



December 11, 2023

REPORT ON REINSTATING THE WATER RESOURCE TRUST FUND

The Colorado River is a shared resource providing most of the water to seven (7) western states. The water supports 40 million persons living in those seven states and plays a critical role in sustaining the regional economy and food security for the nation and sometimes the world.

Through laws, agreements, treaties, and legal precedents, the Federal government has allocated roughly 16.5 million acre-feet (MAF) of River to users every year. In the last few decades due to what has been described as a megadrought, the River has only produced an outflow of about 11 or 12 (MAF) with several years producing only 9 MAF of available water. The net deficit in flows caused the levels of Lake Mead and Lake Powell to fall to historically low numbers, jeopardizing not only the availability of water, but also the ability to produce hydroelectric power if either of the Lakes fall to certain levels or reach deadpool.

The federal Bureau of Reclamation (Reclamation) is the water master for the Colorado River. Reclamation distributes each state's allocation through local water districts. When the output of the River does not meet Reclamation's promised deliveries and/or when the levels of Lake Mead and/or Lake Powell fall below certain levels, Reclamation declares a tiered shortfall on the River and begins calling for cuts to water distributions through a legal priority system. By and large, the rural River communities have higher priority water rights, so Reclamation's cuts to Arizona water tend to target later users in metropolitan areas of Arizona.

Water is vital to existing and new industries and in the southwest, water is necessary for growth. The large metropolitan areas have long seen the Colorado River as the key to sustaining growth. The metropolitan areas have tried many times to shift long-standing, high-priority water rights from rural River communities to the large metropolitan areas and the efforts to transfer had been unsuccessful, until a hedge fund successfully obtained permission to transfer fourth priority water

from the Cibola area of La Paz County to the Town of Queen Creek in metropolitan central Arizona.

This transfer of water from on-River communities to metropolitan areas is seen as a test case because the hedge fund in the center of the transfer and other hedge funds have acquired thousands of acres of production farmland in Yuma County and La Paz County for future transfers of Colorado River water. River communities' Colorado River allocation is most often the only water source for each of the communities and represents its total "water portfolio." The allocation to the River communities is intended to meet the current and future economic needs of each community and any transferred water disparately impacts rural residents by placing constraints on future growth and opportunity. These permanent transfers disrupt existing law and long-standing water rights commoditizes the rural River communities by removing the single, irreplaceable resource in the region, water.

The Counties of Mohave, La Paz, and Yuma, as well as the City of Yuma are engaged in litigation against Reclamation to stop the transfer of River water from La Paz County to the Town of Queen Creek. The Counties and City contend that Reclamation failed to comply with the National Environmental Policy Act (NEPA) mandates to fully consider the environmental and human effects the permanent transfer would have on River communities, especially because of the precedential and aggregate effects of future transfers under a thorough Environmental Impact Statement (EIS). Reclamation argues to the contrary and states it was not required to consider those issues when approving the transfer and could approve the permanent River water transfer, the first of its kind, through a mere Environmental Assessment (EA). Water transfers have been described as "death by 1,000 cuts" to rural River communities and agricultural operations in the Yuma area. If Reclamation is not required to fulfill NEPA as it argues, it streamlines the immediate and permanent transfer of River water to the affluent metropolitan areas without any real oversight. The matter is currently pending in the federal District Court for Arizona.

In addition to River water transfers, Reclamation's 2007 Interim Guidelines for operating the Colorado River are set to expire in 2026. Because of the shortage on the Colorado River, Reclamation has called for the lower Colorado River basin states of California, Arizona, and Nevada to amend the 2007 Interim Guidelines and institute cuts to their states. The first draft of Reclamation's proposed amendment eliminated some of the City's River water allocation and eliminated the City's return flow credits to the River. Luckily, this initial proposal did not move forward, and the current proposed amendment is more acceptable. However, negotiations will

continue this year and if the expected hydrology on the River does not manifest this winter, the City could be susceptible to harsh cuts if it does not vigorously engage to protect the status quo.

The amendments to the 2007 Guidelines are just a bridge as the to the end of 2025 when the 2007 Guidelines, as amended, expire, because the new set of Guidelines, the 2026 Guidelines are simultaneously being negotiated with all users of the Colorado River. The next proposed EIS for the 2026 Guidelines will be released in early 2024 and all the Lower Basin states will need to approve and adopt these new Guidelines on or before December 31, 2025. Arizona is the only Lower Basin state required to have the Guidelines approved by its State Legislature, which increases the City's need to advocate both on a regional level and statewide in a setting where there are legislators who want the Yuma region's Colorado River water to be available for the metropolitan areas in the Phoenix Valley, Pima County, and Pinal County.

