

Agenda Number 10

CONTACT: Doug Dunlap
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MEETING DATE: October 5, 2017

AGENDA ITEM: Consideration of Action to Approve an Amended Resolution Authorizing the Transfer of \$2.0 million of Water Storage Tax Revenues, Collected in Maricopa County and \$2,852,320.29 of Water Storage Tax Revenues, Collected in Pima Maricopa County for the 2016/2017 Tax Year to the Arizona Water Banking Fund, to Fund the AWBA's Purchase of Long-Term Storage Credits from the City of Surprise and the City of Tucson

RECOMMENDATION

Staff recommends that the Board of Directors approve an action to approve an Amended Resolution authorizing the transfer of \$2.0 million of Water Storage Tax Revenues, Collected in Maricopa County and \$2,852,320.29 of Water Storage Tax Revenues, Collected in Pima Maricopa County for the 2016/2017 Tax Year to the Arizona Water Banking Fund, to fund the AWBA's Purchase of Long-term Storage Credits.

FINANCIAL IMPLICATIONS:

Impact on Budget: It is projected that approximately \$14.7 million in Water Storage Tax revenues will be collected by CAWCD from Maricopa County and \$3.1 million in Pima County for the 2016/2017 tax year. The budget authorized in December 2016 by the CAWCD Board authorized up to \$14.7 million in Maricopa County and \$2.86 million in Pima County for the purchase of long-term storage credits during 2016/17 tax year. This request is consistent with the submitted and approved plan.

Impact on Reserves: This action will use a portion of the CAWCD Water Storage Tax reserves for an authorized and approved purpose.

Impact on Rates: No impact on water rates

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

- 2016 CAWCD Board of Directors Strategic Plan
 - Finance: Financing Major Expenditures – Coordinate projected uses of funds with appropriate sources of financing
 - Water Supply: Reliability of the CAP Water Supply

PREVIOUS BOARD ACTION/ACTIVITY:

Jan 28, 2009 With Board approval, CAWCD entered into an Intergovernmental Agreement (IGA) with ADWR and the AWBA to establish the annual process by which services will be requested of CAWCD and ADWR by the AWBA and to facilitate cooperation among the parties.

Nov14, 2014 With Board approval, the IGA was amended to grant the AWBA additional authority to purchase long-term storage credits (LTSC).

Aug 5, 2015	With Board approval, the IGA was amended again to further clarify the procedures and responsibilities of the parties related to the AWBA's purchase of LTSCs using the Water Storage Tax under CAWCD's current and future authority.
June 9, 2016	The Board adopted a resolution applying the Water Storage Tax for the 2016/2017 tax year to repayment of construction costs or payment of the annual operation, maintenance and replacement costs of the Project, including underground storage for the purpose of M&I firming by the AWBA.
Dec 1, 2016	The Board approved the AWBA budget plan for using Water Storage Tax revenues of \$14.7 million in Maricopa County and \$2.86 million in Pima County to purchase LTSCs during the 2016/17 tax year.
January 5, 2017	The Board approved an amended resolution authorizing the transfer of \$12.5 million of the Water Storage Tax revenues collected from Maricopa County for the 2016/2017 tax year to the Arizona Water Banking Fund, to fund the AWBA's purchase of Active Resource Management LLC LTSCs.

ISSUE SUMMARY/DESCRIPTION:

CAWCD is authorized under Title 48 of the Arizona Revised Statutes to levy a property tax up to 4 cents per \$100 of assessed valuation (the "Water Storage Tax"). The authorized uses of this tax under Title 48 are for the repayment of the construction costs or the annual operation, maintenance and replacement costs of CAP. Any tax proceeds that are not designated for these purposes are to be deposited in the Arizona Water Banking Fund. Since 2003, all of the Water Storage Tax proceeds have been dedicated to CAP repayment and O&M by resolutions adopted by the Board in June of each year.

In 2014, the Arizona legislature amended the Water Storage Tax statute to expand the use of the Arizona Water Banking Fund to purchase of LTSCs for the purposes of M&I firming. At the same time, the IGA between CAWCD and AWBA was amended to allow the AWBA to submit a plan for the purchase of long-term storage credits to the CAWCD Board by December of each year, which, if approved, would further allow the transfer of tax revenues to the Arizona Water Banking Fund to fund credit purchases as those transactions were completed, consistent with the approved plan. The IGA amendment contemplated that the CAWCD Board would amend the relevant Water Storage Tax resolution adopted earlier to reflect the transfer of monies to the Arizona Water Banking Fund as necessary for the credit purchases.

In December 2016, the AWBA notified CAWCD that it had negotiated an agreement with Active Resource Management LLC, an Arizona Limited Liability Company, for the purchase of 50,000 acre-feet of long-term storage credits in the total amount of \$12,500,000, and requested that this amount be funded by the transfer of Water Storage Tax revenues to the Arizona Water Banking Fund.

The purchase agreement was consistent with the plan approved by the CAWCD Board, and the Board approved amending the resolution for the 2016/2017 tax year to reflect the transfer.

