

ARIZONA WATER BANKING AUTHORITY Final Meeting Summary

September 13, 2022
Arizona Department of Water Resources
(Hybrid Meeting)



AUTHORITY MEMBERS

Thomas Buschatzke, Chair
Mark Clark, Vice-Chair
Alexandra Arboleda, Secretary
Eric Braun
Joseph Olsen

EX OFFICIO MEMBERS

The Honorable Karen Fann
The Honorable Gail Griffin

I. Welcome/Opening Remarks

Chair Tom Buschatzke and Commission member Alexandra Arboleda attended in person. Commission members Eric Braun, Joseph Olsen and Mark Clark attended via video conference. Mark Clark joined the meeting at 10:07 a.m. and left at 10:30 a.m. *Ex-officio* members, Senate President Karen Fann and Representative Gail Griffin, were not in attendance.

The meeting was called to order at 10:01 a.m.

II. Approval of Meeting Minutes

Chair Buschatzke asked for a motion. Commissioner Olsen moved to approve the June 29, 2022 AWBA Regular Meeting minutes with any needed corrections. Commissioner Arboleda provided the second to the motion. The minutes were unanimously approved.

III. Water Banking Staff Activities

Quarterly report of AWBA credit purchases for calendar year 2022. Ms. Virginia O'Connell reported on the purchase of up to 13,323 acre-feet of long-term storage credits (LTSCs) from the Ak-Chin Indian Community. This purchase was approved by the Commission at the June 29, 2022 meeting, and by the Community last July. Staff anticipates the LTSC purchase transaction will occur this fall, and will provide an update at the December meeting.

Chair Buschatzke asked Commission members if there were any questions. There were none.

Status report on Colorado River conditions. Rachel von Gnechten, Water Resources Engineer with ADWR's Colorado River Management Section, gave the Colorado River Basin update. She noted the forecasted inflow for the water year 2022 was 6.079 million acre-feet (maf), which is 63 percent of the average. She added that improved flows are unlikely.

Ms. von Gnechten then moved to the projected Lake Powell end-of-month elevations from the Bureau of Reclamation's (Reclamation) latest CRMMS-ESP2 modeling, which

reflects May actions taken by the Department of the Interior (Interior) to release 500,000 acre-feet from Flaming Gorge Reservoir to Lake Powell and to keep 480,000 acre-feet of water in Lake Powell that would have normally been delivered to Lake Mead. The end of calendar year (EOCY) 2022 most probable elevation projection for Lake Powell is 3,521.84 feet and the EOY 2023 most probable elevation projection is 3,525.07 feet. These projected elevations are actual elevations and do not reflect "effective" projections. In its May 3, 2022 letter, Interior indicated it would implement "operational neutrality," which means it would determine the Lower Basin Shortage as if the water had been delivered to Lake Mead and determine the Upper Basin Release Tier for Lake Powell in a manner to preserve the releases from Flaming Gorge Reservoir. Ms. von Gnechten added that there is increasing hydrologic uncertainty and some of the driest traces fall below critical elevations at Lake Powell.

Ms. von Gnechten then showed the projected Lake Mead end-of-month elevations from Reclamation's latest CRMMS-ESP modeling. The EOY 2022 most probable elevation projection is 1,040.78 feet and the EOY 2023 most probable elevation projection is 1,021.39 feet.

Ms. von Gnechten moved to show the 500+ Plan. She presented activities as of Reclamation's August 24-month study (MS). She noted that recent system conservation agreements (with several CAP subcontractors, and with the Yuma Mesa Irrigation District) have not been incorporated into the model presented.

Given the projected "effective" EOY 2022 elevation of Lake Mead at 1,047.61 feet (compared to the actual elevation projection of 1,040.78), Reclamation Commissioner Camille Touton announced last August that Lake Mead will operate in a Tier 2a shortage condition in 2023. This means a 592,000-acre-foot reduction to Arizona's Colorado River allocation (approximately 21 percent of the state's annual apportionment). Nevada will have a 25,000-acre-foot reduction and Mexico will have a 104,000-acre-foot reduction. Under Tier 2a, California has no required water savings contributions. Ms. von Gnechten reminded Commission members that Commissioner Touton had stated last June that an additional 2-4 maf of conservation was needed to protect the system. Media coverage leading up to the August 24-MS was anticipating an announcement by Reclamation; however, neither additional mandatory cuts nor an agreement to conserve water by the Basin States was announced. Nevertheless, Basin States will continue to meet with Reclamation to address challenges on the Colorado River and are discussing ways to implement additional reductions. All water users have a stake in the outcome and all need to contribute to the solution.

