



GILA SETTLEMENT QUESTIONS AND ANSWERS

The settlement is very complex and the answers given here are only outlines for information purposes.

For further information please contact Craig Roepke with the New Mexico Interstate Stream Commission at, (505) 827-6160.

1. Q: What did New Mexico receive in the settlement?

A: In short, in any ten years New Mexico water users may elect to deplete 140,000 acre-feet of additional water from the Gila basin. The settlement also provides the ability to divert that water without complaint from downstream pre-1968 water rights in Arizona. New Mexico will receive \$66 million to \$128 million in non-reimbursable federal funding.

2. Q: Why did New Mexico receive this water? How is it related to the 1964 California v. Arizona U.S. Supreme Court Decree?

A: The 1968 Colorado River Basin Project Act apportioned New Mexico 180,000 acre-feet of Gila basin water in any ten-year period. That water is in addition to the water awarded New Mexico in the 1964 California v. Arizona US Supreme Court Decree. However, the 1968 Act did not provide a means for New Mexico to divert the Gila water without objection by senior downstream users. The 1968 Act provided no funding to help develop that water. The 2004 Arizona Water Settlements Act amends the 1968 Act and together with the Consumptive Use and Forbearance Agreement (CUFA), provides both the ability to divert without objection by downstream parties and the funding to help.

3. Q: What are the basic elements of the Consumptive Use and Forbearance Agreement (CUFA)? How does it work?

A: A diversion by a New Mexico Unit must include agreement by a number of parties: The party receiving the diverted Gila basin water (that is the New Mexico CAP Entity), the parties that forbear calling their Gila water in exchange for Central Arizona Project (CAP) water (those are the Gila River Indian Community "GRIC" and the San Carlos Irrigation District "SCIDD"), parties that could raise claims of impairment (being the Upper Valley Diverters "UVDs"), and the party that is responsible for effecting the exchange of Gila water for CAP water (the Secretary of the Interior). The CUFA is that necessary agreement between all those parties, and is ratified by Congress in the Arizona Water Settlements Act.

The CUFA sets forth the rights and responsibilities of the Forbearing Parties, the Secretary of Interior as Authorized Diverter, the New Mexico CAP Entity, and the UVDs. The CUFA describes the terms and

parameters under which diversions by the New Mexico Unit may occur without objection by the downstream users party to the settlement. It also describes how the Secretary of Interior will exchange CAP water for Gila basin water and how controversies may be resolved.

4. Q: What can the money be used for?

A: Section 212(i) of the legislation provides the funds for “paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor [the Gila San Francisco Water Commission], including costs associated with planning and environmental compliance activities and environmental mitigation and restoration.”

Funds may be used to cover costs of an actual water supply project, planning, environmental mitigation or restoration activities associated with or necessary for the project. The water supply project can be something other than a dam or diversion from a stream system as long as it develops water that meets a supply demand. Activities or alternatives that do not meet water supply demands, present or future, could not be funded by this legislation.

5. Q: Who will decide what is and what isn't an alternative that “meets a water supply demand?”

A: The New Mexico Interstate Stream Commission has the responsibility under state law to plan for and develop water in New Mexico. In this federal legislation, the Interstate Stream Commission has the responsibility to determine what alternatives meet water supply demand. In submission of stakeholder applications, the Interstate Stream Commission has required the applicant to describe what water demand would be met and how the application would meet the demand.

6. Q: Who will decide on the final selection of projects?

A: The AWSA mandates that the Commission make the final determination of contracts for water and allocation of funding.

7. Q: When will the Commission make the final selection?

A: The AWSA requires notice be given the Secretary of the Interior by December 31, 2014. To ensure adequate time, the schedule calls for Commission selection of proposed projects in May of 2014. This allows ample time for final input by the public, other state and federal agencies, and the legislature and appropriate modification by the Commission.

8. Q: How will the Commission decide on final selections?

A: A collaborative planning effort has been underway for over ten years. The Commission has recently received over forty applications for use of the water and funding in the AWSA. An evaluation panel will review and assess those applications. The Commission has also helped fund a NM First Town Hall process that will help identify needs and wants in the region. In the end, the Commission must make any final determination during an open, public meeting and only after consultation with the Gila San Francisco Water Commission, the citizens of Southwest New Mexico, and other affected interests.

9. Q: Who is on the evaluation panel?

A: To ensure a diversity of viewpoints and input, the panel contains one member each from New Mexico Environment Department; Energy, Minerals, and Natural Resources Department, the Office of the State Engineer, the Interstate Stream Commission, and the NM department of Game and Fish. The

panel members were chosen by their respective departments and bring experience and expertise in the critical areas of ecology, watershed restoration, conservation, water infrastructure, and hydrology.

