

**ARIZONA WATER BANKING AUTHORITY**  
**Monday, November 15, 2004**

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31	JIM HARTDEGEN	602 881-7401
32	Lisa Atkins	602-229-8605
33	M. Clem	2488402
34	Tom McCann	623 869 2343
35	Alan Sleight	602-542-1371
36	Dary Dube	623-869-2158
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**Arizona Water Banking Authority**  
500 North Third Street, Phoenix Arizona 85004  
Telephone 602-417-2418  
Fax 602-417-2401  
Web Page: [www.awba.state.az.us](http://www.awba.state.az.us)

### **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 **Monday, November 15, 2004 at 12:00 p.m.** at the Arizona Department of Water Resources, 500 North Third Street, Phoenix, Arizona 85004, third floor Conference Room A. The meeting is open to the general public. A copy of the agenda for the meeting is posted below.

**Dated this 10th day of November, 2004**

The Arizona Water Banking Authority Commission will hold a special meeting that is open to the public. Members of the commission will attend either in person or by teleconference. The commission will take action on the following agenda items.

#### **FINAL AGENDA**

- I. Welcome/Opening Remarks
- II. Consideration of Motion for Executive Session per A.R.S. § 38-431.03(A)(3) and (4) for Consultation with AWBA Attorneys to consider the AWBA's Position and Instruct Attorneys Regarding: (1) an Amendment to the Agreement for Interstate Water Banking with the Southern Nevada Water Authority; and (2) provisions of an Agreement for Firming On-River Supplies During Shortages [The Executive Session of the AWBA Commission is not open to the public. The meeting open to the public will reconvene in approximately 1 hour]
- III. Reconvene in Open Session
- IV. Discussion Regarding Development of an Agreement for Firming On-River M&I Supplies During Shortages
- V. Discussion Regarding Amendments to the Agreement For Interstate Water Banking
- VI. Call to the Public

Future Meeting Date:  
Thursday, December 9, 2004

\*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 the Arizona Water Banking Authority at (602) 417-2418. Requests should be made as early as possible to allow time to arrange the accommodation.

Authority Members and staff

We should consider we were about to be asked to vote for a \$360 Million, 1.5MAF deal, originated and negotiated entirely by the staff of the Bank and the CAWCD with no input requested or apparently desired by the Authority Members. I believe we could have used the Executive Session mechanism to discuss the reason for the agreement and to lay out guidelines and principles for the staff which might have helped avoid the firestorm I believe is about to rain over our heads on this deal. Sooner or later, the Authority Members must, of necessity, take a more direct role in the affairs of the Bank. It's a little disconcerting to find the CAWCD debating the terms and conditions of this agreement before the members of the Authority had even seen them. The Authority, not the CAWCD, is the Agency required to approve the deal. The composition of the Authority, with the Director of ADWR, and the Chairman of the CAWCD, might lead to discussions and agreements with the Bank staff without the knowledge of the other Authority Members. Obviously, that's an undesirable situation we need to discuss and correct.

John Mawhinney

John Mawhinney  
PO Box 35536  
Tucson, AZ. 85740

Authority Members and Staff

Subj.: Nevada negotiations

I'm sorry that I couldn't make the meeting, but a death in the family called me away on Friday. I'll try to arrange with Tim to get connected via a telephone but we'll see how that plays out. I'd appreciate you making copies of this and making it available to the public at the meeting unless we are restricting terms and negotiations issues to the Executive Session. Please excuse any errors, I'm sending this off under less than ideal conditions.

As you might imagine, I've been receiving lots of input regarding the Nevada proposal. Suffice it to say that there are a number of important concerns that I think we need to deal with. I believe we should try to accommodate as many of these concerns as we can. I believe this project can be an important step for Arizona and for Nevada and we should try to cooperate to achieve it. That said, let's deal with my concerns and those I've heard from the other parties.

I understand a concern was raised at the CAWCD Board meeting that suggested that if we guaranteed Nevada a source of water before they had stored it, we would, in effect, be agreeing to an intrastate transfer of water which would be a terminal defect. I believe we need that question resolved, with appropriate legal input, before any other issue.

That said, my concerns and desires fall into three areas that I would like to see improved.

### **NEVADA**

1. I expect that some reasonable diligence has produced the basic monetary terms and time guidelines; that the money is reasonable value for the product we deliver, and that we've done our best effort on the climatology etc to insure we have a reasonable chance of executing the terms of the agreement without incurring uncalculated harm to Arizona water users and taxpayers.
2. I believe we must insert a provision anticipating a shortage situation which invokes Arizona's "Junior" status. We need to provide for a proportional reduction in our 40KAF per annum delivery guarantee. I don't believe Nevada's requirements would allow for reduction in any given year to zero but perhaps a temporary proportional reduction down to a floor of 10KAF or so might be acceptable. This would achieve at least two important benefits; first it creates the reality that if Arizona suffers, so does Nevada. Arizona taking the reduction alone while providing 40KAF to Nevada is

- politically unacceptable and not even rational. Second benefit, it will create actual impetus for Nevada assistance in avoiding draconian “junior” status reductions.
3. Every effort will be made by Nevada to store any excess water in Arizona during the terms of the agreement. Similar to the 10Kaf they propose to send this year, we want them to guarantee to resist other storage arrangements for this period.
  4. Nevada will replace and Arizona will purchase any water removed in excess of the amount stored.
  5. Nevada will agree, during the period of the agreement to oppose efforts to implement such programs as “top water banking”, Upper Basin transfers, CRIT transfers and other agreements, which would jeopardize Arizona’s water interest.

