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May 24, 2018

Sent via U.S. Mail and Via E-mail

The Honorable Ryan Zinke
Secretary, U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: Proposed Lease of the Town of Quartzsite's Colorado River entitlement to the Central Arizona Water Conservation District – Recommendation

Dear Secretary Zinke:

Pursuant to A.R.S. § 45-107, the Director of the Arizona Department of Water Resources (Department) is authorized on behalf of the State of Arizona to consult, advise and cooperate with the Secretary of the Interior on matters relating to the Colorado River. Consistent with this responsibility, under A.R.S. § 45-107(D), non-federal Arizona entities that contemplate the transfer of their Colorado River entitlements are required to cooperate, confer and obtain the advice of the Director of the Department. Due to the importance of the distribution of Colorado River to the welfare and economy of the State, and because in most cases mainstream water is the only dependable supply of water for urban, industrial and agricultural users, the Department adopted the "Substantive Policy Statement – Policy and Procedure for Transferring an Entitlement of Colorado River Water"¹ (Substantive Policy Statement) to ensure adequate and consistent evaluation of any proposed transfer of a Colorado River mainstream entitlement.

On August 2, 2017, the Town of Quartzsite (Quartzsite) and the Central Arizona Water Conservation District (CAWCD) submitted to the Department a request for consultation for the proposed lease by Quartzsite of its 1,070 acre-feet per year (af/yr) fourth priority Colorado River water entitlement to CAWCD for use in partially fulfilling CAWCD's statutory groundwater replenishment responsibilities. Quartzsite and CAWCD requested that the Department recommend that the U.S. Bureau of Reclamation approve the proposed lease. Upon receipt of all the necessary documents and information pertinent to the request for consultation, the Department complied with the public notice process set forth in the Substantive Policy Statement and accepted public comments on the proposed lease. After the public comment period closed,

¹ CR 8, Policy and Procedure for Transferring and entitlement of Colorado River water, January 2014 was in effect at the time of the Quartzsite-CAWCD Transfer and Lease application. This policy was revised on January 2018, but revisions made during the January 2018 update to CR8 does not impact any decisions made here.

the Department evaluated the proposed lease under the criteria set forth in the Substantive Policy Statement. The enclosed document, entitled "Evaluation of the Proposed Lease of Town of Quartzsite's 1,070 AF 4th priority Colorado River entitlement to Central Arizona Water Conservation District, 05/24/2018" (Evaluation), contains the Department's evaluation of the proposed lease.

As more fully explained in the enclosed Evaluation, the Department finds that because Quartzsite's fourth priority Colorado River water entitlement has not been put use, and therefore has not been perfected, the proposed lease of the entitlement is inconsistent with the criteria contained in the Substantive Policy Statement, and hence inconsistent with the policies and laws of the State. For that reason, the Department recommends that United States deny the proposed lease if it is submitted for approval by Quartzsite and CAWCD.

The Department appreciates the opportunity to review and make a recommendation regarding the proposed lease. Should you have any questions regarding any of the above, please contact Thomas Buschatzke at 602-771-8426 or via email at tbuschatzke@azwater.gov.

Sincerely,



Thomas Buschatzke
Director, Arizona Department of Water Resources

Enclosure: Evaluation of the Proposed Lease of Town of Quartzsite's 1,070 AF 4th priority Colorado River entitlement to Central Arizona Water Conservation District, 05/24/2018

cc: Brenda Burman, Commissioner, Bureau of Reclamation
Terry Fulp, Bureau of Reclamation
Perri Benemelis, Central Arizona Water Conservation District
Jim Ferguson, Town manager, Town of Quartzsite
Kelly Brown, Deputy Counsel, Arizona Department of Water Resources

**Evaluation of the Proposed Lease of
Town of Quartzsite's 1,070 AF 4th priority Colorado River entitlement to Central Arizona Water Conservation
District
05/24/2018**

I. Introduction

Pursuant to A.R.S. § 45-107(A), the Director of the Arizona Department of Water Resources (Department) is authorized on behalf of the State of Arizona to consult, advise and cooperate with the Secretary of the Interior (Secretary) on matters relating to the Colorado River. Consistent with this responsibility, under A.R.S. § 45-107(D), non-federal Arizona entities that contemplate the transfer of their entitlements are required to cooperate, confer and obtain the advice of the Director of the Department. Due to the importance of the distribution of Colorado River to the welfare and economy of the State, and because in most cases mainstream water is the only dependable supply of water for urban, industrial and agricultural users, the Department adopted the "Substantive Policy Statement – Policy and Procedure for Transferring an Entitlement of Colorado River Water"¹ (Substantive Policy Statement) to ensure adequate and consistent evaluation of any proposed transfer of a Colorado River mainstream entitlement.

