

**City of Phoenix Comments to
Arizona Water Banking Authority Draft 2023 Annual Report**

June 12, 2024

The City of Phoenix (“Phoenix”) appreciates the opportunity to comment on the Arizona Water Banking Authority (“AWBA”) Draft 2023 Annual Report (“Draft Report”). Phoenix also appreciates the AWBA Commission’s consideration of these comments during the June 17, 2024 AWBA meeting.

Phoenix is very concerned about the proposal in the Draft Report that the AWBA would ignore its statutory obligation to include in the Draft Report “[a] description of the water banking services and interstate water banking to be undertaken by the authority during the following ten year period”¹ As noted in the statute, one of the purposes of a ten-year plan is “[p]rotecting this state’s municipal and industrial water users against future water shortages on the Colorado river and disruptions of operations of the central Arizona project.”² According to the Draft Report, the reason the AWBA cannot propose a ten-year plan is due to the “significant uncertainty” associated with Colorado River supplies and the development of new operating guidelines which will go into effect on January 1, 2027.³ As noted below, this is an unacceptable position given the information that is currently available about reservoir and system conditions in the Colorado River and the limited alternatives that have already been proposed by the Basin States for the operating rules.

Phoenix, together with other municipal and industrial (M&I) subcontractors, tribal communities, and the Central Arizona Groundwater Replenishment District (“CAGR”) all face the same uncertainty in the Colorado River noted in the Draft Report. Each entity has an obligation to the millions of individual customers, businesses and industries that rely upon the Colorado River in Central Arizona to plan for an uncertain future through mobilization of alternate supplies, infrastructure construction, increased conservation programs and even planning for curtailment in the face of significant shortage risks. These ongoing efforts have required many water providers to increase the rates charged to customers and include large infrastructure projects in their five and ten-year capital improvement budgets. Moreover, the lack of certainty regarding the *extent* of shortage on the Colorado River does not negate the obligation of each of the mentioned entities to plan for what will be a *certain* shortage beginning on January 1, 2027. This same obligation applies to the AWBA.

While the AWBA may not know the full extent of shortages that will be in effect when the new operating guidelines take effect on January 1, 2027, it is certainly aware of facts which lead to an inescapable conclusion that there is a significant likelihood of shortage to the M&I

¹ A.R.S. § 45-2426(B)(6)

² A.R.S. § 45-2426(B)(6)(a)

³ Draft 2023 AWBA Annual Report, page 19.

and Indian priority pools in the Central Arizona Project beginning as early as January 1, 2027. Specifically, the United States Bureau of Reclamation (BOR) is evaluating three proposals for post-2026 guidelines, also known as the “alternatives development phase.”⁴ Each of the proposals includes a reduction of 1.5 million acre-feet in deliveries to the Lower Basin that would go into effect on January 1, 2027.⁵ Arizona has already agreed with California and Nevada, as part of the Lower Basin Proposal, that Arizona will assume 760,000 acre-feet of the 1.5 million acre-feet in reductions.⁶ There is currently no proposal for any higher priority users within Arizona to take a portion of that 760,000 acre-foot reduction out of priority. Other than the no action alternative, there is no other alternative to this initial reduction being modeled for compliance with the National Environmental Policy Act (“NEPA”). Given the state of the Colorado River system which was at 44% of total system contents as of August 2023⁷, even a no action alternative and Central Arizona’s junior priority in the Colorado River system would result in an all but certain shortage to the M&I pool within the next ten years.

