



Summary of AWBA Meeting¹ January 24, 2001

Opening Remarks

All members of the subcommittee were present.

Approval of Minutes of the December 12, 2000 Meeting

The subcommittee members approved the minutes with two changes.

Discussion Regarding Agreement for Interstate Water Banking

1. Tim Henley stated that staff received comments from a number of the Authority members. Rita Pearson Maguire suggested that the subcommittee review the comments and the summary of issues prepared by staff instead of reviewing the agreement line-by-line. Tim Henley utilized the issues summary to guide the discussion as follows; the information provided in the issues outline is not re-summarized here.

1. **AWBA retains ability to terminate contract; no specific reason stated.**

Mr. Henley stated that the term of the agreement needed to recognize the presence of long-term storage credits. Even though the AWBA may not be storing water and the storage provisions would not apply, the recovery and ICUA provisions will apply into the future. Consequently, the term of the agreement is when all the long-term storage credits had been recovered or through completion of recovery in the year 2050. Dick Walden questioned whether the agreement would still terminate in 2050 if all long-term storage credits had not been recovered. Ms. Pearson Maguire stated that having a termination date was probably more important than wondering what to do with long-term storage credits that may or may not be left over. Jim Davenport stated that Nevada agreed to the 2050 date.

Ms. Pearson Maguire stated that it would be appropriate for a *force majeure* provision to be included in the agreement to account for catastrophic events preventing the AWBA from fulfilling its obligation. Mr. Henley stated that a provision would be included. Mr. Davenport agreed that a *force majeure* provision was acceptable.

2. **Is there water available to do interstate banking without harming Arizona? Also, any agreement should be drafted to retain sufficient flexibility to allow for changes in Arizona's demand.**

¹Please note that these are not formal minutes but a summary of discussion and action of the meeting. Official minutes are prepared prior to the next Authority meeting and are approved at that meeting.

Tom Griffin stated that there is nothing in the agreement that explicitly states that Arizona's water users are taken care of first. Mike Pearce stated that this issue was already agreed to. Specifically, paragraph 2.1 describes how the AWBA would first meet Arizona's demand. A more specific statement regarding Arizona's priority could be included in 1.2.2. George Renner stated that the agreement should have a 'cover sheet' or recital that explained those statements of principals.

3. Is there some commitment to store water for interstate purposes in Pima County?

The AWBA creates an account for Nevada's credits but the account is not area specific nor does the agreement create location specific storage. The decision would be made annually by the AWBA regarding location and quantity of storage to be offered to Nevada. Mr. Walden stated that he liked the idea of retaining flexibility but he asked that consideration be given to Pima County. Mr. Henley stated that he envisioned the AWBA first deciding how intrastate banking would be completed. This would be described in the draft plan that would be presented to the public. Then, based on the draft plan the AWBA would go to Nevada and offer them the storage that remains. This may include a facility that would not have been utilized for intrastate banking and Nevada would decide to accept or decline.

Mr. Walden also wanted to confirm that Nevada pays the full recovery cost. Mr. Henley affirmed this. Bill Chase stated that the agreement is well structured for storage, but may create conflict during recovery particularly because Nevada will be recovering earlier than Arizona. Specifically, if entities within Arizona identify water stored in one location for intrastate purposes there may be political pressure to recover it only for intrastate uses. This may create additional recovery constraints.

4. How would risks associated with poor water quality upon recovery be addressed?

Nevada agreed to pay costs associated with ICUA. The question regarding water availability was raised. Ms. Pearson Maguire stated that she would like to make sure that the appropriate risks are passed on to Nevada and that the AWBA is not taking on obligations that it can't fulfill. She would like the AWBA to look at each of the provisions and make sure there is an appropriate balance. Mr. Chase stated he feels that the groundwater resources is taking the largest amount of risk, because once the ADWR makes a determination that a site is suitable for recharge the credits are issued. If the ADWR is incorrect in their hydrologic analysis and allow more credits than the site justified, there could be negative impacts to the groundwater basin. This could be mitigated in the agreement by including a statement that if, in the future, the determination is made that hydrologic studies were incorrect and credits should be reduced, that reduction would be proportionately passed on to Nevada.

Ms. Pearson Maguire noted that the subcommittee was identifying issues that must be addressed in some fashion, however, it needed to be recognized that some things are beyond the AWBA's control. Mr. Pearce stated that the AWBA is trying to translate water risk into a monetary risk and assign a portion of that monetary risk to Nevada.

5. What does Arizona do for Nevada in years that a shortage is declared on the Colorado River?

Mr. Renner inquired how the agreement fits in with the new California 4.4 Plan. Mr. Henley stated that it would work because shortages are not anticipated in the interim period. But, in the case that the Secretary would declare a shortage Nevada could get less than 300,000 AF and the provisions on ICUA during shortages might apply.