In September 2017, the AWBA notified CAWCD that it had negotiated two additional credit purchase agreements for funding from the 2016/2017 tax year. These agreements consists of a \$2.0 million purchase of 9,082.24 acre-feet of long-term storage credits from the City of Surprise, and a \$2,852,320.29 purchase of 12,570 acre-feet of long-term storage credits from the City of Tucson. AWBA requests that these long-term storage credit purchase agreements be funded by the transfer of Water Storage Tax revenues to the Arizona Water Banking Fund.

The long-term storage credit purchase agreements are consistent with the budget plan approved by the CAWCD Board on December 1, 2016, and staff recommends that the transfers be approved and the resolution for the 2016/2017 tax year be amended to reflect the transfers.

A copy of the amended resolution is attached as Attachment 1 and the notification letter from AWBA, including the credit purchase agreements are attached as Attachment 2, 3 and 4.

SUGGESTED MOTION:

I move that the Board of Directors approve the Amended Resolution authorizing the transfer of \$2.0 million of Water Storage Tax Revenues, Collected in Maricopa County and \$2,852,320.29 of Water Storage Tax Revenues, Collected in Pima County for the 2016/2017 Tax Year to the Arizona Water Banking Fund, to fund the AWBA's Purchase of Long-term Storage Credits

Attachments.

Agenda Number 10. Attachment 1

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE
CENTRAL ARIZONA WATER CONSERVATION DISTRICT
TO AMEND ITS JUNE 9, 2016 RESOLUTION
REGARDING AD VALOREM TAX FOR WATER STORAGE

(October 5, 2017)

WHEREAS, House Bill 2494 adopted by the Arizona Legislature in 1996 (Chapter 308, Laws of Arizona 1996, Forty-second Legislature, Second Regular Session) established the Arizona Water Bank and amended A.R.S. § 48-3715.02 relating to the tax levy for water storage; and

WHEREAS, A.R.S. § 48-3715.02, subsection B, provides that the Central Arizona Water Conservation District ("CAWCD" or "the District") acting through its Board of Directors (the "Board"), shall fix the amount to be raised by direct taxation pursuant to its provisions, which amount shall not exceed four cents per one hundred dollars of assessed valuation (the "Water Storage Tax"); and

WHEREAS, the Board by separate action has fixed the Water Storage Tax rate pursuant to A.R.S. § 48-3715.02, subsection B, for the 2016/2017 tax year at four cents per one hundred dollars of assessed valuation; and

WHEREAS, A.R.S. § 48-3715.03 further provides that the Board shall annually determine by resolution whether any or all of the Water Storage Tax shall be applied to the repayment of the construction costs of the Central Arizona Project (the "Project") or to the annual operation, maintenance, and replacement costs of the Project; and

WHEREAS, A.R.S. § 48-3715.03 further provides that those monies specified in the resolution for repayment of the construction costs or payment of the annual operation, maintenance, and replacement costs of the Project shall be deposited, pursuant to A.R.S. §§35-146 and 35-147, in the District fund established pursuant to A.R.S. § 48-3712, subsection A, paragraph 5; and

WHEREAS, A.R.S. § 48-3715.03 further provides that any Water Storage Tax receipts that are not deposited in the District fund shall be deposited, pursuant to A.R.S. §§ 35-146 and 35-147, in the Arizona Water Banking Fund established pursuant to A.R.S. § 45-2425; and

WHEREAS, on June 9, 2016, the Board adopted a resolution applying the Water Storage Tax for the 2016/2017 tax year to repayment of construction costs or payment of the annual operation, maintenance and replacement costs of the Project, including underground storage for the purpose of M&I firming by the Arizona Water Banking Authority; and

WHEREAS, on December 1, 2016, in accordance with the Intergovernmental Agreement Among Arizona Department of Water Resources, Arizona Water Banking Authority and CAWCD dated January 28, 2009, as amended on November 18, 2014 and August 5, 2015, (the "IGA"), the Board established the amount of Water Storage Tax revenues, by county, for the 2016/2017 tax year that will be available to the Arizona Water Banking Authority ("AWBA") for the purchase of long-term storage credits in 2017, as follows: \$14.7 million collected from Maricopa County for the purchase of long-term storage credits and \$2.86 million collected from Pima county for the purchase of long-term storage credits; and

WHEREAS, in accordance with the IGA, the AWBA notified the District on December 8, 2016 that it had negotiated an agreement to purchase 50,000 AF of long-term storage credits in the Phoenix AMA from the Roosevelt Water Conservation District, at \$250 per long-term storage credit, for a total purchase price of \$12,500,000. The AWBA requested that this purchase be funded by transferring the water storage tax revenues made available by the Board for AWBA's purchase of long-term storage credits in the Phoenix AMA in 2017 to the Arizona Water Banking Fund; and

