

Action Brief

BOARD OF DIRECTORS



Agenda Number 2.b.

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DATE: November 23, 2009

AGENDA ITEM: Consideration of Action to Approve the Purchase of Long-Term Storage Credits from Rocking K Acquisitions, LLC for use by CAGR D for Replenishment Obligations and Reserves

RECOMMENDATION: Staff recommends that the Board approve the Purchase and Sale Agreement for Long-Term Storage Credits between Rocking K Acquisitions, LLC and CAWCD.

FINANCIAL IMPLICATIONS:

Impact on Budget:

CAGR D Budget			
Budget Year	Funds Requested	Funds Included in the Budget	(Over) / Under Budget
2010	\$540,000	\$ 597,920	\$ 57,920

Additional spending authority requested: None

Impact on Reserves: No impact to CAWCD Reserves. (Requested funds are from the CAGR D Water Rights and Infrastructure Fund for the Tucson AMA to be paid back from Water and Replenishment rate revenues as credits are used.)

Impact on Rates: No impact.

RELEVANT POLICY, STATUTE OR GUIDING PRINCIPLE:

A.R.S § 45-854.01 - Assignment of long-term storage credits

Replenishment Strategic Objective - "Obtain Sufficient Water Supplies to Meet Replenishment Obligation"

PREVIOUS BOARD ACTION/ACTIVITY:

August 7, 2008 – Report on CAGR D Credit purchase program.

September 4, 2008 – Approval to purchase Credits from Fidelity Trust.

September 3, 2009 – Approval to purchase Credits from Gold Canyon Sewer Company.

September 3, 2009 – Approval to purchase Credits from Litchfield Park Service Company.

ISSUE SUMMARY/DESCRIPTION:

In 2008 CAGR D implemented a program for the purchase of long-term storage credits to offset a portion of the CAGR D's replenishment obligations. The primary benefit of this program is to reduce the amount of excess CAP water the CAGR D would need to order, deliver to a recharge facility and replenish. This results in more excess CAP water and CAP recharge facility capacity available for other CAP customers. The Board has subsequently approved three separate credit purchase agreements in 2008 and 2009 totaling nearly 13,000 ac-ft.

Rocking K Acquisitions, LLC has agreed to sell 4,000 ac-ft of credits at CAGR D's offer price for the Tucson AMA of \$135 / ac-ft. These credits were accrued with excess CAP water recharged at the Cortaro Marana Irrigation District Groundwater Savings Facility during 1999 and will be transferred to CAGR D in 2010. The credits being sold are a portion of a larger volume of credits originally intended to offset groundwater use for golf course irrigation at the Rocking K Development in Tucson. Rocking K is now able to market some of its credits due to a delay in the development and subsequent acquisition of alternative water supplies.

In order to implement the sale and transfer of credits, staff prepared the attached Purchase and Sale Agreement for Long-Term Storage Credits between Rocking K Acquisitions, LLC and CAWCD. The agreement provides for the following:

1. CAWCD agrees to purchase 4,000 ac-ft of long-term storage credits from Rocking K Acquisitions in 2010 at \$135 / ac-ft.
2. CAWCD will submit the ADWR credit transfer application no later than January 15, 2010.
3. CAWCD will pay the seller the sum of \$540,000 within 20-days of receiving notice from ADWR that the credits have been transferred into the CAGR D Long-Term Storage Account.

SUGGESTED MOTION:

I move that the Board approve the Purchase and Sale Agreement for Long-Term Storage Credits between Rocking K Acquisitions, LLC and CAWCD.

Purchase and Sale Agreement for Long-term Storage Credits

This agreement (“Agreement”) is made this _____ day of _____, 2009 between Rocking K Acquisitions, LLC, formed and existing under the laws of the State of Arizona (“Seller”) and the Central Arizona Water Conservation District (“CAWCD”), a multi-county water conservation district organized and existing under the laws of the State of Arizona (“Buyer”).

Recitals

1. Buyer operates the Central Arizona Project (“CAP”). Buyer also provides replenishment services to member lands and member service areas under authorities provided in Title 48, Chapter 22, Article 4 of the Arizona Revised Statutes (“A.R.S.”). These replenishment authorities are commonly referred to as the Central Arizona Groundwater Replenishment District or CAGR. CAGR is not a separate legal entity, but functions within and is operated by Buyer CAWCD.
2. “Long-term storage credit” shall have the meaning as defined in A.R.S. Section 45-802.01-11.
3. Buyer desires to purchase long-term storage credits developed by Seller pursuant to A.R.S. Title 45, Chapter 3.1, for the benefit of CAGR member lands and member service areas.
4. Seller is willing to sell and transfer certain long-term storage credits in the amounts, at the delivery times and for the prices specified below.

