

MEMORANDUM OF
UNDERSTANDING BETWEEN JOINT
LEAD AGENCIES
NEW MEXICO INTERSTATE STREAM COMMISSION AND
UNITED STATES BUREAU OF RECLAMATION

FOR

THE NEW MEXICO UNIT OF THE CENTRAL ARIZONA PROJECT
ENVIRONMENTAL IMPACT STATEMENT

I. PURPOSE

The United States Bureau of Reclamation, Lower Colorado Region, Phoenix Area Office (Reclamation) on behalf of the Secretary of the Interior (Secretary), and the New Mexico Interstate Stream Commission (ISC), collectively referred to as the Joint Lead Agencies, enter into this Memorandum of Understanding (Agreement) for the purpose of describing their roles, interactions, responsibilities and authorities in preparing the New Mexico Unit of the Central Arizona Project Environmental Impact Statement (EIS) and completing other related environmental compliance requirements for design, construction, operation and maintenance of the proposed New Mexico Unit (NM Unit) of the Central Arizona Project (CAP). The Joint Lead Agencies will prepare the EIS in accordance with the National Environmental Policy Act (NEPA) and address both the effects of the proposed NM Unit and alternatives to provide additional water from the Gila to the Southwest Water Planning Region of New Mexico.¹

The Colorado River Basin Project Act of 1968, Pub. L. 90-537, 43 U.S.C. Ch. 32 (1968 Act), as amended by the Arizona Water Settlements Act of 2004, Pub. L. 108-451 (AWSA), authorizes the Secretary to contract with water users in New Mexico for water from the Gila River, its tributaries and underground water sources. Section 212(d) of the AWSA reduced the amount of consumptive use in New Mexico provided under the 1968 Act to an amount not to exceed an annual average in any period of ten (10) consecutive years of 14,000 acre-feet of water. Reclamation and the ISC are Joint Lead Agencies for environmental compliance regarding the NM Unit pursuant to Section 212(h) of the AWSA.

II. ACTIVITIES UNDER THIS AGREEMENT

The Joint Lead Agencies will work together and jointly coordinate activities to accomplish the following:

1. Schedule and budget activities leading to an EIS for the proposed NM Unit;
2. Develop and implement a public outreach, education and involvement plan;
3. Conduct and document environmental investigations; and

¹ The Southwest Water Planning Region of New Mexico is comprised of Catron, Grant, Luna, and Hidalgo Counties.

4. Prepare an EIS and related documents for the proposed NM Unit.

III. ROLES

The organizational structure the Joint Lead Agencies will use during this EIS process is shown below.