WHEREAS, in accordance with the IGA, the AWBA notified the District on September 28, 2017 that it had negotiated two additional agreements: (1. To purchase 9,082.24 AF of long-

term storage credits in the Phoenix AMA from the City of Surprise, at \$220.21 per long-term storage credit, for a total purchase price of \$2,000,000 and (2. To purchase 12,570 AF of long-term storage credits in the Tucson AMA from the City of Tucson, at \$226.91 per long-term storage credit, for a total purchase price of \$2,852,320.29. The AWBA requested that these purchases be funded by transferring the water storage tax revenues made available by the Board for AWBA's purchase of long-term storage credits in 2017 to the Arizona Water Banking Fund; and

WHEREAS, the Board desires to authorize the transfer of \$2,000,000, in addition to the previously approved transfer of \$12,500,000, for a total transfer of \$14,500,000 of the water storage tax revenues collected from Maricopa County, and the transfer of \$2,852,320.29 of the water storage tax revenues collected from Pima County for the 2016/2017 tax year to the Arizona Water Banking Fund; and

WHEREAS, in accordance with the IGA, the Board must amend the resolution it adopted on January 5, 2017 to direct the transfer of Water Storage Tax revenues to the Arizona Water Banking Fund; and

WHEREAS, A.R.S. § 48-3715.03 further provides that a certified copy of such resolution shall be delivered to the Arizona Department of Water Resources.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Central Arizona Water Conservation District that it amends its January 5, 2017 Resolution of the Board of Directors of the Central Arizona Water Conservation District Regarding Ad Valorem Tax for Water Storage, to read as follows:

1. That \$14,500,000 of the taxes levied pursuant to A.R.S. § 48-3715.02, subsections B and C, in Maricopa County, in the 2016/2017 tax year, shall be deposited in the Arizona Water Banking Fund established pursuant to A.R.S. § 45-2425; And that \$2,852,320.29 of the taxes levied pursuant to A.R.S. § 48-3715.02, subsections B and C, in Pima County, in the 2016/2017 tax year, shall

be deposited in the Arizona Water Banking Fund established pursuant to A.R.S. § 45-2425.

2. That, except as provided in paragraph 1 above, all of the remaining taxes levied pursuant to A.R.S. § 48-3715.02, subsections B and C, in the 2016/2017 tax year shall be applied to repayment of the construction costs or payment of the annual operation, maintenance, and replacement costs of the Project, including underground storage for the purpose of M&I firming by the Arizona Water Banking Authority; and
3. That all taxes levied pursuant to A.R.S. § 48-3715.02, subsections B and C, in the 2016/2017 tax year be deposited in a designated District account in the District fund established pursuant to A.R.S. § 48-3712, subsection A, paragraph 5; and
4. That a certified copy of this resolution be delivered to the Arizona Department of Water Resources.

I, the undersigned, as Secretary of the Central Arizona Water Conservation District, hereby certify that the foregoing is a true and correct copy of the resolutions duly adopted by the Board of Directors of the Central Arizona Water Conservation District at a meeting thereof, duly called and held on October 5, 2017, at which a quorum was present and acting throughout. I further certify that said resolutions have not been modified or revoked since their adoption and are still in full force and effect.

SIGNED THIS 5th DAY OF October 2017.

By: _____
Sharon B. Megdal
Secretary

Agenda Number 10. Attachment 2

PURCHASE AND SALE AGREEMENT FOR LONG TERM STORAGE CREDITS

This Purchase and Sale Agreement (Agreement) is made this ____ day of _____, 2017, (the "Effective Date"), between the Arizona Water Banking Authority ("AWBA"), an authority established under Chapter 14, Title 45 of the Arizona Revised Statutes, added by Law 1996, Ch. 308, § 16, effective April 30, 1996, and the City of Surprise ("Surprise"), a municipal corporation of the State of Arizona (together "Parties").

RECITALS

A. WHEREAS, the AWBA desires to purchase Long-Term Storage Credits developed by Surprise pursuant to Arizona Revised Statutes Title 45, Chapter 3.1, for the benefit of meeting the AWBA's storage goals.

B. WHEREAS, Surprise is willing to sell and transfer certain Long-Term Storage Credits to AWBA upon the price, terms and conditions set forth herein.

C. WHEREAS, Surprise is authorized to sell Long-Term Storage Credits and enter into this Agreement pursuant to, inter alia, Arizona Revised Statutes Title 9, Chapter 5, Article 2 and Title 45, Chapter 3.1, Article 4.

D. WHEREAS, the Parties desire to explore a potential future water supply partnership beyond this Agreement and intend that this Agreement be a starting point for development of that potential partnership.

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:

ARTICLE 1 DEFINITIONS

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

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

1.2 "Agreement" means this Purchase and Sale Agreement for Long-Term Storage Credits.

1.3 "AWBA" means the Arizona Water Banking Authority established by § 45-2421 or its successor.

1.4 "AWBA's Long-Term Storage Account" means the account established pursuant to Arizona Revised Statutes § 45-852.01 in the AWBA's name, account number 70-441150.0000.

