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Thirst for water threatens unique ecosystem

NM-AZ agreement paves way for Gila River diversion project

Ending more than two years of negotiations, New Mexico and Arizona reached agreement in July over the fate of 18,000 acre-feet of Gila River water originally promised to New Mexico under the 1968 legislation that authorized the Central Arizona Project (CAP). If passed into legislation as it now stands, the settlement will pave the way for a doubling of the volume of water that New Mexico may take out of the Gila, with potentially severe ecological consequences for the river and the unique habitats it supports.

Brief background

The Colorado River Basin Project Act of 1968 provided federal funding for water management projects throughout the Colorado basin, including the Central Arizona Project. The act envisioned such a project for New Mexico as well – that is, for the state's portions of the Gila and San Francisco rivers, which in theory end up flowing into the Colorado – but cost considerations, environmental problems, and a lack of demand for the water kept any project from getting off the drawing board.

So when U.S. Senator Jon Kyl (R-AZ) introduced the Arizona Water Settlements Act (S.437) to address long-standing tribal water rights claims in that state, New Mexico's powerful Senate delegation muscled its way into the bill's drafting room. New Mexico Senators Pete Domenici and Jeff Bingaman, who are the chairman and ranking minority member on the Senate's Energy and Natural Resources Committee, sought an amendment that would preserve the state's right to the Gila water and provide funding from the Lower Colorado River Basin Development Fund.

Negotiating the text of the amendment fell to staff of New Mexico's Interstate Stream Commission and the Arizona Department of Water Resources. An agreement was announced on July 9, but negotiators have yet to nail down all the details. There may be plenty of time, however; insiders predict that the bill will not be passed by Congress this year.

Key points in the settlement

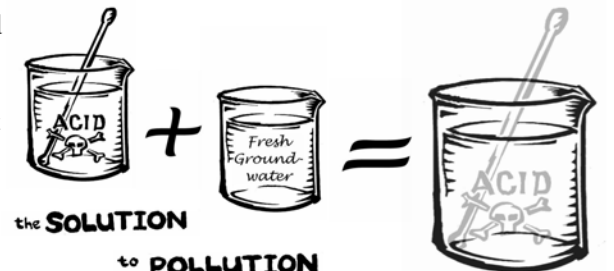
- The Interstate Stream Commission will receive \$66 million from the federal Lower Colorado River Development Fund to spend on water projects in southwest New Mexico. This money will be provided in 10 annual payouts beginning between 2010 and 2014.
- If New Mexico chooses to build a

water diversion project in the Gila Basin and can demonstrate compliance with environmental laws, the state will have access to an additional \$34 million to \$62 million.

- The state's claim on Gila water drops from an average of 18,000 acre-feet per year (afy) to 14,000 afy. (An acre-foot of water contains 326,000 gallons, enough to supply three average families for a year or to irrigate 1/3 acre of alfalfa.)
 - No more than 4,000 afy may be diverted from the San Francisco River. All of the diverted water may come from the Gila if New Mexico so chooses.
 - New Mexico must notify the Secretary
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State Engineer rules against dilution - for now

In a victory for GRIP and for water conservation state-wide, New Mexico's Office of the State Engineer has put a hold on Phelps Dodge's plans to use fresh groundwater to dilute contaminated water at the Chino Mine.



The State Engineer's ruling came on June 21, 17 months after Chino's closure plan was approved by the Environment Department (NMED). The closure plan required the mining company to ask the State Engineer if its water rights could be used for dilution. If the State Engineer – New Mexico's highest authority on water rights – said Chino's plan was okay, the NMED claimed it could not reject dilution.

During hearings on the closure plan, GRIP vigorously challenged the agency's belief that it lacked the authority to prohibit dilution, arguing that allowing a polluter to mix clean water with dirty water in order to meet standards made a mockery of setting standards in the first place, weakened water quality protection enforcement across the state, and could encourage polluters to buy up additional water rights for dilution, thus compounding the state's water shortage.

GRIP lost that argument, but the NMED offered a consolation prize: the requirement that PD seek the State Engineer's finding that dilution "constitutes a

see **Dilution**, page two