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September 4, 2020

Sent via U.S. Mail and E-mail

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

Re: Proposed Transfer of GSC Farm LLC's fourth priority Colorado River entitlement to the Town of Queen Creek

Dear Secretary Bernhardt:

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 Substantive Policy Statement No. CR10, "Policy and Procedure for Transferring an Entitlement of Colorado River Water" (Colorado River Transfer Policy or Transfer Policy) on January 16, 2019, to ensure adequate and consistent evaluation of any proposed transfer of a Colorado River mainstream entitlement.

On December 17, 2018, GSC Farm, LLC (GSC) and the Town of Queen Creek (Queen Creek) entered into a purchase and transfer agreement providing for the transfer of GSC's Colorado River full fourth priority Colorado River entitlement to Queen Creek to aid in providing resiliency and stability for Queen Creek's long-term municipal water needs. On August 1, 2019, GSC and Queen Creek submitted to the Department a request for consultation for the proposed transfer.¹

¹ Although the original request identified a different volume, GSC and Queen Creek subsequently revised the

Pursuant to the Colorado River Transfer Policy, the Department published notices of the proposed transfer on November 7 and November 14, 2019, 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 maintained by the Department. The Department also held four public meetings at different locations to solicit additional public input (November 19, 2019, at the Department's offices in Phoenix; November 20, 2019, at the Bullhead City Council Chambers; November 20, 2019, at the Parker Public Library; and November 21, 2019, at the Yuma City Council Chambers).

The original 30-day comment period ended on December 16, 2019. Based on a request from stakeholders, the Department extended the comment period to January 16, 2020. The Department received 872 written comments. Of those comments, 854 were opposed (including 782 virtually identical form letters) and 18 were supportive. The Department received a total of 88 oral comments at the public meetings, including 66 comments in opposition and 22 comments in support.

On February 7, 2020 GSC and Queen Creek requested an additional 90 days to resolve and mitigate claims of negative impacts, which the Department granted. On May 7, 2020, GSC and Queen Creek submitted a letter in response to the public comments (GSC-Queen Creek Response). The 90-day resolution period ended on May 10, 2020, with no indication that any claims had been resolved.

Subsequently, the Department received letters from entities in Yuma and Mohave Counties asserting that GSC and Queen Creek did not contact them (as entities claiming negative impacts) and their concerns had not been addressed or mitigated and therefore the potential for negative impacts remain. On May 22, 2020 the Department responded to the entities from Yuma and Mohave counties providing that it will not disregard the GSC and Queen Creek response to claims of negative impacts. The Department however provided commenters an additional 45 days to respond to the GSC-Queen Creek response. The 45-day comment period ended on July 6, 2020. The Department received 7 letters from various entities providing rebuttals to the GSC-Queen Creek response.

The Department has reviewed the information submitted by GSC and Queen Creek, as well as all of the public comments, consistent with its Colorado River Transfer Policy. The Department recommends that the U.S. Bureau of Reclamation (Reclamation) transfer 1078.01 af/yr of GSC's 2083.01 af/yr fourth priority Colorado River entitlement, and that GSC retain 1005 af/yr of fourth priority Colorado River entitlement for future use on the land owned by GSC. The reasons for this recommendation are described below.

volume to be transferred to 2083.1 af/yr in response to a request by the Department for additional information.

I. Application of Transfer Policy

A. Past and Reasonable Future Quantity of Consumptive Use

Pursuant to the Transfer Policy, “the amount of water available for conveyance or lease will be limited to the quantity of water that will result in a consumptive use that is no greater than the maximum amount of the entitlement,” and the Department will consider “past and reasonable future quantity of consumptive use of the water associated with the entitlement” in quantifying the volume of water that may be transferred.

GSC currently holds Contract 13-XX-30-W0571 with the Secretary for a diversionary entitlement of 2913.3 af/yr of Arizona fourth priority Colorado River water for irrigation use on 504 gross acres of land, of which 485.55 acres are irrigable. GSC’s consumptive use is calculated as:

$$\text{Diversion} - (\text{Diversion} * 0.285) = \text{Consumptive Use}$$

Using the above calculation, GSC’s past consumptive use is calculated at 2083.01 af/yr.