Ms. von Gnechten concluded her presentation with the results of the August 2022 CRMMS-EST Projections. These show a high risk of a Tier 2b shortage in 2024, and a high risk of a Tier 3 shortage in 2025, 2026, and 2027.

Chair Buschatzke reiterated the fact that the Basin States and the federal government are discussing options to conserve 4 maf. He noted that the states did not get to an agreement by Commissioner Touton's deadline because the total volume of reductions

fell far short of the 2 maf minimum and because there was an inequitable distribution of the additional reductions between Arizona and California. Chair Buschatzke indicated that he would like additional reductions to be shared equitably and that he is seeking a collaborative outcome from discussions with the federal government and other Basin States. He added that the federal government is studying the possibility of deducting about 1.2 maf per year of evaporation and system losses in the Lower Basin, and reviewing the beneficial use definition of Colorado River use.

Commissioner Braun indicated that evaporation and system losses should be deducted proportionally from the Basin State allocations. Chair Buschatzke agreed. Commissioner Braun noted the importance of the actions of the AWBA to build CAP M&I subcontractors' resiliency and of the consultation and strategy teams. He asked how the M&I sectors could support the state. Chair Buschatzke replied that supporting equitable outcome comments are helpful.

Chair Buschatzke mentioned that the Inflation Act Reduction legislation has \$4 billion for drought mitigation for the Colorado River Basin states, with priority to the Lower Basin. This is a good opportunity for voluntary compensation to save 2 or more maf, although it may not be enough. Chair Buschatzke added that Arizona has funds secured by the state's senators. Durable outcomes are better than paying water users for reducing their water use in the short term.

Chair Buschatzke asked if there were any more questions. There were none.

Report from the Central Arizona Water Conservation District (CAWCD). Mr. Markus Shapiro, CAWCD Water Systems Supervisor, started his report with water deliveries to groundwater savings facilities (GSFs) in the Pinal AMA under Arizona's Implementation Plan for the Lower Basin Drought Contingency Plan (LBDGP). He noted that 13,230 acre-feet have already been delivered out of the 45,500 acre-feet scheduled for 2022.

Mr. Shapiro followed with a review of the anticipated CAP delivery demand and supply for 2023. Under a Tier 2a shortage condition, CAP's allocation of 1,676,000 acre-feet will be reduced by 592,000 acre-feet, plus an additional 75,000 acre-feet to account for system loss. Mitigation supplies (85,000 acre-feet) will be added to the 1,009,000 acre-feet remaining. Demand orders are anticipated to be 1,225,000 acre-feet, from which 51,000 acre-feet of unmitigated NIA Pool Shortage will be cut, and to which 110,000 acre-feet will receive tribal firming and compensated and system conservation.

CAWCD anticipates a 100 percent cut to the NIA pool, but no reduction to Indian and M&I pools. This will create a full-firming commitment of 15,000 acre-feet from the AWBA in 2023 to the Community.

Commissioner Arboleda asked how a Tier 3 shortage would impact AWBA's Indian firming obligations. Ms. O'Connell responded that tribal firming water must be delivered to the same extent that M&I priority water is delivered. This means that NIA firming water would be cut the same percentage as M&I water is shorted.

Chair Buschatzke asked AWBA staff to pay close attention to the fact that actual water levels in Lake Mead are deeper than “effective” levels, and that the AWBA might need to firm significant volumes in the very near term.

Chair Buschatzke asked Mr. Shapiro how much water CAP has delivered in 2022, given the required reductions plus the additional 500+ Plan conservation being done. Mr. Shapiro said CAP is expecting a total delivery of 1,062,055 acre-feet. Recent agreements are anticipated to reduce deliveries up to approximately 59,000 acre-feet.

Chair Buschatzke discussed the 500+ Plan further and explained that CAP will be taking intentionally created surplus (ICS) water out of Lake Mead for CAP NIA mitigation. While this action might seem to be defeating the purpose of conserving water to protect Lake Mead, it is a legally binding commitment made under the Drought Contingency Plan (DCP). He added that there are limits on the annual recovery of ICS and that there will be no ICS recovery under a Tier 3 shortage.

Commissioner Braun asked how much ICS water is present in Lake Mead. Ms. von Gnechten said the Lower Basin States’ contribution is about 2.4 maf according to the August 2022 most probable study projected ICS storage balance.

Chair Buschatzke asked if there were additional questions. There were none.

Report on Recovery Planning Activities. Ms. O’Connell informed Commission members that the AWBA has been meeting with CAP M&I subcontractors (half of them, to date) to assess firming methods, i.e. whether they would need a delivery of water through the CAP (direct delivery) or if they would likely be requesting a distribution of credits from the AWBA (independent recovery). Subcontractors have been very receptive, showing AWBA staff how they operate, how they would be impacted by reductions, and what they are doing to prepare for potential future shortage reductions. AWBA staff learned that every system is unique and faces different challenges. Because of future unknowns, subcontractors were asked to evaluate the impacts of different levels of shortage. Depending on their operations, some may be able to do independent recovery across the board, some will need a direct delivery from the start, and some would be able to do independent recovery to a point but would need a direct delivery if shortages were deep.

