

## **Agenda Number 5. Attachment.**

### **Summary of Changes to Draft System Use Agreement and Exhibits**

This document provides a summary of edits to the drafts of the System Use Agreement and its exhibits<sup>1</sup> presented to the CAWCD Board at the December 1, 2016 Board Meeting that Staff anticipates will be reflected in the final execution version of those documents. The edits were made to address comments received during the CAWCD stakeholder process and comments from Reclamation, some of which resulted from Reclamation's tribal consultation process. The summary below is limited to changes to clarify the intent of existing language or substantive changes to address the concerns of tribal and non-tribal stakeholders. Additional changes to fix typographical errors or other minor cleanup changes are not summarized below.

#### **System Use Agreement**

- Subsection 2.23 – Language added to recital at this subsection to note that Firming for Long-Term Contracts includes Firming for Indian Long-Term Contracts. This language is redundant but was added at Reclamation's request to address a comment received during the tribal consultation process.
- Subsection 3.8 – Definition of CAP System – Definition revised to reference CAP System as the “Transferred Works” of the Central Arizona Project and to add reference to New Waddell Dam. The agreement previously referred separately to the CAP System and the Transferred Works, which implied a difference between the two that was not intended. Other conforming changes were made throughout the agreement so that it refers only to the “CAP System.”
- Subsections 3.19 – 3.21 – Definitions of Exhibits A, B and C to the System Use Agreement added.
- Subsection 3.31 – Definition of “On-River Firming” – Definition revised to clarify that “On-River Firming” means the “implementation of” agreements for such purposes and to clarify that it includes existing agreements.
- Subsection 5.1 – CAWCD Use of CAP System – Redundant language referencing priorities for use of CAP System under Section 11 of the agreement was removed. “On-River Firming” and “Satisfaction of Interstate Agreement” moved to their own subcategories rather than listing them as a type of Non-Project Water delivery.
- Subsection 7.1 – Reclamation Wheeling – Deleted language providing that Reclamation Wheeling Contracts and Federal Arrangements only needed to be consistent with Long-Term Contracts “to which CAWCD is not a party.” A similar change was made to Subsections 8.5 (Firming) and 9.3.3 (Exchanges).

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<sup>1</sup> Exhibit A (Map of CAP System Segments and CAP Terminus); Exhibit B (Standard Form of CAWCD Wheeling Contract); and Exhibit C (Terms of Reclamation Wheeling Contract).

- Subsection 7.2 – Language revised to provide that terms of Reclamation Wheeling Contracts will incorporate provisions “substantially similar” to those in Exhibit C.
- Subsection 7.3 – Language added to provide that Reclamation will consult with CAWCD on any variations in the terms a Federal Arrangement from the terms set forth in Exhibit C.
- Subsection 11.1.1 – Priority for CAP System Use – Language revised to clarify that deliveries for Long-Term Contracts that are only able to take their Project Water by exchange will have First Priority if deliveries are within or upstream of Segment where point of delivery for Long-Term Contractor’s exchange is located.
- Subsection 12.3 – Water Quality Indemnification – Language revised to be consistent with similar language in Exhibits B and C.
- Subsection 13.7 – System Improvement Projects – Language revised to clarify that construction of System Improvement Projects may not commence until after completion of environmental compliance and receipt of written consent from Reclamation.
- Subsection 13.13 – System Improvement Projects – Language added to indemnify the United States against claims arising from a determination of Projected Additional Operational Capability or Verified Additional Operational Capability.
- Subsection 14.1 – Water Charges – Language added to clarify that Long-Term Contractors are only responsible to pay Fixed OM&R Charges, Pumping Energy Charges and applicable capital charges if those charges are not paid by the United States.
- Subsection 14.3 – Capital Equivalency Charges – Language revised to clarify that these charges are not applicable to Firming Water, and that the revenues for such charges will be deposited to the Lower Colorado River Basin Development Fund.
- Subsection 16.9 – Exhibits – Language added that requires written agreement of both parties to modify exhibits.

**Exhibit B (Form of CAWCD Wheeling Contract)**

- Subsection 9 – Interruptions and Reductions – Language revised to change “water transportation charges” to “Fixed OM&R Charges and Pumping Energy Charges.”
- Subsection 10.4 – Water Quality – Language revised to change water quality “parameters” to “standards” consistent with System Use Agreement. Reference to compliance with “local” laws deleted.

- Subsections 10.5-10.7 – Water Quality Indemnification – Language revised to clarify scope of indemnification. Term “costs” substituted for “losses” to avoid confusion with reference to system losses in other portions of exhibits and agreement.
- Subsection 13.5 – Monthly Delivery Limitations – Language revised to clarify exception to default rule that no more than 11% of Wheeled Water may be delivered in a given month.
- Subsection 14.1.3 – Capital Equivalency Charges – Language revised to clarify that water delivered for Firming is not subject Capital Equivalency Charges.
- Section 24 – Modifications – Section deleted. Language controlling modification of the terms of Exhibits B and C included in System Use Agreement.

### **Exhibit C (Terms of Reclamation Wheeling Contracts)**

- Subsection 4.7 – Indemnification – Language revised to be consistent with Exhibit B.
- Subsection 6 – Interruptions and Reductions – Language revised to change “water transportation charges” to “Fixed OM&R Charges and Pumping Energy Charges.”
- Subsection 7.4 – Water Quality – Language revised to change water quality “parameters” to “standards” consistent with System Use Agreement. Reference to compliance with “local” laws deleted.
- Subsections 7.5-7.7 – Water Quality Indemnification – Language revised to clarify scope of indemnification. Term “costs” substituted for “losses” to avoid confusion with reference to system losses in other portions of exhibits and agreement.
- Subsection 9.5 – Monthly Delivery Limitations – Subsection deleted at request of Reclamation based on comments received during tribal consultation process. CAWCD also received a comment from a tribal stakeholder expressing concern about this subsection.
- Subsection 10.1.3 – Capital Equivalency Charges – Language revised to clarify that water delivered for Firming is not subject Capital Equivalency Charges.
- Section 13 – Modifications – Section deleted. Language controlling modification of the terms of Exhibits B and C included in System Use Agreement.