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Arizona Department of Water Resources' Response to Comments on Draft Arizona ICS Exhibits

To facilitate Arizona's adoption and implementation of the LBDCP, the Arizona Department of Water Resources (Department) established a schedule for intrastate review of draft exhibits describing Arizona projects to create ICS. The Department received draft exhibits from the Central Arizona Water Conservation District (CAWCD), Colorado River Indian Tribes (CRIT), Gila River Indian Community (GRIC), Mohave Valley Irrigation and Drainage District (MVIDD), and Wellton Mohawk Irrigation and Drainage District (WMIDD). The Department held an open house on January 7, 2019 and accepted comments on the draft ICS exhibits and the Arizona ICS Framework Agreement through January 14, 2019. All the comments have been compiled and are available on the Department's website.

The Department appreciates the comments received on the draft ICS exhibits. In order to facilitate a timely and efficient response, the Department has grouped the comments into the following categories:

1. Similar eligibility criteria

Several commenters suggested that the ICS exhibits should set forth uniform eligibility criteria for the creation of ICS through fallowing. CRIT, MVIDD, and WMIDD have proposed that land should be eligible for fallowing if it has a verifiable history of irrigation for three out of the most recent five years. CAWCD proposes four out of the most recent five years. The Department believes that there is uniformity in the eligibility criteria for fallowing programs and does not need to see a change in any of the exhibits.

2. Criteria for establishing a historical baseline

The Department received comments with respect to the creation of ICS and the need to have uniform criteria for the establishment of a historic baseline of consumptive use (CU) to verify and quantify a reduction in existing consumptive use. Entities submitting Exhibits have proposed to use a variety of methodologies, including a rolling average calculated from the highest 4 out of the 5 years of CU (including verified conservation) (CAWCD), a rolling average of 5 years of CU (GRIC), and an average calculated from the highest 3 of 4 years (WMIDD).

Using a rolling average calculated from the highest 4 out of the 5 years of CU allows entities to take into consideration any anomalies that may have led to particularly low water

use. Anomalies may include low water use due to atypically wet weather or due to supply interruptions. The Department will recommend that the United States Bureau of Reclamation (Reclamation) use a baseline calculated from the highest 4 out of the 5 years of CU, absent the articulation of a justification for deviation from that methodology. The Department further recommends that each Exhibit include a description of how the baseline proposed in the Exhibit will be implemented consistent with the Department's recommended baseline methodology to use a rolling average calculated from the highest 4 out of 5 previous years of CU.

3. Uniform quantification methodology for fallowing

Various commenters suggested establishing a uniform quantification methodology for the entities that are proposing ICS exhibits. CRIT, MVIDD, and WMIDD in their fallowing programs have proposed an average of 5 years of CU for parcels that are designated to be fallowed with certain variations. It is the Department's opinion that the volume of CU reduction should be computed using the average annual net crop CU for the parcels designated to be fallowed in the previous 5-year period in acre-feet per acre multiplied by the number of acres fallowed. Crop CU or crop evapotranspiration for each of the previous five years will be determined using reference crop evapotranspiration computed using operational weather data collected at Arizona Meteorological Network (AZMET) electronic weather stations located in appropriate locations and crop coefficients from the Lower Colorado River Accounting System (LCRAS). In the absence of crop information or field level data for all of the fields designated to be fallowed, an alternative calculation methodology may be proposed.

4. Basis of water right and method of accounting for the CU volumes for ICS

The CRIT suggested that the basis of the water right used to create ICS should be included in each Exhibit. The Department agrees.

5. Transfer or use of ICS outside of contract service area

Several commenters raised concerns regarding the transfer of ICS from on-River communities to Central Arizona. Several commenters noted that transfers of ICS should be subject to the Department's transfer policy. The Department agrees that transfers of ICS are subject to the authority of the director to consult, advise, and cooperate with the Secretary of the Interior pursuant to A.R.S. § 45-106, and the Department has posted its revised Substantive Policy Statement CR10 – "Policy and Procedure for Transferring an Entitlement of Colorado River Water" to reflect this.