While not a party to the agreement between the State of Arizona (“the Bank”) and Southern Nevada, certain agreements must be developed with the CAWCD. Whether a side agreement or contract, some guarantees regarding the storage need to be worked out. In addition to the mechanism for transporting, storing and recovering the water, here are a few related provisions I believe need to be included

#### **CAWCD**

1. CAWCD will develop and adopt a state recovery plan within three years of the agreement, and no water will be stored after that time absent a recovery plan
2. CAWCD in associations with the stakeholders in the local AMA’s will develop and adopt a regional recovery plan for each facility in which water is stored, within five years of the agreement and no water will be stored in a facility for which a recovery plan does not exist.
3. State demonstration projects will be used, as first priority, to store water for Nevada.
4. When recovering water for Nevada, water stored prior to this agreement will be recovered first.
5. CAWCD will return to the original funding method for the Bank, and any concerns regarding legislative “sweeps” will be resolved by legal opinion, litigation or legislation prior to accepting the 100 Million

#### **BANK**

1. I need to know what plans exist for the utilization of the \$100 million “insurance” money. I also want to know that the money will not be spent, or committed absent specific Authority approval
2. To what degree have we, or do we intend to commit to CAWCD plans for providing the protection or insurance we require. Do we, the authority, have the legal ability to contract with other parties, e.g. Indian tribes or Irrigation Districts along the river, to purchase drought related land fallowing agreements or other arrangements to provide some certain water supply in shortage years.

Finally, I understand the reluctance to negotiate a complex agreement by committee. Unfortunately, we haven’t had the opportunity to provide any input before now so I

don't know any other way to influence the process which I why we were put on this Authority. As I mentioned earlier, I support going ahead with an agreement and believe we can both benefit but believe the agreement as it stand at this moment doesn't do that.

John Mawhinney

# Firming SNWA 1.2 milliom acre feet

YEAR	CAP Uses	Available to bank	In-state Credits	SNWA Credits	SNWA cumulative total	SNWA Deliveries
			2,025,000	121,000	121,000	
2005	1,383,392	128,726	186,000	0	121,000	0
2006	1,152,770	346,467	186,000	136,214	257,214	20,000
2007	1,132,472	353,883	186,000	143,111	400,325	40,000
2008	1,101,909	371,564	186,000	159,555	559,880	70,000
2009	1,134,507	326,085	186,000	117,259	677,139	100,000
2010	1,195,186	252,524	186,000	48,848	725,986	140,000
2011	1,242,668	203,566	186,000	3,316	729,302	180,000
2012	1,259,413	185,345	172,371	0	729,302	220,000
2013	1,310,190	133,092	123,776	0	729,302	260,000
2014	1,356,615	85,191	79,227	0	729,302	300,000
2015	1,384,765	55,565	51,675	0	729,302	340,000
2016	1,406,498	32,356	30,091	0	729,302	380,000
2017	1,346,622	90,756	84,403	0	729,302	420,000
2018	1,358,111	77,791	0	72,345	801,648	460,000
2019	1,389,055	45,371	0	42,195	843,843	500,000
2020	1,422,448	10,502	0	9,767	853,609	540,000
2021	1,431,511	0	0	0	853,609	580,000
2022	1,430,072	0	0	0	853,609	620,000
2023	1,430,420	-1,787	0	0	853,609	660,000
2024	1,398,126	29,068	0	27,033	880,642	700,000
2025	1,401,639	24,116	0	22,428	903,070	740,000
2026	1,406,221	18,095	0	16,828	919,898	780,000
2027	1,398,037	24,840	0	23,101	942,999	820,000
2028	1,398,094	23,344	0	21,710	964,709	860,000
2029	1,397,820	22,179	0	20,627	985,336	900,000
2030	1,397,710	20,850	0	19,390	1,004,726	940,000
2031	1,201,323	215,893	0	200,781	1,205,507	980,000
2032	1,199,714	216,158	0	50,000	1,255,507	1,020,000
2033	1,197,185	217,343	0	0	1,255,507	1,060,000
2034	1,194,945	216,895	0	0	1,255,507	1,100,000

TOTAL 3,868,544 1,255,507

minus 20% shortage 1,028,606

plus 16% surplus 1,828,606

## Summary of Changes to the Original Agreement for Interstate Water Banking

### Recitals

- \* Added recitals D through G: D essentially recognizes intent of first agreement; E recognizes the SIRA and the Secretary's duties under it; F states that Arizona now making a specific commitment to store 1.2 million acre feet of credits states that SNWA pays money for that commitment; and G recognizes all credits currently held by SNWA.