- 1.5 "Long-Term Storage Credit" is as defined in Arizona Revised Statutes § 45-802.01(11).
- 1.6 "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 3 below.
- 1.7 "Surprise" means the City of Surprise.
- 1.8 "Surprise's Long-Term Storage Account" means the Long-Term Storage account established pursuant to Arizona Revised Statutes § 45-852.01 in Surprise's name, Account No. 70-441155.0000.

ARTICLE 2 PURCHASE OF LONG-TERM STORAGE CREDITS

- 2.1 Sale and Purchase. Subject to the terms and conditions of this Agreement, Surprise agrees to sell, transfer and assign and AWBA agrees to purchase, acquire, and pay for 9,082.24 acre-feet of Long-Term Storage Credits.
- 2.2 Type of Water. 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.
- 2.3 Long-Term Storage Credits. The Long-Term Storage Credits to be sold by Surprise are stored at the underground storage facility, under the ADWR Facility Permit and ADWR Water Storage Permit set forth in Exhibit A hereto.
- 2.4 Purchase Price. The purchase price for the 9,082.24 acre-feet of Long-Term Storage Credits to be sold by Surprise under this Agreement is \$2,000,000.00 ("Purchase Price"). The Purchase Price was calculated using a per-credit price \$220.21 ($\$220.21/\text{Long-Term Storage Credit} \times 9,082.24 \text{ acre-feet of Long-Term Storage Credits} = \$2,000,000.00$ (rounded to the nearest dollar)), which is equivalent to the cost of accruing Phoenix AMA Long-Term Storage Credits at a constructed underground storage facility in 2017. The per credit price was calculated using the following formula: $\text{Per credit price} = [(\text{CAP Long Term M\&I Subcontract Capital Charge} + \text{CAP Fixed OM\&R Charge} + \text{CAP Pumping Energy Rate Charge} + \text{CAP Underground Water Storage O\&M Charge for the Phoenix AMA}) / 0.94]$. As expressed in numbers, the formula is as follows: $[(\$31 + \$87 + \$77 + \$12) / 0.94 = \$220.21$ (rounded to the nearest cent)].

ARTICLE 3 TIME AND MANNER OF TRANSFER

- 3.1 Long-Term Storage Credit Transfer Form. To evidence the transfer of Long-Term Storage Credits, Surprise and AWBA shall complete, sign and deliver the Long-Term Storage Credit Transfer Form to ADWR upon full execution of this Agreement. A copy of the Long-Term Storage Credit Transfer Form is attached as Exhibit B to this Agreement. After Surprise

has executed and delivered the Long-Term Storage Credit Transfer Form to AWBA, AWBA shall promptly deliver the fully executed Long-Term Storage Credit Transfer Form to ADWR.

3.2 Additional Actions and Documentation. AWBA shall pay any administrative fees established by ADWR to effectuate the transfer of Long-Term Storage Credits into AWBA's Account. 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.

ARTICLE 4 COMPLETION OF DELIVERY AND PAYMENT

4.1. Completion of Delivery. Delivery of the Long-Term Storage Credits to be transferred pursuant to this Agreement shall be deemed complete when ADWR notifies AWBA in writing that it has received and accepted the Long-Term Storage Credit Transfer Form and intends to transfer Long-Term Storage Credits from Surprise's Long-Term Storage Account to AWBA's Account ("ADWR Acceptance"). AWBA and Surprise shall cooperate with ADWR to facilitate completion of such transfer by ADWR.

4.2. Payment. Upon ADWR Acceptance, AWBA shall remit the Purchase Price to Surprise within thirty (30) business days.

ARTICLE 5 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 AWBA has paid for such Long-Term Storage Credits, AWBA 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 AWBA, Surprise 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 2.4 above. Surprise shall refund such amount within thirty (30) business days after either AWBA or Surprise receives any notice of rejection or invalidation from ADWR. AWBA shall transfer and assign back to Surprise the number of credits affected by any such rejection or invalidation. Surprise's obligation to refund any payments under this Article 5 shall expire thirty (30) calendar days after ADWR has issued a non-appealable final agency decision approving the transfer and assignment of the Long-Term Storage Credits into the AWBA Account. The Parties' rights and obligations under this Article 5 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.

**ARTICLE 6
EFFECTIVE DATE AND TERM**

This Agreement shall be effective as of the date set forth in the introductory paragraph of this Agreement (the “Effective Date”) and shall stay in effect until completion of performance by the Parties as contemplated herein unless terminated earlier in accordance with Article 7.

**ARTICLE 7
DEFAULT AND REMEDIES**

7.1. Default. The occurrence of any of the following events constitutes an event of default by a party to this Agreement:

7.1.1 The failure of either party to perform any term, covenant, or condition of this Agreement, if that failure continues for thirty days following the receipt of written notice from the other party.

7.1.2 (i) The filing by or against either party of a petition to have the party adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against a party, the same is dismissed within sixty (60) days); (ii) the making by a party of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the party’s assets, when possession is not restored to the party within sixty (60) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of a party’s assets, where such seizure is not discharged within sixty (60) days.