The firming proposals AWBA staff and subcontractors have been developing will lead to the appropriate firming plans when they are needed. These planning steps are in line with the 2021 Joint Recovery Planning Update.

Ms. O’Connell pointed out that a number of CAP M&I subcontractors have raised questions regarding the volume the AWBA would firm if the Secretary were to require additional reductions beyond the 2007 Guidelines and DCP Contributions, and more specifically if the AWBA would firm up to the 20 percent that was used for hydrologic modeling and planning purposes. Presently, a Tier 3 shortage condition results in reductions of approximately 17 percent to CAP M&I subcontractors. Ms. O’Connell added

that the AWBA's current policy on CAP M&I firming adopted in 2019 indicates that "During the Interim Period, the AWBA will distribute long-term storage credits (LTSCs) under A.R.S. § 45-2457(B)(7) to meet all reductions to scheduled CAP M&I Priority water due to a Shortage Condition or required DCP Contributions." Before adopting the policy, staff conducted a risk assessment by estimating the maximum volume of LTSCs that could potentially be distributed during this period. Assuming a Tier 3 shortage reduction each year through 2026, the analysis indicated that the AWBA could satisfy the firming commitments under the policy. At this time, Interior and Reclamation have not provided any information regarding additional reductions beyond those required by the 2007 Guidelines and DCP. Absent this information, it is not clear what the role of the AWBA would be in firming CAP M&I subcontractors under these circumstances. Furthermore, because shortage reductions beyond a Tier 3 shortage condition were not evaluated, it is unclear how much firming the AWBA could accomplish, given the number of credits currently available. She noted that during meetings with CAP M&I subcontractors, AWBA staff also indicated that a subsequent policy may be necessary to address additional supply reductions not contemplated under the policy.

AWBA staff continues to coordinate with ADWR and CAWCD. A Recovery Planning Advisory Group meeting might be held in October should there be new information to share.

Chair Buschatzke noted that we have to have a serious, and perhaps uncomfortable, discussion about the utilization of AWBA credits. He pointed out that excess supplies are not available to the AWBA, and while the AWBA can purchase credits, we should view the available credits as a finite supply. He indicated that the Commission should discuss how the credits are distributed, particularly in conjunction with other options that might be available to CAP M&I subcontractors, including options to curtail outdoor water use (i.e. turf). He would like to discuss what the AWBA can accomplish in terms of firming, and options to meet critical demand for necessary uses of water if the situation in Lake Mead becomes dire. Chair Buschatzke also noted that he would like to revisit the AWBA's firming policy, which states that the AWBA should firm CAP M&I subcontractors through 2026 under any shortage Tier. Chair Buschatzke indicated that under DCP there is no mitigation under a Tier 3 shortage condition. Therefore, the language in the policy may or may not be consistent with the commitments that were made with the DCP Steering Committee in 2018/2019. Lastly, he commented that the Commission should also discuss if the AWBA should firm reductions beyond the 2007 Guidelines and DCP that were requested by Commissioner Touton. He indicated that in his viewpoint, the AWBA did not commit to firm additional reductions. However, the customers will need an answer on what the bank will do. Chair Buschatzke recognized that hard decisions will have to be made.

Chair Buschatzke asked if there were questions. Commissioner Olsen asked about the authority of the AWBA on these decisions. Chair Buschatzke replied that the statutes say that the distribution of credits is "to the extent necessary," and he recommended getting legal advice from AWBA's Legal Counsel at the next meeting.

Commissioner Braun commented that a discussion about the necessary uses of water should be addressed at the state level; rather than by the AWBA. He asked what level of firming the AWBA will do beyond DCP.

Chair Buschatzke responded that no two water providers are the same in terms of the ability to meet their demands. Given the diversity in water supplies and infrastructure, there needs to be an equitable water program across all the CAP M&I subcontractors. The implications for them and the economy are serious, and he wants stakeholders to have conversations to provide information for decision-making.

The Commission gave direction to staff to provide the following at the next meeting:

- AWBA M&I firming data from 2023 to 2026 under Tier 2b-e, and Tier 3, under current policy
- AWBA potential firming after 2026
- AWBA legal authority on firming volume decisions

IV. Discussion and Potential Approval of the AWBA Standard Template Agreements for the Firming CAP Municipal and Industrial Subcontractors.