### Article 1 - Definitions, Fundamental Principles and Term

- \* Changed definition of agreement to refer to the agreement as amended
- \* The subarticle dealing with limits to storage for SNWA was removed
- \* Agreement becomes effective when executed by all parties and term is extended to 2060

### Article 2 - Delivery and Storage

- \* Removed all language discussing development of Plan of Operation and offering of storage to SNWA. Replaced with guaranteed storage of water resulting in 1.25 million acre feet of credits in sufficient time that they can be recovered when requested. Language remains stating that all necessary agreements and permits shall be maintained to insure 1.25 million acre feet of credits can be developed. All interstate storage will be identified in the final Plan of Operation.
- \* Removed reference to modification of the Plan of Operation
- \* No changes to subarticle regarding SNWA Interstate Account
- \* Removed all language regarding delivery and storage costs replaced with new payment schedule

### Article 3 - Development of Intentionally Created Unused Apportionment

- \* Removed all language regarding requests for development of ICUA and replaced with scheduled development of ICUA. Removed language regarding development of ICUA during shortages
- \* No changes to how ICUA will be paid for by SNWA

### General Changes to Document

- \* Any language pertaining to events that have occurred since the original document was executed (i.e. execution of SIRA, transfer of long-term storage credits held by CAP pursuant to demonstration project) was omitted from the amended agreement

# DRAFT AGREEMENT

## AGREEMENT TO FIRM FUTURE SUPPLIES

This Agreement to Firm Future Supplies (“Agreement”) is made as of \_\_\_\_\_, 2004 (“Effective Date”), by and between the Arizona Water Banking Authority (“AWBA”) and the Mohave County Water Authority (“MCWA”), collectively referred to as the “Parties” and individually as the “Party.”

### RECITALS

1. AWBA is an agency of the State of Arizona and was created to store the State of Arizona’s unused Colorado River water entitlement in western, central and southern Arizona and to develop Long-term Storage (“LTS”) credits to firm existing water supplies for municipal and industrial (“M&I”) users along the Colorado River during Colorado River shortages.
2. MCWA is a corporate and political body of the State of Arizona and a post -1968 M&I user of Colorado River water in the State of Arizona that is outside the service area of the Central Arizona Water Conservation District (“CAWCD”).
3. The AWBA is mandated by A.R.S. § 45-2457 to reserve a reasonable number of LTS credits accrued with general fund appropriations for the benefit of M&I users of Colorado River water in the State of Arizona that are outside the service area of CAWCD.
4. On January 21, 1998, AWBA adopted a motion identifying 420,000 acre feet as the reasonable number of LTS credits to be developed and set aside for the benefit of M&I users of Colorado River water in the State of Arizona that are outside the service area of CAWCD.
5. MCWA has a contract(s) and/or will enter into a contract(s) to accept the shortages attributed to various entities within MCWA’s contract area. **[Obtain relevant contracts and incorporate by reference.]**
6. On March 20, 2002, AWBA adopted Resolution 2002-1, which provided, in part, that the first priority of the use of LTS credits accrued with general fund appropriations shall be to develop and set aside a reasonable number of LTS credits as determined by AWBA’s commission for the benefit of M&I users of Colorado River water in the State of Arizona that are outside the service area of CAWCD.

7. On July 1, 2002, AWBA and CAWCD entered into 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.” The agreement provides that “excess water” is available to AWBA for banking purposes in accordance with the terms of the agreement.

8. MCWA recognizes that it is necessary for it to take the following actions in order for it to perform under this Agreement: (1) establish an LTS credit account (“MCWA’s Account”) with the Arizona Department of Water Resources (“ADWR”) and (2) enter into a water exchange agreement with an entity that has access to Central Arizona Project (“CAP”) water in order to utilize the LTS credits developed for MCWA under this Agreement.

9. The Parties desire to provide: (1) a specific commitment by AWBA to insure LTS credits in an aggregate quantity of 333,171 acre-feet are available for the benefit of MCWA during times of shortage; and (2) that MCWA makes specific payments in consideration of AWBA’s commitments set forth in this Agreement.

## **ARTICLE 1**

### **TERM OF THE AGREEMENT**

#### **1.1. Term**

1.1.1. This Agreement shall be effective when executed by all Parties. This Agreement shall terminate when all of the LTS credits set forth in Subarticle 2.1. have been transferred to MCWA’s Account or on December 31, 2096, whichever is earlier. Any LTS credits remaining in MCWA’s Account at the termination of this Agreement shall revert to the sole and exclusive benefit of AWBA pursuant to A.R.S. § 45-2457, unless this Agreement is extended by all Parties in a written agreement.

## **ARTICLE 2**

### **LONG-TERM STORAGE CREDITS**

#### **2.1. LTS credits for MCWA.**

2.1.1. AWBA shall take all actions necessary to insure LTS credits in an aggregate amount of 333,171 acre-feet are developed and set aside for the benefit of MCWA. Such actions may include storage of Colorado River water, assignment of LTS credits previously developed through the storage of Colorado River water, or any other action consistent with Title 45, Chapter 14 of the Arizona Revised Statutes.

2.1.2. AWBA shall establish a subaccount entitled “the MCWA Subaccount.” AWBA shall assign LTS credits as they are developed under Article 2.1.1. to the MCWA Subaccount.

