

**Agenda Number 5.c.iii.**

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**MEETING DATE:** June 8, 2017

**AGENDA ITEM:** Consideration of Action to Adopt a Board Policy Allowing the Use of the CAGR Long-Term CAP Contract to Satisfy the Arizona Water Banking Authority's Firming or Interstate Obligations

**RECOMMENDATION:**

Staff proposes that the Board adopt the attached Board Policy allowing the use of the CAGR long-term CAP contract to satisfy a portion of the Arizona Water Banking Authority's firming or interstate obligations.

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**FINANCIAL IMPLICATIONS:** None

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**LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:**

CAWCD 2016 Board of Directors Strategic Plan

- Water Supply: Implement Recovery Plan

**PREVIOUS BOARD ACTION/ACTIVITY:**

- May 18, 2017 - CAGR & Underground Storage Committee - Discussion and Consideration of Action to Recommend that the Board Adopt a Board Policy to Allow for the Exchange of AWBA Long-Term Storage Credits for the CAGR's Long-Term Subcontract Water to Create Firming Water
- April 20, 2017 - CAGR & Underground Storage Committee - Report on and Discussion of Board Policy to Allow for the Exchange of AWBA Long-Term Storage Credits for the CAGR's Long-Term Subcontract Water to Create Firming Water
- March 2, 2017 - Report on Recovery Implementation Activities
- September 1, 2016 - Information Brief – CAP's Role in Recovery

## **ISSUE SUMMARY/DESCRIPTION:**

CAWCD bears much of the responsibility for the recovery of water stored by the Arizona Water Banking Authority (AWBA). Therefore, CAP staff continues to work on recovery implementation as outlined in the 2014 Joint Recovery Plan developed in collaboration with AWBA and ADWR.

In February of 2017, the CAP System Use Agreement (SUA) was approved by CAWCD and Reclamation. This document builds much of the legal framework for how firming water will be made available during shortages or outages. Firming water will be necessary to offset shortages that affect CAP M&I users, on-River P-4 M&I users and potentially some Indian NIA users. The SUA also recognizes the need to use AWBA credits when Nevada requests Intentionally Created Unused Apportionment (ICUA) in shortage or non-shortage years.

The SUA identifies several sources of firming water, including water created through exchanges. The SUA further defines how the exchange provisions contained in CAP long-term contracts can be implemented, including a general “water-for-water” requirement. However, a narrow exception is established in subarticle 9.1.2 to address the use of the CAP contract held by CAWCD on behalf of the CAGRD. Specifically, Project Water available for delivery pursuant to the CAGRD’s contract can be exchanged for Long-Term Storage Credits, provided those credits are transferred into the Conservation District Account (CDA) to satisfy CAGRD’s replenishment obligation.

It is worth noting that this transaction does not meet the strict water-for-water standard established under state law, so ADWR considers it a “trade”, and agrees with CAWCD that the state exchange statutes (§45-1001 *et seq*) do not apply.<sup>1</sup> However, internal to the CAWCD/Reclamation contractual framework of the CAP system, this specific transaction is characterized as an exchange and can serve as a means of creating firming water.

This exception was included in the SUA to acknowledge that the transfer of credits into the CDA to offset Excess Groundwater pumping by CAGRD Members functions similarly to annual storage and recovery. In allowing the CAGRD to participate in recovery efforts, the CAGRD’s CAP contract can be used to create firming water in a cost-effective manner, which is a benefit to all entities that may receive firmed water.

When instate firming water is needed, or Nevada requests ICUA, the proposed policy allows the CAGRD to forego planned deliveries of Project Water scheduled to underground storage facilities (USFs) in exchange for an equal amount of AWBA long-term storage credits being assigned to the CDA. The water scheduled for delivery to the USFs would then be available as firming water for instate users that have had their Colorado River water supplies reduced due to shortage, or to allow creation of ICUA for Nevada.

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<sup>1</sup> Conversely, since all *other* exchanges identified in the SUA *are* water-for-water, the state exchange statutes will apply to them, and ADWR has a clear role in regulatory oversight.

On May 18, 2017, the CAGR D & Underground Storage Committee voted unanimously to recommend that the Board adopt the attached policy (subject to changes discussed during the Committee meeting) that would allow for this type of exchange to occur when needed for instate firming and/or to meet interstate obligations.

All general terms and conditions of the policy are similar to the terms and conditions being offered to other exchange partners. In addition to these general terms, specific locations from which CAGR D may accept credits are listed in the policy to meet certain stipulations mandated in CAGR D's M&I subcontract.

