

ARIZONA WATER BANKING AUTHORITY
Wednesday, June 19, 2002

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3	JOHN EVANS	702-862-3475
4	Tom Maher	702-259-8202
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6	Sharon B. Megdal	520-792-9591 x21
7	Dale Ensminger	702 293-8659
8	Nancy Ormsted	702-293-8532
9	Steve Herman	715 885 5000
10	Chuck Cull	623 869-2665
11	Tom Harbour	623 869-2107
12	Harold Goodman	623-930-2582
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16	Jim Davenport	752-486-2689
17	Larry Dozier	
18	Mills Pearce	602-916-5335
19	Brian Henning	623-869-2567
20	John Gould	623-869-2565
21	Kathi Knox	602 542 5480
22	Bob Lynch - Tracy Van Vleet	
23	Beck Siegel SLP	236-2277
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It's a dry heat



Arizona Water Banking Authority
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Web Page: www.awba.state.az.us

PLEASE POST

NOTICE OF PUBLIC MEETING

Pursuant to A.R.S. § 38-431.02, notice is hereby given that there will be a meeting of the Arizona Water Banking Authority Commission on June 19, 2002 at 10:00 a.m. at the Arizona Department of Water Resources, 500 North Third Street, Phoenix, Arizona 85004, third floor conference room. The meeting is open to the general public. A copy of the agenda for the meeting is posted below.

Dated this 18th day of June, 2002

FINAL AGENDA

Arizona Water Banking Authority Commission Meeting

- I. Welcome/Opening Remarks
- II. Approval of Minutes of March 20, 2002 Meeting
- III. Water Banking Staff Activities
 - Deliveries
 - AWBA Member appointments
- IV. Discussion and Approval of Amended 2002 Annual Plan of Operation
 - Discussion regarding inclusion of Interstate Water Banking
 - Comments
 - Approval of Amended 2002 Annual Plan of Operation
 - Discussion and approval of agreement with Southern Nevada Water Authority for delivery of water in 2002
- V. 2001 Annual Report
 - Overview of 2001 Annual Report
 - Adoption of 2001 Annual Report
- VI. FY 2003 Operating Budget
 - Overview of 2003 Operating Budget
 - Adoption of 2003 Operating Budget
- VII. Discussion and Approval of Agreements
 - Groundwater Savings Facility Agreements
 - Intergovernmental Agreement (IGA) among ADWR, CAWCD and AWBA
 - Excess Water Contract between AWBA and CAWCD
 - Master Water Storage Agreement between AWBA and CAWCD

- VIII. Update on Status of Interstate Agreements
- Storage and Interstate Release Agreement (SIRA)
 - Status of Agreement for Development of Intentionally Created Unused Apportionment (ICUA)
 - Agreement Relating to Implementation of Interim Colorado River Surplus Guidelines between Southern Nevada Water Authority and Metropolitan Water District of Southern California
- IX. Call to the Public

Future Meeting Date:

Wednesday, September 18, 2002

Wednesday, December 18, 2002

*This is a tentative agenda that is subject to change prior to the scheduled meeting date. Please contact the AWBA at (602) 417-2418 24 hours in advance of meeting for final agenda.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Nan Flores at (602) 417-2418. Requests should be made as early as possible to allow time to arrange the accommodation.

**ARIZONA WATER BANKING AUTHORITY
Draft Minutes**

**March 20, 2002
Arizona Department of Water Resources**



AUTHORITY MEMBERS
Joseph C. Smith, Chairman
Tom Griffin, Vice-Chairman
Bill Chase, Secretary
George R. Renner
Richard S. Walden

EX OFFICIO MEMBERS
Representative Mike Gleason
Senator Ken Bennett

Welcome/Opening Remarks

Richard Walden, Sen. Ken Bennett and Rep. Mike Gleason were absent from the meeting.

Minutes

The Authority approved the minutes from the December 19, 2001 meeting.

Water Banking Staff Activities

Tim Henley, manager of the Authority, reviewed the current deliveries. Mr. Henley stated that actual deliveries are on schedule with projected deliveries, although it is early in the year. However, it is shaping up to be a dry year, so actual deliveries could exceed projected if dry conditions continue.

Mr. Henley informed the Authority that staff are in the process of completing annual reports for water deliveries. Annual reports are due on March 31.

Mr. Henley recognized Chuck Cahoy who will again be providing counsel to the Authority. Mike Pearce, who had served as the Authority's counsel for the previous few years, left the Department of Water Resources (ADWR) and now works for Fennemore Craig. Mr. Pearce could be used in a contract capacity for work on the interstate agreements if needed. Mr. Henley reported that David Donnelly, Deputy General Manager of the Southern Nevada Water Authority (SNWA) would be retiring. Mr. Donnelly was a member of the interstate water banking negotiating team. Kay Brothers stated that Mr. Donnelly would retire on April 12 and that she would be assuming his duties at SNWA.

Mr. Henley provided the Authority with an update regarding legislation of interest to the Authority. He informed the Authority that there would be no comprehensive water management package going to the legislature this year. It may be presented next year when there is less discussion regarding the budget and more time for discussion and education regarding the water management issues.

A strike everything amendment to Senate Bill 1355 introduced by Senator Guenther would change the Authority's current statutory requirement to reserve a reasonable number of long-term storage credits accrued with general fund appropriation for M&I users outside the CAP service area. The new legislation would require the AWBA to reserve the 375,000 acre feet of credits accrued with general fund money before July 1, 2001 for this purpose. Mr. Henley stated that his concern with this amendment was that the Authority has the ability to do this and should do so on their own without changing the legislation. Mr. Henley stated that he had additional concerns, but would address them under a later agenda item. It was his belief that once the Authority addressed this issue, word could be passed on to Senator Guenther and the legislation could possibly be withdrawn.

Other legislation discussed was H.B. 2594 and H.B. 2643. H.B. 2594 gives exchanges between an agricultural improvement district and a multi-county water conservation district an exemption from the 12 month time period for completion of the exchange. This is pertinent because the Authority is often the recipient of water under these exchanges. H.B. 2643 returns *in lieu* tax dollars collected

by the Authority to the Water Protection Fund instead of the state general fund. Mr. Henley stated that hearings are currently being held on these pieces of legislation. He did not recommend any specific action be taken by the Authority.

Prioritization of the Use of Credits Developed with the General Fund

As discussed above, Mohave County requested Senator Guenther to sponsor the strike all amendment to reserve 375,000 acre feet of credits for them. Mr. Henley stated that there currently is no competition from other sources for the general fund credits, but that Mohave County has concerns regarding the future. He introduced Larry Dozier, Deputy General Manager of the Central Arizona Project (CAP) to discuss the issue associated with actual reservation of the credits.

Mr. Dozier informed the Authority that CAP is required to charge *an in lieu* tax for water used outside the three county CAP service area. Today, that tax is \$20-22 per acre-foot. Thus far, there has been no allocation of the general fund credits for a specific entity outside the service area. Consequently, the tax has not been charged on any of the credits developed with general fund money. However, if the legislative reservation occurs, the credits will be subject to the tax. Further, since the credits haven't actually been used by a particular entity, the tax cannot be passed on and would need to be paid by the Authority. This would generate a bill of about \$7.5 million at a time when the Authority has lost its general fund appropriation. Therefore, a resolution by the Authority was developed to serve in place of the legislative reservation.

George Renner stated that the resolution developed for the Authority only addressed "reasonable" and not a specific number of credits and questioned the reason for this. Mr. Dozier stated that the number that came out of the Study Commission was 420,000 acre feet, however, it is recognized that the number could change over time. Mr. Henley stated that it was his opinion that the resolution recognized "reasonable" as 420,000 acre feet even though it was not specifically stated in the "resolved" section of the resolution. He agreed with Mr. Dozier that picking a specific number is limiting because the true number could be either higher or lower at a later date due to changes in the system. Tom Griffin stated that this was discussed with Mohave County and that the county did not object to the resolution as written. This would hold true as long as full Authority approval was required to change what was "reasonable".

There was no further discussion and the Authority adopted the resolution. The Authority gave Mr. Henley approval to discuss this issue with Senator Guenther. Mr. Griffin stated that he would also be speaking with Senator Guenther.

State Budget Shortfall and Impact on Water Banking Authority

The state budget shortfall was discussed at the December meeting but the actual impact was not analyzed. In fiscal year (FY) 2002, the Authority did not receive the last \$1 million of the planned \$2 million general fund appropriation. The amount of general fund available to the Authority in FY 2003 is unknown, however, Mr. Henley's expectation is that there will be none. The impact of a zero general fund appropriation was evaluated.

The impact is minimal in the Phoenix and Tucson AMA's due to the amount of funds they generate.

The primary area of impact is the Pinal AMA. Based on currently available funds and projections through end of year, deliveries to the Pinal AMA will possibly need to be decreased about 12,000 acre feet due to lack of funds. Mr. Henley presented the following options:

- (1) Inform Pinal County partners that deliveries will be short and alternative water sources will need to be utilized. CAP would then need to recalculate the remaining water charges due. It should be borne in mind that actual losses may be more than 12,000 acre-feet because in dry years, the Pinal County irrigation districts have historically used more water. If those

additional deliveries are foregone, the actual acre-foot loss of storage could be closer to 30,000 acre-feet.

- (2) If revenues are higher than projected, the 2002 deliveries could be achieved, however, there would be no additional money to purchase water until May or June of 2003.
- (3) Funds could be moved from other accounts.
- (4) Utilize Nevada as a partner and initiate interstate water banking. Although all of the necessary agreements are not in place, there is the possibility that they could be ready by June. This would require additional action on the part of the Authority.

Mr. Henley stated that staff is not asking today for a decision about storing water for Nevada. June would be a realistic timeframe for addressing initiation of interstate banking.

Mr. Renner asked if the funds generated by interstate banking would be subject to legislative loss. Mr. Henley stated that they would not because they are received and disbursed almost simultaneously. Any carryover would be held by CAP not by the Authority.

Joseph C. Smith noted that he agreed with Mr. Henley that there will be no general fund money available in FY 2003. Further, it will probably be difficult to get it back in FY 2004. Mr. Smith also stated that he does not think the legislature is looking at any of the Authority's other funds at this time.

Mr. Griffin asked if action needed to be taken to direct staff. Mr. Henley stated that he would feel more comfortable as the previous action taken by the Authority was specifically to direct staff to negotiate agreements. Now they would be discussing actual storage, Mr. Henley would prefer it be through direction by the Authority.

The Authority directed staff to begin discussions with Nevada regarding the possibility of interstate storage in 2002 and 2003.

Update on Status of Interstate Agreements

Mr. Henley reported that the Storage and Interstate Release Agreement (SIRA) is in the middle of the public process. Thus far, the Bureau of Reclamation hasn't received numerous comments but they have had some requests for copies of documents. The expectation is that the SIRA will be finalized in the next month and be ready for approval in June.

Update on Status of AWBA Contract Agreements

Mr. Henley stated that the agreements had all been extended by letter until the end of April. Drafts of the agreements are being worked on but they are not yet ready for execution. He said that the Authority may decide to have a special meeting for approval of agreements since there are so many.

The Groundwater Savings Facility agreement is different because it is now only between the Authority and the partner. The Intergovernmental Agreement is different because it is no longer the mechanism for water delivery. The Excess Water Contract will be the contract for water delivery but the Authority's will be different from others because of the differences in the Authority's delivery and payment. The CAP is in the process of drafting a new Master Storage Facility agreement that will cover storage at all of the CAP facilities.

Mr. Renner asked if a new motion was needed to extend the deadline further. Mr. Henley replied in the negative because although the letters only extended 4 months, the Authority approved extension for up to one year.

Presentation by Tucson AMA Institutional and Policy Advisory Group (IPAG)

Sharon Megdal, representing the IPAG, provided an informational briefing regarding CAP storage and recovery in the Tucson AMA. The IPAG has reexamined the 1998 Regional Recharge Plan and is doing some updated analysis to include Authority activities in the AMA. An interactive spreadsheet has been developed for use as an analytical tool. The spreadsheet allows various scenarios to be modeled.

The model has shown that the M&I firming target for the Tucson AMA will be very difficult to meet and the IPAG has begun analyzing a number of options to bridge the firming gap. Ms. Megdal also discussed the IPAG's interest in recovery, specifically looking at where water is stored and how it will be recovered. The IPAG intends to continue their dialogue with CAP, the Authority, ADWR and others regarding recovery.

Mr. Henley noted that the IPAG has provided assistance to the Authority in the past and he anticipates that they will continue to provide input regarding Authority activities in the AMA.

Update on Preparation of 2001 Annual Report

Gerry Wildeman stated that the Annual Report is still in the preliminary draft stage so copies were not distributed. Drafts of the report will likely be available about a month before the next meeting. Ms. Wildeman noted that the current report will be very similar to past reports, briefly discussed the statutory requirements regarding the Annual Report and requested Authority members to inform staff of any particular items they would like discussed in the report.

Mr. Henley discussed the development of the ten-year plan portion of the Annual Report. He stated that the new ten year plan will include changes to the revenues available to the Authority, an interstate water banking component and activities of other entities that could effect the Authority's availability of water (i.e. the CAGR). The ten-year plan will be incorporated into a larger planning process being developed between the Authority, ADWR, and CAP.

Mr. Renner stated that he would like to see included in the Annual Report a discussion regarding the Governor's Groundwater Management Commission.

Call to the Public

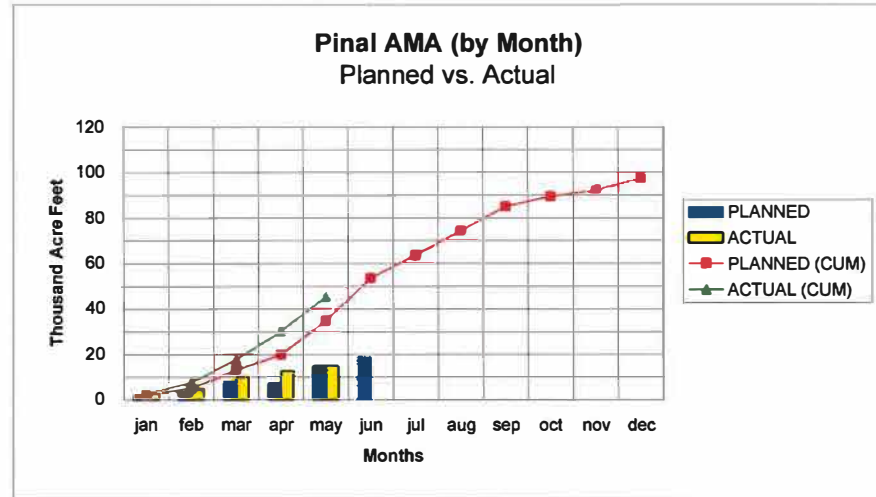
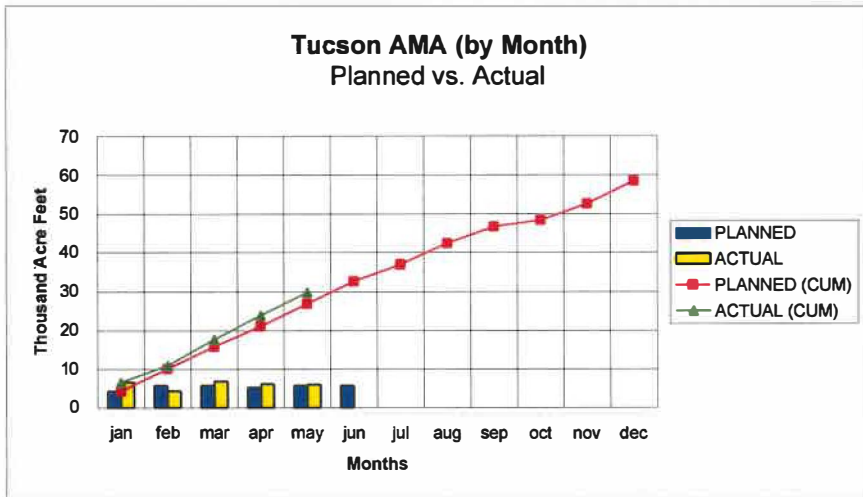
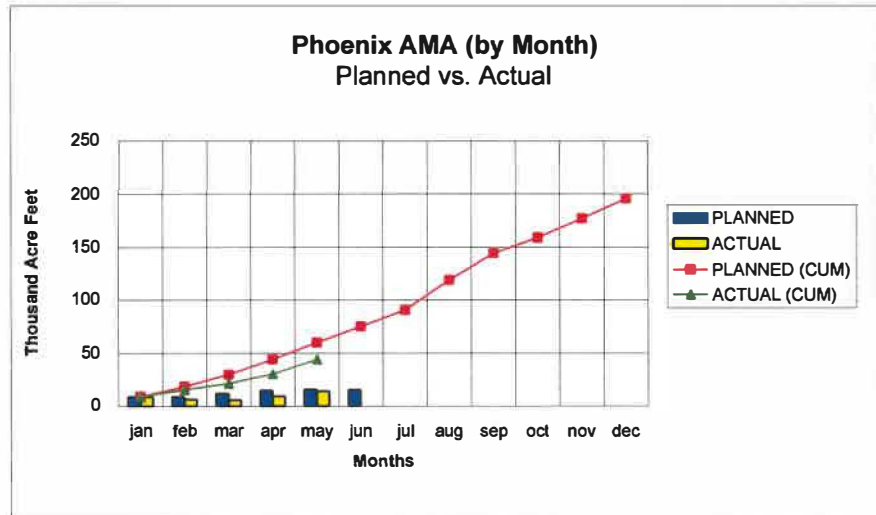
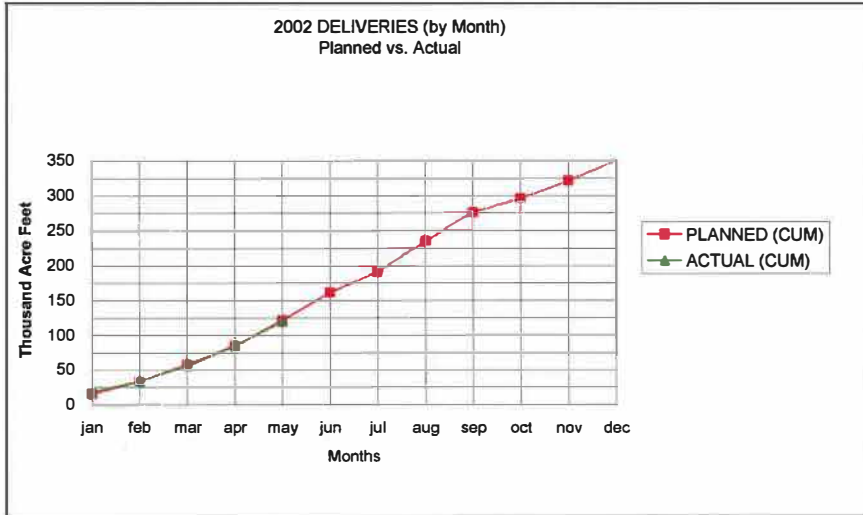
Marvin Cohen from the City of Tucson commented that Tucson is very concerned with developing additional storage and with recovery, particularly with linking recovery with storage. He stated that the Central Avra Valley Storage and Recovery Project could have additional 20,000 acre-feet of storage available in the future.

Mark Myers stated that his comments mirror Mr. Cohen's and Ms. Megdal's regarding interest in storage and recovery. He noted that his clients see interstate storage and recovery as a trial run for intrastate storage and recovery because interstate recovery is on a shorter timeline.

The next AWBA meeting is scheduled for Wednesday, June 19, 2002.

The meeting concluded at 11:28 a.m.

