



# Arizona State Senate Issue Brief

November 10, 2022

## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Issue Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Nothing in the Brief should be used to draw conclusions on the legality of an issue.

## ARIZONA WATER BANKING AUTHORITY

### INTRODUCTION

The Arizona Water Banking Authority (AWBA) was created in 1996 to complement the management efforts of Colorado River water in Arizona (Laws 1996, Chapter 308). Prior to the creation of the AWBA, Arizona was underutilizing its full 2.8 million acre-foot<sup>1</sup> share of water from the Colorado River. As part of its original statutory purpose, the AWBA is required to coordinate and confer with other entities to bank, or store, the unused portion of Colorado River water to meet its contractual and statutory obligations.<sup>2</sup>

The AWBA stores Central Arizona Project (CAP) water to protect Arizona municipal and industrial (M&I) water users against future water shortages on the Colorado River and against disruptions in canal operations. The AWBA, through its Commission, is required to firm water supplies for those users and purposes. To achieve this, the AWBA annually pays the delivery and storage costs to bring water into the Central Arizona Water Conservation District's (CAWCD)<sup>3</sup> three county service area (Maricopa, Pinal and Pima). The water is stored in underground aquifers using underground storage facilities or is used by irrigation districts in lieu of pumping groundwater through groundwater savings facilities. Regardless of the storage method, long-term storage credits (LTSCs) accrue and are held in accounts administered by the Arizona Department of Water Resources (ADWR).<sup>4</sup>

The AWBA is governed by a five-member Commission consisting of: 1) three members appointed by the Governor based upon specified statutory criteria; 2) the President of the CAWCD or their designee; and 3) the ADWR Director, who serves as

<sup>1</sup> Water volume is measured in acre-feet. An acre-foot is approximately 325,851 gallons; the volume covering one acre of land to the depth of one foot. An acre-foot can supply the household needs of two, four-person families for one year.

<sup>2</sup> [AWBA: Annual Plan of Operation 2010](#)

<sup>3</sup> The CAWCD is a tax-levying public improvement district of the state that manages and operates the Central Arizona Project canal.

<sup>4</sup> [AWBA: Introduction](#), [AWBA: Water Bank Storage Facilities](#) and [AWBA: What is Recharge](#)

chairperson. The President of the Senate and the Speaker of the House of Representatives, or their respective designees, also serve on the Commission as nonvoting, ex-officio.<sup>5</sup>

The AWBA is required to: 1) publish an annual report of its previous year's transactions and proceedings by July 1; 2) publish an annual Plan of Operation by January 1 that governs its operations over the course of that calendar year; and 3) prepare a 10-Year Plan that details projected water banking activities.<sup>6</sup>

### **AWBA FUNDING**

The ADWR Director is authorized to levy an annual groundwater pumping fee in the Phoenix, Pinal and Tucson Active Management Areas (AMAs)<sup>7</sup> for intrastate water banking purposes. The monies must be used to benefit the AMA in which they were collected and deposited into the respective county subaccounts of the Water Banking Fund.<sup>8</sup>

In addition to withdrawal fees, the AWBA may receive monies derived from an ad valorem property tax collected by the CAWCD in its three county service areas ([A.R.S. § 48-3715.03](#)). The CAWCD is authorized to levy up to a maximum of \$0.04 per \$100 of assessed valuation through December 31, 2030, and beginning January 1, 2031, up to \$0.03 per \$100 of assessed valuation through December 31, 2035. The CAWCD is required to annually determine by resolution the amount of tax to be levied.<sup>9</sup>

The AWBA may also receive state General Fund appropriations at the discretion of the Legislature.

<sup>5</sup> [AWBA Commission](#)

<sup>6</sup> [A.R.S. § 45-2421](#)

<sup>7</sup> The Arizona Groundwater Code designates five Active Management Areas (Phoenix, Prescott, Pinal, Santa Cruz, and Tucson) where there is a heavy reliance on mined groundwater. Each AMA has management requirements relating to the pumping and use of groundwater, including a series of increased water conservation phases over the course of specified time periods. ([A.R.S. § 45-611](#)).

<sup>8</sup> [A.R.S. § 45-613](#)

<sup>9</sup> [A.R.S. §§ 48-3715.03](#) and [48-3715.02](#)

### **RELATIONSHIP WITH ADWR AND CAWCD**

Although ADWR is required to provide administrative, technical and legal support to the AWBA, the AWBA is a state agency unto itself and, accordingly, its finances and operations are separate and distinct from those of ADWR. An administrative subaccount of the Water Banking Fund, funded by interest earnings, is used to reimburse ADWR for AWBA positions and other administrative services provided.

