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September 12, 2008

Note see CAWCD letter dated June 2, 2009
which clarified this position and noted that
CWC's use was consistent with the CAP contract.

Ms. Sandra Eto
Phoenix Area Office, Attention: PXAO-1500
Bureau of Reclamation
U.S. Department of the Interior
6150 West Thunderbird Road
Glendale, AZ 85306-4001

Re: CAWCD's Comments Regarding the August 11, 2008, Notice of Public Scoping for Preparation of an Environmental Assessment on the Proposed Community Water Company of Green Valley CAP Water Distribution System and Recharge Facility

Dear Ms. Eto:

The Central Arizona Water Conservation District ("CAWCD") submits the following comments regarding the Bureau of Reclamation's notice of public scoping for preparation of an environmental assessment on the proposed Community Water Company of Green Valley ("CWC") Central Arizona Project water distribution system and recharge facility, dated August 11, 2008 (the "Scoping Notice"). These comments are based on CAWCD's review of the Scoping Notice and the July 12, 2007, Letter of Intent between CWC and Augusta Resource Corporation ("Augusta").

CWC holds an annual entitlement to 2,858 acre-feet of CAP M&I priority water pursuant to a three party CAP water service subcontract among CWC, the United States and CAWCD (the "CAP Subcontract"). Currently, there is no infrastructure in place allowing CWC to directly take and use its CAP entitlement.

CAWCD is generally supportive of CWC's efforts to extend a pipeline from the CAP system so that CWC may bring its CAP entitlement into its service area. However, the concept outlined in both the Scoping Notice and the Letter of Intent regarding how CWC will take and use its CAP entitlement is very vague, making it difficult to provide comment on such plans. It appears from both the Scoping Notice and the Letter of Intent that CWC's plans for taking and using its CAP entitlement are predicated on CWC leasing its CAP entitlement to Augusta, for a period of years, in exchange for Augusta financing the CWC water delivery system and recharge facility. If this is the case, CAWCD cannot support the proposed delivery and recharge concept because it would violate the terms of the CAP Subcontract.

THE CAP SUBCONTRACT EXPRESSLY PROHIBITS CWC FROM LEASING ITS CAP ENTITLEMENT TO AUGUSTA.

Subarticle 4.3(d) of the CAP Subcontract provides:

The Subcontractor shall not sell, lease, exchange, forbear or otherwise transfer Project Water; provided, however, that this does not prohibit exchanges of project Water within the State of Arizona covered by separate agreements; and provided, further, that this does not prohibit effluent exchanges with Indian tribes pursuant to Article 6.2; and provided, further, that this does not prohibit the resale or exchange of Project Water within the State of Arizona pursuant to Subarticle 4.3(e).

Subarticle 4.3(d) prohibits a CAP subcontractor, such as CWC, from marketing its CAP entitlement to third parties, such as Augusta. If CWC cannot put its entitlement to use in any year, that water becomes a part of the excess CAP water supply, over which CAWCD has exclusive control and contracting authority. CWC has no rights under the CAP Subcontract to lease its unused entitlement to Augusta, in fact, it is prohibited from doing so. CAWCD cannot support a plan for taking and using CAP water which is predicated on leasing of a CAP entitlement, when such leasing violates the CAP Subcontract.

SUBARTICLE 4.3(e)(i) OF THE CAP SUBCONTRACT DOES NOT PROVIDE A LOOPHOLE TO CIRCUMVENT THE PROHIBITION OF SUBARTICLE 4.3(d).

Subarticle 4.3(e)(i) of the CAP Subcontract provides:

Project Water scheduled for delivery in any Year under this subcontract may be used by the Subcontractor or resold, or exchanged by the Subcontractor pursuant to appropriate agreements approved by the Contracting Officer and the Contractor. If said water is resold or exchanged by the Subcontractor for an amount in excess of that which the Subcontractor is obligated to pay under this subcontract, the excess amount shall be paid forthwith by the Subcontractor to the Contractor for application against the Contractor's Repayment Obligation to the United States; provided, however, that the Subcontractor shall be entitled to recover actual costs of transportation, treatment, and distribution, including but, not limited to capital costs and OM&R costs.

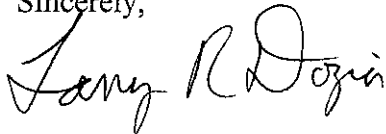
Subarticle 4.3(e)(i) addresses the factual situation where a subcontractor schedules all or a portion of its entitlement for delivery, but then for unforeseen circumstances, is unable to use the full amount of water scheduled for delivery. Subarticle 4.3(e)(i) authorizes, under this limited circumstance, the resale of scheduled Project Water, but only pursuant to an agreement approved by CAWCD and the United States. Further, the subcontractor is prohibited from profiting from the resale of its entitlement under this provision.

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CAWCD and the United States have never approved a resale agreement under Subarticle 4.3(e)(i) for any CAP subcontractor. In those instances where a subcontractor has scheduled for delivery more water than it can actually take during the year, CAWCD has either, made arrangements to deliver such water to other users pursuant to Subarticle 4.3(e)(ii), or, if no other users wanted to take the water, then CAWCD relieved the subcontractor from the pumping energy portion of the OM&R charges associated with the undelivered water pursuant to Subarticle 4.3(e)(iii).

For the reasons stated above, CAWCD has significant concerns that the proposal for CWC to take and use its CAP entitlement, if implemented, would violate the CAP Subcontract. CAWCD appreciates the opportunity to submit these comments.

Sincerely,

A handwritten signature in cursive script that reads "Larry R. Dozier".

Larry R. Dozier
Deputy General Manager

LRD:cv