

# NORTH GILA VALLEY IRRIGATION & DRAINAGE DISTRICT

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Theodore Cooke  
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*Re: North Gila Valley Irrigation and Drainage District – Objection to Mohave Valley Irrigation and Drainage District’s Proposed Drought Contingency Plan (“DCP”) ICS Exhibit*

Dear Director Buschatzke, Ms. Kartha and Mr. Cooke:

North Gila Valley Irrigation and Drainage District (“NGVIDD”) generally supports the DCP and any system conservation and/or Intentionally Created Surplus (“ICS”) program that would be created by the same. NGVIDD understands that the creation of system conservation and ICS are critical in supporting the system and helping to delay and/or avoid Tier 2 or Tier 3 shortage declarations. However, we remain very concerned with how those system conservation and ICS programs will be created and managed, and what precedent those program may set.

Specifically, NGVIDD has substantial concerns with Mohave Valley Irrigation and Drainage District’s (“MVIDD”)s proposed DCP ICS Exhibit, titled Mohave Valley Irrigation and Drainage District (MVIDD) Extraordinary Conservation Intentionally Created Surplus (ICS) – Land Fallowing Program (hereinafter the “Exhibit”). While MVIDD’s Exhibit discusses the details of its proposed fallowing program and the potential ICS and system conservation creation as a result of that program, the Exhibit lacks specificity with regard to a number of issues. MVIDD’s Exhibit does not clearly state its intention for the created system conservation and/or ICS, but from its previous proposed exhibit and comments made throughout the DCP efforts, it could not be clearer that MVIDD’s proposal contemplates the transfer of its created ICS, and, therefore, the transfer of Colorado River water away from the main stem.

NGVIDD and other on-River users oppose efforts to transfer Colorado River water off the main stem of the River for use in other areas of the State, regardless of whether this is done under the guise of ICS, compensated conservation, or system conservation. Such transfers are not only in opposite to the purposes for which such entitlements were granted, but also threaten the supply and potential growth of downstream, on-River users and their communities. Further, approving such an Exhibit at this time and allowing for the transfer of ICS and/or system conservation water, directly or indirectly, created by on-River users is in opposite to the State’s Substantive Policy Statement on Policy and Procedure for Transferring an Entitlement of Colorado River Water (“Policy”).

First, MVIDD did not follow proper procedure for such a program. MVIDD, knowing the intent of its Exhibit is to effectuate a transfer, should have requested consultation with the State. This is to be done in writing one-hundred fifty days prior to any contract execution and should include a water use management plan. After receipt, the State begins its public notice and comment period and can hold public meetings to address potential issues. After the close of this public notice and comment period, the State can make its decision as to the proposed transfer. None of this was done by MVIDD. In fact, it is very clear that their hope was to avoid this process and take advantage of the urgency and need for the DCP. Nevertheless, this process should have been followed.

Second, the program would fail to overcome the factors considered by the State. Even if MVIDD had followed the proper process (which it has not as stated above), after considering the potential negative impacts to the water supplies of other Colorado River entitlement holders and other pertinent impacts that could occur as a result of the proposed transfer, the State would likely deny and/or reject such a transfer program. Allowing for the transfer of on-River entitlements poses significant and real risks to the water supplies of other Colorado River entitlement holders and runs contrary to the purposes of and intent behind the creation of on-River entitlements. Such a precedent would wreak havoc for on-River communities. In addition, such transfers also quickly lead to the creation of a water market, which would quickly put a large part of the State at risk. Consequently, NGVIDD opposes and will continue to oppose any attempt(s) to effectuate a water transfer(s).

There are no exceptions to this Policy, even if we are preparing for shortage. The creation of ICS for transfer purposes, whether to support the implementation of DCP or not, is subject to the requirements of the Policy. As such, MVIDD's Exhibit and proposed program should be rejected.

Agreeing to leave water in the River as ICS or system conservation, while simultaneously allowing another user to divert an equivalent amount of water for use outside the water's area of origin, amounts to a transfer of water. Such an agreement violates the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead ("Interim Guidelines"), MVIDD's contract, and State principles of water use, management and transfer, and, as such, must be rejected. NGVIDD does not oppose any efforts under DCP for true system conservation, that is, efforts by water users to leave water in the system behind Hoover Dam to help keep Lake Mead levels above 1050 feet, 1045 feet, or 1025 feet. Nor does NGVIDD oppose any efforts by water users to leave water in the system as true ICS – water left behind Hoover and later withdrawn for water users' own use in line with the Interim Guidelines and any DCP agreement. However, if this Exhibit, or any future MVIDD exhibit, intends to create system conservation or ICS water that can later be diverted and used outside the district's exterior boundaries, NGVIDD strongly objects and the Exhibit must be rejected.

If MVIDD's Exhibit contemplates the creation of ICS for system conservation purposes to be used later by MVIDD, NGVIDD would support such a program (assuming it would comport with the Interim Guidelines and/or any DCP Agreement). If MVIDD's Exhibit contemplates to create system conservation and not ICS, then its Exhibit should be amended to reflect that fact. NGVIDD would support such a system conservation program so long as it

creates *true* system conservation. In other words, NGVIDD supports system conservation programs but will oppose any program that will in effect transfer, directly or indirectly, water off the mainstem of the Colorado River. As a result, NGVIDD will not support any MVIDD program that will make the conserved or created water part of the up to 512,000 acre-feet to be used to mitigate lower-priority CAP water users, as this would result in a transfer of water from an on-River water community to Central Arizona. More importantly, any system conservation water created should be true system conservation – left in the system, behind Hoover Dam until we are out of any declared shortages and only ever delivered in normal and/or surplus conditions according to the regular priorities and deliveries of the River.

As we move forward with this process, NGVIDD urges the Arizona Department of Water Resources to develop policies that address these ICS and system conservation concerns to ensure that these tools and programs are not abused and do not put the River at further risk.

It should also be noted that NGVIDD understands that the CRIT's involvement and contributions to the State's DCP Implementation Plan hinge on whether such programs and/or transfers are permitted. CRIT's participation is crucial to the State's DCP Implementation Plan, and, as such, should be considered in determining whether MVIDD's Exhibit and proposed program should be approved.

We continue to acknowledge and appreciate the individuals and entities trying to help the State and the Lower Basin avoid Tier 2 and Tier 3 shortages. As stated above, our District would consider and approve true ICD and system conservation programs. But we hesitate to consider and approve these programs on their face, knowing that many are attempting to use the DCP and the high probability of a shortage declaration to make a return on their investment, even if it is to the detriment of their own communities, neighboring water users, and other on-River users. We will do what is in our power, as needed, to enforce the Law of the River, uphold the principles of our State, and stay true to the primary, historical, and contemplated and intended uses of the River.

Very truly yours,

Wm. Edward Harrison, President  
North Gila Valley Irrigation &  
Drainage District

cc: Commissioner Brenda Burman, Bureau of Reclamation  
Regional Director Terry Fulp, Bureau of Reclamation, Lower Colorado Region  
Chairman Charles B. Sherrill, Jr., MVIDD Board of Directors