

Arizona Water Banking Authority

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AUTHORITY MEMBERS
Herbert R. Guenther, Chairman
Maureen R. George, Vice Chairman
Tom Buschatzke, Secretary
Lisa A. Atkins
John Mawhinney

EX OFFICIO MEMBERS
Honorable Steve Pierce
Honorable Kirk Adams

November 19, 2009

The Honorable Janice K. Brewer
Governor, State of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

Dear Governor Brewer:

The Arizona Water Banking Authority was created by the Legislature in 1996 to store Arizona's unused Colorado River water in central Arizona to assist in meeting Municipal and Industrial demands during times of shortages. Last month pursuant to a request from the Governor's Office of Strategic Planning and Budgeting (OSPB), the Arizona Department of Water Resources (ADWR) submitted a proposed budget reduction plan for ADWR and for other non-general appropriations. This plan included a reduction of \$785,445 from the Arizona Water Banking Fund (Fund). The ADWR proposal recognized that the AWBA has already contributed more than its fair share. Over the last two fiscal years to assist in meeting previous budget shortfalls, the Legislature has transferred approximately \$30.5 million from the Fund. Given the significant obligations facing the AWBA, the AWBA Commission continues to voice its opposition to any transfers from the Fund.

Previous transfers have severely impacted and additional transfers will further impact the AWBA's ability to store Arizona's unused Colorado River water. Presently, the only funding sources available to the AWBA for the purchase and storage of unused Colorado River water are withdrawal fees collected in the Phoenix, Pinal and Tucson Active Management Areas. Additional monies can come from Nevada only for the interstate water banking agreement. The AWBA has not received annual general fund appropriations in several years. The \$30.5 million equates to approximately 350,000 acre-feet of water not stored by the AWBA that could assist it in meeting the State's obligation for Indian firming and interstate banking and providing supplies to meet Arizona users' demands during times of shortage.

While the ADWR proposal raised concerns about using the Fund, the Fund is administered by the AWBA Commission. See A.R.S. §45-2425. ADWR had no authority to include any discussion of activities relating to the Fund in their proposed plan. At the very least, we would ask that any discussion with regard to Water Bank funds include the AWBA Commission.

The enclosed correspondence transmitted from the AWBA Commission to the Governor and legislative members on May 5, 2009 additionally describes the numerous state obligations and responsibilities of the AWBA. We recognize the serious fiscal challenges facing the State, but are deeply concerned over the impacts of further fund reductions from the AWBA. As always, the AWBA Commission members and staff are available to address any questions you may have.

Sincerely,

[Recused]
Herbert R. Guenther
Chairman

Maureen R. George
Maureen R. George
Vice-Chairman

Tom Buschatzke
Tom Buschatzke
Secretary

John Mawhinney
John Mawhinney
Commission Member

Lisa A. Atkins
Lisa A. Atkins
Commission Member

Enclosure

cc: Members, Arizona State Senate
Members, Arizona House of Representatives
Mr. John Arnold, Director, Governor's Office of Strategic Planning and Budgeting
Mr. Herbert Guenther, Director, Arizona Department of Water Resources
Ms. Karen Smith, Deputy Director, Arizona Department of Water Resources
Ms. Susan Bitter Smith, President, Central Arizona Water Conservation District
Mr. David Modeer, General Manager, Central Arizona Water Conservation District
AWBA Commission Members

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Honorable Steve Pierce

Honorable Kirk Adams

May 5, 2009

The Honorable Janice K. Brewer
Governor, State of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

The Honorable Robert Burns
President, Arizona State Senate
1700 West Washington Street
Phoenix, Arizona 85007

The Honorable Kirk Adams
Speaker, Arizona House of Representatives
1700 West Washington Street
Phoenix, Arizona 85007

Dear Governor Brewer, President Burns, and Speaker Adams:

While we appreciate the fiscal challenges facing our State, the Arizona Water Banking Authority (AWBA) is very concerned about the impact of the fund transfers from the Arizona Water Banking Fund (Fund) in the current fiscal year, and strongly opposes the proposed additional legislative transfers of any monies from the Fund. We appreciate this opportunity to explain our concerns about the impacts of current fund transfers and our opposition to any additional transfers.

The AWBA is a five-member commission created by the Legislature in 1996 to store water for the benefit of Arizona water users in central Arizona (Maricopa, Pinal and Pima Counties), water users along the Colorado River and Indian communities. The AWBA is an entity separate and distinct from the Arizona Department of Water Resources (ADWR), created to store Arizona's unused Colorado River entitlement and to help ensure water supplies are available during times of shortage or disruptions of the Central Arizona Project (CAP) system. This storage is funded with withdrawal fees, and appropriations for both general and specific purposes. Water deliveries by the AWBA have been reduced as a result of legislative transfers, thereby increasing the impacts of shortages to water users in central Arizona and to communities along the Colorado River. See the enclosed list of the many Arizona water users that benefit from these storage activities.

In addition to the AWBA's other responsibilities, the Legislature designated the AWBA as the agent to carry out the State's obligations under the federal Arizona Water Settlements Act (Settlements Act), to which the State is a party. This includes an obligation to provide CAP water to Indian Communities during times of shortage, commonly referred to as a "firming

obligation". The Legislature, at that time, limited funding sources to the AWBA for this purpose to appropriations and the use of withdrawal fees. Failure to meet this "firming obligation" may create a risk for future litigation by the United States, or the Tribes, to enforce provisions of the Settlements Act. The beneficiaries of Indian water rights settlements are not the Tribes alone, but cities, towns, and other water users throughout the State.

