

## **BOARD OF DIRECTORS**

### ***MEETING MINUTES***

**August 31, 2017**

#### **VOTING MEMBERS PRESENT**

Councilwoman Thelda Williams, President, Phoenix  
Mayor Cathy Carlat, Peoria  
Councilmember Eddie Cook, Gilbert, via teleconference  
Councilmember Lauren Kuby, Tempe  
Councilmember René Lopez, Chandler  
Councilmember Joanne Osborne, Goodyear  
Councilmember Bart Turner, Glendale

#### **VOTING MEMBERS NOT PRESENT – EXCUSED**

Councilmember Pat Dennis, Avondale  
Mayor Jim Lane, Scottsdale  
Councilmember Kevin Thompson, Mesa

#### **OTHERS PRESENT**

|                               |                          |                             |
|-------------------------------|--------------------------|-----------------------------|
| Anthony Alejandro, Peoria     | Mark Holmes, Goodyear    | Ryan Peters, Chandler       |
| Deborah Ayodele, AZ Water/ASU | David Iwanski, AZ Water  | Diana Piña, AMWUA           |
| Gretchen Baumgardner, Tempe   | Sam Jaskolski, AMWUA     | Nicole Sherbert, Scottsdale |
| Eric Braun, Gilbert           | Pat Kossan, AMWUA        | Rachel Smetana, Scottsdale  |
| Cynthia Campbell, Phoenix     | Ryan Lee, Glendale       | Tony Staffaroni, CAP        |
| Gregg Capps, Chandler         | Brad Lundahl, Scottsdale | Drew Swieczkowski, Glendale |
| Brian Draper, Mesa            | Frank Milam, Phoenix     | Warren Tenney, AMWUA        |
| Alan Dulaney, Peoria          | Brian Payne, AMWUA       | Carol Ward-Morris, AMWUA    |
| Kathy Ferris, AMWUA           | Stuart Peckham, SRP      | Thalia Williams, AMWUA      |
| Brett Fleck, AMWUA            | Jessica Perry, Goodyear  |                             |

#### **A. Call to Order**

Councilwoman Williams called the meeting to order at 11:08 a.m.

## **B. General Business – Items for Discussion and Possible Action**

### **1. Approval of the Minutes from the June 22, 2017 Meeting**

Upon a motion by Mayor Carlat and a second by Councilmember Lopez, the AMWUA Board of Directors unanimously approved the minutes from the June 22, 2017 meeting.

### **2. Next meeting scheduled for Thursday, September 28, 2017, 11:00 a.m., at the AMWUA office**

### **3. Governor’s Water Discussion**

Mr. Tenney stated that Governor Ducey launched the Governor’s Water Discussion in June to look at Colorado River and groundwater issues. He said the Governor’s Office asked participants to keep their members up to date on the issues being discussed, so AMWUA has been doing so through meeting summaries and discussions with its Water Resources Advisory Group (WRAG) and Management Board, as well as sharing weekly synopses with the AMWUA Board of Directors.

Mr. Tenney reported that the Governor convened the Plenary Group comprised of state leaders, including Scottsdale Mayor Jim Lane. He said Mayor Lane asked Brian Biesemeyer, Kathryn Sorensen, and himself to support him in this effort and attend the work group meetings. The Governor’s Chief of Staff, Kirk Adams, has been leading the Colorado River Work Group and the Groundwater Work Group meetings, which are held every two weeks.

Mr. Tenney said the Plenary Group met yesterday to discuss over a dozen issues that the two work groups have deliberated on so far. He stated that Chairman Adams explained that the Plenary Group was to consider supporting conceptual proposals so the State can flesh out details with stakeholders to develop into a package for legislation or executive action. Mr. Tenney noted that the Plenary Group gave general support for the conceptual proposals presented while some of the issues generated questions and few expressions of opposition. He said Mayor Lane was supportive of all of the conceptual proposals.

Mr. Tenney reviewed the concepts that the Plenary Group approved that are of most interest to AMWUA’s members.

**DCP & DCP Plus** – Mr. Tenney stated that the Plenary Group did not directly address the Drought Contingency Plan (DCP) and DCP Plus, but a number of the conceptual proposals supported by the Plenary Group are related to DCP Plus. He said the State continues to emphasize the importance of the DCP among Arizona, California, Nevada, and the Bureau of Reclamation, and there has been progress on DCP Plus. Mr. Tenney explained that the Arizona Department of Water Resources (ADWR) is pursuing an

approach that would target keeping Lake Mead at an elevation of 1,080 feet. He said the State believes that to make DCP Plus work, it is important to include Tribal Intentionally Created Surplus (ICS) and a Colorado River Conservation Program as management tools.

