

Agenda Number 2.d.

CONTACT:	Chris Brooks 623-869-2438 cbrooks@cap-az.com	Dennis Rule 623-869-2667 drule@cap-az.com
MEETING DATE:	October 1, 2015	
AGENDA ITEM:	Approval of Agreement between the Superstition Mountains Community Facilities District No. 1 and the Central Arizona Water Conservation District to Purchase Long-term Storage Credits Accrued in the Phoenix AMA	

RECOMMENDATION:

Staff recommends that the Board approve the attached Intergovernmental Agreement between the Superstition Mountains Community Facilities District No. 1 (SMCFD) and the Central Arizona Water Conservation District for the Purchase and Sale of Long Term Storage Credits (LTSCs).

FINANCIAL IMPLICATIONS:

Impact on CAGRD Budget: None

Additional spending authority requested: None

Impact on CAGRD Reserves: The acquisition cost for 760 LTSCs in the Phoenix AMA will be \$133,320 in 2015 and will be paid from the CAGRD Infrastructure & Water Rights (I&WR) reserve. The price in subsequent years is based on CAP firm rates in the year in which the purchase is made.

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

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

CAWCD Board of Directors Strategic Plan

- Water Supply: Obtain Sufficient Water Supplies to Meet Replenishment Obligations

PREVIOUS BOARD ACTION/ACTIVITY:

September 3, 2015 – The Board was briefed in Executive Session about ongoing development of this agreement.

ISSUE SUMMARY/DESCRIPTION:

SMCFD provides sewer service within the City of Apache Junction. After treatment all effluent is either reused on-site or sent to the underground storage facility (USF) where SMCFD recharges it via basins and vadose zone wells. Since 2006 SMCFD has been selling the LTSCs earned through these recharge activities to the Apache Junction Water District, which used them to offset the groundwater pumping they did to supply their customers.

Apache Junction recently began using more of their CAP entitlement by sending it to nearby GSFs or USFs and engaging in annual storage and recovery in addition to earning LTSCs. Apache Junction has chosen not to purchase credits from SMCFD this year and may not purchase them as long their full CAP entitlement is available and sufficient to meet their water needs. Because of this they suggested that SMCFD sell credits to CAGRD in the interim.

CAGRD staff met with SMCFD and Apache Junction staff in April of this year to discuss developing an agreement whereby CAGRD would purchase any credits that become available from storage of effluent in the years 2014 – 2019. The short time frame of the agreement allows Apache Junction to resume purchasing all of these credits if their needs are sufficient in the future, but if that is not the case CAGRD may be able to continue making purchases under a new agreement at that time.

Under the terms of the agreement SMCFD guarantees that CAGRD will be able to purchase a minimum of 1,500 LTSCs over the duration of the agreement, but we may purchase up to 2,352 LTSCs per year (the permitted capacity of the USF) if that many credits are available. SMCFD has already indicated that they will sell the CAGRD approximately 760 LTSCs this year, which were created in 2014.

The cost component of this deal is based on the price of CAP water, similar to our prior credit purchase agreements. The formula results in a price for credits this year of \$175/LTSC. This is consistent with prices we have been paying for LTSCs. This agreement also furthers a valuable relationship with a CAGRD MSA (Apache Junction) and ensures continuation of the beneficial use of reclaimed water with their service area.

The credits obtained through this agreement will add to our portfolio of water supplies with the eastern half of the Phoenix AMA, where new supplies will be needed. CAGRD replenishment obligation in this area was over 16,000 AF in 2014 and it also saw higher growth in ML enrollment and activation last year. Our replenishment obligations will continue to grow in this area necessitating ongoing acquisition of additional supplies.

Attachments:

- 1) Intergovernmental Agreement between the Superstition Mountains Community Facilities District No. 1 and the Central Arizona Water Conservation District for the Purchase and Sale of Long Term Storage Credits.

SUGGESTED MOTION: I move that the Board approve the attached Intergovernmental Agreement between the Superstition Mountains Community Facilities District No. 1 and the Central Arizona Water Conservation District for the Purchase and Sale of Long Term Storage Credits.

