

2012 REPORT

by

THE NEW MEXICO INTERSTATE STREAM COMMISSION

to the

NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

on

THE 2004 ARIZONA WATER SETTLEMENTS ACT

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EXECUTIVE SUMMARY

Mr. Chairman and Members of the Committee,

This report presents the current and anticipated planning efforts and associated work that will take place under the Arizona Water Settlements Act (AWSA) over the next two years.

The AWSA

The AWSA was signed into federal law in December 2004. The AWSA allocates to New Mexico up to \$128 million in non-reimbursable federal funding and an annual average of 14,000 acre-feet of additional water from the Gila Basin, a 47% increase over New Mexico's current Gila apportionment. Sixty-six million dollars of the funding can be used for a New Mexico Unit to develop the new water. The \$66 million can also fund other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico. The remaining \$62 million may only be disbursed for construction of a New Mexico Unit.

The AWSA requires that the new Gila Basin water be consumed in New Mexico. Leasing any of the 14,000 acre-feet of Gila water outside New Mexico is not permitted. New Mexico must inform the U. S. Secretary of the Interior by December 31, 2014 as to whether New Mexico will utilize any of the 14,000 acre-feet of additional water. If New Mexico does not choose to develop any of the additional water, it will continue to flow to Arizona and up to \$62 million of the federal funding will be forfeited.

The Planning Process

To date, there have been over 200 public meetings on the AWSA, conducted in various venues throughout the region. In September 2007, the Southwest New Mexico Stakeholders Group (SWNMSG) was formed to reach a consensus among stakeholders on projects for use of the 14,000 acre-feet of water and federal funding in the AWSA. After several years of work, the SWNMSG was not able to find consensus on a small number of projects.

Consequently, in the spring of 2011, the ISC began its own two-tiered evaluation process of forty-one project proposals submitted by stakeholders. The ISC established an Evaluation Panel that reviewed and ranked the 20 proposals that passed Tier-1. On February 29, 2012, the ISC approved sixteen projects for further assessment, integration, and/or refinement. See Figure 1 for locations of the selected projects. The Commission also approved additional study of wetlands restoration and agricultural conservation.

Next steps

New Mexico must inform the Secretary of the Interior by December 31, 2014 if New Mexico will utilize any of the additional AWSA water Congress allocated to New Mexico. To provide ample opportunity to gather final input from stakeholders, state and federal agencies, local governments, the legislature, and the general public, staff will recommend the ISC make a preliminary selection of projects in mid-2014, and a final selection in November 2014.

Each of the remaining sixteen proposals requires comprehensive assessments of technical feasibility, legal feasibility, economic costs and benefits, and ecologic impacts. In response to stakeholder requests, some work is underway or in the contracting process for surveys of cropping patterns and agricultural conservation, GIS modeling, wetlands studies, and climate change projections.

Budgeting from the New Mexico Unit Fund

In January 2012, the New Mexico Unit Fund (the Fund) received \$9.04 million disbursed by the Bureau of Reclamation pursuant to the AWSA. Identical sums of monies will be deposited in the Fund in January 2013 and January 2014. ISC has budgeted \$150,000 of the \$9.04 million currently in the Fund into the ISC operating budget for 2.5 FTE's and supporting costs. The ISC has also budgeted \$1.5 million to support contractual services for AWSA work in FY12 and FY13 for engineering, hydrologic, geologic, ecologic, and economic assessments of proposals. Additional funding may be budgeted if necessary.

In FY13, the ISC operating budget will include another \$264,000 from the Fund for 2.5 FTE and supporting costs. The ongoing agricultural conservation and wetland studies will be continued and expanded. As scopes of work are finalized, additional funding may be budgeted if required.

Public Involvement

The ISC will continue its comprehensive process of public involvement, including facilitated quarterly public meetings. The ISC has also created a website dedicated to the New Mexico portion of the AWSA (www.nmawsa.org). All scopes of work, reports, and ongoing efforts will be posted there.

Finally, the ISC has convened a smaller group composed of fifteen members from local governments and stakeholder interests to provide representative, broad-based input on specific issues. The composition of this "Input Group" includes local governments, agricultural interests, municipalities, and environmental NGO's.

