

**CITIZENS' WATER ADVISORY COMMITTEE  
(CWAC)**

**Technical/Planning and Policy Subcommittee**

Wednesday, December 17, 2014, 12:00 p.m.

Director's Conference Room

Tucson Water, 3<sup>rd</sup> Floor

310 W. Alameda Street, Tucson, Arizona



**Legal Action Report**

**1. Roll Call/Call to Order**

The meeting was called to order by Subcommittee Chair, Mark Murphy, at 12:02 p.m.  
Those present and absent were:

**Present:**

Mark Murphy	Chairperson-Representative, Mayor
Mitch Basefsky	Representative, City Manager
Brian Wong	Representative, City Manager
Chuck Freitas	Representative, City Manager
Placido dos Santos	Representative, City Manager
Alan Tonelson	Representative, Ward 1
Kelly Lee	Representative, Ward 6

**Absent:**

None

**Tucson Water Staff Present:**

Melodee Loyer	Water Administrator
Belinda Oden	Water Administrator
Andrew Greenhill	Intergovernmental Affairs Manager
Wally Wilson	Chief Hydrologist
Johanna Hernandez	Staff Assistant

**Others Present:**

Marie Pearthree	CAP
Ted Cooke	CAP

**2. Announcements** – None.

**3. Call to Audience** – No action taken.

**4. Review & Approval of November 19, 2014 Legal Action Report and Meeting Minutes** – Member Tonelson motioned to approve the Legal Action Report and Meeting Minutes of November 19, 2014. Member Freitas seconded. Motion passed unanimously by a voice vote of 6-0.

Member Wong arrived at 12:03 p.m.

## Citizens' Water Advisory Committee, Technical/Planning and Policy Subcommittee

Legal Action Report

December 17, 2014

5. **CAP \$.04 Tax Continuation** – Marie Pearthree and Ted Cooke presented a combined PowerPoint presentation on the continuation of the CAP \$.04 tax to the year 2045. Ms. Pearthree provided a timeline of the development and modification of the tax since its inception in 1990. The major stages of the tax were highlighted: 1990 – Inception in Maricopa and Pima Counties (AMAs) for construction of state demonstration projects; 1994 – Modification to include OM&R expenses and federal repayment (complete in 2045), inclusion of Pinal County, and extension to 2001; 1996 – Authorization to use tax for Arizona Water Banking Authority, and extension to 2017; 2003 – Resolution to retain all tax revenues in a CAP to avoid sweeping by the state; Post 2003 – Annual resolution by CAWCD to specify use of tax revenues. Brief explanations of the current and proposed legislation were provided. The proposed legislation is solely an extension; no additional language has been added or changed. Mr. Cooke proceeded with an explanation of what sources fund the CAP, how the tax equates to home owner costs, how the tax has been collected and used historically, why the tax continuation is necessary, CAP's financial planning and known future obligations, examples of the use of the tax and current and future considerations. In summary, the presentation reflects that as a result of CAP funding combined with CAP expenditure obligations, the continuation of the \$.04 tax is necessary to continue providing the same level of services while maintaining reasonable rates. Examples reflect possible scenarios in which the tax is available and in which it is not, indicating rate increases would be 50% more without the tax revenues. It is noted, and studies reflect<sup>1</sup>, that all citizens in the three county area benefit from CAP, and from its continued reliability. Should the tax continue it will cost homeowners \$4 per year for every \$100,000 of home value. Should it not continue, the entire burden will be placed on water users and their rate payers. Extensive discussion was held on the various aspects of the presentation.

After discussion, Member Tonelson motioned for TPP to recommend to full CWAC that the full Committee formally support the \$.04 tax continuation. Member Freitas seconded. Brief discussion was held as to the procedures of formal support. The motion was passed by a voice vote of 5-0, with Members dos Santos and Basefsky abstaining.

6. **2015 Meeting Schedule and Presentation Times** – The Subcommittee has requested that a single PowerPoint presentation be scheduled for the meetings, and have the schedule allow for flexibility to include additional presentations as necessary. The Subcommittee will maintain their schedule of the 4<sup>th</sup> Wednesday of the month, excepting November and December when meetings will be the 3<sup>rd</sup> Wednesday due to holidays. There will be no meetings in July or August for a summer break.
7. **Future Meetings/Agenda Items** – See projected agenda for further information.
8. **Adjournment** – Meeting adjourned at 1:08 p.m.