Another concern with the lack of a ten-year plan is the lack of active recovery planning. Based on the proposal of the 1.5 million acre-foot static reduction in the Upper and Lower Basin Proposals for post-2026 operations, the Central Arizona Water Conservation District (“CAWCD”) notified M&I subcontractors that a 760,000 acre-foot reduction would result in a 20% shortage to the M&I priority pool. This represents impacts to M&I subcontractors’ annual direct uses. As noted in the Draft Report “[u]nderstanding the timing of these impacts is particularly important because it requires the use of recovery wells that must be available in the year that the shortage reductions occur.”⁸ As previously noted, the timing of this shortage will likely begin on January 1, 2027. While that timing is not a legal certainty, it is one for which all M&I subcontractors must plan. Currently, that subcontractor planning does not include any level of firming from the AWBA because there is no plan from the AWBA to distribute long-term storage credits or provide direct recovery. According to the Draft Report, if there was a Tier 3 shortage in 2026, the AWBA and CAWCD as its recovery agent would need to recover over 29,000 acre-feet of long-term storage credits for M&I subcontractors.⁹ Considering the level of a proposed static reduction is a very similar volumetric shortage (720,000 acre-feet in the Tier 3 shortage versus 760,000 acre-feet in a proposed static reduction in the proposed post-2026 operational rules), it is not speculative to believe there will be a need for direct recovery in 2027. Based on the Draft Report, it is not clear whether recovery well capacity would or could be available by that time, and without a plan beyond 2026, it is not clear when that evaluation would begin.

⁴ [Alternatives Development - Post 2026 Colorado River Operations | Bureau of Reclamation \(usbr.gov\)](#)

⁵ Id.

⁶ Arizona Reconsultation Committee Meeting #9, March 6, 2024. [Microsoft PowerPoint - 2024.03.06 ARC Meeting No. 9 vFinal.pptx \(cap-az.com\)](#)

⁷ Modeling and Analysis Work Group #8, March 11, 2024 [Microsoft PowerPoint - 2024.03.11 PRIV AND CONFIDENTIAL MAWG 8 VFinal.pptx \(cap-az.com\)](#)

⁸ Draft 2023 AWBA Annual Report, page 26.

⁹ Id.

This lack of planning could have a serious detrimental impact on M&I subcontractors and the millions of customers who rely on water deliveries and pay annual taxes for AWBA services.

In 2021 Recovery Update, AWBA agreed to a three-year timeline “to provide clarity on recovery implementation for CAP M&I firming.”¹⁰ While the “triggers” are related to BOR’s April Five-Year Probability Table and 24-month Study projections, all parties recognized that within the last three years of the 2007 Operating Guidelines and the Drought Contingency Plan neither metric would have predictive meaning beyond December of 2026 because both expire in December 2026. As previously noted, based on all the proposals currently in NEPA review by BOR and BOR modeling of system conditions, it is very likely M&I subcontractors will be subject to shortage on January 1, 2027. Given these facts, it is difficult to understand AWBA’s position that it is unable to plan beyond December 31, 2026 or the following statement in the Draft Report: “With no projected reduction to CAP M&I Priority supply, no firming was anticipated from the AWBA, and thus no recovery planning consultations were held.”¹¹

It should be noted in making these comments, Phoenix is not advocating for a particular result, decision or policy from the AWBA Commission regarding how, when or how much firming should occur. The ultimate decision about the particulars is beyond the scope of these comments or the Draft Report. However, Phoenix would expect that a true ten-year plan required under Arizona law would be developed by AWBA that would include a process for further analysis and decision-making *prior* to an imminent shortage to the M&I subcontractors. Based on the Draft Report and the position that the AWBA is unable to prepare a ten-year plan until there is certainty as to the post-2026 operating guidelines, it appears there will be no further discussions or planning for the inevitable shortage conditions until at least the spring of 2025 when the Arizona Legislature could first consider such guidelines. Given the high likelihood of significant shortage to the M&I subcontractors beginning on January 1, 2027 with the resulting need for active recovery by the AWBA and its agent CAWCD, a timeline of less than 24 months is very short, especially if recovery well infrastructure is necessary. More importantly, there is no expressed reason why AWBA is unable to prepare such a plan now, especially considering all other impacted parties have already begun their planning efforts to prepare for post -2026 conditions, including budgeting and constructing infrastructure in anticipation of yet-undefined shortage conditions.

Again, Phoenix appreciates the opportunity to comment on the Draft 2023 AWBA Annual Report and looks forward to additional discussion of the report prior to its adoption by the AWBA Commission.

¹⁰ Draft 2023 AWBA Annual Report, page 25.

¹¹ Id. at page 10.