Agreement

In consideration of the promises and undertakings contained herein, the adequacy of which is agreed by both Seller and Buyer to be sufficient, Seller agrees to sell, transfer and assign and Buyer agrees to purchase, accept and pay for the following described property and/or rights, whether real, personal, or contractual (consisting of long-term storage credits), and all rights appurtenant thereto:

Four Thousand (4,000) acre-feet of long-term storage credits for delivery during January 2010

Such long-term storage credits shall be sold, transferred, assigned and delivered by Seller and purchased, accepted and paid for by Buyer pursuant to the following terms and conditions.

A. Type of Water. Seller covenants that all of the long-term storage credits to be sold pursuant to this Agreement were accrued through storage of water from the source identified in Section B.4 of this Agreement. It is the intent of the parties that all credits purchased and sold hereunder shall retain such identity.

B. Source of Credits. The long-term storage credits to be sold by Seller are from:

1. Arizona Department of Water Resources (“ADWR”) Long-Term Storage Account (“LTSA”) No. 70-411410.0000
2. ADWR Facility Permit Number:
 - o 72-538100.0004, such facility being located in the Tucson Active Management Area
3. ADWR Water Storage Permit Number
 - o 73-538100.01
4. Source of water used to generate long-term storage credits - CAP

C. Number and Year of Credits. The number of long-term storage credits to be transferred and year credits were earned are as follows:

1. 4,000 acre-feet of long-term storage credits credited to Seller's LTSA No. 70-411410.0000, earned in calendar year 1999.

D. Purchase Price.

1. $\$135/\text{acre-foot} \times 4,000 \text{ acre-feet} = \$540,000$

E. Time and Manner of Transfer of Credits. Seller and Buyer shall complete and sign the ADWR’s “Long-Term Storage Credit Transfer Form A.R.S. § 45.854.01”, a copy of which is attached as Exhibit A, or if that form is no longer used by ADWR, a successor ADWR form or other form that is satisfactory to Buyer in its reasonably exercised discretion, no later than January 15, 2010.

After Seller has executed and delivered a credit transfer form to Buyer, Buyer shall promptly deliver the fully executed credit transfer form to ADWR.

If Buyer determines, prior to completion of delivery as provided in Section F of this Agreement, that a separate deed and/or bill of sale is necessary or advisable for the transfer of the long-term storage credits, Buyer may request that Seller execute a deed and/or bill of sale that is satisfactory to Buyer in its reasonably exercised discretion. Buyer’s request shall inform Seller of any form or format requirements needed for such deed and/or bill of sale to meet with Buyer’s satisfaction. Seller shall execute, process, and deliver such a conveyancing document at no cost to Buyer. The parties shall cooperate to take such further actions and execute such further documents as may be determined by either party to be necessary or advisable in order to complete the transfer of the long-term storage credits.

F. Delivery Complete - Payment. Delivery of the long-term storage credits in 2010 shall be deemed complete when the ADWR has transferred the credits from Seller's Long-Term Storage Account specified in Section B.1. into Buyer's Long-Term Storage Account. Seller and Buyer shall cooperate with each other and with the ADWR to facilitate completion of such transfers by ADWR. Buyer shall pay the amounts specified in Section D. of this Agreement no later than twenty (20) business days after receiving adequate evidence that ADWR has completed the transfer of credits to Buyer's account. In the event that ADWR has not transferred the credits to Buyer's account within six (6) months after submission of the transfer form, pursuant to paragraph E above, either Buyer or Seller may terminate this Agreement by giving ten (10) days' written notice to the other party. In the event that prior to the completion of delivery, as specified in this Section, the long-term storage credits are transferred out of Seller's account by ADWR, but Buyer is unable to obtain approval, for any reason, of a transfer of the credits into the Buyer's account, Buyer shall cooperate with and assist the Seller in efforts to obtain approval of a transfer of the credits back into Seller's account.

