

## Arizona Water Banking Authority

# Memo

**To:** AWBA Commission

**From:** Virginia O'Connell

**Date:** July 18, 2021

**Re:** Memorandum of Understanding Among ADWR, AWBA and CAWCD Regarding Investigation of Augmentation Opportunities Through A Regional Recycled Water Program

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In 2019, Governor Ducey established the Governor's Water Augmentation, Innovation and Conservation Council. One of the objectives of the Council is to investigate long-term water augmentation strategies for the State of Arizona. The Central Arizona Water Conservation District (CAWCD) is also engaged in exploring and developing opportunities to improve the reliability of Colorado River supplies to its long-term Central Arizona Project (CAP) municipal and industrial (M&I) customers, given the risks and vulnerabilities of future shortage reductions. Lower Colorado River Basin water agencies in California and Nevada are similarly seeking opportunities to augment their water supplies.

The Metropolitan Water District of Southern California (Metropolitan) is exploring an augmentation opportunity through the development of a Regional Recycled Water Program (RRWP). The RRWP, as currently envisioned, is planned to produce and deliver up to approximately 168,000 acre-feet per year of purified water from a new advanced water treatment facility located at the County Sanitation District No. 2 of Los Angeles County's Joint Water Pollution Control Plant in Carson, California. The resulting recycled water supply will be delivered into Metropolitan's system for delivery and is intended to offset Metropolitan's imported supplies from the State Water Project and the Colorado River. The replacement of Colorado River water with RRWP supplies, particularly in years when Metropolitan has sufficient supplies available from the State Water Project, creates an opportunity to augment the Colorado River through interstate exchange.

Metropolitan is initiating the first phase of the project through environmental permitting and initial design. The cost estimate for this first phase is approximately \$25 million. The goal is to complete this first phase by 2025 and to have the project fully developed in the early 2030s.

In 2020, Metropolitan sought partners for the project. In August of that year, the Arizona Department of Water Resources (ADWR) and CAWCD submitted a joint letter of interest for participating with Metropolitan on the development of its RRWP. In December 2020, the Southern Nevada Water Authority (SNWA) executed an agreement with Metropolitan. The agreement includes a commitment by SNWA to invest up to \$6 million in the initial development of the RRWP concept. The agreement

provides that if either party elects to forgo development of the water supply opportunity, for any reason, Metropolitan will refund SNWA's investment. Through participation in the permitting and initial design, SNWA intends to work cooperatively with Metropolitan to jointly explore an augmentation and exchange agreement, termed a "development agreement."

CAWCD and ADWR are proposing a similar arrangement to Metropolitan's partnership with SNWA. The proposal includes a commitment from ADWR and CAWCD to provide up to \$6M to contribute to Metropolitan's cost for environmental permitting services for the RRWP: up to \$5 million from CAWCD and up to \$1 million from ADWR. By implementing this agreement, Metropolitan, ADWR and CAWCD commit to working cooperatively to develop an interstate exchange and delivery framework including any regulatory changes that may be necessary to allow for RRWP supplies to be made available in Arizona. The development of such a framework could provide the structural basis for similar augmentation opportunities in the future.

As with SNWA, Metropolitan intends to work with ADWR and CAWCD to enter into a future development agreement that further defines the responsibilities of the parties in the development of the RRWP as well as the allocation of RRWP water to ADWR and CAWCD or their designees. If CAWCD and/or ADWR choose not to enter into a development agreement with Metropolitan, either party will be refunded for the payments made to Metropolitan under the initial phase. The parties can also choose not to proceed at some future date to acquire, exchange and deliver supplies that may ultimately be produced by the RRWP. By participating in the initial phase, Arizona also preserves its opportunity to participate in future phases.

