

Agenda Number 9.b.

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MEETING DATE: November 5, 2015

AGENDA ITEM: Discussion and Consideration of Action Concerning Possible Pilot System Conservation Agricultural Pool Program

FINANCIAL IMPLICATIONS:**Impact on Budget: No expense impact on General Fund Expenses**

Additional spending authority requested: None. CAWCD anticipates that a portion of the program will be funded by monies remaining in the 2014-2016 Pilot System Conservation Program budget, a portion will be funded by additional, voluntary contributions from Pilot System Conservation Program partners, a portion is already included in the 2016-2017 budget, and a portion is monies that are already included in the Ag Pool Forbearance Program approved by the Board in 2014 that will become available for use in this program.

Impact on Reserves: None.

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 originally approved for the Ag Pool Forbearance Program.

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 this Pilot System Conservation Agricultural Pool 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:Pilot System Conservation Program

At the April 3, 2014, meeting of the Board of Directors of CAWCD, the Board approved the material terms of the Colorado River Pilot System Conservation Agreement ("PSCA"), an interstate conservation agreement among Reclamation, CAWCD, Southern Nevada Water Authority, the Metropolitan Water District of Southern California, and Denver Water. The PSCA was signed on July 30, 2014, with implementation in 2015 – 2016. The purpose of the PSCA was to determine whether system conservation undertaken through voluntary, compensated reductions in consumptive use is a viable method for mitigating the impacts of ongoing drought on the Colorado River System. To fund the two year term of the PSCA, each non-federal party agreed to contribute \$2 million and the United States agreed to contribute \$3 million in federal funds for an initial total of \$11 million.

Some of the projects that have been funded by the PSCA over the past year include farm fallowing and efficiency projects in the Upper and Lower Basins, forbearance programs with Indian Tribes in the CAP service area, and reuse programs at Bullhead City. By the end of 2015, it is anticipated that projects totaling about 40,000 acre-feet of conservation benefiting Lake Mead will be underway. At this time, it is estimated that approximately \$1.5 million dollars remain for usage by the PSCA in the Lower Basin.

Lower Basin Drought Response Actions Memorandum of Understanding (MOU) – CAP Ag Pool Forbearance Program

Operating concurrently with the PSCA, the Lower Basin Drought Response Actions MOU seeks to store an additional 740,000 acre-feet of water in Lake Mead through 2017, with 345,000 acre-feet of that storage to come from CAWCD. To satisfy a significant portion of CAWCD's commitment, CAWCD entered into the Ag Pool Forbearance Program with a number of irrigation districts ("ID") that hold allocations of Excess Water from the pool of non-Indian agricultural use water ("Ag Pool Water"). That program sought to create approximately 160,000 acre-feet of intentionally created surplus credits in Lake Mead through voluntary forbearance in exchange for a reduced Pumping Energy Rate for that IDs remaining Ag Pool Water deliveries.

PSCA Agricultural Pool Conservation Program

Beginning in April 2015, as part of the preparation for a potential August 2015 declaration of shortage on the Colorado River in 2016, CAWCD staff met with representatives of various IDs to discuss options and programs that could work during a shortage year. Among the options discussed was a proposal by representatives of Maricopa-Stanfield Irrigation and Drainage District ("MSIDD"), Central Arizona Irrigation and Drainage District ("CAIDD"), and New Magma Irrigation and Drainage District ("NMIDD") that they voluntarily forbear an aggregate of 12% of their remaining Ag Pool Water in exchange for reductions in their Pumping Energy Rate in 2016.

Following the determination by Reclamation that no shortage would occur in 2016, CAWCD staff and the IDs reengaged on discussions to explore new conservation programs to benefit Lake Mead as well as address pricing concerns expressed by IDs. CAWCD staff believes that the 12% forbearance proposal advocated by MSIDD, CAIDD, and NMIDD holds a unique opportunity to both generate significant additional conservation in Lake Mead while also addressing "rate shock" concerns expressed by the IDs over the reversion back to published rates in 2017.

At this time, CAWCD staff and legal counsel for MSIDD, CAIDD, and NMIDD have drafted and agreed on the standard form agreement for a Pilot System Conservation Program Ag Pool Conservation Program ("PSCA Ag Pool Conservation Program"), which is attached as Exhibit A. The material terms of the agreement are as follows:

Purpose: To generate approximately 25,000 of system conservation water in Lake Mead through the PSCA, and to establish a source of funding that will mitigate increases in the Pumping Energy Rate in 2017 and 2018 for IDs that participate in this PSCA Ag Pool Conservation Program. The cost for conservation would be about \$155/af, and results in a rate reduction for each ID of approximately \$8 per acre-foot in both 2017 and 2018.

Parties: The parties to the PSCA Ag Pool Conservation Agreement would be CAWCD and any of the ten¹ IDs that previously participated in the Ag Pool Forbearance Program approved by the Board on October 2, 2014.

Term: This program would turnback Ag Pool Water in 2016, creating 2016 conservation in Lake Mead while providing a source of funding to the participating IDs in 2017 and 2018.

Volume of Conservation: If each ID involved in this program agrees to forbear delivery of 12% of their remaining Ag Pool Water deliveries,² this program would generate 25,265 acre-feet of system conservation in Lake Mead. Should individual IDs be unable

¹ If SRP were admitted to the Ag Pool Forbearance Program at the November board meeting, CAWCD would also invite SRP to participate in the PSC Agricultural Pool Conservation Program, which would raise the number of eligible districts to eleven.

² The volume offered by MSIDD, CAIDD, and NMIDD is an aggregate of 12% of their combined, remaining Ag Pool Water deliveries or 8,000 acre-feet for MSIDD and CAIDD and 4,000 acre-feet for NMIDD.

to offer 12% and/or participate in the program, CAWCD staff will work with other IDs to increase forbearance to endeavor to meet a minimum of 25,000 acre-feet.

Funding: CAWCD staff anticipates that the funding of this program will total approximately \$3.9 million and will come from four separate sources. These include:

1. Approximately \$1.5 million of the original \$11 million approved for use by the PSCA remains for use in this program. CAWCD staff and staff from other PSCA entities will work with Reclamation to implement a PSCA conservation agreement and dedicate those remaining monies to this program.
2. Metropolitan Water District of Southern California and the Colorado River Board of California staff will seek authorization from their respective governing bodies to add an additional \$500,000 to the PSCA for this program.
3. \$1 million is in the 2016-2017 CAWCD budget for use in Colorado River conservation projects in 2017,³ which could be used for the expansion of the PSCA to include this PSCA Ag Pool Conservation Program.
4. In the current Ag Pool Forbearance Program, which runs from 2015-2016, irrigation districts agreed to forbear a minimum of 23% and up to a maximum of 75% of their Ag Pool Water. In exchange, CAWCD agreed to provide a \$38 incentive to those irrigation districts for any of their remaining Ag Pool Water deliveries. To fund that program, the CAWCD Board granted additional reserve authority of up to \$5 million.

If the CAWCD Board were to authorize this PSCA Ag Pool Conservation Program and irrigation districts agreed to forbear additional water deliveries, CAWCD realizes an effective savings of \$38 per acre-foot of conserved water. Given that this savings is money that the CAWCD Board authorized for use to reduce rates in the original Ag Pool Forbearance Program, CAWCD staff believes that an appropriate use of the savings is to recycle those monies back into programs benefitting irrigation districts that generate the savings.

Amendment of PSCA

Should the Board move forward with this PSCA Ag Pool Conservation Program, the PSCA would need to be amended to allow the contribution of the additional sources of funding identified in #2 and #3 above.⁴ Currently, the PSCA limits capital contributions by any local funding agency, including CAWCD and Metropolitan Water District of Southern California, to \$2 million. CAWCD staff has been working with the original parties to the PSCA on an amendment to the PSCA. The relevant language to the amendment is attached as Exhibit B.

³ The 2016-2017 CAWCD budget also includes \$1 million for Colorado River conservation projects in 2016. However that \$1 million is part of CAWCD's original \$2 million authorization for the PSC.

⁴ Any money that is saved pursuant to #4 above will not be contributed to the PSCA. Rather it will be held directly by CAWCD and later pooled together with the PSCA funds to off-set rates in 2017 and 2018.

SUGGESTED MOTION: I move that the Board approve the standard-form Pilot System Conservation Agricultural Pool Conservation Program Agreement, authorize its execution on behalf of CAWCD in substantially the form in which it was presented today, authorize the addition of \$1 million in the 2017 budget for Colorado River conservation programs to the PSCA, authorize the use of any cost savings from the Ag Pool Forbearance Program for rate reductions for participating irrigation districts in 2017 and 2018, and agree to amend the PSCA to allow CAWCD, Metropolitan Water District of Southern California, and the Colorado River Board of California to contribute additional funds to the PSCA.

AND

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT
PILOT SYSTEM CONSERVATION
AGRICULTURAL POOL PROGRAM AGREEMENT**

This Conservation Agreement is made this ___ day of _____, 2015, by and between the _____ (the "Contractor"), an irrigation and drainage district organized under the laws of the State of Arizona, an Arizona _____, 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. On July 30, 2014, the United States, the Central Arizona Water Conservation District, the Metropolitan Water District of Southern California, Denver Water, and the Southern Nevada Water Authority entered into an agreement to fund the Pilot System Conservation Program (the "PSC"). The PSC allowed these entities to compensate Colorado River water users for voluntary reductions in water use in order to manage water elevation levels in Lake Mead and Lake Powell above critically low elevations.

B. As a component of the PSC, CAWCD has agreed to establish an Agricultural Pool Conservation Program ("Conservation Program") whereby irrigation districts that previously participated in the Forbearance Program agree to additional reductions of deliveries of Ag Pool Water in 2016.

C. In exchange for reducing deliveries of Ag Pool Water in 2016, CAWCD agrees to seek approval to use PSC monies and certain other monies to reduce the Pumping Energy Charge for participating irrigation districts for Ag Pool Water deliveries in 2017 and 2018.

D. Water conserved through this Conservation Program is water that CAWCD shall forbear from diverting from the Colorado River, so that the forborne water may be retained in Lake Mead as system conservation water, thereby increasing the elevation of Lake Mead and reducing the chance of a declaration of shortage in the Lower Basin of the Colorado River.

E. CAWCD intends for this Conservation Program to conserve approximately 25,000 acre-feet of Colorado River water in Lake Mead, which will require a 12% aggregate reduction of each eligible irrigation districts remaining Ag Pool Water deliveries in 2016.

F. Contractor desires to participate in this Conservation Program and enter into this Conservation 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 "Ag Pool Water" means 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.

1.2 "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.

1.3 "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 Agreement Providing for the Delivery of Excess Central Arizona Project Water dated ____ __, 200__.

1.5 "Forbearance Program" means the forbearance program that was approved by the CAWCD Board on October 2, 2014 in which Contractor agreed to reduce deliveries of a portion of its Excess Water in exchange for a reduction in the Pumping Energy Charge paid per acre-foot of Contractor's deliveries of Ag Pool Water in 2015 and 2016.

1.6 "Party" or "Parties" means one or both of the parties to this Conservation Agreement.

1.7 "Year" means a calendar year.

ARTICLE 2 TERM AND TERMINATION OF CONSERVATION AGREEMENT

2.1 Term: This Conservation Agreement shall be effective as of the date set forth in the introductory paragraph of this Conservation Agreement and shall terminate on December 31, 2018.

2.2 Termination: Neither Party to this Conservation Agreement shall have a right to terminate this Conservation Agreement.

ARTICLE 3 PROCEDURE FOR CONSERVING 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 reducing deliveries of Ag Pool Water under this Conservation 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 __, __ 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 The reductions of deliveries agreed to in this Conservation Program are in addition to reductions agreed to by Contractor and CAWCD in the Forbearance Program.