**Tribal ICS** – Mr. Tenney said the 2007 Interim Guidelines instituted ICS as an incentive for a Contractor to store water in Lake Mead to help prevent shortage declarations. He stated that, to date, only the Central Arizona Water Conservation District (CAWCD) has created and accrued ICS. Mr. Tenney stated that the State believes that under the 2007 Interim Guidelines, a tribe with a water right settlement that includes an entitlement to mainstream Colorado River water delivered via the Central Arizona Project (CAP) System constitutes a Contractor and can therefore create ICS. He said the Bureau of Reclamation also agrees that tribes can create ICS; however, CAWCD does not agree.

Mr. Tenney reported that the State has proposed a framework for how tribal ICS would work; the State would oversee all water being forborne by a Contractor in Arizona so that the right combination of ICS is used to keep Lake Mead at the appropriate level to forestall shortage. He noted that the Plenary Group and stakeholders have expressed general support for the Arizona ICS concept but have also expressed interest in what the details will be. He said it is important to note that Governor Lewis of the Gila River Indian Community (GRIC) stated that the GRIC has heard statements suggesting that Tribal ICS was created for the GRIC to gain new authority or advantage, or that they have spurious motivations or are part of a conspiracy. Mr. Tenney stated that Governor Lewis emphatically said such statements are false and that the GRIC would actually give up independence to participate in ICS because they would be under the oversight of the State.

Mr. Tenney said CAWCD staff has concern that allowing individual entities to recover ICS could trigger or exacerbate a shortage; however, having the State oversee ICS would help to minimize or remove that concern. Mr. Tenney stated that the Plenary Group was supportive of the concept of Tribal ICS as a tool that would only be used when it is most advantageous to have additional water in Lake Mead.

Ms. Ferris commented that it is important to note that what the State is proposing to develop would be a sophisticated program to manage ICS and to ensure that it is applied consistently, that it does not harm water users, and that there is a clear understanding of when water can be taken, how much, and what the priorities will be. She said there is no such program currently in place.

**Colorado River Conservation Program** – Mr. Tenney reported that the State is trying to develop a statewide Colorado River Conservation Program. He explained that the State is proposing to oversee the forbearance of any water created by a Contractor, such as CAWCD and tribes, specifically for the purpose of benefiting Lake Mead. He said this could be done through ICS or system conservation and that to create either, a Contractor would be required to show it could have used that water but decided to

reduce its consumptive use. Mr. Tenney noted that this also allows for public review and comment by other Arizona Contractors and would assure funders and those creating system conservation or ICS that forborn water will not be considered excess water and therefore be delivered to a lower priority user. He said having State oversight ensures all Contractors coordinate and comply with the 2007 Guidelines and any DCP overlap.

Mr. Tenney said the State was clear that the ADWR Director would *not* be authorized to forbear water except at the request of the Contractor creating the system conservation or ICS. He said the State believes that existing Arizona contracts for Colorado River water with the Secretary of the Interior are subject to the terms of the State's 1944 Arizona Contract with the Secretary.

Mr. Tenney pointed out that when this proposal was first discussed, stakeholders expressed support for the concept, but CAWCD asked questions for clarification including: whether the State has authority to implement this proposal and felt it was too complicated and needed more time to vet; and if this proposal allows ADWR to decide whether and how much an individual Contractor can exercise their contract. He said the State emphasized that it is not proposing an unfettered ability to interfere with contracts but only to forbear the creation of ICS and system conservation at the request of the Contractor whose water will be left in Lake Mead. Mr. Tenney reported that, except for CAWCD, the Plenary Group was supportive of this conceptual proposal and the State emphasized that details need further discussion.

Mr. Tenney said Mayor Lane spoke strongly in support of the next three issues at yesterday's meeting.

**Sovereign Immunity** – Mr. Tenney reported that the State has proposed legislative language to clarify that CAWCD does not have sovereign immunity. He noted this proposal is consistent with the position that the AMWUA Board of Directors expressed in its April letter to the CAWCD Board. He said AMWUA appreciates that the CAWCD Board has stated they have no intent to use sovereign immunity in disputes with subcontractors; however, in response to the confusion raised this year and to ensure a future CAWCD Board does not use sovereign immunity as a defense, this legislative language brings clarity. He reported that the Plenary Group expressed strong support for this proposal.