Within Arizona, CAWCD and ADWR would implement an agreement for contributed funding and work cooperatively with the AWBA to benefit CAP long-term customers if the supply is developed. CAWCD plans to use funds from the 4-cent property tax (Water Storage Tax) to pay for environmental planning phase services associated with the RRWP. The expenditure of these funds for this purpose is consistent with the goal to provide future supplies for CAP M&I firming by the AWBA. Likewise, any Water Storage Tax funds used by CAWCD or the AWBA to augment supplies under a development agreement would also be used by the AWBA to firm CAP M&I subcontracts. Augmented supplies or credits that may be produced through a development agreement with monies from ADWR may be made available to other water users in Arizona, under terms to be determined in the future.

Three separate agreements will be needed to implement the supply augmentation opportunity envisioned by Metropolitan and Arizona:

1. Agreement to Contribute Funds to Environmental Planning Phase Services Related to the RRWP among Metropolitan, ADWR and CAWCD– This agreement identifies the funding contributions

made by each party to Metropolitan for the first phase of the RRWP and allows for those contributed funds to be credited to a future development agreement.

2. A Joint Funding Agreement between ADWR and CAWCD – This agreement describes how funds will be invoiced within Arizona and made available to Metropolitan.
3. Memorandum of Understanding Among ADWR, AWBA and CAWCD Regarding Investigation of Augmentation Opportunities Through A Regional Recycled Water Program – This agreement describes the mutual understanding and commitments of the parties to work cooperatively with Metropolitan on a development agreement for augmented Colorado River supplies, including any necessary exchanges or regulatory changes that may be necessary to make water available to Arizona. The agreement also clarifies that supplies created using Water Storage Tax funds will be used to firm CAP M&I subcontractors through the AWBA.

The AWBA has stored very little excess CAP water over the last several years as these supplies have been used instead to conserve water in Lake Mead, either for system conservation, creation of ICS or to meet Arizona's Tier Zero DCP contribution of 192,000 ac-ft under the Lower Basin Drought Contingency Plan. With the likelihood of a Tier One shortage in 2022<sup>1</sup> and the potential for a shortage in 2023, there will be no water available for AWBA storage. Any available excess supplies would likely be limited to water that is turned back during the year by higher priority CAP water users. Additionally, recent hydrologic modeling analysis conducted by the AWBA suggests that firming volumes for CAP M&I subcontractors may be significantly higher than previously anticipated based on current Colorado River operating assumptions. For these reasons, staff supports opportunities for future Colorado River supply augmentation associated with the RRWP and the use of these supplies for firming CAP M&I subcontractors.

On June 10, 2021, the CAWCD Board of Directors passed a motion authorizing the Board President or his designee to execute the three agreements described above in substantially the same form.

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<sup>1</sup> U.S. Bureau of Reclamation 2021 April 24-Month Study.

AGREEMENT TO CONTRIBUTE FUNDS FOR ENVIRONMENTAL PLANNING  
PHASE SERVICES RELATED TO THE REGIONAL RECYCLED WATER  
PROGRAM

This FUNDING AGREEMENT (“Agreement”) is made by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“Metropolitan”) the ARIZONA DEPARTMENT OF WATER RESOURCES (“ADWR”) and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), who may be referred to individually as a “Party” or collectively as the “Parties.” ADWR and CAWCD may be referred to collectively as the “Arizona Parties.”