6. Reference to the AZ ICS Framework Agreement

Commenters also suggested that the ICS exhibits should reference the Arizona ICS Framework Agreement because it describes the coordination and collaboration between the parties that are creating, accumulating and delivering ICS in Arizona. The Department disagrees with this suggestion. The ICS exhibits are the basis of agreement between

Arizona, California and Nevada regarding projects that are approved for the creation of ICS. The Arizona ICS Framework Agreement is an agreement regarding the allocation of ICS limitations and other matters relating to the coordination and collaboration between

Arizona parties. Reference to the terms of the Arizona ICS Framework Agreement could give rise to an argument that any amendment or modification of that agreement voids the approval of the Arizona exhibits by the other parties to the 2007 Lower Colorado River Basin ICS Agreement (2007 ICS Agreement).

The Department will reference the Arizona ICS Framework Agreement in the letters proposing the exhibits to the parties to the 2007 ICS Agreement. Additionally, the Department, CAWCD, and the United States will consider the need for additional agreements with the other Arizona ICS creators regarding the Arizona ICS Framework Agreement.

Comments on MVIDD's Exhibit:

1. Various parties objected to MVIDD's Exhibit on the grounds that MVIDD has openly expressed a desire to transfer water outside its district boundaries. Those parties object to the transfer of MVIDD's ICS outside its service area. As discussed above, the Department has modified substantive policy statement No. CR10 to clarify that it includes the transfer of ICS outside a contractor's service area. This issue will be addressed under the terms of the policy statement if and/or when the issue arises.
2. The Mohave County Water Authority (MCWA) argues that MVIDD proposal to create up to 10,000 acre-feet of conserved water through fallowing is unrealistically high, especially given statements by the MVIDD board that 7,700 acre-feet is a more realistic number. It is appropriate for MVIDD's exhibit to indicate that 10,000 acre-feet is the maximum volume of conserved water it will create in any year. MVIDD must identify in its annual creation plan the amount of ICS to be created in that year.
3. MCWA objects to MVIDD's proposal to quantify its consumptive use using its own data. MCWA also expressed concern that all fields within MVIDD do not currently have metered water delivery systems as indicated in MVIDD's Exhibit. MCWA states that MVIDD representatives recently advised that farmers were installing meters but that no information about the type of meters or when and where they would be installed was provided.

It is the Department's opinion that the volume of CU reduction should be computed using the average annual net crop CU for the parcels designated to be fallowed in the previous 5-year period in acre-feet per acre multiplied by the number of acres fallowed. The CU values must be based on the LCRAS and not by an independent study by the District.

4. Mohave County has opposed the inclusion in MVIDD's Exhibit of the following provisions:

“During the term of the program, there shall be no net increase of agricultural water entitlements within MVIDD”

“Any land enrolled in the program will not be allowed to ‘overrun’ any agricultural water entitlement remaining on the non-fallowed land.”

Mohave County argues that these provisions are unnecessary and appear to be an attempt to prohibit new agricultural uses and to “bind the free market.” These provisions appear to ensure that the water conserved by fallowing is not used to support agricultural uses and to ensure that fallowed land does not use water at the expense of other lands in the district, respectively. Because these provisions were proposed by MVIDD and serve reasonable purposes, the Department will not recommend changes to the Exhibit.

5. One commenter expressed concern regarding the absence of dust control methods in the MVIDD Exhibit. The Department notes that although dust control methodology is not a required element for the Exhibit itself, any water used for dust control will affect the CU in the year of creation and, therefore, the volume of ICS created.

Comments on WMIDD Exhibit No. 2:

The Department received comments regarding WMIDD's ICS Exhibit No. 2. On February 13, 2019, WMIDD withdrew ICS Exhibit No. 2 from the Department's consideration. As such, the Department will not respond to comments or propose this exhibit to California and Nevada.

Comments on GRIC Exhibit:

1. CRIT has objected to the language describing the water right GRIC will use to create ICS. The Department will work with GRIC, the United States, and others to find a mutually agreeable description.
2. One comment noted that the GRIC Exhibit states that they can create up to 150,000 acre-feet of ICS, but Arizona's annual maximum creation limit is 100,000 acre-feet. The Department will recommend changes to both the GRIC Exhibit and the CAWCD Exhibit to clarify that ICS creation will be subject to the annual maximum creation limit for Arizona, including any borrowed capacity pursuant to the Lower Basin Drought Contingency Operations, and subject to applicable intrastate agreements with other ICS creators in Arizona.

Next Steps:

After coordinating with the entities proposing the draft Arizona ICS exhibits, the Department and the ICS creators will begin informal discussions with the other parties to the 2007 ICS Agreement prior to formally proposing the exhibits for approval.