

ARIZONA WATER BANKING AUTHORITY

INTERSTATE WATER BANKING REPORT
Fiscal Year 2009



Submitted

October 1, 2009

Interstate Water Banking Report Requirement

Section 2473 to Title 45, Chapter 14, Article 4 directs the Arizona Water Banking Authority (AWBA) to submit a report about interstate water banking to the Joint Legislative Budget Committee on or before October 1 of each year for the previous fiscal year. This report contains information for fiscal year 2009.

The report requires an accounting report of the AWBA's interstate water banking activities with the State of Nevada, including the Southern Nevada Water Authority (SNWA), and includes the following:

1. An accounting of all monies received through the Interstate Water Banking Agreement (Agreement) with the (SNWA).
2. An accounting of all disbursements made with interstate monies, including monies used to purchase or store water.
3. An accounting of any prepaid monies to the Central Arizona Water Conservation District (CAWCD).
4. An accounting of any monies received under the Agreement that are placed in an account with the State Treasurer.
5. Any contract that obligates the AWBA to pay or disburse monies to any other entity, including the CAWCD.

Section 2473 directs that the AWBA may only use the monies received pursuant to an interstate water banking agreement to pay the costs directly incurred in meeting the interstate water banking obligations.

BACKGROUND

The “Law of the River” is comprised of federal and state statutes, interstate compacts, court decisions and decrees, contracts with the United States, an international treaty, operating criteria and administrative decisions concerning the Colorado River. Together, these have resulted in a division of the waters of the Colorado River among the various states and their water users. Over the past several years, the seven states that utilize the Colorado River (the Basin states) have had discussions over various issues and the majority of the issues have been resolved via negotiation instead of litigation. Currently, the issue facing the Basin states is drought and the potential impact to river operations and water supply. Because Arizona is the most junior user on the river, it is important for the state to take steps to protect the Colorado River water supply for Arizona water users.

The 2006 U.S. Supreme Court Consolidated Decree in *Arizona v. California*, confirmed the allocation of water to the three states of the Lower Colorado River basin. This allocation is 4.4 million acre-feet (maf) to California, 2.8 maf to Arizona and 300,000 acre-feet to Nevada.

Agreement for Interstate Water Banking

On July 3, 2001, the Agreement for Interstate Water Banking (2001 Agreement) among the AWBA, the Southern Nevada Water Authority (SNWA) and the Colorado River Commission of Nevada (CRCN) was executed¹. In the 2001 Agreement, the AWBA agreed to use its “best efforts” to store water in Arizona in an amount sufficient to develop an aggregate total of 1.25 million acre-feet of long-term storage credits. Those credits would then be recovered to develop Intentionally Created Unused Apportionment (ICUA) for Nevada as a temporary supply of water to allow Nevada time to develop other long-term water supplies. The 2001 Agreement contained specific provisions to insure that any water stored for Nevada was water that could not be utilized by water users in Arizona. Nevada would pay the full cost of water delivery and storage in addition to all costs associated with recovery of the long-term storage credits.

In 2004, Nevada began exploring alternative ways to meet their water supply needs and approached Arizona with a proposal to amend the 2001 Agreement in such a manner that Nevada’s water supply could be made more secure in the shorter term. The AWBA began negotiations regarding amendments to the original agreement with SNWA and CAWCD staff.

Amended Agreement for Interstate Water Banking

The intent of the amendments was to assure Nevada access to the full 1.25 million acre-feet anticipated under the 2001 Agreement. For this access, Nevada would continue to bear the full cost of storing excess CAP water and later recovering that water. Nevada would also provide \$100 million to the State of Arizona to ensure that Arizona could acquire additional water resources if conditions warranted.

In summary, the amendments negotiated were as follows: (1) guaranteed Nevada a total of 1.25 million acre-feet of credits; (2) recognized that water other than Colorado River water may be the source of credits; (3) Nevada would pay the full cost of delivery, storage and recovery in addition

¹ For purposes of this discussion, the SNWA and the CRCN will be collectively referred to as “Nevada”.

to the \$100 million to mitigate the risk of the guarantee; (4) identified a set schedule for recovery of long-term storage credits; and (5) a sufficient supply of credits would be recovered to allow Nevada to use up to 340,000 acre-feet during a declared shortage on the Colorado River. The Amended Agreement for Interstate Water Banking (Amended Agreement) was approved by the AWBA Commission on December 9, 2004 and executed on February 3, 2005.