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<sup>1</sup> The ASU Economic Impact Study of the CAP to the State of Arizona can be found at [www.cap-az.com/documents/finance/CAP\\_Final\\_040413.pdf](http://www.cap-az.com/documents/finance/CAP_Final_040413.pdf)



YOUR WATER. YOUR FUTURE.

## 4-Cent Tax Extension



# 4-Cent Tax Extension Outline

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- Historical Timeline
- Current Statutory Language
- Proposed Draft Legislation
- CAP Funding Sources
- Historical Collections & Uses
- Continued Relevance
- CAP's Financial Planning
- Known Financial Obligations
- Example Scenarios
- Considerations

## 4-Cent Tax Historical Timeline

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- 1990 – The Arizona Legislature authorizes CAP to collect a property tax in Maricopa and Pima counties to fund the construction of state demonstration projects ( i.e. water recharge facilities) for five years (Laws 1990, Chapter 385).
- 1994 – The Legislature modifies the purpose of the tax for OM&R expenses of the CAP and federal repayment, expands the taxing authority to include Pinal County, and extends the tax until 2001 (Laws 1994, Chapter 278).
- 1996 – The Legislature creates the Arizona Water Banking Authority, authorizes AWBA’s use of Four-Cent Tax proceeds pursuant to CAP Board of Directors resolution, and extends the tax until January 1, 2017 (Laws 1996, Chapter 308).

## Timeline Continued

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- 2003 – The Legislature requests a legislative fund transfer of \$9 million from the Arizona Water Banking Fund to address state budgetary shortfalls. The CAWCD Board, by resolution, decides to retain all Four-Cent Tax revenues in a CAP account. In 2004, the Legislature sweeps an additional \$2 million from the AWBA fund. Only interest monies from the four-cent tax are swept.
- Post 2003 – The CAWCD annually adopts a resolution to specify whether Four-Cent tax revenues will be used for federal repayment, OM&R costs, or shared with the AWBA. Each year since, CAWCD has used a portion of Four-Cent tax monies to pay for the costs of AWBA's delivery and storage of CAP water for M&I firming purposes.

# Current Statutory Language

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## **48-3715.03** Arizona water banking fund; disbursement of monies

A. The district's board of directors shall annually determine by resolution whether **all or any part of the tax** levied pursuant to section 48-3715.02, subsections B and C **shall be applied to the repayment of the construction costs of the central Arizona project** including interest owed on district repayment contracts **or to the annual operation, maintenance and replacement costs of the central Arizona project.** When the district's board adopts such a resolution, a certified copy of the resolution shall be delivered to the department of water resources and those monies specified in the resolution shall be deposited, pursuant to sections 35-146 and 35-147, in the district fund established pursuant to section 48-3712, subsection A, paragraph 5.

B. **Any taxes** that are levied pursuant to section 48-3715.02, subsections B and C and that are **not deposited in the district fund** established pursuant to section 48-3712, subsection A, paragraph 5 **shall be deposited**, pursuant to sections 35-146 and 35-147, **in the Arizona water banking fund** established by section 45-2425.

# Proposed Draft Legislation

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- Although the authority to levy the tax, its purpose, and distribution is contained in permanent law, the four-cent tax since 1994 has been continued and extended through temporary (session) law. One way to extend the tax is by amending session law:

*Section 1. Laws 1994, chapter 278, section 14, as amended by Laws 1996, chapter 308, section 23, is amended to read:*

*Section 48-3715.02, Arizona Revised Statutes, ~~as amended this act,~~ is repealed from and after January 1, ~~2017~~ 2045.*

- This proposed draft language would have the effect of extending the four-cent tax through January 1, 2045, with no other statutory changes.
- The year 2045 corresponds to the end of CAP's federal repayment obligation (\$55 M annually) and also coincides with planned closure of NGS.