7.2. Remedies. If an event of default, the non-defaulting party may immediately terminate this Agreement by written notice to the defaulting party and/or may pursue any other rights available to it in law or equity. The obligation of the defaulting party to pay any amounts due but unpaid as of the date of termination under this provision shall survive such termination.

**ARTICLE 8
MISCELLANEOUS 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, without regard to its conflicts of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

8.2. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Agreement.

8.3. Non-Discrimination. The Parties shall comply with State Executive Order No. 75-5, as amended by State Executive Order No. 2009-09, and all other applicable federal and state laws, rules and regulations relating to equal opportunity and non-discrimination, including the American with Disabilities Act.

8.4. Conflict of Interest. The Parties to this Agreement are hereby notified of A.R.S. § 38-511.

8.5. Permits. The Parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this Agreement, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding employment insurance, disability insurance and worker's compensation. This Agreement does not relieve either party from any obligation or responsibility imposed upon it by law.

8.6. No Employment. Neither Party shall be considered an officer, employee or agent of the other. No monitoring or supervisory responsibility over the other Party's activities arises on the part of the other arises or as a result of, or pursuant to, this Agreement other than as expressly provided herein.

8.7. Severability. The provisions of this Agreement are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the Agreement shall remain in effect.

8.8. Books, Records and Inspections. All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona and the AWBA for five (5) years after the completion of the Agreement. Such records shall be produced at such state offices as are designated by the State of Arizona and the AWBA.

8.9. Indemnification. Each Party to this Agreement is independently responsible in the event of its own negligence. Neither Party agrees to indemnify the other Party.

8.10. Resolution of Disputes. The Parties may pursue any remedy at law or equity, including but not limited to injunctive relief to enforce this Agreement. The remedy(ies) set forth herein are not exclusive and election of one remedy does not preclude the use of other remedies.

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

8.12. 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.

8.13. 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.

8.14. 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.

8.15. 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 existing as of the date of this Agreement.

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

AWBA:

For personal delivery: Manager
Arizona Water Banking Authority
1110 W. Washington St., Suite 310
Phoenix, AZ 85007

For U.S. Mail/email: Manager
Arizona Water Banking Authority
P.O. Box 36020
Phoenix, Arizona 85067-6020
voconnell@azwater.gov

CITY OF SURPRISE:

For U.S. Mail/email: Water Resource Management Director
City of Surprise
16000 N. Civic Center Plaza
Surprise, Arizona 85374

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, mailed or emailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

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

ARIZONA WATER BANKING AUTHORITY

By: _____
Thomas Buschatzke
Its: Chairperson

ATTEST: _____
Kathryn A. Sorensen
Secretary

CITY OF SURPRISE

By: _____
Sharon Wolcott
Its: Mayor

ATTEST: _____
Sherry Aguilar
City Council Clerk

APPROVED AS TO FORM:

Robert Wingo, City Attorney

EXHIBIT A
to
Purchase and Sale Agreement for Long Term Storage Credits

ADWR FACILITY PERMIT and ADWR WATER STORAGE PERMIT

Facility Name	ADWR Facility Permit No.	ADWR Water Storage Permit No.	ADWR Long-Term Storage Account No.	Credits (AF)	Water Source
Agua Fria Managed	71-569775.0006	73-569775.1100	70-441155.0000	3962.26	CAP
Agua Fria Constructed	71-569776.0007	73-569776.1100	70-441155.0000	1068.24	CAP
Tonopah Desert	71-5933005.0002	73-593305.1200	70-441155.0000	1324.57	CAP
Hieroglyphic Mountain	71-584466.0003	73-584466.0900	70-441155.0000	2727.17	CAP

EXHIBIT B
to
Purchase and Sale Agreement for Long Term Storage Credits

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

Agenda Number 10. Attachment 3

PURCHASE AND SALE AGREEMENT FOR LONG-TERM STORAGE CREDITS

This Purchase and Sale Agreement is made this 18 day of February, 2015, (the "Effective Date"), between the Arizona Water Banking Authority ("AWBA"), an authority established under Chapter 14, Title 45 of the Arizona Revised Statutes, added by Law 1996, Ch. 308, § 16, effective April 30, 1996, the City of Tucson ("Tucson"), a Charter City and political subdivision of the State of Arizona.

RECITALS

- A. The AWBA desires to purchase Long-Term Storage Credits developed by Tucson pursuant to Arizona Revised Statutes Title 45, Chapter 3.1, for the benefit of meeting the AWBA's storage goals.
- B. Tucson is willing to sell and transfer certain Long-Term Storage Credits to AWBA under the price, terms and conditions set forth herein.