Priority Concerns

New Mexico, Arizona, the U.S. Secretary of the Interior, and senior downstream water users agreed to the terms of the Consumptive Use and Forbearance Agreement (CUFA), ratified by Congress in the AWSA. The CUFA gives New Mexico a contractual right to divert and consume the additional 14,000 acre-feet of new Gila water without objection by senior downstream water users.

The water delivered through the Central Arizona Project in exchange for New Mexico depletions under the AWSA is the senior priority on the CAP and represents less than 1% of the water currently delivered every year through the CAP. Both the ability of New Mexico to divert and consume the annual average of 14,000 acre-feet of additional water from the Gila Basin and the availability of the exchange water to effect those diversions and depletions of new Gila water were secured in the AWSA.

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2012 REPORT BY THE NEW MEXICO INTERSTATE STREAM COMMISSION TO THE NEW MEXICO LEGISLATIVE FINANCE COMMITTEE ON THE 2004 ARIZONA WATER SETTLEMENTS ACT

This report presents a summary of the extensive planning process the New Mexico Interstate Stream Commission (ISC) has undertaken to secure New Mexico's benefits under the 2004 Arizona Water Settlements Act, or "AWSA." Also discussed are the current and anticipated planning efforts and associated work that will take place over the next two years.

The AWSA

The AWSA was signed into federal law in December 2004. The AWSA allocates to New Mexico up to an annual average of 14,000 acre-feet of additional water from the Gila Basin and up to \$128 million in non-reimbursable federal funding. This 14,000 acre-feet of new water represents a 47% increase over New Mexico's current apportionment of water from the Gila Basin. Sixty-six million dollars of the funding can be used "for the purpose of 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, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration."¹ The remainder of the federal funding, up to \$62 million, would be disbursed on a construction cost-schedule basis only for construction of a New Mexico Unit.

The AWSA requires that the 14,000 acre-feet of new Gila Basin water be consumed in New Mexico (see AWSA Section 212(d) attached). Neither the AWSA nor the Consumptive Use and Forbearance Agreement (CUFA)² permit leasing any of the new 14,000 acre-feet of Gila water outside New Mexico. New Mexico must inform the U. S. Secretary of the Interior by December 31, 2014 as to whether New Mexico will utilize any of the 14,000 acre-feet of additional water. Additionally, if New Mexico does not choose to develop any of the additional water, up to \$62 million of the federal funding is forfeited, and the additional water will continue to flow to and be depleted in Arizona.

The Planning Process

The ISC began a planning process many years ago. The first public meeting regarding the AWSA was held in Silver City in the late spring of 2001, almost four years before the AWSA was signed into law in December 2004. To date, there have been over 200 public meetings on the AWSA, conducted in various venues throughout the region.

In 2005, the Gila San Francisco Coordinating Committee (GSFCC) was formed. The GSFCC was composed of representatives of the Office of the Governor, the Bureau of Reclamation, the Gila San Francisco

¹ The successor to the Southwest New Mexico Water Study Group is the Gila San Francisco Water Commission. A "New Mexico Unit" is any facility that develops any of the additional water. The "Southwest Planning Region" is composed of Luna, Grant, Hidalgo, and Catron counties.

² The CUFA is an agreement signed by Arizona, New Mexico, the U.S. Secretary of the Interior, and Arizona water users and others that protects and firms New Mexico's ability to develop the 14,000 acre-feet.

Water Commission, the US Fish and Wildlife Service, the Interstate Stream Commission (ISC), and later the New Mexico Department of Game and Fish. The purpose of the GSFCC was to develop baseline information, especially as to any impacts on endangered species that might occur from development of the additional AWSA water. The GSFCC held a number of meetings open to the public, science forums, and began creating a decision support model to aid building consensus. In late 2005 the Technical Subcommittee of the GSFCC, composed of state and federal agencies and stakeholders, crafted a plan of integrated basic scientific studies. In 2006, the legislature appropriated full funding for those studies, but the appropriation was vetoed.