# CAP Funding Sources

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- Water delivery charges (60% of CAP's budget)
- M&I Capital charges - applied exclusively to repayment
- Power Basin and Development Fund revenues (10% of budget) - applied exclusively to repayment
- 10-cent ad valorem tax, currently collected at the maximum rate
- 4-cent ad valorem tax
- Interest income, reimbursements and other misc. revenues
- CAP is also authorized to issue general obligation and revenue bonds, but does not currently have any bonds outstanding

## What does this cost the home owner?

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**\$100,000 value =  
\$4.00 per year**

**\$200,000 value =  
\$8.00 per year**



**\$400,000 value =  
\$16.00 per year**

## Historical Collections & Uses

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- From 1991-1996, four-cent tax collections were used for the construction and operation of state demonstration projects.
- CAP built entire facilities, parts of others, and stored water, under the Board's supervision and a public process.
- 1991-1996 collections for this purpose were \$34.5 million.
- Underground storage projects completed included Avra Valley, Pima Mine Road, Lower Santa Cruz, Agua Fria, Tonopah Desert (partial) and Hieroglyphic Mountains (partial)

## Historical Collections & Uses

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- The 1996 legislation that created the AWBA also required the CAWCD Board, by annual resolution, to determine the need and uses of the tax.
- From 1996-2002, the Board of Directors adopted annual resolutions and chose to reserve the four-cent tax proceeds for AWBA authorized purposes.
- During this period, \$75.3 million was collected by CAP and transferred to the Arizona Water Banking Fund for M&I firming.

## Historical Collections & Uses

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- In 2003, because of legislative transfers, the Board of Directors resolved to protect four-cent tax proceeds by reserving them in an account maintained by CAP.
- The CAWCD Board continues to annually determine by resolution the need for the four-cent tax and the amount that should be levied according to Arizona law.
- From 2003-2013, \$76.6 million was collected and used by CAP to cover OM&R costs of deliveries to AWBA for M&I firming.

## Historical Collections & Uses

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- In summary, since 1996 (through tax year 2013):
  - Approximately \$298 million has been collected.
  - CAWCD Board of Directors has been able to honor every request of the AWBA for four-cent tax revenues (more than \$150 million).
- The CAWCD Board of Directors voted to use \$45 million of 4-cent tax monies as an alternative to collecting additional OM&R fees from customers for 2012 and 2013 and increasing M&I capital charges.
- There is a current balance of \$100.8 million, of which \$78.4 million has been set aside by Board of Directors resolution for M&I firming (2003 – 2009 tax years).

## Historical Collections & Uses

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- Virtually 100% of the balance relates to collections from the taxpayers of Maricopa County.
- The distribution of the assessed valuation among the three counties is very lopsided at the present time (78% Maricopa, 17% Pima, 5% Pinal).
- AWBA's statutory restriction regarding the use of four-cent revenues has led to the accrued balance for Maricopa County.
- The AWBA, in its mission to develop long-term storage credits for the state and to track those credits, is required by statute (A.R.S. 45-2457) to keep an accounting system to ensure that expended funds are used to benefit the county from which the funds were derived.

# Historical Collections & Uses

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- Unlike the AWBA, geographical statutory restrictions on use of the four-cent tax do not exist for CAP because it is a multi-county special taxing district responsible for serving the needs of its three counties.
- Keeping the tax levied at a flat four cents has served Pima and Pinal counties in striving to meet their M&I firming goals.

## Historical Collections & Uses

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- In 2013, several unpredictable energy events occurred that impacted CAP's financial projections.
- CAWCD Board discussed and considered several available options to address the financial situation at various public meeting forums:
  - January 24, 2013 (Finance, Audit and Power)
  - March 7, 2013 (CAWCD Board)
  - March 21, 2013 (Special CAWCD Board meeting)
  - April 4, 2013 (CAWCD Board)
  - April 18, 2013 (Finance, Audit and Power)
- On May 2, 2013, the CAWCD Board of Directors voted to use \$45 million of 4-cent tax monies as an alternative to collecting additional OM&R fees from customers for 2012 and 2013 and increasing M&I capital charges.

# Continued Relevance of the Tax

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- CAP's federal repayment continues through 2045.
- CAP's OM&R expenses are ongoing and are expected to increase given future uncertainties.
- AWBA's firming goals are ongoing.

