



## State of New Mexico

Michelle Lujan Grisham  
*Governor*

September 19, 2019

The Honorable David Bernhardt  
United States Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Dear Mr. Bernhardt:

I write to state my opposition to the Secretary of the Interior granting an extension of the December 2019 deadline for issuance of a Record of Decision (ROD) to secure additional federal funding for the New Mexico Unit of the Central Arizona Project (CAP).

The Arizona Water Settlement Act (AWSA), passed by Congress and signed into law in 2004, provides the southwestern area of New Mexico with up to 14,000 acre-feet of water per year from the Gila River and its tributaries, as well as up to \$128 million in federal funding. Approximately half of that money (\$66 million, adjusted for inflation to \$90.4 million) is being disbursed to New Mexico in \$9 million increments. Those funds can be used to access the 14,000 acre-feet per year (through a New Mexico Unit), or to design and build other water utilization alternatives to meet water supply demands in southwest New Mexico. A New Mexico Unit would be a project that diverts water from the Gila River system in New Mexico, including the San Francisco River, for use in New Mexico, in exchange for Central Arizona Project (CAP) water being delivered to Gila River water users downstream in Arizona. The New Mexico Interstate Stream Commission (NMISC) opted to pursue a New Mexico Unit in November 2014, and worked with stakeholders in the southwestern region to create the New Mexico CAP Entity (Entity). The Entity, comprised of representatives from counties, municipalities and other local governments in the southwest region of New Mexico, has design authority from the Secretary of the Interior for the New Mexico Unit. The NMISC consults with the Entity regarding expenditures related to the New Mexico Unit, pursuant to Section 212(i) of the AWSA.

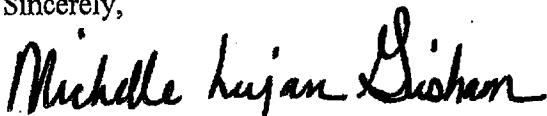
Section 212(j) of the AWSA makes another \$34 million (adjusted for inflation to \$56.3 million) available to New Mexico for construction of a New Mexico Unit provided that a Record of Decision pursuant to the National Environmental Policy Act is issued by December 31, 2019. The AWSA grants the Secretary the authority to extend that deadline if he finds that he is not able to issue such a Record of Decision by the deadline, for reasons outside the control of the State of New Mexico. The Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the New Mexico Unit was published in the Federal Register on June 12, 2018. In the past several years, the Entity has made multiple substantive changes to its proposed project, thus complicating the environmental work required pursuant to the National Environmental Policy Act. The schedule for issuance of a ROD has slipped repeatedly. In June 2019, when the draft EIS was scheduled to be published in September 2019, the NMISC decided not to provide additional funding for the EIS process until they had been provided the draft EIS, had the opportunity to review it, discuss it and make decisions based on facts. My understanding is that the schedule for the Draft EIS has again slipped and it is now set to be published in December 2019. Therefore, it is clear that the deadline of December 31, 2019 for issuance of a ROD will not be met. It is also my understanding that the Entity has written to you to request an extension of the December 31, 2019 deadline. I do not believe that an extension is warranted, given the numerous delays and changes to the proposed New Mexico Unit that have brought us to this point, and given serious concerns about the viability of the proposed New Mexico Unit.

The anticipated cost per acre-foot of water for the proposed New Mexico Unit is expensive. The preliminary Draft EIS suggests it would cost more than \$300 per acre-foot of water, far above the comparable weighted value of agricultural water in the region. No real water users have been identified by the Entity to pay for the amount estimated in the preliminary Draft EIS. The anticipated annual Operation, Maintenance & Repair costs are expected to be approximately \$1 million per year, and it is not clear how the Entity would generate sufficient revenue to cover those costs.

Finally, the financial viability of the Entity remains uncertain. Pursuant to the terms of the NM Unit Agreement signed by the Secretary and the Entity in November 2015, the Entity must demonstrate financial viability before contracts with the Secretary could be entered into. Based on the information received to date, I am unable to conclude with confidence that the Entity could be financially viable once there are no more AWSA funds to sustain it.

Thank you for your consideration.

Sincerely,



Michelle Lujan Grisham  
Governor

# GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

"Putting Our People First"

Stephen Roe Lewis  
Governor



Robert Stone  
Lieutenant Governor

October 3, 2019

David Bernhardt  
Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

Re: Gila River Indian Community's Opposition to Continued Efforts to Develop the New Mexico Unit ("*NM Unit*") Project

Dear Secretary Bernhardt:

The Gila River Indian Community ("*Community*") believes that continued efforts to move forward with the NM Unit are futile. For the reasons provided below the Community opposes an extension of the December 31, 2019 deadline for the New Mexico Central Arizona Project entity's ("*NM CAP Entity*") to finish the environmental impact statement, and asks that the United States deny any request to extend the deadline.