2002 Plan of Operation



Actual deliveries updated <i>Plan of Operation</i>		13-Jun-02 <i>1-Jan-02</i>												total
		jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	
Phoenix AMA														
GRUSP	4,300	2,090	304	3,245	4,294									14,233
	4,800	4,800	4,800	4,800	4,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	50,600
AGUA FRIA	1,758	784	3,820	4,181	4,949									15,492
	2,033	2,034	2,033	5,600	6,100	6,100	6,450	7,100	7,100	5,100	5,579	7,100		62,329
CHCID	0	0	21	22	120									163
	50	100	50	100	100	151	125	125	125	191	0	0		1,117
NMIDD	2,619	3,529	0	243	3,000									9,391
	2,000	2,000	3,200	2,500	3,000	3,500	3,700	9,700	9,600	3,500	2,500	2,000		47,200
QCID	0	0	0	0	0									0
	0	0	0	0	0	0	0	5,711	3,182	1,682	1,202	1,723		13,500
TID	0	0	0	0	0									0
	0	0	0	0	0	0	0	0	0	0	2,000	1,000		3,000
SRP	0	0	1,606	1,600	1,600									4,806
	0	0	1,600	1,600	1,600	1,600	1,600	1,600	1,600	0	0	0		11,200
HIEROGLYPHIC	0	0	0	0	0									0
	0	0	0	0	0	0	0	0	0	0	3,000	3,000		6,000
Subtotal	8,677	6,403	5,751	9,291	13,963	0	0	0	0	0	0	0	0	44,085
Total to date	8,677	15,080	20,831	30,122	44,085	44,085	44,085	44,085	44,085	44,085	44,085	44,085	44,085	44,085
<i>Projected total to date</i>	<i>8,883</i>	<i>17,817</i>	<i>29,500</i>	<i>44,100</i>	<i>59,700</i>	<i>74,851</i>	<i>90,526</i>	<i>118,562</i>	<i>143,969</i>	<i>158,242</i>	<i>176,323</i>	<i>194,946</i>	<i>194,946</i>	<i>194,946</i>
Pinal AMA														
CAIDD	0	0	0	0	0									0
	0	0	0	0	0	0	0	3,000	7,000	2,500	1,000	1,500		15,000
MSIDD	1,020	1,350	1,970	3,520	4,870									12,730
	510	510	1,350	620	4,870	10,700	6,010	210	200	0	710	2,140		27,830
HIDD	1,727	3,310	8,147	9,264	10,307									32,755
	1,500	2,500	6,400	6,500	10,000	8,000	4,000	7,600	3,500	2,000	1,000	1,500		54,500
Subtotal	2,747	4,660	10,117	12,784	15,177	0	0	0	0	0	0	0	0	45,485
Total to date	2,747	7,407	17,524	30,308	45,485	45,485	45,485	45,485	45,485	45,485	45,485	45,485	45,485	45,485
<i>Projected total to date</i>	<i>2,010</i>	<i>5,020</i>	<i>12,770</i>	<i>19,890</i>	<i>34,760</i>	<i>53,460</i>	<i>63,470</i>	<i>74,280</i>	<i>84,980</i>	<i>89,480</i>	<i>92,190</i>	<i>97,330</i>	<i>97,330</i>	<i>97,330</i>
Tucson AMA														
Avra Valley	593	186	469	283	744									2,275
	570	570	570	570	570	570	570	570	570	230	570	570		6,500
Pima Mine	2,464	1,704	2,972	2,775	2,326									12,241
	2,100	2,600	2,600	2,100	2,600	2,600	2,100	2,600	2,000	400	1,131	2,600		25,431
Lower Santa Cruz	3,506	2,431	3,369	3,126	2,888									15,320
	1,600	2,600	2,600	2,600	2,600	2,600	2,600	1,661	1,742	1,293	972	2,600		25,468
Kai Red Rock	0	0	0	0	0									0
	0	0	0	0	0	0	0	500	500	0	0	0		1,000
Subtotal	6,563	4,321	6,810	6,184	5,958	0	0	0	0	0	0	0	0	29,836
Total to date	6,563	10,884	17,694	23,878	29,836	29,836	29,836	29,836	29,836	29,836	29,836	29,836	29,836	29,836
<i>Projected total to date</i>	<i>4,270</i>	<i>10,040</i>	<i>15,810</i>	<i>21,080</i>	<i>26,850</i>	<i>32,620</i>	<i>37,890</i>	<i>43,221</i>	<i>48,033</i>	<i>49,956</i>	<i>52,629</i>	<i>58,399</i>	<i>58,399</i>	<i>58,399</i>
TOTAL	17,987	15,384	22,678	28,259	35,098	0	0	0	0	0	0	0	0	119,406
Total to date	17,987	33,371	56,049	84,308	119,406	119,406	119,406	119,406	119,406	119,406	119,406	119,406	119,406	119,406
<i>Projected total to date</i>	<i>15,163</i>	<i>32,877</i>	<i>58,080</i>	<i>85,070</i>	<i>121,310</i>	<i>160,931</i>	<i>191,886</i>	<i>236,063</i>	<i>276,982</i>	<i>297,678</i>	<i>321,142</i>	<i>350,675</i>	<i>350,675</i>	<i>350,675</i>

Opportunities for Interstate Banking in 2002

PINAL AMA : (ACTUAL VOLUMES TO DATE -- JAN through MAY)

		Permit Capacity	January	February	March	April	May	June	July	August	September	October	November	December	Total
Current Plan of Operation:															
GSF	CAIDD	110,000	0	0	0	0	0	0	0	3,500	7,500	3,000	1,500	2,000	17,500
	HOHOKAM	55,000	1,727	3,310	8,147	9,264	10,307	8,000	4,000	7,600	3,500	2,000	1,000	1,500	60,355
	MSIDD	120,000	1,020	1,350	1,970	3,520	4,870	10,700	6,010	210	200	0	710	2,140	32,700
															110,555
Additional Requests:															
GSF	CAIDD	110,000	0	0	0	0	0	0	0	3,500	7,500	4,000	2,500	3,000	20,500
	HOHOKAM	55,000	1,727	3,310	8,147	9,264	10,307	8,000	3,000	6,000	2,500	1,500	1,000	1,000	55,755
	MSIDD	120,000	1,020	1,350	1,970	3,520	4,870	13,000	11,700	1,700	700	1,000	400	600	41,830
															118,085

AWBA has purchased to date:	53,529 AF	Remaining commitments under current plan -	51,671 AF
		Remaining with additional requests -	64,556 AF

Funds available for Current Plan year:			
	As of May 31	Additions by Oct 31	Total
4 cent tax	\$141,300	\$60,000	\$201,300
Withdrawal Fee	\$952,700	\$40,000	\$992,700
Total	\$1,094,000	\$100,000	\$1,194,000

Remaining Current Plan		with Addition
Funds required	\$1,756,800	\$2,194,890
Funds available	\$1,194,000	\$1,194,000
Funding Shortfall	\$562,800	\$1,000,890
Water that can be purchased	35,118 AF	35,118 AF
Water Shortfall	16,553 AF	29,438 AF

Potential for Nevada Participation:		
	Current Plan	With Addition
with \$0 Carryover	16,553 AF	29,438 AF
with \$350k Carryover	26,847 AF	39,732 AF

Discussion:

- 1) With the currently available funds and the funds that we can reasonably expect to collect between now and the end of October (our last payment for the current Plan is due in November) under the current Plan we will have shortfall of approximately **17,000 AF**.
- 2) If we try and meet the current Plan with current and projected funding we will not meet our current commitments and start next year with no carryover in Pinal with the first dispersement of new funds not expected until late May.
- 3) Because it has been a dry year our GSF partners will most likely require additional water, their options is pump additional groundwater or more in-lieu. After discussions with the districts, they have indicated they can utilize an additional 18,000 AF.

Options:

- 1) Do not amend the Plan, use our current and expected funds to finish the year. This could mean CAP deliveries for the year will be reduced. It would also mean the our GSF partners in Pinal will most likely pump additional groundwater. There would be no carryover for next years Plan.
- 2) Amend current Plan to allow SNWA to make up the shortfall approximately 17,000 AF, still no carryover .
- 3) Amend current Plan to allow SNWA to make up the shortfall but also maintain a carryover of \$350,000 approximately
- 4) Amend current Plan to increase our deliveries to our GSF partners and to allow SNWA to make up the new shortfall with no carryover for next years Plan approximately 27,000 AF, still no carryover.
- 5) Amend current Plan to increase our deliveries to our GSF partners and to allow SNWA to make up the new shortfall but also maintain a carryover of \$350,000 approximately 40,000 AF.

**AGREEMENT BETWEEN THE
ARIZONA WATER BANKING AUTHORITY AND THE
SOUTHERN NEVADA WATER AUTHORITY FOR THE
STORAGE OF COLORADO RIVER WATER IN 2002**

This Agreement is made this ___ day of _____, 2002, between the Arizona Water Banking Authority (“AWBA”) and the Southern Nevada Water Authority (“SNWA”).

1. The Parties to this Agreement are in the process of negotiating and executing a series of agreements under which the AWBA will undertake offstream storage of Colorado River water and the development of intentionally created unused apportionment for the benefit of SNWA and the Colorado River Commission of Nevada (“Interstate Water Banking”) pursuant to 43 CFR 414. Only one of those agreements, the Agreement for Interstate Water Banking, has been executed as of the date of execution of this Agreement.
2. The AWBA has determined that, after meeting the needs of Arizona water users with the money available for that purpose, 40,000 acre feet of capacity remains in 2002 for the acquisition and storage of Colorado River water in Arizona and that this capacity could be used for Interstate Water Banking for the benefit of SNWA.
3. The SNWA desires that the 40,000 acre feet of capacity identified by the AWBA be used by the AWBA to store Colorado River water and accrue Long-Term Storage Credits that could be used for Interstate Water Banking purposes for the SNWA’s benefit. The SNWA recognizes, however, that until the remaining Interstate Water Banking agreements, known as the “Storage and Interstate Release Agreement” and the “Agreement for the Development of Intentionally Created Unused Apportionment” are executed, no mechanism will exist by which the SNWA may obtain water for any water stored under this Agreement.
4. On or before September 15, 2002, the SNWA agrees to pay to the AWBA the total sum of \$5,080,000. This sum is based on the cost to the AWBA of acquiring and storing 40,000 acre feet of Colorado River water for Interstate Water Banking purposes.
 - a) The cost components of the water, per acre foot, are:

• Operation, maintenance and replacement cost:	\$33.00
• Municipal and industrial capital cost:	43.00
• Energy cost:	52.00
• Fees assessed pursuant to A.R.S. § 48-3715(B):	20.00
• Less groundwater savings facility contribution:	-21.00
TOTAL (per acre foot x 20,000 acre feet):	\$127.00
 - b) AWBA administrative fee \$23,000.00
5. The AWBA shall use the monies paid by the SNWA under this Agreement to acquire and store Colorado River water and to accrue Long-Term Storage Credits.

The AWBA shall use its best efforts to acquire and store 40,000 acre feet in accordance with this Agreement, but the SNWA acknowledges that unanticipated changes in delivery or storage capacity or higher than anticipated costs may cause the amount of water acquired and stored to be less than 40,000 acre feet.

6. No later than June 30, 2003, the AWBA shall provide the SNWA an account reconciliation that specifies the amount of water acquired and stored and credits accumulated under this Agreement and the actual costs of the components specified in Paragraph 4. If the water costs per acre foot to the AWBA of acquiring and storing the water are less than those identified under Paragraph 4, the AWBA shall recalculate the total amount of water acquired and stored and credits accumulated based on the total sum paid by the SNWA under Paragraph 4.
7. After the execution of both the Storage and Interstate Release Agreement and the Agreement for the Development of Intentionally Created Unused Apportionment, the AWBA shall assign Long-Term Storage Credits in an amount equal to the number accrued under this Agreement to the SNWA Interstate Account established pursuant to Subarticle 2.2.4 of the Agreement for Interstate Water Banking.
8. If the Storage and Interstate Release Agreement and the Agreement for the Development of Intentionally Created Unused Apportionment are not both executed, all of the following shall apply:
 - a) At the SNWA's request, the AWBA shall use its best efforts to obtain financial reimbursement for the additional costs it incurred for acquiring and storing the water under this Agreement compared to the costs it would have incurred had the water been acquired and stored for Arizona intrastate purposes.
 - b) At the SNWA's request, the AWBA shall pay the SNWA an amount equal to any financial reimbursement secured by the AWBA under Subparagraph 8(a) and an amount equal to the costs the AWBA would have incurred had the water been acquired and stored for Arizona intrastate purposes.
 - c) The SNWA shall have no recourse under this Agreement other than the financial compensation specified in this Paragraph
9. In the event that the amount of water acquired and stored is less than 40,000 acre feet due to delivery or capacity constraints any remaining funds shall be carried forward and applied a future transaction pursuant the Agreement for Interstate Water Banking.

ARIZONA WATER BANKING AUTHORITY

SOUTHERN NEVADA WATER AUTHORITY

Joseph C. Smith, Chairman

_____, Chairman

William Chase, Secretary

Attachment 2002-1

ARIZONA WATER BANKING AUTHORITY
(FY 2002 - July 2001 thru June 2002)

		<u>Actual</u>
FY 2002 ADMINISTRATIVE BUDGET	\$385,045	\$324,300
FY 2002 WATER RECHARGE BUDGET	\$15,247,350	\$13,703,000
TOTAL FY 2002 AWBA BUDGET	\$15,632,395	\$14,027,300
<hr/>		
TOTAL EXPECTED REVENUES	\$15,240,000	\$16,521,517
CARRYOVER / (DEFICIT) from PREVIOUS YEARS	\$29,986,548	\$29,986,548
TOTAL REVENUES AVAILABLE	\$45,226,548	\$46,508,065
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FY 2002 CARRYOVER / (DEFICIT)	\$29,594,153	\$32,480,765

Attachment 2003-1

ARIZONA WATER BANKING AUTHORITY

(FY 2003 - July 2002 thru June 2003)

FY 2003 ADMINISTRATIVE BUDGET	\$563,312
FY 2003 WATER RECHARGE BUDGET	\$20,413,500
TOTAL FY 2003 AUTHORITY BUDGET	\$20,976,812
<hr/> <hr/>	
TOTAL EXPECTED REVENUES	\$15,370,000
CARRYOVER / (DEFICIT) from PREVIOUS YEARS	\$32,480,765
TOTAL REVENUES AVAILABLE	\$47,850,765
<hr/> <hr/>	
FY 2003 CARRYOVER / (DEFICIT)	\$26,873,953

ARIZONA WATER BANKING AUTHORITY

FY 2003 ADMINISTRATIVE BUDGET**\$563,312**

STAFFING

	Total FTE	Cost
Department of Water Resources Cost of Services		\$463,862
Personnel Services	4.5	\$236,031
Water Bank Manager		
2 Water Bank Technical Administrators		
Administrative Assistant		
Attorney		
Employee Related Expenditures (at 22.51% of Personnel Services)		\$53,131
Indirect Cost (at 60.4% of Personnel Service & ERE)		\$174,700
Central Arizona Project Cost of Services		\$10,000
Personnel Services & ERE		\$10,000
Water System Engineer		
Customer Service Coordinator		
Hydrologist		
Administrative Support		
Subtotal Staffing		\$473,862

OTHER COSTS

Professional & Outside Services	(continuing effort on Interstate Issues)	\$60,000
Travel		\$20,750
Instate Travel		\$14,750
Out of State Travel		\$6,000
Other Operating Expenses		\$6,700
Standard per employee	4.5	\$600
Postage		\$3,000
Paper	(Included under indirect cost)	\$0
Miscellaneous		\$1,000
Equipment		\$2,000
No major equipment purchases are anticipated in FY 2000		\$2,000
Subtotal Other Costs		\$89,450

Attachment 2003-3

ARIZONA WATER BANKING AUTHORITY

TRAVEL

	Meetings	\$/Meeting	Cost	
INSTATE TRAVEL				
Authority Members				
Tom Griffin	5	\$450	\$2,250	
Dick Walden	5	\$200	\$1,000	
Bill Chase	5	\$0	\$0	
George Renner	5	\$0	\$0	
Joe Smith	5	\$0	\$0	
Subtotal			\$3,250	
Authority Staff				
Manager	5	\$0	\$0	
	4	\$400	\$1,600	(Las Vegas)
Technical Administrators	10	\$0	\$0	
	4	\$400	\$1,600	(Las Vegas)
Admin Assistant	5	\$0	\$0	
Other Support	2	\$400	\$800	(Las Vegas)
Motor Pool			\$1,500	
Subtotal			\$5,500	
Motor Pool			\$6,000	
Instate Total			\$14,750	
OUT OF STATE TRAVEL				
Authority Members	No out of state travel is anticipated for Authority Members			
Authority Staff				
Manager	4	\$500	\$2,000	(California)
	3	\$1,000	\$3,000	(Other)
Technical Administrators	2	\$500	\$1,000	(California)
Total Out of State			\$6,000	
Total Travel			\$20,750	

Attachment 2003-3 continued

OTHER OPERATING COSTS

		Cost
Postage		<u>\$3,000</u>
Subtotal		\$3,000
Paper	Included under indirect cost	
Subtotal		<u>\$0</u>
Miscellaneous		
	Copying	Included under indirect cost
	Special copying	\$500
	Permits	<u>\$500</u>
		\$1,000
Total Other Operating Cost		\$4,000

EQUIPMENT

	Units	Unit Cost	Cost
			\$2,000
Subtotal			<u>\$2,000</u>
Total Equipment			\$2,000

ARIZONA WATER BANKING AUTHORITY

FY 2003 WATER RECHARGE BUDGET**\$20,413,500**

COST ASSUMPTIONS

Cost of Water		
CAP	(Energy Rate 2 plus \$5.00 towards Fixed O&M)	\$55
Direct Recharge (Cost for using direct recharge facilities)		
	GRUSP	\$17.52
	Avra Valley	\$24.00
	Pima Mine Road	\$6.00
	Lower Santa Cruz	\$12.50
	Hieroglyphic Mountains	\$8.00
	Aqua Fria Recharge Project	\$4.00
Cost Recovery for In-lieu Recharge		
	(cost recovery from in-lieu partners)	\$21

WATER PURCHASES and RECHARGE (July 2002 thru June 2003)

	Amount (acre feet)	Cost / acre foot	Total
CAP Delivery Cost			\$17,175,000
Direct Deliveries	235,000	\$55	\$12,925,000
In-Lieu Deliveries	125,000	\$34	\$4,250,000
Direct Facility Use Charge			\$3,238,500
GRUSP	50,000	\$17.52	\$876,000
Avra Valley	65,000	\$24.00	\$1,560,000
Pima Mine Road	15,000	\$6.00	\$90,000
Lower Santa Cruz	25,000	\$12.50	\$312,500
Hieroglyphic Mountains	20,000	\$8.00	\$160,000
Aqua Fria Recharge Project	60,000	\$4.00	\$240,000
Total FY 2003	360,000	\$57	\$20,413,500

REVENUES AVAILABLE for FY 2003 RECHARGE**\$15,370,000**

4 cent TAX	(Estimated based on 2002 tax year)	\$11,100,000
Maricopa		\$9,000,000
Pinal		\$300,000
Pima		\$1,800,000
Withdrawal Fee	(Estimated for 2001 pumping)	\$4,270,000
Phoenix AMA		\$2,650,000
Pinal AMA		\$970,000
Tucson AMA		\$650,000
General Fund Appropriation	(Potentially available July 1, 2002)	\$0

Attachment 2004-1

ARIZONA WATER BANKING AUTHORITY
(FY 2004 - July 2003 thru June 2004)

FY 2004 ADMINISTRATIVE BUDGET	\$499,650
FY 2004 WATER RECHARGE BUDGET	\$17,740,000
TOTAL FY 2004 AUTHORITY BUDGET	\$18,239,650
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TOTAL EXPECTED REVENUES	\$16,000,000
CARRYOVER / (DEFICIT) from PREVIOUS YEARS	\$26,873,953
TOTAL REVENUES AVAILABLE	\$42,873,953
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FY 2004 CARRYOVER / (DEFICIT)	\$24,634,303

**AGREEMENT BETWEEN
THE ARIZONA WATER BANKING AUTHORITY,
AND _____ DISTRICT
PROVIDING FOR STORAGE OF CENTRAL ARIZONA PROJECT WATER
AT A GROUNDWATER SAVINGS FACILITY**

1. The ARIZONA WATER BANKING AUTHORITY (“AWBA”) and _____
_____ DISTRICT (“Facility Operator”) enter into this Agreement this ____ day of 2002.

2.
 - 2.1 The purpose of this Agreement is to provide for the storage of Central Arizona Project water, which the AWBA is legally entitled to store, at the Groundwater Savings Facility operated by the Facility Operator.
 - 2.2 The Parties recognize that this Agreement is one of a series of agreements entered into by the AWBA to provide for the storage of Central Arizona Project water. These agreements include the Intergovernmental Agreement among the Arizona Department Of Water Resources, Arizona Water Banking Authority, and Central Arizona Water Conservation District, dated _____, 2002, and the Agreement Between the Central Arizona Water Conservation District and the Arizona Water Banking Authority Providing for the Delivery of Excess Central Arizona Project Water, dated _____, 2002. These agreements, in turn, are subject to certain agreements entered into by the Central Arizona Water Conservation District regarding the operation of the Central Arizona Project. These agreements include Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, between the United States and the Central Arizona Water Conservation District, and Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment upon the Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated

Action). The Parties to this Agreement recognize and agree that this Agreement is subject to the agreements referenced in this Section 2.2 and that in the event of any inconsistency between this Agreement and agreements referenced, the provisions of the agreements referenced shall be controlling.

2.3 The Parties agree that the Central Arizona Water Conservation District shall have rights as a third party beneficiary to enforce certain provisions that are specified in this Agreement.

3. In this Agreement, the following terms shall have the following meanings:

3.1 "ADWR" shall mean the Arizona Department of Water Resources

3.2 "Authority Water" shall mean water made available by CAWCD to the AWBA on an annual basis for underground storage pursuant to the terms of the Excess CAP Water Contract between the AWBA and CAWCD, which water would not otherwise have been used within Arizona.

3.3 "CAP" shall mean the Central Arizona Project.

3.4 "CAWCD" shall mean the Central Arizona Water Conservation District.

3.5 "Party or Parties" shall mean either one, or in the plural, both of the parties to this Agreement.

3.6 Definitions specified in A.R.S. § 45-802.01 are applicable to this Agreement. The first letters of terms so defined are capitalized.

4. This Agreement shall terminate on December 31, 2011 unless the parties agree in writing to extend the term or unless it is sooner terminated or cancelled in accordance with Section 13.

5. The delivery and use of water under this Agreement are conditioned on the following, and the Parties agree that:

- 5.1 All uses of Authority Water shall be consistent with Arizona water law and with federal law applicable to the CAP.
- 5.2 Authority Water made available pursuant to this Agreement shall be used only at the Groundwater Savings Facility for which the Facility Operator has obtained and continues to maintain Groundwater Savings Facility Permit, No. 72-_____, or modifications or renewals of that permit. The Facility Operator shall be responsible for all expenses and administrative requirements, including filing annual reports with the ADWR, associated with maintaining the Groundwater Savings Facility permit. The Facility Operator's use of Authority Water at such Groundwater Savings Facility shall at all times comply with the plan of operation of the Groundwater Savings Facility Permit. If such Groundwater Savings Facility Permit is cancelled or expires for any reason the Facility Operator shall immediately notify the AWBA and deliveries of Authority Water to the Facility Operator may, at the option of the AWBA, be discontinued immediately. The Facility Operator shall notify the AWBA if it files an application with the ADWR to amend its Groundwater Savings Facility permit.
- 5.3 Authority Water made available to the Facility Operator pursuant to this Agreement shall be used within the Facility Operator's Groundwater Savings Facility for Water Storage purposes only.
- 5.4 The Facility Operator shall cause the pumping of groundwater within the Facility Operator's Groundwater Savings Facility to be reduced by one acre-foot for each one acre-foot of Authority Water received at the Facility
- 5.5 The Facility Operator shall submit to the AWBA a monthly report of water use. The monthly report shall be in a form and submitted within a time which is acceptable to the AWBA and shall contain a report of water use by amount

and type of water used.

- 5.6 The AWBA shall obtain a Water Storage Permit from the ADWR to store water at the Facility Operator's Groundwater Savings Facility. The AWBA shall be responsible for all expenses and administrative requirements, including filing annual reports with the ADWR, associated with maintaining the Water Storage Permit.
6. 6.1 On or before September 1, the Facility Operator shall consult with the AWBA and provide a written projection of the Facility Operator's water use by type and amount for each month of the following year, which the AWBA may use to develop its annual plan of operation for the following year.
 - 6.2 On or before December 1, the AWBA shall return to the Facility Operator a final water delivery schedule based on the AWBA's annual plan of operation for the following year.
 - 6.3 The AWBA shall authorize the Facility Operator to order Authority Water for delivery to the Groundwater Savings Facility directly from CAWCD in accordance with CAWCD water ordering procedures and the AWBA's plan of operation.
 - 6.4 The amounts, times and rates of delivery of Authority Water to the Facility Operator during any year shall be in accordance with the current plan of operation of the Authority. Authority Water ordered by the Facility Operator shall not exceed the amounts provided for in the current plan of operation of the Authority, unless approved in writing by the Authority.
 - 6.5 Monthly water deliveries may be amended upon the Facility Operator's written request to CAWCD with copy to the AWBA. Proposed amendments shall be submitted by the Facility Operator to CAWCD with copy to the

AWBA not less than fifteen (15) days before the desired change is to become effective, and shall be subject to review and modification by CAWCD and the AWBA.

- 6.6 The Facility Operator shall hold the AWBA and CAWCD, their officers, agents, and employees, harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with water delivery schedules furnished by or to the Facility Operator.