# CAP's Financial Planning

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- CAWCD's current financing model is “pay as you go” - all known near-term financial obligations are included in the budget and water rates
- Up to this point, CAWCD's reserves have been adequate for the purposes of:
  - Smoothing out the cash flow related to known financial obligations, e.g., capital projects, allowing rates to be smooth while expenditures may be “lumpy”
  - Dealing with unknown financial obligations that present themselves, e.g., unplanned infrastructure failure
- CAWCD is considering revenue bond financing for some major capital expenditures in the near future (transmission lines) as an additional smoothing mechanism

## Some Major Known Future Financial Obligations

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- Colorado river shortage fixed OM&R
- Colorado river structural deficit (augmentation, intentionally created surplus, desalination, etc.)
- CAP Canal Aging Infrastructure
- Recovery Infrastructure and Related Needs
- Navajo Generating Station (if it continues in operation through 2045)
  - 2019 balloon payment on renewal of land lease and coal contract
  - Annual cost increase 2020 renewal of land lease and coal contract
  - Fixed cost to be absorbed from BART closure of one unit 2020
  - Installation of SCRs for BART on two units 2030
- Navajo Generating Station (if it closes prior to 2045)
  - Replacement of SRP power sales revenue (through 2031)
  - Replacement cost of NGS power plus balance of repayment
- Cost of BART and contract renewal NEPA and legal challenges
- Pending carbon legislation

# Example Scenarios: Capital Charges

If NGS closes and have to make up \$30 million from surplus power sales, can only be made up from capital charges

	without funds	utilization of funds
Allocations that pay Capital Charges (af)	750,000	750,000
Lost power sales that increase federal debt repayment	\$30,000,000	\$30,000,000
4 cent tax funds applied	0	\$ (15,000,000)
Net amount to be made up	\$30,000,000	\$15,000,000
Increase per acre-foot	\$ 40.00	\$ 20.00

*Decreases capital charge by \$20/acre-foot per year applied*

# Example Scenarios: Fixed OM&R Rate



Mitigation of shortage expense of \$30 million per year, which allows Arizona to take its full entitlement.

	without funds	utilization of funds
Annual Deliveries (acre-foot)	1,500,000	1,500,000
Shortage mitigation cost	\$30,000,000	\$30,000,000
4 cent tax funds applied	0	\$ (15,000,000)
Net amount to be made up	\$30,000,000	\$15,000,000
Increase per acre-foot	\$ 20.00	\$ 10.00

*Decreases Fixed OM&R rate by \$10/acre-foot per year applied*

# Example Scenarios: Fixed OM&R Rate

Shortage occurs which decreases deliveries by 400,000 acre-foot. Normal Fixed OM&R rate is \$60/af

	without funds	utilization of funds	
Annual Deliveries (acre-foot)	1,500,000	1,100,000	1,100,000
Total Fixed OM&R cost	\$90,000,000	\$90,000,000	\$90,000,000
4 cent tax funds applied	0	0	\$ (15,000,000)
Net amount to be made up	\$90,000,000	\$90,000,000	\$75,000,000
Increase per acre-foot	\$ 60.00	\$ 82.00	\$ 68.00

*Decreases Fixed OM&R rate by \$10/acre-foot per year applied*

# Considerations

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- If the 4-cent tax expires, the only place CAWCD can absorb significant new costs is in water rates and capital charges.
- Burden of additional costs will fall exclusively on water users, although the benefits of CAP extend to all citizens in the three counties and the balance of the state. (ASU's Economic Impact of CAP Study, April 2014)
- Future funding needs to ensure CAP reliability.

# CAWCD's 4-Cent Property Tax Extension of Levy Authority

Authorized by the Arizona State Legislature in the 1990s, the 4-Cent Tax is an ad valorem property tax levied by the three-county special taxing district, Central Arizona Water Conservation District (CAWCD). The CAWCD is governed by a 15-member elected Board of Directors that manages and operates the 336-mile Central Arizona Project (CAP) canal. CAP is Arizona's single, largest water supplier, providing more than 1.5 million acre-feet (nearly 500 billion gallons) of Colorado River water to Maricopa, Pima and Pinal counties each year.

## Quick Facts on the 4-Cent Tax

- Cannot exceed 4 cents per \$100 of a property's total value and must be levied at a single rate across the three-county CAP service area.
- Equates to \$8 per year for a homeowner with a \$200,000 house.
- Generates approximately \$18-19 million per year.
- Represents approximately 6-7% of CAWCD's overall annual revenues.
- Expires on January 2, 2017. The CAWCD Board has voted to seek legislation to extend the 4-Cent taxing authority.

