

# NMISC Decisions and Issues related to the Arizona Water Settlements Act

Update Presentation to the Interim Water and Natural  
Resources Committee

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NM Interstate Stream Commission



# Overview

- The federal Arizona Water Settlements Act (“AWSA”) is an act of Congress, passed in 2004
- The AWSA provided to New Mexico:
  - ▣ A. Additional water (up to 14,000 acre-feet per year)
  - ▣ B. Funding (administered by the NMISC)
- Congress tasked the federal, state, and local parties with certain roles and responsibilities
  - ▣ DOI/Reclamation
  - ▣ NMISC
  - ▣ Southwest Water Study Group (now NM CAP Entity)



# I. New Mexico Unit

# NM Unit: NEPA Process and Roles

- The New Mexico Unit of the Central Arizona Project (“NM Unit”): A unit of the CAP in Southwest New Mexico (“SWNM”) to develop and consumptively use AWSA water
- Prior to construction of a NM Unit, an Environmental Impact Statement (“EIS”) had to be prepared for environmental compliance, in accordance with the National Environmental Policy Act (“NEPA”) and the AWSA
  - ▣ NEPA began in June 2018
- Roles:
  - ▣ Reclamation and NMISC: Joint Leads
  - ▣ NM CAP Entity: Proponent

# Interstate Commission's Actions in June 2020

- June 18, 2020: Following staff presentation of the Draft EIS to the Commission on June 16th, the Commission voted that the NMISC:
  - not proceed with the NM Unit NEPA process, and
  - not approve Reclamation's requested budget for FY2021
  - The Commission also directed staff to look at certain specific projects and types of projects going forward and coordinate with the NM CAP Entity on next steps with/for the Joint Powers Agreement.
  
- The Commission's decisions:
  - do not speak to Reclamation's independent responsibilities as the federal lead agency under the AWSA
  - do not affect or alter New Mexico's entitlement to up to 14,000 acre feet of AWSA water

# Subsequent Events

- The NMISC prepared a Mutual Consent to Terminate the 2016 Funding Agreement between the Joint Leads and the CAP Entity and distributed it to Reclamation and the CAP Entity
- July 7, 2020: The CAP Entity voted to:
  - ▣ reject the Mutual Consent to Terminate, and
  - ▣ pursue dispute resolution pursuant to Paragraphs XI and XII of the Funding Agreement
- July 9, 2020: The CAP Entity sent a formal notice to the Joint Leads, requesting initiation of dispute resolution
- July 17, 2020: The CAP Entity sent another letter to the Joint Leads listing various issues that the CAP Entity thinks need to be addressed in the dispute resolution meeting

# Next Steps to Wind Down the NEPA Process

- August 28, 2020: The dispute resolution virtual meeting related to the Funding Agreement only
- Once the dispute resolution meeting has occurred, the NMISC staff will seek direction from the Commission on next steps in regard to the NEPA process.

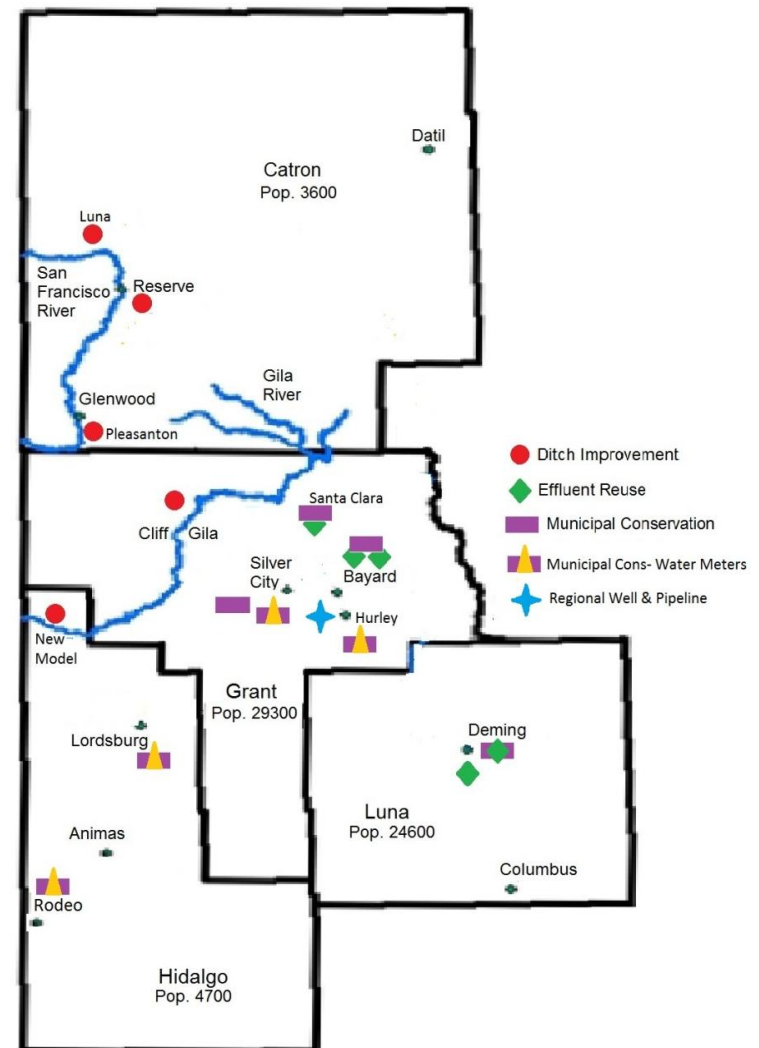


## II. Non-New Mexico Unit



# Non-NM Unit: Process

- 2010-2014: The NMISC developed a two-tier process to screen 45 local stakeholders' proposals
- 2014-2016: The NMISC allocated \$9.1 million to 16 projects in the four-county region ("Non-NM Unit projects")



