

INFORMATION BRIEF

BOARD OF DIRECTORS



Agenda Number 6

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MEETING DATE: Thursday, January 6, 2022

AGENDA ITEM: Discussion of Temporary Water Program and Consideration of Action to Approve Lease with Ak-Chin Indian Community for 500 AF of CAP Water - Francom

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

2022 CAWCD Board Strategic Plan

Stewardship and Sustainability: *Serving as proactive leaders in sustainability and responsible, collaborative stewards of CAP's Colorado River supply*

PREVIOUS BOARD ACTION/ACTIVITY:

December 2021 CAWCD Board heard public comment from Mr. Boyce Andersen on the impact that termination of the Temporary Water Program would have on his cattle ranching operations.

ISSUE SUMMARY/DESCRIPTION:

CAWCD has long operated a Temporary Water Program that has utilized Excess Water supplies. As stated on the CAP website, the Temporary Water Program is to provide water for the purposes of:

1. Municipal use (city/county road maintenance to meet regulatory requirements to mitigate the production of dust),
2. Military use (for training purposes by military personnel to enhance their capacity to perform specific military functions and tasks),
3. Livestock operations use (associated with watering livestock to graze a specific number, kind, and class - authorized livestock operations must hold a federal or state grazing license), or
4. Other uses (CAP will consider other use requests on a case by case basis).

Each approved applicant was provided a temporary water permit that was effective for one year, with the exception of livestock operations who were given a 3-year permit. The permit defined the terms of use and stated that the license shall terminate at or upon the discretion of the United States or CAWCD. The program set 250 acre-feet as the limit on the amount of water that could be obtained per year, per license holder, and defined a tiered pricing schedule based on the amount of water to be taken. To reinforce the temporary nature of the program and to make clear that the source of water may not be reliable, the program stated that "CAP cannot guarantee that the requested amount will be available" and "Temporary Water must not be an integral part of the applicants' business operations."

Due to the unprecedented conditions on the Colorado River, a Tier 1 shortage has been declared for 2022, and the 1030 consultation has been triggered, resulting in the development of the 500+ plan. CAP contractors and subcontractors are looking at impending cuts to their allocations and no Excess Water is available. CAP staff concluded that the Temporary Water Program could not continue in 2022. No matter how small the amount, making deliveries under Temporary Water permits would essentially be reducing the amount of water otherwise available to CAP contractors and subcontractors.

Letters, announcing the termination of the Temporary Water Program for 2022, were mailed out between November 18 and 22. (see example attached). To allow time for those impacted by the termination to find other water sources, permittees with valid temporary water licenses that extend into 2022 or beyond would continue to receive water through March 31, 2022. However, permits set to expire in 2021 would not be renewed and no new permits would be issued.

CAP staff recognized the hardship that this loss of water might have on those who have historically relied upon it, but, without access to a water supply to deliver to temporary users, while contract and subcontract holders are being reduced, staff did not see a way to continue the program. For some temporary water permittees, there might be a path to obtain water from a municipal water service provider and all have the option to obtain a lease from a Federal Tribe with a CAP water contract.

Working to find a legal mechanism that would lessen the immediate impact of the termination of the Temporary Water Program on those that have used the program, CAP staff have been working with the Ak-Chin Indian Community on the possibility of leasing a small volume of water from them as a source to provide temporary water to those with a license that extends into 2022. As of December 15, 2021, the Ak-Chin Indian Community and CAP staff have reached agreement on the terms of this water lease and have signed a Letter of Intent for this water in 2022 and are now working through environmental and legal reviews to finalize and sign a lease. Upon successful execution, this one-year water lease will enable CAP to provide existing License holders the ability to continue to take water under the terms and conditions of their current License within 2022.

The terms of the lease agreement, as defined by the Letter of Intent, are:

- Lease for calendar year 2022, expiring on December 31, 2022
- Total leased quantity of 500 acre-feet
- Price established as \$290 per acre-foot, for a total of \$145,000
- Lease is contingent upon final approval by the Community Tribal Council and the United States Bureau of Reclamation
- Payment due 30 days following approval by all parties and Reclamation
- Form of lease agreement to be consistent with standard lease forms utilized by the Community in other leases

A letter was sent to all Temporary Water Program license holders with active permits in 2022, notifying them of our efforts to address the program in 2022 (see listing below). The water volume remaining on the lease has been provided for each party in parenthesis. Knowing that the historical use for the majority of these is below the leased volume, CAP staff have estimated that we can satisfy all 2022 temporary water use with the 500 AF lease from the Ak-Chin Indian Community.

Municipal Use

1. Pinal County (9 AF)
2. City of Casa Grande (8 AF)
3. City of Maricopa (10 AF)
4. Maricopa Department of Transportation (4 AF)
5. Flood Control District of Maricopa County (5 AF)
6. La Paz County (5 AF)
7. Pinal County (5 AF)

Construction and Home Development

1. DCS Contracting, Chandler AZ – Meridian home development (3 AF)
2. Double AA Builders, Ltd, Scottsdale AZ – Bungalows development (13 AF)
3. DRE Farms, LLC, Chandler AZ- Motorclub development (18 AF)
4. Fulton Homes, Inc., Tempe AZ – Barney Farms development (86 AF)

5. Mattamy Arizona, LLC, Scottsdale AZ – San Tan Heights development (9 AF)
6. Rummel Construction, Inc., Scottsdale AZ – North Creek Phase 1 development (9 AF)
7. Taylor Morrison, Scottsdale AZ – Combs Ranch development (68 AF)
8. Lennar Arizona Inc., Tempe AZ (81 AF)
9. Meridian Engineering Co., Tucson AZ (16 AF)
10. Resource Recycling of Arizona, Glendale AZ (45 AF)
11. Power Contracting, LLC, Phoenix AZ (72 AF)

Note: *Based on historical yearly use, some of the developers are expected to take less than the volume of water remaining on their existing license, which is the amount shown above.*

Livestock / Cattle Use

1. Parsons Ranches, Marana AZ (1 AF)
2. Lazy SW, LLC, Whitman AZ (1 AF)
3. Ladder Seven, LLC, Twin Falls Idaho (1 AF)
4. K/P Livestock, Gila Bend AZ (1 AF)
5. Kelly James, Salome AZ (1 AF)
6. Earnhardt Ranches, LLC, Young AZ (1 AF)
7. DeGanahl Cattle Co., LLC, Hillside AZ (1 AF)
8. Craig Shelley, Chandler Heights AZ (1 AF)
9. Boyce Vance Andersen, Prescott AZ (1 AF)
10. Weisser Cattle Co., Salome AZ (1 AF)
11. Jason Schickedanz, Perryton AZ (1 AF)
12. Picacho Peak Land and Cattle, Red Rock AZ (1 AF)
13. Rolf Flake, Gilbert AZ (1 AF)
14. Timothy Maxwell, Buckeye AZ (2 AF)

The cost of the 2022 Ak-Chin Indian Community Lease (\$145,000) will be covered by the fees paid by the license holders at a program size of 500 acre-feet, so no external funding from CAP reserves is required.

ATTACHMENTS:

1. Presentation
2. Notification of Temp Water Termination, Boyce Andersen