**Agreements Regarding Colorado River Water** – Mr. Tenney said the State is proposing that the ADWR Director's approval must be given before CAWCD begins negotiations or enters into an agreement involving the use, storage, or conservation of Colorado River water. He noted that CAWCD says the current arrangement has worked well and does not need to be changed; however, CAWCD and ADWR have argued about past negotiations in meetings and in the press, which raises questions about how well the current arrangement is working. Mr. Tenney stated that the differing opinions highlight the State's concern that difficulties have arisen with other states when CAWCD has

asserted itself ahead of ADWR. He said clarification regarding the State taking the lead on Colorado River water agreements would ensure that Arizona is speaking with one voice. He reported that the Plenary Group expressed support for this proposal.

In response to questions from Mayor Carlat and Councilmember Lopez regarding precedence in Colorado River water negotiations, Ms. Ferris said based on her legal research, the State has authority in these situations. She said this proposal is the State's attempt to restate the current law, not to litigate it.

**Audit** – Mr. Tenney said the State has proposed that the Auditor General audit CAWCD for finances and performance every five years in an effort to increase transparency and accountability at CAWCD. He stated that Pinal Agricultural believes the audit is not necessary and perceives it as a tool for those with an ax to grind; however, others believe the audit could reinstall and maintain confidence in CAWCD by putting to rest concerns that have arisen over time. He reported that the Plenary Group voiced support for this proposal.

Councilmember Kuby asked if departments of Arizona State are regularly audited; Ms. Ferris said yes. Councilmember Lopez asked if the departments are audited at the same frequency, every five years. Mr. Aarons said the frequency of audits depends on the agency and the agency's term of life. He said audits could happen as soon as every two years or as long as every ten years, it just depends on the Legislature's decision.

Councilmember Turner commented that it is interesting that the State is asserting that the elected body that operates under the Open Meeting Law is perhaps less transparent than the agencies and bureaucracies of the State government, and that by having this audit it will make this elected body more transparent. He also questioned what would be done to make the other side of the process more transparent. Ms. Ferris said most of what ADWR does is subject to a hearing, an administrative review and a judicial review, so it is a very different process for a state agency in terms of transparency. She said even though the CAWCD process operates under Open Meeting Law, concerns have risen in recent years that a lot of work has been done in Executive Session and the audit is an opportunity for stakeholders to express their concerns. She said the audit is something for the Legislature because it will receive reports from the Auditor General to see if programs are effective and how money is being spent. She noted ADWR gets audited too. Mr. Tenney pointed out that there is also oversight of ADWR in that agreements involving Colorado River water have to go before the Legislature.

Councilmember Osborne commented that she is proud of the State and its water accomplishments and believes that the State should be the head of water. She also said we need to protect our water now and in the future by putting good water policy in place. Mr. Tenney noted agreement. He said AMWUA has been approaching this process with the mindset of how to best benefit its members, and can hopefully provide a steady voice throughout collaboration.

Mr. Tenney said the Plenary Group voiced general support for each of the next two conceptual proposals dealing with the Arizona Water Banking Authority (AWBA).

**Use of 4-Cent Tax for AWBA Purposes** – Mr. Tenney said the State is proposing to clarify language that any unexpended 4-cent tax monies not applied to repayment or O&M obligation in any fiscal year shall be made available to the AWBA upon the request of the ADWR Director/Chair of the AWBA Commission. He noted that the State contends this proposal only clarifies existing statutes while maintaining CAWCD's authority to levy and use the tax. He said having the clarification that CAWCD needs to decide annually how it will use the 4-cent water storage tax would avoid the continuing accumulation of over \$100 million in property tax dollars with no specific plan for how those funds will be put to beneficial use.

**Expanded AWBA Recovery and Firming Authority** – Mr. Tenney reported that the State is seeking to have AWBA be able to enter into agreements for recovery of long-term storage credits developed with 4-cent tax funds without distributing the credits to CAWCD. He said, in effect, this would take CAWCD out as the middleman for indirect recovery of those credits and the direct distribution would provide greater flexibility and reduce costs for cities to protect residents during shortage.