**BACKGROUND**

- A. Metropolitan is a water district established under the California Metropolitan Water District Act, codified in Section 109-1, et. seq., of the Appendix to West’s Annotated California Water Code, for the purpose of serving water to southern California. ADWR is an agency of the State of Arizona established pursuant to Title 45 of the Arizona Revised States. CAWCD is a political subdivision of the State of Arizona established pursuant to Arizona Revised Statutes §§ 48-3701, et. seq., which operates the Central Arizona Project pursuant to contracts and agreements with the United States.
- B. Metropolitan and the County Sanitation District No. 2 of Los Angeles County (“Sanitation District”) are working together to develop a Regional Recycled Water Program (“Program”). As currently envisioned, the Program will produce and is planned to deliver up to 150 million gallons per day, or approximately 168,000 acre-feet per year, of purified water from a new advanced water treatment facility located at the Sanitation District’s Joint Water Pollution Control Plant in Carson, California (“JWPCP”). The Program also includes a new conveyance system that would deliver water to groundwater basins within Metropolitan’s service area for indirect potable reuse and potentially to two Metropolitan treatment plants for direct potable reuse. It is anticipated that the Program will be constructed in a phased approach so that the eventual ultimate capacity of the program can take into account the availability of water at the JWPCP and the anticipated demands of Metropolitan’s member agencies both for purposes of groundwater replenishment and direct potable reuse through raw water augmentation.
- C. On August 26, 2020, the Arizona Parties submitted a letter to Metropolitan expressing their interest in participating with Metropolitan on development of the Project, including the anticipation that the Arizona Parties would provide resources to assist in the development of the Program in exchange for receiving water made available by the Program in the future. The Parties intend to explore entering into

a future development agreement to further define the responsibilities of the Parties in the development of the Program.

- D. In order to evaluate the Program, Metropolitan intends to conduct an environmental review along with the Sanitation District. Metropolitan's approved budget for the environmental review is \$30 million. The actual costs to complete the environmental review will be tracked and may differ from the originally budgeted amount. The Parties intend through this Agreement for the Arizona Parties to contribute funds to Metropolitan for Metropolitan's use in conducting the environmental review.
- E. Concurrently with the execution of this Agreement, the Arizona Parties are entering into the Joint Funding Agreement between ADWR and CAWCD ("Arizona Parties Joint Funding Agreement") to facilitate the Arizona Parties' obligations to contribute funds to Metropolitan pursuant to this Agreement.

### **TERMS**

1. The Arizona Parties will provide to Metropolitan the lesser of either \$6 million or 24 percent of Metropolitan's costs for conducting analyses, investigations, evaluations, studies and public outreach, as needed, to complete any environmental review and documentation required for design and construction of the Program (collectively "Environmental Planning Phase Services"). These Environmental Planning Phase Services include environmental evaluation, engineering and other technical support, and public outreach, and will conform to and comply with the requirements of the California Environmental Quality Act and any other applicable environmental requirements, permitting processes and laws.
2. Metropolitan shall provide an accounting and invoice CAWCD for the Arizona Parties' funding commitment under this Agreement. Metropolitan shall invoice CAWCD on a quarterly basis for 24 percent of the costs incurred by Metropolitan for Environmental Planning Phase Services, up to a maximum cumulative amount of \$6 million. CAWCD shall have the right to review and confirm that the invoice conforms to the terms of this Agreement, and if so approved, CAWCD shall pay the invoice within 30 days of receipt. With each payment, CAWCD shall provide Metropolitan an accounting of the portion of each payment attributable to funds contributed by each Arizona Party.
3. This Agreement does not: obligate Metropolitan to approve or develop the Program; obligate Metropolitan to make water available to the Arizona Parties through exchange or other mechanism; obligate the Arizona Parties to agree to such exchange; allocate any Program water to the Arizona Parties; or set any precedent

for the terms of any such allocation. Such terms may be provided for in a separate Development Agreement among the Parties.