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:

ARTICLE 1 DEFINITIONS

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

- 1.1 "ADWR" means the Arizona Department of Water Resources.
- 1.2 "Agreement" means this Purchase and Sale Agreement for Long-Term Storage Credits.
- 1.3 "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 the AWBA in that year as indicated in the Annual Notice submitted by AWBA to Tucson pursuant to Article 3.1 below.
- 1.4 "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 Article 2.3 below.
- 1.5 "AWBA" means the Arizona Water Banking Authority established by § 45-2421 or its successor

- 1.6 “Long-Term Storage Credit” is as defined in Arizona Revised Statutes § 45-802.01(11).
- 1.7 “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 3 below.
- 1.8 “Tucson” means the City of Tucson.
- 1.9 “Tucson's Long-Term Storage Account” means the account established pursuant to Arizona Revised Statutes § 45-852.01 in Tucson's name, account No. 70-411111.

**ARTICLE 2
PURCHASE OF LONG-TERM STORAGE CREDITS**

- 2.1 Sale and Purchase. Subject to the terms and conditions of this Agreement, beginning in 2015, and each year during the term of this Agreement, Tucson agrees to sell, transfer and assign and AWBA agrees to purchase, accept and pay for no more than 15,000 acre-feet of Long-Term Storage Credits. The total volume of Long-Term Storage Credits that Tucson agrees to sell and AWBA agrees to purchase during the term of this Agreement is no more than 45,000 acre-feet.
- 2.2 Annual Purchase Price. The Annual Purchase Price (“AP”) 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 Central Arizona Project published rate schedule. The Annual Purchase Price for the Long-Term Storage Credits to be transferred in 2015 shall be 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:

$AP = \{[(CAP \text{ Fixed OM\&R Delivery Charge}^* + CAP \text{ Pumping Energy Rate } 1^* + CAP \text{ M\&I Long-term Subcontract Capital Charges}^* + TW \text{ Facility Fee}) \times 1.07]\} \times \text{Annual Long-Term Storage Credit Volume for the applicable year, and:}$

where

AP = the Annual Purchase Price for Long-Term Storage Credits transferred in the applicable year;

TW Facility Fee=the Annual Facility Fee for AWBA Storage in Tucson Water Recharge Facilities, set at \$16.09 for 2015, which increases at the fixed rate of 3 percent per year.

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

- 2.3 Type of Water. 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.
- 2.4 Long-Term Storage Credits.
- 2.4.1 The Long-Term Storage Credits to be sold by Tucson are from Tucson's Long-Term Storage Account and shall be transferred to the AWBA's Account(s) subject to the terms and conditions of this Agreement.
- 2.4.2 The Long-Term Storage Credits to be transferred to AWBA must have been accrued by Tucson at underground storage facilities located in the Tucson Active Management Area.
- 2.4.3 The Long-Term Storage Credits to be sold by Tucson were accrued—or will be accrued—at the underground storage facilities under the ADWR Facility Permit and ADWR Storage Permits set forth on Exhibit A. The Parties acknowledge that Exhibit A may be amended from time to time during the term of this Agreement to reflect amendments to Tucson's existing underground storage facility permits or to add new permitted underground storage facilities. Tucson, in its sole discretion, may determine the origin of the Long-Term Storage Credits it wishes to transfer to AWBA in any particular year by specifying in writing the Facility Permit Number where the credits were accrued and the Water Storage Permit Number authorizing such storage.
- 2.4.4 The AWBA agrees that any Long Term Storage Credits acquired pursuant to this Agreement will be used by the AWBA for the purpose of meeting its statutory obligations to distribute said credits for the benefit of Arizona municipal and industrial (“M&I”) water users against future water shortages on the Colorado River and disruptions of operation of the Central Arizona Project, as established in A.R.S. Chapter 14, Title 45, and will not be sold to any third party.
- 2.4.5 Tucson agrees to work in good faith with the AWBA and the Central Arizona Project to recover and wheel AWBA supplies to other M&I water users who have “wheeling” or other arrangements with Tucson to store and deliver M&I water using Tucson infrastructure.

ARTICLE 3 TIME AND MANNER OF TRANSFER

- 3.1 Annual Notice. On or before February 15 of each year thereafter during the term of this Agreement, AWBA shall notify Tucson of the volume of Long-Term Storage Credits it desires to acquire from Tucson during such year (the "Annual Long-Term Storage Credit Volume")

- 3.2 Long-Term Storage Credit Transfer Form. On or before March 31, 2015, and on or before March 31 of each year thereafter during the term of this Agreement, Tucson and AWBA shall complete, sign and deliver 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. On or before March 31, 2015, and on or before March 31 of each year thereafter during the term of this Agreement, AWBA shall submit a fully executed Long-Term Storage Credit Transfer Form to ADWR.
- 3.3 Additional Actions and Documentation. AWBA shall pay any administrative fees established by ADWR to effectuate the transfer of Long-Term Storage Credits into AWBA's Account(s). 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.