2.1.2.1. At MCWA’s request, up to 333,171 acre-feet of LTS credits shall be transferred to MCWA’s Account from the MCWA Subaccount if: (1) the Secretary of the United States Department of the Interior declares a shortage (“Shortage”) in the Annual Operating Plan for Colorado River reservoirs; and (2) MCWA has entered into a water exchange agreement with an entity who has access to Central Arizona Project (“CAP”) water.

2.1.2.2. The amount of LTS credits transferred to MCWA’s Account in any given year pursuant to this Agreement shall be no greater than the amount of the Shortage actually borne by MCWA for that year.

## 2.2. Payments by MCWA.

2.2.1. In consideration of AWBA’s obligations under Subarticle 2.1. and pursuant to A.R.S. § 45-2457(B)(2)(a)(ii), MCWA shall pay the cost of replacement (“Replacement Costs”) of the LTS credits transferred to MCWA’s Account under this Agreement. MCWA shall prepay a portion of the Replacement Costs to AWBA in the aggregate amount of \$6,663,420.00 (the “Prepayment”)[**Note: the Prepayment is subject to change prior to the execution of this Agreement based on costs dictated by CAWCD.**] The Prepayment does not reflect the total amount of the Replacement Costs.

2.2.2. MCWA’s obligation to make the Prepayment is not dependent on the conditions occurring under Subarticle 2.1. of this Agreement and shall be made regardless of whether any LTS credits are transferred to MCWA.

2.2.3. The Replacement Costs shall be calculated and charged to MCWA in accordance with Subarticle 2.2.3.1. The Prepayment and Replacement Costs shall be billed by AWBA and paid by MCWA as provided in Subarticle 2.2.3.2.

2.2.3.1. The charges for the LTS credits transferred to MCWA under this Agreement shall consist of the following pricing components computed on a per acre-foot basis:

2.2.3.1.1. Any cost to purchase, transport through CAP and/or the storage of the water;

- 2.2.3.1.2. A payment *in lieu* of property taxes, calculated as described in A.R.S. § 48-3715; and
  - 2.2.3.1.3. Any additional costs as may be reasonably incurred by AWBA, including, but not limited to, costs AWBA is required by A.R.S. § 45-2424 to reimburse ADWR and CAWCD for the services provided by each agency to AWBA pursuant to the provisions of A.R.S. § 45-2424 and the “Intergovernmental Agreement Among the Arizona Department of Water Resources, Arizona Water Banking Authority and Central Arizona Water Conservation District” entered into on July 1, 2002.
- 2.2.3.2. The Prepayment and Replacement Costs shall be billed and paid as follows:
- 2.2.3.2.1. MCWA shall pay to AWBA the Prepayment in twenty (20) equal consecutive payments of \$333,171.00 on or before the 15th day of March, June, September and December of each year commencing in 2005 and ending in 2009.
    - 2.2.3.2.1.1. Charges for LTS credits transferred to MCWA under Subarticle 2.1.2.1. shall be first deducted from the Prepayment. Once the Prepayment is exhausted, MCWA shall pay that portion of the Replacement Costs not already deducted from the Prepayment within thirty (30) days after ADWR deposits the LTS credits subject to this Agreement into MCWA’s Account.
  - 2.2.3.2.2. Subject to the approval of AWBA, MCWA may assign to AWBA the number of LTS credits transferred to MCWA under this Agreement in lieu of MCWA paying the Replacement Costs as set forth in Subarticle 2.2.3.2. herein. The assignment of LTS credits transferred to AWBA under this Subarticle shall take place within thirty (30) days after ADWR transfers the LTS credits subject to this Agreement to MCWA’s Account.

## ARTICLE 3

### DELINQUENT CHARGES AND SURETY OF PERFORMANCE

#### **3.1. Delinquency charges under the terms of this Agreement.**

- 3.1.1. The Parties agree that monetary damages will be ineffective in remedying any breach of this Agreement and that a court may order specific performance.
- 3.1.2. All payments due under this Agreement shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the greater of the rate prescribed 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 described 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. Any payment received shall first be applied to any interest owed, and then to charges owed.
- 3.1.3. In the event any portion of the charges are disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, MCWA shall be refunded any overpayment plus interest, accrued at the rate as set forth in Subarticle 3.1.2, prorated by days from the date payment was credited to MCWA to the date the refund check is issued.
- 3.1.4. In the event any delinquent amount is not paid by MCWA within thirty (30) days after receipt by MCWA of written notice from AWBA of the delinquency, AWBA shall have the right, without liability of any kind, to suspend its performance under this Agreement so long as the delinquent amount remains unpaid. Such suspension shall not affect the LTS credits remaining in MCWA's Account. Nothing herein shall limit the rights of AWBA to use any other available legal remedy to effect collection of delinquent amounts.

#### **3.2. Surety of performance under the terms of this Agreement.**

- 3.2.1. In the event that a dispute arises over any action to be undertaken pursuant to the terms of this Agreement, the Parties recognize and acknowledge that time is of the essence in the conduct of the Parties under the terms of this Agreement.

