

Arizona Water Banking Authority

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AUTHORITY MEMBERS

Herbert R. Guenther, Chairman
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EX OFFICIO MEMBERS

Honorable Steve Pierce
Honorable Kirk Adams

May 5, 2009

The Honorable Janice K. Brewer
Governor, State of Arizona
1700 West Washington Street
Phoenix, Arizona 85007

The Honorable Robert Burns
President, Arizona State Senate
1700 West Washington Street
Phoenix, Arizona 85007

The Honorable Kirk Adams
Speaker, Arizona House of Representatives
1700 West Washington Street
Phoenix, Arizona 85007

Dear Governor Brewer, President Burns, and Speaker Adams:

While we appreciate the fiscal challenges facing our State, the Arizona Water Banking Authority (AWBA) is very concerned about the impact of the fund transfers from the Arizona Water Banking Fund (Fund) in the current fiscal year, and strongly opposes the proposed additional legislative transfers of any monies from the Fund. We appreciate this opportunity to explain our concerns about the impacts of current fund transfers and our opposition to any additional transfers.

The AWBA is a five-member commission created by the Legislature in 1996 to store water for the benefit of Arizona water users in central Arizona (Maricopa, Pinal and Pima Counties), water users along the Colorado River and Indian communities. The AWBA is an entity separate and distinct from the Arizona Department of Water Resources (ADWR), created to store Arizona's unused Colorado River entitlement and to help ensure water supplies are available during times of shortage or disruptions of the Central Arizona Project (CAP) system. This storage is funded with withdrawal fees, and appropriations for both general and specific purposes. Water deliveries by the AWBA have been reduced as a result of legislative transfers, thereby increasing the impacts of shortages to water users in central Arizona and to communities along the Colorado River. See the enclosed list of the many Arizona water users that benefit from these storage activities.

In addition to the AWBA's other responsibilities, the Legislature designated the AWBA as the agent to carry out the State's obligations under the federal Arizona Water Settlements Act (Settlements Act), to which the State is a party. This includes an obligation to provide CAP water to Indian Communities during times of shortage, commonly referred to as a "firming

obligation". The Legislature, at that time, limited funding sources to the AWBA for this purpose to appropriations and the use of withdrawal fees. Failure to meet this "firming obligation" may create a risk for future litigation by the United States, or the Tribes, to enforce provisions of the Settlements Act. The beneficiaries of Indian water rights settlements are not the Tribes alone, but cities, towns, and other water users throughout the State.

The State, acting through the AWBA, also has a contractual obligation to provide 1.25 million acre-feet of water for Nevada. The Southern Nevada Water Authority (SNWA) has agreed to provide full funding for meeting this obligation. Under the contract, SNWA is required to make two payments to the AWBA, \$230 million and \$100 million. These payments cover the cost of delivering and storing CAP water and the risk to the State that an alternative source of water will have to be purchased to meet Arizona's guarantee under the contract. Until the obligation is met, transferring any of the \$100 million places the State at risk to being unable to meet the obligation. To date, approximately \$8.5 million from the original \$100 million SNWA payment has been transferred to the State's General Fund for uses other than the Nevada contract.

Besides the AWBA funding sources previously mentioned (withdrawal fees, general appropriations, and SNWA payments), the Central Arizona Water Conservation District (CAWCD) maintains accounts of funds collected through the levy of a 4-cent *ad valorem* tax in Maricopa, Pinal, and Pima Counties, the CAP service area. CAWCD utilizes these revenues to offset the cost of water to the AWBA so that it can store water for use by CAP municipal and industrial water users during times of shortage. As these funds are held by a special taxing district, transfers by the Legislature are constitutionally prohibited.

In FY 2009, the Legislature has transferred approximately \$25 million from the Arizona Water Banking Fund to the State's General Fund. Approximately \$17 million of this transfer directly affects the amount of water the AWBA can store for the benefit of Arizona users. Unfortunately, House Bill 2633 currently proposes the transfer of another \$7.9 million from the AWBA for FY 2010. Water not stored by the AWBA reduces the amount of water available to Arizona during times of shortage. The result has been that instead of storing water for the benefit of Arizona, AWBA stored water for the benefit of Nevada.

The AWBA is aware that some of the past legislative transfers of funds from the AWBA have been used to partially fund the ADWR budget. Since the AWBA is independent from ADWR, we do not support the use of AWBA funds for that purpose and strongly believe that it places water users in this State at unnecessary risk. However, we also recognize the importance of ADWR and the activities that are mutually beneficial to both our organizations. These activities allow the AWBA to meet its individual obligations. We believe that the statewide importance and critical nature of ADWR's operations and work warrant funding sufficient to meet their obligations and urge your favorable consideration of establishing such a base funding level. This base funding level should not rely on the transfer of AWBA funds.

Recently, you were provided documents suggesting that the Arizona Water Banking Fund be used to supplement the General Fund and to offset potential cuts in the ADWR appropriations. Those documents were prepared by ADWR, with no input from the AWBA Commission

members. We were disappointed in not participating in those documents and hope that this letter clarifies our position with regard to the risks of using AWBA funds to offset ADWR cuts.

As budget discussions continue, we hope that you, your colleagues and staff will feel free to communicate directly with AWBA Commission members and staff to fully understand the ramifications of transferring AWBA funds. The AWBA is willing and ready to provide the information or data needed to facilitate these discussions. We look forward to working with you to address the immediate fiscal challenges facing our State, and developing a plan on how the funds that have already been transferred could be returned to the AWBA as the State's fiscal condition improves in the future.

Sincerely,

[Recused]
Herbert R. Guenther
Chairman

Maureen R. George
Maureen R. George
Vice-Chairman

Tom Buschatzke
Tom Buschatzke
Secretary

John Mawhinney
John Mawhinney
Commission Member

Lisa A. Atkins
Lisa A. Atkins
Commission Member

Enclosure

cc: Members, Arizona State Senate
Members, Arizona House of Representatives
AWBA Authority Members
Arizona Department of Water Resources
Central Arizona Water Conservation District

Arizona Entities that Benefit from Arizona Water Banking Authority Storage Activities

Arizona State Land Department	Community Water Company (Green Valley)
Arizona State Parks	Flowing Wells Irrigation District
Arizona Water Company	Freeport MacMoRan (former Phelps Dodge, Inc.)
Arizona-American Water Company	Golden Shores Water Conservation District
ASARCO Incorporated (Ray Mine)	Green Valley Domestic Water Improvement District
AVRA Water Co-op, Inc.	Hohokam Irrigation District
Bullhead City	Lake Havasu City
Carefree Water Co.	Maricopa County Parks & Recreation
Cave Creek Water Co.	Maricopa-Stanfield Irrigation & Drainage District
Central Arizona Irrigation & Drainage District	Metropolitan Domestic Water Improvement District
Central Arizona Water Conservation District (for Central Arizona Groundwater Replenishment District)	Mohave County Water Authority
Chandler Heights Citrus Irrigation District	Mohave Valley Irrigation and Drainage District
Chaparral City Water Co.	Phoenix Memorial Park
Circle City Water Co.	Pine Water Company
City of Avondale	Queen Creek Water Co.
City of Chandler	Rio Verde Utilities, Inc.
City of El Mirage	San Tan Irrigation District
City of Eloy	Spanish Trail Water Co.
City of Glendale	Town of Buckeye
City of Goodyear	Town of Florence
City of Mesa	Town of Gilbert
City of Peoria	Town of Marana
City of Phoenix	Town of Oro Valley
City of Scottsdale	Town of Parker
City of Surprise	Town of Quartzite
	Town of Superior