

**Agenda Number 3.c.**

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**MEETING DATE:** May 7, 2015

**AGENDA ITEM:** Approval of Agreement between the United States and the Central Arizona Water Conservation District to Purchase Long-term Storage Credits Accrued by the Bureau of Reclamation in the Tucson AMA

**RECOMMENDATION:**  
Staff recommends that the Board approve the attached Agreement between the United States and the Central Arizona Water Conservation District for the Sale and Purchase of Long Term Storage Credits ("LTSCs").

**FINANCIAL IMPLICATIONS:**

**Impact on Budget:**

| Budget Year | Funds Requested | CAGRD Budget                 |                       |
|-------------|-----------------|------------------------------|-----------------------|
|             |                 | Funds Included in the Budget | (Over) / Under Budget |
| 2015        | \$10,800,000    | \$43,300,000 (I&WR balance)  | \$ --                 |

Additional spending authority requested: \$0 – The cost of this acquisition will be paid from the Infrastructure & Water Rights ("I&WR") account reserve.

**Impact on CAGRD Reserves:** The acquisition cost for 60,000 LTSCs in the Tucson AMA in the amount of \$10.8 million will be paid from the CAGRD I&WR Fund reserve.

**Impact on CAWCD Reserves:** None.

**Impact on CAGRD Rates:** None. The CAGRD I&WR Rate Component is set appropriately to accommodate the acquisition of new water supplies.

**Impact on CAWCD Rates:** None.

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

- CAWCD Board of Directors Strategic Plan
- o Water Supply: Obtain Sufficient Water Supplies to Meet Replenishment Obligations

**PREVIOUS BOARD ACTION/ACTIVITY:**

December 4, 2014 - Board briefing in Executive Session and Board direction to proceed with offer to purchase long-term storage credits

**ISSUE SUMMARY/DESCRIPTION:**

In October 2014 the Bureau of Reclamation (BOR) Phoenix Office issued a Solicitation for offers to purchase up to 20,000 acre-feet (AF) of LTSCs annually for 3 years, beginning in 2015. The credits were accrued by BOR in two managed recharge projects in the Tucson AMA (Santa Cruz Managed Recharge Project and Lower Santa Cruz Managed Recharge Project).

BOR has been accruing credits in the Tucson AMA by storing effluent in two managed recharge projects within the Santa Cruz River. The Secretary of Interior (as represented by BOR) has rights to 28,200 acre-feet/year of effluent in the Tucson area as part of the Southern Arizona Water Rights Settlement Act (SAWRSA), which has been committed to recharge since 2000. At the end of 2013 Reclamation had accrued almost 71,000 AF of LTSCs from storage in these two facilities.

SAWRSA authorizes the sale or lease of effluent or LTSCs derived from the effluent to provide revenue to the Cooperative Fund that was established in the settlement to assist with payment of CAP water delivery charges on behalf of the Tohono O'odham Nation ("TON"). The proceeds from this sale of LTSCs will be deposited directly into the Cooperative Fund.

In December 2014 CAGR D submitted an offer to purchase all 60,000 of the LTSCs in a single purchase for a price of \$180/LTSC, or \$10.8 million total. On Feb. 4, 2015, CAGR D was notified by BOR that its offer had been selected and they wished to finalize an agreement according to the terms proposed by CAGR D. Staff subsequently met with BOR on February 24, 2015, to begin developing the agreement and to establish a timeline for completion of the purchase.

These credits are ideal for CAGR D use because BOR wishes to impose certain restrictions on recovery of the credits and because they were earned from effluent stored at a managed recharge facility, meaning they cannot be used to demonstrate an assured water supply (A.R.S. § 45-853.01.C.). CAGR D recently updated its demand projections/replenishment obligation for the Tucson Active Management Area ("AMA"); the acquisition of these LTSCs will enable CAGR D to satisfy its replenishment obligation through 2033. Alternatively, CAGR D could use the LTSCs to meet replenishment reserve requirements for the Tucson AMA.