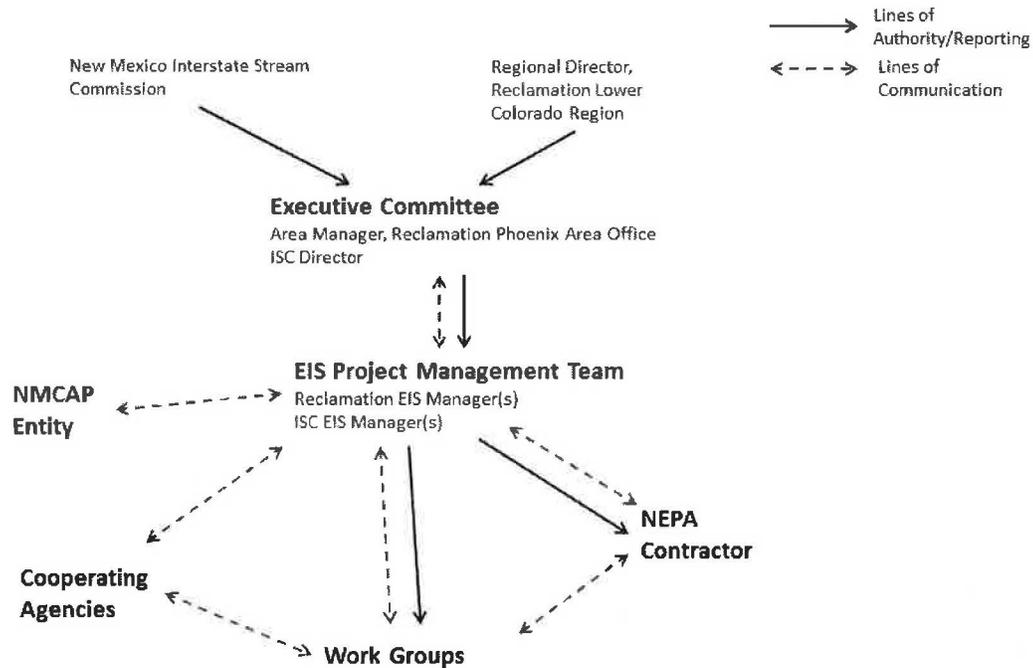


Figure 1. New Mexico Unit of the CAP EIS Organization

Reclamation will issue a request for proposal for a NEPA Contractor to conduct required technical work and prepare the EIS documents under the supervision and direction of the Joint Lead Agencies. The Joint Leads will each provide representatives for the technical proposal evaluation committee that will evaluate such proposals.

Except as otherwise specifically provided herein, the Joint Lead Agencies are collectively responsible for all decisions relating to preparation of the EIS and will make all final decisions on disputes arising during the NEPA process. The Joint Lead Agencies will make decisions by consensus. This Agreement and any related agreements supporting the purpose of this Agreement shall not limit or in any way affect any person or organization's right to comment or otherwise participate in the normal public review and comment process.

- A. Executive Committee. The Executive Committee will have overall responsibility for allocating staff, funding, and other resources, providing guidance to staff, reviewing progress, and coordinating among the Joint Lead Agencies in matters related to the EIS. The Executive Committee will review and approve the Draft and Final EIS. Decisions of the Executive Committee shall be unanimous and will be approached in a constructive and collaborative manner. The Executive Committee will assist in resolving any unresolved issues referred by the EIS Project Management Team. Membership of the Executive Committee will consist of Reclamation's Phoenix Area Office Manager, and the Director of the ISC. The Executive Committee will meet as needed to address issues or resolve disputes regarding preparation of the EIS.
- B. Cooperating Agencies. Cooperating Agencies are agencies that have jurisdiction by law or special expertise on relevant environmental issues, pursuant to 40 CFR §§ 1501.6 and 1508.5. The Joint Lead Agencies, through the Executive Committee, will invite appropriate Tribes, Pueblos, and governmental entities to participate in the NEPA process as Cooperating Agencies. The EIS Project Management Team will develop an agreement with each Cooperating Agency that documents specific expectations, roles, and responsibilities. Cooperating Agency agreements must be signed by both Joint Lead Agencies.

The role of Cooperating Agencies is to review important EIS documentation and provide input to the Joint Lead Agencies through the EIS Project Management Team in accordance with 40 CFR § 1501.6. The Cooperating Agencies may make recommendations to the EIS Project Management Team with respect to the EIS process. The Cooperating Agencies will meet as needed to discuss issues. The EIS Project Management Team will schedule meetings of the Cooperating Agencies as needed and will conduct the meetings.

- C. EIS Project Management Team. The EIS Project Management Team will be responsible for day-to-day EIS management. Each Joint Lead Agency will assign one or two staff members to the Management Team. Members of the Management Team have discretion to use contractors for additional EIS management support. The Management Team will have primary and joint responsibility for:
1. Overall coordination and oversight of the EIS activities, including ensuring completion of environmental studies and NEPA-related activities; coordination of contractual service procurement, staff allocation, EIS schedule tracking, periodic revisions to Attachment A as applicable, and preparation of progress reports;
 2. Assuring the EIS process follows an interdisciplinary approach in the conduct of technical work and preparation of the EIS;
 3. Providing guidance to staff and coordination among the Joint Lead Agencies;
 4. Forming and providing guidance to Work Groups;
 5. Jointly developing scopes of work for NEPA-related contract;
 6. Providing consensus direction on work to be performed under NEPA-related contracts;
 7. Developing the Purpose and Need Statement;
 8. Authorizing necessary studies;
 9. Reviewing and approving draft EIS-related work products of the NEPA Contractor;

10. Responding to input and reviewing and approving responses to comments on the EIS;
11. Distributing draft and final EIS documents;
12. Advising the Executive Committee with regard to necessary studies and schedule changes, budget needs, and other administrative and project management matters;
13. Continuous coordination with Cooperating Agencies;
14. Ensuring adequate communication and information exchange both external and internal;
15. Preparing and reviewing all required consultation documents;
16. Coordinating and assuring appropriate public involvement and participation;
17. Completing the EIS and draft decision documents; and
18. Assuring integration of NEPA with overall project planning.