In September 2007, the Southwest New Mexico Stakeholders Group (SWNMSG) was formed. The SWNMSG's purpose was to reach a consensus on a small set of projects for use of the 14,000 acre-feet of water and federal funding allocated to New Mexico in the AWSA. In November 2010, the SWNMSG suggested fifty-five projects to the ISC. The ISC asked it to reduce the number of projects to a workable size. The SWNMSG was not able to find consensus on a smaller set of projects.

The ISC consequently began its own two-tiered evaluation process in the spring of 2011. Any stakeholder, tribe, federal or state agency, or local government was encouraged to submit proposals. The ISC crafted the process and criteria for the evaluation process with input from stakeholders and local governments in the region. Forty-one project proposals were accepted from May 2011 to June 2011. To evaluate and rank the 41 proposals submitted, the ISC established an Evaluation Panel with one representative each from the New Mexico Environment Department; the Energy, Minerals and Natural Resources Department; the Office of the State Engineer; ISC; and the Department of Game and Fish. Twenty proposals met the Tier-1 criteria and passed to the Tier-2 ranking process.

The ISC staff, considering the ranking and comments of the evaluation panel, the independent rankings of the Gila San Francisco Water Commission, the results of the New Mexico First Gila Town Hall, and hundreds of hours of public comment before the Commission and in public meetings, recommended sixteen proposals for further assessment, refinement, or combination. On February 29, 2012, the ISC approved the staff recommendations. The sixteen projects are grouped in five categories: municipal conservation (1 project), diversion and storage (3 projects), effluent re-use and municipal infrastructure (4 projects), watershed restoration (5 projects), and agricultural infrastructure improvements for conservation (3 projects). Figure 1 presents the categories and general locations of the selected projects. The Commission also approved additional study of wetlands restoration and agricultural conservation.

Next steps

To provide the Commission with the information needed to make that informed and considered decision, a large amount of work must take place between now and mid 2014. Each of the remaining sixteen proposals will require assessments of technical feasibility (engineering, hydrology, geomorphology, geology, etc.), legal feasibility (compliance with the AWSA, with other federal statutes, with New Mexico statutes, etc.), economic costs and benefits, and ecologic impacts (protection of the

environment, endangered species impacts, watershed health, etc.). Should a New Mexico Unit to develop the new 14,000 acre-feet of Gila water be selected in 2014 as a project for implementation and funding, the AWSA requires initiation of compliance with all federal environmental mandates upon signing of the New Mexico Unit Agreement by the Secretary of the Interior.

Some of the work to assess the technical, ecologic, economic, and legal feasibility of proposed projects has begun or is in the planning/contracting stages. For example:

- In response to stakeholder requests to study agricultural conservation, the ISC has contracted with a consultant to survey cropping patterns and report if a transition from higher water use/lower return crops to lower water use/higher return crops could be accomplished, and if so, what economic and environmental benefits might accrue. The ISC is also drafting scopes of work for studies to quantify water use increase or decrease attendant to conversion from flood irrigation to drip irrigation in the Deming area.
- To ensure the five watershed proposals are properly and thoroughly assessed, experts from the University of New Mexico and the New Mexico Forest and Watershed Institute at Highlands University will provide the ISC with guidelines for choosing, implementing, monitoring, maintaining, integrating, and overseeing watershed restoration projects. The Forestry division of the Energy, Minerals, and Natural Resources department has been invited to assist.
- Doctoral students will produce GIS/watershed models, wetlands surveys, and other ecologic assessments. Their deliverables will be in the form of published, peer-reviewed papers that will inform the ISC's assessment of related proposals.
- The ISC is also negotiating assessments of impacts from climate change with experts in that field.

New Mexico must inform the Secretary of the Interior by December 31, 2014 if New Mexico will utilize any of the additional AWSA water Congress allocated to New Mexico. Because of this looming deadline, the process going forward can no longer be only a planning process. It must be clearly focused on making an informed and considered decision.