In 1988, the Yuma City Council adopted Resolution R2558 to establish a Water Resource Trust Fund to protect water resources for the Yuma Community. The City Council memorandum and Resolution R2558 are attached to this report as Exhibit "A". The R2558 implemented a modest surcharge to City water accounts for the protection and enhancement of the City's water rights. The funds could be used only for purposes of water resource protection, such as: major legal expenses; acquisition of water rights; water supply enhancements; legislative assistance; and water source protection information and education; and other water resource protection purposes as determined by the City Council.

It is recommended that City Council reinstate the 1988 Water Resource Trust Fund to provide funding to protect the City's Colorado River interests. The proposal is nearly identical to R2558, except the surcharge will not be based on percentage. To grant certainty to customers, the suggested surcharge would be \$1.00 per residential account, \$2.00 per each commercial account with \$1.00 for each residential dwelling unit on a commercial account, and \$10.00 for each industrial account. The goal is to fund \$500,000.00 and City Council will use these monies only for purposes of water resource protection. Once the fund reaches the goal amount, the surcharge will end. If the fund needs to be replenished in the future, another Resolution will be brought for City Council approval in accordance with statute.

Respectfully submitted,

/s/ Rodney C. Short

Rodney C. Short

Deputy City Attorney

EXHIBIT "A"

RESOLUTION R2558 & CITY COUNCIL MEMORANDUM OF THE
1988 WATER RESOURCE TRUST FUND

CITY OF YUMA REQUEST FOR COUNCIL ACTION

FOR MEETING OF: <u>September 19, 1988</u>	Ordinance _____	Resolution <u>X</u>
DEPT: <u>Public Services</u>	First Reading _____	Motion _____
DIVISION: <u>Water/Sewer</u>	Second Reading _____	Public Hearing _____

SUMMARY TITLE/RECOMMENDATION: ADOPTING WATER RESOURCE ASSET FUND SURCHARGE
The adoption of Resolution amending "City of Yuma Utility Regulations" as adopted by Resolution No. 2482, governing the water and sewer system by enacting a 3% water surcharge to residential and commercial water service charges.

BACKGROUND/DISCUSSION/ALTERNATIVES/CONCURRENCE:

Background:

The natural resource asset value of water has been recognized previously and during budget discussions it was planned to set up a \$300,000 fund to protect Yuma's water supply assets. Funds for this purpose were to be derived from a surcharge on water bills.

This matter was taken before the Water and Sewer Commission in June 1988, and they recommended to the City Council a 3% surcharge to raise \$300,000. These funds they recommended be restricted for water supply enhancements.

At the September 6, 1988 Council Work Session this surcharge issue was discussed and the City Council concerns addressed at that time have been included in the Resolution.

Discussion:

This resolution concerns the establishment of a Water Resource Asset Fund Surcharge. It establishes a restricted fund and a surcharge on residential and commercial water service charges to provide the revenue.

Major components of the Resolution are:

- 1) 3% surcharge on residential and commercial water service charges.
- 2) Surcharge shall become effective on water bills issued December 1, 1988, and continue through November 30, 1990. (If surcharge is to continue after November 30, 1990, it will have to be reinacted.)
- 3) All expenditures from the fund must be approved by City Council. In order to insure public notice, expenditures cannot be approved at the Council meeting at which they are introduced, so two meetings will be required to expend these funds.
- 4) When Council determines the fund is no longer needed, any remaining monies on hand shall be transferred to the Water Plant Capacity restricted account.

The resolution also lists the intent of the City Council to spend the Water Resource Asset Fund for general water resource protection such as: major legal expenses; acquisition of water rights; water supply enhancements; legislative assistance; and water source protection information, and education.

CONTINUATION OF BACKGROUND/DISCUSSION/ALTERNATIVES/CONCURRENCE:

An average water bill is about \$20.00 per month, so the surcharge will cost each customer an average of 60 cents each month.

Alternative:

A six (6) percent surcharge for one year.

Concurrence:

Director of Financial Services.

If funds are required, please complete the following: _____
State \$ _____; City \$ _____; Other \$ _____;
Total \$ _____, Budgeted \$ _____ Avail for Transfer \$ _____
Contingency \$ _____ Funding for this item is found in the _____
Budget, Page No. _____

FISCAL IMPACT STATEMENT:

The action requested can be expected to produce approximately \$300,000 over two years.

If request is for Ordinance or Resolution, complete the following NEW _____
AMENDING ORD/RES. NO. 2482 SECTION 1.11 CITY CODE SECTION _____

Is an Emergency Clause required? YES _____ NO X
If YES, why?