In order to accomplish its duties, including those specifically listed above, the EIS Project Management Team will meet regularly with, and provide consensus direction to, the NEPA Contractor and will meet otherwise as needed to carry out its work regarding preparation of the EIS. The Management Team will work by consensus and its decisions will be approached in a constructive and collaborative manner. The Management Team will attempt to resolve conflicts that may arise over the management and administration of the work, and disputes that are identified by the Work Group leaders as unresolved at that level. In the event that the Management Team cannot reach agreement, it will refer the issue to the Executive Committee.

- D. NEPA Contractor. The NEPA Contractor will conduct necessary studies and prepare the EIS under direction of the EIS Project Management Team using an interdisciplinary approach as required by NEPA. The NEPA Contractor will prepare a long-term detailed EIS schedule and implement tasks as directed by the Management Team, according to the agreed-upon schedule. This will include all work in the NEPA Contractor scope of work prepared by the Joint Leads. Any direction or instruction to the NEPA Contractor that could result in a change to the scope of work or an assignment of work must be agreed upon by the EIS Project Management Team and come through Reclamation's Contracting Officer. The NEPA Contractor will report periodically to the EIS Project Management Team.
- E. Work Groups. Work Groups in a variety of disciplines will support a systematic interdisciplinary approach to the NEPA process and perform technical studies and evaluations at the direction of the EIS Project Management Team. The Joint Lead Agencies, through the EIS Project Management Team, will create Work Groups and may adjust the membership of these groups from time to time, considering any changes or additions to membership recommended by the Work Group leaders and Cooperating Agencies.

In implementing studies and technical evaluations assigned by the EIS Project Management Team, each Work Group will be led by two representatives designated respectively by Reclamation and the ISC. These leaders are responsible for coordinating Work Group activities and are the points of contact for communicating with the EIS Project Management Team and the NEPA Contractor on behalf of the Work Groups. The EIS Project Management Team will work with the NEPA Contractor to facilitate meetings among the Work Group leaders, as appropriate, to ensure the exchange of information

among Work Groups and a coordinated interdisciplinary approach and feedback to the EIS process. Work Group leaders will refer any unresolved dispute or conflicts arising within their respective Work Groups to the EIS Project Management Team. Disputes or conflicts arising between Work Groups will also be addressed by the EIS Project Management Team.

IV. GENERAL PROVISIONS

- A. Term and Termination. This Agreement will become effective on the last signature date. This Agreement shall remain in effect until terminated as provided herein or completion of a signed Record of Decision (“ROD”), whichever is earlier. The Joint Lead Agencies will endeavor to complete the final EIS within approximately three (3) years from the effective date of this Agreement or by December 2019.

Either Joint Lead Agency may terminate this Agreement by providing written notice to the other Joint Lead Agency, effective sixty (60) days following the date of delivery of such notice. If termination is not by mutual agreement of the Parties, a Party may only terminate this Agreement if the Joint Lead Agencies have completed the process described in Section IV.D below. Within fifteen (15) business days after the termination or expiration of this Agreement, the EIS Project Management Team will make accessible a full and complete copy of the then-current project files to each Joint Lead Agency. The Management Team shall maintain the project files for at least one year following the termination of this Agreement, or until each of the Joint Lead Agencies has received a copy of the project files, whichever is later.

- B. Decision Process. The Joint Lead Agencies are responsible for all decisions involving preparation of the EIS and will make all final decisions on issues arising during the NEPA process, except in those cases listed in Section VIII.A.12. Decisions will be by consensus of the Joint Lead Agencies, however, the Parties recognize that federal decision documents (e.g. RODs) are the responsibility of the Secretary. The Joint Lead Agencies will coordinate preparation of and share drafts of any decision documents related to implementation of actions addressed in the EIS, including the ROD. In the event that the ROD reflects an alternative action other than the preferred alternative identified in the EIS, the ISC does not waive, and hereby reserves, all rights to judicial review of the ROD.
- C. No Delegation or Abrogation. Although this Agreement sets forth a cooperative consensus process, both Joint Lead Agencies recognize that they each have statutory and contractual responsibilities that cannot be delegated. This Agreement does not, and is not intended to, abrogate any of the Joint Lead Agencies' statutory or contractual responsibilities. This Agreement shall not be construed to alter the Joint Lead Agencies' statutory or contractual responsibilities.
- D. Dispute Resolution. The Joint Lead Agencies, through the EIS Project Management Team, will make all reasonable efforts to resolve issues in a collaborative and timely manner. Unresolved issues of the Management Team will be brought to the Executive Committee level for resolution. The Executive Committee will resolve conflicts by unanimous consent, or direct that the conflict be resolved by a mutually acceptable mediation or

facilitation process. The Work Group leaders, team or committee responsible for resolution of a dispute or conflict will document the nature of any dispute and the resolution process used, and provide the documentation to the EIS Project Management Team.