The ISC's current planning schedule calls for final project selection by late spring of 2014. To provide ample opportunity to gather final input from stakeholders, state and federal agencies, local governments, the legislature, and the general public, staff will recommend the schedule be modified for preliminary selection in mid-2014, and ISC final selection in November 2014. Final project selection in November will still allow timely transmittal of New Mexico's intentions to the Secretary of the Interior by the December 2014 deadline.

Budgeting and Fiscal Report

During its 2011 session, the New Mexico Legislature passed H.B. 301, creating the New Mexico Unit Fund (the Fund) in the State Treasury. The 2011 New Mexico Unit Fund Act requires the Interstate Stream Commission ("ISC") to report by November 15th every year to the Interim Committee on Water and Natural Resources and to the Legislative Finance Committee on the following three points:

- (1) The status of the New Mexico Unit Fund;
- (2) The distribution of money from the New Mexico Unit Fund to implement the purpose of the Fund pursuant to the Act; and
- (3) Proposed uses and levels of funding projected for the following fiscal year.

2011 N.M. Laws, Ch. 99, NMSA 1978, § 72-14-45 (2011). Included here is the ISC report to the Legislative Finance Committee for 2012.

1. Status of the New Mexico Unit Fund

In January 2012, pursuant to the AWSA, the Bureau of Reclamation disbursed \$9.04 million in the Fund. Identical sums of monies will be deposited in the Fund in January 2013 and January 2014.

2. Distribution of money from the Fund to implement the purpose of the Fund pursuant to the Act

For the last half of FY12, ISC has budgeted \$150,000 of the \$9.04 million in the Fund into the ISC operating budget for 2.5 FTE's and supporting costs. The ISC has also budgeted \$1.5 million to support contractual services for AWSA work in FY12 and FY13. That work will include engineering, hydrologic, geologic, ecologic, and economic assessments of proposals. As detailed scopes of work are crafted, additional funding may be budgeted.

3. Proposed uses and levels of funding projected for the following fiscal year

In FY13, the ISC operating budget will include another \$264,000 from the Fund for 2.5 FTE and supporting costs. Any unexpended balances from either the operating budget or the contractual services budget will revert to the Fund. The ongoing agricultural conservation and wetland studies will be continued and expanded. As we craft scopes of work, additional funding may be budgeted if required.

In FY14, engineering, hydrologic, geomorphic, ecologic, wetlands, watershed, economic, and agricultural conservation assessments and work must be completed. In addition, if a New Mexico Unit is anticipated, the ISC must complete a study to confirm that those who would contract for the water are willing and able to pay local cost shares.

Public Involvement

Through the completion of this planning and decision process, the ISC will continue its comprehensive process of public involvement. To ensure all stakeholders and the public are afforded opportunity for input and comment, ISC will hold facilitated quarterly public meetings throughout the planning process. The ISC has also created a website dedicated to the New Mexico portion of the AWSA (www.nmawsa.org). All scopes of work, reports, and ongoing efforts will be posted there as well.

Finally, the ISC has convened a smaller group composed of fifteen members from local governments and stakeholder interests to provide facilitated input on specific issues as needed. This “Input Group” will provide representative, broad-based input to the ISC, but is not focused on reaching consensus. The composition of the Input Group is as follows: 1 representative each from Luna, Grant, Hidalgo, and Catron Counties, 1 representative from the Town of Silver City, 1 representative from the City of Deming, 2 representatives from the environmental interests, 1 representative from the mining industry, 2 representatives from farming interests, 2 representatives from ranching interests, and 2 representatives from the business community. Each entity or interest chose its own representative(s). To date, the Input Group has met once, and provided the ISC with over 150 questions related to the selected projects that the group felt should be asked and answered over the next two years. The ISC is scheduling a second meeting of the Input Group in June 2012.

Priority Concerns

New Mexico was first allocated the additional water from the Gila Basin in the 1968 Colorado River Basin Project Act (CRBPA). However, the priority of this additional water in the 1968 CRBPA was set at September 30, 1968, a date junior to many downstream Arizona water rights. The junior 1968 priority date made use of New Mexico’s additional water very difficult. The primary focus in negotiating New Mexico’s portion of the 2004 AWSA was to ensure the additional Gila water in the 1968 CRBPA became “wet water” that New Mexico could develop with certainty.