ARTICLE 4 COMPLETION OF DELIVERY AND PAYMENT

- 4.1 Completion of Delivery. Delivery of the Annual Long-Term Storage Credit Volume for a particular year shall be deemed complete when ADWR notifies AWBA 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 Tucson's Long-Term Storage Account to AWBA's Account(s).
- 4.2 Payment. Each year during the term of this Agreement, within 30 (thirty) 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 AWBA Account(s), AWBA shall pay Tucson the Annual Purchase Price as calculated pursuant to Article 2.2 above. Provided however, each year during the term of this Agreement, AWBA shall pay Tucson the Annual Purchase Price no later than June 30 of the applicable year.
- 4.3 Non-availability of Funds. Every payment obligation of the State under this IGA is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of the IGA, this IGA may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

**ARTICLE 5
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 AWBA has paid for such Long-Term Storage Credits, AWBA 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 AWBA, Tucson shall refund an amount equal to the number of Long-Term Storage Credits affected by such rejection or invalidation times the Annual Purchase Price for such credits. Tucson shall refund such amount within 20 (twenty) business days after either AWBA or Tucson receives any notice of rejection or invalidation from ADWR. AWBA shall transfer and assign back to Tucson the number of credits affected by any such rejection or invalidation. Tucson's obligation to refund any payments under this Article 5 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 AWBA Account(s). The Parties' rights and obligations under this Article 5 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.

**ARTICLE 6
EFFECTIVE DATE AND TERM**

This Agreement shall be effective as of the date set forth in the introductory paragraph of this Agreement (the "Effective Date"). The initial term of this Agreement is three (3) years.

**ARTICLE 7
DEFAULT AND REMEDIES**

- 7.1 Default. The occurrence of any of the following events constitutes an event of default by a party to this Agreement:
- 7.1.1 The failure of either party to perform any term, covenant, or condition of this Agreement, if that failure continues for thirty (30) days following the receipt of written notice from the other party.
 - 7.1.2 (i) The filing by or against either party of a petition to have the party adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against a party, the same is dismissed within sixty (60) days; (ii) the making by a party of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the party's assets, when possession is not restored to the party within sixty (60) days; or (iv) the attachment, execution, or other judicial seizure of substantially all of a party's assets, where such seizure is not discharged within sixty (60) days.

7.2 Remedies. If an event of default occurs, the non-defaulting party may immediately terminate this Agreement by written notice to the defaulting party and/or may pursue any other rights available to it in law or equity. The obligation of the defaulting party to pay any amounts due but unpaid as of the date of termination under this provision shall survive such termination.

ARTICLE 8 MISCELLANEOUS 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, without regard to its conflicts of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

8.2 Tucson's Warranty of Title. Tucson 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. Tucson shall warrant and defend title against all persons claiming by or through Tucson and no other.

8.3 No Third Party Beneficiaries. This IGA is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this IGA.

8.4 Non-Discrimination. The Parties shall comply with State Executive Order No. 75-5, as amended by State Executive Order No. 2009-09, and all other applicable federal and state laws, rules and regulations relating to equal opportunity and non-discrimination, including the American with Disabilities Act.

8.5 Conflict of Interest. The Parties to this IGA are hereby notified of A.R.S. § 38-511.

8.6 Permits. The Parties shall obtain and maintain all licenses, permits and authority necessary to perform their obligations pursuant to this IGA, and shall comply with all applicable state, federal and local laws, including but not limited to those regarding employment insurance, disability insurance and worker's compensation. This IGA does not relieve either party from any obligation or responsibility imposed upon it by law.

8.7 No Employment. Neither Party shall be considered an officer, employee or agent of the other. No monitoring or supervisory responsibility over the other Party's activities arises on the part of the other arises or as a result of, or pursuant to, this IGA other than as expressly provided herein.

- 8.8 Severability. The provisions of this IGA are severable to the extent that if any provision is held unenforceable under applicable law, the remaining provisions of the IGA shall remain in effect.
- 8.9 Books, Records and Inspections. All books, accounts, reports, files and other records relating to this IGA shall be subject at all reasonable times to inspection and audit by the State of Arizona and the AWBA for five (5) years after the completion of the IGA. Such records shall be produced at such state offices as are designated by the State of Arizona and the AWBA.
- 8.10 Indemnification. Each Party to this IGA is independently responsible in the event of its own negligence. Neither Party agrees to indemnify the other Party.
- 8.11 Resolution of Disputes. The Parties shall attempt to resolve all claims, disputes, controversies, or other matters in question between the Parties arising out of, or relating to, this IGA (“Dispute”) promptly, equitably, and in a good faith manner. Any Dispute arising out of this Agreement is subject to arbitration to the extent required by A.R.S. § 12-133 and § 12-1518. The prevailing Party in such arbitration may seek enforcement of such award in any court of competent jurisdiction. Each Party agrees to submit to the jurisdiction of any such court solely for purposes of the enforcement of such arbitration decision and for no other purpose.
- 8.12 Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the parties hereto.
- 8.13 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.
- 8.14 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.
- 8.15 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.
- 8.16 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.