II. Request for Consultation on Proposed Lease of Quartzsite's Fourth Priority Colorado River Entitlement to CAWCD

On August 2, 2017, the Town of Quartzsite (Quartzsite) and the Central Arizona Water Conservation District (CAWCD) submitted to the Department a request for consultation for a proposed lease by Quartzsite of its 1,070 acre-feet per year (af/yr) fourth priority Colorado River water entitlement to CAWCD for use in partially fulfilling CAWCD's statutory groundwater replenishment responsibilities. Quartzsite and CAWCD entered into the lease agreement (Lease Agreement) on June 8, 2017 providing for the lease of Quartzsite's 1,070 af/yr Colorado River entitlement to CAWCD. The initial term of the Lease Agreement is 25 years commencing on January 1 of the year in which all regulatory approvals required for CAWCD to divert Colorado River water under the Lease Agreement and transport that water to CAWCD's service area have been obtained. The Lease Agreement provides that it will automatically renew for a second 25-year term unless either party provides notice of its desire not to renew the lease within the timeframes provided under the Lease Agreement. Quartzsite and CAWCD have requested that the Department recommend to the U.S. Bureau of Reclamation (Reclamation) that it approve the proposed lease for the full potential 50-year lease period, subject to the renewal of the lease for the second 25-year term. This document describes the Department's evaluation of the proposed lease and presents the evaluation results.

The following bulleted items briefly summarize the water supply and demand information for Quartzsite and CAWCD as stated in their request for consultation:

Quartzsite

- Holds a Section 5 contract with the United States, Contract No. 7-07-30-W0353 (Quartzsite Contract) for a fourth priority annual entitlement for 1,070 af of Colorado River water. The contract is for permanent service but is subject to termination if no water is put to beneficial use within the Quartzsite contract service area by January 28, 2029. Quartzsite has never used any of this entitlement.

¹ CR 8, Policy and Procedure for Transferring and entitlement of Colorado River water, January 2014 was in effect at the time of the Quartzsite-CAWCD Transfer and Lease application. This policy was revised on January 2018, but revisions made during the January 2018 update to CR8 does not impact any decisions made here.

- Current annual water demand – 600 af
- Projected annual water demand for 2030 – 660 af
- Currently, demand is met with groundwater withdrawn at two facilities – the Quail Trail production facility and the Kofa Avenue Production facility.

CAWCD

- CAWCD’s plans to use the 1,070 af/yr of fourth priority Colorado River water to meet a portion of its Central Arizona Groundwater Replenishment District (CAGR) replenishment obligation within Maricopa, Pinal and Pima counties.
- Current annual replenishment obligation – 30,000 af
- Annual long-term water supply – 38,166 af
- Projected annual replenishment obligation by 2034 – 86,900 af
- Existing water sources
 - CAP water supply – 8,311 af
 - CAP Water supply (Non-Indian Agricultural priority) – 18,185 af
 - CAP water supply tribal lease – 2,500 af
 - Long term storage credits – 6,770 af
 - Effluent – 2,400 af