7. 7.1 The AWBA may reduce or discontinue deliveries of Authority Water to the Facility Operator under this Agreement in one or more of the following events:
 - 7.1.1 The Facility Operator fails to file the monthly report(s) required by Section 5.5.
 - 7.1.2 The Facility Operator violates the permit or plan of operation associated with the Groundwater Savings Facility or takes any action that threatens the AWBA's ability to accrue Long-Term Storage Credits for Authority Water delivered to the Groundwater Savings Facility.
- 7.2 The AWBA shall notify the Facility Operator of any determination to reduce or discontinue deliveries of Authority Water to the Facility Operator.

8. 8.1 On or before October 15 of each year, CAWCD and the AWBA shall notify the Facility Operator of the cost for each acre foot of Authority Water to be delivered under this Agreement for the following year ("Facility Operator's Contribution").
- 8.2 The Facility Operator shall pay CAWCD directly for all water delivered under

this Agreement. On or before the first day of each month, the Facility Operator shall pay CAWCD the amounts due as the Facility Operator's Contribution for Authority Water scheduled for delivery during that month.

8.3 The Facility Operator shall pay CAWCD in advance all amounts due as the Facility Operator's Contribution for Authority Water scheduled for delivery under this Agreement; however, CAWCD has agreed to reimburse the Facility Operator for any portion of the Facility Operator's Contribution which is attributable to Authority Water scheduled for delivery that is not subsequently delivered to the Facility Operator or to provide an equivalent credit against payment in the future of any fees owed CAWCD by the Facility Operator, should the Facility Operator so desire. CAWCD shall not be required to deliver water scheduled under this Agreement if the Facility Operator is in arrears in payment of any charges due CAWCD for a period of 60 days or more.

8.4 CAWCD shall be entitled, as a third party beneficiary to this Agreement, to collect from the Facility Operator any charges for water owed under this Section 8, along with interest, administrative and penalty charges on delinquent installments or payments, in accordance with the following:

8.4.1 The Facility Operator shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Facility Operator shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Facility Operator shall pay an additional penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the Facility Operator shall

pay any fees incurred for debt collection services associated with a delinquent payment.

8.4.2 The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent (0.5%) per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

8.4.3 When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty and administrative charges, second, to the accrued interest, and third to the overdue payment.

8.5 If the AWBA is not given Long-Term Storage Credits because the Facility Operator has violated the Groundwater Savings Facility permit or plan of operation, the Facility Operator shall pay to the AWBA any water service charges paid by the AWBA to CAWCD for the water delivered to the Groundwater Savings Facility which did not accrue Long-Term Storage Credits. The payment shall be made within 90 days of the denial of Long-Term Storage Credits by the ADWR.

9. 9.1 Nothing in this Agreement shall be construed as an allocation of water to the Facility Operator, nor shall this Agreement entitle the Facility Operator to any water other than as provided herein.

9.2 Nothing in this Agreement shall be construed as requiring the AWBA to provide Authority Water to the Facility Operator in any year, and nothing in

this Agreement shall be construed as requiring the Facility Operator to accept deliveries of Authority Water in any year. The Parties agree that in any year in which the AWBA desires to provide Authority Water to the Facility Operator and in which the Facility Operator agrees to accept deliveries of Authority Water, the terms and conditions of this Agreement shall apply.

10. Neither the AWBA or CAWCD warrant the quality of any water furnished under this Agreement and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water. The Facility Operator waives its right to make a claim against the AWBA or CAWCD, on account of the quality of water or any changes in water quality caused by the commingling of water delivered under this Agreement with other water.
11.
 - 11.1 The Parties agree that the AWBA may designate a third party agent to exercise the right to recover the AWBA's water stored under this Agreement. The "Designated Recovery Agent" shall be CAWCD, a political subdivision of the State of Arizona, and/or a municipal corporation formed under the laws of the State of Arizona. The AWBA shall, in accordance with Section 15 of this Agreement, notify the Facility Operator of the appointment of a Designated Recovery Agent pursuant to this Section 11.
 - 11.2 The Facility Operator agrees to cooperate with the Designated Recovery Agent in facilitating the recovery of Long-Term Storage Credits stored by the AWBA at the Facility Operator's Groundwater Savings Facility.
 - 11.3 The Facility Operator agrees not to register any objection with the ADWR to an application for a recovery well permit filed by the Designated Recovery

Agent or other entities seeking to recover water stored by the AWBA so long as the water is to be recovered at the Groundwater Savings Facility at which it was stored.

- 11.4 Upon the distribution of Long-Term Storage Credits by the AWBA to a Designated Recovery Agent, the Designated Recovery Agent may recover the Long-Term Storage Credits at the Groundwater Savings Facility upon written notification to the Facility Operator.
- 11.5 The Designated Recovery Agent shall not recover Long-Term Storage Credits within the Facility Operator's boundaries that were not accrued by the AWBA at the Facility Operator's Groundwater Savings Facility, unless the Facility Operator agrees in writing to allow the Designated Recovery Agent to recover other Long-Term Storage Credits.
- 11.6 To recover Long-Term Storage Credits pursuant to this Section 11, the Facility Operator shall allow the Designated Recovery Agent to recover the AWBA's Long-Term Storage Credits using the Facility Operator's wells. Such use shall be subject to the Facility Operator's operational control of the wells and shall be made only when, in the discretion of the Facility Operator, there is sufficient well capacity and water transportation facilities available to recover the Long-Term Storage Credits without disrupting delivery of irrigation water to the Facility Operator's customers; however, such discretion shall not be unreasonably exercised so as to defeat the intent of this Section 11. The Facility Operator shall provide to the AWBA within 1 year after execution of this Agreement a description of wells and well sites which the Designated Recovery Agent could utilize for recovery purposes, including the necessary authorization for Facility Operator's use of such wells and well sites.

- 11.7 If insufficient well capacity is available within the Facility Operator's boundaries to meet a recovery request, the Designated Recovery Agent may install, own, operate and maintain new wells and related facilities or, at the Designated Recovery Agent's request, the Facility Operator may, under a separate agreement, install, own, operate and maintain new wells and related facilities, provided that the Designated Recovery Agent pays the Facility Operator in advance all construction costs associated with such new wells and facilities. All of the fixed and variable operating costs of such facilities attributable to the recovery of Long-Term Storage Credits shall be the sole responsibility of the Designated Recovery Agent. Nothing herein requires the Facility Operator to construct facilities that, in their judgement, would interfere with the operation of existing wells within the Facility Operator's water delivery system. The Designated Recovery Agent shall reimburse the Facility Operator the cost of obtaining all permits required to drill new recovery wells identified by the Designated Recovery Agent for purposes of this Agreement.
- 11.8 The Designated Recovery Agent shall be responsible for obtaining and maintaining recovery well permits and shall pay all permit fees associated with recovery of Long-Term Storage Credits at the Groundwater Savings Facility.
- 11.9 The Designated Recovery Agent shall reimburse the Facility Operator for all reasonable costs incurred by the Facility Operator in the recovery of Long-Term Storage Credits in accordance with this Section 11. These costs may include, but are not limited to wheeling services, scheduling costs, incremental increased cost of power, and incremental increased cost of operation, maintenance, and replacement of wells and/or pumps within the

Facility Operator's Groundwater Savings Facility. Prior to any recovery under this Section 11, the Designated Recovery Agent and the Facility Operator shall agree upon the costs for which the Designated Recovery Agent shall be responsible. The Designated Recovery Agent and the Facility Operator may agree that the Designated Recovery Agent will provide power to operate the wells to offset part of the agreed upon costs.

- 11.10 The Facility Operator does not warrant the quality of water produced from recovery wells and is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of such water. The Designated Recovery Agent waives its right to make a claim against the Facility Operator because of changes in water quality caused by underground storage or the mixing of recovered water with other water.
- 11.11 It is the express intention of the Parties that the Designated Recovery Agent be a third party beneficiary of the obligations and duties of the provisions of this Section 11, and that the third party beneficiary shall be considered a "Party" only for the purposes of this Section 11. The rights of the third party beneficiary under this Section 11 shall vest immediately upon notification of the Facility Operator by the AWBA of the designation of a Designated Recovery Agent in accordance with this Section 11. The Parties agree that the terms of this Section 11 shall not, in any way, limit the rights or privileges of the AWBA under this Agreement.
- 11.12 The obligations set forth in this Section 11 shall survive the expiration or termination of this Agreement and remain in full force and effect until all Authority Water stored at the Facility Operator's Groundwater Savings Facility has been recovered.

12. 12.1 Authority Water furnished to the Facility Operator pursuant to this Agreement shall be delivered only to the Facility Operator at such point(s) that have previously been approved by CAWCD and only if CAWCD has satisfied itself that the pipelines, canals, distribution systems, or other conduits that will convey Authority Water after delivery will prevent excessive conveyance losses and are constructed, operated, and maintained in accordance with any condition of applicable laws, regulations or order and to the satisfaction of CAWCD.
- 12.2 In the event of damage to CAP facilities due to failure of the Facility Operator to operate in a good and workmanlike manner, the Facility Operator shall pay the CAWCD within thirty (30) days of Facility Operator's receipt of a statement for the costs of repairing any damage to Project facilities or Project rights-of-way caused by or arising out of the Facility Operator's activities under this Agreement.
- 12.3 If the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, and if the Facility Operator intends to convey water furnished to the Facility Operator pursuant to this Agreement through connection facilities owned or operated by others, the use by the Facility Operator of such connection facilities shall be the subject of written agreement(s) between the Facility Operator and the owner(s) or operator(s) of such connection facilities, and all such agreements shall be provided to the CAWCD prior to initiation of deliveries.
- 12.4 Unless the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, all water delivered from the Water Supply System shall be measured with equipment furnished and installed by the Facility Operator and operated and maintained by the Facility

Operator at the Facility Operator's sole cost and expense. The results of such measurements shall be reported to CAWCD in such manner and at such time(s) as CAWCD may prescribe. Upon the request of CAWCD or the AWBA, the accuracy of such measurements shall be investigated by the Facility Operator, and any errors which are determined to have occurred therein shall be adjusted; however, in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive.

- 12.5 If the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, all water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by CAWCD. Upon the request of the Facility Operator, the AWBA, or CAWCD, the accuracy of such measurements shall be investigated by CAWCD and the Facility Operator, and any errors which are mutually determined to have occurred therein shall be adjusted; however, in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive.
- 12.6 The United States, CAWCD, and the AWBA shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the Facility Operator's Project delivery point. The Facility Operator shall hold the United States, CAWCD, and the AWBA harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water beyond the Facility Operator's Project delivery point.
- 12.7 The AWBA shall not be liable for any action taken by CAWCD or the Facility Operator pursuant to this Section 12 regarding the construction, operation,

or maintenance of connection facilities.

12.8 Deliveries of water scheduled under this Agreement are subject to interruption and discontinuance due to investigation, inspection, construction, testing, maintenance, repair or replacement of the CAP and its components. The Facility Operator also acknowledges that CAP water available to the AWBA is only that water which would otherwise be unused in Arizona and, therefore, deliveries of water scheduled under this Agreement are subject to interruption and discontinuance due to insufficient water or delivery capacity to deliver all other waters scheduled for delivery through the CAP. The United States, its officers, agents, and employees, CAWCD, its officers, agents and employees, and the AWBA, its officers, agents, and employees shall not be liable for any damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water scheduled under this Agreement occurs.

13. 13.1 This Agreement may be terminated for any of the following reasons:

13.1.1 If the Facility Operator remains in arrears in the payment of the Facility Operator's Contribution for thirty (30) days or more, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator;

13.1.2 If the Facility Operator remains in arrears in the reimbursement of any portion of the AWBA's Contribution for thirty (30) days or more, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator and

CAWCD;

- 13.1.3 If the excess water contract between the AWBA and CAWCD providing for delivery of Authority Water is terminated, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator; or
- 13.1.4 if the AWBA determines in its sole discretion that the Facility Operator is operating the Groundwater Savings Facility in a manner contrary to law or in a manner which is likely to jeopardize the ability of the AWBA to earn Long-Term Storage Credits for Authority Water delivered to the facility for the benefit of the AWBA, the AWBA may terminate this Agreement, which termination shall be effective ten (10) days after mailing written notice of termination to the Facility Operator and CAWCD.

13.2 The Parties' and CAWCD's rights under this Agreement to collect any monies owed under the Agreement shall survive the termination of this Agreement.

13.3 The rights of the AWBA to terminate this Agreement as provided in this Section 13 shall be in addition to all other rights of the AWBA under this Agreement and as provided by law.

14. The Facility Operator shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including: the Facility Operator's water supply data, water-use data, and other matters that the AWBA or CAWCD may require. Reports thereon shall be furnished to the AWBA or CAWCD in such form and on such date or dates as the AWBA or

CAWCD may require. Subject to applicable federal and state laws and regulations, each party to this Agreement shall have the right during office hours to examine and make copies of each other party's books and records relating to matters covered by this Agreement.

15. Any notice, demand, or request authorized or required by this Agreement shall be in writing and shall be deemed to have been duly given if mailed, first class postage prepaid, or delivered to the parties at the following addresses:

If to the AWBA:

Manager
Arizona Water Banking Authority
500 North Third Street
Phoenix, Arizona 85004

If to the Facility Operator:

_____ District

The designation of the address or addressee for the giving of notice may be changed by notice given as provided in this Section 15.

16. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any interest therein shall be valid unless and until approved in writing by and the AWBA.
17. This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first above-written.

ARIZONA WATER BANKING AUTHORITY

Attest: _____
Secretary

By: _____
Chairman

_____ **DISTRICT**

Attest: _____
Secretary

By: _____
President

**AGREEMENT BETWEEN
THE ARIZONA WATER BANKING AUTHORITY,
AND DISTRICT
PROVIDING FOR STORAGE OF CENTRAL ARIZONA PROJECT WATER
AT A GROUNDWATER SAVINGS FACILITY**

1. The ARIZONA WATER BANKING AUTHORITY ("AWBA") and _____
_____ DISTRICT ("Facility Operator") enter into this Agreement this ____ day of 2002.

2.
 - 2.1 The purpose of this Agreement is to provide for the storage of Central Arizona Project water, which the AWBA is legally entitled to store, at the Groundwater Savings Facility operated by the Facility Operator.
 - 2.2 The Parties recognize that this Agreement is one of a series of agreements entered into by the AWBA to provide for the storage of Central Arizona Project water. These agreements include the Intergovernmental Agreement among the Arizona Department Of Water Resources, Arizona Water Banking Authority, and Central Arizona Water Conservation District, dated _____, 2002, and the Agreement Between the Central Arizona Water Conservation District and the Arizona Water Banking Authority Providing for the Delivery of Excess Central Arizona Project Water, dated _____, 2002. These agreements, in turn, are subject to certain agreements entered into by the Central Arizona Water Conservation District regarding the operation of the Central Arizona Project. These agreements include Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, between the United States and the Central Arizona Water Conservation District, and Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment upon the Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated

Action). The Parties to this Agreement recognize and agree that this Agreement is subject to the agreements referenced in this Section 2.2 and that in the event of any inconsistency between this Agreement and agreements referenced, the provisions of the agreements referenced shall be controlling.

2.3 The Parties agree that the Central Arizona Water Conservation District shall have rights as a third party beneficiary to enforce certain provisions that are specified in this Agreement.

3. In this Agreement, the following terms shall have the following meanings:

3.1 "ADWR" shall mean the Arizona Department of Water Resources.

3.2 "Authority Water" shall mean water made available by CAWCD to the AWBA on an annual basis for underground storage pursuant to the terms of the Excess CAP Water Contract between the AWBA and CAWCD, which water would not otherwise have been used within Arizona.

3.3 "CAP" shall mean the Central Arizona Project.

3.4 "CAWCD" shall mean the Central Arizona Water Conservation District.

3.5 "Party or Parties" shall mean either one, or in the plural, both of the parties to this Agreement.

3.6 Definitions specified in A.R.S. § 45-802.01 are applicable to this Agreement. The first letters of terms so defined are capitalized.

4. This Agreement shall terminate on December 31, 2011 unless the parties agree in writing to extend the term or unless it is sooner terminated or cancelled in accordance with Section 13.

5. The delivery and use of water under this Agreement are conditioned on the following, and the Parties agree that:

- 5.1 All uses of Authority Water shall be consistent with Arizona water law and with federal law applicable to the CAP.
- 5.2 Authority Water made available pursuant to this Agreement shall be used only at the Groundwater Savings Facility for which the Facility Operator has obtained and continues to maintain Groundwater Savings Facility Permit, No. 72-_____, or modifications or renewals of that permit. The Facility Operator shall be responsible for all expenses and administrative requirements, including filing annual reports with the ADWR, associated with maintaining the Groundwater Savings Facility permit. The Facility Operator's use of Authority Water at such Groundwater Savings Facility shall at all times comply with the plan of operation of the Groundwater Savings Facility Permit. If such Groundwater Savings Facility Permit is cancelled or expires for any reason the Facility Operator shall immediately notify the AWBA and deliveries of Authority Water to the Facility Operator may, at the option of the AWBA, be discontinued immediately. The Facility Operator shall notify the AWBA if it files an application with the ADWR to amend its Groundwater Savings Facility permit.
- 5.3 Authority Water made available to the Facility Operator pursuant to this Agreement shall be used within the Facility Operator's Groundwater Savings Facility for Water Storage purposes only.
- 5.4 The Facility Operator shall cause the pumping of groundwater within the Facility Operator's Groundwater Savings Facility to be reduced by one acre-foot for each one acre-foot of Authority Water received at the Facility
- 5.5 The Facility Operator shall submit to the AWBA a monthly report of water use. The monthly report shall be in a form and submitted within a time which is acceptable to the AWBA and shall contain a report of water use by amount

and type of water used.

- 5.6 The AWBA shall obtain a Water Storage Permit from the ADWR to store water at the Facility Operator's Groundwater Savings Facility. The AWBA shall be responsible for all expenses and administrative requirements, including filing annual reports with the ADWR, associated with maintaining the Water Storage Permit.
6.
 - 6.1 On or before September 1, the Facility Operator shall consult with the AWBA and provide a written projection of the Facility Operator's water use by type and amount for each month of the following year, which the AWBA may use to develop its annual plan of operation for the following year.
 - 6.2 On or before December 1, the AWBA shall return to the Facility Operator a final water delivery schedule based on the AWBA's annual plan of operation for the following year.
 - 6.3 The AWBA shall authorize the Facility Operator to order Authority Water for delivery to the Groundwater Savings Facility directly from CAWCD in accordance with CAWCD water ordering procedures and the AWBA's plan of operation.
 - 6.4 The amounts, times and rates of delivery of Authority Water to the Facility Operator during any year shall be in accordance with the current plan of operation of the Authority. Authority Water ordered by the Facility Operator shall not exceed the amounts provided for in the current plan of operation of the Authority, unless approved in writing by the Authority.
 - 6.5 Monthly water deliveries may be amended upon the Facility Operator's written request to CAWCD with copy to the AWBA. Proposed amendments shall be submitted by the Facility Operator to CAWCD with copy to the

AWBA not less than fifteen (15) days before the desired change is to become effective, and shall be subject to review and modification by CAWCD and the AWBA.

- 6.6 The Facility Operator shall hold the AWBA and CAWCD, their officers, agents, and employees, harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with water delivery schedules furnished by or to the Facility Operator.

7. 7.1 The AWBA may reduce or discontinue deliveries of Authority Water to the Facility Operator under this Agreement in one or more of the following events:
 - 7.1.1 The Facility Operator fails to file the monthly report(s) required by Section 5.5.
 - 7.1.2 The Facility Operator violates the permit or plan of operation associated with the Groundwater Savings Facility or takes any action that threatens the AWBA's ability to accrue Long-Term Storage Credits for Authority Water delivered to the Groundwater Savings Facility.
- 7.2 The AWBA shall notify the Facility Operator of any determination to reduce or discontinue deliveries of Authority Water to the Facility Operator.

8. 8.1 On or before October 15 of each year, CAWCD and the AWBA shall notify the Facility Operator of the cost for each acre foot of Authority Water to be delivered under this Agreement for the following year ("Facility Operator's Contribution").
- 8.2 The Facility Operator shall pay CAWCD directly for all water delivered under

this Agreement. On or before the first day of each month, the Facility Operator shall pay CAWCD the amounts due as the Facility Operator's Contribution for Authority Water scheduled for delivery during that month.

8.3 The Facility Operator shall pay CAWCD in advance all amounts due as the Facility Operator's Contribution for Authority Water scheduled for delivery under this Agreement; however, CAWCD has agreed to reimburse the Facility Operator for any portion of the Facility Operator's Contribution which is attributable to Authority Water scheduled for delivery that is not subsequently delivered to the Facility Operator or to provide an equivalent credit against payment in the future of any fees owed CAWCD by the Facility Operator, should the Facility Operator so desire. CAWCD shall not be required to deliver water scheduled under this Agreement if the Facility Operator is in arrears in payment of any charges due CAWCD for a period of 60 days or more.

8.4 CAWCD shall be entitled, as a third party beneficiary to this Agreement, to collect from the Facility Operator any charges for water owed under this Section 8, along with interest, administrative and penalty charges on delinquent installments or payments, in accordance with the following:

8.4.1 The Facility Operator shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Facility Operator shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Facility Operator shall pay an additional penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the Facility Operator shall

pay any fees incurred for debt collection services associated with a delinquent payment.

8.4.2 The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent (0.5%) per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

8.4.3 When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty and administrative charges, second, to the accrued interest, and third to the overdue payment.

8.5 If the AWBA is not given Long-Term Storage Credits because the Facility Operator has violated the Groundwater Savings Facility permit or plan of operation, the Facility Operator shall pay to the AWBA any water service charges paid by the AWBA to CAWCD for the water delivered to the Groundwater Savings Facility which did not accrue Long-Term Storage Credits. The payment shall be made within 90 days of the denial of Long-Term Storage Credits by the ADWR.

9. 9.1 Nothing in this Agreement shall be construed as an allocation of water to the Facility Operator, nor shall this Agreement entitle the Facility Operator to any water other than as provided herein.

9.2 Nothing in this Agreement shall be construed as requiring the AWBA to provide Authority Water to the Facility Operator in any year, and nothing in

this Agreement shall be construed as requiring the Facility Operator to accept deliveries of Authority Water in any year. The Parties agree that in any year in which the AWBA desires to provide Authority Water to the Facility Operator and in which the Facility Operator agrees to accept deliveries of Authority Water, the terms and conditions of this Agreement shall apply.