The two most significant provisions of the Amended Agreement are that Arizona has now guaranteed Nevada that a sum total of 1.25 million acre-feet of credits will be developed on their behalf. In exchange for this guarantee, Nevada agreed to pay Arizona \$100 million above the actual cost of water delivery and storage. The initial \$100 million dollar payment was made in two installments in 2005, and deposited in a Resource Account of the AWBA Fund .

The AWBA began storing water pursuant to the Amended Agreement in 2005, under a provision recognizing that the AWBA may store water on behalf of SNWA prior to the commencement of scheduled payments, using a loan from the Resource Account. The Annual Report published by the AWBA in July of each year, for the previous calendar year, details the amount of interstate water stored and long-term storage credits accrued by the AWBA. The Amended Agreement provides a temporary water supply for Nevada allowing time for development of other non-Colorado River resources and it provides Arizona additional flexibility to achieve its long-term water management goals.

The loans from the Resource Account, has allowed the AWBA to take advantage of the available water supply and store water on Nevada's behalf. Credits accrued by Nevada through the end of calendar year 2008 totaled 527,520 acre-feet (AWBA Annual Report 2008, Table 4). No water was stored on behalf of Nevada in calendar year 2008 due to limited water availability. (Note: the total volume of interstate credits accrued through calendar year 2007 has increased by 73 acre-feet from the volume previously reported, 527,447 acre-feet, due to an adjustment following final confirmation by ADWR).

In January, 2009, the AWBA held a special meeting in response to a request from SNWA for the opportunity to discuss potential changes to the Amended Agreement. The type of modifications discussed focused on creating flexibility in the interstate operations and included allowing changes to the schedule dates and period, dates of water recovery, and coordination schedules in forecasting water storage and recovery. The AWBA agreed that conditions had changed since the Amended Agreement was executed and agreed to toll the performance dates for a period of 90 days to allow time for both state parties to work on permanent modifications to the Amended Agreement.

Second Amended Agreement for Interstate Water Banking

On April 1, 2009, the AWBA approved and executed the Second Amended Agreement for Interstate Water Banking (Second Amended Agreement; Interstate Agreement). While the Second Amended Agreement does provide flexibility in administering the contract, it did not change provisions requiring Nevada to pay the full cost of storage and recovery or Arizona's obligation to create 1.25 million acre-feet of long-term storage credits.

The AWBA Plan of Operation for 2009 approved in December, 2008 did not include storing water for Nevada because of limited water availability. Pursuant to the Second Amended Agreement and because no water was scheduled to be stored in 2009, Nevada requested that the initial

payment of \$23 million to the Operating Account be delayed. The intent of the Operating Account is to pay for the delivery and storage of water (see description of Operating Account in section entitled Interstate Accounting).

Recognizing that additional water became available to the AWBA in March, 2009, the AWBA amended its Annual Plan of Operation for 2009 to include storage for Nevada. The AWBA notified SNWA of this fact in a letter agreement executed with SNWA that approved a modification to the payment schedule. In the letter agreement, SNWA was notified that a partial payment to the Operating Account would be required to pay the cost of delivery and storage of the new water supplies that became available for interstate banking.

Presently, an estimated 25,000 acre-feet of interstate water are forecasted to be delivered during the 2009 calendar year (AWBA Annual Plan of Operation 2009, Amended Table 2). The AWBA will have an estimated, cumulative total of 550,770 acre-feet of credits stored on behalf of Nevada by the end of calendar year 2009. These credits amount to about 44% of the total 1.25 million acre-feet of water storage guaranteed to Nevada. Although this interstate report is based on fiscal year accounting, the AWBA operates on a calendar year. The AWBA approves a Plan of Operation for the entire year through the end of 2009; thus, the credits are estimated through the end of 2009.

Benefits to Arizona

Our Interstate Agreement with Nevada provides an opportunity for the State of Arizona to secure numerous benefits for Arizona water users. Current projections indicate excess water within Arizona's 2.8 million acre-foot entitlement will be available for storage in the future. Without interstate banking, the AWBA does not have sufficient in-state funding to store the quantities of excess CAP water currently projected to be available. Interstate water banking is a mechanism that can maximize Arizona's utilization of its 2.8 million acre-foot entitlement.

The Interstate Agreement also provides additional financial resources that could be used to develop alternative water supplies. Additionally, water stored for interstate purposes provides revenues for the Arizona Water Protection Fund, which is the sole state funding source for riparian protection in Arizona. Furthermore, the water that Nevada may recover has and will help facilitate the full development of recovery arrangements for Arizona water users. Most importantly, the Interstate Agreement helps strengthen Arizona's interstate relationship with Nevada. A strong relationship is critical as the seven Basin states continue discussions regarding the drought and shortages on the Colorado River.