Ms. Maguire questioned whether this provision allows Nevada to recover only up to their 300,000 AF in a shortage year. Mr. Henley said it did, however, if Nevada had credits, they could request that those credits be delivered during a shortage year. Mr. Chase stated that he felt the 300,000 AF provision was overly restricted but was mitigated by the last sentence. He also stated that he felt this is a political issue. Mr. Walden asked if the 100,000 AF limit on reduction of diversions in any year applies in this paragraph. Mr. Henley confirmed it did and reiterated that it is per statute.

6. There should be no identification of “Nevada water” or long-term storage credits at any specific facility

There was no subcommittee discussion regarding this issue.

7. The AWBA needs to be able to protect Arizona’s interests by ceasing an interstate agreement if Nevada engages in activities that could harm Arizona

The AWBA can address this issue annually by not offering storage but once credits are developed, Nevada can ask that they be recovered. There was no subcommittee discussion regarding this issue.

Mr. Henley stated that, although Nevada has accepted the form of the agreement and most of the provisions, some wordsmithing needs to be completed and some effort needs to be made to insure that all necessary components were included. Specifically, Nevada would like to see the issue of their priority over California addressed in the agreement. Mr. Chase concurred with including this issue, however, Mr. Pearce did not. Ms. Pearson Maguire queried whether the AWBA could acknowledge a preference for Nevada based on agreements contained in the Interim Surplus Guidelines while recognizing that storage on behalf of California would not be precluded. Mr. Pearce stated that he felt it was not a good strategy for the AWBA to make this type of contractual commitment. The negotiation team will continue to address this issue and bring their response back to the AWBA.

Mr. Walden stated that he liked the way the Nevada step down provisions was included in the agreement.

Ms. Pearson Maguire had a concern regarding inclusion of language that stated that the AWBA would adopt a draft annual plan of operation by September 30th as this was not necessary to meet the contractual obligation of the interstate banking relationship. Mr. Henley stated that the phrase would be modified.

Mr. Renner questioned the manner in which the AWBA would solicit public comment. Ms. Pearson Maguire stated that since the AWBA and subcommittee had adhered to public meeting laws, there was no additional need to seek public comment. Mr. Renner replied that he had no objections to this and that, in his opinion, the AWBA may be within 90 days of an agreement. Mr. Davenport stated that he felt the agreement could be finalized at the March Authority meeting. Ms. Pearson Maguire replied that the subcommittee had the authority to move that staff present the agreement for approval at the March Authority meeting.

Mr. Renner stated that he did not want to be required to decide on final approval at the March meeting. Mr. Henley replied that the motion could be merely for staff to present the agreement for discussion and future action to the Authority at the March meeting. In essence, to move any further action or discussion on this agreement from the subcommittee to the Authority itself.

Mr. Renner moved that the subcommittee refer the agreement as modified today for full committee consideration at the Authority meeting on March 21st. Mr. Walden stated that there might be a way to inform the public at the Authority meeting and if necessary the Authority could meet in April. Ms. Maguire questioned whether Mr. Walden's statement was a modification of Mr. Renner's motion or just a comment. Mr. Walden confirmed that it was just a comment and not a modification. The motion was adopted.

Initial Discussion Regarding the Storage and Interstate Release

Mr. Henley stated that staff will now begin to focus on the Storage and Interstate Release Agreement which builds off of the two party agreement and that the timing was appropriate to initiate discussions with the Bureau of Reclamation. In his opinion, it would be beneficial for staff to have initial discussions regarding this agreement before any Authority action is taken on the two party agreement. Mr. Pearce added that staff utilized the federal rule in development of the draft agreement and that he felt it was in good form. In his opinion, it was most important to insure consistency between the agreements and that it should not take more than a few weeks to have a draft for review by the subcommittee or the Bureau. Mr. Chase stated he would prefer staff meet with the Bureau prior to presenting a draft to the subcommittee. He then asked whether the agreement would move through the subcommittee process or through the Authority. Ms. Pearson Maguire stated that the subcommittee would make that decision, however, her preference was for discussion to remain at the subcommittee level. A motion was made and approved that staff meet with the Bureau of Reclamation to discuss the Storage and Interstate Release Agreement.

Call to the Public

Mark Myers questions the term of the AWBA and whether it expired in 2016. He suggested that perhaps legislation should be sought to expand the term to 2050. Ms. Pearson Maguire asked Mr. Henley to research this issue and provide information to the AWBA. However, it was her belief that the 2016 date was only tied to funding sources for the AWBA.

The next AWBA meeting is scheduled for March 21, 2001. Ms. Pearson Maguire inquired whether another interstate water banking subcommittee meeting should be scheduled. Mr. Henley suggested that another subcommittee meeting should be contingent on staff meeting with the Bureau to discuss the Storage and Interstate Release Agreement and that February 28, 2001 could be a tentative date. Finally, Mr. Henley stated that the existing IGA with CAP required some examination and possible modification.

Adjournment

The meeting adjourned at 11:43 a.m.