# List of the Existing Projects funded by the NMISC and their Status

	Non-NM Unit Project	NMISC Grant (\$)	Percent of Grant Requested for payment to date	Status as of July 31, 2020
1	Town of Hurley Water Supply Project (Phase 1)	2,100,000	100%	Construction not complete yet; see later slides
2	Gila Basin Irrigation Commission Diversion Structures Replacement (Phase I)	1,250,000	20%	Full design of Phase I to replace the Upper Gila Ditch push-up dam complete; bidding process for construction to begin soon
3	1892 Luna Irrigation Ditch Association Diversion Structure Replacement	100,000	0	Full design complete; project currently enjoined due to a lawsuit against the Gila National Forest
4	New Mexico New Model Canal Improvement	200,000	33%	Full design complete
5	City of Deming Effluent Reuse	1,750,000	100%	Construction of some of the proposed infrastructure complete; SCADA construction still ongoing
6	City of Deming Effluent Reuse (2 <sup>nd</sup> grant)	596,000	0	
7	Village of Santa Clara Effluent Reuse (30% design only)	100,000	100%	30% design complete
8	City of Bayard Effluent Reuse	1,171,048	0	Projects no longer viable; grantee seeking other alternatives
9	City of Bayard Effluent Reuse (2 <sup>nd</sup> grant)	176,295	2%	
10	Pleasanton East-Side Ditch Improvement	200,000	100%	Construction complete
11	Kiehne Ditch Improvement	500,000	100%	Construction complete
12	City of Lordsburg New Meters	242,950	100%	Construction complete
13	Rodeo Mutual Domestic Association New Meters	14,000	100%	Construction complete
14	Town of Silver City Park Irrigation Upgrade	18,157	100%	Construction complete
15	Town of Silver City Meter Replacement	500,000	100%	Construction complete
16	Town of Hurley New Meters	181,550	100%	Construction complete
<b>Total</b>		<b>9,100,000</b>		

# NMISC Non-NM Unit Priorities

- The NMISC continues to work with all existing Non-NM Unit grantees on their respective funding agreements and projects, if not yet completed or abandoned
- During the June 18, 2020 meeting, the Commissioners discussed and requested staff pursue the following priorities:
  - ▣ 1) Hurley water supply project
  - ▣ 2) Replacing “Push-Up” diversion dams including the GBIC project
  - ▣ 3) Protecting the Virden Valley farmers from potential threats related to pending litigation under the Globe Equity Decree

# Thank You!

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□ **Questions?**



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# Background Materials for Questions

# A. Additional Water

- An annual average of 14,000 acre feet of water from the Gila River, its tributaries including the San Francisco River, and underground sources in NM (“AWSA water”)
- AWSA water is in addition to the amounts allocated to New Mexico in the 1935 Globe Equity Decree and the 1964 U.S. Supreme Court Decree in *Arizona v. California*

## B. AWSA Funding

- \$66M (adjusted for inflation to \$90M in 2012)
  - ▣ Being disbursed in ten annual payments starting in 2012
  - ▣ \$9.04M per year (as adjusted in 2012)
  - ▣ Final payment due January 2021
- Deposited in the New Mexico Unit Fund (“Unit Fund”)
  - ▣ A fund in the State Treasury established by the New Mexico Legislature in 2011
  - ▣ Administered by the NMISC
- To pay for costs of a project to develop AWSA water, or other projects to meet water supply demand in SWNM

