

City of Phoenix Comments to Proposed Arizona Water Banking Authority (AWBA) Distribution of Long-Term Storage Credits (LTSC)

The City of Phoenix (“Phoenix”) appreciates the opportunity to provide comments to the Arizona Water Banking Authority (AWBA) proposed alternatives for distribution of long-term storage credits (LTSCs) to Central Arizona Project Municipal and Industrial (M&I) subcontractors pursuant to A.R.S. §§ 45-2401 *et seq.*

Alternative 1 (phased approach) is not consistent with the statutory intent or requirements applicable to the AWBA.

This approach proposes to limit distribution of credits based on a desire of the AWBA to extend the life of the AWBA and the available credits. The AWBA simply lacks statutory authority to do this. In the General Provisions relating to the creation and operation of the AWBA, the Legislature noted the temporary nature of the AWBA’s ability to use excess Colorado River water to accrue credits for the benefit of M&I subcontractors: “The legislature finds that this state is currently and *temporarily* underutilizing both the entitlement to Colorado river water ... and the central Arizona project” A.R.S. § 45-2401(A)(emphasis added). The Legislature also noted the likely need to utilize that stored water by acknowledging “the susceptibility of this state to future shortages” and the need to utilize protect the state and its citizens from “the threat to the general economy and welfare of this state.” *Id.* There is no mention in the statute of an intent or finding of the Legislature that the AWBA should exist permanently or maintain a balance in the AWBA account to extend its lifespan.

The AWBA Alternative 1 proposes to adopt an arbitrary method of LTSC distribution that is not based on the impacts of shortage in M&I subcontract supplies or even an evaluation of whether the arbitrary percentages chosen will alleviate impacts. The AWBA doesn’t cite a basis for making this arbitrary distribution percentage other than a desire to extend the credits. It is also inconsistent with the express charge in A.R.S. § 45-2457(B)(7):

The authority *shall distribute* these long-term storage credits to CAWCD or to CAWCD’s municipal and industrial subcontractors to the extent necessary to meet the demands CAWCD’s municipal and industrial subcontractors during times in which CAWCD’s diversions from the Colorado River have been or will be disrupted by shortages on the Colorado River or by disruptions in operation of the central Arizona project.

If the AWBA desires to limit distribution of LTSC during times of shortage to M&I subcontractors, it should identify its authority to do so.

Alternative 2 (incentive approach) is also not consistent with Arizona Revised Statutes.

After collecting a tax on residential properties and creating over one million acre-feet of LTSCs for the express benefit of M&I subcontractors for over 25 years, AWBA for the first time introduces a

completely new scheme for distribution of those credits that is inconsistent with state law. This alternative would not base distribution “to the extent necessary to meet the demands of CAWCD’s municipal and industrial subcontractors,” but would instead introduce new standards requiring municipalities to operate their utilities in a way that has the AWBA dictating the “acceptable” rates the utility should charge, the municipal ordinances a city council would be required to adopt and the specific conservation programs they should apply within their jurisdiction. This is a gross overreach. AWBA cites no basis for any of these proposals in statute or rule because there is none.

The appropriate authority over conservation is with the Arizona Department of Water Resources in the operation of its management plans. Those plans purport to determine the appropriate amount of conservation utilities and communities are required to implement. However, even to the extent a municipality is not in compliance with those conservation requirements, there is nothing in the AWBA’s authority to limit access to LTSCs that were purchased with taxes charged specifically to residents of those municipalities. The State of Arizona did not buy the excess water with General Fund appropriations, and based on the statute, the AWBA has no discretion on how to distribute the accrued LTSCs. See A.R.S. § 45-2457(D)(“*Except as provided by subsection B, paragraph 7 of this section ... the decision to distribute or extinguish any long-term storage credit accrued or purchased by the authority is at the complete discretion of the authority.*”)(emphasis added).

Phoenix appreciates the desire of the AWBA to be prudent with taxpayer resources and seek opportunities for conservation. However, it has no authority to distribute credits paid for by Phoenix residents in any other way than that dictated by Arizona Revised Statutes. Both alternatives presented during the meeting on April 11, 2023 fail to meet the requirements to distribute credits based solely on shortages to M&I subcontracts.