III. Quartzsite’s Fourth Priority Colorado River Entitlement

Quartzsite acquired its fourth priority Colorado River entitlement on January 28, 1999 when it entered into a contract with the United States for a fourth priority Colorado River water entitlement of up to 1,070 acre-feet per year for use within Quartzsite’s contract service area. At the time the contract was entered, and presently, Quartzsite’s water supply has been groundwater withdrawn from wells within Quartzsite’s incorporated boundaries. Section 5.1 of the Quartzsite Contract originally provided that the United States reserved the right to terminate the contract if Quartzsite did not complete a water delivery system and order, divert, transport, and beneficially use mainstream water within the Quartzsite Contract service area by January 28, 2014. By letter to the United States dated January 21, 2013, Quartzsite requested an extension of the January 28, 2014 date for completing its water delivery system. The United States subsequently consulted with the Department on Quartzsite’s request. After reviewing information provided by Quartzsite on its groundwater supply and the status of its evaluation of options for use of its Colorado River entitlement, the Department, by letter dated December 20, 2013, recommended that the United States extend the term specified in Section 5.1 of the Contract to January 28, 2029, and include a requirement for Quartzsite to submit to the United States and the Department a 15-year implementation plan and annual status reports.

On October 20, 2015, Quartzsite and the United States entered into Amendment No. 1 to the Quartzsite Contract. Among other things, Amendment No. 1 extended the term in Section 5.1 from January 28, 2014 to January 28, 2029 and added a requirement that Quartzsite prepare and submit to the United States and the Department by December 31, 2014 a 15-year implementation plan describing the steps that will be taken to develop and put to use Quartzsite’s Colorado River water entitlement, including three 5-year milestones that will identify key deliverables for years 2019, 2024 and 2029. Amendment No. 1 also required Quartzsite to prepare and submit annual status reports on the implementation plan to the United States and the Department. Although Quartzsite submitted the implementation plan to the United States and the Department, it has submitted only one status report, dated January 13, 2017, since December 2014.

IV. Public Notice Process

The Substantive Policy Statement requires the Department to give public notice of a proposed transfer of a Colorado River entitlement and to allow the public to submit comments on the proposed transfer. The Department gave public notice of the proposed lease of Quartzsite's fourth priority entitlement to CAWCD in the manner set forth in the Substantive Policy Statement, which included publishing notices of the proposed lease on October 11, 2017 and October 18, 2017 in the Arizona Republic, a newspaper of general circulation throughout the state. The Department also notified the planning and zoning departments of La Paz, Yuma and Mohave counties. Notices were also sent to a list of interested parties that the Department maintains. All notices stated that comments on the proposed lease would be accepted by the Department until November 27, 2017. Public meetings were held at three different locations as follows to solicit additional public input:

1st Public meeting – November 6, 2017 at ADWR offices in Phoenix, Arizona. There were 23 sign-ins and 3 public comments – 2 in support and 1 in opposition.

2nd Public meeting – November 9, 2017 at Quartzsite Town Hall. There were 33 sign-ins and 9 public comments – 3 in support and 6 in opposition.

3rd Public meeting – November 13, 2017 at Bullhead City Council Chambers. There were 37 sign-ins and 17 public comments – 2 in support and 15 in opposition.

Based on a request from stakeholders to extend the comment period, the comment period was extended to December 20, 2017. During the comment period, 66 written comments were received – 5 were in favor of the proposed lease, 8 were opposed and 37 were outside the scope of the request for consultation.

The Department received the following claims of negative impacts from persons submitting comments:

- The Mohave County Water Authority (MCWA) made a claim that the proposed lease will create permanent negative impacts by foreclosing future Municipal and Industrial (M&I) development on the Colorado River.
- MCWA made a claim that MCWA and other fourth priority Colorado River entitlement holders would be negatively impacted because CAWCD is seeking to usurp their opportunity to acquire additional Colorado River water in the event Quartzsite cannot put its Colorado River entitlement to beneficial use within its service area.
- MCWA claimed negative impacts to other fourth priority entitlement holders in the event of a Colorado River shortage. MCWA stated that if a shortage is declared on the River, the excess CAP pool is impacted, and normally CAWCD would not receive any excess pool water. If the proposed lease were to be approved, CAWCD would receive a portion of the 1,070 af/yr of Colorado River water entitlement during a shortage, after a pro-rata reduction. MCWA claimed that in this scenario, other fourth priority entitlement holders would be negatively impacted because the total amount of Colorado River water available to them would be reduced by the amount of water delivered to CAWCD.

- Multiple Quartzsite residents claimed negative impacts because Quartzsite's portfolio of water resources would be reduced to one.

