

January 14, 2019

Mr. Thomas Buschatzke, Director  
Arizona Department of Water Resources  
1110 W. Washington St., Suite 300  
Phoenix, AZ 85007

Re: Arizona Intrastate Process for Intentionally Created Surplus Projects

Dear Director Buschatzke:

This law firm is general counsel to Maricopa-Stanfield Irrigation & Drainage District, Central Arizona Irrigation and Drainage District, New Magma Irrigation and Drainage District, and Queen Creek Irrigation District (“Districts”). The Districts have the following comments regarding the draft Extraordinary Conservation Intentionally Created Surplus (“ICS”) exhibits submitted by Central Arizona Water Conservation District (“CAWCD”), Colorado River Indian Tribes, Gila River Indian Community, Mohave Valley Irrigation and Drainage District, and Wellton-Mohawk Irrigation and Drainage District and the draft Framework Agreement Among the United States, the State of Arizona, and CAWCD for an Arizona ICS Program (“Framework Agreement”).

As Central Arizona Project (“CAP”) Excess Water contractors, the Districts maintain that it is imperative to ensure that each Arizona ICS project reflects a genuine reduction in consumptive use by the ICS creator and satisfies the definition of an extraordinary conservation activity under the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”). Under Section 3(A)(1) of the 2007 Guidelines, fallowing projects constitute extraordinary conservation activities only if the fallowed land “currently is, historically was, and otherwise would have been irrigated in the next Year.” To satisfy those criteria, the Districts believe that all proposed fallowed lands must have a verifiable history of irrigation during no less than three of the five years preceding the year in which the lands will be fallowed for an ICS project. The Districts object to any proposed ICS project that would allow Colorado River contractors to accrue ICS for portions of their entitlements that they currently do not use, as well as projects that would allow contractors to accrue ICS for fallowing lands as part of ordinary farming practices that do not reduce the contractors’ consumptive use.

In addition, Section 11 of the draft Framework Agreement includes a note providing that CAWCD agrees to forbear any rights it may have to delivery of ICS created by or delivered to other ICS creators, contingent on the execution of letter agreements by all CAP Non-Indian Agricultural (“NIA”) Priority Water contractors agreeing not to order such ICS. The Districts currently are analyzing whether ICS

forborne by NIA contractors qualifies as Excess Water that the Districts also must agree not to order.

If you have any questions regarding the Districts' comments, please do not hesitate to ask.

Very truly yours,



FOR

Paul R. Orme  
General Counsel to:

Central Arizona Irrigation and Drainage District  
Maricopa-Stanfield Irrigation & Drainage District  
New Magma Irrigation & Drainage District  
Queen Creek Irrigation District  
Electrical District No. 3 of Pinal County  
Electrical District No. 4 of Pinal County

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