The proposed new use will be for municipal water supply purposes. Queen Creek proposes to divert the entire transferrable quantity of 2083.01 af/yr of Arizona fourth priority Colorado River water. Queen Creek proposes to store the water within Roosevelt Water Conservation District (RWCD) in the near term, subject to contractual agreement. Queen Creek has several recovery wells permitted within its service area with immediate capacity to recover the full volume of this stored water. Through annual storage and recovery, Queen Creek proposes to begin offsetting groundwater use within its service area with renewable Colorado River water immediately.

B. Potential Negative Impacts to the Water Supplies of Other Colorado River Entitlement Holders

The Colorado River Transfer Policy states that “the importance of the Director’s review is underscored by the fact that mainstream water is, in most cases the only dependable supply of water for urban, industrial, and agricultural water users” on the Colorado River mainstem. Therefore, the Department must also consider potential negative impacts to the water supplies of other Colorado River entitlement holders in quantifying the volume of water available for transfer.

In the case of GSC-Queen Creek proposed transfer, GSC will retain ownership of 504 acres on the Colorado River mainstem but is proposing to sever and transfer water rights from the land. GSC asserts that the land will be developed for municipal use and will receive water either from a domestic water improvement district to be formed in the future or from Cibola Mutual Water

Company, which relies on fourth priority water from Cibola Valley Irrigation and Drainage District's (CVIDD) entitlement.²

GSC's contract service area is located within the CVIDD's contract service and is eligible to receive a portion of CVIDD's Arizona fifth and or sixth priority water for irrigation use but is not eligible to receive fourth priority water for irrigation or domestic use, pursuant to the express terms of CVIDD and GSC's contracts. CVIDD, and Cibola Mutual Water Company, which receives water from CVIDD, lack the authority to deliver fourth priority water to GSC.

GSC also indicated that the development may be served by a domestic water improvement district (DWID), rather than by Cibola Mutual Water Company. Because such a DWID has not yet been established and there are no identifiable water supplies that such a DWID could use to serve the development, this alternative is too speculative to serve as a basis for determining that a water supply will remain available to serve GSC's lands if GSC's full entitlement volume is transferred away from the lands.

GSC cannot develop its 504 acres for any purpose without a water supply, and the only water supply in the area is Colorado River water.³ If GSC does not retain a portion of its fourth priority entitlement, it must obtain water that is currently under contract for another use on different lands, or obtain a new contract for previously uncontracted Colorado River water. Therefore, GSC should retain a portion of its entitlement to fourth priority Colorado River water sufficient for future development of GSC's land.

Although the transfer request did not provide extensive details for the future intended development of GSC's lands, the Department has used available information to estimate the future water demands to ensure sufficient water supplies will remain available to meet future water demands on GSC's lands and to protect other water users in the area from negative impacts. Additional detail may justify a different quantification.

In the La Paz County comprehensive plan, the GSC land is designated as "Rural Community." This designation allows up to 8 single family units per acre, 10 townhome dwelling units per acre, or 15 condominium dwelling units per acre. GSC asserts that it will look to develop the property it holds to its highest and best value, although at a much lower density than identified in the La Paz Comprehensive Plan's land use designation. Using a net developable acreage of 403 acres,⁴ a density of 8 dwelling units per acre, 2.65 persons per dwelling unit and 105 gallons per capita per day,⁵ the water demand for residential use would be approximately 1005 af/yr. Notably, this volume significantly exceeds the 300 af/yr available to Cibola Mutual Water Company pursuant

² CVIDD's fourth priority entitlement includes 300 af/yr for domestic use, a portion of which is provided to Cibola Mutual Water Company. Cibola Mutual Water Company's average use is approximately 27 af/yr.

³ Although in some cases effluent may be available, there is not a readily available supply of effluent in the area sufficient to meet the likely future demands.

⁴ The Department assumed net developable acreage to be 80% of the gross acreage.

⁵ This value is based on domestic water use rates in Parker and similar communities in La Paz county.

to CVIDD's entitlement.

C. Other Factors

GSC is proposing to transfer its consumptive use quantity, leaving the return flows for the benefit of the mainstem. As such, water quality impacts related to return flows or other pertinent impacts are not likely to occur as a result of the proposed transfer. The proposed transfer is also not likely to have negative impacts on the United States' ability to meet its obligations under the 1944 Mexico Water Treaty, including Minute 242. Other factors raised by comments are addressed in Section II, below.