Recent transactions involving the purchase of Tucson AMA LTSCs provide direct support for the CAGR D offer price. CAGR D secured two previous multi-year LTSC purchase agreements, both of which were based on CAP delivery and storage rates. CAGR D's successful offer maximizes the net present value of the credit sale and provides significant benefit to the Cooperative Fund without paying a premium that would adversely impact the future market for LTSCs. The purchase price reflects an average of projected credit values for the years 2015-2017.

**SUGGESTED MOTION:** I move that the Board approve the attached Agreement between the United States and the Central Arizona Water Conservation District for the Sale and Purchase of Long Term Storage Credits.

Attachment.

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION**

**AGREEMENT BETWEEN THE UNITED STATES  
AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
FOR THE SALE AND PURCHASE OF  
LONG TERM STORAGE CREDITS**

**SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT ACT**

1. PREAMBLE: This Agreement providing for the sale and purchase of Long-Term Storage Credits (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2015, pursuant to the Southern Arizona Water Rights Settlement Act (96 Stat. 1274), as amended (“SAWRSA”), between the UNITED STATES OF AMERICA (“United States”), represented by the Secretary of the Interior (“Secretary”), acting through the Department of the Interior, Bureau of Reclamation (“Reclamation”), and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), a multi-county water conservation district organized and existing under the laws of the State of Arizona. For the purposes of this Agreement, CAWCD includes any assignees, purchasers, or transferees. In this Agreement, the United States and CAWCD are each individually sometimes called “Party” and sometimes collectively called “Parties.”

2. EXPLANATORY RECITALS:

2.1 WHEREAS, in 1982 SAWRSA was enacted into law to establish a framework for resolution of the Tohono O’odham Nation water rights’ claims and authorized the Secretary to enter into a contract with the City of Tucson to acquire treated effluent to be used to meet the Secretary's obligations under SAWRSA;

2.2 WHEREAS, the United States entered into Contract No. 0343-84 titled “Contract Between the United States and the City of Tucson to Provide for Delivery of Reclaimed Water to the Secretary” dated October 11, 1983, which makes reclaimed water available to the United States;

2.3 WHEREAS, the United States was issued a Water Storage Permit by the Arizona Department of Water Resources (ADWR) to store treated effluent in the Santa Cruz River Managed Underground Storage Facility and receive Long-Term Storage Credits;

2.4 WHEREAS, the United States was issued a Water Storage Permit by the Arizona Department of Water Resources (ADWR) to store treated effluent in the Lower Santa Cruz River Managed Recharge Project and receive Long-Term Storage Credits;

2.5 WHEREAS, the United States desires to sell 60,000 acre-feet of Long-Term Storage Credits and to use the revenues as authorized under SAWRSA, as amended by Title III of the Arizona Water Settlements Act of 2004 (118 Stat. 3478);

2.6 WHEREAS, Reclamation sent letters to prospective buyers on October 27, 2014, to solicit bids for the purchase of Long-Term Storage Credits;

2.7 WHEREAS, CAWCD operates the Central Arizona Project ("CAP"). CAWCD also provides replenishment services to member lands and member service areas under authorities provided in title 48, Chapter 22, Article 4 of the Arizona Revised Statutes. These replenishment authorities are commonly referred to as the Central Arizona Groundwater Replenishment District or CAGR. CAGR is not a separate legal entity, but functions within and is operated by CAWCD.

2.8 WHEREAS, CAWCD desires to purchase Long-Term Storage Credits developed by the United States pursuant to Arizona Revised Statutes Title 45, Chapter 3.1, for the benefit of CAGR member lands and member service areas;

2.9 WHEREAS, the United States accepted a bid from CAWCD by letter from Reclamation, dated February 4, 2015; and

2.10 WHEREAS, in furtherance of its CAGR responsibilities, CAWCD intends to extinguish the Long-Term Storage Credits to be purchased from the United States;

2.11 WHEREAS, the United States and CAWCD desire to enter into this Agreement to set forth the terms and conditions for the sale of Long-Term Storage Credits from the United States to CAWCD.

