



GILA SETTLEMENT QUESTIONS AND ANSWERS

The following questions were submitted to the Interstate Stream Commission or arose during presentations by Interstate Stream Commission staff. The settlement is very complex and the answers given here are necessary summaries and for information purposes only.

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1. Q: What did New Mexico receive in the settlement?

A: In short, in any ten years New Mexico water users may elect to divert 140,000 acre-feet of additional water from the Gila basin. The settlement also provides the ability to divert that water without complaint from downstream pre-1968 water rights in Arizona. New Mexico will receive \$66 million to \$128 million in non-reimbursable federal funding.

2. Q: Why did New Mexico receive this water? How is it related to the 1964 California v. Arizona U.S. Supreme Court Decree?

A: The 1968 Colorado River Basin Project Act apportioned New Mexico 180,000 acre-feet of Gila basin water in any ten-year period. That water is in addition to the water awarded New Mexico in the 1964 California v. Arizona US Supreme Court Decree. However, the 1968 Act did not provide a means for New Mexico to divert the Gila water without objection by senior downstream users. The 1968 Act provided no funding to help develop that water. The 2004 Arizona Water Settlements Act amends the 1968 Act and together with the Consumptive Use and Forbearance Agreement (CUFA), provides both the ability to divert without objection by downstream parties and the funding to help.

3. Q: What are the basic elements of the Consumptive Use and Forbearance Agreement (CUFA)? How does it work?

A: A diversion by a New Mexico Unit must include agreement by a number of parties: The party receiving the diverted Gila basin water (that is the New Mexico CAP Entity), the parties that forbear calling their Gila water in exchange for Central Arizona Project (CAP) water (those are the Gila River Indian Community "GRIC" and the San Carlos Irrigation District "SCIDD"), parties that could raise claims of impairment (being the Upper Valley Diverters "UVDs"), and the party that is responsible for effecting the exchange of Gila water for CAP water (the Secretary of the Interior). The CUFA is that necessary agreement between all those parties, and is ratified by the Arizona Water Settlements Act.

The CUFA sets forth the rights and responsibilities of the Forbearing Parties, the Secretary of Interior as Authorized Diverter, the New Mexico CAP Entity, and the UVDs. The CUFA describes the terms and parameters under, which diversions by the New Mexico Unit may occur without objection by the downstream parties. It also describes how the Secretary of Interior will exchange CAP water for Gila basin water and how controversies may be resolved.

4. Q: What can the money be used for?

A: Section 212(i) of the legislation provides the funds for “paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration.”

Funds may be used to cover costs of an actual water supply project, environmental mitigation or restoration activities associated with or necessary for the project. The water supply project can be something other than a dam or diversion from a stream system as long as it develops water that meets a supply demand. Activities or alternatives that do not meet water supply demands, present or future, could not be funded by this legislation.

5. Q: Who will decide what is and what isn’t an alternative that “meets a water supply demand?”

A: The New Mexico Interstate Stream Commission has the responsibility under state law to plan for and develop water in New Mexico. In this federal legislation, the Interstate Stream Commission has the responsibility to determine what alternatives meet water supply demand. The Interstate Stream Commission will make that determination in consultation with the Southwest Water Planning Group, the citizens of Southwest New Mexico, and other affected interests. The New Mexico Interstate Stream Commission will institute a continuing process of public information and comment, of which this January 17, 2005 public meeting is the first. Input will be solicited from and information distributed to political entities, interest groups, and the general public.

6. Q: What is the schedule for this public information process?

A: We would like input from the public before we determine the schedule and form of the actual process, or decide who conducts that process. The purposes of the initial meeting on January 17 are twofold. First, to provide basic information on the Arizona Water Settlements Act to the public. Second, to receive input from an informed public on the schedule and process that will allow us to choose uses for the water and funding New Mexico gained in the settlement. This process can be funded through local, state, and/or federal contributions.

7. Q: What criteria would the Interstate Stream Commission use in deciding whether a project could be funded?

A: The legislation mandates funding can be used only for meeting water supply demand, for planning and environmental compliance activities, and environmental mitigation and restoration. The Interstate Stream Commission and the Southwest Water Planning Group have both adopted policies that “recognize the unique and valuable ecology of the Gila Basin.” In considering any proposal for water utilization under Section 212 of the Arizona Water Settlements Act, the Commission will apply “the best available science to fully assess and mitigate the ecological impacts on Southwest New Mexico, the Gila River, its tributaries and associated riparian corridors, while also considering the historic uses of and future demands for water in the basin and the traditions, cultures and customs affecting those uses.”

