

Information Brief

BOARD OF DIRECTORS



Agenda Number 7.

CONTACT: Larry Dozier
(623) 869-2377
ldozier@cap-az.com

DATE: November 24, 2009

AGENDA ITEM: Discussion of Draft Recovery Agreement with Southern Nevada Water Authority

RELEVANT POLICY, STATUTE OR GUIDING PRINCIPLE:

- CAP is the Operating Agent for AWBA
- Interstate Banking

PREVIOUS BOARD ACTION/ACTIVITY:

Discussion at the Work/Study Session on Recovery Planning/Projects – November 19, 2009

ISSUE SUMMARY/DESCRIPTION:

When the original interstate banking arrangements were initiated in 2002, there were appropriate agreements among the Department of the Interior, the Arizona Water Banking Authority (AWBA) and the appropriate Nevada entities regarding interstate storage. There was also an agreement between AWBA and CAP that provided for CAWCD to recover banked water and leave Colorado River water for Nevada to use, i.e. Intentionally Created Unused Apportionment (ICUA). While those agreements discussed scheduling, payment of capital costs, payment of recovery costs, cost sharing, etc., there was no specific detailed agreement involving CAWCD and the Southern Nevada Water Authority.

The Recovery Agreement that is being discussed at this time is specifically among CAWCD, AWBA and the Nevada entities – SNWA and the Colorado River Commission of Nevada (CRCN). The significant part of this agreement is in Article 4. The major points are listed below:

4.a. through c.

Subarticle a. notes that recovery for SNWA is not expected to start until 2018 or later.

Subarticle b. sets up a 3-year advance water planning process to ensure CAWCD has time to add new recovery facility, if needed.

Subarticle c. acknowledges that once recovery starts we may determine that some minimal level must be performed each year to maintain equipment operability.

- 4.d.i.** This subarticle provides for up-front financing of capital costs by SNWA or cost sharing with others, depending upon planned use of the recovery facilities.
- 4.d.ii.** This subarticle addresses operating costs. It also notes that recovery of stored water helps avoid other O&M costs that CAWCD would have experienced.
- 4.e.** This subarticle notes that recovery methods such as credit exchange or direct delivery of other Colorado River water really require no direct recovery costs.
- 4.f.** This subarticle notes that any costs saved or avoided in the recovery process should be appropriately shared with SNWA.

You may note that most of the subarticles call for an "Example to be inserted" or included in an appendix to the agreement. CAWCD will prepare those examples. The examples are intended to be detailed enough to provide guidance and show intent so that we can address real time situations that most likely won't arise until 2018 or later.

This draft agreement has been prepared and revised by AWBA, SNWA and CAWCD staff. Some additional editing is anticipated as well as preparation and review of the "Examples". The goal is to have an approved document executed in the first quarter of 2010.

Attachment.

RECOVERY AGREEMENT
AMONG
ARIZONA WATER BANKING AUTHORITY, CENTRAL ARIZONA WATER
CONSERVATION DISTRICT, SOUTHERN NEVADA WATER AUTHORITY AND
COLORADO RIVER COMMISSION OF NEVADA

This Recovery Agreement is made this ___ day of _____, among the Arizona Water Banking Authority (“AWBA,”), Central Arizona Water Conservation District (“CAWCD”), Southern Nevada Water Authority (“SNWA”) and Colorado River Commission of Nevada (“CRCN”) in order to address some details of the “recovery of intrastate and interstate Long-term Storage Credits” as contemplated by the Second Amended Agreement for Interstate Water Banking Among the AWBA, SNWA and CRCN (“Interstate Water Banking Agreement”).

1. This Recovery Agreement shall be interpreted at all times to be consistent with the Interstate Water Banking Agreement, the Storage and Interstate Release Agreement between the Secretary of the Interior, AWBA, SNWA and CRCN, dated December 18, 2002, and the Agreement for the Development of Intentionally Created Unused Apportionment between AWBA and CAWCD, dated December 18, 2002.
2. Relevant provisions of the Interstate Water Banking Agreement provide as follows:
 - a. Subarticle 1.1.15 provides that “ ‘Recovery Facilities’ shall mean constructed facilities capable of recovering both intrastate and interstate Long-term Storage Credits.”
 - b. Subarticle 1.1.13 provides that “ ‘Long-term Storage Credit’ shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).”
 - c. Subarticle 1.1.20 provides that “ ‘Storage Facility’ or ‘Storage Facilities’ shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01.”
 - d. Subarticle 1.1.12 provides that “ ‘Interstate Recovery Schedule’ shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.”
 - e. Subarticle 1.2.3 provides that “No ownership rights in specific storage facilities shall accrue to either SNWA or CRCN by this Agreement.”
 - f. Subarticle 3.1.1 provides that “SNWA shall have the right to require the recovery of Long-term Storage Credits in the SNWA Interstate Account and the development of ICUA in any year”
 - g. Subarticle 3.2.1 provides that “For any year in which SNWA will require development of ICUA by AWBA and the release of ICUA by the Secretary, SNWA shall confer with the AWBA prior to June 1 of the preceding Year and

provide notice of the amount of such ICUA to AWBA by June 1 of the preceding Year.