3.2.2. AWBA shall use its best efforts to ensure that there are in effect all third party contracts necessary for the development of the LTS credits as provided in Article 2 herein, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall use its best efforts to insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.

## **ARTICLE 4**

### **OTHER PROVISIONS**

#### **4.1 Uncontrollable forces.**

4.1.1. Neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure to perform 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, 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 nonaction by, or failure to obtain the necessary authorizations or approvals from, any government 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.

#### **4.2 Notices**

4.2.1. 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 at the following address:

If to the AWBA:

Manager  
Arizona Water Banking Authority  
Arizona Water Department of Water Resources  
500 N. Third Street  
Phoenix, Arizona, 85004

If to MCWA:

[INSERT DESIRED CONTACT INFORMATION]

**4.3. Assignment limited.**

4.3.1 The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Agreement or any interest therein shall be valid unless and until approved in writing by the non-assigning Party.

**4.4. No third party beneficiary.**

4.4.1. This Agreement is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Agreement.

**4.5 Waiver.**

4.5.1. The waiver by either Party of any breach of any term, covenant or condition of 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.

**4.6. Entire agreement.**

4.6.1. The terms, covenants and conditions of this Agreement constitute the entire agreement between the Parties, and no understandings or obligations not expressly set forth in this Agreement shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing signed by the Parties.

**4.7. Governing law.**

4.7.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

**4.8. Cancellation.**

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

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the \_\_\_ day of \_\_\_\_\_, 2004.

**Arizona Water Banking Authority**

Attest:

\_\_\_\_\_  
Senator Herbert Guenther, Chair

\_\_\_\_\_  
Charles L Cahoy, Secretary

**Mohave County Water Authority**

Attest:

\_\_\_\_\_

\_\_\_\_\_

# **AMENDED<sup>1</sup> AGREEMENT FOR INTERSTATE WATER BANKING<sup>2</sup>**

among<sup>3</sup>

**The Arizona Water Banking Authority<sup>4</sup>  
and<sup>5</sup>**

**The Southern Nevada Water Authority and the<sup>6</sup>  
Colorado River Commission of Nevada<sup>7</sup>**

This <sup>8</sup>Amended<sup>9</sup> Interstate Water Banking Agreement <sup>10</sup>(Agreement)<sup>11</sup> is made <sup>12</sup>this 3<sup>rd</sup> day of July, 2001,<sup>13</sup> as of January 1, 2005 (Effective Date).<sup>14</sup> among the Arizona Water Banking Authority<sup>15</sup> (AWBA)<sup>16</sup>, and the Southern Nevada Water Authority <sup>17</sup>(SNWA)<sup>18</sup> and the Colorado River Commission of Nevada<sup>19, 20</sup> (CRCN), collectively referred to as "Parties" and individually as "Party."<sup>21</sup>

## **Recitals<sup>22</sup>**

A. The Arizona Water Banking Authority is an agency of the State of Arizona expressly authorized by A.R.S. § 45-2401 *et seq.* to engage in the interstate banking of Colorado River water on behalf of the State of Arizona. The statutory <sup>23</sup>requirements<sup>24</sup> conditions<sup>25</sup> of A.R.S. <sup>26</sup>§<sup>27</sup> §§<sup>28</sup> 45-2427 and 45-2471 have been satisfied<sup>29</sup>, this Agreement conforms to all of the requirements of such sections and all other applicable provisions of Arizona law,<sup>30</sup> and AWBA is empowered to enter into this Agreement.<sup>31</sup>

B. The Southern Nevada Water Authority <sup>32</sup>(SNWA)<sup>33</sup> 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 Intentionally Created Unused Apportionment released by the Secretary for use within the State of Nevada pursuant to Art. II(B)(6) of the Decree in *Arizona v California*, 376 U.S. 340, 343 (1964).<sup>34</sup>

C. 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 and 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement.<sup>35</sup> The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to facilitate the banking of Colorado River water, the <sup>36</sup>creation<sup>37</sup> crediting<sup>38</sup> of Long-term Storage Credits<sup>39 40</sup> and the <sup>41</sup>establishment and development of ICUA<sup>42 43</sup> for SNWA.<sup>44</sup>

**D. On July 3, 2001, the Parties entered into the original Agreement for Interstate Water Banking (Original Agreement). In the Original Agreement, and subject to its limitations, AWBA committed to use its best efforts to create Long-term Storage Credits in an initial amount of 1,200,000 acre-feet for SNWA, to be held in an SNWA Interstate Account established with the Arizona Department of Water Resources and, on request of**

SNWA, to recover such credits and cause the development of Intentionally Created Unused Apportionment of Colorado River water (ICUA) for SNWA. SNWA agreed to reimburse AWBA for its costs on an annual basis.<sup>45</sup>

E. On December 18, 2002, the United States, acting through the Secretary of the Interior, AWBA, SNWA, and CRCN entered into a Storage and Interstate Release Agreement (SIRA) pursuant to the Secretary's regulations at 43 C.F.R. Part 414, Offstream Storage of Colorado River Water and Development of and Release of Intentionally Created Unused Apportionment in the Lower Division States. In the SIRA, the Secretary committed to release ICUA developed by AWBA in accordance with the request of SNWA, the terms of the SIRA, and certain specified determinations of the Secretary.<sup>46</sup>