3.3 Except as provided in section 3.1, all terms, conditions, and provisions of the Excess Water Agreement shall remain unchanged and in full force and effect during the term of this Conservation Agreement.

3.4 This Article 3 shall not survive termination of this Conservation Agreement.

ARTICLE 4 MODIFICATION OF WATER ORDER

4.1 In reducing the amount of Contractor's water delivery schedule pursuant to section 5(b)(iii) 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 PUMPING ENERGY CHARGE REDUCTION

5.1 In exchange for agreeing to a reduction in deliveries of its Ag Pool Water deliveries in 2016, Contractor shall receive a reduction on its Pumping Energy Charge in 2017 and 2018.

5.2 The Pumping Energy Charge reduction for each year shall be calculated in accordance with Exhibit A.

5.3 On or about February 1, 2016, CAWCD shall notify Contractor in writing of the estimated Pumping Energy Charge reduction for 2017 and 2018.

5.4 This reduction in the Pumping Energy Charge shall apply only to Contractor's Ag Pool Water that is either currently allocated to Contractor or Ag Pool Water that was previously allocated to Contractor prior to adoption of CAWCD Supplemental Policy for Marketing Excess Water for NIA Use 2004-2030-UPDATE dated November 4, 2010. It shall not apply to Ag Pool Water that is turned back by other entities and re-marketed to Contractor.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of Contractor: Contractor represents and warrants as follows: (i) Contractor is a irrigation and drainage 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 Conservation 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 Conservation 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 Conservation 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 Conservation 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 Conservation Agreement or of any duty, covenant, obligation or undertaking established thereunder.

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

8.4 Amendments: This Conservation 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 Conservation Agreement shall not be deemed a waiver of any other term, covenant, or condition of this Conservation Agreement.

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

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

8.8 Notices: Except as otherwise required by law, any notice given in connection with this Conservation 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 and
For U.S. Mail use:

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

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 Conservation Agreement.

8.10 Attorneys' Fees: In the event it becomes necessary for any Party hereto to institute legal proceedings to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to collect its costs and reasonable attorneys' fees from the non-prevailing party.

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

CAWCD: **CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: _____

Its: _____

ATTEST:

CONTRACTOR: _____

By: _____

Its: _____

ATTEST:

EXHIBIT A
CALCULATION OF PUMPING ENERGY CHARGE REDUCTION

$$\frac{A + B}{(Z * 2)}$$

where:

A = Monies that are approved for use by the PSC pursuant to a Pilot System Conservation Agreement between the United States and CAWCD. These monies are estimated at \$2.9 million and include monies originally contributed to the PSC which have not yet been used or allocated to other projects, \$500,000 of additional contributions to the PSC by the Metropolitan Water District of Southern California and the Colorado River Board of California, and \$1,000,000 of additional contributions to the PSC by CAWCD.

B = Any monies that, because of the reduction of Ag Pool Water deliveries pursuant to this Conservation Agreement, would not otherwise be used by CAWCD to reduce Contractor's Pumping Energy Charge to the fixed rate established in the Forbearance Program. More specifically, this figure is determined by multiplying the total volume of water conserved pursuant to this Conservation Program by \$38.

Z = The combined acre-foot volume of Ag Pool Water that will be delivered to Contractor and to any additional irrigation districts which take part in this Conservation Program.

EXHIBIT B

Amendment to the PSCA to allow additional contributions by Local Funding Agencies

6.4 Additional Funding. Notwithstanding the \$2 million funding contributions specified in Section 6.2, a Local Funding Agency may provide additional funding to the Pilot Program, including funding originating from another entity as provided in Section 6.3. If a Local Funding Agency provides additional funding, the Parties may make such funding available for proposed System Conservation projects with Entitlement Holders notwithstanding the \$11.25 million limit in Section 5.6. A Local Funding Agency which intends to provide such additional funds will notify the other Parties in writing.”