

SALMON, LEWIS & WELDON, P.L.C.

Attorneys at Law

Riney B. Salmon II, P.C.
John B. Weldon, Jr.
Mark A. McGinnis
Kristin D. Magin
R. Jeffrey Heilman
Blake W. Rebling
Michael K. Foy

2850 E. Camelback Road, Suite 200
Phoenix, Arizona 85016
Telephone 602-801-9060
Facsimile 602-801-9070

M. Byron Lewis
Lisa M. McKnight
James R. Huntwork
Douglas J. Kunath
Benjamin A. Thinnies
Daniel B. Jones

March 6, 2020

Writer's Direct Line
602-801-9083
Writer's Internet Address
dbj@slwplc.com

Of Counsel
Paul R. Orme, P.C.
G. Van Velsor Wolf Jr.
George J. Coleman, III

The Honorable Martha McSally
United States Senate
218 Russell Senate Office Building
Washington, D.C. 20515

Re: Arizona Drought Contingency Plan Irrigation Infrastructure Funding
Authority

Dear Senator McSally:

This law firm represents Central Arizona Irrigation and Drainage District ("CAIDD"), Maricopa-Stanfield Irrigation & Drainage District ("MSIDD"), New Magma Irrigation and Drainage District ("NMIDD"), Queen Creek Irrigation District ("QCID"), and San Carlos Irrigation and Drainage District ("SCIDD") (collectively "Districts"), which are responsible for managing and delivering the irrigation water supplies required for agriculture on more than 260,000 acres located in central Arizona. As you know, under the Lower Basin Drought Contingency Plan ("LBDCP"), Arizona must leave in Lake Mead all of the Central Arizona Project ("CAP") agricultural pool water on which the Districts currently rely in any year during which the water elevation in Lake Mead is projected to fall below 1075 feet.

To partially mitigate the harmful effects that otherwise would result from the complete loss of the CAP agricultural water supply under LBDCP, Arizona's LBDCP plan includes an irrigation infrastructure project ("Infrastructure Project") that is intended to provide substitute irrigation water supplies for a portion of the CAP agricultural water that must remain in Lake Mead. The Infrastructure Project consists of new, replacement, and rehabilitated irrigation wells, canal system improvements, and a reclaimed water reuse project, among other things, and is expected to cost approximately \$50,000,000 total. The parties to Arizona's intra-state LBDCP negotiations, which included representatives of the United States, understood that non-federal parties would contribute approximately half of the necessary funding, and that federal funding would be made available to complete the Infrastructure Project. Although funding from the non-federal parties has been secured, no federal funding has been made available for the Infrastructure Project to date.

The Infrastructure Project was essential to Arizona's LBDCP plan and to obtaining the consent of the Arizona Legislature required for state to agree to participate in LBDCP. We

understand that the United States Bureau of Reclamation (“Reclamation”) has raised questions as to whether it has authority to contribute funding for the construction, replacement, or rehabilitation of irrigation wells to complete the Infrastructure Project. For the reasons set forth below, we contend that Reclamation does currently have such authority.

I. The Colorado River Drought Contingency Plan Authorization Act

The Colorado River Drought Contingency Plan Authorization Act (“DCP Authorization Act”), Pub. Law 116-14, authorizes Reclamation to contribute funding for the Infrastructure Project. Section 2(a) of the DCP Authorization Act directs the Secretary of the Interior (“Secretary”) to sign “the Agreement Concerning Colorado River Drought Contingency Management and Operations and the agreements attached thereto as Attachments A1, A2, and B,” and directs and authorizes the Secretary to “to carry out the provisions of such agreements and operate applicable Colorado River System reservoirs accordingly.”

Section 4(a) of “Attachment B” referenced in the DCP Authorization Act (“LBDCP Agreement”) provides that “[p]rior to or concurrent with the execution of this LB DCP Agreement, the Parties shall enter into and implement Intra-State DCP Agreements as necessary to carry out the obligations of the non-Federal Parties . . . and enable the Secretary to perform the Secretarial actions required in the LBOps.” Similarly, Section 3(c) provides that the “Secretary will explore mechanisms to arrange for additional appropriations or other funding mechanisms to assist the Parties in taking additional Lower Basin drought response actions in a manner consistent with the goals of this LB DCP Agreement.” The Infrastructure Project is a critical part of Arizona’s intra-state DCP agreement for purposes of Section 4(a) of the LBDCP Agreement, and Reclamation’s contribution of funding for the Infrastructure Project qualifies as assistance in taking drought response actions for purposes of Section 3(c). Thus, the DCP Authorization Act and LBDCP agreements provide sufficient authority for Reclamation to contribute to the Infrastructure Project.

II. Preexisting Reclamation Authorities

In addition to the DCP Authorization Act, Reclamation’s preexisting authorities allow Reclamation to contribute to the Infrastructure Project. Reclamation always has had authority to construct groundwater wells and related infrastructure. *See* 43 U.S.C. § 411. Groundwater historically has been included as part of the water supply available for use by Reclamation projects, and wells necessary to access those supplies historically have constituted part of Reclamation projects’ infrastructure.

Likewise, the Reclamation State Emergency Drought Relief Act of 1991 (“Drought Relief Act”) authorizes Reclamation to undertake construction, management, and conservation activities to minimize losses and damages resulting from drought conditions, and expressly refers to “wells drilled to minimize losses and damages from drought conditions.” 43 U.S.C. § 2211(a). The Infrastructure Project is a necessary component of Arizona’s intra-state


LBDCP agreement, and Reclamation's participation would constitute construction, management, and conservation activities to minimize losses and damages resulting from extended drought conditions in the Colorado River basin for purposes of the Drought Relief Act.

Reclamation has used its preexisting authorities to grant funding for the construction, rehabilitation, and replacement of wells and related groundwater infrastructure. For example, in fiscal year 2018, Reclamation awarded grants to six drought resiliency projects consisting of well construction, rehabilitation, or replacement proposals. *See* <https://www.usbr.gov/drought/docs/2018/2018DroughtResiliencyProjectSelections.pdf>. Moreover, Reclamation already has agreed to contribute \$100,000 for work relating to this specific Infrastructure Project in its capacity as a partner in the Regional Conservation Partnership Program proposal submitted to the Natural Resources Conservation Service by the Arizona Department of Water Resources on December 3, 2019.

For the reasons discussed above, Reclamation currently has authority to contribute funding to assist in the Districts' completion of the Infrastructure Project. If we can provide any additional information to help resolve any remaining questions that you may have, please do not hesitate to contact us.

Very truly yours,

Salmon, Lewis & Weldon P.L.C.

By 
Paul R. Orme


Daniel B. Jones