**Intergovernmental Agreement Between
Superstition Mountains Community Facilities District No. 1
and
Central Arizona Water Conservation District
for the
Purchase and Sale of Long Term Storage Credits**

This Intergovernmental Agreement (“Agreement”) for the purchase and sale of Long-Term Storage Credits by and between the Superstition Mountains Community Facilities District No. 1 (“SMCFD”), a municipal corporation and political subdivision of the State of Arizona, 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, is made as of this _____ day of _____, 2015 (“Effective Date”). CAWCD and SMCFD are sometimes referred to herein, collectively, as the “Parties”.

RECITALS

- A.** SMCFD and CAWCD are empowered by A.R.S. § 48-709.D.2 to enter into intergovernmental agreements for joint or cooperative action, and each party has agreed to enter into this Agreement and has delegated to the persons signing the Agreement on its behalf the authority to execute this Agreement.
- B.** Pursuant to A.R.S. §48-709, SMCFD has authority to operate and maintain sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge.
- C.** SMCFD has obtained the required permits from the Arizona Department of Water Resources (“ADWR”) and the Arizona Department of Environmental Quality (“ADEQ”) for the operation of a Constructed Underground Storage Facility (“USF”) to store its treated effluent.
- D.** The treated effluent discharged into the USF yields Long-Term Storage Credits that allow for the recovery of groundwater from anywhere within the Phoenix Active Management Area.
- E.** 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 CAGRD. CAGRD is not a separate legal entity, but functions within and is operated by CAWCD.
- F.** CAWCD desires to purchase Long-Term Storage Credits developed by SMCFD pursuant to Arizona Revised Statutes Title 45, Chapter 3.1, for the benefit of CAGRD member lands and member service areas.

G. SMCFD desires to sell and transfer Long-Term Storage Credits derived from the storage of treated effluent under the price, terms and conditions set forth herein for the benefit of SMCFD's customers.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

AGREEMENT

I. Definitions

- A. "ADWR" means the Arizona Department of Water Resources.
- B. "Agreement" means this Intergovernmental Agreement Between Superstition Mountains Community Facilities District No. 1 and Central Arizona Groundwater Replenishment District for the Purchase and Sale of Long-Term Storage Credits.
- C. "Annual Long-Term Storage Credit Volume" means for any given year during the term of this Agreement, the annual volume of Long-Term Storage Credits to be acquired by CAWCD in that year as indicated in the Annual Notice submitted by SMCFD to CAWCD pursuant to Section V.B below.
- D. "Annual Purchase Price" means the annual purchase price for Long-Term Storage Credits to be transferred pursuant to the terms of this Agreement as calculated pursuant to Section VI below.
- E. "CAWCD" means the Central Arizona Water Conservation District.
- F. "CAGRD" means the Central Arizona Groundwater Replenishment District, the replenishment authority operated by CAWCD.
- G. "CAGRD's Account(s)" means (i) the long-term storage account established pursuant to Arizona Revised Statutes § 45-859.01 for the Phoenix Active Management Area, account No. 70- 441120.0001; (ii) the conservation district account established pursuant Arizona Revised Statutes § 45-859.01 for the Phoenix Active Management Area, Account No. 75-441120 and/or the (iii) the conservation district replenishment reserve subaccount for the Phoenix Active Management Area, account No 70- 441120.0002.
- H. "Long-Term Storage Credit" is as defined in Arizona Revised Statutes § 45-802.01(11).
- I. "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 Section V below.

J. "SMCFD's Long-Term Storage Account" means the account established pursuant to Arizona Revised Statutes § 45-852.01 in SMCFD's name, account No. 70-441196.0000.

II. Purpose

This Agreement provides the terms, conditions and responsibilities of SMCFD and CAWCD for the sale and transfer of Long-Term Storage Credits generated from the storage of SMCFD's treated effluent.

III. Compliance with Regulations

- A. CAWCD agrees, at its sole cost, to comply with all federal, state or local laws, rules, regulations and standards, relating to its ability to purchase and utilize the Long-Term Storage Credits purchased from SMCFD.
- B. SMCFD agrees, at its sole cost, to comply with any federal, state or local laws, rules, regulations and standards, relating to its ability to produce and transfer Long-Term Storage Credits.

