

Presentation to the Interim Water and Natural Resources Committee

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Background

The U.S. Congress, through the 1968 Colorado River Basin Project Act, as amended by the 2004 Arizona Water Settlements Act (“AWSA”), provided New Mexico with up to an annual average of 14,000 acre-feet of water from the Gila River, its tributaries including the San Francisco River, or underground water sources in Southwestern New Mexico (“AWSA water”). This AWSA water is in addition to the amount decreed to New Mexico by the 1964 U.S. Supreme Court Decree in *Arizona v. California*. The New Mexico Unit of the Central Arizona Project (“NM Unit”) is the project that would divert, convey and store the AWSA water for consumptive use in Southwestern New Mexico. Congress also did the following:

1. Authorized U.S. Secretary of Interior (“Secretary”) to design, build, operate, and maintain the NM Unit to develop AWSA water.
2. Tasked the State of New Mexico, through the New Mexico Interstate Stream Commission (“ISC”), with certain roles, decisions and activities.
3. Authorized a local entity called the New Mexico CAP Entity (“CAP Entity”) to own and hold title to the NM Unit, and provided it the opportunity to assume responsibilities to design, build, operate and maintain the NM Unit upon request.¹

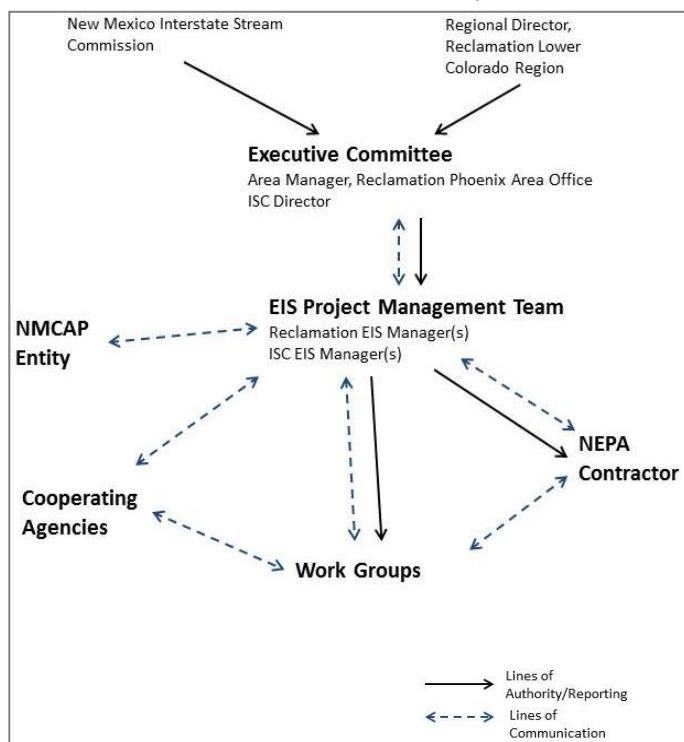
ISC’s Roles Related to NM Unit

The State of New Mexico had to report to the Secretary by December 31, 2014 as to whether New Mexico wanted to pursue a NM Unit. In November 2014, the ISC voted to send a written notice to the Secretary that New Mexico intended to build a NM Unit. Prior to construction of a NM Unit, however, an Environmental Impact Statement (“EIS”) had to be prepared, in accordance with the National Environmental Policy Act (“NEPA”) and the AWSA. The AWSA designated the U.S. Bureau of Reclamation (“Reclamation”) as the lead federal agency for environmental compliance related to the NM Unit, while providing for the ISC to be designated as joint lead upon request. In February 2015, the ISC formally requested to be a joint lead.

Therefore, Reclamation and the ISC are joint leads (“Joint Leads”) for all environmental compliance activities for the NM Unit. The CAP Entity is the project proponent in the NEPA process.

NM Unit NEPA Update

In June 2018, Reclamation published in the Federal Register a Notice of Intent to prepare an EIS for the



¹ In April 2016, the CAP Entity requested that the Secretary transfer the NM Unit design responsibility to the Entity. The transfer took place in May 2016.

NM Unit. This was the formal initiation of the NEPA process. After the public scoping period, the Joint Leads started incorporating details of the CAP Entity’s proposed project (“Proposed Action”) into the EIS, developing alternatives, and working with the Cooperating Agencies. The NEPA contractor provided the Joint Leads with a Preliminary Draft EIS in January 2019 for their review. Based on the Joint Leads’ input, the NEPA contractor prepared a revised version in June 2019. The Joint Leads are currently refining the Draft EIS based on a variety of new information, including but not limited to more accurate data related to the baseline conditions, further information received from the CAP Entity for its Proposed Action, better defined data for the alternatives, and comments from the Cooperating Agencies. The Draft EIS will fully analyze the action alternatives and their impacts on various resource topics including hydrology, biology, and economics, compared to the no action alternative. The Draft EIS is scheduled to be published and available to the public in December 2019.

Legal authorities and Contractual Obligations

In addition to being bound to follow the applicable state and federal laws, the ISC is specifically bound to follow the AWSA, and all documents incorporated into the AWSA by reference. The ISC is also specifically bound to follow the New Mexico Unit Fund (“Unit Fund”) statute, NMSA 1978, § 72-14-45, enacted by the New Mexico Legislature in 2011. Moreover, the ISC is contractually bound to the following:

- 2016 Memorandum of Understanding between the Joint Leads
- 2016 Interim Advance Funding Agreement between the Joint Leads and the CAP Entity
- Joint Powers Agreement that created the CAP Entity, entered into in 2015 and amended twice since then

Total expended from the Unit Fund for NM Unit as of September 30, 2019: \$13.9 million

ISC’s Roles Related to Non-NM Unit

The AWSA authorizes the ISC to fund the NM Unit or any water utilization projects to meet water supply demands in Southwestern New Mexico, in consultation with the Southwest New Mexico Water Study Group or its successor.² Between 2014 and 2016, the ISC allocated \$9.1 million (“ISC allocation”) to 16 projects, based on a multi-year vetting process. Those 16 projects are collectively called “non-NM Unit projects.” These projects range from acequia improvement and effluent reuse, to water meter replacement and aquifer storage and recovery.

The ISC allowed the non-NM Unit grantees to use part of their awards for design and engineering. For construction, the ISC required up to 10% match for certain projects (in-kind work accepted). The ISC made a policy decision to enter into construction funding agreement with the grantees only after the grantees secured all additional funding necessary to complete a fully functional project, or a fully functional phase of a project. At the time of the original allocations, the non-NM Unit grantees were given a certain deadline set forth by the ISC to obtain additional funding for construction. Upon request, several grantees have seen that deadline extended.

Non-NM Unit Projects Update

As of September 30, 2019, about 52% of the total ISC allocation has been requested by the non-NM Unit grantees. Only 7 projects are operational; the rest are in various stages of design and construction. The slow pace of progress (about 50% after more than four years) is due to an array of technical, legal and procurement issues.

Total expended from the Unit Fund for non-NM Unit as of September 30, 2019: \$6.2 million (includes ISC’s vetting and administration)

² This group was succeeded by the Gila-San Francisco Water Commission. The CAP Entity is the successor to the Gila-San Francisco Water Commission.