10. Q: Why can't the public or stakeholders attend the deliberations of the evaluation panel?

A: There are a variety of viewpoints and experience represented on the evaluation panel. This diversity was chosen intentionally to ensure thorough consideration and assessment of applications. The forthright and candid debate that results would be compromised or diminished if applicants or interested parties were present. The evaluations would be subject to claims of substantial bias.

11. Q: How will the Commission ensure adequate public involvement?

A: The AWSA has been the subject of almost 300 public meetings in various venues since 2001. Going forward, the New Mexico Interstate Stream Commission has adopted a continuing process of public involvement, dissemination of information, and comment. The Commission has approved funding for a comprehensive website that will be open to the public and where all work orders, progress reports, presentations, evaluation results, etc. will be posted. The public's comments will be posted. Further, the Commission approved professionally-facilitated quarterly meetings open to all stakeholders. Those meetings will be used for presentations on ongoing work, evaluation results, etc. The facilitator will also try to help the participants move toward consensus..

12. Q: What criteria will the evaluation panel use in assessing stakeholder applications?

A: As requested by stakeholders, the evaluation is in a two-tier format. The attached Tier-1 and Tier-2 criteria and schedule are being used by the evaluation panel to assess over forty applications received from individuals, universities, research institutions, NGO's, and local governments. Tier-1 and Tier-2 criteria are attached.

13. Q: Why did the Commission try to weigh diversion projects ten times higher than conservation projects?

A: Neither the Commission nor its staff ever proposed weighing diversions projects differently or higher than conservation projects. Understandably, water users desire a differential weighting that favors development of additional water. The ISC staff put that concept before all the stakeholders to see if a compromise or other resolution could be found. The Commission never saw, heard of, or considered any differential weighting. The criteria adopted by the Commission provides equal weighting. In fact, a conservation program that would save 1,250 acre-feet would garner the same number of points as a diversion project that harvested 10,000 acre-feet. If anything, the criteria is weighted toward conservation.

14. Q: Does the Commission already have a project or projects in mind?

A: No. The Commission has not proposed any project or has any project or projects already in mind. The Commission has asked that ideas for projects come from the citizens in the region. Of the forty plus applications received, projects range from main stem dams to low-flow shower heads. Using the best available science, the Commission will seriously consider all suggested projects that can be funded under the AWSA.

15. Q: Is a regional consensus required before the Commission will select a project or projects?

A: The commission will continue, as it has for the last ten years, to facilitate a stakeholder consensus. The quarterly meetings will be used in part to try to build consensus. The Commission is also supporting a NM First Town Hall that will attempt to reach consensus on regional preferences and

priorities. However, the 2014 deadline in the AWSA will require the Commission to make its selections by mid-2014, whether a consensus has been reached or not. Please see also number 7 above.

16. Q: Does title to water and access to the money, or just access to the money expire in 2019?

A: New Mexico is guaranteed to receive \$66 million if the money is used for paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico. New Mexico must give notice to the Secretary of Interior by 2014 that New Mexico intends to build a project to exchange Gila River water in New Mexico for CAP water, or New Mexico loses access to the money above \$66 million and the right to contract with the Secretary of Interior for the exchange of CAP water for Gila Basin water. By 2019, the Secretary of Interior must have issued a record of decision under National Environmental Policy Act (NEPA) as to the viability of a chosen alternative. If the Secretary of Interior, through no fault of New Mexico, is not able to issue a decision by that time, the 2019 date may be extended to 2030.

17. Q: Can the \$34 million to \$64 million above the initial \$66 million be spent on anything other than a diversion project?

A: No. The funding above the \$66 million can only be used to build a project that exchanges Gila River water for CAP water. The funds above \$66 million will be disbursed from the U.S. Treasury on a construction cost-schedule basis.

18. Q: Can any portion of the 14,000 ac-ft/yr be diverted without going through NEPA?

A: No. The legislation requires that the New Mexico Unit Agreement between the New Mexico CAP Entity and the Secretary of Interior that will provide for the exchange of CAP water for any diversion from the Gila basin is subject to full NEPA constraints.

19. Q: Now that the Act is signed, is there any legal prohibition against leasing any portion of the 14,000 acre-feet to downstream users?

A: The settlement agreement does not provide for any leasing of the 14,000 acre-feet to downstream users. The 1968 Colorado River basin Project Act lists as one of its purposes supplying water to "western New Mexico." In addition, such a lease would be subject to the restrictions in state law relating to interstate transfers and leasing. Other practical problems exist. New Mexico is a very poor state compared to our neighbors. Such a lease arrangement would set a precedent for raids on New Mexico water not only by Arizona but by other states as well. Further, unless New Mexico built a project to divert the water, it would necessarily flow down to downstream users anyway. It is doubtful they would be willing to "lease" water that would be available at their doorstep for free.

