

**Agenda Number 12.**

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**MEETING DATE:** October 2, 2014

**AGENDA ITEM:** Discussion and Consideration of Action to Approve the Standard-Form Forbearance Agreement and Approve Revisions to the Ag Pool Program

**RECOMMENDATION:**

Staff recommends that the Board approve the standard-form Forbearance Agreement and approve revisions to the Ag Pool Program

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**FINANCIAL IMPLICATIONS:**

**Impact on Budget: No Expense impact on General Fund Expenses**

Additional spending authority requested: None

**Impact on Reserves:** For entire Ag Pool Program

<b>General Fund Reserves</b>			
<b>Year</b>	<b>Reserves Requested</b>	<b>Reserves Included in Published Rates</b>	<b>(Over) / Under</b>
2015	\$43,468,792	\$41,600,000	(\$1,868,792)
2016	\$44,023,944	\$41,600,000	(\$2,423,944)
	\$87,492,736	\$83,200,000	(\$4,292,736)

**Impact on Rates:** None. The Impact that would have affected Fixed OM&R rates by decreasing deliveries of CAP water are covered by utilizing the reserves originally planned to cover the Ag pool deliveries that are to be forborne plus the above requested reserves.

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## **LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:**

2010 CAWCD Board of Director Strategic Plan

- Finance: Maintaining CAP's Financial Health
- Project Reliability: Effectively Operate and Maintain CAP Assets
- Water Supply: Reliability of the CAP Water Supply

Supplemental Policy for Marketing Excess Water for Non-Indian Agricultural Use 2004 Through 2030 established on November 4, 2010 (Attachment 1).

## **PREVIOUS BOARD ACTION/ACTIVITY:**

The Board was briefed on this in executive session on September 4, 2014.

The Ag Pool Program to be modified through this action was first established by the Board on May 18, 2000, modified by the Board on December 5, 2002, and further modified by the Board on November 4, 2010.

## **ISSUE SUMMARY/DESCRIPTION:**

### Forbearance Program

The Colorado River Drought Response and Sustainability Plan seeks to preserve 1.5 to 3.0 million acre-feet of additional water in Lake Mead over the next 5 years through individual and combined actions of the seven Colorado River Basin States. While the Plan has not yet been executed, CAWCD staff have been exploring various programs to satisfy the Arizona component of the Plan, which is the storage of 345,000 acre-feet of water in Lake Mead.

Among those options is this short-term forbearance program developed by CAWCD and representatives of Maricopa-Stanfield Irrigation and Drainage District ("MSIDD"), Central Arizona Irrigation and Drainage District ("CAIDD"), and New Magma Irrigation and Drainage District ("NMIDD"). The terms of this forbearance program are reflected in the Forbearance Agreement attached to this brief as Attachment 2. Though the Forbearance Agreement was negotiated by the above parties, CAWCD staff intends to offer the forbearance program to any irrigation district ("ID") holding an allocation of Excess Water from the pool of non-Indian agricultural use water ("Ag Pool Water").

In this forbearance program, any ID holding Ag Pool Water can participate by agreeing to forbear a portion of their Ag Pool Water in exchange for a reduced pumping energy rate on their remaining Ag Pool Water deliveries. Any water forborne through this program is water that CAWCD would not divert from the Colorado River and would retain in Lake Mead. CAWCD intends that this forborne water will become Extraordinary Conservation Intentionally Created Surplus pursuant to an exhibit to the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement (the "LCR Forbearance Agreement"). A draft of that exhibit is attached to this brief as Attachment 3.

To qualify for this program, an ID must have accepted full delivery of their Ag Pool Water during the years 2012-2014 and must agree to forbear at least 23% of their Ag Pool Water. Due to the mechanics of the LCR Forbearance Agreement, CAWCD has to set certain limitations on the maximum quantity of water that may be forborne. This limit is the lesser of 75% of the ID's allocated Ag Pool Water or 20,000 acre-feet.

