

**WHITE PAPER**  
**CAWCD Staff Proposal for Wheeling**  
**Non-Project Water Supplies**

This staff white paper outlines a set of proposed agreements between CAWCD and the Bureau of Reclamation that establish the foundation for a wheeling program. The agreements create the framework to enable CAWCD to offer, and Reclamation to approve, wheeling agreements that provide for the long-term, reliable delivery of non-Project Water through the CAP system ("Proposal").

This Proposal is intended to serve as the initial basis for CAWCD's negotiations with Reclamation, water users and other stakeholders to implement the provisions of Article 8.18 of the Contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, dated December 1, 1988, (the "Master Repayment Contract").<sup>i</sup> As explained more fully below, this Proposal also serves as the basis for CAWCD's negotiations with Reclamation to address Reclamation's asserted rights to have water transported through the CAP system pursuant to Article 8.17 of the Master Repayment Contract.<sup>ii</sup>

The Proposal is comprised of this white paper plus several related draft agreements that are focused on resolving contractual issues between Reclamation (as owner), and CAWCD (as operator). The concepts they contain have been discussed with staff from Reclamation's Phoenix Area Office, but Reclamation has taken no position on them. CAWCD anticipates that the Proposal will undergo refinement as part of Reclamation's required public negotiation and input process, and that additional policies related to implementation will be developed with broad and extensive stakeholder involvement.

Article 8.18 of the Mater Repayment Contract contemplates a "standard form of wheeling agreement." The Proposal includes an initial draft agreement (Attachment 1), which includes many of the same provisions found in CAP water delivery contracts, including sections related to scheduling water deliveries, points of delivery and measurement, environmental clearances, water quality, losses, interruptions and rate structure. CAWCD proposes that all water users, including Tribes, will be eligible to obtain a wheeling agreement. However, an agreement must be tied to a specific physically and legally available non-Project water supply. Furthermore, CAWCD proposes that all regulatory approvals related to the transfer of the non-Project water supply, including environmental compliance, must be completed before a wheeling agreement will be offered. Finally, each individual wheeling agreement will require approval by the

CAWCD Board, approval by Reclamation, and payment of a System Improvement Fee (discussed below).

A standard form of wheeling agreement is necessary for a wheeling program, however additional agreements between CAWCD and Reclamation are required, largely to address Reclamation's asserted rights to have non-Project water transported through the CAP system pursuant to Article 8.17 of the Master Repayment Contract. CAWCD and Reclamation disagree on the scope and extent of the United States' rights under Article 8.17. However, in an effort to avoid a prolonged dispute and to reach a desirable outcome, CAWCD has identified processes that it believes provide certainty for wheeling under Article 8.18, while fully protecting the United States' rights under Article 8.17.

First, the Proposal contemplates that, over time, CAWCD will undertake infrastructure improvement projects to increase the delivery capacity of the CAP system. As those improvements are completed, deliveries of non-Project Water under Article 8.18, up to the quantified capacity increase, would no longer be subject to displacement by Reclamation under Article 8.17, and 8.18 delivery rights would be similar to those of existing CAP long-term contract holders. CAWCD has suggested that the system improvement quantification could be accomplished through an amendment to the Operating Agreement between the United States and CAWCD for Operation and Maintenance of the CAP, dated June 15, 2000 (the "Operating Agreement"), combined with a jointly developed standard technical procedure (Attachment 2, Section 12).

Second, CAWCD proposes a procedure based on the annual ordering process to determine whether capacity is available to wheel non-Project Water for Reclamation under Article 8.17. The delivery capacity potentially available to Reclamation varies from year-to-year, within the year, and within the CAP system, based on a variety of factors, including the amount of Colorado River water available for diversion, customer orders and maintenance schedules (Attachment 3). The Proposal contemplates that by October 10<sup>th</sup> of the prior year, Reclamation would be required to submit a proposed delivery schedule for Article 8.17 water. CAWCD would determine the extent to which Reclamation's request could be fulfilled only after all orders for Project Water (including Excess) and 8.18 non-Project Water (if system improvements are complete) had been finalized. CAWCD has suggested that this procedure can be memorialized in an amendment to the Operating Agreement (Attachment 2, Section 7), and a jointly developed standard technical procedure.

Finally, CAWCD proposes that all entities entering into wheeling agreements under Article 8.18 pay a "system improvement fee" to fund the projects necessary to increase the CAP delivery capacity. CAWCD's Proposal includes language (Attachment 2, Section 13) intended to ensure that revenues collected from this fee are used exclusively for improvement projects and are not

swept into the Development Fund. This is necessary to differentiate the system improvement fee from the wheeling charges referenced in Article 8.18 of the Master Repayment Contract.<sup>iii</sup>

CAWCD believes that this Proposal provides a practical framework for reliably wheeling non-Project Water supplies, while protecting Article 8.17 rights and not interfering with Project Water deliveries, and that it contains a sufficient degree of detail to initiate CAWCD's negotiations with Reclamation, water users and stakeholders.

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<sup>i</sup> The Master Repayment Contract contemplates that non-Project water may be transported through the CAP system pursuant to standard form wheeling agreements jointly developed by CAWCD and Reclamation. Article 8.18 provides in part:

"8.18 Wheeling of Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to the availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. . ."

<sup>ii</sup> Article 8.17 of the Master Repayment Contract provides:

"8.17 Rights Reserved to the United States to have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract."

<sup>iii</sup> Article 8.18 of the Master Repayment Contract provides:

". . . All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water. The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund."