

**Agenda Number 4.d.**

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**MEETING DATE:** November 5, 2015

**AGENDA ITEM:** Approval of Forbearance Agreement with Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association

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**FINANCIAL IMPLICATIONS:**

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

Additional spending authority requested: None

**Impact on Reserves:** The addition of SRP to the forbearance program authorized in October 2014 would lower the total amount of reserves needed for the entire Ag Pool Forbearance Program. Previously, the Board had authorized additional reserves spending of \$5,000,000 for the Ag Pool Forbearance Program over 2015-2016. By adding SRP to the Ag Pool Forbearance Program in 2016, the total reserves needed for the program will decrease by approximately \$20,900.

**Impact on Rates:** None. The impact that would have affected Fixed OM&R rates by decreasing deliveries of CAP water are covered by utilizing reserves that were originally planned to cover Ag pool deliveries that are to be forborne plus reserves that were previously approved for the Ag Pool Forbearance program.

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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

Policy for Excess Water Marketing for Non-Indian Agricultural Use – 2004 Through 2030

Supplemental Policies for Marketing Excess Water for Non-Indian Agricultural Use 2004 Through 2030 established on December 5, 2002, November 4, 2010 and October 2, 2014

**PREVIOUS BOARD ACTION/ACTIVITY:**

CAWCD staff briefed the Board about the addition of SRP to the Ag Pool Forbearance Program on October 1, 2015.

The Board approved the Ag Pool Forbearance Program on October 2, 2014, and granted reserve authority not to exceed \$5 million for 2015-2016.

The Ag Pool Program policies were first established by the Board on May 18, 2000, modified by the Board on December 5, 2002, modified by the Board on November 4, 2010, and further modified by the Board on October 2, 2014.

**ISSUE SUMMARY/DESCRIPTION:**

Forbearance Program

The Ag Pool Forbearance Program has been a key component of Arizona's portion of the Colorado River Drought Response and Sustainability Plan, which seeks to preserve 1.5 to 3.0 million acre-feet of additional water in Lake Mead over the next 5 years. Water forborne through this program is water that CAWCD does not divert from the Colorado River and retains in Lake Mead as Extraordinary Conservation Intentionally Created Surplus ("EC ICS") pursuant to an exhibit to the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement.

At the October 2, 2014 meeting of the Board of Directors, the Board approved the Ag Pool Forbearance Program by which irrigation districts ("ID") holding an allocation of Excess Water from the pool of non-Indian agricultural use water ("Ag Pool Water") could agree to forbear a portion of their Ag Pool Water in exchange for a reduction of their pumping energy rate on their remaining Ag Pool Water deliveries. For the 2016 year, the reduced pumping energy rate will be \$38 per acre foot.

One of the conditions for qualifying for this program in 2015-2016 was that an ID must have accepted full delivery of their Ag Pool Water during the years 2012-2014. Due to this requirement, the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association ("SRP") was unable to take part in the Ag Pool Forbearance Program as they had not taken full delivery of their Ag Pool Water in 2012.

SRP has taken full delivery of their Ag Pool Water in 2013-2014 and CAWCD staff anticipates that SRP will take full delivery of their Ag Pool Water in 2015. Accordingly,

CAWCD staff believes that adding SRP to the Ag Pool Forbearance Program for 2016 is appropriate and have worked with SRP to update the standard form Forbearance Agreement agreed to by the Board on October 2, 2014 to allow SRP to participate. The amended Forbearance Agreement is attached as Exhibit A. In addition, a tracked changes version is attached as Exhibit B that shows changes between the standard form Forbearance Agreement and the SRP Forbearance Agreement.

Among the terms agreed to by CAWCD staff and SRP is that SRP will forbear 75% of the 3,800 acre-feet of their Ag Pool Water, which will add an additional 2,850 acre-feet of EC ICS to the Ag Pool Forbearance Program for 2016. Additionally, because the 2016 agricultural incentive of \$15 that SRP would ordinarily receive on this forborne water is greater than the incentive that SRP will receive on its remaining 950 acre-feet of deliverables, the addition of SRP to this program will result in a net decrease to the total cost of the Ag Pool Forbearance Program.

**SUGGESTED MOTION:** I move that the Board approve the edits to the standard form forbearance agreement and authorize the addition of the Salt River Project Agricultural Improvement and Power District to the Ag Pool Forbearance Program for 2016.

Attachment.

**SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT,  
SALT RIVER VALLEY WATER USERS' ASSOCIATION,  
AND  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT  
FORBEARANCE AGREEMENT**

This Forbearance Agreement is made this \_\_\_ day of \_\_\_\_\_, 2015, by and between the Salt River Project Agricultural Improvement and Power District, an Arizona agricultural improvement district organized under existing laws of the State of Arizona, the Salt River Valley Water Users' Association, an Arizona corporation (collectively, the "Contractor"), and the Central Arizona Water Conservation District ("CAWCD"), a multi-county water conservation district organized under existing laws of the State of Arizona.

**RECITALS**

A. Contractor and CAWCD have determined to establish a Forbearance Program, whereby Contractor has agreed to forbear delivery of a portion of its Excess Water in exchange for a reduction in the Pumping Energy Charge paid per acre-foot of certain of Contractor's deliveries of Excess Water from the pool of non-Indian agricultural use water established pursuant to CAWCD Policy on Excess Water Marketing for Non-Indian Agriculture Use - 2004 through 2030 dated May 18, 2000 ("Ag Pool Water").

B. In reducing its deliveries of Ag Pool Water, CAWCD shall forbear from diverting Colorado River water that otherwise would have been delivered to Contractor, so that the forborne water may be retained in Lake Mead as Extraordinary Conservation Intentionally Created Surplus, thereby increasing the elevation of Lake Mead and reducing the chance of a declaration of shortage in the Lower Basin of the Colorado River.

C. This Forbearance Program shall be available to Contractor as it (1) holds a contract for the delivery of Ag Pool Water; (2) is forbearing a minimum of twenty-three percent (23%) and a maximum of seventy-five percent (75%) of its allocated Ag Pool Water, not to exceed 20,000 acre-feet; and (3) has accepted full delivery of its allocated Ag Pool Water each year for the prior three years.

D. Contractor desires to participate in this Forbearance Program and enter into this Forbearance Agreement.

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

## **ARTICLE 1 DEFINITIONS**

1.1 "CAP Repayment Stipulation" shall mean the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al.*, and numbered CIV 95-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

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

1.3 "Excess Water" means "Excess Water" as that term is defined in section 5(d)(1) of the Stipulation for Judgment portion of the CAP Repayment Stipulation.

1.4 "Excess Water Agreement" means the Amended Agreement Between the Central Arizona Water Conservation District and Salt River Project Providing for the Delivery of Excess Central Arizona Project Water dated November 6, 2007.

1.5 "Party" or "Parties" means one or both of the parties to this Forbearance Agreement.

1.6 "Year" means a calendar year.

## **ARTICLE 2 TERM AND TERMINATION OF FORBEARANCE AGREEMENT**

2.1 Term: This Forbearance Agreement shall be effective as of the date set forth in the introductory paragraph of this Forbearance Agreement and shall terminate on December 31, 2016.

## **ARTICLE 3 PROCEDURE FOR FORBEARING AG POOL WATER**

3.1 Notwithstanding section 5(b)(iii) of the Excess Water Agreement, for the purposes of establishing the procedure for ordering and forbearing Ag Pool Water under this Forbearance Agreement, upon receipt of Contractor's water delivery schedule, CAWCD shall modify Contractor's water delivery schedule by reducing the amount of the water order by 2,850

acre-feet. Following modification of Contractor's water delivery schedule, CAWCD shall review it together with all other water delivery schedules, and determine whether Excess Water is available for delivery in the following Year, and, if so, the amount of Excess Water available for delivery under this Agreement in the following Year.

3.2 Except as provided above, all terms, conditions, and provisions of the Excess Water Agreement shall remain unchanged and in full force and effect during the term of this Forbearance Agreement.

3.3 This Article 3 shall not survive termination of this Forbearance Agreement.

**ARTICLE 4  
MODIFICATION OF WATER ORDER**

4.1 In reducing the amount of Contractor's water delivery schedule pursuant to section 5(b)(ii) of the Excess Water Agreement as amended above, CAWCD shall use its best efforts to work with Contractor to establish a reduced water delivery schedule that is acceptable to Contractor.

**ARTICLE 5  
WATER SERVICE CHARGE**

5.1 During the term of this Forbearance Agreement, in exchange for forbearing deliveries of a portion of its Ag Pool Water, CAWCD will reduce the Pumping Energy Charge associated with the delivery of Contractor's remaining Ag Pool Water to a fixed rate as shown in the following chart:

	<u>2016</u>
	Firm
Pumping Energy Rate for Remaining Ag Pool Water (\$/af)	\$38

5.2 This reduction in the Pumping Energy Charge shall apply only to Contractor's Ag Pool Water that is currently allocated to Contractor.

5.3 The Pumping Energy Rate provided in section 5.1 above is a fixed rate and includes any agricultural incentives provided to Contractor pursuant to CAWCD policy.

**ARTICLE 6  
REPRESENTATIONS AND WARRANTIES**

6.1 Representations and Warranties of Contractor: Contractor represents and warrants as follows: (i) Contractor is an agricultural improvement district duly organized and validly existing under the laws of the State of Arizona. To the best of Contractor's knowledge the execution and delivery hereof to CAWCD and the performance by Contractor of its obligation under this Agreement will not violate the terms or provisions of any agreement, document or instrument to which Contractor is a party or by which Contractor is bound; (ii) All proceedings required to be taken by or on behalf of Contractor to authorize it to make, deliver and carry out the terms of this Forbearance Agreement have been duly and properly taken.

6.2 Representations and Warranties of CAWCD: CAWCD represents and warrants as follows: (i) CAWCD is a multi-county water conservation district duly organized and validly existing under the laws of the State of Arizona. To the best of CAWCD's knowledge, the execution and delivery hereof to Contractor and the performance by CAWCD of its obligation under this Agreement will not violate the terms or provisions of any agreement, document or instrument to which CAWCD is a party or by which CAWCD is bound; (ii) All proceedings required to be taken by or on behalf of CAWCD to authorize it to make, deliver and carry out the terms of this Forbearance Agreement have been duly and properly taken.

## **ARTICLE 7 LIMITATION ON REMEDIES**

7.1 No Party shall be entitled to seek any remedy for a breach of, or default under, this Forbearance Agreement except for those remedies already provided in the Excess Water Agreement.

## **ARTICLE 8 GENERAL PROVISIONS**

8.1 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 and any applicable federal laws, without regard to its conflicts of laws provisions. Any action to resolve any dispute regarding this Forbearance Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

8.2 Third Party Rights: The Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Forbearance Agreement or of any duty, covenant, obligation or undertaking established thereunder.

8.3 Assignment: No Party may assign, delegate, or otherwise transfer this Forbearance Agreement, in interest therein, or the Party's rights or obligations under this Forbearance Agreement without the prior written consent of the other Party.

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

8.5 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. The waiver by either Party of a breach of any term, covenant, or condition in this Forbearance Agreement shall not be deemed a waiver of any other term, covenant, or condition of this Forbearance Agreement.

8.6 Severability. Any determination by any court of competent jurisdiction that any provision of this Forbearance Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Forbearance Agreement.

8.7 Captions. All captions, titles, or headings in this Forbearance 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 Forbearance Agreement.

8.8 Notices. Except as otherwise required by law, any notice given in connection with this Forbearance Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate Party at the following address (or at any other address as a Party may hereafter designate by written notice given as required by this paragraph):

**CONTRACTOR:**

For delivery use:

Corporate Secretary  
Salt River Project  
Mail Station PAB 215  
1521 N. Project Dr.  
Tempe, AZ 85281

For U.S. Mail use:

Corporate Secretary  
Salt River Project  
Mail Station PAB215  
P.O. Box 52025



Phoenix, AZ 85072

**CAWCD:**

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

For U.S. Mail use: c/o General Manager  
P.O. Box 43020  
Phoenix, AZ 85080-3020

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

8.9 Additional Acts and Documentation: Each Party, upon the request of the other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Forbearance Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Forbearance Agreement on the day and year first above written.

CAWCD: **CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:  
  
\_\_\_\_\_

CONTRACTOR: **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**SALT RIVER VALLEY WATER USERS' ASSOCIATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_