The State, acting through the AWBA, also has a contractual obligation to provide 1.25 million acre-feet of water for Nevada. The Southern Nevada Water Authority (SNWA) has agreed to provide full funding for meeting this obligation. Under the contract, SNWA is required to make two payments to the AWBA, \$230 million and \$100 million. These payments cover the cost of delivering and storing CAP water and the risk to the State that an alternative source of water will have to be purchased to meet Arizona's guarantee under the contract. Until the obligation is met, transferring any of the \$100 million places the State at risk to being unable to meet the obligation. To date, approximately \$8.5 million from the original \$100 million SNWA payment has been transferred to the State's General Fund for uses other than the Nevada contract.

Besides the AWBA funding sources previously mentioned (withdrawal fees, general appropriations, and SNWA payments), the Central Arizona Water Conservation District (CAWCD) maintains accounts of funds collected through the levy of a 4-cent *ad valorem* tax in Maricopa, Pinal, and Pima Counties, the CAP service area. CAWCD utilizes these revenues to offset the cost of water to the AWBA so that it can store water for use by CAP municipal and industrial water users during times of shortage. As these funds are held by a special taxing district, transfers by the Legislature are constitutionally prohibited.

In FY 2009, the Legislature has transferred approximately \$25 million from the Arizona Water Banking Fund to the State's General Fund. Approximately \$17 million of this transfer directly affects the amount of water the AWBA can store for the benefit of Arizona users. Unfortunately, House Bill 2633 currently proposes the transfer of another \$7.9 million from the AWBA for FY 2010. Water not stored by the AWBA reduces the amount of water available to Arizona during times of shortage. The result has been that instead of storing water for the benefit of Arizona, AWBA stored water for the benefit of Nevada.

The AWBA is aware that some of the past legislative transfers of funds from the AWBA have been used to partially fund the ADWR budget. Since the AWBA is independent from ADWR, we do not support the use of AWBA funds for that purpose and strongly believe that it places water users in this State at unnecessary risk. However, we also recognize the importance of ADWR and the activities that are mutually beneficial to both our organizations. These activities allow the AWBA to meet its individual obligations. We believe that the statewide importance and critical nature of ADWR's operations and work warrant funding sufficient to meet their obligations and urge your favorable consideration of establishing such a base funding level. This base funding level should not rely on the transfer of AWBA funds.

Recently, you were provided documents suggesting that the Arizona Water Banking Fund be used to supplement the General Fund and to offset potential cuts in the ADWR appropriations. Those documents were prepared by ADWR, with no input from the AWBA Commission

members. We were disappointed in not participating in those documents and hope that this letter clarifies our position with regard to the risks of using AWBA funds to offset ADWR cuts.

As budget discussions continue, we hope that you, your colleagues and staff will feel free to communicate directly with AWBA Commission members and staff to fully understand the ramifications of transferring AWBA funds. The AWBA is willing and ready to provide the information or data needed to facilitate these discussions. We look forward to working with you to address the immediate fiscal challenges facing our State, and developing a plan on how the funds that have already been transferred could be returned to the AWBA as the State's fiscal condition improves in the future.

Sincerely,

[Recused]
Herbert R. Guenther
Chairman

Maureen R. George
Maureen R. George
Vice-Chairman

Tom Buschatzke
Tom Buschatzke
Secretary

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Enclosure

cc: Members, Arizona State Senate
Members, Arizona House of Representatives
AWBA Authority Members
Arizona Department of Water Resources
Central Arizona Water Conservation District

Arizona Entities that Benefit from Arizona Water Banking Authority Storage Activities

Arizona State Land Department	Community Water Company (Green Valley)
Arizona State Parks	Flowing Wells Irrigation District
Arizona Water Company	Freeport MacMoRan (former Phelps Dodge, Inc.)
Arizona-American Water Company	Golden Shores Water Conservation District
ASARCO Incorporated (Ray Mine)	Green Valley Domestic Water Improvement District
AVRA Water Co-op, Inc.	Hohokam Irrigation District
Bullhead City	Lake Havasu City
Carefree Water Co.	Maricopa County Parks & Recreation
Cave Creek Water Co.	Maricopa-Stanfield Irrigation & Drainage District
Central Arizona Irrigation & Drainage District	Metropolitan Domestic Water Improvement District
Central Arizona Water Conservation District	Mohave County Water Authority
(for Central Arizona Groundwater Replenishment District)	Mohave Valley Irrigation and Drainage District
Chandler Heights Citrus Irrigation District	Phoenix Memorial Park
Chaparral City Water Co.	Pine Water Company
Circle City Water Co.	Queen Creek Water Co.
City of Avondale	Rio Verde Utilities, Inc.
City of Chandler	San Tan Irrigation District
City of El Mirage	Spanish Trail Water Co.
City of Eloy	Town of Buckeye
City of Glendale	Town of Florence
City of Goodyear	Town of Gilbert
City of Mesa	Town of Marana
City of Peoria	Town of Oro Valley
City of Phoenix	Town of Parker
City of Scottsdale	Town of Quartzite
City of Surprise	Town of Superior