II. Response to Comments

A. GSC's entitlement is part of 164,652 af/yr reserved for mainstem use and cannot be transferred for use in central Arizona

Several comments assert that GSC's entitlement is included in 164,652 af/yr reserved for use on the mainstem of the Colorado River and therefore cannot be transferred for use in central Arizona. This assertion is based in part on a letter dated February 28, 1990, from then-Director Plummer to the Secretary regarding Colorado River allocations in Arizona (1990 Letter), as well as an internal Reclamation memo in 1988 regarding a contract with the Central Arizona Water Conservation District (1988 Memo). Upon review, the Department concludes that GSC's entitlement is not subject to reservation for use on the Colorado River mainstem.

The assertion that a volume of water is reserved for mainstem use derives from earlier allocation of Colorado River water in Arizona. In the early 1970s, in light of the United States Supreme Court's decision in *Arizona v. California* and the authorization of the Central Arizona Project, the Arizona Water Commission (AWC), a predecessor to the Department, began considering the allocation of Arizona's then uncontracted-for entitlement for Colorado River water. The AWC received and analyzed requests for Colorado River water from all parts of the State and coordinated the allocation studies with other ongoing activities such as the State Water Plan, the future management of the lower Colorado River, determination of Federal reserved rights along the Colorado River and the Arizona Groundwater Management Study Commission.

In 1976, AWC staff recommended that supplies sufficient to meet a diversion demand of 113,000 af/yr be reserved to meet demands along the mainstem of the Colorado River, including contracts executed in 1968 with the City of Kingman, Mohave Valley Irrigation and Drainage District and the Lake Havasu Irrigation and Drainage District. The staff recommendation also included a listing of existing contracts, existing users and major applicants for direct diversion from the mainstem of the Colorado River. This listing totaled 165,000 af/yr.

By 1990, the Secretary had entered into water delivery contracts with entities along the mainstem in Arizona for approximately 122,000 af/yr. This left approximately 43,000 af/yr of

uncontracted-for Colorado River water to be allocated along the mainstem. In the 1990 Letter, the Department recommended that Reclamation negotiate new or amended contracts with entities along the Colorado River for approximately 40,000 af/yr. In response to comments expressing concern about the loss from the mainstem of “uncontracted available supply,” the Department recommended that the remaining uncontracted available supply of 4927 af/yr be reserved for future municipal and industrial use on the mainstem.

Although the 1990 Letter described a reservation of 4927 af/yr of then uncontracted-for Colorado River water for future municipal and industrial uses, GSC’s entitlement has been allocated and contracted for by the Secretary and is not subject to that reservation. Even if GSC’s entitlement were originally part of the 4927 af/yr reservation or if the 1990 Letter impliedly reserved the entire 164,652 af/yr for mainstem use, the 1990 Letter was nonbinding.⁶ This proposed transfer is, therefore, properly subject to the terms of the Policy Statement.

The 1988 Memo likewise does not prohibit a transfer of fourth priority Colorado River water from the mainstem to central Arizona. The 1988 Memo addressed the proposed amendatory contract between the United States and the Central Arizona Water Conservation District (CAWCD) for the Central Arizona Project (CAP) Repayment Contract (Repayment Contract). Subarticle 8.7(c) of the proposed amendatory contract provided that the Secretary would limit the cumulative amount of Colorado River entitlement contracts dated after September 30, 1968, for mainstem use to 165,000 af/yr, with a priority equal to that of the CAP water supply. The 1988 Memo also noted that nothing in the proposed contract would limit the right of the Secretary to adjust or reduce an entity’s Colorado River water entitlement as specified in such contracts and to make that water available to any water user. Thus, if anything, the 1988 Memo describes a limit on the volume of mainstem uses, rather than a reservation for those uses.

For all of the above reasons, the Department has determined that GSC’s fourth priority entitlement is not subject to a reservation for mainstem use. GSC’s entitlement is therefore appropriately considered for transfer to central Arizona pursuant to the Colorado River Transfer Policy.