**Metering and Reporting** – Mr. Tenney said the State is recommending that metering and reporting of groundwater pumping be done throughout the State, as opposed to only within Active Management Areas (AMAs) which is the current requirement. He noted that metering and reporting provides data for ADWR to better manage the AMAs; without having data throughout the State, it is difficult for ADWR to effectively consider new management tools for areas with problems like Mohave, La Paz, and Cochise counties. He said some members of the Plenary Group have questioned if reporting is an unnecessary regulatory burden, especially if their area is not experiencing problems, to which ADWR and others countered that the only way to confirm there is no problem is to have accurate data and if there is a problem, to have data available. Mr. Tenney reported that based on comments of support from the Plenary Group, the State will include this in the conceptual package and will work with those expressing concerns.

Councilmember Turner, Councilmember Lopez, and Ms. Ferris discussed that state statute is currently silent on metering and reporting requirements for areas outside of AMAs and that ADWR could not make changes to that requirement without the State Legislature enacting a law.

Councilmember Osborne asked if this was put into law, would it be an unfunded mandate and how would new meters be paid for. Mr. Tenney said that issue is at the heart of the opposition. He stated that ADWR has put together a list of what potential costs would be and have said they want to and are willing to address those concerns of a regulatory burden. He also said the AMAs went through this process and have had great benefits to metering and reporting. Ms. Ferris noted that there are already

methods in place to measure withdrawal in ways other than with a meter. She also said most people are already measuring their withdrawal.

**Safe-Yield Goal Beyond 2025** – Mr. Tenney stated that the Plenary Group voiced strong support for the State’s proposal to clarify in statute that the goal to achieve and maintain safe-yield for the Phoenix, Tucson, and Prescott AMAs applies beyond 2025, including the creation of three additional ten-year management plan periods beginning in 2025 for all AMAs. He said the State is also proposing that by 2022, the Governor would establish a commission to provide recommendations to the ADWR Director regarding any changes to the management goals and requirements for the management plans beginning in 2025. He noted that there was a request that such a commission have a broad representation of stakeholders.

Mr. Tenney stated that at yesterday’s Plenary Group meeting, Chairman Adams requested support and advocacy for these concepts and emphasized that these proposals need further discussion and development into a full proposal. He also noted that Mayor Lane was supportive of the conceptual proposals discussed from a statewide municipal perspective. He then asked if the AMWUA Board of Directors would want to consider expressing support for the process and acknowledge that these are important concepts that they want to see further developed. Mr. Tenney said having the AMWUA Board express an official position would help AMWUA to be better engaged in the process to further develop proposals for the benefit of its members and would assist Mr. Aarons in discussions with Legislators.

Councilwoman Williams commented that Mr. Tenney has been very involved in this process and thanked him for his work representing AMWUA. She said it is important to support these concepts and to continue working on their development.

In response to a question from Mayor Carlat asking for his thoughts, Mr. Aarons said that he believes the AMWUA Board of Directors taking this position gives good direction, while providing enough leeway to participate in conversations.

The AMWUA Board of Directors members, Mr. Tenney, Ms. Ferris, and Mr. Aarons discussed the verbiage of the formal position they may take on these conceptual proposals.

Upon a motion by Councilmember Turner, a second by Councilmember Osborne, and unanimous approval, the AMWUA Board of Directors took the following position:

“The AMWUA Board of Directors recognizes that the Governor’s Water Discussion is an effort to improve Arizona’s overall management of Colorado River water and groundwater. The Governor’s Water Discussion’s conceptual proposals concentrate on those issues that Arizona needs to address at this time through legislation and rulemaking. AMWUA’s engagement is critical for this process to benefit municipal

water users and the State as a whole. Therefore, the AMWUA Board supports the Governor's Water Discussion process, and the need to address the concepts outlined by the State by working with the Governor and the Legislature as the concepts are fleshed out into a legislative package."

Mr. Tenney noted that the Governor's Water Discussion has increased tensions between ADWR and CAWCD. He said that himself and Tim Thomure, Tucson Water's Director, were invited to share the municipal perspective at a special meeting of the CAWCD Board. He reported that at the meeting, he candidly shared what he has heard from AMWUA members about the Governor's Water Discussion and what he has heard from municipalities over the last two decades, including while serving on the CAWCD Board, about their relationships with CAWCD. Mr. Tenney said CAWCD is an important entity to each AMWUA member and while it is important to have a clear delineation between the State and CAWCD's responsibilities, AMWUA will continue to strive to have a positive relationship with CAWCD.