Arizona law specifies a tiered system for the use of 4-Cent Tax revenues. Primarily, the tax may be used by the CAWCD to repay the federal government for its share of construction costs of the canal, and those payments average \$55 million annually. CAWCD may also use the proceeds for CAP purposes with regard to Operation, Maintenance, and Replacement (OM&R) expenses of the canal. Finally, the funds can be used to store water underground in conjunction with the Arizona Water Banking Authority (AWBA) and as authorized by the CAWCD by annual resolution.

Each year, the 15-member CAWCD Board must first determine whether there is a need to levy the tax, and for what purpose. If the tax is to be levied, the Board establishes the allocation and distribution of funds through an open process, public meeting. A Board resolution adopted in this manner specifies how the 4-Cent Tax will be used.

## Four-Cent Tax Authority (A.R.S. § 48-3715.03)

"[The CAWCD] ...shall annually determine by resolution whether all or any part of the tax levied... be applied to the repayment of the construction costs of the central Arizona project... or to the annual operation, maintenance and replacement costs of the central Arizona project. Any taxes ...that are not deposited into the district [CAWCD] fund...shall be deposited...in the Arizona water banking fund..."

## HOW THE 4¢ TAX IS USED

Arizona law specifies a **1-2-3 tiered system** for expenditures.



**\$152M**  
HAS STORED  
**2 MILLION**  
ACRE-FEET OF WATER  
FOR DROUGHT  
PROTECTION

## Continued Relevance and Need

The tax has provided CAWCD with a source of revenue to address the unanticipated costs of operating the CAP canal and created nearly 2 million acre-feet of stored water for times of shortage. These purposes are still relevant today and will be even more important in the future. In addition, the current statutory authority of the 4-Cent Tax provides the CAWCD the flexibility it needs to address future challenges.

The CAWCD faces several challenges to ensure future reliability of the canal and the Colorado River system. Some of these include:

- Colorado River drought and anticipated shortage of water supply;
- Aging infrastructure of the canal system, which is now more than 30 years old; and
- Renegotiation of key contracts and ongoing regulatory actions affecting the CAP's primary power supply, the Navajo Generating Station.

If the 4-Cent Tax expires, the only place CAWCD can absorb significant and unexpected new costs is in water rates and capital charges to its municipal, agricultural, and Tribal customers. In addition, all proactive water storage efforts funded by this tax for future Arizona needs will end.

The 4-Cent Tax today, as in 1990, benefits Arizona, and it provides the CAWCD the financial flexibility to address current and future costs, thereby helping to ensure vital and reliable water supplies today and into the future.

**For more information, please contact Bridget Schwartz-Manock, CAP's Legislative Affairs Manager, at 623-869-2150 or [bschwartzmanock@cap-az.com](mailto:bschwartzmanock@cap-az.com).**



## Timeline of the Four-Cent Tax Authority

**1990** – To address the State's underutilization of its 2.8 million acre-foot allocation of Colorado River, the Arizona Legislature authorizes CAWCD to collect a property tax in Maricopa and Pima counties to fund the construction of water recharge facilities for five years (Laws 1990, Chapter 385). Water storage is a way to bring otherwise unused CAP water into central Arizona for future use. The CAWCD successfully constructed six water recharge facilities.

**1994** – The Legislature modifies the purpose of the tax for OM&R expenses of the CAP and for federal repayment, expands the taxing authority to include Pinal County, and extends the tax until 2001. The CAWCD Board is required to annually determine whether the tax will be levied and how proceeds are utilized (Laws 1994, Chapter 278).

**1996** – The Legislature creates the Arizona Water Banking Authority (AWBA), authorizes AWBA's use of 4-Cent Tax proceeds pursuant to CAWCD resolution, and extends the tax until January 1, 2017 (Laws 1996, Chapter 308). More than \$150 million of tax proceeds have been shared with the AWBA to store water underground for municipal and industrial purposes in times of shortage.

*"Bathtub rings" in Lake Mead demonstrate the drastic impact drought and Colorado River structural deficit have had on the reservoir's water elevation.*