- E. Modifying the Agreement. This Agreement may be modified by agreement of the Parties through a letter of agreement signed by the Executive Committee or their designated representatives. Any modification shall be made in writing prior to implementing the change.
- F. Correspondence. For coordination purposes, copies of all written correspondence between Joint Lead Agencies or from any Lead Agency to another person or entity pertaining to activities under the EIS shall be sent by the originator to the EIS Project Management Team and shall be made part of the project files.
- G. Officials not to Benefit. No member of or delegate to Congress, resident Commissioner, Commissioner of the ISC, or any member of the Executive Committee, the EIS Project Management Team, or any Work Group shall receive any benefit that may arise from this Agreement.
- H. Construction of this Agreement. This Agreement is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by or against either Party or any third party.
- I. Records Requests. The Parties agree to notify each other if either receives a request for any records related, directly or indirectly, to this Agreement or to the NEPA process associated with the NM Unit. The Parties recognize that each Party must abide by its governing laws in responding to any such records request.

V. NEW MEXICO CAP ENTITY

The New Mexico CAP Entity will be involved in the NEPA process in the capacity of a Project Proponent. The relationship between the New Mexico CAP Entity and the Joint Lead Agencies will be addressed in a separate agreement between the Joint Leads and the Entity.

VI. PUBLIC INVOLVEMENT

The Joint Lead Agencies anticipate developing a detailed public involvement plan with the assistance of the NEPA Contractor. The Joint Lead Agencies will conduct public involvement throughout the EIS process, including public scoping meetings, EIS comment meetings/hearings, and other outreach activities consistent with NEPA requirements. Reclamation will submit for publication in the Federal Register a Notice of Intent to prepare an EIS, Notices of Availability of the draft and final EIS, and Record of Decision. Notices will also be published in the Federal Register on the availability of scoping information.

VII. PRODUCTS

- A. Environmental Studies and NM Unit EIS Documents. Environmental studies and the

EIS Documents will be prepared in accordance with NEPA and its implementing regulations, and incorporating the Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies (PR&Gs) as revised by the Department of Interior in 2015. These may include, but are not limited to, the following:

1. Public Involvement Plan;
2. Notice of Intent to prepare an EIS;
3. Scoping Report;
4. EIS schedule;
5. Environmental studies as agreed to by the Management Team;
6. Notice of Availability of Draft EIS;
7. Biological Assessment;
8. Draft EIS;
9. Notice of Availability of Final EIS;
10. Final EIS;
11. Draft and final decision document (ROD);
12. Notice of Availability of Record of Decision (ROD); and
13. Required biological and cultural studies.

B. Project Files. Reclamation will keep and maintain the project files for the EIS, with the assistance of the NEPA Contractor. The project files shall include all records establishing the basis for the development of the EIS that are not subject to a withholding privilege, such as (if available): correspondence among the Joint Lead Agencies, meeting minutes, and public comments. All members of the Management Team will have full access to all documents in the project files, unless they contain sensitive cultural resources data that are protected under specific federal regulations. In these instances, the Management Team will arrange for appropriate safeguards for such sensitive data.

C. Record of Decision. Reclamation will publish a ROD in accordance with Section IV.B. above, not less than thirty (30) days following publication of the Final EIS.

D. Milestones. The Joint Lead Agencies have identified key milestones in Attachment A through publication of the Notice of Intent to prepare the Environmental Impact Statement. The Joint Lead Agencies anticipate the development of a long-term detailed EIS schedule after the NEPA Contractor has been retained. The Joint Lead Agencies may revise Attachment A to modify existing milestones or add additional milestones as they become available. Any revision to Attachment A will be by mutual consent and may occur without an amendment to this Agreement. Any such changes will be disseminated to the New Mexico CAP Entity.

VIII. AGENCY RESPONSIBILITIES

Reclamation, the NM CAP Entity and the ISC have developed a separate Funding Agreement that addresses funding to Reclamation for costs of planning and environmental compliance activities for the NM Unit. The staffing commitments of the Parties under this Agreement will be fulfilled using in-house staff or contractors.

