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DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Arizona Project, Arizona; Water Allocations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of final decision to modify the Secretary of the Interior's record of decision.

SUMMARY: The Department hereby issues notice of its final decision to modify the 1983 Central Arizona Project (CAP) Water Allocation Decision to delete the mandatory effluent pooling provision. As supported by public comment, we now view that provision as an impediment to effluent exchanges and effective water management in central Arizona. The decision that we are publishing in this notice eliminates the requirement for a mandatory effluent pooling provision in CAP water service subcontracts. We will grant the requests by the cities of Chandler and Mesa to amend their water service subcontracts to remove the mandatory effluent pooling provision and we will delete the mandatory effluent pooling provision in other CAP municipal and industrial water service subcontracts upon request.

DATES: This final decision is effective June 18, 2003 and amends the previous allocation decision published by Secretary Watt on March 24, 1983 (48 FR 12446).

ADDRESSES: To receive a copy of the Final Environmental Assessment and responses thereto, contact John McGlothen, NEPA Specialist, Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 85069, telephone: 602-216-3866.

FOR FURTHER INFORMATION CONTACT: Paul Nelson, Contracts and Repayment Specialist, Phoenix Area Office, Bureau of Reclamation, telephone: (602) 216-3878.

SUPPLEMENTARY INFORMATION:

- I. Previous Notices Related to CAP Water
- II. Background
- III. Rationale for Final Decision
- IV. Comments on the Proposed Modification and Responses
- V. Compliance with NEPA

I. Previous Notices Related to CAP Water

Previous notices related to CAP water were published in the **Federal Register** as 37 FR 28082, Dec. 20, 1972; 40 FR 17297, Apr. 18, 1975; 41 FR 45883, Oct. 18, 1976; 45 FR 52938, Aug. 8, 1980; 45

FR 81265, Dec. 10, 1980; 48 FR 12446, Mar. 24, 1983; 56 FR 29704, Jun. 28, 1991; 57 FR 4470, Feb. 5, 1992; and 57 FR 48388, Oct. 23, 1992. The above listed notices and decisions were made pursuant to the authority vested in the Secretary by the Reclamation Act of 1902 as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501) and in recognition of the Secretary's trust responsibility to Indian tribes.

II. Background

Following the 1983 CAP Water Allocation Decision, the Bureau of Reclamation, the Central Arizona Water Conservation District (CAWCD), and each of the non-Indian CAP water allottees desiring CAP water entered into three-party water service subcontracts providing for the delivery of CAP water. In order to ensure implementation of the mandatory effluent pooling provision, municipal and industrial (M&I) water service subcontractors who choose to circumvent the effluent pooling provision and directly exchange their effluent with Indian tribes are subject to a reduction in their entitlement to CAP water under their subcontracts by the amount of CAP water received from the effluent exchange.

The Department indicated in the 1983 CAP Water Allocation Decision that CAP M&I water allocations could be made more firm by execution of feasible non-potable effluent exchanges with Indian tribes. The 1983 CAP Water Allocation Decision also implemented a pooling provision whereby all M&I water service subcontractors share in the benefits of effluent exchanges. In a time of shortage of CAP water under the effluent pooling provision, the additional CAP water made available as a result of any effluent exchanges with Indian tribes would be shared by all M&I subcontractors, thereby reducing the amount of shortage for each subcontractor. The pooling provision was included in the CAP M&I water service subcontracts.

The 1983 CAP Water Allocation Decision also provided that the Department could require Indian tribes located in close proximity to metropolitan areas to take delivery of effluent in lieu of CAP water. This requirement was eliminated by a Secretarial decision published in the **Federal Register** on October 23, 1992, so that any effluent exchanges involving Indian tribes would occur on a voluntary basis.

The major cities in Maricopa County, which are the sources of most of the exchangeable effluent, prefer to exchange effluent on their own, incur all related treatment and transportation expenses, and receive any benefits from the exchange.

The notice of proposed modification of the Secretary of the Interior's Record of Decision to remove the mandatory effluent pooling provision and request for comments was published in the **Federal Register** (67 FR 38514, June 4, 2002). Implementation of the proposed modification was the only option presented.

III. Rationale for Final Decision

The Department favors elimination of the mandatory effluent pooling provision from the 1983 CAP Water Allocation Decision for the following reasons:

(1) In response to public comments submitted by the City of Phoenix in 1992 concerning the mandatory effluent pooling provision, the Department committed to re-evaluate this provision at a later date after consultation with the Arizona Department of Water Resources (ADWR) (*see* 57 FR 48389, Oct. 23, 1992). In part, the City of Phoenix stated “* * * The City of Phoenix agrees with the reasons for deleting the mandatory substitute water provision from the Indian CAP Contracts and believes that it is equally important to remove the provision from CAP M&I subcontracts that would penalize a subcontractor for entering into a direct effluent exchange with an Indian Community for CAP water.” The Department acknowledged the City of Phoenix's concerns that the provisions of the effluent exchange article in the CAP M&I water service subcontracts may no longer be critical to the management of water supplies in central Arizona.