The Substantive Policy Statement provides that the Director of the Department will issue a recommendation regarding a proposed lease to the Secretary within 60 days from the end of the public comment period, unless additional time is needed to resolve claims of negative impacts to third parties. On January 11, 2018 CAWCD requested an additional 90 days to resolve and mitigate claims of negative impacts. The 90-day resolution period ended on April 11, 2018 without any resolution of the claims. On April 11, 2018, Quartzsite and CAGR jointly submitted responses to public comments regarding the proposed lease.

V. Department's Evaluation of the Proposed Lease under the Substantive Policy Statement

The Department has conducted an evaluation of the proposed lease in accordance with the Substantive Policy Statement. The Substantive Policy Statement classifies entitlement transfer actions into conveyances, leases and assignments.² The proposed action of transferring Quartzsite's 1,070 af/yr fourth priority Colorado River water entitlement to CAWCD is considered a lease because it is a temporary transfer action.

The proposed lease was evaluated under the applicable evaluation criteria: past and reasonable future quantity of consumptive use of water associated with the entitlement, potential negative impacts to the water supplies of other Colorado River entitlement holders, water quality impacts related to return flows, beneficial use and water demand and the 1944 Mexican Treaty obligations. The proposed lease was also evaluated under the provisions of the Substantive Policy Statement relating to the conveyance or lease of an unused entitlement.

1. Past and reasonable future quantity of consumptive use of water associated with the entitlement

Pursuant to the Substantive Policy Statement, the Director will consider several factors when evaluating a proposed transfer of a Colorado River entitlement, including "the past and reasonable future quantity of consumptive use of water associated with the entitlement." An analysis of past and reasonable future quantity of consumptive use of the water associated with the entitlement is a consideration for the quantity of the water that may be transferred.

Past quantity of consumptive use

- Quartzsite has not put to use its Colorado River entitlement within its contract service area, and therefore, a consumptive use has not been established.

Reasonable Future Quantity of Consumptive Use

- Based on the request for consultation, CAWCD would divert the full 1,070 af/yr of Colorado River

² An entitlement transfer action is considered a conveyance when a Colorado River contractor proposes to permanently transfer all or a portion of its entitlement to another entity that will not serve the same contract service area and/or proposes to change the type of water use. A lease is a temporary transfer action involving all or a portion of a Colorado River entitlement. An agreement to direct Colorado River water to a particular user temporarily, including an agreement not to order water pursuant to a Colorado River entitlement in order to direct the water to a particular user, is also considered a lease for the purposes of the substantive policy statement. An entitlement transfer action is considered an assignment when a Colorado River contractor proposes to permanently convey all or a portion of its entitlement to another entity that will serve the same type of use within the same contract service area.

water available under Quartzsite's entitlement and use that water to satisfy its statutory CAGRDR replenishment obligation. Because replenishment would occur in central Arizona, the water diverted under the proposed lease would be 100% consumptively used outside of Quartzsite's contract service area with no return flow to the Colorado River. The proposed lease is for 25 years with an option to automatically renew for another 25 years unless either party provides notice of its desire not to renew the lease within the timeframes provided under the Lease Agreement. Section 5.1 of the Quartzsite Contract states "*Notwithstanding Section 4 herein, the United States reserves the right to terminate this contract by written notice of termination to Quartzsite if Quartzsite does not complete its water delivery system and order, divert, transport, and beneficially use Mainstream Water within the Quartzsite Contract Service area, as shown in Exhibit A, by January 28, 2029, which is 30 years from the date set forth in Section 1 of the Contract, unless otherwise determined by the contracting officer in writing, after consultation with ADWR.*" (Emphasis added). The proposed lease does not establish beneficial use of Quartzsite's 1,070 af/yr of Colorado River water within Quartzsite's contract service area by January 28, 2029.

- A portion of Quartzsite's planning area is located within the proposed accounting surface and comments received during the public comment period have implied that Quartzsite could establish future consumptive use by drilling a well in that portion of its planning area. However, as of the date of this evaluation, the accounting surface rule is still in draft form, and the Department and others raised many substantive objections, both legal and technical to the draft rule and it has never been revised or adopted.

