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**MEETING DATE:** February 7, 2013

**AGENDA ITEM:** Discussion and Consideration of Action Regarding NIA Priority Water Reallocation

**RECOMMENDATION:**

Staff recommends that the Board approve Non-Indian Agricultural Priority Water acquisition price components for 9d Debt, Back Capital Charges and Back Property Tax Equivalency, a five-year payment plan and appropriate credits for facility use charges.

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**FINANCIAL IMPLICATIONS:**

The reallocation of NIA water will result in certain proceeds to CAP. The first phase will generate proceeds in 2014-2019. Proceeds related to 9d Debt will be deposited into a stand-alone sinking fund to service the 9d Debt obligation that has been assumed by CAP. Proceeds related to the Back Property Tax Equivalency will only occur if an allocation is approved outside the CAP service area, which is not anticipated until 2021. Proceeds related to Back Capital Charges will be deposited in the CAP General Fund Strategic Reserves. These proceeds have been incorporated into CAP's Strategic Reserve forecast. Due to the recent decision by the Arizona Department of Water Resources to defer 17,333 acre-feet from the first phase of the NIA allocation (2013) to the subsequent phase (2021), CAP's reserve forecast for 2014-2019 will be reduced by approximately \$16 million.

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**LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:**

- 2010 CAWCD Strategic Plan
- Water Supply: Prepare for CAP NIA Reallocation

**PREVIOUS BOARD ACTION/ACTIVITY:**

February 2012 – Work/Study – Revenues, Reserves and Rates

April 2012 – Customer Rate Workshop and Finance, Audit and Power Committee

May 2012 – Regular Board Meeting

December 2012 – Regular Board Meeting

January 2013 – CAGR Committee Meeting

**ISSUE SUMMARY/DESCRIPTION:**

HISTORY – The Arizona Water Settlements Act of 2004 ("Settlements Act") was enacted on December 10, 2004. The Settlements Act ratified the Arizona Water Settlement Agreement ("Agreement") between CAWCD, the United States and the Arizona Department of Water Resources ("ADWR"), which made available CAP Non-Indian agricultural priority water ("NIA Priority Water") for reallocation by the Secretary of the Interior. Among other things, the Settlements Act and the Agreement required the Secretary of the Interior to reallocate 96,295 acre-feet ("AF") of NIA Priority Water to ADWR to be held in trust for further reallocation to non-Indian municipal and industrial users in Arizona.<sup>1</sup>

The Settlements Act and the Agreement required ADWR to submit to the Secretary of the Interior ("Secretary") a recommendation for reallocation of the 96,295 AF of NIA Priority Water. The Agreement also required ADWR to develop eligibility criteria and make such NIA Priority Water available for reallocation to non-Indian M&I users in Arizona "at periodic intervals, starting in 2010".<sup>2</sup> On August 25, 2006, the Secretary issued a Record of Decision reallocating 96,295 AF of NIA Priority Water to ADWR, which provided that "before the water may be further allocated, the Director of ADWR shall submit to the Secretary of the Interior a recommendation for reallocation."<sup>3</sup>

Last October, ADWR released its draft Proposed Process and Evaluation Criteria for the reallocation of this NIA Priority Water. At the same time, CAWCD developed proposed pricing methodology and components for the acquisition of this NIA Priority Water and Reclamation drafted a process for reviewing ADWR's recommendation for reallocation. A public meeting was held on October 2, 2012 to present the background of ADWR's proposed process for reallocation, CAWCD's pricing methodology and Reclamation's review process. Public comments were accepted by ADWR through November 9, 2012. All written comments are compiled and available on ADWR's website, [www.azwater.gov/](http://www.azwater.gov/). CAWCD submitted written comments to ADWR on its proposed reallocation process.

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<sup>1</sup> Settlements Act § 104(a)(2)(A) and Paragraph 9.3 of the Agreement.

<sup>2</sup> Paragraph 9.3.4 of the Agreement.

<sup>3</sup> *Notice of Modification to the Secretary of the Interior's Record of Decision, Publication of a Final Decision of CAP Water Reallocation*, 71 Fed. Reg. 50449, 50451 (August 25, 2006).