20. Q: What operational or hydrologic modeling of the CUFA has been developed?

A: During negotiations, the Interstate Stream Commission conducted preliminary modeling to ensure that the bypass parameters and the terms of diversion by the New Mexico Unit did not impair New Mexico's ability to realize the 14,000 acre-feet of water while still protecting the Gila ecology. The best available science, including more detailed modeling, will be used to assess specific projects or alternatives.

21. Q: Who will award contracts for the 14,000 acre-feet?

A: The CUFA provides that the State of New Mexico, through the New Mexico Interstate Stream Commission, will form or designate the New Mexico CAP Entity or Entities. The New Mexico CAP Entity will enter into a contract with the Secretary of Interior to divert the water. Section 212(d) of the legislation provides that the New Mexico Interstate Stream Commission will approve any contract between the New Mexico CAP Entity and the Secretary of Interior. The New Mexico CAP Entity and how water gets to the end users are not defined at this time.

22. Q: Who will own the contracted 14,000 acre-feet of water diverted in New Mexico?

A: The CUFA allows the New Mexico Unit to divert up to 140,000 acre-feet of water from the Gila River during any ten-year period. Under the CUFA, the New Mexico CAP Entity will have a perpetual contractual right to use this additional Gila basin water. The Secretary of Interior will also enter into an agreement with the Forbearing Parties (GRIC and SCIDD) to receive CAP water instead of the Gila River water diverted by the New Mexico Unit.

23. Q: Who will operate and manage any facility constructed to divert the contracted 14,000 acre-feet?

A: The Secretary of Interior (through the Bureau of Reclamation) is tasked with design, construction, and operation of the New Mexico Unit. The legislation provides that upon request by the State of New Mexico, the Secretary of Interior shall transfer to the New Mexico CAP entity responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those functions. However, the Secretary of Interior will remain responsible to the Forbearing Parties and the UVDs for ensuring the diversion is in compliance with the CUFA.

24. Q: What is the plan for environmental compliance?

A: The legislation designates the Bureau of Reclamation as the lead federal action agency and provides that the State of New Mexico through the Interstate Stream Commission may elect to serve as joint lead. The Bureau (and the ISC) will plan the formal environmental compliance activities. The Commission encourages parties in Southwest New Mexico to quickly begin the meaningful interaction, studies, and consensus required to minimize the time and effort required by environmental compliance.

25. Q: Who will be responsible for any harmful effect to the ecology of the Gila and San Francisco Rivers that might result from diverting the contracted water?

A: The Secretary of the Interior is responsible to ensure operations of the New Mexico Unit conform to federal environmental mandates; i.e., operations of the New Mexico Unit would have to conform to those approved in the Record of Decision issuing from an Environmental Impact Statement (EIS).

26. Will it be difficult for New Mexico to actually divert the additional water in the AWSA without harming the environment?

A: Modeling has estimated that New Mexico could divert the full allocation of water under the AWSA without touching any water until the flows reached 150 cubic feet per second (cfs), and then only taking a fraction of the flows above that amount. The median flow on the Gila at the Gila near Gila gage is only 73 cfs. The maximum diversion under the CUFA is 350 cfs. That amount won't modify the effects of flood flows. It appears that diversions under the CUFA will have very little if any effect on ecologic functionality.

27. Q: What will be the priority date of the contracted water? How will the priority date be established?

A: In the 1968 Colorado River Basin Project Act, additional diversions in New Mexico would be junior to all Gila rights existing as of September 30, 1968. However, the Bypass Parameters and terms of the New Mexico Unit diversion in the CUFA (2004 AWSA) allow diversions without objection by senior water rights holders as long as the diversions are in conformance with the CUFA. In other words, New Mexico has a firm contractual right, ratified by Congress, to divert the additional water in perpetuity without senior calls.

28. Q: Is it required that New Mexico pay for the capital costs of the water delivered to the New Mexico CAP Water Bank? Are there exceptions?

A: Section 212(e) of the legislation states: "the New Mexico CAP entity shall be responsible only for its share of operations, maintenance, and repair costs. No capital costs attendant to other Units or portions of the Central Arizona Project shall be charged to the New Mexico CAP entity."

29. Q: What CAP water is available for purchase and credit to the New Mexico CAP Water Bank? How will purchases be funded?

A: The water to be exchanged for the New Mexico Unit diversions has the first priority on the CAP. The New Mexico CAP Entity must pay for the operations, maintenance, and repair costs associated with the CAP water exchanged for diversions in the Gila basin by the New Mexico Unit.

30. Q: Is there any kind of map of the major groups of water rights governed by the CUFA and of key flow measurement points?

A: See the attached "Upper Gila River Features Map".

Upper Gila River Features

(schematic, not to scale)