10. Neither the AWBA or CAWCD warrant the quality of any water furnished under this Agreement and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water. The Facility Operator waives its right to make a claim against the AWBA or CAWCD, on account of the quality of water or any changes in water quality caused by the commingling of water delivered under this Agreement with other water.
11.
 - 11.1 The Parties agree that the AWBA may designate a third party agent to exercise the right to recover the AWBA's water stored under this Agreement. The "Designated Recovery Agent" shall be CAWCD, a political subdivision of the State of Arizona, and/or a municipal corporation formed under the laws of the State of Arizona. The AWBA shall, in accordance with Section 15 of this Agreement, notify the Facility Operator of the appointment of a Designated Recovery Agent pursuant to this Section 11.
 - 11.2 The Facility Operator agrees to cooperate with the Designated Recovery Agent in facilitating the recovery of Long-Term Storage Credits stored by the AWBA at the Facility Operator's Groundwater Savings Facility.
 - 11.3 The Facility Operator agrees not to register any objection with the ADWR to an application for a recovery well permit filed by the Designated Recovery

Agent or other entities seeking to recover water stored by the AWBA so long as the water is to be recovered at the Groundwater Savings Facility at which it was stored.

- 11.4 The Facility Operator shall use its best efforts to enter into agreements with owners of wells within the Facility Operator's boundaries to procure access to those wells for the Designated Recovery Agent for the purposes of recovering AWBA water stored at the Groundwater Savings Facility. The Facility Operator shall provide to the AWBA a description of wells and well sites which the Designated Recovery Agent could utilize for recovery purposes, including the necessary authorization for Facility Operator's use of such wells and well sites, within 30 days of entering into each such agreement.
- 11.5 If agreements for access to wells have been procured under Section 11.4 and upon the distribution of Long-Term Storage Credits by the AWBA to a Designated Recovery Agent, the Designated Recovery Agent may recover the Long-Term Storage Credits at the Groundwater Savings Facility using those wells upon written notification to the Facility Operator.
- 11.6 The Designated Recovery Agent shall not recover Long-Term Storage Credits within the Facility Operator's boundaries that were not accrued by the AWBA at the Facility Operator's Groundwater Savings Facility, unless the Facility Operator agrees in writing to allow the Designated Recovery Agent to recover other Long-Term Storage Credits.
- 11.7 The Designated Recovery Agent shall be responsible for obtaining and maintaining recovery well permits and shall pay all permit fees associated with recovery of Long-Term Storage Credits at the Groundwater Savings Facility.

- 11.8 The Facility Operator does not warrant the quality of water produced from recovery wells and is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of such water. The Designated Recovery Agent shall not make a claim against the Facility Operator because of changes in water quality caused by underground storage or the mixing of recovered water with other water.
- 11.9 It is the express intention of the Parties that the Designated Recovery Agent be a third party beneficiary of the obligations and duties of the provisions of this Section 11, and that the third party beneficiary shall be considered a "Party" only for the purposes of this Section 11. The rights of the third party beneficiary under this Section 11 shall vest immediately upon notification of the Facility Operator by the AWBA of the designation of a Designated Recovery Agent in accordance with this Section 11. The Parties agree that the terms of this Section 11 shall not, in any way, limit the rights or privileges of the AWBA under this Agreement.
- 11.10 The obligations set forth in this Section 11 shall survive the expiration or termination of this Agreement and remain in full force and effect until all Authority Water stored at the Facility Operator's Groundwater Savings Facility has been recovered.
12. 12.1 Authority Water furnished to the Facility Operator pursuant to this Agreement shall be delivered only to the Facility Operator at such point(s) that have previously been approved by CAWCD and only if CAWCD has satisfied itself that the pipelines, canals, distribution systems, or other conduits that will convey Authority Water after delivery will prevent excessive conveyance losses and are constructed, operated, and maintained in accordance with

any condition of applicable laws, regulations or order and to the satisfaction of CAWCD.

- 12.2 In the event of damage to CAP facilities due to failure of the Facility Operator to operate in a good and workmanlike manner, the Facility Operator shall pay the CAWCD within thirty (30) days of Facility Operator's receipt of a statement for the costs of repairing any damage to Project facilities or Project rights-of-way caused by or arising out of the Facility Operator's activities under this Agreement.
- 12.3 If the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, and if the Facility Operator intends to convey water furnished to the Facility Operator pursuant to this Agreement through connection facilities owned or operated by others, the use by the Facility Operator of such connection facilities shall be the subject of written agreement(s) between the Facility Operator and the owner(s) or operator(s) of such connection facilities, and all such agreements shall be provided to the CAWCD prior to initiation of deliveries.
- 12.4 Unless the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, all water delivered from the Water Supply System shall be measured with equipment furnished and installed by the Facility Operator and operated and maintained by the Facility Operator at the Facility Operator's sole cost and expense. The results of such measurements shall be reported to CAWCD in such manner and at such time(s) as CAWCD may prescribe. Upon the request of CAWCD or the AWBA, the accuracy of such measurements shall be investigated by the Facility Operator, and any errors which are determined to have occurred therein shall be adjusted; however, in the event the parties cannot agree on

the required adjustment, CAWCD's determination shall be conclusive.

- 12.5 If the Facility Operator's Project delivery point is a Project turnout or Project turnouts constructed by the United States, all water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by CAWCD. Upon the request of the Facility Operator, the AWBA, or CAWCD, the accuracy of such measurements shall be investigated by CAWCD and the Facility Operator, and any errors which are mutually determined to have occurred therein shall be adjusted; however, in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive.
- 12.6 The United States, CAWCD, and the AWBA shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the Facility Operator's Project delivery point. The Facility Operator shall hold the United States, CAWCD, and the AWBA harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water beyond the Facility Operator's Project delivery point.
- 12.7 The AWBA shall not be liable for any action taken by CAWCD or the Facility Operator pursuant to this Section 12 regarding the construction, operation, or maintenance of connection facilities.
- 12.8 Deliveries of water scheduled under this Agreement are subject to interruption and discontinuance due to investigation, inspection, construction, testing, maintenance, repair or replacement of the CAP and its components. The Facility Operator also acknowledges that CAP water available to the AWBA is only that water which would otherwise be unused in Arizona and,

therefore, deliveries of water scheduled under this Agreement are subject to interruption and discontinuance due to insufficient water or delivery capacity to deliver all other waters scheduled for delivery through the CAP. The United States, its officers, agents, and employees, CAWCD, its officers, agents and employees, and the AWBA, its officers, agents, and employees shall not be liable for any damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water scheduled under this Agreement occurs.

13. 13.1 This Agreement may be terminated for any of the following reasons:
- 13.1.1 If the Facility Operator remains in arrears in the payment of the Facility Operator's Contribution for thirty (30) days or more, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator;
 - 13.1.2 If the Facility Operator remains in arrears in the reimbursement of any portion of the AWBA's Contribution for thirty (30) days or more, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator and CAWCD;
 - 13.1.3 If the excess water contract between the AWBA and CAWCD providing for delivery of Authority Water is terminated, the AWBA may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to the Facility Operator; or

- 13.1.4 if the AWBA determines in its sole discretion that the Facility Operator is operating the Groundwater Savings Facility in a manner contrary to law or in a manner which is likely to jeopardize the ability of the AWBA to earn Long-Term Storage Credits for Authority Water delivered to the facility for the benefit of the AWBA, the AWBA may terminate this Agreement, which termination shall be effective ten (10) days after mailing written notice of termination to the Facility Operator and CAWCD.
- 13.2 The Parties' and CAWCD's rights under this Agreement to collect any monies owed under the Agreement shall survive the termination of this Agreement.
- 13.3 The rights of the AWBA to terminate this Agreement as provided in this Section 13 shall be in addition to all other rights of the AWBA under this Agreement and as provided by law.
14. The Facility Operator shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including: the Facility Operator's water supply data, water-use data, and other matters that the AWBA or CAWCD may require. Reports thereon shall be furnished to the AWBA or CAWCD in such form and on such date or dates as the AWBA or CAWCD may require. Subject to applicable federal and state laws and regulations, each party to this Agreement shall have the right during office hours to examine and make copies of each other party's books and records relating to matters covered by this Agreement.
15. Any notice, demand, or request authorized or required by this Agreement shall be

in writing and shall be deemed to have been duly given if mailed, first class postage prepaid, or delivered to the parties at the following addresses:

If to the AWBA:

Manager
Arizona Water Banking Authority
500 North Third Street
Phoenix, Arizona 85004

If to the Facility Operator:

_____ District

The designation of the address or addressee for the giving of notice may be changed by notice given as provided in this Section 15.

- 16. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any interest therein shall be valid unless and until approved in writing by and the AWBA.
- 17. This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first above-written.

ARIZONA WATER BANKING AUTHORITY

Attest: _____
Secretary

By: _____
Chairman

_____ **DISTRICT**

Attest: _____
Secretary

By: _____
President

**INTERGOVERNMENTAL AGREEMENT
AMONG THE
ARIZONA DEPARTMENT OF WATER RESOURCES,
ARIZONA WATER BANKING AUTHORITY AND
CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

This Intergovernmental Agreement is made this ____ day of _____, 2002, among the Arizona Water Banking Authority, an agency of the State of Arizona (the "AUTHORITY" or "AWBA"), the Arizona Department of Water Resources, an agency of the State of Arizona ("ADWR"), and the Central Arizona Water Conservation District, a political subdivision of the State of Arizona ("CAWCD").

RECITALS

- A. ADWR is required by A.R.S. § 45-2424.A to provide administrative, technical and legal support to the AWBA to the extent requested by the AWBA.
- B. CAWCD is required by A.R.S. § 45-2424.D to provide technical support to the AWBA to the extent requested by the AWBA.
- C. The AWBA is required by A.R.S. § 45-2424 to reimburse ADWR and CAWCD for the services provided by each agency to the AWBA pursuant to the provisions of A.R.S. § 45-2424.
- D. The Parties desire to enter into this Agreement to establish the annual process by which services will be requested of CAWCD and ADWR by the AWBA pursuant to A.R.S. § 45-2424, to establish the amounts of, and process for, the AWBA to reimburse CAWCD and ADWR for the provision of such services, and to facilitate cooperation among the parties in the exercise of their respective powers and duties.

AGREEMENT

Term

1. (a) This Agreement shall commence on the date that it is filed with the Arizona Secretary of State and shall remain in effect until December 31, 2007, unless otherwise terminated or cancelled in accordance with this Section.

(b) This Agreement may be terminated upon sixty (60) days written notice by any party.

(c) This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

Services Provided by ADWR to the AWBA

2. (a) The services that ADWR provides to the general public shall be provided to the AWBA without charge, or at the same rate charged to the general public. Such services include, but shall not be limited to: (1) assistance in completing applications for water storage permits, including attendance at pre-application conferences, (2) responding to requests to view public records in the same manner and at the same rate charged to the public, and (3) determining the amount of long-term storage credits accrued by the AWBA.

(b) Pursuant to A.R.S. § 45-2424, ADWR shall provide the following administrative, technical and legal support to the AWBA:

(i) ADWR employees necessary to directly staff the AWBA;

(ii) Legal support which shall include, but not be limited to: assistance in preparing all written agreements to which the AWBA is a party, assistance in preparing updates to Storage Site Criteria and Facilities Inventory, review and drafting of AWBA official business, attending AWBA meetings, and providing general legal guidance and advice as requested by AWBA members and staff;

(iii) Administrative and technical support which shall be in the form of all activities allowed as indirect costs under the Office of Management and Budget Circular A-87, as amended or revised; and

(iv) Bulk mailing as may be needed on occasion by the AWBA.

(c) The AWBA shall reimburse ADWR for the specific services provided under Section 2.b above in accordance with Section 4 of this Agreement.

(d) If the AWBA desires that ADWR provide technical services outside of those defined in Section 2.b above, it shall submit a written request to ADWR outlining its specific request for services. If ADWR is willing to provide such services, it shall so notify the AWBA, and provide an estimate of the cost for such services within thirty days of the AWBA request. The AWBA shall reimburse ADWR for additional technical services rendered pursuant to this Section in accordance with Section 4.b of this Agreement.

Services Provided by CAWCD to the AWBA

3. (a) The services that CAWCD provides to the general public or its customers shall be provided to the AWBA without charge, or at the same rate charged to the general public or its customers. Such services include: (1) monthly and annual water delivery accounting reports, (2) development of long-range projections of CAP delivery capacity and water demand, and (3) monthly billing and annual reconciliation of bills.

(b) Pursuant to A.R.S. § 45-2424, CAWCD shall provide the following technical services to the AWBA:

(i) Assist in development of preliminary and final AWBA Annual Plans of Operation;

(ii) Provide copies of hydrologic analyses or feasibility studies related to underground storage facilities prepared by or for CAWCD, as requested by the AWBA; and

(iii) Invoice, collect and process the groundwater savings facility operator's portion of the water service charge for Excess Water delivered on behalf of the AWBA to the groundwater savings facility operator.

(c) The AWBA shall reimburse CAWCD for the specific services provided under Section 3.b above in accordance with Section 5 of this Agreement.

(d) If the AWBA desires that CAWCD provide technical services outside of those defined in Section 3.b above, it shall submit a written request to CAWCD outlining its specific request for services. If CAWCD is willing to provide such

services, it shall so notify the AWBA and submit an estimate of the cost for such services within thirty days of the AWBA request. Before CAWCD provides technical services to the AWBA under this Section, CAWCD and the AWBA shall agree in writing on the manner and timing of reimbursement to be made to CAWCD by the AWBA for such services.

Cost of and Reimbursement for

Services Provided by ADWR

4. (a) The cost of the services provided to the AWBA by ADWR pursuant to Sections 2.b and 2.d above shall be calculated as follows:

(i) ADWR employees staffing the AWBA shall be charged at the rate of 100% of the full-time equivalents (Personal Service) plus the associated standard employee related expenses (ERE);

(ii) Legal services shall be charged at the rate of ½ of a full-time Attorney IV;

(iii) Costs for administrative services shall be calculated quarterly based on: (1) the actual costs of direct services provided for the appropriate quarter, and (2) the actual costs of indirect services as determined by multiplying the total of the actual amount for AWBA Personal Services and ERE by the indirect rate presented by ADWR in its annual cost rate proposal submitted to the United States government.

(b) The AWBA shall reimburse ADWR for staffing costs periodically throughout the year as those costs are incurred. The AWBA shall reimburse ADWR for all other services rendered pursuant to Sections 2.b and 2.d above through quarterly payments. Payment for all costs shall be completed via an automatic transfer from the administration account of the Arizona Water Banking Fund to the ADWR indirect fund.

Cost of and Reimbursement for

Services Provided by CAWCD

5. (a) The AWBA shall pay CAWCD a fixed fee of \$10,000.00 per year for the services set forth in Section 3.b.

(b) Within sixty days after the end of each year during the term of this Agreement, CAWCD shall submit an invoice to the AWBA for the \$10,000.00 fixed fee referred to in Section 5.a. The AWBA shall pay CAWCD within thirty days of receiving the invoice.

Cooperative Activities and Joint Planning Process

6. (a) CAWCD, the AWBA and ADWR agree to meet and confer annually, during the month of April, to discuss long-term CAP water supplies and long-term demands for such supplies.

(b) CAWCD and the AWBA agree to meet and confer annually, during the month of April, to discuss CAWCD's annual tax levy pursuant to A.R.S. § 45-3715.02.B and C and the disbursement of monies collected under that tax pursuant to A.R.S. § 45-3715.03.

(c) CAWCD and AWBA shall cooperate in the preparation of annual reports submitted to ADWR and shall agree on the accuracy of the reports before they are filed.

(d) ADWR shall determine and issue long-term storage credits to the AWBA in accordance with its normal operating procedures and shall annually accomplish this task in a reasonable amount of time, so as not to infringe on the operations of the AWBA. The AWBA shall not be entitled to preferential treatment from ADWR either in the timing or method through which entitlement to credits is analyzed.

(e) The parties shall meet periodically to develop a coordinated and cooperative planning process which addresses, but is not limited to, the following issues: (1) the future distribution and use of water stored by the AWBA, and (2) recovery of water stored by the AWBA and CAWCD in consideration of the water management objectives set forth in Title 45, Chapter 2, Arizona Revised Statutes.

Resolution of Disputes

7. (a) The AWBA, CAWCD and ADWR acknowledge that this Agreement is a cooperative agreement and each of the parties owes the duty of good faith and fair dealing to each of the other parties in carrying out the terms and intent of this

Agreement. In the event of a dispute over the terms of this Agreement or the obligations arising under those terms, the parties agree that they shall meet and discuss their differences and attempt to resolve them informally. If the dispute cannot be resolved informally, the manager of the AWBA, the director of ADWR, and the general manager of CAWCD shall meet at least once to discuss the dispute and attempt resolution.

(b) In the event that a dispute arises over the payment of money under the terms of this Agreement, the parties agree that, to the extent possible, payment should be made in timely fashion, but may be made under protest. That protest shall then be resolved according to the dispute resolution process provided for in this Agreement.

Designation of CAWCD as a Third Party

Beneficiary of Recovery Rights of AWBA Water

8. In any water storage agreement between the AWBA and the operator of a groundwater savings facility, the AWBA agrees to attempt to secure the inclusion of a clause that allows for the appointment of CAWCD as a third party beneficiary of the rights to recover water stored by the AWBA pursuant to the storage agreement.

Notice

9. (a) Any notice, demand or request authorized or required by this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by mail, postage prepaid, or facsimile to the persons specified below:

Central Arizona Water Conservation District
General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020
Facsimile Number: (623) 869-2332

Arizona Water Banking Authority
Manager
500 North Third Street
Phoenix, AZ 85004-3903
Facsimile Number: (602) 417-2401

Arizona Department of Water Resources
Director
500 North Third Street
Phoenix, AZ 85004-3903
Facsimile Number: (602) 417-2415

(b) A party may, at any time, by notice to the other parties, designate different or additional persons or different addresses for the giving of notices.

Third Party Beneficiaries

10. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Waiver

11. The waiver by any Party of a breach of any term, covenant or condition in this Agreement shall not be deemed a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term covenant or condition of this Agreement.

Headings

12. Title and paragraph headings are for reference only and are not part of this Agreement.

IN WITNESS WHEREOF, CAWCD, the AWBA and ADWR enter into this Agreement by signing below.

Attest:

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Secretary

By: _____
George R. Renner, President

Attest:

ARIZONA WATER BANKING AUTHORITY

Secretary

By: _____
Joseph C. Smith, President

ARIZONA DEPARTMENT OF WATER
RESOURCES

By: _____
Joseph C. Smith, Director

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Central Arizona Water Conservation District. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to Central Arizona Water Conservation District.

Dated this ____ day of _____, 2002

Central Arizona Water Conservation District
Douglas K. Miller, General Counsel

By: _____

Title: _____

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Arizona Department of Water Resources. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to the Arizona Department of Water Resources.

Dated this ____ day of _____, 2002

Arizona Department of Water Resources
W. Patrick Schiffer, Chief Counsel

By: _____

Title: _____

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Arizona Water Banking Authority. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to the Arizona Water Banking Authority.

Dated this ____ day of _____, 2002

Arizona Water Banking Authority
W. Patrick Schiffer, Chief Counsel

By: _____

Title: _____

AGREEMENT BETWEEN THE CENTRAL ARIZONA
WATER CONSERVATION DISTRICT AND
THE ARIZONA WATER BANKING AUTHORITY
PROVIDING FOR THE DELIVERY OF EXCESS
CENTRAL ARIZONA PROJECT WATER

This Agreement is made as of the ____ day of _____, 2002, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended (the "Basin Project Act"), between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT ("CAWCD"), and THE ARIZONA WATER BANKING AUTHORITY ("AWBA").

RECITALS

A. The Basin Project Act provides, among other things, that for the purposes of furnishing irrigation and municipal and industrial ("M&I") water supplies to water deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, control of floods, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes, the Secretary shall construct, operate, and maintain the Central Arizona Project ("CAP").

B. The United States and CAWCD have entered into Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988 (the "Repayment Contract"), which is incorporated by reference, providing for the delivery of water and repayment of costs of the

CAP.

C. The United States and CAWCD have entered into the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment upon the Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action) (the "Stipulation"), which modifies the Repayment Contract in certain respects.

D. Paragraph 5(d)(2) of the Stipulation grants CAWCD the exclusive right to sell or use Excess Water.

E. The Arizona Legislature has declared that it is the public policy of the State of Arizona to use the CAP to deliver Colorado River water that would otherwise be unused in Arizona for purposes specified in A.R.S. § 45-2401.

F. The Arizona Legislature has created AWBA to implement this policy and has specifically authorized AWBA, in A.R.S. § 45-2423(B)(7), to execute agreements with the CAWCD to obtain water for storage at permitted facilities.

AGREEMENT

Repayment Contract and Stipulation Controlling

1. AWBA expressly acknowledges that this Agreement is subject to the Repayment Contract and Stipulation, including any amendments thereof, and any actions taken and determinations made under those agreements, except as otherwise provided herein. In the event of any inconsistency between this Agreement and the Repayment Contract, the provisions of the Repayment Contract, as modified by the Stipulation, shall be controlling. Definitions included in the Repayment Contract and Stipulation are applicable to this Agreement. The first letters of terms so defined are capitalized herein.

Term

2. The initial term of this Agreement expires on December 31 of the year in which it is executed. This Agreement will be automatically renewed for successive one-year terms until December 31, 2017, unless AWBA notifies CAWCD by October 1 of any year that it does not wish to renew the Agreement for the following year or unless sooner terminated in accordance with Article 12.

Delivery of Water by CAWCD

3. In so far as Project Water supplies and the delivery capability of the Project will permit, and subject to the provisions of the Repayment Contract and Stipulation, CAWCD will deliver Excess Water to AWBA in an amount to be determined in accordance with the terms of this Agreement and at a water service charge calculated in accordance with Article 10. The determination of whether Excess Water is available for delivery in any Year, and, if so, the amount of such Excess Water that is available for delivery under this Agreement in any Year, is a determination within the exclusive discretion of CAWCD; Provided, however, That delivery of Excess Water under this Agreement shall be subject to the prior satisfaction of all water deliveries scheduled pursuant to a long-term contract or subcontract for Project Water service, as that term is used in the Stipulation.

Conditions Relating to Delivery and Use

4. The delivery and use of water under this Agreement is conditioned on the following, and the parties hereby agree that:

(a) All uses of Project Water and Return Flow shall be consistent with Arizona water law unless such law is inconsistent with the Congressional directives applicable to the Central Arizona Project.

(b) Project Water furnished pursuant to this Agreement shall be delivered through Project Works for storage or exchange as permitted by law.