NOW, THEREFORE, it is mutually agreed to by the Parties that the United States will sell to CAWCD and CAWCD will purchase from Reclamation 60,000 acre-feet of Long-Term Storage Credits pursuant to the terms and conditions set forth below:

3. AGREEMENT PURPOSES: The purposes of this Agreement are to set forth the terms and conditions for Reclamation's sale of Long-Term Storage Credits to CAWCD.

4. DEFINITIONS: As used in this Agreement, the following terms, when capitalized, shall mean:

4.1 "ADWR" means the Arizona Department of Water Resources.

4.2 "Agreement" means this Purchase and Sale Agreement.

4.3 "CAGR" means the Central Arizona Groundwater Replenishment District, the replenishment authority operated by CAWCD.

4.4 "CAGRD's Account(s)" means (i) the long-term storage account established pursuant to Arizona Revised Statutes § 45-859.01 for the Tucson Active Management Area, Account No. 70-411120.0001; (ii) the conservation district account established pursuant Arizona Revised Statutes § 45-859.01 for the Tucson Active Management Area, Account No. 75-411120 and/or the (iii) the conservation district replenishment reserve subaccount for the Tucson Active Management Area, account No 70-411120.0002.

4.5 "CAWCD" means the Central Arizona Water Conservation District.

4.6 "Exhibit A" is a description of the Long-Term Storage Credits which are the subject of this Agreement. Exhibit A is attached hereto and made part of this Agreement.

4.7 "Exhibit B" is a copy of the Long-Term Storage Credit Transfer Form adopted by ADWR. Exhibit B is attached hereto and made part of this Agreement.

4.8 "Exhibit C" is the wiring instructions upon which CAWCD will transfer payment to the United States for the purchase of Long-Term Storage Credits from Reclamation. Exhibit C is attached hereto and made part of this Agreement.

4.9 "Long-Term Storage Credit" is as defined in Arizona Revised Statutes § 45-802.01(11).

4.10 "Long-Term Storage Credit Transfer Form" is a form, approved by ADWR, to effectuate the assignment of Long-Term Storage Credits, as defined in Arizona Revised Statutes § 45-854.01(B), and more specifically described in Article 6 below.

4.11 "Reclamation's Long-Term Storage Account" means the account established pursuant to Arizona Revised Statutes § 45-852.01 in Reclamation's name, account No. 70-411200.0000.

4.12 "Recovery" means the withdrawal of Long-Term Storage Credits in accordance with Arizona Revised Statutes § 45-834.01.

4.13 "Water Storage Permit" means a permit issued by ADWR pursuant to Arizona Revised Statutes § 45-831.01.

## 5. SALE AND PURCHASE OF LONG-TERM STORAGE CREDITS:

5.1 Sale and Purchase. In consideration of the promises and undertakings contained herein, the adequacy of which is agreed by both Reclamation and CAWCD to be sufficient, Reclamation agrees to sell, transfer and assign and CAWCD agrees to purchase, accept and pay for 60,000 acre-feet of Long-Term Storage Credits in accordance with the terms of this Agreement.

5.2 Type of Water. Reclamation covenants that all of the Long-Term Storage Credits to be sold pursuant to this Agreement were accrued through storage of effluent at the underground storage facilities identified in Section 5.3.2 below. It is the intent of the Parties that all Long-Term Storage Credits purchased and sold under this Agreement shall retain the identity of the source of water used to generate such Long-Term Storage Credits.

5.3 Long-Term Storage Credits.

5.3.1 The Long-Term Storage Credits to be sold by Reclamation under this Agreement are from Reclamation's Long-Term Storage Account and are as set forth in Exhibit A hereto.

5.3.2 Of the Long-Term Storage Credits to be sold by Reclamation under this Agreement, 10,000 were developed and stored at the Santa Cruz River Managed Underground Storage Facility pursuant to ADWR Facility Permit No. 71-545944.0001 and 50,000 were developed and stored at the Lower Santa Cruz River Managed Recharge Project pursuant to ADWR Facility Permit No. 71-591928.0001. Both of these underground storage facilities are located in the Tucson Active Management Area.

