

2018 Recovery Planning Advisory Group Questions and Answers – Meeting 1

What is a Recovery Exchange Agreement?

In a recovery exchange agreement, one party provides recovered water (i.e., LTSCs recovered pursuant to permitted recovery wells), and the other party provides a CAP supply. In the context of recovery of credits earned by the AWBA, CAWCD would provide recovered water, and a CAP contractor or subcontractor would provide an equal volume of CAP water. The CAP water that CAWCD *receives* in the exchange is available for CAWCD to deliver to CAP water users that require direct delivery of firming water.

What is CAWCD's authority to enter into recovery exchange agreements?

Arizona law authorizes parties with a right or claim to use water to conduct water-for-water exchanges consistent with certain statutory requirements. A.R.S. § 45-1001 *et seq.* Each party in an exchange is restricted to using the water they physically receive in the same manner as the water they give. A.R.S. § 45-1003(A)(2). The statutory requirements for an exchange involving recovered LTSCs and CAP water would include written notice to ADWR and a written exchange contract between the exchange partners. *Id.* at §§ 1051 and 1052.

For an exchange involving recovered LTSCs and CAP water, CAWCD would be providing the recovered water. CAWCD's legal right to the water would be based on LTSCs recovered through a Recovery Well permit held by CAWCD. A.R.S. § 45-834.01. The credits that CAWCD would recover would have been assigned to it by AWBA pursuant to A.R.S. § 45-854.01 and either an approved Interstate or Intrastate Recovery Schedule.

As for CAWCD's exchange partner, CAP M&I subcontracts, for example, allow subcontractors to exchange their CAP water with another party, subject to certain restrictions. The subcontractor's legal right to the CAP water in the exchange is the CAP subcontract itself. The ability of CAWCD and contractors or subcontractors to enter into exchanges is further addressed in the CAP System Use Agreement (SUA), which requires Reclamation approval of Exchange Agreements between CAWCD and Long-Term Contractors (SUA § 9.1) and authorizes CAWCD to use the CAP System to deliver Exchange Water without the need for a wheeling agreement (SUA § 5.1.2).

Arizona law authorizes AWBA and CAWCD to coordinate on recovery and firming activities and for AWBA to assign LTSCs to CAWCD for those purposes. More specifically, AWBA has the authority to coordinate and to confirm with CAWCD on recovery and firming purposes and to assign LTSCs to CAWCD for recovery and firming purposes. *See e.g.*, A.R.S. §§ 45-2423(A)(4) and (5) (coordinate with CAWCD); 45-2457 (firming of on-River M&I users and CAP M&I subcontractors); 45-2472 (interstate recovery); 45-2491 (Indian firming); *see also* A.R.S. § 45-854.01 (more generally authorizing the assignment of LTSCs). CAWCD is likewise authorized to coordinate and cooperate with the AWBA in fulfilling its statutory duties, and is further authorized to acquire in any lawful manner real and personal property of any kind (including LTSCs) necessary or convenient for the uses and purposes of the district. *See* A.R.S. §§ 48-3713(A)(7) and (B)(2).

In accordance with their authorities, AWBA and CAWCD have entered into agreements that address the manner in which interstate recovery will be conducted. These agreements include recovery exchange agreements as one option that could be implemented by AWBA and

CAWCD to satisfy interstate recovery obligations. AWBA and CAWCD may enter into similar agreements in the future for intrastate firming purposes.

What are the stipulations for the use of General Fund Credits?

The Arizona Water Banking Authority has developed LTSC utilizing several funding sources, each of which has statutory purposes and restrictions. The funding source used to pay for the creation of a LTSC is just one of the factors that the AWBA considers when determining how to use that credit.

LTSC developed with the State's General Fund can be used for firming on-River P4 M&I users, firming CAP M&I subcontractors, settling Indian water rights claims, or extinguished to further water management goals. However, per A.R.S. § 45-2457(B)(1), the AWBA is required to reserve a reasonable number of General Fund credits for firming on-River P4 M&I users and has therefore resolved, through AWBA Resolution 2002-1, to give first priority for use of these credits for this purpose. To date, the AWBA has accrued 403,830 acre-feet of the 420,000 acre-feet of credits originally identified by the AWBA as the amount of credits that should be set aside for on-River P-4 M&I firming.

Additionally, in 2005, the Mohave County Water Authority (MCWA) entered into an Agreement to Firm with the AWBA for specific on-River P4 M&I users. Pursuant to this Agreement, a total of 230,280 acre-feet of credits were transferred to the AWBA long-term storage subaccount for MCWA in 2005. The AWBA has reserved an additional 25,894 acre-feet of credits for AWBA pursuant to an Amended Agreement to Firm between AWBA and MCWA, dated December 8, 2010, for a total of 256,174 acre-feet. Also, CAP and MCWA have entered into an agreement for the exchange and recovery of these reserved credits when they are transferred to MCWA's LTSC account during shortages.

Furthermore, AWBA Resolution 2008-1 established a LSTC replacement account for 4th priority Colorado River M&I users. As credits are used and replaced, these replacement credits will be placed in a separate replacement subaccount and earmarked for the entity that reimbursed the AWBA for the replacement of those credits.

Will there be a cost for long-term storage credits (LTSC) distributed to a subcontractor?

At this time, there has been no policy adopted regarding the costs associated with the distribution of LTSC's. As a part of the Recovery Planning Advisory Group (RPAG) process, this topic will be part of the cost discussion and it is important that stakeholders provide their input for consideration.