4. If Metropolitan does not approve or develop the Program or if Metropolitan or the Arizona Parties determine to not enter into a separate Development Agreement to allocate Program water to the Arizona Parties, or their designees, then Metropolitan will return the funds that the Arizona Parties provided to Metropolitan under this Agreement, without any interest. If ADWR and Metropolitan elect to enter into a Development Agreement and CAWCD elects not to enter into a Development Agreement, Metropolitan will return the funds accounted for as CAWCD contributions as provided in Paragraph 2 to CAWCD without any interest. If CAWCD and Metropolitan elect to enter into a Development Agreement and ADWR elects not to enter into a Development Agreement, CAWCD will reimburse ADWR for all funds accounted for as ADWR contributions as provided in Paragraph 2, pursuant to the Arizona Parties Joint Funding Agreement.
5. If the Parties enter into a separate Development Agreement which allocates Program water to the Arizona Parties or their designees, the Development Agreement will credit the Arizona Parties with the funds provided by the Arizona Parties under this Agreement.
6. Metropolitan and the Arizona Parties will also explore whether certain in-kind services could be provided by the Arizona Parties in support of the Environmental Planning Phase Services.
7. This Agreement is effective as of the date the last Party executes the Agreement and will terminate on December 31, 2035, provided that the Parties may agree to extend the terms of this Agreement.
8. This Agreement is not intended by the Parties to create any right in or benefit to Parties other than ADWR, CAWCD and Metropolitan. This Agreement does not create any third-party beneficiary rights or causes of action.
9. The failure of any Party to enforce at any time, or for any period of time, the provisions hereof shall not be construed as a waiver of such provisions or the rights of such Party to enforce each and every such provision.
10. This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.
11. The Parties to this Agreement are hereby notified of and acknowledge Arizona Revised Statutes § 38-511 regarding cancellation for conflict of interest.

12. This Agreement shall be subject to available funding, and nothing in this agreement shall bind ADWR to expenditures in excess of funds appropriated and allotted for the purposes outlined in this agreement.
13. Throughout the term of the Agreement and for five years after termination, all records relating to the Agreement shall be subject to inspection and audit by the Parties.
14. The Parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the Parties arising out of, or relating to this Agreement promptly, equitably, and in good faith. The Parties also agree to resolve all disputes arising out of or relating to this Agreement through arbitration to the extent required by law or court rules.
15. This Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.
16. This Agreement is the entire agreement of the Parties and no understandings or obligations not expressly set forth in this Agreement are binding on the Parties.
17. The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to legally bind the Party to it.
18. The Parties agree to comply with all applicable Federal and State laws, rules and regulations relating to equal opportunity and non-discrimination.
19. Any notice under this Agreement must be in writing and addressed as follows:

The Metropolitan Water District of Southern California  
Post Office Box 54153  
Los Angeles, CA 90054-0153  
Attn: Deven Upadhyay  
Assistant General Manager/Chief Operating Officer  
With a courtesy copy by email to [DUpadhyay@mwdh2o.com](mailto:DUpadhyay@mwdh2o.com)

Arizona Department of Water Resources  
Attn: Director  
P.O. Box 36020  
Phoenix, AZ 85067-6020  
With a courtesy copy by email to [tbuschatzke@azwater.gov](mailto:tbuschatzke@azwater.gov)

Central Arizona Water Conservation District  
c/o General Manager  
P.O. Box 43020

Phoenix, Arizona 85080-3080

With a courtesy copy by email to [tcooke@cap-az.com](mailto:tcooke@cap-az.com)

A properly addressed notice will be effective on the day of delivery, if delivered directly by a Party or by a nationally recognized delivery service, or on the third day after mailing, if sent postage prepaid by U.S. Mail. The Parties shall transmit a courtesy copy of any notice to the other Party by email on the day the notice is sent.

Any Party may change the address listed in this section by providing five days' notice to the other Parties.

**Agreement to Contribute Funds for Environmental Planning Phase Services  
Related to the Regional Recycled Water Program**



**THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_  
Jeffrey Kightlinger  
General Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Marcia L. Scully  
General Counsel

**Agreement to Contribute Funds for Environmental Planning Phase Services  
Related to the Regional Recycled Water Program**

**ARIZONA DEPARTMENT OF WATER RESOURCES**

By: \_\_\_\_\_  
Thomas Buschatzke  
Director

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Nicole D. Klobas  
Deputy Chief Counsel

**Agreement to Contribute Funds for Environmental Planning Phase Services  
Related to the Regional Recycled Water Program**

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_  
Theodore C. Cooke, D.B.A.  
General Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Jay M. Johnson  
General Counsel

**JOINT FUNDING AGREEMENT BETWEEN THE ARIZONA DEPARTMENT  
OF WATER RESOURCES AND THE CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT**

This Joint Funding Agreement (“Joint Funding Agreement”) is made by and between the Arizona Department of Water Resources (“ADWR”) and the Central Arizona Water Conservation District (“CAWCD”), who may be referred to individually as a “Party” or collectively as the “Parties.”

