criteria will be used to evaluate all applicants for the 2013 CAP service area reallocation phase of the NIA Priority Reallocation, unless otherwise specified.

1. Qualified applicants can include existing municipal providers (not including irrigation districts that serve non-irrigation uses) located within the CAP service area, industrial water users located within the CAP service area, and the CAGR D.
2. Qualified applicants must be able to demonstrate that the costs associated with acquiring and utilizing this supply have been analyzed and that there exists the ability and intention to meet these financial requirements.
3. Qualified applicants must demonstrate the ability to: (1) directly use this NIA Priority water, (2) store and recover, or (3) replenish this water in a manner consistent with the water management goals for the AMA.
4. Qualified applicants will need to provide a water management plan that demonstrates how they plan to utilize this water supply by 2020, and how they will manage the future shortages associated with this water supply. Applicants should describe the necessary infrastructure used to access this NIA Priority water supply. If an alternate water supply will be used, applicants shall discuss the source of this supply and the infrastructure to be used to access this alternate supply. All financial obligations associated with these water supplies and the necessary infrastructure shall be discussed within the financial analysis.
5. The Department will consider each applicant's Demand and Supply Imbalance projected for 2020 when recommending allocations. Demand and Supply Imbalance will be calculated by subtracting available renewable water supplies for 2020 from projected demands for 2020. Renewable supplies shall include all water supplies available to the applicant except groundwater and Excess CAP water. Applicants will be asked to submit their Demand and Supply Imbalance projections and the Department will substantiate the submittals using previously submitted and other available data commonly used in Department planning studies.
6. If an applicant's Requested Volume exceeds the Demand and Supply Imbalance for 2020, the Requested Volume will be reduced accordingly. For each pool of water identified for this phase of the reallocation, if the sum of all Requested Volumes for reallocation exceeds the available amount, the annual reallocation recommendation for each applicant will be distributed from the available reallocation amount on a pro-rata basis with the Requested Volumes of all qualified applicants in that pool.
7. For the CAIDD and MSIDD Pools (4,313 af each):
  - a. Municipal providers shall provide water to the CAIDD and/or the MSIDD areas identified in the Agreement Exhibits 9.3.4.3 and 9.3.4.4.
  - b. CAGR D is not eligible to compete for this pool of the reallocation.
  - c. Municipal providers serving the CAIDD area and/or the MSIDD area will be evaluated for an annual reallocation recommendation based on all of the criteria described in this document, including their Demand and Supply Imbalances for 2020.
  - d. If the Requested Volumes for these pools of water exceed the available amounts, the remaining Requested Volumes for each applicant will be included for evaluation under the Municipal Pool.

8. For the Industrial Pool (12,000 af):
  - a. Qualified industrial applicants will include currently authorized groundwater users and must demonstrate a Demand and Supply Imbalance for 2020 greater than 400 acre-feet per year.
  - b. Application requests must be for a specific use in a specified location.
  - c. An industrial user that receives water from a municipal provider may apply for this Industrial Pool of water if the requested amount is not also counted under the municipal provider's requested amount.
  - d. Applications will be evaluated based on the demonstration of the replacement of an actual groundwater use.
  
9. For the Municipal Pool (34,629 af):
  - a. Municipal providers, both public and private, and the CAGRDR will be evaluated in the same pool.
  - b. The Demand and Supply Imbalance for the CAGRDR will be calculated based on its projected actual 2020 replenishment obligation (not necessarily the Plan of Operation projection), not including its replenishment reserve requirements.
  - c. If a member service area or water provider serving a member land specifies that an allocation of this NIA Priority water will be used to reduce its reported Excess Groundwater use to the CAGRDR and is recommended to receive part of this NIA Priority water, CAGRDR's Demand and Supply Imbalance will be reduced accordingly.