B. Precedent for future transfers of Colorado River entitlements from the mainstem to central Arizona

Several comments assert that this transfer will serve as precedent for future transfers that will ultimately result in less water available to users on the Colorado River mainstem.⁷ The Department disagrees. Although others may propose to transfer Colorado River entitlements from the mainstem to central Arizona in the future, each entitlement is unique. The Department

⁶ The 1990 Letter explicitly acknowledged that it was nonbinding (“The Department will revisit the allocation of this reserve when additional population and water use data became available and the need is apparent.”).

⁷ Nothing in this recommendation serves as precedent for transfer of Arizona’s Colorado River apportionment for use outside Arizona. Any transfer of Arizona’s apportionment to another state would contradict Arizona policy and conflict with the Law of the River.

will consider all of the facts associated with each proposed transfer pursuant to the Colorado River Transfer Policy.

While some mainstem entitlement contracts may be appropriate for transfer to other locations, including central Arizona, others may present challenges. Some individual Colorado River entitlements in Yuma, for example, are unquantified and included in contracts held by irrigation districts for delivery to lands within the boundaries of those districts. A proposal to transfer water from an irrigation district absent an associated land transfer would necessarily implicate the district's ability to meet the water demands within the district, including the district's ability to maintain delivery infrastructure. Additionally, one entitlement is shared among three districts with rights of refusal, which would create issues in the event of a transfer. Yuma entitlements also have complexities that create legal uncertainties as to whether they could be transferred.

Due to the proximity to the Northerly International Boundary, the complexity of Yuma area operations and Minute 242 salinity requirements, a transfer of Yuma area entitlements could cause salinity impacts and could require the release of additional water from Lake Mead in order to address increased salinity to satisfy Minute 242. Mitigation of the salinity impacts might therefore be necessary to ensure that such a transfer would not negatively affect other Colorado River users.

The discussion above is not a complete list of the potential issues associated with future transfers, nor is it intended to suggest that other mainstem locations would not raise additional concerns. The discussion merely serves to provide examples of issues that could be implicated by future transfer requests. The Department will also continue to recognize the need to retain water to meet the future demands on lands associated with the contract being transferred, consistent with the recognition in the Transfer Policy that in most locations along the mainstem, Colorado River water is the only available supply.

C. Other communities on the Colorado River mainstem need additional water supplies

Some comments argue that other fourth priority users on the mainstem need additional water, suggesting that GSC's entitlement should instead be reallocated to other mainstem users. At least one comment letter identified mainstem communities where growth allegedly has been suspended or truncated due to a lack of water supplies.

Between 2010 and 2019, fourth priority mainstem users diverted an average of 90,448 af/yr. This average use is significantly less than the 151,307af/yr of fourth priority water contracted for on the mainstem. Even if GSC's full diversionary contract volume were transferred to central Arizona, a substantial volume of fourth priority water would remain available to support future growth in mainstem communities.

Moreover, the request before the Department is not a request for an allocation or a reallocation of uncontracted water supply. This transfer request concerns a negotiated agreement between

the current contractor and the proposed transferee. Unlike allocation processes, it is not the role of the Department to determine which user might present the ideal use for the water supply in question. The Department's role is to evaluate the proposed transfer pursuant to the laws and policies of the State of Arizona and make a recommendation regarding the proposed transfer.

III. Conclusion

Consistent with the policies set forth in the Colorado River Transfer Policy and consistent with the laws and policies of the State of Arizona, the Department recommends that Reclamation transfer 1,078.01 af/yr of fourth priority entitlement from GSC to Queen Creek. The Department recognizes that the quantity may be subject to change based on additional detail concerning future uses and is available to work with Reclamation, GSC and Queen Creek in that regard.

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

Sincerely,



Thomas Buschatzke
Director

cc (via email and U.S. Mail):

Brenda Burman, Commissioner, Reclamation
David Palumbo, Deputy Commissioner of Operations, Reclamation
Terrance Fulp, Ph.D., Lower Colorado River Regional Director, Reclamation
Jeffrey Small, U.S. Department of the Interior Intergovernmental Affairs
Michael Schlehuber, GSC Farm, LLC
Michael Malano, GSC Farm, LLC
John Kross, Town Manager, Town of Queen Creek
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