**BACKGROUND**

- A. On August 26, 2020, ADWR and CAWCD submitted a letter to The Metropolitan Water District of Southern California (“Metropolitan”) expressing their interest in participating with Metropolitan on the development of its Regional Recycled Water Program (“Program”). The Program, as currently envisioned, is planned to produce and deliver up to approximately 168,000 acre-feet per year of purified water from a new advanced water treatment facility located at the County Sanitation District No. 2 of Los Angeles County’s Joint Water Pollution Control Plant in Carson, California (“JWPCP”). CAWCD and ADWR anticipate that the Program may provide significant opportunities to augment the Colorado River, which could result in increased reliability and resiliency of the Colorado River supply for Arizona water users.
- B. Concurrently with the execution of this Joint Funding Agreement, the Parties are entering into the Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program among Metropolitan, ADWR and CAWCD (“RRWP Contributed Funds Agreement”). Pursuant to the RRWP Contributed Funds Agreement, ADWR and CAWCD commit to providing to Metropolitan a combined total of the lesser of either \$6,000,000 or 24 percent of Metropolitan’s costs for conducting analyses, investigations, evaluations, studies and public outreach, as needed, to complete any environmental review and documentation required for the design and construction of the Program (“Arizona Parties Funding Commitment”). If Metropolitan approves and develops the Program, ADWR, CAWCD and Metropolitan intend to explore entering into a future development agreement to further define the responsibilities of the Parties in the development on the Program and to allocate Program water to ADWR, CAWCD, and/or their designees (“Development Agreement”). If Metropolitan does not approve or develop the Program or if ADWR and CAWCD determine not to enter into a subsequent Development Agreement to allocate Program water to the ADWR, CAWCD or their designees, then Metropolitan will return the funds ADWR and CAWCD provided to Metropolitan under the RRWP Contributed Funds Agreement.

- C. The Parties believe that water developed through the Program may be a resource available to increase the reliability of CAP long-term contracts. The Parties intend to work collaboratively on any agreements, programs or partnerships necessary to develop the Program water supply for such purposes, including, but not limited to, partnerships with the Arizona Water Banking Authority.
- D. Subject to appropriations from the State Legislature, ADWR anticipates it will contribute a maximum of \$1,000,000 toward the Arizona Parties Funding Commitment.
- E. CAWCD is willing to contribute the remaining up to \$6,000,000 of the Arizona Parties' Funding Commitment, and to backstop the Arizona Parties Funding Commitment in the event ADWR does not receive adequate appropriations from the State Legislature.

## TERMS

1. This Joint Funding Agreement shall be effective when both of the following have occurred: 1) Both Parties have signed this Joint Funding Agreement and 2) All parties to the RRWP Contributed Funds Agreement have signed the RRWP Contributed Funds Agreement. This Joint Funding Agreement shall terminate on December 31, 2035, unless the Parties agree to extend the term.
2. CAWCD shall pay all invoices for the Arizona Parties Funding Commitment to Metropolitan pursuant to the RRWP Contributed Funds Agreement, up to the full amount of the Arizona Parties Funding Commitment. Upon receipt of all such invoices, CAWCD will promptly forward a copy of the invoices to ADWR. ADWR shall review the invoices and notify CAWCD of any concerns that the invoice does not conform to the terms of the RRWP Contributed Funds Agreement within 10 days of receipt of the invoice.
3. Subject to Paragraph 7 below, ADWR shall be responsible for the first \$1,000,000 of the Arizona Parties Funding Commitment.
4. If Metropolitan does not approve or develop the Program or enter into a future Development Agreement with CAWCD and ADWR to allocate Program water to CAWCD and ADWR or their designees and Metropolitan returns the funds CAWCD paid to Metropolitan pursuant to the RRWP Contributed Funds Agreement, then CAWCD will return to ADWR the funds ADWR paid to CAWCD pursuant to this Joint Funding Agreement.