IV. Commitments

- A. SMCFD's Commitments
 1. SMCFD will make every reasonable effort to reclaim as much water as possible for beneficial use.
 2. SMCFD will submit an Annual Underground Water Storage Report to ADWR on or before March 31st for Long-Term Storage Credits produced in the preceding calendar year.
 3. Within 30 days of the Effective Date of this Agreement, SMCFD will provide CAWCD with a report of Long-Term Storage Credits produced ("Summary Report") identifying the number of Long-Term Storage Credits produced in 2014 that are eligible for CAWCD to purchase in 2015. A sample report is attached as Exhibit A.
 4. For each year thereafter during the term of this Agreement, SMCFD will provide CAWCD with a Summary Report of Long-Term Storage Credits produced in the previous year on or before June 15th identifying the number of Long-Term Storage Credits it anticipates to be eligible for CAWCD to purchase.
 5. Over the term of this Agreement, SMCFD will make available a minimum of 1,500 Long-Term Storage Credits for purchase by CAWCD.

B. CAWCD's Commitments

1. CAWCD agrees to purchase all Long-Term Storage Credits listed on the Summary Report as eligible for purchase, beginning with credits produced in 2014 and available in 2015, up to a maximum of 2,352 Long-Term Storage Credits per year.

C. Mutual Commitments

1. Both parties acknowledge that the availability of Long-Term Storage Credits is dependent upon ADWR's acceptance of SMCFD's Annual Underground Water Storage Report. In the event that ADWR does not accept SMCFD's report or modifies the number of Long-Term Storage Credits available for sale, and such actions impact the number of credits available for CAWCD to purchase, CAWCD will not hold SMCFD responsible for any shortfall.

V. Sale and Transfer of Long-Term Storage Credits

- A. CAWCD shall pay any administrative fees established by ADWR to effectuate the transfer of the Long-Term Storage Credits into CAGRD's Account(s).
- B. Within 30 calendar days after receiving notification from ADWR that its Annual Underground Water Storage Report has been accepted, SMCFD will notify CAWCD of the volume of Long-Term Storage Credits available to CAWCD for purchase.
- C. Within 30 calendar days of the annual notice from SMCFD regarding the annual volume of Long-Term Storage Credits available to CAWCD, SMCFD and CAWCD shall complete, sign and deliver to ADWR the Long-Term Storage Credit Transfer Form to evidence the transfer of the Annual Long-Term Storage Credit Volume for that year. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit B to this Agreement. If ADWR adopts a different Long-Term Storage Credit Transfer form, then the Parties shall utilize that form instead.
- D. Delivery of the Annual Long-Term Storage Credit Volume for a particular year shall be deemed complete when ADWR notifies CAWCD in writing that it has received and accepted the Long-Term Storage Credit Transfer Form and intends to transfer Long-Term Storage Credits equal to the Annual Long-Term Storage Credit Volume for such year from SMCFD's Long-Term Storage Account to CAGRD's Account(s).
- E. Each year during the term of this Agreement, within 30 calendar days after receiving written notification from ADWR that it has received and accepted the Long-Term Storage Credit Transfer Form and intends to transfer the Annual Long-Term Storage Credit Volume to CAGRD's Accounts(s), CAWCD shall pay SMCFD the Annual Purchase price as calculated pursuant to Section VI below.

- F. If ADWR determines that a transfer will result in the disqualification of Long-Term Storage Credits because CAWCD does not qualify to store water in the year the Long-Term Storage Credits were stored, SMCFD shall withdraw its request to transfer the number of Long-Term Storage Credits that will be disqualified and will return CAWCD's payment for those credits. SMCFD has the right to sell or transfer to others any disqualified Long-Term Storage Credits.
- G. 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, SMCFD 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 Section VI. SMCFD shall refund such amount within 20 business days after CAWCD and SMCFD receive any notice of rejection or invalidation from ADWR. CAWCD shall transfer and assign back to SMCFD the number of credits affected by any such rejection or invalidation. SMCFD's obligation to refund any payments under this Section V.G shall expire 30 days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the Long-Term Storage Credits into CAGRD's Account(s). The Parties' rights and obligations under this Section V shall remain in full force and effect, and shall survive termination of this Agreement for purposes of addressing a circumstance where ADWR rejects or invalidates any transfer of Long-Term Storage Credits made hereunder.