- h. Subarticle 3.2.2 provides that “Between June 1 and September 15 of the Year in which a notice has been given under Subarticle 3.2.1, AWBA staff shall meet and confer with SNWA concerning the proposed location, manner and estimated cost of the development of the specified ICUA.”
 - i. Subarticle 3.2.3 provides that “On or before September 15 of the Year in which a notice for the development of ICUA has been given to AWBA under Subarticle 3.2.1, or as otherwise required by the Secretary, SNWA shall make a request of the Secretary for the release of such ICUA during the following Year and shall provide a copy of such notice to AWBA.”
 - j. Subarticle 3.3.1 provides that “Upon receipt of a notice under 3.2.1 for the development of ICUA, AWBA shall meet and confer with CAWCD to develop an Interstate Recovery Schedule under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment. The Interstate Recovery Schedule shall utilize the recovery of Long-term Storage Credits to develop ICUA through recovery methods identified in the corresponding Storage and Interstate Release Agreement. These methods include recovery and exchange of Long-term Storage Credits for Colorado River Water and/or credit exchange of Long-term Storage Credits for Colorado River Water that would have otherwise been delivered for underground storage in that year.”
 - k. Subarticle 3.3.1.3 provides that “Factors to be considered when preparing the Interstate Recovery Schedule shall include, but are not limited to:
 - 3.3.1.3.1 Arizona water management goals,
 - 3.3.1.3.2 CAP operational requirements,
 - 3.3.1.3.3 Water Quality requirements,
 - 3.3.1.3.4 Opportunities for shared or joint facilities
 - 3.3.1.3.5 Opportunities to reduce recovery costs.
 - l. Subarticle 3.4.3 provides that “SNWA shall specify in its notice given under Subarticle 3.2.1 if, and the extent to which, ICUA is to be developed through the recovery of Long-term Storage Credits previously held by CAWCD for the benefit of SNWA under its October 15, 1992 agreement with The Metropolitan Water District of Southern California. The Parties acknowledge that pursuant to the terms of such agreement and prior to the effective date of the Original Agreement, SNWA made advance payments of the entire cost to recover such credits and to develop such ICUA.
3. Relevant provisions of the Agreement for the Development of Intentionally Created Unused Apportionment between the ABWA and CAWCD provide as follows:

- a. Subarticle 3.1 provides that “An Interstate Recovery Schedule shall set forth the means by which CAWCD plans to create ICUA on behalf of AWBA in any Year. Except as provided in Article 3.2, an Interstate Recovery Schedule shall use the recovery and exchange method, the credit exchange method, or both of these two methods to develop ICUA.”
- b. Subarticle 3.2 provides that “An Interstate Recovery Schedule may use a method other than the recovery and exchange method and the credit exchange method if that method complies with 43 CFR Part 414 and if the Secretary has approved its use.
- c. Subarticle 3.3 provides that “The recovery and exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be recovered and the recovered water exchanged for Colorado River water that would otherwise have been delivered through the CAP in that Year.
 - 3.3.1 An Interstate Recovery Schedule may provide that CAWCD recover Long-term Storage Credits assigned by AWBA and deliver the recovered water that would have been delivered by CAWCD in that Year.
 - 3.3.2 An Interstate Recovery Schedule may provide that Long-term Storage Credits assigned by AWBA to CAWCD be assigned by CAWCD to an entity scheduled to receive CAP water from CAWCD in that Year for recovery and use by that entity in place of CAP water that would have been delivered by CAWCD in that Year.
 - 3.3.3 If the recovery and exchange method will be used to develop ICUA in a Year, an Interstate Recovery Schedule shall demonstrate that there is sufficient recovery capacity to recover the necessary Long-term Storage Credits from the SNWA Interstate Account and shall describe how the Credits will be recovered and delivered through the CAP or how the Credits will be recovered by individual CAP customers in lieu of their scheduled CAP deliveries.”
- d. Subarticle 3.4 provides that “The credit exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be exchanged for Colorado River water that would otherwise have been delivered through the CAP for underground storage in that Year. The recipient of the Credits shall be an entity scheduled to receive water from CAWCD for purposes of underground storage in that Year.
 - 3.4.1 The entity receiving Long-term Storage Credits under the credit exchange method shall be required to pay CAWCD the same fees and charges that it would have paid had CAP water been delivered to it for underground storage.
 - 3.4.2 If the credit exchange method will be used to develop ICUA in a Year, an Interstate Recovery Schedule shall demonstrate that CAWCD has received sufficient orders for the delivery of Colorado River water for underground storage

and shall identify the entity or entities accepting the transfer of Long-term Storage Credits in lieu of the delivery of Colorado River water.