F. By this Amended Agreement for Interstate Water Banking, the Parties amend and restate in its entirety the Original Agreement to provide (1) a specific commitment by AWBA to have credited to the SNWA Interstate Account Long-Term Storage Credits in an aggregate amount, including those heretofore credited, of 1,250,000 acre-feet, (2) a commitment by AWBA, on request of SNWA, to recover such credits and to develop ICUA for SNWA's benefit up to a specified annual maximum, and (3) specified payments to be made by SNWA in consideration of AWBA's commitments respecting the crediting of such Long-Term Storage Credits.<sup>47</sup>

G. Prior to the Effective Date, AWBA established<sup>48</sup> a long-term storage sub-account entitled "<sup>49</sup>SNWA Interstate Account<sup>50,51</sup>" with the Arizona Department of Water Resources (ADWR). As of the Effective Date Long-term Storage Credits had been credited to such account, consisting of (1) 50,000 acre-feet of Long-term Storage Credits, constituting all of the Long-term Storage Credits held by CAWCD for the benefit of SNWA as of the effective date of the Original Agreement, and (2) all of the Long-term Storage Credits existing by virtue of Colorado River water stored, or other Long-term Storage Credits transferred to such account, pursuant to the Original Agreement.<sup>52</sup>

**ARTICLE 1**

**Article 1** —<sup>53</sup> **DEFINITIONS, FUNDAMENTAL PRINCIPLES AND TERM**<sup>54</sup>

- 1.1 Definitions. For purposes of this Agreement<sup>55</sup> ~~for Interstate Water Banking~~<sup>56</sup>, terms that are defined in Article I of the Decree in *Arizona v. California*, 376 U.S. 340 (1964), terms that are defined in Arizona Revised Statutes (A.R.S.<sup>57</sup>) Title 45, Chapter 3.1, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.<sup>58</sup>
- 1.1.1 “ADWR<sup>59;60;61</sup>” shall mean Arizona Department of Water Resources.<sup>62</sup>
- 1.1.2 “Agreement” shall mean this<sup>63</sup> Amended<sup>64</sup> Agreement for Interstate Water Banking.<sup>65</sup>
- 1.1.3 “AWBA” shall mean the Arizona Water Banking Authority.<sup>66</sup>
- 1.1.4 “AWBA Plan of Operation<sup>67;68</sup>” shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § ~~69452456~~<sup>70</sup> 45-2456.<sup>71</sup>
- 1.1.5 “Bureau of Reclamation” shall mean the United States Bureau of Reclamation, Lower Colorado Region.<sup>72</sup>
- 1.1.6 “CAP” shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*, and as operated under that certain Master Repayment Contract dated December 1, 1988, Contract No. 14-06-W-245 between CAWCD and the United States Bureau of Reclamation, as amended.<sup>73</sup>
- 1.1.7 “CAWCD” shall mean the Central Arizona Water Conservation District.<sup>74</sup>
- 1.1.8 “CRCN” shall mean the Colorado River Commission of Nevada.<sup>75</sup>
- 1.1.9 “Decree” shall mean the Decree entered by the United States Supreme Court in the matter of *Arizona v. California*,<sup>76</sup> 376 U.S. 340 (1964), as supplemented or amended.<sup>77</sup>
- 1.1.10 “Excess CAP Water” shall mean CAP water that is available for distribution by CAWCD in accordance with ~~78~~<sup>79</sup> ~~§~~<sup>80</sup> 8.7(e) of the Master Repayment Contract or ~~81~~<sup>82</sup> ~~§~~<sup>83</sup> 5(d)(2) of the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and Ultimate ~~Judgement~~<sup>84</sup> Judgment<sup>85</sup> upon Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*,<sup>87</sup> No. CIV 95-625-TUC-WDB<sup>88</sup> (EHC) and CIV 95-1720-PHX-EHC (consolidated), and in accordance with policies established by the CAWCD Board.<sup>89</sup>

- 1.1.11 “ICUA” shall mean Intentionally Created Unused Apportionment as that term is defined in 43 C.F.R. § 414.2.<sup>90</sup>
- 1.1.12 “Interstate Recovery Schedule” shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.<sup>91</sup>
- 1.1.13 “Long-term Storage Credit” shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).<sup>92</sup>
- 1.1.14 “Master Repayment Contract” shall mean that Contract No. 14-06-W-245 dated December 1,1988, between CAWCD and the United States Bureau of Reclamation, as amended.<sup>93</sup>
- 1.1.15 “Secretary” shall mean the Secretary of the Interior for the United States, Department of the Interior.<sup>94</sup>
- 1.1.16 “SNWA” shall mean the Southern Nevada Water Authority.<sup>95</sup>
- ~~4.4.17 “SNWA/CRCN” shall mean the Southern Nevada Water Authority and the Colorado River Commission of Nevada acting together in accordance with Subarticle 1.2.5 of this agreement.<sup>96</sup>~~
- 1.1.17 ~~4.4.18~~<sup>97</sup> “SNWA Interstate Account” shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR pursuant to Subarticle 2.2.4 of ~~this~~<sup>98</sup> the Original<sup>100</sup> Agreement.<sup>101</sup>
- 1.1.18 ~~4.4.19~~<sup>102</sup> “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<sup>103</sup>
- 1.1.19 ~~4.4.20~~<sup>104</sup> “Year” shall mean ~~any~~<sup>106</sup> a<sup>107</sup> calendar year<sup>109</sup> ~~after the execution of this agreement~~<sup>110 111</sup>.