VI. Pricing

- A. The Annual Purchase Price for the Long-Term Storage Credits to be transferred pursuant to this Agreement will vary from year to year and shall be based on components of the CAP published rate schedule. The Annual Purchase Price for the Long-Term Storage Credits to be transferred in 2015 shall be \$ 175 multiplied by the Annual Long-Term Storage Credit Volume for 2015. The Annual Purchase Price for the Long-Term Storage Credits to be transferred pursuant to this Agreement in each year after 2015, shall be calculated as follows:

$$AP = [(CAP \text{ Fixed OM\&R Charge}^* + CAP \text{ Pumping Energy Charge}^* + CAP \text{ Capital Charge for Municipal and Industrial Long-term Subcontract}^*) \times 0.98] \times \text{Annual Long-Term Storage Credit Volume for the applicable year}$$

where

AP = the Annual Purchase Price for Long-Term Storage Credits transferred in the applicable year (rounded to the nearest dollar)

*As published in CAP's Annual Rate Schedule for the year in which the credits are transferred.

- B. In the event that CAP ceases to establish one or more of the CAP Rate components of the AP, or if the underlying factors used to establish the CAP Rate components of the AP change materially, CAWCD and SMCFD agree to hold the then existing AP constant until they can administratively agree upon a revised pricing structure.

VII. Duration and Termination

- A. Effective Date: This Agreement shall be effective on the date set forth in this Agreement.
- B. Except as otherwise provided in the Agreement, the term of this Agreement shall continue through December 31, 2020.

VIII. Force Majeure

In the event that either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, the obligations of both parties, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability, but for no longer. The cause shall be, so far as possible, remedied with the best efforts of the disabled party and with all reasonable dispatch. The term "force majeure" in this Agreement means acts of God, strikes, lockouts or other industrial or labor disturbances, acts of the public enemy, wars, terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, unavoidable interruptions in electric power to drive pumps, interruptions by government not due to the fault of the parties, including injunctions, civil disturbances, explosions, well collapses, breakage or accident to machinery or transmission facilities, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties. Nothing in this Agreement will be construed as requiring either party to settle a strike or labor dispute against its will. Nothing in this Agreement will prohibit either party, at its own expense, from using whatever self-help remedies may be available to it.

IX. Mutual Indemnifications

To the fullest extent permitted by law, each party agrees to defend, indemnify and hold harmless the other party and the other party's officers, agents and employees from all claims, losses and causes of actions arising out of, resulting from, or in any manner connected with this Agreement, but only to the extent that the claim, loss, cause of action, damage or injury is caused or contributed to by the negligent acts or omissions of the indemnifying party.

X. Future Changes in the Laws, Regulations and Permits

SMCFD and CAWCD agree to timely meet requirements and confer in order to comply with changes in laws, regulations and permits.

XI. Notices

All oral communications of notices, schedules or requests made in connection with this Agreement shall be confirmed in writing and shall be deemed properly served if delivered in person, sent by electronic mail or United States mail, postage prepaid.

All notices, schedules or requests shall be sent to:

FOR CAWCD:

For delivery use: c/o General Manager
23636 N. 7th Street
Phoenix, AZ 85024

For U.S. Mail use:

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

FOR SMCFD:

Darron Anglin, District Manager
Superstition Mountains Community Facilities District No. 1
5661 S. Ironwood Dr.
Apache Junction, AZ 85120
Phone (480) 941-6754
e-mail danglin@smcfd.org

or as otherwise specified in writing from time to time by each party.

XII. Miscellaneous Provisions

- A. Assignment: No party shall have the right to assign this Agreement or any interest herein except to their respective successors. This Agreement shall be binding on the successors of the parties.
- B. Waiver: Waiver by either party of any breach of any term, covenant or condition in this Agreement shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition.
- C. Amendment: This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the parties.
- D. Severability: In the event that any provision of this Agreement or the application thereof is held invalid, that invalidity will not have any effect on other provisions and their application that can be given effect without the invalid provision or application, and to this extent the provisions of the Agreement are severable.