Supporting Information/Source Documents: List all material filed in the City Clerk's Office as backup information for the request.

- 1.
- 2.
- 3.

ANY CHANGES SINCE LAST PRESENTED TO COUNCIL? YES _____ NO _____
If YES, please resubmit to appropriate Departments for APPROVAL signatures.

REVIEWED BY CITY ATTORNEY: Steven W. Moore Date: 9/14/88

APPROVED FOR COUNCIL AGENDA:

City Administrator: [Signature] Date: 9-14-88

APPROVED AS TO BUDGET APPROPRIATION AND AVAILABILITY OF FUNDS:

Director of Financial Services: _____ Date: _____

Recommended by: Larry E. Hunt Date: 9-14-88
Responsible Department Director

TO BE COMPLETED BY CITY CLERK FOLLOWING COUNCIL ACTION: _____ City Clerk

Date: _____ Resol.No. _____ Ord.No. _____

MOTION: _____
Minute Book Number _____ Page Number _____

RESOLUTION NO. 2558

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA AMENDING THE "CITY OF YUMA UTILITY REGULATIONS", AS ADOPTED BY RESOLUTION NO. 2482, GOVERNING THE USE OF THE WATER AND SEWER SYSTEM AND PRESCRIBING UTILITY RATES AND FEES.

WHEREAS, the City of Yuma's water supply is a natural resource asset and must be protected; and,

WHEREAS, the Water and Sewer Commission of the City of Yuma has recommended to the City Council the need to establish funds for the protection and enhancement of this natural resource; and,

WHEREAS, the establishment of these funds would be of public benefit to the residents of the City; and,

WHEREAS, these funds are to be used for the following general purposes as they apply to water resource protection: major legal expenses; acquisition of water rights; water supply enhancements; legislative assistance; and water source protection information and education; and other purposes as determined by the City Council; and,

WHEREAS, the present rate structure does not raise sufficient sums for these purposes and the Water and Sewer Commission of the City of Yuma has recommended to the City Council a need for the increase and a proposed water surcharge amount.

NOW, THEREFORE, be it resolved by the City Council of the City of Yuma as follows:

SECTION 1. Yuma City Code Section 31-85 authorizes the City Council to prescribe utility rates by Resolution.

SECTION 2. There is hereby established a Water Resource Trust Fund. All monies derived from a water resource trust fund surcharge shall be allocated to this Fund.

SECTION 3. Section 1.11 of Article I, Water Regulations, "City of Yuma Utility Regulations", as adopted by Resolution No. 2482, is amended to include the following:

H. Water Resource Trust Fund Surcharge

A water resource trust fund surcharge shall be added to the bimonthly utility bill. This surcharge shall be computed by taking the amounts shown for residential and/or commercial water services and multiplying by three percent.

SECTION 4. All expenditures from the Water Resource Trust Fund must be approved by the City Council. Such expenditures shall not be approved at the Council meeting at which they are introduced.

SECTION 5. The surcharge adopted by this Resolution shall become effective and be reflected on water bills issued December 1, 1988 through November 30, 1990.

SECTION 6. At such time the City Council determines that there is no longer a need for the Water Resource Trust Fund, any monies still on hand at such date shall be transferred to the Water Utility Fund Restricted Account for water plant capacity.

SECTION 7. The sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared invalid, unenforceable or unconstitutional by the valid judgement of decree of a court of competent jurisdiction, such invalidity, unenforceability or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Resolution.

PASSED AND ADOPTED this 19th day of Sept, 1988.

ATTEST:

Dorothy R. Robbins
City Clerk

APPROVED:
Jim Bester
Mayor

APPROVED AS TO FORM:

Steven W. Moore
City Attorney

REVIEWED BY:

[Signature]
City Administrator

Approved at the City Council Meeting of:
Sept 19, 1988
City Clerk: D. Riblini

STATE OF ARIZONA)
)
COUNTY OF YUMA)

I, Dorothy R. Robbins, City Clerk of the City of Yuma, Arizona, Do Hereby Certify that the whole number of members of the City Council of said City is seven; that the foregoing Resolution, being Resolution No. 2558_ was duly passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of said Council held on the _19_ day of _September, 19 88_, and that the same was so passed and adopted by the following vote:

AYES: Councilmen Rodriguez, Steiert, Shoop, Jefferson,
and Mayor Buster

NAYS: Councilmembers _____

ABSENT: Councilmen Godley and Peterson

WITNESS MY HAND AND THE OFFICIAL SEAL OF SAID CITY THIS 21
DAY OF Sept., 19 88

Dorothy R. Robbins
City Clerk of the City of Yuma