8.17 Notices. Except as otherwise required by law, any notice given in connection with this 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):

AWBA:

For delivery and U.S. Mail use:

Manager
Arizona Water Banking Authority
3550 N. Central Avenue, 2nd Floor
Phoenix, Arizona 85012

TUCSON:

For delivery and
for U.S. Mail use:

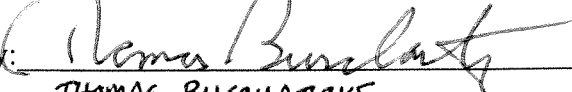
c/o Water Director
310 W. Alameda
Tucson, Arizona 85726-7210

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.

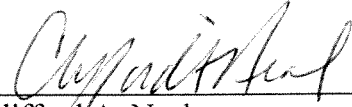
*[Remainder of This Page Intentionally Left Blank.
Signatures on Following Page]*

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

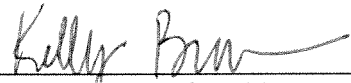
ARIZONA WATER BANKING AUTHORITY

By: 
THOMAS BUSCHATZKE

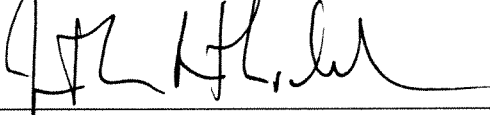
Its: Chairperson

ATTEST: 
Clifford A. Neal
Secretary

APPROVED AS TO FORM:

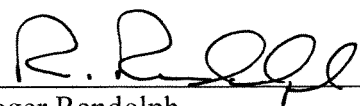

Deputy Counsel, AWBA

THE CITY OF TUCSON

By: 
Jonathan Rothschild

Date: February 18, 2015

Its: Mayor

ATTEST: 
Roger Randolph
City Clerk

Date: February 18, 2015

APPROVED AS TO FORM:


Principal Assistant City Attorney

EXHIBIT A to Exhibit A to Resolution No. 22351
to
Purchase and Sale Agreement for Long-Term Storage Credits

LONG-TERM STORAGE CREDITS

Facility Name	ADWR Facility Permit No.	ADWR Water Storage Permit No.	Credits (AF)	Year(s) Earned	Water Source
CAVSARP	71-591928.0001	73.591925.0000			CAP
SAVSARP	71-211276.0003	73.211276.0001			CAP

EXHIBIT B to Exhibit A to Resolution No. 22351
to
Purchase and Sale Agreement for Long Term Storage Credits

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:

Name of Buyer

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

Contact Person/Telephone Number

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

Mailing Address

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

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

Agenda Number 10. Attachment 4



MEMORANDUM

To: Doug Dunlap, CAWCD Finance & Accounting Manager

From: Virginia O'Connell, Manager

Subject: Transfer of Maricopa and Pima County *Ad valorem* Funds for Credit Purchase

Date: September 28, 2017

AUTHORITY MEMBERS
Thomas Buschatzke, Chairman
Ray L. Jones, Vice-chair
Kathryn A. Sorensen, Secretary
Pamela Pickard

EX OFFICIO MEMBERS
The Honorable Steve Yarbrough
The Honorable J. D. Mesnard

On March 18, 2015, the AWBA approved a three-year credit purchase agreement with the City of Tucson, effective February 18, 2015. The agreement allows for an annual determination of the purchase and sale of up to 15,000 acre-feet of long-term storage credits accrued by Tucson Water at its Clearwater facilities. For 2017, the final year of this agreement, the AWBA has agreed to purchase 12,570 acre-feet of credits accrued at the Southern Avra Valley Recharge Project (SAVSARP). Based on the Annual Purchase Price calculation described under Section 2.2 of the purchase and sale agreement, the total cost of the credits is \$2,852,320.29. The amount of the credits and the purchase price are consistent with the target amount identified in the AWBA's 2017 Annual Plan of Operation and the Pima County *ad valorem* tax monies reserved by the CAWCD Board for this purpose. A copy of the executed agreement was previously made available, but I am including it again for simplicity.

Additionally, at the AWBA meeting on September 20, 2017, the AWBA approved a one-time credit purchase agreement with the City of Surprise. The agreement is for the purchase of 9,082.24 acre-feet of CAP water credits for a total cost of \$2 million. As with the AWBA's agreement with the City of Tucson, the cost is the same as AWBA water delivery and storage costs and consistent with the targets identified in the AWBA 2017 Plan and within the amount of Maricopa County *ad valorem* tax monies reserved for this purpose. A copy of this agreement is also attached.

To complete these transactions, the AWBA is requesting that \$2,852,320.29 in Pima County *ad valorem* tax funds and \$2 million in Maricopa County tax funds be deposited to the corresponding subaccounts in the Arizona Water Banking Fund. I understand this transfer will first require an amendment to the 2017 four-cent *ad valorem* tax resolution by your Board and that it will be on the agenda for consideration at the October 5th Board meeting. The AWBA anticipates receiving an invoice from each party that same day, allowing the AWBA thirty (30) days for remittance.

If you have any questions regarding this request, please contact me at 602-771-8491.

Thank you.

cc: Scott Selin, ADWR Finance