8. Q: What is the process and timeframe for implementing the CUFA?

A: A number of court and legislative actions in Arizona must be completed by 2007 for the Arizona Water Settlements Act and the many agreements it contains, including the CUFA, to become effective. Certain timeframes contained within the CUFA are described below.

9. Q: Does title to water and access to the money, or just access to the money expire in 2019?

A: New Mexico is guaranteed to receive \$66 million if the money is used for paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico. New Mexico must give notice to the Secretary of Interior by 2014 that New Mexico intends to build a project to exchange Gila River water in New Mexico for CAP water, or New Mexico loses access to the money above \$66 million and the right to contract with the Secretary of Interior for the exchange of CAP water for Gila Basin water. By 2019, the Secretary of Interior must have issued a record of decision under National Environmental Policy Act (NEPA) as to the viability of a chosen alternative. If the Secretary of Interior, through no fault of New Mexico, is not able to issue a decision by that time, the 2019 date may be extended to 2030.

10. Q: Can the \$34 million to \$64 million above the initial \$66 million be spent on anything other than a diversion project?

A: No. The funding above the \$66 million can only be used to build a project that exchanges Gila River water for CAP water. The funds above \$66 million will be disbursed from the U.S. Treasury on a construction cost-schedule basis.

11. Q: Can any portion of the 14,000 ac-ft/yr be diverted without going through NEPA?

A: No. The legislation requires that the New Mexico Unit Agreement between the New Mexico CAP Entity and the Secretary of Interior that will provide for the exchange of CAP water for any diversion from the Gila basin is subject to full NEPA constraints.

12. Q: Now that the Act is signed, is there any legal prohibition against leasing any portion of the 14,000 acre-feet to downstream users?

A: The settlement agreement does not provide for any leasing of the 14,000 acre-feet to downstream users. In addition, such a lease would be subject to the restrictions in state law relating to interstate transfers and leasing. Other practical problems exist. New Mexico is a very poor state compared to our neighbors. Such a lease arrangement would set a precedent for raids on New Mexico water not only by Arizona but by other states as well. Unless New Mexico built a project to divert the water, it would necessarily flow down to downstream users. It is doubtful they would be willing to "lease" water that would be available at their doorstep for free.

13. Q: How does the call system in the Globe Equity court work? To what water rights does it apply?

A: The Globe Equity call system is a procedure agreed to among Globe Equity rights holders by which holders of Globe Equity rights may call for their water and how that called water is delivered in priority. The additional water New Mexico could divert under the settlement is not subject to the Globe Equity call system. The settlement requires the Globe Equity call system to be modified as needed to accommodate diversions by the New Mexico Unit as long as diversions are in accordance with the terms of the CUFA.

14. Q: Where in recent legislation is it stated that the Arizona Water Settlement Act or the CUFA documents (as opposed to the implementation actions) must undergo NEPA review?

A: Section 212(h) of the Arizona Water Settlements Act requires the Secretary of Interior to carry out all federal environmental mandates, including NEPA review of the CUFA, upon execution (i.e., signing) of the CUFA.

15. Q: What operational or hydrologic modeling of the CUFA has been developed?

A: During negotiations, the Interstate Stream Commission conducted preliminary modeling to ensure that the bypass parameters and the terms of diversion by the New Mexico Unit did not impair New Mexico's ability to realize the 14,000 acre-feet of water while still protecting the Gila ecology. The best available science, including more detailed modeling, will have to be used to assess specific projects or alternatives.

16. Q: Is there any kind of map of the major groups of water rights governed by the CUFA and of key flow measurement points?

A: See "Upper Gila River Features Map".

17. Q: How might any of this information be made available for public review?

A: That is one purpose of the initial January 17 public meeting. Interstate Stream Commission staff has made numerous presentations to the public, and to planning and study groups during the last three years. The Interstate Stream Commission will conduct further presentations and public meetings as necessary during the planning process. The final version of relevant documents will be available through the Office of the State Engineer's web site at: www.seo.state.nm.us.

18. Q: Who will award contracts for the 14,000 acre-feet?

A: The CUFA provides that the State of New Mexico, through the New Mexico Interstate Stream Commission, will form or designate the New Mexico CAP Entity or Entities. The New Mexico CAP Entity will enter into a contract with the Secretary of Interior to divert the water. Section 212(d) of the legislation provides that the New Mexico Interstate Stream Commission will approve any contract between the New Mexico CAP Entity and the Secretary of Interior. The New Mexico CAP Entity and the arrangements by which water gets to the end water users are not defined at this time.