5. If CAWCD enters into a Development Agreement with Metropolitan, but ADWR elects not to enter into a Development Agreement, CAWCD will reimburse ADWR the funds ADWR paid to CAWCD pursuant to this Joint Funding Agreement without any interest, unless otherwise agreed to by the Parties in writing.
6. The Parties to this Agreement are hereby notified of and acknowledge Arizona Revised Statutes § 38-511 regarding cancellation for conflict of interest.
7. This Joint Funding Agreement shall be subject to available funding, and nothing in this agreement shall bind the State to expenditures in excess of funds appropriated and allotted for the purposes outlined in this agreement.
8. The Parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the Parties arising out of, or relating to this Joint Funding Agreement promptly, equitably, and in good faith. The Parties also agree to resolve all disputes arising out of or relating to this Joint Funding Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §§ 12-133 and 12-1518.
9. This Joint Funding Agreement is governed by and shall be construed and interpreted in accordance with Arizona law. Any action to resolve any dispute regarding this Joint Funding Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.
10. This Joint Funding Agreement is solely for the benefit of the signatory Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms of this Joint Funding Agreement.
11. This Joint Funding Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.
12. This Joint Funding Agreement is the entire agreement of the Parties and no understandings or obligations not expressly set forth in this Joint Funding Agreement are binding on the Parties.
13. All captions, title, or headings in this Joint Funding Agreement are used for reference and convenience only and do not limit, modify, or otherwise affect this Joint Funding Agreement.
14. The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Joint Funding Agreement and to legally bind the Party to it.
15. The Parties shall comply with State Executive Order No. 75-5, as amended by State Executive Order No. 2009-9, and all other applicable Federal and State laws,

rules and regulations relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

16. All books, accounts, reports, files and other records in relation to this Joint Funding Agreement shall be subject at all reasonable times to inspection and audit by the Parties throughout the term and for five years after the termination of this Joint Funding Agreement.
17. Any notice under this Joint Funding Agreement must be in writing and addressed as follows:

Arizona Department of Water Resources

Attn: Director

P.O. Box 36020

Phoenix, AZ 85067-6020

With a courtesy copy by email to \_\_\_\_\_

Central Arizona Water Conservation District

c/o General Manager

P.O. Box 43020

Phoenix, Arizona 85080-3080

With a courtesy copy by email to [tcooke@cap-az.com](mailto:tcooke@cap-az.com)

Any Party may change the address listed in this section by providing five days' notice to the other Parties.

18. This Joint Funding Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

**Joint Funding Agreement between the Arizona Department of Water Resources and  
the Central Arizona Water Conservation District**

**ARIZONA DEPARTMENT OF WATER RESOURCES**

By: \_\_\_\_\_  
Thomas Buschatzke  
Director

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Nicole D. Klobas  
Deputy Chief Counsel

**Joint Funding Agreement between the Arizona Department of Water Resources and  
the Central Arizona Water Conservation District**



**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_  
Theodore C. Cooke, D.B.A.  
General Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Jay M. Johnson  
General Counsel

MEMORANDUM OF UNDERSTANDING AMONG THE ARIZONA DEPARTMENT  
OF WATER RESOURCES, ARIZONA WATER BANKING AUTHORITY AND  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT REGARDING  
INVESTIGATION OF AUGMENTATION OPPORTUNITIES THROUGH A  
REGIONAL RECYCLED WATER PROGRAM