1.2 Fundamental Principles of this Agreement<sup>112</sup>

- 1.2.1 This Agreement is among AWBA and SNWA and CRCN. It is intended to create a program of interstate banking of Colorado River water.<sup>113</sup> ~~The parties to this~~<sup>114</sup> This<sup>115</sup> Agreement<sup>116</sup> ~~recognize that~~<sup>117</sup> will not require<sup>118</sup> AWBA<sup>119</sup> ~~shall not~~<sup>120</sup> to<sup>121</sup> engage in interstate banking to the detriment of any water user in Arizona<sup>122</sup>, ~~and interstate banking shall be secondary to the primary interests of water management within the State of Arizona~~<sup>123 124</sup>.
- 1.2.2 Under the terms of this ~~agreement~~<sup>125</sup> Agreement<sup>126</sup>, AWBA shall acquire and store mainstream Colorado River water in Arizona and ~~thereby create~~<sup>128</sup> Longterm<sup>129</sup> cause Long-term<sup>130</sup> Storage Credits to be ~~credited and~~<sup>131</sup> held<sup>132</sup> in the SNWA Interstate Account.<sup>133</sup> AWBA shall recover the Long-term Storage Credits at a later date and exchange the recovered water with other

Colorado River water users in Arizona to develop ICUA. The Secretary is required to release this ICUA for consumptive use within the State of Nevada pursuant to the Storage and Interstate Release Agreement entered into by the Secretary under the regulations adopted by the Secretary in 43 CFR Part 414. This Agreement is one part of a three part contractual relationship which also includes the Storage and Interstate Release Agreement and an Agreement for the Development of Intentionally Created Unused Apportionment.

<sup>134</sup>~~This~~<sup>135</sup> In furtherance of its performance under this<sup>136</sup> Agreement<sup>137</sup> ~~is~~<sup>138</sup> the AWBA has<sup>139</sup> also<sup>140</sup> dependent upon<sup>141</sup> entered into<sup>142</sup> an Intergovernmental Agreement among AWBA, CAWCD, and ADWR, as amended, and a series of water storage agreements between AWBA and Storage Facility operators in the State of Arizona.<sup>143</sup>

1.2.3 This Agreement shall govern the relative rights and responsibilities of AWBA, SNWA and CRCN for the delivery, storage and recovery of Colorado River water in Arizona and for the development of ICUA. No ownership rights in specific storage facilities<sup>144</sup> ~~or Long term Storage Credits~~<sup>145</sup> shall accrue to either SNWA or CRCN by this Agreement.<sup>146</sup> Neither SNWA nor CRCN shall have any rights in this interstate banking arrangement except as provided in this Agreement.<sup>147</sup>

~~1.2.4 Water supply projections have indicated SNWA may require in excess of 1,200,000 acre feet of ICUA to assist in meeting future demands. SNWA desires the ability to build and draw upon a maximum balance of 1,200,000 acre feet of Long term Storage Credits in the SNWA Interstate Account over the course of this Agreement.~~<sup>148</sup>

~~1.2.4.1 Realization of this goal may be limited by the amount of Colorado River water available for interstate banking and the availability of Storage Facilities after the primary goals of Arizona water users and Arizona water management have been met.~~<sup>149</sup>

~~1.2.4.2 To assist SNWA, AWBA agrees to use its best efforts to store an initial volume of 1,200,000 acre feet of water for SNWA under the terms of this Agreement if Arizona water needs and water management goals have been addressed. Nothing herein shall require AWBA to (i) seek a change in law; (ii) execute new contracts for Storage Facilities; or (iii) contract for the construction of new Storage Facilities, unless mutually agreed in the future consistent with the terms of this Agreement.~~<sup>150</sup>

~~1.2.4.3 Nothing in this Agreement shall require AWBA to store any water for the benefit of SNWA unless the Storage and Interstate Release Agreement and the Agreement for the Development of Intentionally Created Unused Apportionment have been executed and are in full effect.~~<sup>151</sup>

1.2.4 ~~1.2.4.4~~<sup>152</sup> AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by <sup>153</sup>~~written agreement~~<sup>154</sup> the Agreement Relating to Implementation of Interim Colorado River Surplus Guidelines<sup>155</sup> between SNWA and <sup>156</sup>~~The~~<sup>157</sup> Metropolitan Water District of Southern California<sup>158, 159</sup> dated May 16, 2002.<sup>160</sup>

~~1.2.4.5~~ AWBA recognizes that once Long-term Storage Credits have accrued to the benefit of SNWA in the SNWA Interstate Account that SNWA shall have the right to withdraw those Long-term Storage Credits, by exchange through Lake Mead, pursuant to the requirements of this Agreement and the Storage and Interstate Release Agreement.<sup>161</sup>