19. Q: Who will own the contracted 14,000 acre-feet of water diverted in New Mexico?

A: The CUFA allows the New Mexico Unit to divert up to 140,000 acre-feet of water from the Gila River during any ten-year period. Under the CUFA, the New Mexico CAP Entity will have a contractual right to use this additional Gila basin water. The Secretary of Interior will also enter into an agreement with the Forbearing Parties (GRIC and SCIDD) to receive CAP water instead of the Gila River water diverted by the New Mexico Unit.

20. Q: Who will operate and manage any facility constructed to divert the contracted 14,000 acre-feet?

A: The Secretary of Interior (through the Bureau of Reclamation) is tasked with design, construction, and operation of the New Mexico Unit. The legislation provides that upon request by the State of New Mexico, the Secretary of Interior shall transfer to the New Mexico CAP entity responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those functions.

However, the Secretary of Interior will remain responsible to the Forbearing Parties and the UVDs for ensuring the diversion is in compliance with the CUFA.

21. Q: What is the plan for environmental compliance on each major element of the CUFA?

A: The legislation designates the Bureau of Reclamation as the lead federal action agency and provides that the State of New Mexico through the Interstate Stream Commission may elect to serve as joint lead. The Bureau (and the ISC) will plan the formal environmental compliance activities. The Commission encourages parties in Southwest New Mexico to quickly begin the meaningful interaction, studies, and consensus required to minimize the time and effort required by environmental compliance.

22. Q: Who will be responsible for any harmful effect to the ecology of the Gila and San Francisco Rivers that might result from diverting the contracted water?

A: The Secretary of the Interior is responsible to ensure operations of the New Mexico Unit conform to federal environmental mandates; i.e., operations of the New Mexico Unit would have to conform to those approved in the Record of Decision issuing from an Environmental Impact Statement (EIS).

23. Q: What will be the priority date of the contracted water? How will the priority date be established?

A: Pursuant to the 1968 Colorado River Basin Project Act, additional diversions in New Mexico will be junior to all Gila rights existing as of September 30, 1968. The Bypass Parameters and terms of the New Mexico Unit diversion in the CUFA allow diversions without objection by certain senior water rights holders as long as the diversions are in conformance with the CUFA.

24. Q: Is it required that New Mexico pay for the capital costs of the water delivered to the New Mexico CAP Water Bank? Are there exceptions?

A: Section 212(e) of the legislation states: "the New Mexico CAP entity shall be responsible only for its share of operations, maintenance, and repair costs. No capital costs attendant to other Units or portions of the Central Arizona Project shall be charged to the New Mexico CAP entity."

25. Q: It appears that an additional bank called the CAP Mitigation bank will allow the GRIC or the SCIDD to purchase additional water rights adjudicated in the Gila system in Arizona. How does the bank operate?

A: If sometime in the future a court adjudicates additional Arizona water rights on the Gila and assigns those rights a pre-1968 priority date, those rights would be senior to the September 30, 1968 priority date of the New Mexico Unit. Under the terms of the CUFA, New Mexico will be responsible for accommodating fifty-percent of those additional pre-1968 rights or 40 cfs of additional flow whichever amount is less. The UVDs, GRIC and SCIDD must accommodate any remainder of those additional pre-1968 Arizona rights, not New Mexico. The CAP Mitigation Bank is a water bank into which GRIC and SCIDD may deposit CAP water to offset the impact of those additional pre-1968 rights. GRIC and SCIDD must pay all costs for the CAP water they deposit into the CAP Mitigation bank.

26. Q: Why would GRIC need to pay for water from the CAP Mitigation Bank if additional Gila rights are adjudicated in Arizona? Shouldn't GRIC be senior to any additional Arizona water rights?

A: Yes, GRIC would be senior to most Gila water rights adjudicated in the future. Through the settlement, GRIC has agreed to help accommodate potential additional rights. The CAP Mitigation Bank is insurance to protect GRIC and SCIDD from the responsibility they assume in the CUFA to

assume any additional pre-1968 Gila rights that may be adjudicated at some time in the future. GRIC and SCIDD, not the NM CAP Entity, bear the cost for that insurance.

27. Q: What CAP water is available for purchase and credit to either the New Mexico CAP Water Bank or the CAP Mitigation Bank? How will purchases be funded?

A: The CAP water available to be exchanged for the New Mexico Unit Gila diversions has the first priority on the CAP. The New Mexico CAP Entity must pay for the operations, maintenance, and repair costs associated with the CAP water exchanged for diversions in the Gila basin by the New Mexico Unit. GRIC and SCIDD must pay for any CAP water they purchase for deposit into their CAP Mitigation Bank.

Upper Gila River Features

(schematic, not to scale)

