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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