(c) Project Water furnished to AWBA pursuant to this Agreement may not be directly resold or transferred, but AWBA may enter into an arrangement with a groundwater savings facility allowed under state law to store Project Water and may otherwise transfer, assign, distribute, and extinguish long-term storage credits accrued with Project Water as authorized by A.R.S. §§ 45-2401 *et seq.*

(d) Notwithstanding any other provision of this Agreement, Project Water shall not be delivered on behalf of AWBA unless and until CAWCD has issued final environmental clearance for the system or systems through which Project Water is to be conveyed after delivery and CAWCD has satisfied itself that all pipelines, canals, distribution systems, or other conduits that will convey Project Water after delivery under this Agreement will prevent excessive conveyance losses and are constructed, operated, and maintained in accordance with any condition of applicable laws, regulations, or order and to the satisfaction of CAWCD.

Procedure for Ordering Water

5. (a) The amounts, times, and rates of delivery of Excess Water on behalf of AWBA during each Year shall be in accordance with a water delivery schedule for that Year. Such schedule shall be determined in the following manner:

(i) On or about August 1 of each year during the term of this Agreement, AWBA and CAWCD shall meet and confer regarding the development of AWBA's draft plan of operation for the following year.

(ii) On or before September 1 of each year during the term of this Agreement, CAWCD shall provide to AWBA a preliminary schedule for delivery of Excess Water for storage for intrastate purposes during the following year.

(iii) On or before October 1 of each year during the term of this Agreement, AWBA shall provide to CAWCD written comments on the preliminary schedule for delivery of Excess Water during the following year. AWBA shall also identify the volume of Excess Water it anticipates storing for interstate purposes during the following year.

(iv) On or before October 15 of each year during the term of this Agreement, CAWCD shall provide to AWBA a water delivery schedule, by month and by storage facility, for intrastate storage. CAWCD shall also identify the volume of Excess Water it anticipates being available for storage for interstate purposes during the following year.

(v) On or before November 10 of each year during the term of this Agreement, AWBA shall submit to CAWCD a request for the delivery of Excess Water for interstate storage during the following year.

(vi) On or before November 15 of each year during the term of this Agreement, CAWCD shall provide to AWBA a final water delivery schedule for intrastate and interstate storage.

(b) The monthly water delivery schedules may be amended upon AWBA's written request to CAWCD. Proposed amendments shall be submitted by AWBA to CAWCD no later than 15 days before the desired change is to become effective. CAWCD shall accept any request by AWBA to reduce scheduled deliveries and shall take all reasonable actions necessary to effect a request by AWBA to reduce scheduled deliveries. AWBA requests to increase scheduled deliveries shall be subject to review and modification in like manner as the schedule. CAWCD shall notify AWBA of its action on the requested schedule modification within 10 days of CAWCD's receipt of such request.

(c) AWBA shall hold CAWCD, its officers, agents, and employees, harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the actions of CAWCD regarding water delivery schedules furnished by or to AWBA.

(d) CAWCD shall not deliver water on behalf of AWBA except in the amounts and in accordance with the schedules developed in accordance with this Article. AWBA shall not be responsible for any payments due CAWCD except for water scheduled and delivered in accordance with this Article.

Project Delivery Point, Measurement
and Responsibility for Distribution of Water

6. (a) Excess Water furnished on behalf of AWBA pursuant to this Agreement shall be delivered at such point(s) on the Water Supply System as are agreed upon in writing by CAWCD and AWBA.

(b) All water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by CAWCD or with equipment furnished, installed, operated and maintained with the approval of CAWCD. Upon the request of AWBA or CAWCD, the accuracy of such measurements shall be investigated by CAWCD and AWBA, and any errors which are mutually determined to have occurred therein shall be adjusted; Provided, however, That in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive.

(c) Neither the United States nor CAWCD shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the Project delivery point, except as provided in the Master Water Storage Agreement between AWBA and CAWCD. AWBA shall hold the United States and CAWCD harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water beyond Project delivery point, except as provided in the Master Water Storage Agreement between AWBA and CAWCD.

Interruptions and Reductions

7. In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract to temporarily discontinue or reduce the amount of water to be delivered, CAWCD may discontinue or reduce the quantity of water to be furnished on behalf of AWBA as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of any of the Project facilities or any part thereof. CAWCD may also discontinue or reduce the quantity of water to be furnished on behalf of AWBA if there is insufficient Project Water or Project delivery capacity to deliver AWBA's water order, the water orders of other contractors of Excess Water service, and all water deliveries scheduled pursuant to a contract with the United States or a subcontract with the United States and CAWCD providing for Project Water service for a period of 50 years or more. So far as feasible, CAWCD shall attempt to coordinate any such discontinuance or reduction with AWBA and to give AWBA due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in delivery of water occurs.

No Long-Term Commitment to the Delivery of Project Water

8. Nothing in this Agreement shall be construed as an allocation of Project Water to AWBA nor shall this Agreement entitle AWBA to any Project Water other than as provided herein.

Quality of Water

9. CAWCD does not warrant the quality of any Project Water furnished under this Agreement and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any Project Water. AWBA waives its right to make a claim against the United States, CAWCD, or any other Project subcontractor or contractor on account of the quality of Project Water or any changes in water quality caused by the commingling of

Project Water with other water during delivery of the Project Water. Water quality and liability issues that arise from the storage of Project Water by CAWCD on behalf of AWBA at CAWCD underground storage facilities shall be governed by the Water Storage Agreement between CAWCD and AWBA.

Water Service Charges

10. (a) For all water delivered under this Agreement, AWBA shall pay or provide for payment of water service charges established annually by CAWCD. By August 1 of each year, CAWCD shall establish separate water service charges for water to be delivered under this Agreement during the following year for interstate storage and each type of intrastate storage.

(b) AWBA and CAWCD agree that, except as provided in Article 11, water delivered pursuant to this Agreement shall be invoiced and paid on a monthly levelized basis. The monthly levelized payment shall be computed annually by multiplying the total amount of water scheduled for delivery for the following year in accordance with Article 5 by the applicable water service charges, subtracting from this product the water service fees to be paid during the year directly to CAWCD by Groundwater Savings Facility Operators in accordance with Article 11, and by dividing that difference by 12.

(c) Each month, CAWCD shall mail an invoice for the levelized monthly payment for the upcoming month to AWBA no later than the first day of the current month. Payment for the upcoming month shall be due by approximately the 20th day of the current month, and shall be past due on the first day of the upcoming month.

(d) If, during any year in which water is being delivered for interstate storage under this Agreement, CAWCD determines that its costs during the year for water delivered for interstate storage will be 20% or more higher than is reflected in the water service charge for interstate storage for the year, it shall notify AWBA in writing.

(e) After each year of water deliveries under this Agreement, CAWCD shall provide AWBA with a year-end account reconciliation for water delivered under this Agreement for the previous year. CAWCD shall provide the reconciliation no later than May 31 of the year following the water deliveries.

(i) The year-end account reconciliation for water delivered for intrastate storage shall be limited to the quantity of water actually delivered during the previous year compared to the amount scheduled when the levelized monthly fee was calculated.

(ii) The year-end account reconciliation for water delivered for interstate storage shall account for both (1) the quantity of water actually delivered during the previous year compared to the amount scheduled when the levelized monthly fee was calculated and (2) the actual costs associated with the water delivered for operation, maintenance, and replacement of the Project and for energy costs compared to the costs estimated when the water service rate for interstate storage was established.

(iii) If the year-end account reconciliation demonstrates that additional funds are owed to CAWCD, AWBA shall pay CAWCD within 30 days of the date an invoice is submitted by CAWCD. If funds are due to AWBA, they may be applied to AWBA's monthly levelized payments for the current calendar year, or, at AWBA's option, be paid to AWBA by negotiable instrument no later than 30 days after the AWBA has notified CAWCD of the preferred option.

(iv) Upon termination of this Agreement for any reason, CAWCD shall provide AWBA with an account reconciliation for any year or partial year for which a reconciliation has not been performed. The obligation to provide the reconciliation, and of either party under Article 10.e.iii to pay any funds as a result of the account reconciliation, shall survive termination of this Agreement.

(f) The payment of all water service charges when due under this Agreement

is a condition precedent to delivery of Excess Water.

Collection of Water Service Charges
from Groundwater Savings Facility Recipients

11. (a) In accordance with the Intergovernmental Agreement entered into among AWBA, CAWCD, and the Arizona Department of Water Resources, CAWCD has agreed to invoice, collect, and process that portion of the water services fees assessed under this Agreement that AWBA will charge to a Facility Operator of a Groundwater Savings Facility which receives water scheduled by AWBA under this Agreement. On or before October 15 of each year, AWBA shall notify CAWCD of the portion of the water services fee that it will charge to the Facility Operator. In any agreement with a Facility Operator, AWBA shall require the Facility Operator to make timely payment of such fees to CAWCD in accordance with normal CAWCD invoicing and billing practices, shall authorize CAWCD as a third party beneficiary to collect fees owed, as well as interest, administrative fees, and penalty charges on delinquent payments, and shall ensure that CAWCD's rights as a third party beneficiary to collect any unpaid fees, interest, and charges survive termination of the agreement.

(b) CAWCD agrees that a Groundwater Savings Facility Operator shall be entitled to be reimbursed by CAWCD for any portion of the Facility Operator's water services fee that is attributable to water that is scheduled for delivery under this Agreement but that is not subsequently delivered to the Facility Operator. CAWCD agrees that in lieu of reimbursement for scheduled, but undelivered water, the Facility Operator shall be entitled to an equivalent credit against payment in the future of any fees owed CAWCD, should the Facility Operator so desire.

Termination and Cancellation of Contract

12. (a) If AWBA remains in arrears in the payment of any charges due CAWCD for a period of 60 days or more, CAWCD may terminate this Agreement, which termination shall be effective 30 days after mailing written notice of termination to AWBA. AWBA shall remain obligated to pay all charges required to be paid under this Agreement during the time

period until and including the date of termination. AWBA's obligation to pay any amounts due but unpaid as of the date of termination shall survive termination of this Agreement. CAWCD's right to terminate this Agreement as provided in this Article 12 shall be in addition to the other rights of CAWCD under this Agreement and to all other rights provided by law.

(b) This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

Charges for Delinquent Payments

13. (a) Each party to this Agreement shall be subject to interest, administrative and penalty charges on delinquent installments or payments owed by that party under this Agreement. The party shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, the party shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, the party shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, the party shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty and administrative charges, second, to the accrued interest, and third to the overdue payment.

Rules, Regulations and Determinations

14. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this Agreement is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

(b) AWBA shall have the right to make determinations necessary to administer this Agreement that are consistent with the expressed provisions of this Agreement, the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the Secretary of the Interior.

Compliance with Environmental Laws

15. The parties, in carrying out this Agreement, shall comply with all applicable environmental laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

Equal Opportunity

16. During the performance of this Agreement, the parties shall comply with all applicable laws and regulations of the United States and the State of Arizona relating to labor, employment, civil rights, and equal opportunity in employment.

Notices

17. (a) Notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by mail, postage prepaid, or facsimile to the persons specified below:

Central Arizona Water Conservation District
General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020
Facsimile Number: (623) 869-2332

Arizona Water Banking Authority
Manager
500 North Third Street
Phoenix, AZ 85004-3903
Facsimile Number: (602) 417-2401

(b) A Party may, at any time, by notice to the other Party, designate

different or additional persons or different addresses for the giving of notices.

Assignment Limited--Successors and Assigns Obligated

18. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement No. _____
_____ effective the day and year first above-written.

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

* * *

* * *

ARIZONA WATER BANKING
AUTHORITY

Attest: _____
Secretary

By: _____
Chairman

DRAFT

June 11, 2002

MASTER WATER STORAGE AGREEMENT

This Agreement is made as of the ____ day of _____, 2002, between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), and the ARIZONA WATER BANKING AUTHORITY (“AWBA”).

RECITALS

A. Pursuant to A.R.S. § 48-3713.B.5, CAWCD has the authority to acquire, develop, construct, operate, maintain and acquire permits for Underground Storage Facilities to store surplus Central Arizona Project water.

B. CAWCD has constructed and is operating a number of Underground Storage Facilities.

C. AWBA has been created for the purposes set forth in A.R.S. § 45-2401, which include, among others: (1) storing otherwise unused Arizona entitlement to Colorado river water within Arizona to meet future water needs within Arizona, and (2) providing the opportunity to the states of California and Nevada to store currently unused Colorado river water in Arizona to meet future needs in those states.

D. AWBA and CAWCD have executed an Excess CAP Water Contract, providing for, among other things the purchase of Excess CAP Water by AWBA for storage at permitted Storage Facilities.

E. AWBA desires to store Excess CAP Water at certain Underground Storage Facilities owned or operated by CAWCD, and CAWCD agrees to make available unused storage capacity at its Underground Storage Facilities for such storage in accordance with this Agreement.

AGREEMENT

Definitions

1. (a) “ADWR” shall mean the Arizona Department of Water Resources.
- (b) “Authority Water” shall mean specifically priced Excess Water made available by CAWCD to AWBA on an annual basis for underground storage pursuant to the terms of the Excess CAP Water Contract.
- (c) “CAWCD USFs” or “CAWCD Underground Storage Facilities” shall mean those Underground Storage Facilities owned or operated by CAWCD and listed in Exhibit A. Exhibit A is incorporated by this reference and may, from time to time, be updated by the Parties.
- (d) “Excess CAP Water Contract” shall mean the Excess CAP Water Contract, entered into by CAWCD and AWBA contemporaneously with this Agreement. The Excess CAP Water Contract is incorporated by this reference.
- (e) “Party/Parties” shall mean one or both of the parties to this Agreement.
- (f) Definitions included in the Excess CAP Water Contract are applicable to this Agreement. The first letters of terms so defined are capitalized herein.
- (g) Definitions specified in A.R.S. § 45-802.01 are applicable to this Agreement. The first letters of terms so defined are capitalized herein.

Term

2. (a) This Agreement expires on December 31, 2016, unless sooner terminated or canceled in accordance with the provisions of this Agreement.
- (b) This Agreement may be terminated upon sixty (60) days written notice by any Party.
- (c) The Parties have previously entered into a number of water storage agreements for CAWCD USFs. Those agreements are listed in Exhibit B, which is incorporated by this reference. The Parties agree that those agreements shall govern storage and payment for storage at the respective CAWCD USF through the remainder of 2002 and that those agreements shall terminate on December 31, 2002. This Agreement

shall supercede those agreements and govern storage at the respective CAWCD USFs for scheduling and payment for 2003 and all subsequent years during the term of this Agreement. Water storage at any CAWCD USF for which a storage agreement has not previously been entered into shall be governed by this Agreement.

Conditions Relating to Storage

3. The storage of Authority Water at CAWCD USFs under this Agreement is conditioned on the following and the Parties agree that:

- (a) All storage of Authority Water at a CAWCD USF shall be consistent with Arizona law.
- (b) AWBA shall obtain and maintain Water Storage Permits from ADWR authorizing it to store Authority Water at the CAWCD USFs. AWBA shall be responsible for filing annual reports as required by the Water Storage Permits.
- (c) CAWCD shall obtain and maintain USF permits from ADWR authorizing it to construct, maintain, and operate USFs. CAWCD's storage of Authority Water shall, at all times, comply with the USF permit issued by ADWR for that particular CAWCD USF. CAWCD shall be responsible for filing annual reports as required by the USF permits.

Procedure for Scheduling Storage Capacity

4. The Parties shall schedule storage of Authority Water at CAWCD USFs in accordance and conjunction with the process and schedule established in Article 5 of the Excess CAP Water Contract between the Parties.

Water Storage Charges

5. (a) Each year of the term of this Agreement, by November 1, CAWCD shall provide AWBA preliminary annual storage charges for intrastate storage and for interstate storage at each CAWCD USF for the following year. CAWCD shall provide in writing to AWBA by November 1 of each year the basis for the intrastate and interstate water storage charges, which shall include the estimated costs for the following year for each CAWCD USF of all of the following: (1) any applicable capital costs for

the CAWCD USFs, (2) costs of operating, maintaining, and monitoring the CAWCD USFs, (3) any applicable water transportation costs at CAWCD USFs, (4) any applicable energy costs, and (5) any other component making up the water storage charges.

CAWCD shall provide AWBA final annual storage charges for intrastate storage and for interstate storage at each CAWCD USF for the following year when those charges are set by the CAWCD Board of Directors.

(b) AWBA shall pay CAWCD the applicable water storage charge for each acre-foot of Authority Water scheduled and delivered to a CAWCD USF and stored by CAWCD on behalf of AWBA. Payment of the applicable water storage charges is not related to and is not contingent on AWBA's accrual of Long-Term Storage Credits from water stored under this Agreement.

(c) On or before the 15th day of each month, CAWCD shall submit a bill to AWBA for water storage charges for Authority Water delivered to CAWCD USFs and stored by CAWCD on behalf of AWBA during the previous month. AWBA shall pay CAWCD within thirty (30) days of receipt of such bill.

(d) The water storage charges are estimated charges, based on the components set forth in Section 5.a. The actual costs may be higher or lower. After each year of water storage under this Agreement, CAWCD shall determine the actual costs of water storage at each CAWCD USF for the previous twelve-month period. CAWCD shall provide AWBA a written comparison setting forth the water storage charge, and the components making up that water storage charge as set forth in Section 5.a, both for the estimated water storage charge and the water storage charge used for the adjustment undertaken pursuant to this Section 5.d. CAWCD shall provide the comparison no later than May 31 of the year following storage.

(i) If the actual costs of water storage at any CAWCD USF are higher than those used to estimate the annual storage charges, CAWCD shall adjust the water storage charges for that facility and shall bill AWBA for the difference in proportion to the amount of the storage capacity utilized by AWBA at that CAWCD USF during the year. AWBA shall pay CAWCD within thirty (30) days of receipt of such bill.

(ii) If the actual costs of water storage at any CAWCD USF are lower than those used to estimate the annual storage charges, CAWCD shall adjust the water storage charges for that facility and shall either, at AWBA's election, pay AWBA the difference in proportion to the amount of the storage capacity utilized by AWBA at that CAWCD USF during the year, or credit such amount to AWBA's account for water storage charges for the following year.

(e) Upon termination of this Agreement for any reason, CAWCD shall provide AWBA an account adjustment as described in Section 5.d for any year or partial year for which an account adjustment has not been performed. The obligation to provide the account adjustment and of either party under this Section 5.d to pay any funds as a result of the account adjustment shall survive termination of this Agreement.

Operating Agent

6. (a) CAWCD shall be responsible for operating and maintaining the CAWCD USFs.

(b) CAWCD shall retain sole responsibility and authority for decisions relating to operating and maintenance practices at the CAWCD USFs, including maintenance scheduling and the selection of periods when maintenance will be done.

(c) Whenever practicable, CAWCD shall inform AWBA ninety (90) days in advance of any matter which may substantially affect the storage of Authority Water at any CAWCD USF.

Water Measurement and Accounting

7. (a) CAWCD shall account for water delivered to CAWCD USFs using actual measurements, methods required by the applicable USF permit and/or generally accepted accounting and engineering practices.

(b) CAWCD shall install and maintain flow measurement systems to measure the amount of Authority Water diverted from the CAP into each CAWCD USF,

and shall maintain the accuracy of such systems within plus or minus 5 percent of actual flows.

(c) CAWCD shall determine evaporation losses representative of the conditions at or near each CAWCD USF using the method indicated in the applicable USF permit or using actual measurements, when available. Any other losses at CAWCD USFs shall be calculated using generally accepted engineering practices and water-level readings from the gages in the basins.

(d) CAWCD shall prepare a monthly water accounting report of Authority Water stored at each CAWCD USF. The report shall include the daily amount of water stored and the losses calculated as described in this Section.

Water Quality

8. AWBA shall indemnify and hold harmless CAWCD against losses to third parties resulting from water quality degradation or harm to property caused by AWBA's water storage at any CAWCD USF, due to the commingling of AWBA's infiltrating water with groundwater and/or other surface water, so long as CAWCD is in compliance with the monitoring requirements of the respective USF permit. Further, AWBA waives any claim on its own behalf against CAWCD for water quality degradation or harm to property arising from such commingling, so long as CAWCD is in compliance with the monitoring requirements of the respective USF permit, or unless such claim is intended to enforce the indemnification provision of this Section; provided, however, that AWBA shall indemnify and hold harmless CAWCD only to the extent that indemnification is not provided to CAWCD by the State of Arizona pursuant to A.R.S. § 45-898.01; and provided further, however, that AWBA's indemnification shall only extend to the percentage of degradation attributable to the water stored on behalf of AWBA at the CAWCD USF at issue. AWBA retains the right to make claims against any other entity, including CAWCD, storing water in the CAWCD USF at issue in the amount proportionate to such amount stored by those other entities. In no event shall CAWCD assume liability for water quality degradation resulting from the storage of Authority Water at CAWCD USFs, solely due to its performance of obligations as the operating agent under this Agreement.

Authorizations and Approvals

9. AWBA shall be responsible for obtaining, at its own expense, any permits, authorizations and approvals required for the underground storage of Authority Water at the CAWCD USFs or for AWBA's performance under this Agreement. AWBA shall keep CAWCD informed of its applications for such permits and authorizations. CAWCD will share information with AWBA to assist AWBA in its permit applications. AWBA shall also be responsible for filing any annual reports or other documents necessary to maintain its right to store Authority Water at the CAWCD USFs.

Liability

10. (a) Each Party shall assume liability for its own negligence and shall indemnify the other against any damages the non-negligent Party incurs as a result of the negligent Party's action or inaction.

(b) CAWCD shall assume no liability to AWBA for claims of damage resulting from CAWCD's decision to curtail or stop water flows to any CAWCD USF during storm or emergency conditions.

(c) CAWCD shall assume no liability to AWBA for quantities of recoverable or unrecoverable water stored underground or removed from underground storage; nor to replace water lost, unintentionally misdirected or otherwise failing to reach the underlying aquifer for any reason except an intentional act by CAWCD. CAWCD, AWBA and any other lessee of the CAWCD USF experiencing the type of water losses described in this Section shall share in any deficiency resulting from such lost, unintentionally misdirected or otherwise unstored water in proportion to the amount of the storage capacity utilized at such facility in any given year.

(d) Liability, as described in Section 8, related to Authority Water stored in CAWCD USFs prior to the termination of the Agreement shall remain with AWBA after termination of this Agreement. This Section 10(d) shall survive expiration or termination of this Agreement, and remain in full force and effect.

Default

11. (a) CAWCD and AWBA shall pay all monies and carry out all other performances, duties and obligations agreed to be paid and/or performed by them pursuant to this Agreement. A default by CAWCD or AWBA in the covenants and obligations to be kept and performed by it shall be an act of default under this Agreement.

(b) In the event of a default by CAWCD or AWBA, then, within thirty (30) days following notice of such default by the non-defaulting party, the defaulting party shall remedy such default either by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default. If such default is not remedied within the time specified, the non-defaulting party may terminate this Agreement upon twenty-four (24) hours written notice.