In the 2004 AWSA, New Mexico, Arizona, the U.S. Secretary of the Interior, and senior downstream water users agreed to the terms of the Consumptive Use and Forbearance Agreement (CUFA). In the AWSA Congress ratified the CUFA. The CUFA gives New Mexico a contractual right to divert and consume the additional 14,000 acre-feet of new Gila water without objection by senior downstream water users.

The terms of the CUFA include strict constraints on diversion and consumption of any new Gila water. Table 1, Bypass Flows, presents the minimum flows, by month, that must be bypassed before New Mexico may divert any of the AWSA water. New Mexico negotiated those minimum bypass flows with senior downstream water users. In the CUFA, the holders of those senior rights have agreed that bypassing those minimum flows (and meeting other constraints in the CUFA) protects their senior rights. As long as New Mexico complies with the terms of the CUFA, the holders of senior downstream water rights – and the Secretary of Interior – have agreed that New Mexico may divert and consume the 14,000 acre-feet of additional water without objection. In addition, the Arizona signatories agreed to use their own water to make whole any non-signatories who could bring a valid claim of impairment against New Mexico. In effect, New Mexico may divert the additional 14,000 acre-feet without threats of a priority call.

Figure 2 is a schematic of the relative locations of the signatories to the CUFA, showing the downstream senior users (Gila River Indian Community, San Carlos Irrigation and Drainage District, and Upper Valley Diverters, etc.). Because the CUFA provides that New Mexico may divert the additional AWSA water only when there are river flows in excess of amounts required to meet existing senior downstream

rights, it is unlikely that priorities will ever play a role in this matter. During negotiations, the ISC modeled the effects of those terms of diversion and found that, in any historical running ten-year period, New Mexico could realize the annual average of 14,000 acre-feet of additional water allocated in the 2004 AWSA while fully complying with both the AWSA and the CUFA.

For New Mexico to obtain the additional water from the Gila Basin, the AWSA requires the Secretary of the Interior to implement an exchange, through the Central Arizona Project, of an amount of mainstem Colorado River water equal to the additional Gila Basin water depleted in New Mexico. Concerns have been raised that drought shortages could prevent that exchange. One provision in the 1968 CRBPA (Section 304 (e)) sets the priority of that exchange water. The provision states that in case of a shortage or reduction on the Colorado River, users who have yielded water from other sources in exchange for mainstem Colorado River water shall have the first priority on the Central Arizona Project. The seniority of the exchange water is not modified by the 2004 AWSA. If shortages on the Colorado River do occur, as well they might, the 14,000 acre-feet of mainstem water necessary to effect New Mexico's exchange will have the first priority. By way of scale, the annual average of 14,000 acre-feet of exchange water represents less than 1% of the water currently delivered every year through the Central Arizona Project.

Both the ability of New Mexico to divert and consume the annual average of 14,000 acre-feet of additional water from the Gila Basin and the availability of the exchange water to effect those diversions of new Gila water appear secure.

Section 212 (d) of the Arizona Water Settlements Act

(d) Amendment to Section 304- Section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)) is amended--

(1) by striking paragraph (1) and inserting the following: `(1) In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in the State of New Mexico, with the approval of its Interstate Stream Commission, or with the State of New Mexico, through its Interstate Stream Commission, for water from the Gila River, its tributaries and underground water sources in amounts that **will permit consumptive use of water in New Mexico [emphasis added]** of not to exceed an annual average in any period of 10 consecutive years of 14,000 acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States in *Arizona v. California* (376 U.S. 340). Such increased consumptive uses shall continue only so long as delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this Act, in quantities sufficient to replace any diminution of their supply resulting from such diversion from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose, full consideration shall be given to any differences in the quality of the water involved.';

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

FIGURE 1. Categories and locations of projects selected for assessment, integration, and/or refinement