2. Potential negative Impacts to the water supplies of other Colorado River entitlement holders

- Quartzsite holds a diversion entitlement to fourth priority Colorado River water in the amount of 1,070 af/yr. A diversion entitlement is limited by the quantity of water that may be diverted by the entitlement holder. Any return flow that results from the use is credited to Arizona's annual 2.8 million af/yr allocation of Lower Basin Colorado River water and is available to other water users. Because Quartzsite has not put to use its Colorado River entitlement within its contract service area, neither a consumptive use nor a return flow has been established.
- During normal conditions³, the water available under Quartzsite's entitlement has historically been diverted by CAWCD for use as excess Central Arizona Project water. Since 2014, CAWCD has elected to allocate all excess water supply after the satisfaction of the agricultural settlement pool to system conservation in Lake Mead, the Central Arizona Groundwater Replenishment District (CAGRDR) replenishment obligation and to the statutory firming pool (consisting of the CAGRDR replenishment reserve, the Arizona Water Banking Authority and Reclamation's Indian firming obligations).
- Under the proposed lease, CAWCD plans to divert the entire 1,070 af/yr of Colorado River water available under Quartzsite's entitlement and use it for CAGRDR replenishment purposes in Maricopa, Pinal and Pima counties. Under normal operations, the proposed lease would not cause potential negative impacts to the water supplies of other Colorado River entitlement holders. However, it would cause a potential negative impact to the recipients of the excess water supply which includes the agricultural settlement pool, the statutory firming pool and to other excess water users by reducing the amount of excess water available to them.
- Because CAWCD is allowed to divert any unused apportionment on the River as excess water, the impacts of shortage on long term Colorado River entitlement holders depend on the amount of

³ Pursuant to Section 2 of the 2007 Interim Guidelines, the Secretary determines a "Normal Condition" when Lake Mead elevation is projected to be above 1075 feet and below 1,145 feet on January 1.

excess water available. In that sense, excess water serves as a buffer in times of shortage to long term Colorado River water entitlement holders. Under shortage conditions⁴, the proposed lease would reduce the amount of excess water available for diversion. Based on the methodology laid out under the October 24, 2006 Director's Shortage Sharing Recommendations, the proposed lease would therefore impact the fourth priority Colorado River entitlement holders by accelerating the point in time when shortage reductions would impact fourth priority entitlement holders. In addition, under shortage conditions, the proposed lease would further reduce the amount of any excess water available to excess water users, including the agricultural settlement pool and the statutory firming pool.

3. Water quality impacts related to return flows and other pertinent impacts that could occur as a result of the transfer

Because Quartzsite has not put to use its Colorado River entitlement within its contract service area, there is no demonstrable water quality impact related to return flows or other pertinent impacts that could occur as a result of the proposed lease.

4. Ensure that the transaction will not negatively impact the United States' ability to meet its 1944 Treaty obligations for delivery of Colorado River water to Mexico or to meet the Minute 242 salinity control requirement

The proposed lease does not negatively impact the United States' ability to meet its 1944 treaty obligations for the delivery of Colorado River water.

Because Quartzsite has not put to use its entitlement within its contract service area, it would be difficult to determine whether the proposed lease will have an impact on salinity control requirements pursuant to Minute 242.

5. Unused Colorado River Entitlements

The Substantive Policy Statement is clear that the Department will not recommend the conveyance or lease of any entitlement to unused or surplus Colorado River apportionments. The Substantive Policy Statement states that "[I]f such entitlements are not needed by a contractor, the Department will recommend that the unneeded contract be terminated and, if necessary, a new one created." The fundamental philosophy of not conveying or leasing an unused entitlement applies to all priorities, including unused fourth priority entitlements. The Department has on one occasion recommended the termination of a fourth priority Colorado River contract because the entity had not exercised its contractual right to divert and use Colorado River water (*See January 9, 2002 letter to Bureau of Reclamation on Colorado River Delivery Contract No. 6-07-30-W0125, Western States Minerals*). Reclamation subsequently terminated the contract with Western States Minerals by letter dated January 22, 2002.