If additional or unanticipated needs are identified in the course of the NEPA process that are not resolved by this Agreement or the Funding Agreement between Reclamation and ISC, the Management Team of the Joint Lead Agencies will meet and confer to resolve the issue. Commitments made under this Agreement are subject to approval and appropriations by state and federal entities. Nothing in this Agreement will require any of the Joint Lead Agencies to exceed annual appropriations.

A. Bureau of Reclamation. Reclamation will:

1. Ensure upper level management is knowledgeable of EIS status, oversee EIS progress, and maintain familiarity with important issues;
2. Assign one or two Project Managers whose primary assignment is to manage the project process for Reclamation and participate as members of the Management Team;
3. Make available competent technical specialists as necessary to coordinate with the NEPA Contractor in the identification and development of resource analyses and preparation of documents. The estimated resource commitment for Reclamation technical specialists' participation is addressed through the Funding Agreement;
4. Assign staff as necessary to accomplish the public involvement program;
5. Ensure that the ISC receives updates through monthly progress reports regarding tasks accomplished by Reclamation's contractors and staff towards completion of the EIS. The Parties will mutually agree on the format of that monthly report;
6. Provide input for all documents and review materials within set time frames;
7. Review and comment on all draft documents and public information materials;
8. Provide existing data and analysis as needed;
9. Provide any necessary documents to the ISC for review;
10. Provide copies of draft reports to the ISC for review;
11. Submit for publication required Federal Register notices;
12. Perform required consultations, including Government to Government consultations with affected Indian Tribes and Pueblos, in compliance with applicable federal laws; and
13. Ensure the EIS and supporting documents and the NEPA process comply with all

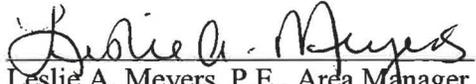
applicable Acts, regulations, guidance, orders, and procedures.

B. New Mexico Interstate Stream Commission. The ISC will:

1. Ensure upper level management is knowledgeable of EIS status, oversee EIS progress, and maintain familiarity with important issues;
2. Assign one or two Project Managers whose primary assignment is to manage the project process for the ISC and participate as members of the Management Team;
3. Assign technical specialists as necessary to enhance the interdisciplinary capability of the EIS process. As a Joint Lead Agency, the ISC is responsible for providing adequate technical staff and experienced technical specialists in the areas of NEPA, cultural resources, and biological resources, which are significant areas of effort in the environmental compliance process;
4. Assign staff as necessary to accomplish the public involvement program;
5. Ensure that Reclamation receives updates on ISC work through monthly progress reports regarding tasks accomplished by the ISC's contractors and staff towards completion of the EIS. The Parties will mutually agree on the format of that monthly report;
6. Provide input for all documents and review materials within set time frames;
7. Review and comment on all draft documents and public information materials;
8. Provide existing data and analysis as needed;
9. Provide funding as set out in the Funding Agreement;
10. Provide any requested information and studies to Reclamation for review;
11. Provide copies of draft reports to Reclamation for review; and
12. Participate fully in all consultations undertaken by Reclamation pursuant to applicable federal laws. Participate as appropriate in discussions with Indian Tribes and Pueblos.

IN WITNESS WHEREOF, the Parties hereby enter into this Agreement as of the last date indicated herein.

BUREAU OF RECLAMATION



Leslie A. Meyers, P.E., Area Manager
Phoenix Area Office

Date: 11/18/16

NEW MEXICO INTERSTATE STREAM COMMISSION



Deborah K. Dixon, P.E., Director

Date: 11/17/16

Approved as to legal form



Amy I. Haas, General Counsel

Date: 11/17/16

Attachment A
Target Dates Through NOI Publication

Milestone	Responsibility	Target Date*
Complete Statement of Work for EIS Contractor	BOR & NMISC	Winter 2016/2017
Develop Statement of Purpose & Need	BOR & NMISC	
Advertise RFP for EIS contractor	BOR	
Complete NOI to prepare EIS	BOR & NMISC	
Submit NOI for publication in Federal Register	BOR	
Contractor proposal review and selection	BOR & NMISC	Spring 2017
Contract award	BOR	Spring 2017
Kick-off meeting with EIS contractor	BOR, NMISC, EIS Contractor	Spring 2017
Publication of NOI and commencement of formal public scoping period	BOR & NMISC	Spring 2017
Begin Public Scoping Meetings	EIS Contractor, BOR & NMISC	Spring 2017

*The target dates will be updated upon execution of the MOU and the Funding Agreement by the Parties.