Additionally, the AWBA coordinates with CAWCD for technical support needs, as well as the purchase, delivery and storage of Colorado River water delivered through the canal. Like ADWR, CAWCD is reimbursed for those services requested by the AWBA.<sup>10</sup>

### **ACCESS TO EXCESS CAP WATER**

The AWBA traditionally has purchased CAP water when excess supplies are available. Excess CAP supplies may exist once CAWCD has fulfilled water demand obligations for its higher priority users. The U.S. Secretary of the Interior's 1983 Record of Decision (Decision) outlined a priority system for the allocation of CAP water based on the following four classes of water: 1) M&I; 2) Indian; 3) non-Indian agriculture (NIA); and 4) miscellaneous. The Decision specified that in times of shortage, miscellaneous uses would be eliminated first, followed by NIA uses. Excess CAP water is the most junior priority within the CAP water priority hierarchy and, as such, it will be the first supply to be reduced if a shortage is declared on the Colorado River.<sup>11</sup>

The CAWCD has water contracts with municipal users, irrigation districts, Indian tribes and private water companies that have a higher priority to receive CAP water than the AWBA.

In 2010, the Legislature clarified AWBA's participation in two potential pools of excess

<sup>10</sup> [A.R.S. §§ 45-2424; 45-2425; and 45-2423](#)

<sup>11</sup> [ROD-03-1983: CAP Water Allocation](#)

water made available by the CAWCD for intrastate and interstate water banking purposes ([Laws 2010, Chapter 168](#)). The legislation specified that the first pool made available by CAWCD would be used to meet AWBA's intrastate water obligations. This does not change AWBA's existing authority to store CAP water for interstate banking purposes. Additionally, the second pool would be created from the acquisition of new CAP water using AWBA interstate funds.<sup>12</sup>

### **INDIAN FIRMING**

In 2004, President Bush signed the Arizona Water Settlements Act (Settlements Act) which resolved several Indian water rights claims in Arizona.<sup>13</sup> The Legislature subsequently enacted a series of bills from 2005 through 2007 to implement the Settlements Act and further defined Arizona's rights and obligations under federal law.<sup>14</sup> The AWBA, in cooperation with ADWR and CAWCD, is the State of Arizona's agent for meeting Indian firming obligations.<sup>15</sup>

The Settlements Act recognizes three categories where the state has firming responsibilities. The first two obligations pertain to firming of NIA Priority CAP water for the Gila River Indian Community and other Arizona tribes in times of shortage for a 100-year period and the third pertains to providing assistance to the Secretary of the Interior in carrying out obligations of the Southern Arizona Water Rights Settlement Act (completed in 2012).

Because there are outstanding water rights claims and ongoing negotiations with other Arizona tribes, the AWBA could incur additional future firming responsibilities beyond those identified in the Settlements Act.

The AWBA is authorized to use General Fund appropriations and withdrawal fees to

satisfy the State's firming commitment.<sup>16</sup> Although there is currently no dedicated funding source for Indian firming, the Legislature allowed the AWBA to purchase LTSCs, including for the purpose of Indian firming, if excess CAP water has been stored or is otherwise unavailable.<sup>17</sup>

### **INTERSTATE BANKING AGREEMENT WITH NEVADA**

The AWBA is authorized to enter into interstate water banking agreements with California and Nevada to assist those states in meeting future water needs.<sup>18</sup> The AWBA, on behalf of the state, cannot enter into an interstate banking agreement without the consent of the ADWR Director and at least two AWBA Commissioners who have voting authority.

Arizona entered into an interstate water storage agreement with Nevada in 2001 and began storing water in 2005. The parties include the AWBA, the Southern Nevada Water Authority (SNWA) and the Colorado River Commission of Nevada.<sup>19</sup>

Although the agreement has been amended several times, the current iteration states that storage for interstate purposes will be determined by the parties on an annual basis and may include the storage of Nevada's unused apportionment. Storage will be paid for by Nevada on a pay-as-you-go basis.<sup>20</sup>

<sup>12</sup> [Laws 2010, Chapter 168](#); [A.R.S. § 45-2427](#)

<sup>13</sup> [P.L. 108-451, 108th Congress, 2004](#)

<sup>14</sup> [Laws 2005, Chapter 143](#); [Laws 2006, Chapter 114](#); [Laws 2007, Chapter 249](#); [Laws 2007, Chapter 286](#)

<sup>15</sup> [AWBA: Tribal Firming Program](#)

<sup>16</sup> [Laws 2006, Chapter 114](#)

<sup>17</sup> [Laws 2014, Chapter 126](#)

<sup>18</sup> [A.R.S. Title 45, Ch. 14, art. 4](#)

<sup>19</sup> [2001 Water Agreement](#)

<sup>20</sup> [AWBA Interstate Banking](#)

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***ADDITIONAL RESOURCES***

- Arizona Water Banking Authority  
3550 N. Central Avenue, 2<sup>nd</sup> Floor  
Phoenix, Arizona 85012  
Phone: (602) 771-8487  
<http://www.azwaterbank.gov/awba>  
[Plans & Reports](#)
- Arizona Department of Water Resources  
3550 N. Central Avenue, 2<sup>nd</sup> Floor  
Phoenix, Arizona 85012  
Phone: (602) 771-8426  
[www.azwater.gov/](http://www.azwater.gov/)
- Arizona Water Banking Authority Statutes:  
[A.R.S. Title 45, Chapter 14](#)
- Multi-County Water Conservation  
Districts: [A.R.S. Title 48, Chapter 22](#)
- [Arizona Water Banking Authority Storage and Interstate Release Agreement](#)