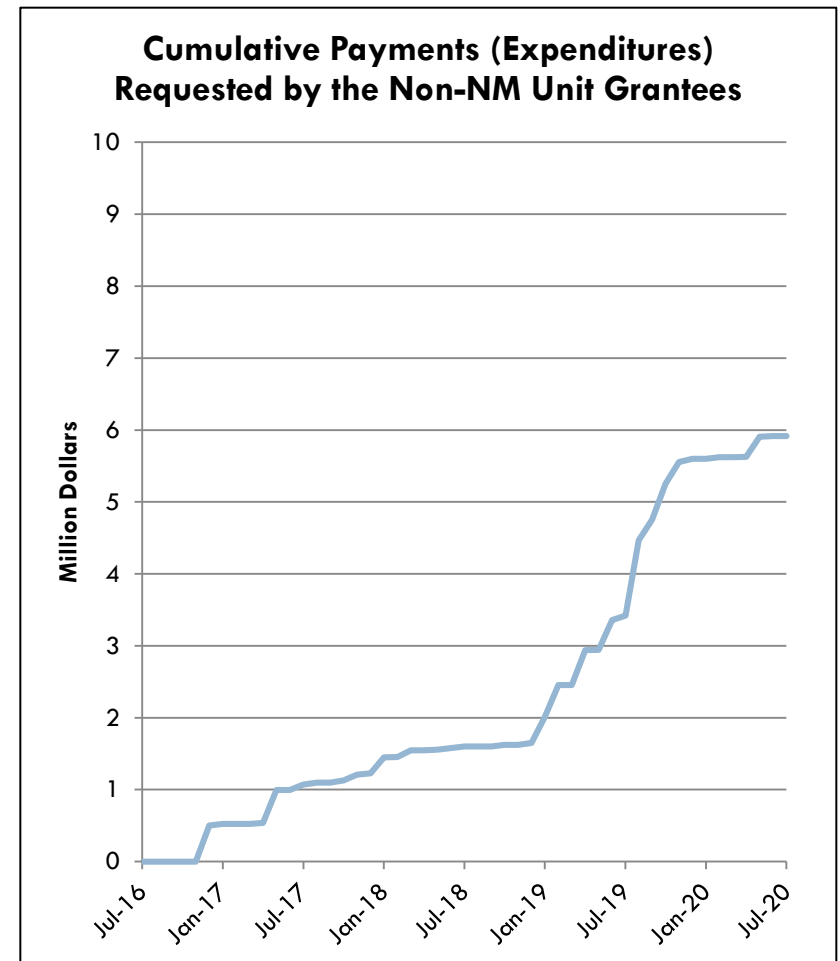


# NEPA Process: Timeline of Main Events

- June 2018: Reclamation published the Notice of Intent to prepare an EIS
- June 2019: The Commission decided that it would not provide any additional funding beyond FY2020, until such time as the Commission had had the opportunity to review the Draft EIS and to be briefed by staff about it
- *October 2019: NMISC Director testified before this Committee in Silver City*
- December 2019: The U.S. Secretary of Interior denied the CAP Entity's request to extend a statutory deadline in the AWSA to obtain additional construction funding. This decision permanently withheld \$56.3 million of federal funding
- April 2020: After 20 months of joint effort by the Joint Leads, Reclamation published the Notice of Availability of the Draft EIS in the Federal Register for public comment
- June 8, 2020: The mandatory 45-day period for public comment ended. The Joint Leads received more than 500 comments

# Non-NM Unit Progress After 4+ Years

- About 65% of the total \$9.1M has been requested for payment. See the graph.
- Out of the 16 projects:
  - seven projects are operational
  - two projects have been abandoned
  - the rest are in various stages of design and construction
- This pace of progress is due to an array of technical, legal and procurement issues
- Next slide provides more details



# 1) Hurley Water Supply Project

- Phase I seeks to supply Hurley with two wells and a pipeline in Grant County, NM
- Phase I is an existing Non-NM Unit Project, and the Commission allocated \$2.1M towards the total construction cost of ~\$8M
- The NMISC has already paid the full \$2.1M as requested by Hurley
- However, Phase I construction is effectively on pause due to serious water quantity and quality issues encountered during the construction
  - ▣ Quantity of water produced may be inadequate to supply Hurley
  - ▣ Quantity of water produced is definitely inadequate to supply other communities as part of the previously proposed regional project
  - ▣ Quality of water produced very problematic due to arsenic levels
- We are monitoring the situation closely to stay informed about the local decisions
- Resolving those issues may require independent investigation and involvement of other state agencies such as NMED and NMOSE

## 2) GBIC Project

- This project seeks to replace three existing earthen push-up dams on the Gila River with more permanent structures in the Cliff-Gila Valley in Grant County, NM
- These push-up dams have caused environmental impacts and disturbance to the Gila River channel and the riparian corridor
- Phase I (replacing the uppermost push-up dam) is an existing Non-NM Unit project, and the Commission allocated \$1.25M towards its design and construction; total estimated cost: \$1.5M
- We are in communication with the local parties to support their collaborative efforts

# 3) Protecting NM Water Users from Pending Litigation in AZ

- There is ongoing litigation in the U.S. District Court in AZ under the 1935 Globe Equity Decree
- A ruling in the case has the potential to affect the ability of Virden Valley farmers in Hidalgo County, NM to pump groundwater
- The Globe Equity Court has jurisdiction over the Virden Valley by virtue of the 1935 Globe Equity Decree
- We are monitoring the situation and will coordinate with local parties to provide any assistance they may need

## 4) Potential Other Projects

- Section 212(i) of the AWSA requires the NMISC to consult with the SWNM Water Study Group (WSG) or its successor on withdrawals from the NM Unit Fund
  - ▣ The CAP Entity is the successor to the WSG
- The CAP Entity JPA would need to be amended to:
  - ▣ Modify the process for consideration of other potential water utilization projects in SWNM
  - ▣ Re-order the CAP Entity's priorities or add new priorities
- Any amendment to the JPA would require approval from all fourteen local governments that are members of the CAP Entity, and from the Commission at their respective public meetings