Pursuant to the Substantive Policy Statement, the purpose for leasing an entitlement is to provide a temporary supply to another party located outside of the existing contract service area without the contractor permanently relinquishing or abandoning the entitlement. If a water entitlement lease is proposed for a period of more than five years, the applicant for the lease action must demonstrate that

⁴ Pursuant to Section 2 of the 2007 Interim Guidelines, the Secretary determines a "Shortage Condition" when Lake Mead elevation is projected to be below 1075 feet on January 1.

the existing water use will not be abandoned and explain why a long-term lease is necessary for the intended new use. The requirement that an applicant proposing to lease its entitlement for a period of more than five years demonstrate that the existing water use will not be abandoned supports the Department's position that the Substantive Policy Statement was not intended to allow the conveyance or lease of an unused entitlement. For abandonment to be an issue, the applicant must have been using its entitlement for an existing use at the time of the application. Quartzsite has never used its Colorado River entitlement.

In their responses to public comments, Quartzsite and CAWCD stated that the Department has previously recommended transfers of unused entitlements from the City of Kingman (Kingman) and Cibola Valley Irrigation and Drainage District (CVIDD). However, as explained below, none of those transfers involved the conveyance or lease of an unused entitlement.

Transfer of Kingman's Entitlement

The transfer of the Kingman fourth priority Colorado River entitlement to the Mohave County Water Authority (MCWA) is the only case where the Department recommended the transfer of an unused entitlement. However, that transfer was an assignment in which the entitlement would continue to be available for use within Kingman, and not a conveyance or lease. In the 1980s Kingman recognized that it was not economically feasible for it to put to use its 18,500 af/yr of fourth priority Colorado River entitlement within its contract service area. Reclamation, after a favorable recommendation from the Department, extended the termination date of the contract by requiring that Kingman submit a plan for the beneficial use of water on or before October 31, 1994.

Once the extension was granted, Kingman and other Mohave county communities began serious discussions which focused on the development of a regional approach for putting Kingman's entitlement to beneficial use. Through a series of public meetings and discussions, the concept of creating a county water authority to hold and distribute Kingman's entitlement within Mohave County was developed. In late January 1994, legislation was introduced in the Arizona legislature authorizing the creation of a county water authority for that purpose. All of the municipal corporations in Mohave County that had a contract with the United States for delivery of Colorado River water as of January 1, 1993 passed resolutions approving the formation of the MCWA. The bill authorizing the establishment of the MCWA was signed into law by Governor Symington on April 8, 1994 and the Department favorably recommended Kingman's plan to Reclamation and recommended that Reclamation initiate the process to effect the assignment of Kingman's entitlement to MCWA. The favorable recommendation for the assignment of Kingman's Colorado River entitlement to MCWA was primarily because the transfer was to an entity that was within Mohave County and continued to benefit the region as a whole, including Kingman.

Under the proposed lease, CAWCD would divert the full 1,070 af/yr of Colorado River water available under Quartzsite's entitlement and use that water to satisfy its statutory CAGRDR replenishment obligation. Because replenishment would occur in central Arizona, the water diverted under the proposed lease would be 100% consumptively used outside of Quartzsite's contract service area with no return flow to the Colorado River. For that reason, the proposed lease is materially distinguishable from the Kingman transfer.

Transfers of CVIDD's Entitlement

In 2004, CVIDD transferred 700 af/yr of its priority 5 entitlement and 1,000 af/yr of its priority 6 entitlement to MCWA. These entitlements had previously been put to use by CVIDD within its contract service area and therefore had been perfected by CVIDD prior to the transfer. Moreover, this transfer was an assignment since the entitlement was being transferred to another entity that was to serve the same type of use within the same contract service area. These entitlements were subsequently transferred to Arizona Game and Fish Commission in 2007 for use in the same place of use as the original entitlement.

In 2008, CVIDD transferred 2,700 af/yr of its priority 4 Colorado River water entitlement to GSC Farms LLC (formerly Arizona Recreational Facilities LLC). This entitlement had previously been put to use by CVIDD within its contract service area and perfected. Once again, this transfer was considered an assignment because the entitlement was being transferred to another entity that was to serve the same type of use within the same contract service area. A portion of this entitlement (12.7 af/yr) was then transferred to Lake Havasu City in 2013.