- E. Non-Discrimination: The parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out duties pursuant to this Agreement.
- F. ADA: The parties shall comply with all applicable provisions of the Americans with Disabilities Act and all applicable federal regulations under the Act.
- G. Conflict of Interest: This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.
- H. Integration: This Agreement supersedes any prior Agreements and understandings, whether written or oral, between SMCFD and CAWCD with respect to the Sale of Long Term Storage Credits.
- I. Interpretation: This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.
- J. SMCFD's Warranty of Title: SMCFD warrants that to the best of its actual knowledge 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. SMCFD shall warrant and defend title against all persons claiming by or through SMCFD and no other.

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

The Superstition Mountains Community Facilities District executed this Intergovernmental Agreement by its Chairman, as authorized by its Board of Directors, and the Central Arizona Water Conservation District executed this Intergovernmental Agreement by its President, as authorized by its Board of Directors.

Superstition Mountains Community Facilities District No. 1

Kathleen Waldron, Chairman

Darron Anglin, District Manager

Central Arizona Water Conservation District

Lisa Atkins, President

Attest: Frank Fairbanks, Secretary

The foregoing Intergovernmental Agreement between the Superstition Mountains Community Facilities District No. 1 and the Central Arizona Groundwater Replenishment District has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in the proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

Superstition Mountains Community Facilities District No. 1

Central Arizona Water Conservation District

Clarke H. Greger
Ryley, Carlock & Applewhite
Attorney for Superstition Mountains
Community Facilities District No. 1

Attorney for Central Arizona Water
Conservation District

EXHIBIT A

Superstition Mountains Community Facilities District No. 1
Summary Report of Long Term Storage Credits Produced
Calendar Year: _____

Long-Term Storage Credits Produced			
Month	Total Credits	Committed to Others	Available to CAWCD
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
TOTAL			

EXHIBIT B

ADWR LONG-TERM STORAGE CREDIT TRANSFER FORM A.R.S. § 45-854.01

ARIZONA DEPARTMENT OF WATER RESOURCES
Water Management Section
3550 North Central Ave, Phoenix, Arizona 85012
Telephone (602) 771-8585
Fax (602) 771-8689

LONG-TERM STORAGE CREDIT TRANSFER FORM A.R.S. § 45-854.01

For Official Use Only

DATE RECEIVED: _____

[FOR SELLER]

Name of Seller

Long-Term Storage Account No.

Contact Person/Telephone Number

Facility Permit Number (where source water was stored)

Mailing Address

Water Storage Permit Number (authority to store source water)

City/State/Zip

Number of long-term storage credits (in acre-feet) transferred by type(s) of water and year credits were earned.

Type: _____ acre-feet _____ year earned _____

Type: _____ acre-feet _____ year earned _____

[FOR BUYER]

If the transfer includes long-term storage credits earned from the storage of Central Arizona Project (CAP) water in an Active Management Area (AMA), please state:

1. The date of Buyer's formation (if Buyer is a legal entity): _____

2. The amount of groundwater withdrawn by Buyer in the AMA during the calendar year that the credits were earned: _____

a. The groundwater right number(s) the Buyer withdrew the groundwater pursuant to: _____

Name of Buyer

Contact Person/Telephone Number

Mailing Address

City/State/Zip

Long -Term Storage Account No. (if any)

Pursuant to A.R.S. § 45-854.01(C), the director of the Arizona Department of Water Resources may reject and invalidate any assignment of long-term storage credits in which the stored water would not have met the requirements for long-term storage credits as prescribed by A.R.S. § 45-852.01 if the assignee had stored the water.

The undersigned hereby certify, under penalty of perjury, that the information contained in this report is, to the best of their knowledge and belief, correct and complete and that they are authorized to sign on behalf of the party for whom their signature appears.

Authorized Signature for Seller DATE

Authorized Signature for Buyer DATE

Title

Title