

Arizona Water Settlements Act Questions for Clarification

The statutory language that governs New Mexico's choices under the Arizona Water Settlements Act (AWSA) requires interpretation so that all parties are operating from a common basis of understanding as the region develops alternatives for utilizing funding and water under the AWSA.

There is an array of questions that have arisen over the interpretation of this act. The primary questions concern what the requirements are for New Mexico to claim \$66 million in federal funds, what sort of project or projects will satisfy the statutory language to claim additional funds, and what sorts of actions on the part of New Mexico are required in order to maintain a claim to use additional water from the Gila River basin at some time in the future.

Additionally, the Consumptive Use and Forbearance Agreement and other Gila Settlement agreements govern the parameters under which New Mexico may divert water. There are a number of technical questions associated with these accompanying agreements.

AWSA Funding

1. What restrictions, if any, are there on the first level of funding provided New Mexico under the Arizona Water Settlements Act? Are there any circumstances under which it would become reimbursable? Are there any circumstances under which the state would not be eligible to receive it at all?

2. What restrictions are there on the second level of funding? What are the legal parameters and limitations on what would constitute a "New Mexico project," under the meaning of the Arizona Water Settlements Act? What are the size/scope/method/cost/other parameters a "project" must meet to trigger the second level of funding? Under what circumstances, if any, would the second level of funding become reimbursable?

3. Does the \$66M need to go through the NEPA process before it can be used for a project?

4. Disbursements from the Lower Colorado River Development Fund begin in 2012 in \$6.6M increments over 10 years. Does funding for environmental and other planning studies need to go through NEPA before it is expended?

5. Is AWSA funding indexed to future year dollars?

6. Which agency is in control of \$66M in AWSA funding once it is transferred to New Mexico? Who decides how \$66M gets spent?

AWSA Water

7. In the event New Mexico does not initiate a “New Mexico project” under the Arizona Water Settlements Act provision, thereby not initiating an exchange for Central Arizona Project Water, does New Mexico lose any future claim on the 14,000 acre-feet/year specified in the Arizona Water Settlements Act or the original Central Arizona Project legislation? Put more simply, is this a take it now or lose it forever proposition with regard to the 14,000 acre feet?
8. Who owns CAP water?
9. What are the terms and conditions of a contract for AWSA water? Who can contract? What are the appropriate exchange costs (acre-foot basis) over time?
10. What happens after a contract? Can CAP water be leased, exchanged or distributed to water users? By whom—NM CAP Entity?
11. Where can the AWSA water be used? Does it need to stay in southwestern New Mexico or can it be transferred outside of the region? Can places outside the Basin be the CAP entity?
12. What are the specific CUFA rules? How do the CUFA diversion parameters relate to flood flows?
13. What are the conditions under which New Mexico may divert groundwater rather than surface water under the AWSA/CUFA? What are the locations for groundwater diversion under the CUFA? How is it managed/enforced?

Institutional Authority/Management

14. Who manages the New Mexico Unit if one were to be built?
15. What is the role of the Bureau of Reclamation under the AWSA?
16. What are the roles and responsibilities of various agencies and services under the AWSA? How to ensure early consultation re: roles and regulations?
17. What is the State Engineer's authority in permitting the AWSA water?
18. How are shortages addressed?
19. Who communicates with the Bureau of Reclamation?
20. Could these water rights be administered differently? Prior appropriation?

Timing

21. What is the "expiration date" on the second level of funding if any?
22. What are the conditions under which the timeline for a Record of Decision can be extended beyond 2019?

Additional Questions from Stakeholder Group Meetings re: Planning Process:

1. Who are "water users"?
2. What are all the options?
3. What "tests" should be used?
4. How to identify all stakeholders?
5. What latitude is there for drawing the line?
6. How to incorporate a "no water" scenario?
7. How can inefficiencies in water administration be addressed?
8. Standing of applicant (section 7)?
9. How can effects on people in Gila Basin be addressed?
10. Is San Juan/Chama a useful model for Gila?
11. Could these water rights be administered differently? Prior appropriation?
12. Legal framework at federal and state level?
13. Gila-San Francisco Water Commission – what do you do to involve the public?
14. How can science be used? How will it be funded?
15. How can previous studies be used? And how much will they draw on studies? Should there be a preferred sequence of studies? How to decide on what to study?
16. How can the GSFWC be assisted? And what is its role in helping the state achieve its responsibility?

17. How much impact can conservation have on meeting water needs?
18. What are the impacts of depending on ground water?
19. Can agriculture and species preservation co-exist?
20. Cost associated with surface water diversion? Potential benefits?
21. Should we first determine the impacts on/of the CUFA?
22. What should we spend money on?
23. Global warming and water supply? Result in less surface and more ground water?
24. What studies are needed before we move to alternatives? Are done? Need to be done?
25. What is done to ensure trust in who conducts studies?
26. Will GCC participate and assist in funding studies for a collaborative process?
27. How can we increase flow? What is the connection between watersheds and flows?
28. Is the ISC open to alternatives?
29. What does it mean to participate in good faith?
30. Define need (water demands) first?
31. Planning horizon (in years)? 10? 20?
32. What is an inclusive stakeholders group?
33. How can BLM's (and other state and federal mandates) mandated management responsibility be recognized? And included in the process?
34. What is the carrying capacity of this region?
35. Who should be used as experts in applied science?