G. Rejection or Invalidation of the Transfer of Credits by ADWR. If ADWR, pursuant to A.R.S. § 45-854.01(C), rejects or invalidates any transfer and assignment of long-term storage credits made hereunder prior to any payment by Buyer, Buyer shall not be obligated to pay for the number of credits affected by such rejection or invalidation. If such rejection or invalidation occurs after payment has been made by Buyer, Seller shall refund an amount equal to the number of credits affected by such rejection or invalidation times the price per acre-foot for the affected credits within twenty (20) business days after either Buyer or Seller receives any notice of rejection or invalidation from ADWR. Buyer shall transfer and assign back to Seller the number of credits affected by any such rejection or invalidation if necessary. Seller's obligation to refund any payments under this paragraph shall expire thirty (30) days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the long-term storage credits into Buyer's Long-Term Storage Account.

H. CAWCD Board Approval. This Agreement is subject to and expressly conditioned upon approval by the CAWCD Board. Such Board approval shall be completed within sixty (60) days of execution of the Agreement by Seller and shall apply to all transfers of credits identified in Section C of this Agreement.

I. Miscellaneous.

1. This Agreement shall be governed by and construed pursuant to the laws of the State of Arizona, without regard to its conflicts of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona. The parties agree to waive all rights to a jury trial.
2. Time is of the essence in the performance of this Agreement
3. Seller warrants that it has good and marketable title to the long-term storage credits that are the subject of this Agreement and agrees to convey marketable title to such long-term storage credits free and clear of all liens and encumbrances. Seller shall warrant and defend the title against all persons whomsoever.
4. The parties agree that if a party fails to perform its obligations under this Agreement, other remedies will not be sufficient and the parties agree that, in addition to other available remedies, the remedy of specific performance shall be available to the aggrieved party.

- 5. This Agreement may not be amended except by written instrument signed by the parties.
- 6. This Agreement constitutes the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior written and oral agreements, understandings and negotiations between the parties with respect to the subject matter hereof.
- 7. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving party. A waiver by any party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.
- 8. The provisions of Sections I.1., I.2., I.3. and I.4. shall survive the completion or termination of this Agreement.

In Witness Whereof, the authorized representatives of Buyer and Seller have executed this Agreement, as set forth below.

Central Arizona Water Conservation District

Rocking K Acquisitions, LLC

By _____

By _____

Print Name: Susan Bitter Smith

Print Name: _____

Title: President

Title: _____

Date: _____

Date: _____

Attest _____

Print Name: Timothy Bray

Title: Secretary

Date: _____

ARIZONA DEPARTMENT OF WATER RESOURCES
Water Management Section
3550 North Central Ave, Phoenix, Arizona 85012
Telephone (602) 771-8585
Fax (602) 771-8689

LONG-TERM STORAGE CREDIT
TRANSFER FORM A.R.S. § 45-854.01

For Official Use Only
DATE RECEIVED: _____

[FOR SELLER]

Name of Seller

Long-Term Storage Account No.

Contact Person/Telephone Number

Facility Permit Number (where source water was stored)

Mailing Address

Water Storage Permit Number (authority to store source water)

City/State/Zip

Number of long-term storage credits (in acre-feet) transferred by type(s) of water and year credits were earned.

Type: _____ acre-feet _____ year earned _____

Type: _____ acre-feet _____ year earned _____

[FOR BUYER]

If the transfer includes long-term storage credits earned from the storage of Central Arizona Project (CAP) water in an Active Management Area (AMA), please state:

Name of Buyer

1. The date of Buyer's formation (if Buyer is a legal entity): _____.

Contact Person/Telephone Number

2. The amount of groundwater withdrawn by Buyer in the AMA during the calendar year that the credits were earned:
_____.

Mailing Address

a. The groundwater right number(s) the Buyer withdrew the groundwater pursuant to:
_____.

City/State/Zip

Long -Term Storage Account No. (if any)

Pursuant to A.R.S. § 45-854.01(C), the director of the Arizona Department of Water Resources may reject and invalidate any assignment of long-term storage credits in which the stored water would not have met the requirements for long-term storage credits as prescribed by A.R.S. § 45-852.01 if the assignee had stored the water.

The undersigned hereby certify, under penalty of perjury, that the information contained in this report is, to the best of their knowledge and belief, correct and complete and that they are authorized to sign on behalf of the party for whom their signature appears.

Authorized Signature for Seller DATE

Authorized Signature for Buyer DATE

Title

Title