Uncontrollable Forces

12. Neither Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than the obligation of AWBA to make payment for service under this Agreement) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, terrorism, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it is involved.

Resolution of Disputes

13. (a) A Party having a dispute under this Agreement that cannot be resolved by the Parties may submit the dispute to arbitration. Arbitration shall be subject to the following provisions:

(i) Arbitration shall be binding only upon the consent of the Parties.

(ii) A Party wishing to submit a dispute to arbitration shall provide thirty (30) day written notice to the other Party of its intent to pursue arbitration and shall name one arbitrator at that time. Within fifteen (15) days of receiving this notice, the other Party to the dispute shall name one arbitrator and give written notice to the other Party of its selection. The two selected arbitrators shall, within five (5) days of selection of the second arbitrator, jointly select a third arbitrator.

(iii) Within thirty (30) days from the selection of the third arbitrator, the arbitrators shall hold a hearing. Within thirty (30) days from the conclusion of the hearing, the arbitrators shall render a decision on the dispute.

(iv) Arbitration shall be subject to the Arizona Arbitration Act, Arizona Revised Statutes, Title 12, Chapter 9, Article 1. In the event of a conflict between this Agreement and the Act, the provisions of this Agreement shall prevail.

(b) A Party that is dissatisfied with the results of non-binding arbitration may pursue any other legal or equitable remedy not expressly provided for in this Section and available to resolve the dispute.

Actions Pending Resolution of Disputes

14. Pending the resolution of a dispute pursuant to Section 13, each Party shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Any amount paid by a Party pursuant to this Section during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

Governing Law

15. This Agreement shall be governed by the laws of the State of Arizona.

Binding Obligations

16. All of the obligations set forth in this Agreement shall bind CAWCD and its successors and assigns. This Agreement shall not be assigned by AWBA or accrue to AWBA's successor, nor shall any CAWCD USF storage capacity use rights under this Agreement be used by another party. This Agreement shall not be assigned by CAWCD or accrue to CAWCD's successor without the express written consent of AWBA.

Notices

17. (a) Notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by mail, postage prepaid, or facsimile to the persons specified below:

Central Arizona Water Conservation District
General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020
Facsimile Number: (623) 869-2332

Arizona Water Banking Authority
Manager
500 North Third Street
Phoenix, AZ 85004-3903
Facsimile Number: (602) 417-2401

(b) A Party may, at any time, by notice to the other Party, designate different or additional persons or different addresses for the giving of notices.

Third Party Beneficiaries

18. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Waiver

19. The waiver by either Party of a breach of any term, covenant or condition in this Agreement shall not be deemed a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term covenant or condition of this Agreement.

Headings

20. Title and paragraph headings are for reference only and are not part of this Agreement.

Entire Agreement

21. The terms, covenants and conditions of this Agreement constitute the entire agreement between the Parties relative to the use of CAWCD USF storage capacity, and no understandings or agreements not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by both Parties.

Cancellation

22. This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the day and year first above-written.

Attest:

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Secretary

By: _____
George R. Renner, President

Attest:

ARIZONA WATER BANKING AUTHORITY

Secretary

By: _____
Joseph C. Smith, Chairman



United States Department of the Interior

BUREAU OF RECLAMATION

Lower Colorado Regional Office

P.O. Box 61470

Boulder City, NV 89006-1470

IN REPLY REFER TO:

BCOO-4440

WTR-4.03

JUN 07 2002

Mr. Tim Henley
Manager
Arizona Water Banking
Authority
500 North Third Street
Phoenix, Arizona 85004

Subject: Proposed Storage and Interstate Release Agreement
(SIRA) Among Southern Nevada Water Authority (SNWA),
Colorado River Commission of Nevada (CRCN), Arizona Water
Banking Authority (AWBA), and the United States

Dear Mr. Henley:

Enclosed for review and consideration by your board is the final form of the SIRA. As you know, this SIRA was developed through a series of draft agreements and meetings among the principal parties over the past two years. This SIRA was developed pursuant to the final rule for Offstream Storage of Colorado River Water (Rule) published in the *Federal Register* on November 1, 1999 (Vol. 64, No. 210, Pg. 58986).

Reclamation and SNWA jointly prepared an associated draft environmental assessment (DEA) that analyzes the potential impacts of the storage and retrieval actions that will occur under the SIRA. The draft SIRA and DEA were provided to the Lower Basin States and the general public for review and comment by letter dated February 19, 2002. In conjunction with the public review and as required by Subsection 414.3 (g) of the Rule, Reclamation consulted with Mexico through the United States and Mexican Sections of the International Boundary and Water Commission. Based on our analysis and review of comments made during the public comment period, we anticipate preparing a Finding of No Significant Impact (FONSI).

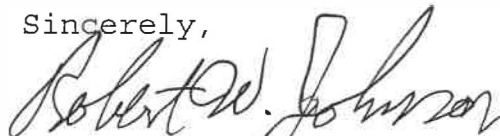
Reclamation completed environmental compliance documentation for several projects that tie into the analysis of the potential impacts of those projects on the offstream storage and retrieval of Colorado River water pursuant to the Rule and the SIRA. Those documents are tiered to and incorporated by reference in the Final Environmental Assessment for the SIRA.

- First, we completed a final programmatic environmental assessment for the Rule in November 1999. A programmatic approach to address National Environmental Policy Act was adopted for the Rule because many of the details of specific interstate agreements under the Rule were unknown at that time.
- In January 2001, Reclamation issued a Record of Decision on the Final Environmental Impact Statement (FEIS), dated December 2000, for the Colorado River Interim Surplus Guidelines (Guidelines). The Arizona and Nevada apportionments that could be stored for interstate purposes were included in modeling for the FEIS for the Guidelines.
- Reclamation issued a Draft Environmental Impact Statement (DEIS) in January 2002 for the Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions. Based on comments received on that DEIS, the FEIS is being modified to clarify the analysis that has already been done for the offstream banking rule, particularly the proposed action of executing a SIRA that would benefit SNWA through offstream storage of up to 1.2 million acre-feet of recoverable long-term storage credits by AWBA.
- As noted above, Reclamation released a DEA, dated March 17, 2002, for the SIRA. The DEA expanded upon the FPEA based on the details of the proposed transaction.

Enclosed for your information and reference is the anticipated schedule for execution of the SIRA. We plan to sign the FONSI by June 17, 2002, thereby documenting the conclusion of our consultation with Mexico and completion of the FEA for the SIRA. Once the FONSI is signed I am prepared to execute the proposed SIRA in its enclosed form on behalf of the United States. It is our expectation that the SIRA will be executed by AWBA, SNWA, and CRCN following action by their respective boards of directors or commissions. We will be pleased to prepare the SIRA for execution following the requisite approval by AWBA, SNWA, and CRCN.

If you have any questions regarding the proposed agreement, please contact Mr. Dale Ensminger at the above address or telephone him at 702-293-8659.

Sincerely,



Robert W. Johnson
Regional Director

Enclosures

Similar letter sent to:

Ms. Patricia Mulroy
General Manager
Southern Nevada Water
Authority
1001 S. Valley View Blvd
Las Vegas, Nevada 89153

Mr. George M. Caan
Director
Colorado River Commission
of Nevada
555 E. Washington Ave
Suite 3100
Las Vegas, Nevada 89101-1048

cc: Mr. Gerald R. Zimmerman
Executive Director
Colorado River Board of
California
770 Fairmont Avenue
Suite 100
Glendale, California 91203-1035

Mr. Joseph C. Smith
Director
Arizona Department of Water
Resources
500 North Third Street
Phoenix, Arizona 85004-3921
(w/encls to ea)

Schedule for Finalization of Environmental Documentation and
Execution of Storage and Interstate Release Agreement (SIRA)
Among AWBA, SNWA, CRCN, and the United States

<u>Action</u>	<u>Date</u> ¹
Distribute draft SIRA to AWBA, SNWA, and CRCN for review	C - 04-30-02
Consultation meeting among BOR and U.S. and Mexican Sections of IBWC	C - 05-14-02
BOR complete draft responses to comments	C - 05-20-02
Distribute administrative final environmental assessment (FEA) to SNWA and BOR for final review	C - 05-23-02
Draft FONSI available for BOR final review	C - 05-30-02
FEA completed	C - 06-04-02
FONSI completed preparatory to BOR's execution of SIRA	C - 06-06-02
Distribute final form of draft SIRA to AWBA, SNWA, and CRCN for approvals with a statement of BOR's intent to execute the SIRA in that final form	C - 06-07-02
CRCN board action to consider approval of SIRA	06-11-02
Signing of FONSI ²	06-17-02
AWBA quarterly board meeting to review status of agreements	06-19-02
SNWA board action to consider approval of SIRA	06-20-02
AWBA board action to consider approval of SIRA ³	07-17-02
Complete execution of SIRA by all parties following approval by CRCN, SNWA, and AWBA ⁴	07-17-02
Newspaper notices of completion of FEA and FONSI and execution of SIRA	07-24-02

¹ "C" in right column means completed action.

² FONSI to be signed by 6-17-02, allowing Mexico 30 days to comment after BOR's 5-14-02 consultation meeting with Mexico.

³ BOR's projection - date will be set at AWBA's 6-19-02 board meeting.

⁴ Execution of SIRA will occur following approval by all signatory parties.

STORAGE AND INTERSTATE RELEASE AGREEMENT

among

The United States of America, acting through the Secretary of the Interior; the Arizona Water Banking Authority; the Southern Nevada Water Authority; and the Colorado River Commission of Nevada

WITNESSETH, THAT:

Recitals

- A. The Secretary of the United States Department of the Interior (Secretary) in 43 CFR 414.3(c) authorized the United States Bureau of Reclamation, Lower Colorado Region, to execute and administer this Storage and Interstate Release Agreement (Agreement) on behalf of the United States. References to the Secretary in this Agreement include the United States Bureau of Reclamation, Lower Colorado Region.
- B. The Arizona Water Banking Authority (AWBA) is expressly authorized by A.R.S. § 45-2401 *et seq.* to enter into Storage and Interstate Release Agreements and develop Intentionally Created Unused Apportionment (ICUA). 43 CFR 414.2(1).
- C. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994 and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant to its contract issued under section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICUA released by the Secretary for use within the State of Nevada pursuant to Article II(B)(6) of the Decree in *Arizona v. California*, 376 U.S. 340, 343 (1964).
- D. The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 through 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, enters into this Agreement to facilitate the banking of Colorado River water, the creation of Long-term Storage Credits and the establishment and maintenance of a Long-term Storage Account for SNWA.

- E. On July 3, 2001, AWBA, SNWA, and CRCN entered into an Agreement for Interstate Water Banking for the purpose of creating a program of interstate banking of Colorado River water in Arizona for the benefit of SNWA. Under this program, AWBA will acquire and store mainstream Colorado River water in Arizona, creating Long-term Storage Credits to be held for SNWA in an account established with ADWR, and at a later date recover the Long-term Storage Credits and exchange the recovered water with Colorado River water users in Arizona to develop ICUA.
- F. The Boulder Canyon Project Act and Article II(B)(6) of the Decree, taken together, authorize the Secretary to release unused Arizona apportionment for use in Nevada. Pursuant to such authority and for the purpose of increasing the efficiency, flexibility, and certainty of Colorado River management and thereby helping satisfy the regional water demands that exist in the area served by SNWA, the Secretary promulgated regulations (43 CFR Part 414) to establish a procedural framework for facilitating interstate off-stream banking transactions, including a commitment by the Secretary to release ICUA as a part of such transactions, consistent with those regulations.
- G. ICUA released under this Agreement will provide SNWA with a supplemental water supply that is critical to the economy, health and safety of the area served by SNWA pending the development of other long-term sources of water supply.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Secretary, AWBA, SNWA, and CRCN hereby agree as follows:

Article 1
Definitions and Term

- 1.1 Definitions. The following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.
 - 1.1.1 "ADWR" shall mean the Arizona Department of Water Resources.
 - 1.1.2 "Agreement" shall mean this Storage and Interstate Release Agreement.
 - 1.1.3 "Agreement for Development of Intentionally Created Unused Apportionment" shall mean that agreement between AWBA and the Central Arizona Water Conservation District dated _____.
 - 1.1.4 "Agreement for Interstate Water Banking" shall mean that agreement among AWBA, SNWA and CRCN dated July 3, 2001.
 - 1.1.5 "AWBA" shall mean the Arizona Water Banking Authority.

- 1.1.6 “AWBA Plan of Operation” shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.
- 1.1.7 “Basin States” shall mean the Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, Wyoming, and Utah.
- 1.1.8 “CAP” shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*
- 1.1.9 “CAWCD” shall mean the Central Arizona Water Conservation District.
- 1.1.10 “CRCN” shall mean the Colorado River Commission of Nevada.
- 1.1.11 “Decree” shall mean the Decree entered by the United States Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.
- 1.1.12 “Entitlement Holder” shall mean a holder of an authorization to beneficially use Colorado River water pursuant to (i) the Decree; (ii) a water delivery contract with the United States through the Secretary; or (iii) a reservation of water from the Secretary.
- 1.1.13 “ICUA” shall mean Intentionally Created Unused Apportionment as that term is defined in 43 CFR 414.
- 1.1.14 “Long-term Storage Credit” shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01.
- 1.1.15 “SNWA” shall mean the Southern Nevada Water Authority.
- 1.1.16 “SNWA Interstate Account” shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR under the terms of this Agreement and the Agreement for Interstate Water Banking.
- 1.1.17 “Storage Facility” or “Storage Facilities” shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01. “Storage facilities” do not presently include facilities constructed or financed by the United States.
- 1.1.18 “Water Stored “ means the amount of Long-term Storage Credits properly credited to the SNWA Interstate Account under applicable Arizona law and the Agreement for Interstate Water Banking. The amount of “Water

Stored” under this agreement will always be less than the amount of water diverted for storage.

1.1.19 “Year” shall mean calendar year.

1.2 Term of the Agreement

This Agreement shall commence on the date of execution by all parties and shall continue until June 1, 2050, or until termination of the Agreement for Interstate Water Banking, whichever is sooner.

Article 2 Water Available for Storage

- 2.1 Colorado River water available for storage for purposes of this Agreement shall be within either (i) the State of Arizona’s basic or surplus apportionment, apportioned to the State of Arizona under Articles II(B)(1) or II(B)(2) of the Decree; or (ii) the State of Nevada’s unused basic or surplus apportionment, apportioned to the State of Nevada under Articles II(B)(1) and II(B)(2) of the Decree and released to the State of Arizona under Article II(B)(6) of the Decree.
- 2.2 Colorado River water apportioned to the State of Nevada under Articles II(B)(1) and II(B)(2) of the Decree may be used for storage in the State of Arizona under this Agreement in accordance with 43 CFR 414.3(a)(3) only if the following conditions are met:
- 2.2.1 The Secretary has decided that such unused Nevada apportionment shall be released for Consumptive Use within Arizona under Article II(B)(6) of the Decree.
- 2.2.2 The AWBA has agreed that it will accept delivery of such water and store it for the benefit of SNWA in accordance with the terms of the Agreement for Interstate Water Banking.
- 2.3 Before any water is diverted from the Colorado River for storage under this Agreement, it shall first be offered to all Entitlement Holders within Arizona for diversion within their entitlements for purposes other than interstate transactions as provided in 43 CFR 414.3(a)(2).
- 2.4 The water available for storage shall be diverted from the Colorado River and delivered to Storage Facilities by CAWCD, utilizing CAP facilities constructed by the United States.

Article 3
Storage Facilities and Accrual of Long-term Storage Credits

- 3.1 AWBA shall store water for the benefit of SNWA pursuant to the Agreement for Interstate Water Banking. All water shall be stored within the State of Arizona in the Storage Facilities for which AWBA has or then has storage agreements. 43 CFR 414.3(a)(1). A listing of the potential Storage Facilities to be utilized is provided in the AWBA storage facilities inventory dated March 1, 1997. Additional storage facilities may be needed for Arizona use. If such facilities are permitted by ADWR and developed by Arizona entities, and if AWBA chooses to use those Storage Facilities for interstate banking, AWBA shall update the 1997 Facility Inventory to include those additional facilities. If the 1997 Facility Inventory is updated, unused storage capacity at those additional facilities may be used for interstate water banking.
- 3.2 The Storage Facilities utilized in each Year shall be identified in the AWBA Plan of Operation.
- 3.2.1 The AWBA Plan of Operation may be modified in accordance with A.R.S. § 45-2456 subject to the provisions of the Agreement for Interstate Water Banking.
- 3.2.2 AWBA shall notify the Secretary in writing of any change in the AWBA Plan of Operation that may affect the amount or location of water to be stored under the Agreement for Interstate Water Banking.
- 3.3 AWBA shall establish a Long-term Storage Sub-Account with ADWR entitled the "SNWA Interstate Account." AWBA shall manage the SNWA Interstate Account so as to accommodate the storage and recovery of water for the benefit of SNWA in the manner provided in this Agreement and the Agreement for Interstate Water Banking. AWBA shall ensure that ADWR timely and properly credits or debits the SNWA Interstate Account with the correct number of Long-term Storage Credits under applicable Arizona law for each Year. AWBA shall ensure that the Year-end balance of Long-term Storage Credits in the SNWA Interstate Account is correct.
- 3.3.1 Except as provided in sub-articles 3.3.2 and 3.3.3, SNWA shall not be entitled to the storage of water under this Agreement or the assignment of existing Long-term Storage Credits pursuant to sub-article 3.3.4 to the extent such storage or assignment would result in Long-term Storage Credits credited to the SNWA Interstate Account in excess of 200,000 acre-feet in any Year, or in excess of 1,200,000 acre-feet over the entire period of this Agreement.

- 3.3.2 SNWA shall be entitled to all Long-term Storage Credits held by CAWCD for SNWA on the effective date of this Agreement that were developed pursuant to a demonstration project developed by CAWCD in 1992 and modified in 1994 to test the feasibility of underground storage of Colorado River water supplies and subsequently transferred to AWBA for credit to the SNWA Interstate Account. The 50,000 acre-feet of Long-term Storage Credits transferred to AWBA under this sub-article shall not be counted for purposes of determining whether either of the limitations specified in sub-article 3.3.1 has been exceeded.
- 3.3.3 During the term of this Agreement, AWBA may cause the assignment of Long-term Storage Credits into and out of the SNWA Interstate Account by notifying ADWR of such assignment. If an equal number of Long-term Storage Credits are transferred into and out of the SNWA Interstate Account in a single transaction with ADWR, then the transaction shall not be counted for purposes of determining whether either of the limitations specified in sub-article 3.3.1 has been exceeded.
- 3.3.4 During the term of this Agreement, Long-term Storage Credits may be assigned to AWBA for credit to the SNWA Interstate Account for purposes of increasing the number of Long-term Storage Credits available to SNWA. Any such assignment must have the consent of AWBA. If Long-term Storage Credits are assigned to AWBA for credit to the SNWA Interstate Account under this sub-article, those credits shall be counted for purposes of determining compliance with both of the limitations specified in sub-article 3.3.1.
- 3.4 The provisions of this sub-article 3.4 shall govern reports by AWBA to the Secretary and incorporation of the AWBA reports into the Secretary's accounting under Article V of the Decree.
- 3.4.1 By December 31 of each Year, AWBA shall provide the Secretary with an estimate of the Long-term Storage Credits to be developed for and credited to the SNWA Interstate Account in the following Year. AWBA shall update that estimate monthly during the course of the Year and provide a final estimate at the end of that Year. The estimate and updates are to be considered provisional until AWBA makes its final annual accounting to the Secretary by September 1 of the Year following the Year of the development of the Long-term Storage Credits.
- 3.4.2 AWBA shall prepare and submit to the Secretary and the States of Arizona, California, and Nevada by September 1 of each Year a final verified accounting for the prior Year of: (i) the beginning balance of Long-term

Storage Credits in the SNWA Interstate Account; (ii) the amount of Colorado River water diverted from the mainstream for the purpose of interstate water banking in that year, and the amount of Water Stored resulting from that diversion; (iii) any Long-term Storage Credits properly assigned and transferred to or from the SNWA Interstate Account under sub-articles 3.3.2, 3.3.3, or 3.3.4; (iv) any Long-term Storage Credits assigned from the SNWA Interstate Account during that Year under sub-article 5.8; (v) the net Long-term Storage Credits in the SNWA Interstate Account at the end of the Year; and (vi) the cumulative amount of Long-term Storage Credits properly credited to the SNWA Interstate Account for purposes of determining compliance with the 1,200,000 maximum credit accrual specified in sub-article 3.3.1.

- 3.4.3 Submission by AWBA of a report in compliance with sub-article 3.4.2 shall constitute compliance with the requirements of 43 CFR § 414.4(a) as it is in effect on the date of execution of this Agreement.
- 3.4.4 The Secretary shall include a supplement in the Secretary's annual Article V Decree accounting report titled "Water Diverted and Stored in Arizona for the Benefit of SNWA."
 - 3.4.4.1 The Secretary will account for the water that is diverted by CAWCD for storage by AWBA as a consumptive use in the State of Arizona for the year in which it is diverted and stored.
 - 3.4.4.2 The Secretary will account for the diversion and consumptive use of ICUA by SNWA as a consumptive use in the State of Nevada of unused apportionment of the State of Arizona made available by the Secretary under Article II(B)(6) of the Decree for use by SNWA in accordance with the terms of this Agreement.
 - 3.4.4.3 The supplement shall reflect as Water Stored, expressed in terms of acre-feet, the provisional Long-term Storage Credits identified in the AWBA reports submitted pursuant to sub-article 3.4.1 and shall identify these as provisional estimates for informational purposes only. The supplement shall also reflect as Water Stored the verified Long-term Storage Credits identified in the AWBA final verified accounting submitted pursuant to sub-article 3.4.2 subject to such review of the underlying books and records as the Secretary deems appropriate.

- 3.4.5 All records of AWBA concerning the amount of Water Stored in that Year, including all records used by AWBA to prepare the final verified accounting, shall be available for inspection by the Secretary.
- 3.5 Accrual of Long-term Storage Credits in the SNWA Interstate Account at certain Storage Facilities does not mean that those Long-term Storage Credits will be recovered at those same Storage Facilities. Recovery of Long-term Storage Credits shall be in accordance with the Agreement for Interstate Water Banking, the Agreement for Development of Intentionally Created Unused Apportionment, and applicable Arizona law.