This Memorandum of Understanding (“RRWP MOU”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2021 among the Arizona Department of Water Resources (“ADWR”), the Arizona Water Banking Authority (“AWBA”) and the Central Arizona Water Conservation District (“CAWCD”) for the purpose of expressing their mutual understandings and commitments to further collaboration regarding the potential development of augmented Colorado River water supplies for the firming of long-term subcontracts for municipal and industrial priority Central Arizona Project water (“long-term M&I subcontracts”) or for use by other water users in Arizona as more fully described herein, through The Metropolitan Water District of Southern California’s Regional Recycled Water Program. ADWR, CAWCD and AWBA may be referred to individually as a “Party” or collectively as the “Parties.”

**BACKGROUND**

- A. The director of ADWR is authorized to “[i]nvestigate works, plans or proposals pertaining to surface water” including Colorado River water and Central Arizona Project (CAP) water; “[p]rosecute and defend all rights, claims and privileges of this state respecting interstate streams;” and “negotiate and cooperate with agencies of ... any state or government and represent this state concerning matters within the department’s jurisdiction.” A.R.S. § 45-105(A)(2), (9), (10).
- B. The AWBA is required to “[c]oordinate with CAWCD for the purchase, delivery and storage of Colorado river water delivered through the central Arizona project,” and is authorized to execute agreements necessary to obtain and store water delivered through the CAP and distribute long-term storage credits accrued to make water available to municipal and industrial users of Colorado River water in Arizona. A.R.S. § 45-2423(A)(4), (B)(2), and (B)(7).
- C. CAWCD is a political subdivision of the State of Arizona established pursuant to Arizona Revised Statutes §§ 48-3701, et. seq., which operates and maintains the CAP pursuant to contracts and agreements with the United States, and delivers water to CAP contractors, subcontractors and other water users in Arizona. CAWCD is authorized to make and execute all contracts and other instruments necessary to accomplish its authorized purposes. A.R.S. § 48-3712(A)(2).

- D. Governor Ducey established the Governor’s Water Augmentation, Innovation and Conservation Council. One of the goals of the Council is to investigate long-term water augmentation strategies for the State of Arizona.
- E. On August 26, 2020, ADWR and CAWCD submitted a letter to The Metropolitan Water District of Southern California (“Metropolitan”) expressing their interest in participating with Metropolitan on the development of its Regional Recycled Water Program (“Program”). The Program, as currently envisioned, is planned to produce and deliver up to approximately 168,000 acre-feet per year of purified water from a new advanced water treatment facility located at the County Sanitation District No. 2 of Los Angeles County’s Joint Water Pollution Control Plant in Carson, California.
- F. ADWR and CAWCD intend to enter into the Agreement to Contribute Funds for Environmental Planning Phase Services Related to the Regional Recycled Water Program with Metropolitan (“RRWP Contributed Funds Agreement”). Pursuant to the RRWP Contributed Funds Agreement, ADWR and CAWCD will contribute a combined total of the lesser of either \$6 million or 24 percent of Metropolitan’s costs for conducting analyses, investigations, evaluations, studies and public outreach, as needed, to complete any environmental review and documentation required for design and construction of the Program (collectively “Environmental Planning Phase Services”). If Metropolitan approves and develops the Program, ADWR, CAWCD and Metropolitan intend to explore entering into a future development agreement to further define the responsibilities of the Parties in the development of the Program and to allocate Program water to ADWR and CAWCD or their designees (“Development Agreement”).
- G. In the event CAWCD and/or ADWR do not enter into a Development Agreement with Metropolitan, CAWCD and/or ADWR will be entitled to a refund of the amount paid to Metropolitan under the RRWP Contributed Funds Agreement.
- H. If ADWR and CAWCD ultimately enter into a Development Agreement with Metropolitan which allocates Program water to ADWR, CAWCD or their designees, ADWR and CAWCD will be entitled to a credit toward any funds owed under the Development Agreement in the amount of the funds contributed by ADWR and CAWCD in the RRWP Contributed Funds Agreement.