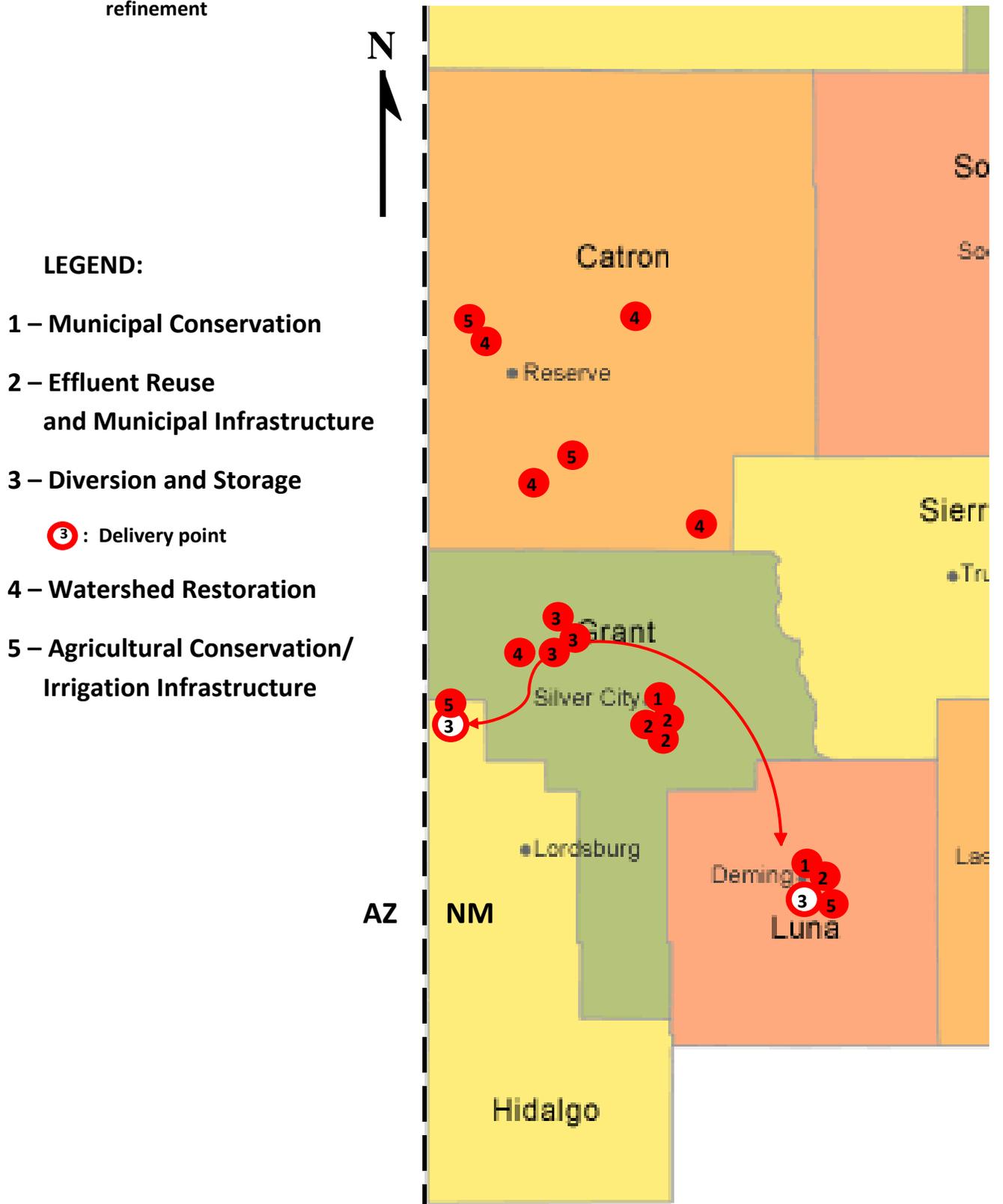


TABLE 1. MINIMUM BYPASS FLOWS BY MONTH

<u>Month</u>	<u>Bypass</u>
January	82.5 (cfs)
February 1-13	137.5
February 14-28/29	215
March	292.5
April	432.5
May	437.5
June	442.5
July	442.5
August	442.5
September	442.5
October	267.5
November	152.5
December	75.5

GILA SYSTEM SCHEMATIC
(GENERAL AND NOT TO SCALE)