In exchange for accepting reduced deliveries of Ag Pool Water, IDs would receive a reduced pumping energy charge for any Ag Pool Water deliveries remaining after forbearance. For 2015, the reduction would decrease the pumping energy rate to a fixed \$36 per acre-foot, which represents a \$17 reduction from the published Ag Pool rate of \$53 in 2015. For 2016, the reduction would decrease the pumping energy rate to a fixed \$38 per acre-foot, which represents a \$19 reduction from the published Ag Pool rate of \$57 in 2015. These published Ag Pool rates of \$53 for 2015 and \$57 for 2016 are the difference between the full CAP Pumping Energy Rate minus current agricultural incentives. CAP water received by an ID through some other mechanism, such as re-marketing of another IDs unscheduled Ag Pool Water, would not be entitled to this reduced rate.

MSIDD, CAIDD, and NMIDD have indicated that they would be unable to forbear any portion of their remaining Ag Pool Water in 2017 because of the reduction in the Ag Pool in that year. Therefore, this program will automatically terminate at the end of 2016. In addition, should a shortage be declared in 2016, CAWCD and participants in the program have the option to terminate the Forbearance Agreement prior to 2016.

#### Costs to CAWCD for the Forbearance Program

Under existing contract and Board policy, the 2015 cost to CAWCD for delivering 400,000 acre-feet of Ag Pool Water is \$41,600,000. This includes Fixed OM&R charges and current agricultural incentives.

As the forbearance program is currently contemplated, MSIDD, CAIDD, and NMIDD will each forbear 20,000 acre-feet per year for a total of 120,000 acre-feet over the life of the forbearance program. For 2015, the forbearance of 60,000 acre-feet by these IDs will result in a total Ag Pool Program cost of \$43,468,792.00, or net costs for the forbearance program of \$1,868,792.00. This net cost is the result of the additional agricultural incentive and the inclusion of Fixed OM&R costs for water not delivered that would otherwise have been passed along to other customers.

The net cost to CAWCD of both years of the forbearance program is \$4,292,736, which corresponds to \$35.77 per acre-foot of forborne water. Should additional IDs choose to enter the program, the total cost of the program will change slightly, but the cost per acre-foot of water forborne should be comparable.

## Revisions to Ag Pool Policy

Ag Pool Program policy has been set by the Board on three separate occasions. Most relevant to this forbearance program is the Supplemental Policy For Marketing Of Excess Water For Non-Indian Agricultural Use – 2004 Through 2030 dated November 5, 2010. Pursuant to that policy, the allocations of Ag Pool Water in the Pinal AMA were adjusted from 1.3 acre-feet per acre to 1.0 acre-feet per acre. Ag Pool Water that became unallocated pursuant to that change was to be "available to any ID within the Pinal AMA before being offered in other AMAs [or INAs] just as any water allocated but not requested is handled under current procedures."

In order to assure that any water that is forborne pursuant to this forbearance program remains in Lake Mead, CAWCD staff is proposing a change to the re-marketing portion of the Ag Pool Program. Specifically, CAWCD staff is proposing that any Ag Pool Water that is forborne pursuant to this forbearance program would not be re-offered to other IDs. Instead, CAWCD would retain discretion over any water that is forborne pursuant to this or similar agreements developed in the future. Should the Board adopt this policy, re-marketing of the Ag Pool Water would occur in the following order:

1. Ag Pool Water that is forborne pursuant to contractual agreement with CAWCD shall not be re-marketed and shall remain under the discretion of the Board;
2. Re-marketed to other Ag Pool participants in the same AMA;
3. Re-marketed to all other Ag Pool participants.

Modifying Board policy in this manner does raise one additional issue: whether this forbearance program would impact an IDs ability to serve as a Groundwater Savings Facility ("GSF") and accept cost-shared CAP water. ADWR requires that before an ID can serve as a GSF for CAP water, that ID must use all CAP water "reasonably" available. "Reasonably" available includes physically deliverable and economically affordable. After meetings between CAWCD and ADWR staff, ADWR has stated that this forbearance program meets the spirit of the "reasonably" available requirement, is a rational interpretation of the definition of "reasonably" available, and that this program would not impact an ID from serving as a GSF.

If adopted, this Action Brief will be added to the Board policy manual to document the change to the Supplemental Policy for Marketing Excess Water for Non-Indian Agricultural Use 2004 Through 2030.

**SUGGESTED MOTION:** I move that the Board approve the standard-form Forbearance Agreement, authorize its execution on behalf of CAWCD in substantially the form in which it was presented today, approve the revisions to the Ag Pool Program, and grant additional reserve authority of up to \$4,292,736 for 2015-2016.