None of the transfers by CVIDD involved an unused entitlement. These entitlements had previously been put to use by CVIDD within its contract service area and perfected prior to the transfers. The Department has been steadfast in its policy that unused entitlements should not be conveyed or leased. In conformance with this policy, the Department informed Quartzsite on several occasions that it may not convey or lease its unused entitlement. (See, e.g., email dated June 7, 2012, from Perri Benemelis of the Department, responding to an inquiry regarding Quartzsite's Colorado River water entitlement in which she states, "In general, the Town has the right to use this water supply for domestic purposes, but not for sale or lease to generate revenue.")

VI. Review of the Proposed Lease in relation to the Terms of the Quartzsite Contract

In addition to evaluating the proposed lease under the provisions of the Substantive Policy Statement, the Department also reviewed the proposed lease in relation to the Quartzsite Contract. Section 5.1 of the contract states, "*Notwithstanding Section 4 herein, the United States reserves the right to terminate this contract by written notice of termination to Quartzsite if Quartzsite does not complete its water delivery system and order, divert, transport, and beneficially use Mainstream Water within the Quartzsite Contract Service area, as shown in Exhibit A, by January 28, 2029, which is 30 years from the date set forth in Section 1 of the Contract, unless otherwise determined by the contracting officer in writing, after consultation with ADWR.*" (Emphasis added).

CAWCD plans to divert the full 1,070 af/yr of Colorado River water available under the Lease Agreement and use that water to help satisfy its statutory CAGRDR replenishment obligation. Since replenishment occurs in central Arizona, the water that would be diverted under the proposed transfer would be 100% consumptively used outside of the Quartzsite contract service area, with no return flow to the Colorado River. The proposed lease is for 25 years with an option to automatically renew for another 25 years. The initial term of the lease of 25 years is past the January 28, 2029 date set forth in Section 5.1 of the Contract by when Quartzsite is to complete its water delivery system and order, divert, transport and beneficially use mainstream water within the Quartzsite contract service area by January 28, 2029. The proposed lease does not establish beneficial use of Quartzsite's 1,070 af/yr of Colorado River water within Quartzsite's contract service area by January 28, 2029. Therefore, the proposed lease is inconsistent with the terms of the Quartzsite Contract.

VII. Conclusion

The Department finds that the proposed lease is inconsistent with the policies set forth in the Substantive Policy Statement, and hence inconsistent with the policies and laws of the State.

- Quartzsite has not put its Colorado River entitlement to use. As such, Quartzsite has not exercised its contractual right to divert and use Colorado River water and therefore has not perfected the use of its Colorado River water entitlement. The Substantive Policy Statement is clear that the Department will not recommend the conveyance or lease of any entitlement to unused or surplus Colorado River apportionments.
- Pursuant to the Substantive Policy Statement, if a water entitlement lease is proposed for a period of more than five years, the applicant for the lease action must demonstrate that the existing water use will not be abandoned and explain why a long-term lease is necessary for the intended new use. The requirement that an applicant proposing to lease its entitlement for a period of more than five years demonstrate that the existing water use will not be abandoned supports the Department's position that the Substantive Policy Statement was intended to allow the conveyance or lease of an entitlement only if the entitlement has been put to use. Quartzsite has not used its Colorado River entitlement and has no plans to do so in the near future.
- None of the conveyances or leases recommended by the Department to date have involved the conveyance or lease of an unused entitlement. The 1998 favorable recommendation of the transfer of Kingman's unused Colorado River entitlement was primarily because the transfer was an assignment to an entity that was within Mohave County and continued to benefit the region as a whole, including Kingman. Prior transfers of fifth and sixth priority Colorado River entitlements include the 2004 transfers from CVIDD to MCWA and subsequently from MCWA to Arizona Game and Fish Commission in 2007. These entitlements however had previously been put to use by CVIDD within its contract service area and perfected prior to the transfers. The Department has been steadfast in its policy that unused entitlements should not be conveyed or leased. In conformance with this policy, the Department has informed Quartzsite on several occasions that it may not convey or lease its unused entitlement. (E.G., *email dated June 7, 2012, from Perri Benemelis in response to an inquiry regarding Quartzsite's Colorado River water entitlement states, "In general, the Town has the right to use this water supply for domestic purposes, but not for sale or lease to generate revenue."*)