The Colorado River Basin Project Act of 1968, as amended by the Arizona Water Settlements Act of 2004 ("*AWSA*"), authorizes the Secretary of the Interior to divert up to an annual average of 14,000 acre-feet of Gila River water over a 10-year consecutive period to the NM CAP Entity. In exchange, Central Arizona Project water must be delivered to downstream users in Arizona, namely the Community and the San Carlos Irrigation and Drainage District ("*NM CAP Water*"). The Consumptive Use and Forbearance Agreement ("*CUFA*"), ratified by the AWSA, details several conditions that must be met before the Secretary can lawfully divert Gila River water. For example, the NM CAP Entity must have credits in the New Mexico Water Bank equal to the amount of water it intends to divert in a given year. CUFA ¶ 4.6.2. If all the conditions in the CUFA are met, the Secretary may divert Gila River water pursuant to the agreement.

The CUFA also requires that the Secretary deliver one acre-foot of NM CAP Water for every one acre-foot of water used in New Mexico to the Gila River Indian Community (55%) and the San Carlos Irrigation and Drainage District (45%). CUFA ¶ 5.4.5. The Secretary must pay for delivery of the NM CAP Water, to be reimbursed by the NM CAP entity. *Id.* at ¶ 5.4.2. The CUFA specifies that the delivery of such NM CAP Water "shall be without economic injury or cost to the Community." *Id.* at ¶ 5.4.3.

The United States and the NM CAP Entity executed the NM Unit Agreement in 2015 as required by the CUFA. The NM Unit Agreement further requires the negotiation of a water service contract before the commencement of NM CAP Water deliveries. NM Unit Agreement ¶ 9.3.1. The execution of the water service contract is contingent on the negotiation of and an agreement on the following terms:

- liability and indemnification, as these issues may arise under the water service contract;
- the annual advance of funding for all operations and maintenance costs of the NM Unit project, including the funding of environmental mitigation costs, CAP Fixed OM&R and CAP Pumping Energy Charges associated with the delivery of NM CAP Water; and
- “an objective standard” to determine what will constitute financial viability of the NM CAP Entity.

*Id.* at ¶ 9.3.2-9.3.3. Significantly, the water service contract must also be consistent with the terms of the CUFA. *Id.* at ¶ 9.3.4.

The CUFA and ancillary documents predicate the Secretary’s ability to divert water for consumptive use in New Mexico in exchange for NM CAP Water deliveries on several conditions. Because there is no indication that all conditions necessary for diversion will be satisfied in the near future nor any assurance that the mandated exchange would be possible should such diversions be made, the Community has reached the conclusion that continued efforts to develop the NM Unit are futile.

*First*, the Community is skeptical that the NM Unit project remains viable. Funding for the project is limited; there are substantial long-term operating costs, and well-publicized local political opposition due to the many environmental concerns with the project. There is little evidence that sufficient funding will exist to complete construction let alone to fund the operation costs of the NM Unit after all environmental obligations have been satisfied.

*Second*, even if all preconditions for diversions of NM CAP Water are satisfied, the Community is unlikely to enter into the NM CAP Water exchange, because to do so would very likely economically injure the Community in violation of the CUFA and ancillary documents. The Secretary must deliver one acre-foot of NM CAP Water to the Community and SCIDD for every acre-foot diverted for consumptive use in New Mexico at no cost to the Community and SCIDD. The Secretary must timely pay for both the CAP Fixed OM&R Charge and the CAP Pumping Energy Charge for such water, to be reimbursed by the NM CAP Entity. The delivery rate for CAP water in 2019 is \$158/acre-foot. That cost will only rise. Using the 2019 figures, the cost of delivery for the maximum diversion would be over \$2.2 million annually. The Community has yet to see a plan where the NM CAP Entity demonstrates enough resources to carry the burden of these costs. The Community will not bear the cost of these deliveries because doing so would violate the terms of the CUFA and economically injure the Community.

*Third*, the Community is very concerned about the solvency of the Lower Colorado River Basin Development Fund (“*Basin Fund*”). Under the AWSA the Basin Fund is the primary source of funding for the Community’s settlement and was expected be solvent until 2044 or beyond to

cover the CAP Fixed OM&R Charge for the delivery of CAP water for the Community's and other Arizona tribes' use. Unfortunately, the Basin Fund is woefully underfunded and its solvency in question due in large part to the United States mismanagement. The NM CAP Entity's request to extend the December 31, 2019 deadline is merely an effort to get more money out of the Basin Fund. As the primary beneficiary of the Basin Fund the Community is opposed to any actions that will exacerbate the Basin Fund's solvency problem. An extension of the deadline will unnecessarily waste Basin Fund resources for a project that is unlikely to be completed.

For these reasons, the Community has concluded that the NM CAP Entity cannot satisfy the obligations under the CUFA and ancillary documents to lawfully receive Gila River diversions. The Community does not support efforts that waste scarce Basin Fund resources in pursuit of an impossible goal, and is requesting that United States deny any request to extend the December 31, 2019 deadline.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Roe Lewis". The signature is stylized with large loops and a long horizontal stroke at the end.

