

DUPLICATE ORIGINAL

MEMORANDUM OF UNDERSTANDING BETWEEN THE JOINT LEAD AGENCIES AND THE NEW MEXICO CAP ENTITY

FOR

THE NEW MEXICO UNIT OF THE CENTRAL ARIZONA PROJECT ENVIRONMENTAL IMPACT STATEMENT

1. Introduction

Pursuant to the National Environmental Policy Act (NEPA), this Memorandum of Understanding (MOU) is between the Bureau of Reclamation, Lower Colorado Region, Phoenix Area Office (Reclamation), and the New Mexico Interstate Stream Commission (ISC), collectively referred to as the Joint Lead Agencies, and the New Mexico Central Arizona Project (CAP) Entity (Entity). The Entity is the Proponent of the project described herein.

The Colorado River Basin Project Act of 1968, Pub. L. 90-537, 43 U.S.C. Ch. 32 (1968 Act), as amended by the Arizona Water Settlements Act of 2004, Pub. L. 108-451 (AWSA), authorizes the Secretary to contract with water users in New Mexico for water from the Gila River, its tributaries and underground water sources. Section 212(d) of the AWSA reduced the amount of consumptive use in New Mexico provided under the 1968 Act to an amount not to exceed an annual average in any period of ten (10) consecutive years of 14,000 acre-feet of water. Reclamation and the ISC are the Joint Lead Agencies for environmental compliance regarding the NM Unit pursuant to Section 212(h) of the AWSA. The Entity was formed and designated for the purpose of, among other things, planning, designing, building, operating and maintaining the New Mexico Unit (NM Unit) of the CAP.

2. Purpose

The purpose of this MOU is to describe the roles, interactions, responsibilities, and authorities between the Joint Lead Agencies and the Entity in preparing the Environmental Impact Statement (EIS), and completing other related environmental compliance requirements for design, construction, operation and maintenance of the proposed NM Unit of the CAP. The NM Unit of the CAP is referred to herein as the "Project." The Joint Lead Agencies will prepare the EIS in accordance with NEPA and address both the effects of the proposed NM Unit and alternatives to provide additional water from the Gila River, its tributaries and underground water sources, including the San Francisco River, to the Southwest Water Planning Region of New Mexico.¹

¹ The Southwest Water Planning Region of New Mexico comprises Catron, Grant, Luna and Hidalgo Counties.

3. Joint Lead Agency Responsibilities

The Joint Lead Agencies have entered into a Memorandum of Understanding, signed on November 18, 2016, that defines the roles and responsibilities of the ISC and Reclamation as the Joint Leads in preparing an EIS and addressing related requirements in anticipation of the Record of Decision (ROD) required by Section 212(i)(2) of the AWSA for a NM Unit. The roles and responsibilities set forth in the Joint Lead Agency MOU are incorporated herein by reference. In addition, the Joint Lead Agencies shall:

- A. Consistent with their responsibilities, as Joint Lead Agencies, consider the data, environmental analyses, and technical studies of the Entity, giving particular weight to those topics on which the Entity is acknowledged by the Joint Lead Agencies to possess Project expertise. The Joint Lead Agencies will exercise their best professional judgment when considering whether and how to use information provided by the Entity. As appropriate, the Joint Lead Agencies shall ensure that the Entity's comments, including divergent views, are fully documented.
- B. Ensure that the Entity receives copies of the monthly progress reports to be provided by the Joint Lead Agencies to each other pursuant to the Joint Lead Agency MOU.
- C. Provide the Entity with copies of the environmental studies and NM Unit EIS documents identified in the Joint Lead Agency MOU, and any other necessary documents for review (normally 30 days), consistent with the Joint Lead Agencies' responsibilities.

4. Entity Responsibilities

The Entity shall, through its staff and contractors:

- A. Assist in the development of a Purpose and Need statement for the Project.
- B. Provide a detailed Proposed Action and assist, as appropriate, in the development and evaluation of alternatives for the Project.
- C. Participate in the scoping process, including making staff available for public scoping meetings, and assisting with the identification of significant issues.
- D. Participate as appropriate, upon invitation of the Joint Lead Agencies, in technical meetings, EIS coordination meetings, and other types of meetings.
- E. Provide input, upon request, for all documents and review materials within the time frames set for review.
- F. Provide any requested information and studies to the Joint Lead Agencies for review.

- G. Provide copies of reports commissioned by the Entity to the Joint Lead Agencies for consideration.
- H. Retain the right to comment on all issues related to the EIS through the normal public review and comment process.
- I. Promptly inform the Joint Lead Agencies of concerns related to the NEPA process.

5. Joint Responsibilities

- A. The Joint Lead Agencies may meet separately with any one or more cooperating agencies to discuss specific topics. The Joint Lead Agencies will inform the Entity of the results of these discussions.
- B. This MOU does not affect funding agreements already in place or to be executed among the Parties regarding completion of NEPA compliance. For costs not explicitly covered under such agreements, it is understood that the Entity is responsible for its own costs with regard to completion of tasks outlined herein such as attendance at meetings and other tasks.
- C. All Parties agree that work will proceed as expeditiously as possible. The Parties agree to comply with the EIS schedule once it is approved by the Joint Lead Agencies.