(2) The mandatory effluent pooling provision removes any incentive for a municipality to exchange effluent with an Indian tribe. The Department believes that effluent producing entities, Indian tribes, the State of Arizona, and other local organizations should be free to pursue local water management decisions that are in the best interest of the local economies, and that they should not be constrained in such water management decisions by the mandatory effluent pooling provision.

(3) ADWR now supports removing the mandatory effluent pooling provision from the 1983 CAP Water Allocation Decision and the CAP M&I water service subcontracts.

(4) CAWCD, as a party to the CAP M&I water service subcontracts, does not object to deletion of the mandatory

effluent pooling provision from the subcontracts.

(5) The Department is aware of two pending effluent exchange agreements that require Departmental approval. The cities of Chandler and Mesa each have a proposed effluent exchange agreement with the Gila River Indian Community (GRIC). The benefits resulting from the proposed exchanges to the cities and GRIC will not occur unless and until the mandatory effluent provision is removed from the cities' CAP water service subcontracts.

(6) The Department received four responses to the proposed action during the **Federal Register** notice public comment period. Each respondent provided rationale and recommendations that support the option of modifying the Secretary's Record of Decision to remove the mandatory effluent pooling provision. The Department received no objections to this proposed action.

IV. Comments on the Proposed Modification and Responses

(1) Salt River Project, July 5, 2002

Comment 1-1: "SRP agrees with the Department's determination that the mandatory effluent pooling provision is an impediment to effluent exchanges and effective water management in central Arizona. For example, without the modification the cities of Chandler and Mesa will not be able to undertake effluent-CAP water exchanges pursuant to the Reclaimed Water Exchange Agreement portion of the Gila River Indian Community Settlement."

Response 1-1: SRP's expression of support for the Department's proposal is noted.

(2) City of Phoenix, July 5, 2002

Comment 1-2: "The City of Phoenix has long supported the removal of that sentence. In 1982 the City sent two letters to then Secretary of the Interior James Watt asking that the mandatory effluent exchange pooling concept be eliminated from the Secretary's proposed allocation decision. We maintained then that the inclusion of such a provision would serve to inhibit future exchanges which would otherwise be mutually beneficial to the exchanging parties * * *. We are pleased that you are now proposing to eliminate the mandatory effluent exchange pooling requirement from both the Secretary's record of decision and also from the CAP M&I subcontracts."

Response 1-2: The City of Phoenix position has remained consistent throughout the period following the

Secretary's decision. It has been instrumental in spurring the Department's investigation of the issues arising from the mandatory effluent exchange provision.

(3) City of Chandler, July 3, 2002

Comment 1-3: "The City of Chandler, Arizona submits this letter in support of the proposed modification of the Secretary of Interior's March, 1983 Record of Decision, which deletes the mandatory effluent pooling provision from Central Arizona Project ("CAP") water service contracts. This provision, and the related M&I subcontracts' effluent exchanges restriction, prevent municipalities from exchanging effluent for CAP water held by Indian communities. The proposed modification encourages better water management, and will allow for a necessary effluent exchange as part of the Gila River Indian Community water rights settlement."

Response 1-3: The Department acknowledges the City of Chandler's statements of support for the Secretary's proposed modification of the 1983 Record of Decision. It also notes that Chandler's position supports and is consistent with its formal request for an amendment of its CAP water service contract to remove the mandatory effluent pooling provision, which is pending.

(4) City of Mesa, June 17, 2002

Comment 1-4: "The City of Mesa fully supports the Department's proposal to modify the 1983 Central Arizona Project (CAP) Water Allocation Decision to delete the mandatory effluent pooling provision. We agree with Department's determination that the mandatory effluent pooling provision is an impediment to effluent exchanges and effective water management in central Arizona. * * * The City of Mesa intends to enter into an effluent exchange agreement with the Gila River Indian Community (GRIC) through the proposed GRIC water rights settlement. The benefits resulting from the proposed exchanges to Mesa and GRIC will not occur unless and until the mandatory effluent provision is removed from Mesa's CAP water service subcontracts * * * We urge the Secretary to amend Mesa's CAP water service subcontracts to delete the mandatory effluent pooling provision."

Response 1-4: The Department acknowledges and accepts the City of Mesa's statements of support for the Secretary's proposed modification of the 1983 Record of Decision. Its comments are consistent with its formal request for an amendment of its CAP water service

contract to remove the mandatory effluent pooling provision, which is pending.

V. Compliance With NEPA

The Department has completed a Final Environmental Assessment (EA) on the impact of modifying the 1983 CAP Water Allocation Decision to delete the mandatory effluent pooling provision. The Final EA resulted in a "Finding of No Significant Impact" (FONSI) to the human environment and was signed August 5, 2002 by Reclamation's Phoenix Area Office Manager, Phoenix, Arizona.

Final Decision

The following sentence is hereby deleted from the 1983 CAP Water Allocation Decision (March 24, 1983, 48 FR 12447): "This allocation is subject to adoption of a pooling concept whereby all M&I allottees share in the benefits of effluent exchanges."

Dated: May 14, 2003.

Gale A. Norton,

Secretary of the Interior.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-020-1010-AC]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City field offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held August 14, 2003, in Billings, MT beginning at 8 a.m. When determined, the meeting place will be announced in a News Release. The public comment period will begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana, 59301, telephone (406) 233-2831.