Stephen Roe Lewis  
Governor

**Infrastructure Capital Improvement Plan FY2021-2025**  
**Projects in Southwest New Mexico Counties that may meet definition of AWSA water utilization project that meets water supply demand**

Local government	ID	ICIP Ranking	Project Title	Category	Total Project Cost	Amount Not Yet Funded	Expenditures over what years
<b>CARSON COUNTY</b>							
Carson County	none	7	Storage Tank/Water Improvements	Facilities - Administrative	\$500,000	\$500,000	FY21
Reserve	32657	1	Storage Tank & Water System Improvements	Water-Water Supply	\$1,695,923	\$250,000	FY21
Rancho Grande MDWCA	29029	2	Asset Management Plan	Water-Water Supply	\$20,000	\$20,000	FY21
Rancho Grande MDWCA	29031	2					
<b>HIDALGO COUNTY</b>							
Hidalgo County	none	3	Rehab Wells and Drill New Well	Water-Water Supply	5,475,000	5,475,000	FY21-22
Lordsburg	29926	1	Water and Wastewater Line Improvements	Water-Wastewater	5,075,000	5,075,000	FY21-22
Lordsburg	29065	1	Water System Improvements	Water-Water Supply	750,000	750,000	FY21
Virden	27902	2					
<b>LUNA COUNTY</b>							
Luna County	none	6	Water System Improvements	Water-Water Supply	7,067,773	7,067,773	FY21-24
Columbus	25860	6	Effluent Reuse Storage & Irrigation Improvements	Water-Water Supply	4,400,000	1,800,000	FY20-22
Deming	26095	6	Well Upgrades/ Optimization/ Conversion/SCADA	Water-Water Supply	2,150,000	2,150,000	FY21-25
Deming	28024	37	Water System Line replacement/repair	Water-Water Supply	1,300,000	1,000,000	FY21-22
Deming	15181	43	Enchanto Cr.	Water-Water Supply	1,300,000	1,000,000	FY21
Deming	32092	14	40 Year water plan	Other-other	60,000	60,000	FY21
<b>GRANT COUNTY</b>							
Grant County	31306	7	Cliff/Gila Grant Co. Fairgrounds Water System	Water-Water Supply	250,000	250,000	FY21
Grant County	25359	15	Grant Co. Water Storage	Water-Wastewater	9,850,000	9,750,000	FY21-22
Hurley	15250	1	New Water System	Water-Water Supply	10,521,480	3,040,000	FY21
Bayard	15998	1	Upgrade Water Distribution	Water-Water Supply	480,000	480,000	FY24
Santa Clara	15209	1	Water Systems Improvement	Water-Water Supply	750,000	750,000	FY21
Santa Clara	15210	7	Phase II Reg Wastewater Facility Effluent Reuse	Water-Wastewater	550,000	550,000	FY21
Santa Clara	21358	9	Develop 40 year water plan	Water-Other	60,000	60,000	FY21
Silver City	22987	11	Water System Master Plan Update	Water-Other	75,000	75,000	FY21
Silver City	16976	1	32nd St. Waterline Replacement	Water-Water Supply	300,000	300,000	FY21
Silver City	16977	29	Replace Ridge Rd. Waterline Hwy 90 to Pleasant	Water-Water Supply	150,000	150,000	FY21
Silver City	24003	10	Wastewater Effluent Re-use Improvements	Water-Wastewater	250,000	250,000	FY21
Silver City	16928	5	Francis Wellfield Transmission Line Replacement	Water-Water Supply	15,000,000	15,000,000	FY24
Silver City	16170	6	New Well Construction - Woodward Ridge Rd. Waterline Replacement - Pleasant	Water-Water Supply	500,000	500,000	FY24
Silver City	23193	12	to Lance	Water-Water Supply	250,000	250,000	FY24
Silver City	23306	1	Anderson Well Replacement	Water-Water Supply	750,000	750,000	FY25
Silver City	24948	2	Little Walnut Water Storage Tank	Facilities - Other	750,000	750,000	FY25
Silver City	32203	1	North Tank & Well Improvements	Water-Water Supply	560,000	560,000	FY21
Case Adobe	32205	3	Water System Improvements Phase 2-6	Water-Water Supply	3,202,840	2,852,940	FY21-25
Case Adobe	25928	3	Well Rehabilitation	Facilities - Administrative	199,353	199,353	FY21
Hanover MDWCA	29339	1	New Well and Water System Improvements	Facilities - Administrative	1609,729	609,729	FY21
Hanover MDWCA	29059	2	Waterline Extension to Santa Clara	Facilities - Administrative	771,136	721,136	FY21
Hanover MDWCA	29047	4	Fierro Road Water Line	Facilities - Administrative	652,012	652,012	FY21
Hanover MDWCA	25930	5	Water Tank - Fierro Canyon	Facilities - Administrative	199,430	199,430	FY21
Hanover MDWCA	25929	6	Convert wells to Solar Power Option	Facilities - Administrative	128,982	128,982	FY21
Hanover MDWCA	16538	7	Santa Clara Waterline Extension Phase 2	Facilities - Administrative	986,846	882,246	FY21
<b>TOTAL</b>					<b>\$66,334,604</b>	<b>\$64,052,598</b>	