ADWR'S PROPOSED STRUCTURE OF REALLOCATION – ADWR proposes to reallocate the NIA Priority Water in phases, with the first phase in 2013, the second phase in 2021 and, if necessary, a third phase in 2030. Further, ADWR proposes to divide the 96,295 AF of NIA Priority Water between potential applicants within CAP's three-county service area and potential applicants outside of CAP's service area as follows: 78,962 AF for users within CAP's service area and 17,333 AF for users outside of CAP's service area. Of the 78,962 AF pool for users within CAP's service area, ADWR initially proposed to divide the pool as follows: 51,962 AF for M&I water providers and the CAGRD (to be reallocated in 2013); 12,000 AF for industrial water users (to be reallocated in 2013); and 15,000 AF for water providers serving the Central Arizona Irrigation and Drainage District ("CAIDD") area and the Maricopa Stanfield Irrigation and Drainage District ("MSIDD") area, as required by Paragraph 9.3 of the Agreement (11,820 AF to be reallocated in 2013, and the balance to be reallocated in subsequent phases.) After considering submitted comments on its proposed reallocation structure, ADWR decided to reduce, by about 1/3, the 51,962 AF pool for M&I water providers and the CAGRD to be reallocated in 2013 and retain 17,333 AF from this pool for later reallocation in 2021. Hence, the pool of NIA Priority Water available for reallocation for M&I water providers and the CAGRD in 2013 has been reduced to 34,629 AF.

ADWR'S PROPOSED SELECTION CRITERIA FOR REALLOCATION – ADWR identified three goals for the 2013 reallocation of NIA Priority Water: (1) To reduce groundwater overdraft; (2) To provide an additional source of water to areas with limited physical availability of groundwater; and (3) To meet the near-term demands for existing municipal water providers and industrial users of groundwater or Excess CAP water with permanent demands. ADWR's proposed selection criteria to implement these goals include the following requirements: qualified applicants must demonstrate the ability to pay the costs associated with acquisition and utilization of the water supply; qualified applicants must demonstrate how they plan to utilize this water by 2020 and how they will manage the future shortage impacts associated with this supply; and qualified applicants must demonstrate an imbalance between its projected 2020 water demand and its available renewable water supplies.

PUBLIC COMMENTS – A total of 38 entities submitted written comments on ADWR's proposed reallocation process, including cities and towns inside and outside of CAP's service area, municipal water providers, industrial users, developers, and water users' associations. ADWR issued a Response to public comments on January 18, 2013. A copy of ADWR's Response is attached as Attachment 1. Of the entities commenting on ADWR's proposed reallocation, some also submitted comments regarding CAWCD's proposed pricing methodology. CAWCD issued a Response to the public comments regarding pricing methodology on December 20, 2012. A copy of CAWCD's Response is attached as Attachment 2.

ADWR's NEXT STEPS – ADWR will post the Final Process and Evaluation Criteria for the 2013 NIA Priority Water reallocation in late January or early February, 2013. ADWR has stated that soon thereafter, it will schedule a meeting to discuss the application process with prospective applicants. ADWR will propose a three-month process for applicants to prepare their applications for NIA Priority Water. ADWR has stated that it plans to have a recommended allocation to the Secretary by the end of 2013.

CAWCD PRICING PROPOSAL – CAP's role in the NIA Water reallocation (other than as an applicant through CAGR) is to set acquisition prices. During the ongoing discussions over the last year, three price components that are relatively straightforward and provided for by statute, contract or policy have been under consideration. A fourth, a Water Supply Availability Component, which would have been discretionary on the part of CAP to provide a partial source of funding to help ensure the availability of NIA water by CAP in "normal" water supply years, has been dropped due to insufficient clarity as to how such a program would work and lack of support.

The three remaining price components are as follows:

- **9(d) Debt Component** – estimated to be approximately \$389/acre-foot, this amount will reimburse CAP for the \$88.7 million in 9(d) debt assumed from CAP irrigation districts under the Arizona Water Settlement Agreement.
- **Back Capital Charge Component** – estimated to be approximately \$899/acre-foot, this amount will contribute towards the CAP repayment obligation. This charge is consistent with past practices, contracts and the terms of the Repayment Stipulation.
- **Back Property Tax Equivalency Component** – estimated to be approximately \$1,500/acre-foot, this charge will only apply to allocations outside the CAP service area. This charge is authorized under A.R.S. §48-3715.B. *No allocations outside the CAP service area are anticipated in this initial allocation (2014).*

These rate components are based in part on estimates and will need to be recalculated at the time the actual allocations are approved by the Secretary.

Staff also proposes that CAP offer a five-year payment plan, including interest, as was done for the M&I allocation in 2007. In response to comments received, staff also proposes that recipients of NIA water receive appropriate credit against Back Capital Charges for facility use fees consistent with the CAP Transfer Policy and CAP's responses to public comments on the NIA reallocation program.

**SUGGESTED MOTION:**

I move that the Board of Directors approve Non-Indian Agricultural Priority Water acquisition price components of \$389/acre-foot for 9d Debt, \$899/acre-foot for Back Capital Charges and \$1,500/acre-foot for Back Property Tax Equivalency, adjusted

as necessary for refinement of estimates and timing of actual allocations. In addition, I move that CAP offer a five-year payment plan for recipients of NIA Priority Water and provide appropriate credits for facility use charges consistent with the CAP Transfer Policy and CAP's responses to public comments.