



SENT VIA U.S. MAIL AND EMAIL

January 14, 2019

Director Thomas Buschatzke
Arizona Department of Water Resources
1110 W. Washington St.
Suite 310
Phoenix, AZ 85007

Re: CAWCD's Comments on Arizona ICS Exhibits Submitted to ADWR

Director Buschatzke,

The Central Arizona Water Conservation District (CAWCD) appreciates the opportunity to provide comments regarding the Extraordinary Conservation Intentionally Created Surplus (EC-ICS) exhibits being proposed by the Gila River Indian Community (Community), Colorado River Indian Tribes (CRIT), Mohave Valley Irrigation and Drainage District (MVIDD), and Welton Mohawk Irrigation and Drainage District (WMIDD). CAWCD's comments fall into two categories: (i) general comments applicable to all EC-ICS exhibits proposed pursuant to the Arizona ICS Framework Agreement and (ii) specific comments related to each draft EC-ICS exhibit. In addition, CAWCD is providing comments to clarify the appropriate quantification and verification of ICS and the relationship of the proposed exhibits to the draft Arizona ICS Framework Agreement and CAWCD's unquantified Section V mainstem Colorado River delivery contract.

GENERAL COMMENTS

1. Baselines are Essential to Establishing Reductions in Existing Consumptive Use. The 2007 Interim Guidelines ("Guidelines") establish the fundamental principle that creation of ICS must be the result of a verified and quantified reduction in existing consumptive use, through the investment in conservation activities. This principle is essential to protect all water users from the adverse impact of an entity reserving unused water for their future use. An accurate baseline of historic consumptive use by Arizona Section V Contractors and CAP Settlement Tribes desiring to create EC-ICS is essential to calculating true reductions to existing consumptive use, and hence, quantifying the volume of ICS created by conservation activities. The ADWR process has not yet provided guidance or a proposed a uniform process to establish what portion of an Arizona Section V Contractor's or CAP Settlement Tribe's Colorado River entitlement has a recent history of consumptive use.

Because of CAWCD's unquantified Section V Contract, CAWCD is acutely interested in a verifiable and consistent approach for calculating the volume of water with a recent history of consumptive use as the baseline for reductions due to conservation actions to create ICS in order to avoid adverse impacts to CAWCD's supply. Moreover, an accurate and appropriate baseline determination for water with a recent history of consumptive use is necessary for CAWCD so that it may provide its forbearance from diverting the creation or delivery of ICS by other Arizona Section V Contractors and CAP Settlement Tribes. Accordingly, CAWCD submits that ADWR must articulate a formula or criteria for determining a baseline for calculating existing consumptive use. Further, as part of the process pursuant to the Arizona ICS Framework Agreement, ADWR will need to establish an actual baseline number for each Arizona Section V Contractor and CAP Settlement Tribe desiring to create EC-ICS. CAWCD proposes ADWR adopt a baseline defined as - the rolling average calculated from the highest 4 years of consumptive use, plus verified conservation, including ICS, over the previous 5 years. This baseline will serve as an upper limit of existing consumptive use. Verified ICS plus verified consumptive use, as well as any verified system conservation, must not exceed the baseline value in any year. In conclusion, CAWCD submits that each Arizona Section V Contractor and CAP Settlement Tribe desiring to create EC-ICS be required to include in its proposed exhibit, a specific baseline volume of existing consumptive use, calculated pursuant to an agreed upon formula, with supporting historic consumptive use data.

2. Arizona EC-ICS Exhibits Should Reference the Arizona ICS Framework Agreement. The draft Arizona ICS Framework Agreement provides for the coordination and collaboration among ADWR, CAWCD, the Bureau of Reclamation, Arizona Section V Contractors and CAP Settlement Tribes for the creation, accumulation and delivery of Arizona EC-ICS. In addition, the draft Arizona ICS Framework Agreement describes the acceptable components for ICS delivery contracts with the Secretary of the Interior. Finally, the draft Framework Agreement provides for CAWCD's forbearance for exhibits attached to the Agreement, and future agreements consistent with the draft Framework Agreement. CAWCD submits that each proposed exhibit will need to explicitly reference it is developed pursuant to and consistent with the draft Arizona ICS Framework Agreement.

3. Defined Eligibility Criteria for Each Type of EC-ICS Program Is Necessary. The proposed EC-ICS exhibits fall into two broad categories: following programs (including full year, seasonal, and crop substitution), and demand reduction programs. CAWCD recommends that following programs be administered at the field level, with each enrolled field demonstrating irrigation in 3 out of the previous 5 years. For demand reduction programs, CAWCD recommends that eligibility be based on a conservation partner's rolling average of the 4 highest years out of the most recent 5 years of consumptive use, including verified conservation.