- e. Subarticle 3.5 provides that “If a method other than the recovery and exchange method or credit exchange method is used to develop ICUA, an Interstate Recovery Schedule shall include such information as required by the Secretary for that method.
 - f. Subarticle 3.6 provides that “An Interstate Recovery Schedule shall identify the total quantity of Long-term Storage Credits to be assigned to CAWCD by AWBA from the SNWA Interstate Account to develop the quantity of ICUA needed for the following Year.”
4. Cooperative Planning for Timing and Amount of Recovery In order to facilitate timely and effective performance of the above-stated relevant provisions, the parties to this Recovery Agreement, agree as follows:
- a. The parties now anticipate that SNWA recovery will be required on or after 2018. The parties agree that since significant lead time is needed to construct and initiate operations of new recovery wells and that sound financial, construction and operations practices require deferral of construction and operation of recovery facilities until closer in time to when recovery wells are needed, the parties agree to meet annually to discuss:
 - i. The timing and magnitude of SNWA’s recovery requests.
 - ii. CAWCD’s available and planned recovery capacity.
 - iii. CAWCD’s current estimates of recovery capital and operations costs.
 - iv. The effects of potential shortages of Colorado River water on such requests, capacity and costs.
 - b. SNWA shall present an initial recovery request schedule in the first such annual meeting and shall provide any amendment thereto at least three years prior to any recovery year for which the initial recovery request is proposed to be amended.
 - c. The parties also now anticipate that CAWCD’s recovery capacity may be utilized for parties other than SNWA on a schedule inconsistent with SNWA’s initial recovery request schedule. Inasmuch as sound financial, construction and operations practices require at least minimal operations of recovery facilities once operation is initiated, the parties agree to discuss and amend any proposed recovery request schedule as may be required to maintain the sound operating condition of CAWCD’s recovery facilities.
 - d. Recovery Methods Involving Recovery and Exchange of Long Term Storage Credits for Colorado River Water
 - i. Capital Costs of Recovery Facilities. Capital costs for developing recovery facilities include the costs of planning, permitting, design and

construction, as well as any cost of construction financing. According to the Interstate Water Banking Agreement, capital costs may be borne exclusively by SNWA, payable in advance if recovery facilities are dedicated exclusively to recovery for SNWA, or may be borne proratably by multiple interstate or intrastate users of the same recovery facilities.

The parties agree that, in each annual meeting in which SNWA's initial or amended recovery request schedule is discussed, the parties shall disclose all available information regarding their best estimates of the costs of planning, permitting, design, construction and construction financing and the plans and intentions of any other party who may seek recovery utilizing CAWCD's recovery facilities. [Example to be inserted]

- ii. Operating Costs of Recovery Facilities. Operating costs for the operation of recovery facilities include the cost of electrical power used to pump water for delivery to a CAWCD customer or into the Central Arizona Project delivery system, and the cost of repair and maintenance of the well site, motors, pumps, discharge lines, and electrical facilities. Operating costs exist whether CAWCD's recovery facilities are newly constructed for the intended recovery purpose or are existing irrigation district wells which share operations as recovery wells and water supply production wells. [Example to be inserted]

The parties agree that, in each annual meeting in which SNWA's initial or amended recovery request is discussed, the parties shall disclose their best estimates of the costs of electrical power, recognizing that estimates of such costs are prone to gross uncertainty with respect to distant years, and their best estimates of the repair and maintenance costs of anticipated recovery facilities. The parties agree that they shall explore cost-avoidance strategies, including any means which may be available to any of them that would reduce the costs of electrical power, or the repair and maintenance costs of anticipated recovery facilities, including the substitution of direct delivery of Colorado River water in lieu of recovery of stored water in central Arizona. [More on this concept in example, including SOI approval and compliance with part 414.]

- e. Credit Exchange for Long-term Storage Credits for Colorado River Water. Multiple interstate or intrastate users of the Arizona Water Banking system now maintain Long-term Storage Credit balances with the Arizona Water Bank and may seek recovery of those credits on recovery request schedules that are similar to or varied from SNWA's initial or amended recovery request schedule. The parties agree, that in each annual meeting in which SNWA's initial or amended recovery request schedule is discussed, that the parties shall disclose any available information regarding the recovery request schedules of other interstate or intrastate users of the Arizona Water Banking system, and the existence of any opportunities for the integration of recovery request schedules, including through

the exchange of existing Long-term Storage Credit balances for the right to direct delivery of Colorado River water, so as to minimize recovery costs. The parties agree that any administrative costs, as contemplated by the Interstate Water Banking Agreement would not be avoided by such credit exchanges. [Same as above regarding Example and SOI approval and part 414 compliance]

- f. Costs Avoided. Recovery strategies identified by the parties in the course of annual meetings, and utilized or integrated into initial or amended recovery request schedules may avoid costs which would have otherwise been incurred in the normal costs of operation of facilities by any one or more of the parties. The parties agree that the actual annual value of those avoided costs shall be set off against SNWA's actual annual recovery costs due in any year under the Agreement for Interstate Water Banking, as it may be amended from time to time, but shall give SNWA no credit beyond the actual annual recovery costs due in any year. [Example to be inserted]

In witness of this Agreement, the Parties affix their official signatures below.

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

ARIZONA WATER BANKING AUTHORITY

SOUTHERN NEVADA WATER AUTHORITY

COLORADO RIVER COMMISSION OF NEVADA