**SUGGESTED MOTION:** I move that the Board of Directors adopt the attached Board Policy allowing the use of the CAGR D long-term CAP contract to satisfy a portion of the Arizona Water Banking Authority's firming or interstate obligations

Attachments.

**(Section 9.1 of the CAP System Use Agreement)**

9.1 Exchanges between Long-Term Contractors and CAWCD:

9.1.1 Exchanges of Project Water for Non-Project Water, including exchanges of Recovered Water for Firming purposes, between Long-Term Contractors and CAWCD shall be:

9.1.1.1 In accordance with the terms of Long-Term Contracts and this Agreement; and

9.1.1.2 Pursuant to an Exchange Agreement between the Long-Term Contractor and CAWCD, approved by Reclamation.

9.1.2 Notwithstanding Subsection 3.32 of this Agreement, a Long-Term Contract held by CAWCD for the benefit of the Central Arizona Groundwater Replenishment District may be used to exchange Project Water for Long-Term Storage Credits, provided that those credits are transferred into a conservation district account established under A.R.S. § 45-859.01 in satisfaction of a replenishment obligation, and such an exchange shall be:

9.1.2.1 In accordance with the terms of Long-Term Contracts and this Agreement; and

9.1.2.2 Approved by Reclamation.

**(Subsection 3.32 of the CAP System Use Agreement)**

3.32 “Non-Project Water” means all water, including Recovered Water, other than Project Water. For the purposes of this Agreement the term Non-Project Water does not include Long-Term Storage Credits.

## **CAWCD POLICY ALLOWING THE USE OF THE CAGRDLONG-TERM CAP CONTRACT TO SATISFY THE ARIZONA WATER BANKING AUTHORITY'S FIRMLNG OR INTERSTATE OBLIGATIONS**

### **I. Process for CAGRDLong-Term Storage Credits**

- A. Prior to the use of the CAGRDLong-Term CAP contract to satisfy the Arizona Water Banking Authority's firming or interstate obligations, CAWCD shall obtain approval from the United States Bureau of Reclamation that the process is consistent with the exchange requirements in the CAP System Use Agreement section 9.1 and in accordance with the Supplemental Contract between the United States and the Central Arizona Water Conservation District for Delivery of Central Arizona Project Water contract no. 14-06-W-245 and any subsequent supplements or amendments (the "Supplemental Contract").
- B. In any year in which CAWCD is required to recover long-term storage credits on behalf of the Arizona Water Banking Authority for either instate firming or interstate obligations, CAWCD may exchange up to the maximum quantity of CAP water available to CAGRDL under the Supplemental Contract, as authorized by the CAP System Use Agreement.
- C. For every long-term storage credit exchanged with the Supplemental Contract, CAGRDL shall accept an equal reduction in the volume of CAP water deliveries in that same calendar year.
- D. Any long-term storage credits transferred to CAGRDL for firming or instate obligations must be transferred into a conservation district account established under Arizona Revised Statute § 45-859.01 in satisfaction of a replenishment obligation.
- E. CAGRDL shall pay all charges, including CAP Fixed OM&R Charges, CAP Pumping Energy Charges, CAP Capital Charges, and any applicable water storage charges for CAP or non-CAP owned and operated facilities, that would otherwise have been associated with delivery of CAGRDL's CAP water order as if the CAP water order was fully delivered to CAGRDL as ordered and no exchange had taken place.
- F. By April 30 of the year following the year in which long-term storage credits were transferred, CAWCD shall pay \$15 to CAGRDL for each every long-term storage credit that CAWCD exchanges with CAGRDL.

### **II. Locations From Which CAGRDL May Accept Long-Term Storage Credits**

- A. Exhibit A of the Supplemental Contract, as amended, identifies the entities that have assigned CAP M&I water entitlements to CAGRDL.
  - a. In a given calendar year, CAGRDL may only reduce CAP water deliveries for its CAP M&I water entitlements obtained from Sunrise Water Company, West End Water Company, New River Utility Company, and Valley Utilities Water Company for long-term storage credits that were created at water storage facilities within the area of hydrologic impact of the groundwater withdrawals to be replenished.
  - b. In a given calendar year, CAGRDL may reduce CAP water deliveries for its CAP M&I water entitlements obtained from Litchfield Park Service Company and Chandler Heights Citrus Irrigation District for long-term storage credits that were created at water storage facilities in the Phoenix Active Management Area.
- B. To the extent that CAGRDL obtains NIA Priority Water, in a given calendar year, CAGRDL may reduce CAP water deliveries available for its CAP NIA Priority water entitlements for long-term storage credits that were created at any water storage facility in the Phoenix, Pinal, or Tucson Active Management Areas.