5.3.3 The Long-Term Storage Credits to be sold by Reclamation under this Agreement were stored pursuant to ADWR Water Storage Permit No. 73-545943.0200, for credits stored in the Santa Cruz River Managed Underground Storage Facility, and ADWR Water Storage Permit No. 73-591928.0500, for credits stored in the Lower Santa Cruz River Managed Recharge Project.

5.3.4 The source of water used to generate the Long-Term Storage Credits to be sold by Reclamation under this Agreement is effluent.

5.4 Purchase Price. The purchase price for the Long-Term Storage Credits to be sold by Reclamation under this Agreement is \$10,800,000. The per acre-foot price for Long-Term Storage Credits to be transferred pursuant to this Agreement is \$180. (\$180 X 60,000 acre-feet = \$10,800,000).

6. TIME AND MANNER OF TRANSFER:

6.1 Long-Term Storage Credit Transfer Form. To evidence the transfer of Long-Term Storage Credits, Reclamation and CAWCD shall complete, sign and deliver the Long-Term Storage Credit Transfer Form to ADWR within 30 days of the full execution of this Agreement. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit B to this Agreement. After Reclamation has executed and delivered the Long-Term Storage Credit Transfer Form to CAWCD, CAWCD shall promptly deliver the fully executed Long-Term Storage Credit Transfer Form to ADWR.

6.2 Additional Actions and Documentation. The Parties shall cooperate to take such further actions and execute such further documents as may be determined by either Party to be necessary or advisable in order to complete the transfer of the Long-Term Storage Credits contemplated by this Agreement.

7. COMPLETION OF DELIVERY and PAYMENT:

7.1 Completion of Delivery. Delivery of the Long-Term Storage Credits to be transferred pursuant to this Agreement shall be deemed complete when ADWR notifies Reclamation or CAWCD in writing that it has received and accepted the Long-Term Storage Credit Transfer Form or when evidence of such transfer is otherwise reflected in ADWR's records ("ADWR Acceptance"), whichever first occurs. CAWCD and Reclamation shall cooperate with ADWR to facilitate completion of such transfer by ADWR.

7.2 Payment. CAWCD shall pay the full amount of \$10,800,000, as specified in Article 5.5 above, no later than twenty (20) business days after ADWR Acceptance. CAWCD shall deposit the \$10,800,000 into an account according to the wiring instructions in Exhibit C hereto.

8. REJECTION OR INVALIDATION OF TRANSFER:

If ADWR, pursuant to Arizona Revised Statutes § 45-854.01(C), rejects or invalidates any transfer or assignment of Long-Term Storage Credits made hereunder before CAWCD has paid for such Long-Term Storage Credits, CAWCD shall not be obligated to pay for the number of Long-Term Storage Credits affected by such rejection or invalidation. If such rejection or invalidation occurs after payment has been made by CAWCD, Reclamation shall refund an amount equal to the number of Long-Term Storage Credits affected by such rejection or invalidation times the price per acre-foot for the affected Long-Term Storage Credits, as such price is established in Article 5.5 above. Reclamation shall refund such amount within sixty (60) business days after either CAWCD or Reclamation receives any notice of rejection or invalidation from ADWR. CAWCD shall transfer and assign back to Reclamation the number of credits affected by any such rejection or invalidation. Reclamation's obligation to refund any payments under this Article 8 shall expire thirty (30) days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the Long-Term Storage Credits into CAGR's Account(s).

9. EXTINGUISHMENT OF CREDITS: CAWCD, in furtherance of its CAGR responsibilities, shall over the course of time extinguish the Long-Term Storage Credits purchased under this Agreement and shall not Recover, sell, exchange or otherwise use or transfer these credits; PROVIDED, HOWEVER, that in the event CAWCD desires to Recover, sell, exchange or otherwise use or transfer these credits, CAWCD shall first obtain the written approval of the United States which shall be subject to all applicable environmental compliance requirements.