INTERSTATE ACCOUNTING

Pursuant to the Second Amended Agreement, funds are to be received by the AWBA from the SNWA in two ways:

1. \$100 million will be used to guarantee that AWBA can meet the terms of the Interstate Agreement. This amount is intended to be the “insurance” payment to be used to develop alternative water resources to meet obligations to Nevada. Any alternative water supplies developed under the Second Interstate Agreement that are not needed to meet the Nevada obligation would be available for Arizona water users. This payment was made upon request in two installments in June, 2005 and October, 2005 and deposited into a “Resource Account”. If the \$100 million is not needed as “insurance” then it continues to be available to Arizona for whatever purpose deemed appropriate.
2. \$230 million was scheduled to be paid in 10 annual payments of \$23 million beginning in 2009 and deposited into an “Operating Account”. Money in the Operating Account will be used to pay CAWCD for the cost of water delivery and to pay facility operators for storage. The Second Amended Agreement now recognizes additional flexibility in operations. The AWBA and SNWA executed a letter agreement on April 2, 2009 approving a modification to the payment schedule for 2009 given the availability of excess CAP water.

The total quantity of interstate storage is dynamic from year to year, but cannot exceed a quantity that would result in more than 200,000 acre-feet of long-term storage credits in any year pursuant to the Storage and Interstate Release Agreement (SIRA) among the Secretary of the Interior, the AWBA, the SNWA and CRCN. As stated above, \$100 million was received from Nevada in two installments in 2005 and deposited in a subaccount with the Arizona State Treasury. In fiscal year 2009, the AWBA did not receive any additional funds from SNWA for the delivery and storage of water pursuant to the Interstate Agreement.

On February 1, 2009, Governor Brewer signed into law Senate Bill 1001 that addressed budget reductions and transfers for FY 2009. The total legislative transfer from the Arizona Water Banking Fund was \$12.7¹ million. As a result of Senate Bill 1001, \$8.57 million of the total reduction was transferred from the Nevada Resource Account (see Interstate Accounting FY 2009 table).

It is important to note that although this report is based on fiscal year accounting, the AWBA operates on a calendar year. A.R.S. § 45-2456 requires by January 1 of each year, the AWBA shall adopt a Plan of Operation for that calendar year. Along with adoption of the annual Plan of Operation, funds are committed for the purchase, delivery, and storage of water for that calendar year.

¹ SB 1001 signed February 1, 2009 specifically identified \$12.6 million to be transferred from the Arizona Water Banking Fund [Sec. 4(A)(47) \$9,196,600; Sec. 5(A)(36) \$387,300; Sec. 14 \$3,000,000]. An additional transfer of \$130,700 was identified by JLBC in March, 2009 pursuant to SB 1001 [Sec. 7]. Total legislative transfer from the Arizona Water Banking Fund pursuant to SB 1001 was \$12,714,600.

INTERSTATE ACCOUNTING - Fiscal Year 2009

Interstate Accounts	Beginning Balance FY 2009	\$ Received from NV¹	Disbursements²	Prepayment Forwarded to CAWCD³	AZ State Treasury End of FY Balance⁴	\$ Committed for AWBA CY Plan of Operation⁵
Resource	\$18,936,271	- 0 -	\$8,564,916	- 0 -	\$10,715,149 ⁶	- 0 -
Operating	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	\$2,685,000

¹Initial payment of \$100 million deposited into a "Resource Account" in 2005. Ten subsequent payments of \$23 million were scheduled to begin annually in 2009 to be deposited into an "Operating Account" (see Interstate Accounting section for description of payment modification).

²Monies disbursed from "Resource Account" at Arizona State Treasurer's Office as a consequence of SB 1001 signed February 1, 2009. No monies were disbursed for the purchase and storage of water.

³Prepaid monies forwarded to CAWCD for delivery and storage of water on behalf of SNWA.

⁴End of fiscal year balance, including accrued interest, in subaccount at Arizona State Treasurer's Office.

⁵Monies committed for purchase of deliveries and storage of interstate water for remainder of the calendar year. Monies in the Operating Account to be received in FY 2010.

⁶SB 1188 and HB 2643 ("Trailer bill" making revisions to SB 1188) signed July 1, 2009 transferred an additional \$5.4 million from the Resource Account; this transfer will be reflected in the FY 2010 report to JLBC.