Article 4

Development of Intentionally Created Unused Apportionment

- 4.1 AWBA shall develop ICUA for the benefit of SNWA in accordance with the provisions of this Agreement, the Agreement for Interstate Water Banking and the Agreement for Development of Intentionally Created Unused Apportionment. All actions that AWBA takes to develop ICUA shall be consistent with the laws of the State of Arizona.
- 4.2 AWBA shall only use means to develop ICUA under this Agreement that have been approved by the Secretary. Two such approved means are the recovery and exchange method and the credit exchange method. AWBA may also use any other means of developing ICUA during the term of this Agreement provided such means comply with CFR Part 414 and are first approved by the Secretary.
- 4.2.1 The recovery and exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be recovered and the recovered water exchanged for Colorado River water that would otherwise have been delivered through the CAP in that Year. The Long-term Storage credits may be recovered by CAWCD or by another entity scheduled to receive water from CAWCD in the Year of recovery.
- 4.2.2 The credit exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be exchanged for Colorado River water that would otherwise have been delivered through the CAP for underground storage in that Year. The recipient of the credits shall be an entity scheduled to receive water from CAWCD for purposes of underground storage in the Year of recovery.
- 4.3. AWBA shall prepare an Interstate Recovery Schedule in accordance with the terms of the Agreement for the Development of Intentionally Created Unused Apportionment and the Agreement for Interstate Water Banking. AWBA shall meet

and confer with the Bureau of Reclamation in the preparation of the Interstate Recovery Schedule. ICUA shall not exceed 100,000 acre-feet in any Year under this Agreement.

- 4.4 The Interstate Recovery Schedule shall set forth the means by which AWBA intends to create ICUA.
 - 4.4.1 If AWBA intends to create ICUA using the recovery and exchange method, then the Interstate Recovery Schedule shall demonstrate that there is sufficient recovery capacity to recover the necessary Long-term Storage Credits from the SNWA Interstate Account and shall describe how the credits will be recovered and delivered through the CAP or how the credits will be recovered by individual CAP customers in lieu of their scheduled CAP deliveries.
 - 4.4.2 If AWBA intends to create ICUA using the credit exchange method, then the Interstate Recovery Schedule shall demonstrate that CAWCD has received sufficient orders for the delivery of Colorado River water for underground storage and shall identify the entity or entities accepting the transfer of Long-term Storage Credits in lieu of the delivery of Colorado River water.
 - 4.4.3 If AWBA intends to create ICUA using another method approved by the Secretary, after consultation with the Governors' representatives of the Basin States, then the Interstate Recovery Schedule shall include such information as required by the Secretary for that method.
- 4.5 AWBA shall require that any Agreement for Development of Intentionally Created Unused Apportionment contain a provision requiring CAWCD to accept Long-term Storage Credits from the SNWA Interstate Account in exchange for Colorado River water that would have otherwise been diverted into the CAP by CAWCD and to reduce its consumptive use of Colorado River water in accordance with that exchange. The Agreement for Development of Intentionally Created Unused Apportionment shall allow CAWCD to meet all scheduled deliveries to Indian contractors, CAWCD subcontractors and other CAP water users, through a combination of Colorado River water and recovered Long-term Storage Credits.
- 4.6 AWBA shall require that any Agreement for Development of Intentionally Created Unused Apportionment also provide that any Long-term Storage Credits accepted by CAWCD pursuant to this Article 4 shall be accounted for by CAWCD as water diverted from the Colorado River for purposes of determining the amount of water that CAWCD may lawfully divert from the Colorado River in the Year of development of ICUA.

- 4.7 In any Year that SNWA anticipates requesting the release of ICUA under sub-article 5.1, SNWA shall, by June 1, make a preliminary request to the AWBA for the development of ICUA in accordance with the terms of the Agreement for Interstate Water Banking. Such preliminary request shall be in writing and shall specify the quantity of the requested ICUA. A copy of such preliminary request shall be provided to the Secretary at the same time that it is made to AWBA.
- 4.8 By December 1 of any year in which SNWA has made a request for development of ICUA in the following Year under the Agreement for Interstate Water Banking, AWBA shall prepare and deliver to Secretary three certifications: (i) a Development of ICUA Certification; (ii) an Interstate Recovery Schedule Certification; and (iii) an Upcoming Year Delivery Certification. These three certifications may be combined in a single document.
- 4.8.1 The Development of ICUA Certification shall certify: (i) that sufficient Long-term Storage Credits exist in the SNWA Interstate Account to support the development of the requested ICUA; (ii) that ICUA will be developed in the upcoming Year in an amount equal to the request using an approved means; (iii) that such ICUA otherwise would not exist; and (iv) that the notice under sub-Article 4.11 has been given. The Development of ICUA Certification shall request that the Secretary release the ICUA for use in Nevada pursuant to Article II(B)(6) of the Decree and this Agreement.
- 4.8.2 The Interstate Recovery Schedule Certification shall state that the Interstate Recovery Schedule has been prepared after consultation with the Bureau of Reclamation and that the Interstate Recovery Schedule sets forth the means by which AWBA intends to develop ICUA utilizing Long-term Storage Credits in the SNWA Interstate Account and the quantity of ICUA the AWBA intends to develop. The Interstate Recovery Schedule Certification shall certify that the contractual commitments by CAWCD necessary to develop ICUA remain in full force and effect and that CAWCD will reduce its consumptive use of Colorado River water in the amount of the requested ICUA. A copy of the Interstate Recovery Schedule shall be included with the Interstate Recovery Schedule Certification. The Secretary shall provide a copy of the Interstate Recovery Schedule and the Interstate Recovery Certification to the Governors' representatives of the Basin States.
- 4.8.3 The Delivery Certification shall indicate the amount of water ordered by CAWCD for the following Year and quantify how that order will be satisfied with diversions from the Colorado River and Long-term Storage Credits from the SNWA Interstate Account. The Delivery Certification shall state that Arizona's consumptive use of Colorado River water will be decreased

in the following Year by a quantity sufficient to develop the requested ICUA.

- 4.9 Once AWBA certifies to the Secretary that ICUA will be developed during the Year of release, AWBA shall take all actions necessary in the following Year to ensure that ICUA is developed in accordance with such certifications.
- 4.10 In years in which the Secretary has determined a shortage under Article II(B)(3) of the Decree, AWBA's obligation to develop ICUA shall be limited as provided in the Agreement for Interstate Water Banking.
- 4.11 AWBA shall give notice to Entitlement Holders in Arizona, including Indian Tribes, that SNWA has requested the development of ICUA. The notice shall state which means permitted under this Article will be used to develop ICUA. Whether and what opportunities exist for Entitlement Holders in Arizona, including Indian Tribes, to develop ICUA will depend upon the means selected. The notice shall identify any opportunities for Entitlement Holders in Arizona, including Indian Tribes, to participate in the development of ICUA associated with the particular means selected. AWBA shall provide this notice by first class mail to Entitlement Holders in Arizona, or by such other means as are acceptable to the Secretary.
- 4.12 By April 1 of the Year after ICUA is developed, AWBA shall submit to the Secretary a report documenting how ICUA was created and confirming that the amount of ICUA set forth in the Interstate Recovery Schedule was developed.
- 4.13 The Secretary shall, as he or she deems appropriate, review books and records in accordance with sub-article 6.6 to ensure that ICUA was developed and, in the event of a discrepancy shall require AWBA to repay to Lake Mead storage as set forth in sub-article 4.14.
- 4.14 If AWBA does not create ICUA as required under this Article, AWBA shall create ICUA in another Year to repay to Lake Mead storage the amount of ICUA consumptively used by SNWA but not created by AWBA. The Secretary, in addition to any other remedy available, may seek a court order requiring AWBA to do so. The Year of repayment shall be at the discretion of the Secretary, but shall not be more than three years after the year in which the shortfall occurred.

Article 5

Release of Intentionally Created Unused Apportionment

- 5.1 SNWA shall make a written request of the Secretary for the release of ICUA for consumptive use in the State of Nevada. A request for a release of ICUA shall be made by September 15 of the current Year, or an earlier date as reasonably

required in writing by the Secretary, for a release of ICUA in the following Year. The request shall specify the quantity of ICUA to be released by the Secretary and shall certify that SNWA has mailed, first class postage paid, a copy of the request to the States of Nevada, Arizona, and California by providing copies to CRCN, the Arizona Department of Water Resources and the Colorado River Board of California. A copy of the request shall be provided to AWBA. To make a proper and timely request, SNWA must be in compliance with the terms of the Agreement for Interstate Water Banking and must have made a preliminary request to the AWBA to develop ICUA under sub-article 4.7.

- 5.2 The request for the development of ICUA by SNWA shall be incorporated into the Secretary's Annual Operating Plan for the Colorado River. The Annual Operating Plan shall state that, upon proper certification, the Secretary intends to release that quantity of ICUA to SNWA under Article II(B)(6) of the Decree in accordance with the terms of this Agreement.
- 5.3 Release of ICUA under this Agreement for diversion by SNWA shall operate under 43 CFR Part 414.3(f), Anticipatory Release of ICUA, as provided in this article. The Secretary shall not release ICUA in excess of 100,000 acre-feet in any Year or in excess of the 1,250,000 acre-feet over the entire period of this Agreement. The amount of 1,250,000 acre-feet consists of the 1,200,000 acre-feet maximum credit accrual developed under the Agreement for Interstate Water Banking and the 50,000 acre-feet credit accrual developed pursuant to the demonstration underground storage project referenced in sub-article 3.3.2.
- 5.4 By December 20 of the current Year, following receipt of a proper and timely request for release of ICUA under sub-Article 5.1, the Secretary shall determine whether AWBA has elected a means for developing ICUA approved under Article 4 and whether all necessary actions required by 43 CFR Part 414 have been taken. For purposes of this Agreement, all necessary actions are those actions expressly enumerated in 43 CFR Part 414, as amplified by this Agreement.
 - 5.4.1 The Secretary shall determine whether the certifications made by AWBA meet the requirements under sub-article 4.8. Upon so determining, the Secretary shall issue a notice of determination that shall release for diversion of the quantity of ICUA so certified for consumptive use in the State of Nevada. The release of ICUA under this sub-article shall be effective as of January 1 of the following Year.
 - 5.4.2 If the Secretary determines that the proper certifications have not been made under sub-article 4.8, or that all necessary actions under 43 CFR Part 414 have not been taken, the notice of determination shall (i) specify which certifications or necessary actions are deficient and the nature of the

deficiency; (ii) specify the extent to which such deficiencies preclude the release of ICUA requested by SNWA for consumptive use in Nevada effective as of January 1 of the following Year; and (iii) determine whether any quantity of ICUA is available for release in the following year. If a quantity of ICUA is available for release under (iii), the notice shall release of the quantity of ICUA to SNWA for consumptive use in the State of Nevada, effective on January 1 of the following year.

- 5.4.3 Any portion of ICUA not released in the notice of determination made by the Secretary under this sub-article shall be released for diversion by the Secretary on such date as the Secretary determines that the stated deficiencies have been cured.
- 5.5 The Secretary shall provide notice of the determination under sub-article 5.4 on or before December 20 of the current Year. If the Secretary fails to provide written notice of a determination required by sub-Article 5.4 by December 20, SNWA may seek judicial relief and shall be deemed to have exhausted any applicable administrative remedy and shall be free to seek any remedies available to it under applicable law.
- 5.6 ICUA shall be released to SNWA only in the Year and to the extent that ICUA is developed by AWBA, or for an anticipatory release, will be developed by AWBA as certified to the Secretary in accordance with Article 4.7, by reducing Colorado River water use within the State of Arizona.
- 5.7 Once the Secretary has determined that ICUA will be released to SNWA under sub-article 5.4, such ICUA shall not be available for release to any Entitlement Holder in the States of Arizona or California in that Year.
- 5.8 In any Year in which the Secretary has released ICUA to SNWA under this Article 5, AWBA shall cause the assignment of Long-term Storage Credits from the SNWA Interstate Account in accordance with the Interstate Recovery Schedule. By December 31 of that Year, AWBA shall ensure that all assignments from the SNWA Interstate Account have been made and properly debited by ADWR.
- 5.9 The amount of ICUA released for consumptive use in Nevada effective January 1 of any Year shall not be subject to reduction unless:
 - 5.9.1 SNWA requests that AWBA cease development of ICUA under the terms of the Agreement for Interstate Water Banking; and

- 5.9.2 AWBA certifies to the Secretary that, pursuant to a SNWA request, a specific quantity of Long-term Storage Credits will not be recovered or exchanged for Colorado River water pursuant to an SNWA request.
- 5.10 ICUA that has been developed by the AWBA and released by the Secretary for diversion by SNWA in a particular Year but not diverted by SNWA for consumptive use in that Year may not be carried forward and diverted by SNWA in any succeeding Year.
- 5.11 The Secretary shall release ICUA developed by AWBA in accordance with the request of the SNWA, the terms of this Agreement, the determination of the Secretary under sub-article 5.4 of this Agreement, the Boulder Canyon Project Act, Article II(B)(6) of the Decree and all other applicable Federal laws and executive orders.

Article 6

General Provisions

- 6.1 Upon execution of this Agreement and annually thereafter, SNWA shall pay an annual administration fee of two thousand dollars (\$2,000.00) to cover the United States' costs to perform the routine tasks necessary to administer this Agreement. The initial annual administration fee shall be pro-rated on the basis of one hundred sixty six dollars and sixty seven cents (\$166.67) per month for the first year, payable upon execution of this Agreement. Thereafter, the fee for each subsequent year shall be due on January 1.
- 6.2 The Secretary reserves the right at intervals of five (5) years, beginning five (5) years after the date of execution of this Agreement, to reexamine the annual administration fee and to revise the fee after three (3) months' advance written notice and after consultation with SNWA if the Secretary determines that a different charge is necessary to cover the United States' costs to perform the tasks described in this Agreement. Upon SNWA's written request, the Secretary shall provide SNWA with a detailed cost analysis supporting the adjustment to the annual administration fee.
- 6.3 The annual administration fee shall cover, but is not limited to, the costs for the following tasks routinely performed by the Secretary:
- 6.3.1 Determining when unused Nevada apportionment is available for release for consumptive use within Arizona pursuant to Article II(B)(6) of the Decree for purposes of storage pursuant to this Agreement and releasing that unused apportionment;

- 6.3.2 Reviewing records prepared by AWBA and SNWA pursuant to sub-article 3.4 and preparing and maintaining records to supplement the Article V Decree accounting report;
 - 6.3.3 Reviewing AWBA's notices of opportunities for Colorado River water users in Arizona to participate in the development of ICUA;
 - 6.3.4 Reviewing certifications from AWBA that ICUA has been or will be developed;
 - 6.3.5 Determining that all necessary actions have been taken to implement 43 CFR 414; and
 - 6.3.6 Reviewing SNWA's requests for release of ICUA and scheduling delivery of ICUA to SNWA.
- 6.4 The Secretary recognizes that the Decree must be enforced fairly with respect to all Entitlement Holders. Excess diversion by an Entitlement Holder that is not participating in a Storage and Interstate Release Agreement other than through the CAP facilities cannot be offset by reducing diversions to another Entitlement Holder for the sole reason that the latter Entitlement Holder is participating in a Storage and Interstate Release Agreement.
- 6.5 In the event any inconsistency is found between this Agreement and the Agreement for Interstate Water Banking, as initially executed and as it may be amended, regarding the rights and obligations as between AWBA and SNWA, the provisions of this Agreement shall control. No agreement to which the Secretary is not a party shall be construed as altering the rights and obligations as between the Secretary and the other parties to this Agreement.
- 6.6 The records of any party to this Agreement that relate to the storage and recovery of water, including the development and verification of Long-term Storage Credits, and the creation, release and use of ICUA shall be open to inspection by any other party. AWBA shall require that any Agreement for Development of Intentionally Created Unused Apportionment with CAWCD provide that the records of CAWCD relating to the development of ICUA shall be open to reasonable inspection by any party to this Agreement.
- 6.7 The provisions of this sub-article shall govern enforcement of this Agreement.
- 6.7.1 Time is of the essence in the performance of this Agreement.

- 6.7.2 The parties recognize and acknowledge that the availability of ICUA as provided in this Agreement is a critical alternative municipal water supply for SNWA while other longer-term sources of supply are being developed; that in planning to meet the needs of the area it serves, SNWA will rely on ICUA being available to it as provided in this Agreement; that accordingly the release of ICUA as provided in Article 5 is critical to the economy, health and safety of the area served by SNWA; that the release of ICUA as provided in this Agreement presents a unique opportunity for SNWA to obtain additional Colorado River water under the Decree; and that, for these reasons, among others, the water resources to be released as ICUA for use in Nevada are unique and not susceptible to replacement by SNWA.
- 6.8 The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent on appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted. Absence of appropriation or allotment of funds shall not relieve AWBA, SNWA, or CRCN from any obligation under this Agreement.
- 6.9 No member of or Delegate to Congress, Resident Commissioner, or official of AWBA, SNWA, or CRCN shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- 6.10 The parties to this Agreement shall indemnify the United States, its employees, agents, subcontractors, successors, or assignees from loss or claims for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of actions taken by non-Federal parties to this Agreement.
- 6.11 The parties to this Agreement are hereby notified of Arizona Revised Statutes section 38-511.
- 6.12 The parties to this Agreement recognize and acknowledge that this Agreement is a contract executed pursuant to Federal Reclamation law, including the provisions of 43 U.S.C. § 390uu.
- 6.13 This Agreement shall not constitute approval by the Secretary of any other agreement or water delivery program.
- 6.14 Nothing in this Agreement affects the rights of any Colorado River Entitlement Holder.

- 6.15 No party to this Agreement shall be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to uncontrollable forces. The term “uncontrollable force” shall mean any cause beyond the control of the party unable to perform such obligation, including but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, a Federal governmental agency or authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require any party to settle any strike or labor dispute in which it is involved.
- 6.16 Non-Federal parties to this Agreement may assign their interest in this Agreement, in whole or in part, to other authorized entities, subject to the approval of all other parties to this Agreement.
- 6.17 The Secretary does not warrant the quality of water released or delivered under this Agreement. The United States is not liable for damages of any kind resulting from water quality problems and the United States has no obligation to construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

Article 7

Notices

7.1 Notices and Requests

- 7.1.1 All notices and requests required or allowed under the terms of this Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

AWBA:

Arizona Water Banking Authority
500 North Third Street
Phoenix, Arizona 85004
Attn: Manager

SNWA:

Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153
Attn: General Manager

CRCN:

Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Attn: Director

Secretary:

U.S. Department of the Interior
Bureau of Reclamation
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, Nevada 89006
Attn: Regional Director

The State of Arizona:

Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004
Attn: Director

The State of California:

Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1035
Attn: Executive Director

The State of Nevada:

Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Attn: Director

- 7.1.2 Any party may, at any time, change its mailing address by notice to the other parties.

7.2 Notices and Requests by Facsimile

7.2.1 Notices and requests may be given by facsimile among AWBA, SNWA, CRCN and the Secretary in lieu of first class mail as provided in sub-article 7.1. Such facsimiles shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

AWBA Facsimile Number 602-417-2401

SNWA Facsimile Number 702-258-3951

CRCN Facsimile Number 702-486-2695

Secretary Facsimile Number 702-293-8042

7.2.2 Any party may, at any time, change its facsimile number by notice to the other parties.

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the ____ day of _____, 2002.

Legal Review and Approval: **THE UNITED STATES OF AMERICA**

By: _____ By: _____
Field Solicitor Regional Director
Phoenix, Arizona Lower Colorado Region
Bureau of Reclamation

**STATE OF NEVADA, acting through its
COLORADO RIVER COMMISSION**

Attest:

By: _____ By: _____
Executive Director Chair

Approved as to form:

By: _____
[Title]

THE SOUTHERN NEVADA WATER AUTHORITY

Attest:

By: _____ By: _____
General Manager Chair

Approved as to form:

By: _____
[Title]

ARIZONA WATER BANKING AUTHORITY

Attest:

By: _____ By: _____
[Title] Chair

**Agreement Relating to Implementation of
Interim Colorado River Surplus Guidelines
Between
Southern Nevada Water Authority and
Metropolitan Water District of Southern California**

This agreement is entered into effective _____, 2002 by the Southern Nevada Water Authority, a Nevada joint exercise of powers authority ("SNWA"), and the Metropolitan Water District of Southern California, a California metropolitan water district ("MWD").

Recitals

A. SNWA is a joint exercise of powers authority established pursuant to Nevada law for the purpose, among others, of providing Colorado River water to its five purveyor member agencies in Clark County, Nevada, for municipal purposes.

B. MWD is a metropolitan water district organized under the California Metropolitan Water District Act and delivers Colorado River and other water to its member agencies in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, California primarily for municipal purposes.

C. The Colorado River Compact of 1922 apportions the consumptive use of 7.5 million acre-feet per year (AFY) of Colorado River water to the lower Colorado River basin. The 1964 decree entered by the United States Supreme Court in *Arizona v. California* ("Decree") apportions the consumptive use of Colorado River water in the lower basin in years in which 7.5 million AFY is available as follows: 2.8 million AFY for use in Arizona, 4.4 million AFY for use in California, and 300,000 AFY for use in Nevada (the states' "basic apportionments"). The Decree further provides that if sufficient Colorado River water is available for consumptive use in the lower basin in excess of 7.5 million AFY (a "surplus condition"), as determined by the Secretary of the Interior, such excess is apportioned 46 % for use in Arizona, 50% for use in California, and 4% for use in Nevada (the states' "surplus apportionments"). Article II(B)(6) of the Decree also provides that the Secretary may make water apportioned to, but unused in, one of the three lower basin states available for consumptive use in the other lower basin states, with the proviso that no rights to the recurrent use of such water shall accrue by reason of such use.

D. Section 5 of the Boulder Canyon Project Act provides that no person shall be entitled to use Colorado River water except by a permanent service contract with the United States, through the Secretary of the Interior, executed pursuant to such section.

E. Pursuant to section 5 of the Boulder Canyon Project Act, SNWA has contracted with the United States for the delivery of Colorado River water, including (1) all of Nevada's 300,000 AFY basic apportionment of Colorado River water that had not been legally committed for use by others as of March 2, 1992 (with minor exceptions), (2) any Colorado River water available for use in Nevada as surplus, and (3) any water apportioned to, but unused in, another lower basin state and made available for use in Nevada by the Secretary pursuant to article II(B)(6) of the Decree.

F. MWD has contracted with the United States for the delivery of Colorado River water pursuant to section 5 of the Boulder Canyon Project Act. MWD's contract, other Boulder Canyon Project Act contracts for delivery of Colorado River water in California, and various individual water rights applications collectively allocate California's apportionment of Colorado River water (including any surplus made available by the Secretary for use in California). MWD delivers its Colorado River supplies through the Colorado River Aqueduct, which has a capacity of approximately 1.3 million AFY.