For the reasons stated above, CAWCD proposes that each of the proposed EC-ICS exhibits include the following:

- A baseline of existing consumptive use, calculated pursuant to an accurate and appropriate formula, establishing an upper limit of consumptive use. ICS and conservation programs will then be a reduction down from this baseline.
- A statement that the exhibit is developed pursuant to and consistent with the draft Arizona ICS Framework Agreement.

- Demonstration that the proposed EC-ICS program is consistent with defined eligibility criteria for the specific type of ICS program proposed, i.e., for fallowing programs, administration at the field level with each enrolled field demonstrating irrigation in 3 out of the 5 previous years.

COMMENTS ON INDIVIDUAL EXHIBITS – Additional comments on individual EC-ICS exhibits are as follows:

Gila River Indian Community:

The Community's characterization of its water entitlement and water delivery contract is inconsistent with the Arizona Water Settlements Act (the "Act"), the Gila River Indian Community Water Rights Settlement Agreement, and the Community's CAP Water Delivery Contract. The Community repeatedly uses the term "mainstem Colorado River water" and "Colorado River water" in its exhibit to describe its water delivery contract and water supply, notwithstanding the fact that nowhere in the Community's Water Settlement Agreement, its CAP Water Delivery Contract or the Arizona Water Settlements Act is the Community's water entitlement described as such. The Community has an entitlement to CAP water; its exhibit should accurately reflect this fact.

The description of several components of the Community's proposed EC-ICS exhibit are inconsistent with the language described in the draft Arizona ICS Framework Agreement. The Community's description of the proposed ICS delivery agreement should be revised to be consistent with the draft Arizona ICS Framework Agreement. The description of the annual EC-ICS creation amount is in excess of the annual creation limit for Arizona. Further, the description of the annual EC-ICS creation amount should be revised to be consistent with the draft Arizona ICS Framework Agreement. And, as outlined in the general comments above, the exhibit should reference the draft Arizona ICS Framework Agreement as the means to support verification that the Community's conserved water is not diverted by others.

The Community proposes a process for determining its recent history of CAP water use. The proposal is flawed in that it fails to establish an accurate and appropriate baseline of historic consumptive use. The proposal does not include the most recent year of use (2018) and it looks at only a portion of the Community's recent historic use as a basis to determine a baseline. As outlined above, CAWCD proposes ADWR adopt a baseline defined as - the rolling average calculated from the highest 4 years of consumptive use, plus verified conservation, including ICS, over the previous 5 years. This baseline will serve as an upper limit of existing consumptive use. Verified ICS plus verified consumptive use, as well as any verified system conservation, must not exceed the baseline value in any year. CAWCD encourages further discussion among ADWR, CAWCD, BOR and the Community to clarify and define an appropriate and accurate baseline of the Community's existing consumptive use of its CAP entitlement.

CRIT:

The methodology for quantifying conserved consumptive use is unclear as to whether the calculation is based on an average of consumptive use across CRIT farms or calculated directly from the consumptive use associated with the fields enrolled in the fallowing program. CAWCD recommends inclusion of an explicit reference that the calculation of conserved consumptive use is based on the fields enrolled in the fallowing program.

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The description of the calculation of consumptive use and diversion reduction is unclear relative to a consumptive use baseline. The exhibit should explicitly describe the calculation of the historical consumptive use baseline relative to diversions, and describe the upper limit of diversions as well as consumptive use.

MVIDD:

MVIDD's exhibit is somewhat vague in describing the quantification methodology it intends to use to quantify conserved consumptive use. CAWCD suggests that MVIDD amplify its description of how conserved consumptive use resulting from its proposed fallowing program will be quantified.

WMIDD – Land Fallowing Subcategory

CAWCD suggests the annual fallowing program described be consistent with the demonstration that the fields enrolled have an irrigation history of 3 out of the most recent 5 years.

The description of seasonal and crop basis fallowing are unclear as to the basis of eligibility. CAWCD recommends that the seasonal fallowing program requires demonstration that the enrolled fields were cultivated with full year crops for 3 out of the 5 most recent years. CAWCD recommends that the crop basis fallowing program requires demonstration the enrolled fields were cultivated with full season, non-hay crops from December – May for 3 out of the 5 most recent years.

WMIDD – Extraordinary Conservation programs that existed on January 1, 2006

WMIDD has not demonstrated that the lands described in the proposed exhibit have been recently irrigated or are enrolled in a verified conservation program. Therefore, the proposed conservation does not appear to meet the requirements of water with recent history of consumptive use. CAWCD is unable to support this proposal.

In conclusion, CAWCD appreciates the opportunity to submit these comments. CAWCD is extremely supportive of other Arizona Section V Contractors and CAP Settlement Tribes joining CAWCD in creating, accumulating and using ICS. We recognize that ICS is an important tool in Arizona's water management framework. We look forward to working together to resolve these comments so that an Arizona package of EC-ICS exhibits may be included in the Arizona ICS Framework Agreement, and submitted for approval through the basin states process.

Sincerely,


Theodore C. Cooke
General Manager