Councilwoman Williams noted that the AMWUA Board members could expect to have a meeting with the CAWCD Board members, if they have not already scheduled one.

#### 4. Water Quality Standards Proposal for Non-Project Water under the System Use Agreement

Mr. Tenney stated that AMWUA has continued to facilitate Water Quality Group meetings with the AMWUA members, Southern Arizona utilities, Apache Junction, the Gila River Indian Community (GRIC), and the Salt River Project (SRP) in an effort to develop a consensus proposal among stakeholders for a water quality standard for non-project water put in the CAP canal to present to CAWCD. He said the Water Quality Group has met four times and the primary challenge has been that the Phoenix area and Southern Arizona have distinct experiences in how they have treated Colorado River water.

Mr. Tenney reported that after much discussion, the Water Quality Group has agreed to an overall proposal that will be presented to the CAWCD Task Force on September 12<sup>th</sup>. He said the proposal accomplishes the following:

- Allows for wheeling of non-project water.
- Ensures that the introduction of non-project water into the CAP canal will maintain the water quality in the canal within the historical ranges that we have already been receiving.
- Avoids impacts to current treatment operations; we want to avoid having increased treatment requirements and costs. This is accomplished by measuring in-canal water quality at diversion points and the use of modeling that considers in-canal blending to determine discharge limits to best protect users.
- Southern Arizona entities assert an additional "not-to-exceed" discharge parameter for constituents is needed. While there is not an agreement on what, if any, the



“not-to-exceed” numbers should be, this one point should not keep the proposal from moving forward.

- Addresses the current situation of the CAP canal. While it does not consider a deep shortage situation, the concept can apply to shortage scenarios.

Mr. Tenney stated that the Water Quality Group has been fortunate to utilize the assistance of SRP, who has successfully managed daily water quality of Salt and Verde water in the SRP system through monitoring and modeling.

Mr. Tenney said facilitating these discussions has been challenging, yet rewarding for AMWUA to play a role in bringing together a larger group to develop a concept that could maximize the use of the CAP canal today, as well as in the future when recovery is needed during shortages.

## 5. [AMWUA Website](#)

Ms. Ward-Morris premiered the new AMWUA website and gave the AMWUA Board of Directors a tour of the site. She noted that the new site is easy to use, approachable, well organized, streamlined, and full of information. She highlighted that the website has four subheadings that organize content and tell AMWUA’s story: “who we are,” “what we do,” “where we stand,” and “what you can do.”

Ms. Ward-Morris noted that a second phase of the website will update the online versions of AMWUA’s publications: *Landscape Plants for the Arizona Desert* and *Xeriscape: Landscaping with Style*. She said this phase will be funded out of the Regional Conservation Program budget and will fall far below the threshold for requiring the AMWUA Board of Director’s approval. Ms. Ward-Morris encouraged the AMWUA Board members to tour the site and welcomed any comments, questions, and feedback.

## C. Executive Director’s Report

Mr. Tenney reported that ADWR has requested AMWUA’s assistance in updating the botanical names of the 900+ plants included in the Low Water Use/Drought Tolerant regulatory plant lists. He said ADWR will pay for the project through an intergovernmental agreement (IGA) with AMWUA and AMWUA will, in turn, issue a request for proposals, discuss consultant selection with ADWR, contract for the work, and then oversee the contract. He noted that the cost for this project would not be known until proposals are received, but it will fall well below the threshold that requires the AMWUA Board of Director’s approval. Mr. Tenney said this project ties in with AMWUA convening the AMA’s Landscape Technical Advisory Committee to advise ADWR on these lists, as well as tying in to AMWUA’s Landscape Plants publication and website; the 224 plants featured in AMWUA’s guide are a subset of the ADWR list.

Mr. Tenney announced that Thalia Williams, AMWUA's Sub-Regional Operating Group (SROG) Program Coordinator, has decided to retire at the end of October. He stated that Ms. Williams has been valuable in overseeing AMWUA's administrative and financial accounting support provided to the five SROG cities that own and operate the 91<sup>st</sup> Avenue Wastewater Treatment Plan. Mr. Tenney stated that AMWUA has begun to advertise for this position.

**D. Future Agenda Items**

There were no requests for future agenda items.

**E. Adjournment**

Councilwoman Williams adjourned the meeting at 12:51 p.m.