G. Since 1964, consumptive use of Colorado River water in California has generally exceeded California's basic apportionment of 4.4 million AFY, averaging slightly more than 5.0 million AFY. Until 1989, California's requirements for Colorado River water above its basic apportionment were regularly met because the Secretary made Colorado River water apportioned to, but unused in, Arizona and Nevada available for use in California. Use of Colorado River water in Arizona and Nevada has increased to the point where most, if not all, of both states' basic apportionments is currently used. Demand for Colorado River water in Nevada is expected to exceed Nevada's basic apportionment in the immediate future and to exceed Nevada's anticipated surplus apportionment well before 2016.

H. In a number of years since 1989, California's requirements for Colorado River water in excess of its basic apportionment were met through a combination of unused Arizona and Nevada apportionment and water delivered by the Secretary in excess of the lower basin's 7.5 million AFY consumptive use apportionment. Since 1996 surplus deliveries have been made pursuant to formal declarations by the Secretary.

I. Because Arizona and Nevada are expected to use their respective basic apportionments, without the Secretary declaring the existence of a surplus condition, use of Colorado River water in California would be limited to California's 4.4 million AFY basic apportionment.

J. The sustained consumptive use of Colorado River water above California's basic apportionment has been of considerable concern to the six other Colorado River basin states and the Secretary, a concern shared by MWD and the other California contractors for Colorado River water. Responding to these concerns, the California contractors began negotiations over a series of agreements, two objectives of which are to reduce use of Colorado River water in California to the state's 4.4 million AFY basic apportionment by December 31, 2016 while allowing MWD to divert Colorado River water to the full capacity of the Colorado River Aqueduct. These negotiations resulted in the October 15, 1999 non-binding Key Terms for Quantification Settlement, which is expected to lead to execution of a formal Quantification Settlement Agreement among MWD, IID, and CVWD and related ancillary agreements by December 31, 2002.

K. There is a consensus among the basin states and the Secretary that in normal hydrologic years use of Colorado River water in California must be reduced to the state's basic apportionment over the next 15 years; that, because MWD delivers water primarily for municipal purposes, it should be able to fully utilize the Colorado River Aqueduct; and that California contractors have, to date, made progress toward these ends. Accordingly, the representatives of the governors of the seven basin states and certain contractors, including SNWA and MWD, collectively developed and submitted to the Bureau of Reclamation a proposal for interim surplus guidelines (the "Basin States' Working Draft") which provided a basis for surplus declarations by the Secretary for a fifteen-year interim period, conditioned on reduction in use (subject to meeting specified bench-marks) by California of Colorado River water .

L. The Basin States' Working Draft was used as the basis for development of the Colorado River Interim Surplus Guidelines, which were adopted by the Secretary in a Record of Decision on January 18, 2001 ("Interim Surplus Guidelines"), effective for a period ending December 31, 2016 (the "interim period"). In addition to specifying the circumstances under which the Secretary will declare the existence of a surplus condition and the extent of the surplus, the Interim Surplus Guidelines also specify which contractors may use surplus and the purposes for which surplus may be used. These specifications do not completely conform to the Decree's surplus apportionments or to the provisions of the affected contractors' contracts with the United States, including the contracts of SNWA and MWD.

M. Because elements of the Interim Surplus Guidelines do not completely conform to the states' surplus apportionments or the affected contractors' contracts, implementation of the Interim Surplus Guidelines is dependent on agreements among affected contractors in those states. Accordingly, the Interim Surplus Guidelines provide that several of their provisions will be implemented only if necessary implementation agreements are completed by December 31, 2002, including agreements between MWD and the State of Arizona and between SNWA and MWD.

N. On May 23, 2001, MWD and the State of Arizona, acting through the Arizona Department of Water Resources, entered into the Arizona-MWD Interim Surplus Guideline Implementation Agreement ("Arizona-MWD Agreement") under which in certain years Arizona will partially waive its right to surplus Colorado River water and ensure that Arizona contractors for Colorado River water will forbear use of such waived surplus Colorado River, all as specified in the agreement. The Arizona-MWD Agreement also provides that MWD will forbear from taking delivery of Colorado River water in those shortage years in which deliveries to Arizona will be reduced up to a specified maximum if, in prior years, MWD has received certain specified deliveries of surplus Colorado River water.

O. The Quantification Settlement Agreement among MWD, IID and CVWD will contain provisions limiting the rights of IID and CVWD to receive the delivery and use of surplus Colorado River water.

P. The partial waiver by Arizona of its right to surplus Colorado River water and the forbearance by Arizona contractors in the use of surplus Colorado River water, as specified in the Arizona-MWD Agreement, is essential for SNWA to receive the full benefits intended by the Interim Surplus Guidelines and the full benefits provided by this Agreement. The availability of water to Arizona through forbearance by MWD as provided in the Arizona-MWD Agreement is necessary for MWD to receive the full benefits intended by the Interim Surplus Guidelines and the full benefit of the Arizona -MWD Agreement.

Q. The parties enter into this Agreement for the purposes, among others, of (1) allowing the Interim Surplus Guidelines to be implemented, (2) agreeing on the allocation of unused Arizona apportionment between SNWA and MWD and on the priority of SNWA for interstate banking in Arizona and (3) providing measures to ensure, insofar as possible, that surplus Colorado River water is delivered and used only as specified in the Interim Surplus Guidelines.

R. This Agreement is entered into by SNWA and MWD with the expectation that the Secretary will adhere to and implement the Interim Surplus Guidelines as issued on January 18, 2001, without modification, and in that connection will deliver any unused Arizona basic apportionment to SNWA and MWD in accord with this Agreement.

NOW, THEREFORE, the parties agree as follows:

Article I Term of Agreement

Section 1.1 This Agreement shall become effective upon execution by both parties. All provisions of this Agreement other than Article V shall terminate on December 31, 2016, and the provisions of Article V shall survive such termination and continue in effect until termination of the Agreement for Interstate Water Banking dated July 3, 2001 among SNWA, the Colorado River Commission of Nevada, and the Arizona Water Banking Authority ("AWBA"), whereupon the provisions of Article V shall also terminate.

Section 1.2 If the Secretary modifies, suspends, or terminates the Interim Surplus Guidelines or fails to allocate unused Arizona basic apportionment or surplus Colorado River water as provided in the Guidelines, either party shall have the right, at any time thereafter and at its sole discretion, to suspend by notice to the other party articles II, III and IV of this Agreement, the suspension to continue until either the Secretarial action giving rise to the exercise of the right of suspension is cured or such party notifies the other that such articles are nonetheless reinstated.

Article II Adherence to Interim Surplus Guidelines

Section 2.1 SNWA and MWD each agree to order, schedule, request, take delivery of, divert, and use surplus Colorado River water and unused Arizona basic apportionment only in conformity with the allocations and purposes of use specified in the Interim Surplus Guidelines and in this Agreement.

Section 2.2 SNWA and MWD each agree to refrain from challenging the Secretary's determination, quantification, and delivery of surplus Colorado River water to each other so long as such are in conformity with the Interim Surplus Guidelines and this agreement.

Section 2.3 If a California Colorado River contractor seeks to use surplus Colorado River water contrary to the Interim Surplus Guidelines, MWD shall take appropriate action to enforce its rights under the Quantification Settlement Agreement in order to limit the use of such surplus Colorado River water.

Article III

Allocation and Use of Unused Arizona Basic Apportionment

Section 3.1 The Interim Surplus Guidelines provide, among other things, that “[t]he Secretary will deliver Colorado River water to contractors in a manner consistent with,” among other things, agreements between MWD and SNWA “which are necessary to provide for forbearance of water under Article II(B)(6) of the Decree” and further provide for allocation by the Secretary of unused Arizona basic apportionment “as agreed by” SNWA and MWD.

Section 3.2 The parties agree that any unused Arizona basic apportionment shall be allocated by the Secretary to SNWA and MWD in equal quantities, except as otherwise provided for in this Agreement.

Section 3.2.1 Each party shall use its allocation first for purposes of Direct Delivery Domestic Use consistent with section 1(B)(1) of the Interim Surplus Guidelines. Any unused Arizona basic apportionment allocated to, but not used by, such party for those purposes shall be available for use by such party as provided in section 3.2.2.

Section 3.2.2 Each party shall use its allocation of unused Arizona basic apportionment second for instate off-stream banking activities consistent with section 1(B)(2) of the Interim Surplus Guidelines.

Section 3.3 Any unused Arizona basic apportionment allocated to a party but not used by such party as provided in sections 3.2.1 and 3.2.2 shall be re-allocated by the Secretary for such uses by the other party.

Section 3.4 The parties agree that any unused Arizona basic apportionment not used by either party as provided in sections 3.2.1, 3.2.2 and 3.3 shall be available for re-allocation by the Secretary to meet other needs in California as specified in section 1(B)(3) of the Interim Surplus Guidelines.

Article IV
Arizona-MWD Agreement

Section 4.1 If any Arizona entitlement holder should seek to use water to which Arizona has waived its right under the Arizona-MWD Agreement, MWD shall take appropriate action to enforce its rights under the Arizona-MWD agreement.

Section 4.2 MWD agrees that it will not waive, amend or terminate any provision of the Arizona-MWD Agreement relating to Arizona's waiver of rights to surplus Colorado River water or to the use of surplus Colorado River water by Arizona contractors without the prior written consent of SNWA, which consent SNWA shall not unreasonably withhold.

Section 4.3 SNWA agrees that it will not assert any claim to, request the delivery of or use any unused California basic apportionment that results from the intentional forbearance by MWD, pursuant to the Arizona-MWD Agreement, of Colorado River water to which MWD otherwise has a right and otherwise would take.

Article V
Arizona Groundwater Banking

Section 5.1 SNWA and MWD both have an interest in participating in the interstate banking program of the Arizona groundwater bank administered by the AWBA. On July 3, 2001, SNWA (together with the Colorado River Commission of Nevada) entered into an Agreement for Interstate Water Banking with the AWBA. Section 1.2.4.4 of that agreement provides that the AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by written agreement between SNWA and MWD. On July 10, 2001, MWD wrote the AWBA acknowledging the agreement between SNWA and AWBA and the provision of the Interim Surplus Guidelines specifying that Nevada would have a first priority for interstate banking in Arizona, and requesting that the AWBA begin discussions with MWD over a interstate water banking agreement. The purpose of this article V is to specify the agreement of SNWA and MWD as to priorities of storage and recovery of water in Arizona as contemplated by the Agreement for Interstate Water Banking.

Section 5.2 The parties recognize that, under Arizona law, interstate banking is secondary to the primary interests of water management within the State of Arizona; that apart from this requirement limitations exist on the amount of water that the AWBA can place in storage in any year; and that Arizona law limits the amount of stored water that may be

withdrawn from storage for interstate purposes in any year. Accordingly, the parties desire to provide a priority to SNWA with respect to both storage of water in Arizona and the withdrawal of water from storage for interstate purposes.

Section 5.3 Until the AWBA has placed an aggregate of 1.2 million acre-feet of Colorado River water into storage for the credit of SNWA, SNWA shall have the first right each year to have the AWBA store up to 200,000 acre feet of Colorado River water, or so much thereof as is available in accordance with AWBA's plan of operations for the Arizona water bank, for the credit of SNWA. If AWBA's plan of operations determines that more than 200,000 acre-feet of storage is available for interstate banking purposes in any given year, MWD may seek to have AWBA store up to 200,000 acre feet of Colorado River water for the benefit of MWD in that year, until the AWBA has placed an aggregate of 1.2 million acre-feet of Colorado River water into storage for the credit of MWD. Thereafter, the parties agree to negotiate in good faith with regard to their relative priorities of right in any Arizona ground water storage opportunities available to either of them.

Section 5.4 MWD shall have the right to pursue water and storage capacity made available by AWBA that is not taken by SNWA pursuant to Section 5.3, including any water initially taken by SNWA that becomes available because SNWA subsequently decreases the amount to be stored for its credit.

Section 5.5 Each year SNWA shall have the first right to have water withdrawn from storage for interstate purposes by requiring the AWBA to cause the creation of intentionally created unused apportionment ("ICUA") for direct delivery domestic use in SNWA's service area to the full extent the creation of ICUA is allowed by Arizona law.

Section 5.6 Each party shall provide the other party with copies of all communications with the AWBA and the Bureau of Reclamation relating to the quantity of water to be stored for the account of, and ICUA to be developed for, such party.

Section 5.7 MWD agrees that any agreement between MWD and AWBA relating to interstate banking in Arizona for the benefit of MWD shall reflect the priorities accorded by this Agreement.

Article VI
Las Vegas Wash

Section 6.1 The Las Vegas Wash is the primary outlet into Lake Mead of water flows from the metropolitan Las Vegas Valley. These flows contain contaminants which have the potential to impact Lake Mead, an effect that can be exacerbated by reductions in the level of Lake Mead. This connection has been shown recently by the presence of perchlorate in Lake Mead, concentrations of which have been declining due to ongoing mitigation efforts even with declining lake levels. SNWA administers the Las Vegas Wash Coordination Committee and the Las Vegas Comprehensive Adaptive Management Plan, among the objectives of which are preventing contaminants from entering the Wash and improving the quality of water entering Lake Mead and the Colorado River.

Section 6.2 Because Lake Mead provides water supplies to MWD as well as SNWA, the success of SNWA's efforts respecting Las Vegas Wash water quality is also of considerable importance to MWD. Therefore, MWD agrees to work with SNWA and support programs aimed at improving the water quality of Lake Mead and the Colorado River.

Article VII
SNWA Power Costs

Section 7.1 SNWA and MWD do not anticipate that implementation of the Interim Surplus Guidelines will increase SNWA's costs to pump water from Lake Mead. It is the intent of the parties to this Agreement that, if SNWA's costs should increase, SNWA should not incur any significant additional costs attributable to implementation of the Interim Surplus Guidelines for the benefit of MWD. Accordingly, if SNWA believes it is incurring such significant additional costs, SNWA shall notify MWD to this effect. The parties then shall negotiate in good faith over the amount (or the method of determining the amount) of such costs and the terms of an agreement to compensate SNWA for them, as appropriate.

Article VIII
Remedies

Section 8.1 Each party recognizes that the rights and obligations of the parties under this Agreement are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one party does not perform in accordance with this Agreement, the other party will likely suffer harm curable only by the imposition of an injunction requiring specific

performance. Each of the parties therefore agrees that any breach of this Agreement by any party shall entitle the non-breaching party to injunctive relief, including, but not limited to, a decree of specific performance, in addition to any other remedies at law or equity that may be available in the circumstances.

Section 8.2 The parties do not intend that any right or remedy given to a party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching party fails to exercise or delays in exercising any such right or remedy, that party does not thereby waive the right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this Agreement or otherwise.

Article IX

General Provisions

Section 9.1 It is the intent of the parties that all use by SNWA and MWD of surplus Colorado River and unused Arizona basic apportionment pursuant to this Agreement and the Interim Surplus Guidelines will occur under the respective contracts of SNWA and MWD with the United States under section 5 of the Boulder Canyon Project Act. This Agreement provides for the voluntary, contractual forbearance in the use of such water by the parties, and does not alter or waive any party's rights under contracts with the United States to Colorado River water.

Section 9.2 Time is of the essence of this Agreement.

Section 9.3 This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties.

Section 9.4 This Agreement may be supplemented, amended, or modified only by a writing executed by both parties.

Section 9.5 The parties agree to proceed with reasonable diligence and use reasonable best efforts to (1) defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any provision of this Agreement or any party's right to act in accordance with any provision of this Agreement, and (2) oppose any action by the Secretary that is contrary to the provisions of the Interim Surplus Guidelines or that would materially affect

either party's right and ability to receive and use surplus Colorado River water or unused Arizona basic apportionment as provided in the Interim Surplus Guidelines.

Section 9.6 This Agreement is binding upon and will inure to the benefit of the parties and, upon the dissolution of either party, the legal successor to that party's responsibilities respecting the provision of Colorado River water within the area previously served by such party. Neither party may assign any of its rights or delegate any of its obligations under this Agreement except to such legal successor.

Section 9.7 This Agreement is for the benefit of the parties only and is not intended to be, and shall not be construed as, a third-party beneficiary contract.

Article X

Notices

Section 10.1 All notices and other communications required by this Agreement ("notices") shall be in writing and shall be given by one of the following methods:

- (1) By personal delivery, the notice being effective on delivery;
- (2) By first class mail, the notice being effective four mail delivery days after deposit, postage pre-paid, in a United States Postal Service office or mailbox;
- (3) By certified mail, the notice being effective on delivery if confirmed by a return receipt;
- (4) By overnight delivery by Federal Express or similar service, the notice being effective on delivery if delivery is confirmed by the delivery service; or
- (5) By facsimile transmission, the notice being effective on receipt, provided that (i) either (A) a duplicate notice is promptly given by one of the other methods permitted by this article, or (B) the receiving party delivers a written confirmation of receipt, and (ii) any notice given by facsimile transmission shall be deemed received on the next business day if it is received after 4:30 p.m. Pacific time or on a non-business day.

Section 10.2 Notices shall be given to the following addresses and facsimile numbers:

Southern Nevada Water Authority
Attention: General Manager and General Counsel
1001 South Valley View Boulevard
Las Vegas, NV 89153
Fax No. 702-258-3268

Metropolitan Water District of Southern California
Attention: Chief Executive Officer and General Counsel
700 North Alameda Street
Los Angeles, CA 90012
Fax No. 213-217-6950

Any party may change its address or facsimile number by giving the other parties notice of the change in any manner permitted by this article.

Article XI **Definitions**

Section 11.1 As used in this Agreement, the following terms shall have the following meanings:

- “AFY” means acre-feet per year.
- “Arizona Forbearance Agreement” has the meaning stated in Recital O.
- “Basic apportionment” has the meaning stated in Recital C.
- “Basin States’ Working Draft” has the meaning stated in Recital K.
- “CVWD” means the Coachella Valley Water District.
- “Decree” has the meaning stated in Recital C.
- “Entitlement holder” has the meaning stated in section 4.1.
- “ICUA” has the meaning stated in section 5.5.
- “IID” means the Imperial Irrigation District.
- “Interim period” has the meaning stated in Recital L.
- “Interim Surplus Guidelines” has the meaning stated in Recital L.
- “MWD” means the Metropolitan Water District of Southern California.
- “Notices” has the meaning stated in section 10.1.

“Quantification Settlement Agreement” means the agreement described in Recital J expected to be executed by MWD, IID, and CVWD.

“PVID” means the Palo Verde Irrigation District.

“Secretary” means the Secretary of the Interior, United States Department of the Interior.

“SNWA” means the Southern Nevada Water Authority.

“Surplus apportionment” has the meaning stated in Recital C.

“Surplus condition” has the meaning stated in Recital C.

In Witness Whereof, the Southern Nevada Water Authority and Metropolitan Water District of Southern California enter into this Agreement by signing below:

**METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By: _____
Ronald R. Gastelum
President and Chief Executive Officer

Dated: May _____, 2002

Approved as to form:

By: _____
Jeffrey Kightlinger
General Counsel

Dated: May _____, 2002

SOUTHERN NEVADA WATER AUTHORITY

By: _____
Patricia Mulroy
General Manager

Dated: May _____, 2002

Approved as to form:

By: _____
Charles Hauser
General Counsel

Dated: May _____, 2002

#003686599



SOUTHERN NEVADA
WATER AUTHORITY

Administrative Office
1001 S. Valley View Blvd.
Las Vegas, Nevada 89153
Telephone: (702) 258-3939
Fax: (702) 258-3268

Project Office
1900 E. Flamingo, Ste. 170
Las Vegas, Nevada 89119
Telephone: (702) 862-3400
Fax: (702) 862-3470

Southern Nevada Water System
243 Lakeshore Road
Boulder City, NV 89005
Telephone: (702) 564-7697
Fax: (702) 564-7222

May 20, 2002

George R. Renner, President
Central Arizona Project Board of Directors
PO Box 43020
Phoenix, AZ 85080-3020

Dear Mr. Renner:

I have received your May 15, 2002 letter regarding remarks made by Pat Mulroy at a CLE International seminar on the Law of the Colorado River. I have discussed this with Pat and staff and certainly would like to clear up any misunderstandings.

Pat is a proponent of collaborative efforts and fully supports flexible integrated solutions. The Southern Nevada Water Authority (SNWA) has supported and contributed to the development of the Bureau of Reclamation's Interim Surplus Guidelines, and applauds the creation of the Arizona Water Banking Authority (AWBA). The partnership of the AWBA and the Central Arizona Project (CAP) to store water for future use is key to sound water management in Arizona as well as the lower Colorado River Basin. We recognize that Arizona will ensure its needs are met first then provide opportunities for other states, such as Nevada.

The SNWA appreciates the opportunity that AWBA and CAP have created to bank water in Arizona to help Southern Nevada meet our future water needs. Pat has expressed the importance of partnerships and fully realizes the importance of the CAP water supply to the future of Arizona. Pat has been a strong proponent that shortages should be shared by all states, not just Arizona. She has told us time and again that even though it would be very difficult for Nevada to not exercise its priority, since all of our supply is hardened municipal use, it is our responsibility to not create an undue burden on Arizona.

Amanda M. Cyphers, Chair
Henderson Councilman

Shari Buck
North Las Vegas Councilman

Oscar Goodman
Las Vegas Mayor

Dario Herrera
County Commissioner

Patricia Mulroy
General Manager

Bryan Nix
Boulder City Councilman

Mary Kincaid-Chauncey, Vice Chair
County Commissioner

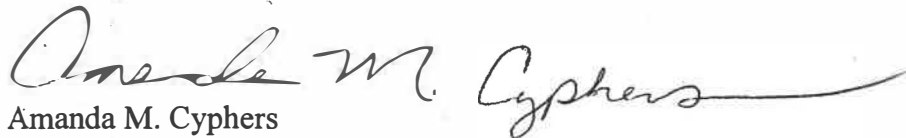
Myrna Williams
County Commissioner

BOARD OF DIRECTORS

George R. Renner, President
May 20, 2002
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In closing, I would like to assure you that the SNWA recognizes the importance of the CAP water supply to Arizona and to the future of sound water management in the lower Colorado Basin. We do not intend to suggest anything that would undermine the stability or reliability of Arizona's water supply, or that of any other state for that matter. We are looking forward to our partnership with Arizona through our participation in the Arizona Water Banking program. I regret any misunderstanding regarding remarks made at the CLE seminar.

Sincerely,



Amanda M. Cyphers
Chair, SNWA Board of Directors

- c: Wayne Cook, Upper Colorado River Commission
Jim Davenport, Colorado River Commission of Nevada
Ron Gastelum, Metropolitan Water District of Southern California
Tim Henley, Arizona Water Banking Authority
Joe Smith, Arizona Department of Water Resources
Gerald Zimmerman, Colorado River Board of California