10. LIABILITY: CAWCD shall hold the United States harmless and shall indemnify the United States for any and all claims, costs, damages, or judgments of any kind or character arising out of any act, omission, or occurrence relating to the use of Long-Term Storage Credits provided under this Agreement.

11. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS: The expenditure or advance of any money or performance of any obligation by the United States under this Agreement shall be contingent upon appropriation of allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

12. TERM OF AGREEMENT:

12.1 This Agreement shall become effective as of the day and year first written above, and shall remain in effect until CAWCD fully extinguishes the Long-Term Storage Credits purchased under this Agreement or, subject to the approval of the United States, otherwise Recovers, sells, exchanges or otherwise uses or transfers the credits.

12.2 In the event that ADWR Acceptance, as provided for under Article 7.1, has not occurred within sixty (60) days after submission of the Long-Term Storage Credit Transfer Form, either CAWCD or Reclamation may terminate this Agreement by giving ten (10) days' written notice to the other Party.

13. NO COMMITMENT FOR ADDITIONAL SALES: Nothing in this Agreement shall be construed as providing a commitment for, or prohibition against, the future sale by Reclamation to CAWCD of Long-Term Storage Credits other than the 60,000 Long-Term Storage Credits described in Article 5.3 of this Agreement and in Exhibit A hereto.

14. NOTICES: Any notice to be given hereunder shall be in writing and shall be deemed properly given when mailed, postage prepaid, or delivered to the addresses specified below:

Reclamation:

For delivery and U.S. mail use:

Area Manager  
Bureau of Reclamation  
Phoenix Area Office  
6150 W. Thunderbird Rd.  
Glendale, AZ 85306-4001

CAWCD:

For delivery use:



General Manager  
23636 N. 7<sup>th</sup> Street  
Phoenix, Arizona 85024

For U.S. Mail use:

General Manager  
P.O. Box 43020  
Phoenix, AZ 85080-3020

The designation of the addressee or the address may be changed by notice in the same manner as provided in this Article for other notices.

15. MISCELLANEOUS PROVISIONS:

15.1 Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to federal law, where applicable, and otherwise to the laws of the State of Arizona.

15.2 Time of the Essence. Time is of the essence in the performance of this Agreement.

15.3 Reclamation's Warranty of Title. Reclamation warrants that it has good and marketable title to the Long-Term Storage Credits that are the subject of this Agreement and agrees to convey marketable title to such Long-Term Storage Credits free and clear of all liens and encumbrances. Reclamation shall warrant and defend title against all persons whomsoever.

15.5 Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.

15.6 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the Parties.

15.7 Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving Party. A waiver by any Party of any right or remedy hereunder shall not be construed as a waiver of any other right or remedy, whether pursuant to the same or a different term, condition or covenant.

15.8 Survival After Termination. The provisions of Articles 10, 15.1, 15.2, and 15.3, shall survive the completion or termination of this Agreement.

15.9 Captions. All captions, titles, or headings in this Agreement are used for the purpose of reference and convenience only and do not limit, modify, or otherwise affect any of the provisions of this Agreement.

15.10 Rules, Regulations and Amendment or Successor Statutes. All references in this Agreement to the Arizona Revised Statutes include all rules and regulations promulgated by ADWR under such statutes and all amendment statutes and successor statutes, rules, and regulations to such statutes, rules, and regulations.

15.11 Officials Not to Benefit. No Member or Delegate to Congress, Resident Commissioner or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement as of the date first set forth above.

UNITED STATES OF AMERICA

Approved as to form:

By: \_\_\_\_\_  
Katherine Ott Verburg  
Office of the Solicitor

By: \_\_\_\_\_  
Leslie Meyers  
Area Manager, Phoenix Area Office  
Bureau of Reclamation

CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT

By: \_\_\_\_\_  
Marie Pearthree  
Deputy General Manager  
Strategic Initiative & Public Policy

ATTEST:

\_\_\_\_\_