6. General Provisions

- A. Term and Termination. This MOU will become effective on the last signature date. This MOU shall remain in effect until terminated as provided herein or completion of a signed ROD, whichever is earlier.

Any Party may terminate this MOU by providing written notice to the other Parties, effective sixty (60) days following the date of delivery of such notice. If termination is not by mutual agreement of the Parties, a Party may only terminate this MOU if the Parties have gone through the dispute resolution process outlined below.

- B. No Delegation or Abrogation. The Entity recognizes that the Joint Lead Agencies each have statutory and contractual responsibilities that cannot be delegated. This MOU does not, and is not intended to, abrogate any of the Joint Lead Agencies' statutory or contractual responsibilities. This MOU shall not be construed to alter the Joint Lead Agencies' statutory or contractual responsibilities.
- C. Dispute Resolution. The Joint Lead Agencies and the Entity will use their best efforts to resolve issues in a manner agreeable to all Parties. The Joint Lead Agencies will document for the administrative record the nature of any dispute and the resolution

process used. If a disputed issue cannot be resolved in a collaborative and timely manner, the Joint Lead Agencies shall be responsible for final decisions involving the EIS or the NEPA process. The Entity retains the right to comment on all issues related to the Proposed Action and Alternatives, including those in dispute, through the normal NEPA public review and comment process.

- D. Modifying the MOU. This MOU may be modified by agreement of the Parties only through a written amendment signed by all the Parties hereto.
- E. Correspondence. For coordination purposes, copies of all written correspondence between the Parties, or from any Party to another person or entity pertaining to activities under the EIS shall be sent by the originator to the EIS Project Management Team and shall be made a part of the project files.
- F. Officials not to Benefit. No member of or delegate to Congress, resident Commissioner, Commissioner of the ISC, or any individual representing a member of the Entity shall personally receive any benefit that may arise from this MOU.
- G. Records Requests. The Parties agree to notify each other if any Party receives a request for any records related, directly or indirectly, to this MOU or to the NEPA process associated with the NM Unit. The Parties recognize that each Party must abide by its governing laws in responding to any such records request.
- H. Authorities Not Altered. Nothing in this MOU alters, limits, or supersedes the authorities or responsibilities of any party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond their respective authorities.
- I. Financial Obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum or funds in excess of authorization and appropriations available or in any other way take action in violation of the Anti-Deficiency Act (31 U.S.C. 1341), the New Mexico Procurement Code, NMSA 1978, Sections 13-1-21 to 13-1-199, or NMSA 1978, Section 6-5-3.
- J. Construction of this MOU. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by or against any Party to the MOU, or any third party.
- K. Immunity and Defenses Retained. Each party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU and cooperative work on the EIS.
- L. Management of Information. The Entity acknowledges that all data and information provided will become part of the official record and will be available for public review in

accordance with law. All draft documents are part of the official record and may be released by any party to this MOU to the extent required by the Freedom of Information Act, the Inspection of Public Records Act, or the Privacy Act.

M. Responsibility for Decision Making. The Joint Lead Agencies are responsible for all decisions involving preparation of the EIS and will make final decisions on issues arising during the NEPA process in accordance with the Joint Lead Agencies' MOU. While the Parties agree to make reasonable efforts to resolve procedural and substantive disagreements, the Entity acknowledges that the Department of Interior retains final responsibility for the decision identified in the ROD.

7. Notices

Notice given pursuant to the provisions of this MOU must be in writing and delivered via e-mail, fax, mail, postage prepaid, or hand-delivered personally to a Party's representative. The Parties' representatives for the purposes of this paragraph are as follows:

Bureau of Reclamation

Area Manager
Bureau of Reclamation
6150 W. Thunderbird Rd.
Glendale, AZ 85306-4001
623-773-6211
Lmeyers@usbr.gov

NM Interstate Stream Commission

Director
NM Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102
505-827-6103
Deborah.Dixon@state.nm.us

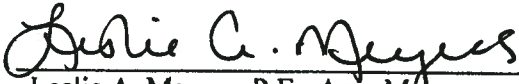
New Mexico CAP Entity

Chairman
NM CAP Entity
P.O. Box 446
Lordsburg, NM 88045
575-542-9341
Darrshannon52@gmail.com

8. Signatures

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the last date written below.

BUREAU OF RECLAMATION



Leslie A. Meyers, P.E., Area Manager
Phoenix Area Office

Date: 2/13/17

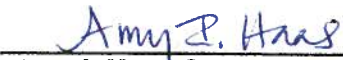
NEW MEXICO INTERSTATE STREAM COMMISSION



Deborah K. Dixon, P.E., Director

Date: 1/20/2017

Approved as to legal form



Amy I. Haas, General Counsel

Date: 1/20/17

NEW MEXICO CAP ENTITY



Darr Shannon, Chair

Date: 1/3/17