## **MUTUAL UNDERSTANDINGS AND COMMITMENTS**

1. The Parties anticipate that the Program may provide significant opportunities to augment the Colorado River, which could result in increased reliability and

resiliency of the Colorado River supply available to CAP long-term contracts. Such opportunities may require significant collaboration, agreements and partnerships among the Parties to implement.

2. The Parties commit to working together to enter into a Development Agreement with Metropolitan for the purposes of developing an augmented Colorado River supply. The Parties commit to working collaboratively with Metropolitan on any necessary exchange agreements or regulatory changes that may be necessary to enable the augmented supply produced through the Development Agreement to be available for use in Arizona.
3. The Parties intend that any augmented supply or credit produced through a Development Agreement with monies levied by CAWCD pursuant to A.R.S. § 48-3715.02 or with monies from the Arizona water banking fund pursuant to A.R.S. § 48-3715.03(B) would be used to firm long-term M&I subcontracts. Such firming may be accomplished through various arrangements including partnerships with the Arizona Water Banking Authority. The Parties commit to working collaboratively on any agreements, partnerships, statutory or regulatory changes needed to develop the Program water into a firming supply for long-term M&I subcontracts.
4. The Parties intend that any augmented supply or credit that may be produced through a Development Agreement with monies from ADWR may be made available to other water users in Arizona, under terms to be determined in the future.
5. Nothing in this MOU is intended to or shall be construed to limit or affect in any way the authority or legal responsibilities of any Party. Nothing in this MOU binds any participant to perform beyond their respective authorities.
6. This MOU may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one MOU.
7. Any notice under this MOU must be in writing and addressed as follows:

Arizona Department of Water Resources  
Attn: Director  
P.O. Box 36020  
Phoenix, AZ 85067-6020  
With a courtesy copy by email to [tbuschatzke@azwater.gov](mailto:tbuschatzke@azwater.gov)

Arizona Water Banking Authority  
Attn: Manager  
P.O. Box 36020

Phoenix, AZ 85067-6020

With a courtesy copy by email to [voconnell@azwater.gov](mailto:voconnell@azwater.gov)

Central Arizona Water Conservation District

c/o General Manager

P.O. Box 43020

Phoenix, Arizona 85080-3080

With a courtesy copy by email to [tcooke@cap-az.com](mailto:tcooke@cap-az.com)

A properly addressed notice will be effective on the day of delivery, if delivered directly by a Party or by a nationally recognized delivery service, or on the third day after mailing, if sent postage prepaid by U.S. Mail. The Parties shall transmit a courtesy copy of any notice to the other Party by email on the day the notice is sent.

Any Party may change the address listed in this section by providing five days' notice to the other Parties.

**Memorandum of Understanding Among the Arizona Department of Water Resources, Arizona Water Banking Authority and Central Arizona Water Conservation District Regarding Investigation of Augmentation Opportunities Through a Regional Recycled Water Program**

**ARIZONA DEPARTMENT OF WATER RESOURCES**

By: \_\_\_\_\_  
Thomas Buschatzke  
Director

Date: \_\_\_\_\_

**Memorandum of Understanding Among the Arizona Department of Water Resources, Arizona Water Banking Authority and Central Arizona Water Conservation District Regarding Investigation of Augmentation Opportunities Through a Regional Recycled Water Program**

**ARIZONA WATER BANKING AUTHORITY**

By: \_\_\_\_\_  
Thomas Buschatzke  
Chair

Attest: \_\_\_\_\_  
[NAME]  
Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Memorandum of Understanding Among the Arizona Department of Water Resources, Arizona Water Banking Authority and Central Arizona Water Conservation District Regarding Investigation of Augmentation Opportunities Through a Regional Recycled Water Program**

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_  
Theodore C. Cooke, D.B.A.  
General Manager

Date: \_\_\_\_\_