ARIZONA WATER SETTLEMENTS ACT: BACKGROUND AND HISTORY

Outline

- Area
- History
- ISC’s Tasks, Decisions per AWSA
- Funding and New Mexico Unit Fund
- ISC’s Roles
Southwest NM: Four-County Region

- Southwest NM
  - Catron, Grant, Luna, Hidalgo counties
  - Gila, San Francisco, Mimbres, San Simon and Little Colorado basins
History

Arizona v California

- Original action in U.S. Supreme court
- Spanned 1952 to 2006
- Filed by AZ to apportion Colorado River lower basin water among the 3 lower basin states of AZ, CA and NV
- NM pulled into AZ v. CA because Gila tributary to Colorado
1964 Decree

- Limits NM to 30,000 acre-feet in Gila, San Francisco and San Simon basins
- Unlike CA and AZ, no water provided for future development
- Requires NM to prepare and maintain annual records of irrigated acres, consumptive uses, and diversions
- NM selects Gila River Water Master, court confirms it

1968 Colorado River Basin Project Act

- Allocated additional 18,000 acre-feet of consumptive use to NM from Gila Basin
  - Above and beyond the 30,000 acre feet in the 1964 decree
- 1968 priority date, junior to downstream rights in AZ; makes development problematic
- No federal funding
- Hence no mechanism to realize water
- Moreover, contingent on the Central Arizona Project ("CAP") delivering compensatory water to downstream Gila River users in Arizona
2004 Arizona Water Settlements Act

- Amends 1968 Colorado River Basin Project Act
- Reduces NM’s additional allocation from an annual average of 18,000 to 14,000 acre feet
- The diverted water is exchanged for same amount of mainstem Colorado River water (through Arizona CAP canal) to be delivered to AZ users
- Provides two pots of non-reimbursable federal funding:
  - $66M
  - $Up to $62M
- Ratifies Consumptive Use and Forbearance Agreement which alleviates 1968 priority issue
ISC’s Tasks, Decisions per AWSA
What is NM Unit?

- New Mexico Unit of the Central Arizona Project ("NM Unit"): Physical facilities that would be used to divert, convey and store AWSA water
- Also known as: diversion/storage project

ISC’s Tasks in AWSA: NM Unit

- Notify the U.S. Secretary of Interior ("SOI") if NM intends to pursue construction of a NM Unit by December 31, 2014
- Opportunity to become a joint lead in National Environmental Policy Act ("NEPA") process with U.S. Bureau of Reclamation ("Reclamation")
- Designate the NM CAP Entity
- Administer $66M pot
ISC’s Tasks in AWSA: Non-NM Unit

- Fund projects other than NM Unit in SWNM that “meet water supply demands”
- Administer $66M pot

Planning Process

- ISC started a planning process in 2005 for distribution of AWSA funds to local projects
- 2005-2010: Consensus building with stakeholders
- 2011-2014: two-tier process to screen and evaluate local stakeholders’ proposals
  - 15 proposals selected and evaluated
  - Input from stakeholders and public
Commission’s Decisions

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<thead>
<tr>
<th>ISC’s Involvement pursuant to AWSA</th>
<th>Accomplished in</th>
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<td><strong>NM Unit</strong></td>
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<td>Opportunity to become a joint lead in NEPA process with Reclamation</td>
<td>February 2015 (ISC became joint lead.)</td>
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<td>Designate the NM CAP Entity</td>
<td>July 2015</td>
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<td><strong>Non-NM Unit</strong></td>
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<td>Fund projects other than NM Unit in SWNM</td>
<td>2014-2015</td>
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What is NM CAP Entity?

- **Group of local governments formed under a JPA in July 2015**
  - 14 local governments + ISC as a non-voting member

- **NM CAP Entity’s Authorities per AWSA:**
  - Own and hold title to all portions of the NM Unit
  - Assume from SOI, upon request, responsibilities of design, construction, operation, and maintenance of the NM Unit
  - Currently has assumed the design responsibility.

- **CAP Entity does not have all the powers of a local government; hence needs fiscal agents.**
  - ISC: first fiscal agent, City of Deming: second fiscal agent
  - ISC considers and approves CAP Entity’s annual budgets and reimburses Deming for allowable expenditures.
Fund in New Mexico Unit Fund

AWSA Funding: First Pot

- for NM Unit or Non-NM Unit projects
- $66M (adjusted for inflation to $90.4M) is being deposited into a fund called “New Mexico Unit Fund” (“Fund”)
  - Fund established in NM treasury in 2011 pursuant to AWSA
  - 10 annual payments of $9.04 million
  - First payment delivered in January 2012
- Fund Administered by ISC
- Balances do not revert to the NM General Fund.
NM Unit Fund

- **Fund Pays for:**
  - ISC Gila/AWSA operating budget (FTEs, support costs)
  - ISC contractual services including:
    - Engineering
    - Studies
    - Legal
  - ISC Non-NM Unit projects
  - ISC Advances to Reclamation for NEPA
  - NM CAP Entity budget

- **Status as of 10/23/17:**
  - Total received: $54.24M
  - Total expended: $12.93M
  - Market value increase: $3.26M
  - Balance: $44.6M

AWSA Funding: Second Pot

- **Additional funding only for NM Unit project:**
  - $34M (adjusted for inflation) on construction cost-schedule basis
  - $28M (adjusted for inflation) if the return rate on carryover funds exceeds an average annual rate of 4% from 2004 through construction time

- **Additional funding available only if:**
  - NM notifies the SOI if it intends to build a NM Unit by 12/31/14. **DONE**
  - SOI to issue a Record of Decision under NEPA by 12/31/19
ISC’s Roles

- Continue to Administer the Fund
  - Administer Non-NM Unit projects
  - Advance funds to Reclamation for NEPA
  - Process NM CAP Entity’s budget
- “Joint lead” in the NEPA process with Reclamation
  - The ISC is NOT the project proponent; the CAP Entity is.