Ms. O'Connell presented the key terms of the firming agreement for subcontractors that anticipate requesting a distribution of firming credits from the AWBA. The accepted firming proposals will be incorporated into the AWBA Plan of Operation. The agreement is a recognition that a LTSC transfer to a subcontractor satisfies the AWBA firming responsibility toward that subcontractor.

Chair Buschatzke proposed a motion to enter into executive session to obtain legal advice on the M&I Firming Agreement templates at 11:18 a.m. Commissioner Arboleda moved to enter into executive session. Commissioner Olsen seconded the motion. Chair Buschatzke asked for a discussion. There was no discussion.

The regular session reconvened at 11:40 a.m.

Nicole Klobas, AWBA Legal Counsel, suggested two clarifying revisions to the M&I firming template agreements to address Commission member's concerns. First, in Definitions, section 6, the term "fully" was deleted because it is redundant in describing that CAP M&I subcontractor orders are impacted. The term "Water Shortage" is used to further describe a "Water Shortage Year", which is used to identify the steps that need to be undertaken to develop a firming plan. It is not a reference to the number of credits distributed for firming purposes. Second, in Credit Distribution, section 4.4, the change was made to clarify that the section is describing the "process" that is being used to distribute credits during a Water Shortage Year based on the Firming Plan that was agreed to for that specific year. The term "all" was deleted from the first sentence to indicate that only credits identified in the firming plan for a particular Water Shortage Year are being distributed.

Chair Buschatzke asked if there were comments from Commission members. Commissioner Olsen thanked staff who participated in the RPAG meetings, AWBA staff, and other Commission members for their extensive collaboration. He added that the firming agreement was straightforward and comprehensive.

Chair Buschatzke asked for a motion. Commissioner Arboleda moved to approve the M&I Firming Agreement template with the two clarifying changes described by AWBA Legal Counsel. Commissioner Olsen seconded the motion. Chair Buschatzke asked the public for comments. There were none. Chair Buschatzke asked for further discussion on the motion. The motion was passed unanimously.

V. Preliminary AWBA 2023 Plan of Operation

Discussion of AWBA Preliminary 2023 Plan of Operation. Dr. Rebecca Bernat reviewed the draft Preliminary 2023 Plan of Operation (2023 Plan). With no excess CAP water available in 2023, the AWBA can use alternate methods to continue making progress on credit development. The total projected cost of the 2023 Plan is approximately \$14 million and is anticipated to result in the development of almost 45,000 of credits. The Plan proposes using \$1.8 million in Phoenix AMA withdrawal fee revenues to develop 6,134 acre-feet of ICS firming credits from the Gila River Indian Community, \$978,000 in Tucson AMA withdrawal fee revenues to purchase approximately 3,110 acre-feet of LTSCs, and \$3.3 million and \$7.8 million in Maricopa and Pima County water storage tax monies to purchase 10,640 and 24,900 acre-feet of LTSCs, respectively. The 2023 Plan assumes the cost of one LTSC is \$312 in the Phoenix AMA, and \$314 in the Tucson AMA based on equivalent CAP water storage and delivery costs. Dr. Bernat did stress the fact that the market for LTSCs is tightening and that it might be difficult for the AWBA to purchase LTSCs in the future.

In addition, the AWBA will have a 15,000-acre-foot firming obligation to the Gila River Indian Community. The AWBA plans to satisfy this obligation by extinguishing an equal volume of firming credits developed on-Reservation. Firming is neither expected for on-River contractors nor CAP M&I subcontractors.

Commissioner Arboleda asked what method was used to determine the price of LTSCs, and why the LTSC market is tightening. Dr. Bernat replied that the AWBA has been using the same formula, which is based on CAP water storage and delivery cost for 2023, under a Tier 2a shortage. She explained that less water storage leads to fewer LTSCs available in the market and that other entities do not use the same formula to price LTSCs.

Direction to staff on public presentation of the AWBA Preliminary 2023 Plan of Operation in conjunction with the Groundwater Users Advisory Council (GUAC) meetings in the Phoenix, Pinal, and Tucson AMAs.

Chair Buschatzke asked about AWBA staff's procedure for the GUAC meetings. Dr. Bernat replied that she will present the 2023 Plan at the Phoenix and the Tucson GUAC meetings, and that Ms. O'Connell will present it at the Pinal GUAC meeting. Ms. O'Connell added that the purpose is to allow the public to comment on the 2023 Plan at the meetings.

The Commission directed staff to schedule and hold public meetings on the 2023 Plan in conjunction with the GUAC in the Phoenix, Pinal and Tucson AMAs.

VI. Call to the Public

There were no additional comments. The meeting adjourned at 12:02 p.m.

Future Meeting Dates:

Wednesday, December 7, 2022