~~1.2.5~~ For purposes of this Agreement, SNWA and CRCN may be required to act together to insure performance of their mutual obligations under this Agreement. In such circumstances, the defined term "SNWA/CRCN" shall be used. Whenever performance by SNWA/CRCN is required, SNWA and CRCN shall confer among themselves and determine a unified course of action. In the event that SNWA and CRCN cannot agree on a unified course of action, AWBA shall not be required to perform any obligation under this Agreement affected by SNWA and CRCN's disagreement until SNWA and CRCN have adopted a unified course of action.<sup>162</sup>

~~1.2.6~~ AWBA is an agency of the State of Arizona and is required to operate in accordance with its authorizing statutes, A.R.S. § 45-2401 et seq. and in compliance with all laws of the State of Arizona which govern AWBA activities. SNWA/CRCN shall be entitled to rely upon AWBA's compliance with all statutory requirements, but SNWA/CRCN recognize that such statutes may be duly amended in the course of this Agreement and, subject to the last two sentences of this Subarticle, SNWA/CRCN recognize that AWBA will be required as a matter of Arizona law to comply with any such amendment. Any reference to a statute in this Agreement shall mean that statute, as it may be amended in the future, or its duly authorized successor statute. Nothing in this Subarticle is intended to, or shall be construed as, an agreement by SNWA or CRCN that any enactment of law by the Arizona legislature after the effective date of this Agreement shall have any effect on SNWA's rights or remedies under this Agreement with respect to water that has been placed into storage for SNWA pursuant to this Agreement as of the effective date of such enactment, on any Long-term Storage Credits in the SNWA Interstate Account as of such date, or on SNWA's rights to the development of ICUA with respect to such water and Long-term Storage Credits. SNWA and CRCN expressly reserve all rights at law and in equity under this Agreement.<sup>163</sup>

**1.2.5** ~~4.2.7~~<sup>164</sup> This <sup>165</sup> ~~agreement~~<sup>166</sup> **Agreement**<sup>167</sup> is intended to operate for the mutual benefit of the citizens of the State of Arizona and the citizens of the State of Nevada.<sup>168</sup> It is entered into with the understanding that it is an act of comity, and with the understanding that interstate banking of Colorado River water among the States of the Lower Division must be undertaken in accordance with express authority granted under each state’s law.<sup>169</sup>

1.3 Term of Agreement<sup>170</sup>

This Agreement becomes effective when executed by all <sup>171</sup> ~~parties~~<sup>172</sup> **Parties**<sup>173</sup>. This Agreement shall terminate when all of the Long-term Storage Credits ~~in~~<sup>174, 175</sup> **specified in Subarticle 2.1.1 have been credited to**<sup>176</sup> the SNWA Interstate Account <sup>177</sup> **and all such credits**<sup>178</sup> ~~have~~<sup>179</sup> **subsequently**<sup>180</sup> been recovered, or on June 1, <sup>181</sup> ~~2050~~<sup>182</sup>, ~~2060~~<sup>183</sup> whichever is sooner. Any Long-term Storage Credits remaining in the SNWA Interstate Account at the termination of this Agreement shall revert to the sole and exclusive benefit of AWBA, unless this Agreement is extended by written agreement of all <sup>184</sup> ~~parties~~<sup>185</sup> **Parties**<sup>186 187</sup>.

**Article 2 — Delivery and Storage**<sup>188</sup>

**ARTICLE 2**<sup>189</sup>

**DELIVERY AND STORAGE**<sup>190</sup>

2.1 **Request for Water**<sup>191</sup> **Crediting Long-term**<sup>192</sup> Storage <sup>193</sup> **by SNWA.**<sup>194</sup> **Credits for SNWA; Annual Plan of Operation**<sup>195</sup>

2.1.1 ~~Annually, AWBA shall develop a draft AWBA Plan of Operation. The draft AWBA Plan of Operation shall not initially include an interstate component but shall contain the information necessary to initiate discussion between AWBA and SNWA/CRGN regarding interstate banking for the following Year.~~<sup>196</sup> **AWBA shall take all actions necessary to ensure that Long-term Storage Credits in a gross amount of 1,250,000 acre-feet, including the Long-term Storage Credits referenced in Recital G, are credited to the SNWA Interstate Account in sufficient time both to meet the requirements of Subarticle 2.1.3 and to allow the recovery of the full 1,250,000 acre-feet of such credits for the purpose of developing ICUA for SNWA within the term of this Agreement and the limitations of Subarticle 3.1.1. Such actions may include storage of Colorado River water, assignment of existing Long-term Storage Credits, or any other actions that will support the development of ICUA under this Agreement consistent with 43 C.F.R. Part 414 and the SIRA.**<sup>197</sup>

2.1.2 ~~AWBA~~<sup>198</sup> ~~staff shall meet and confer with SNWA/CRGN staff concerning the proposed location, manner and cost by which the interstate banking could be accomplished in the following Year.~~<sup>199</sup> **shall ensure that there are in effect in a timely manner all regulatory permits and approvals and all third-party agreements necessary to enable AWBA to meet its obligations under this Subarticle, including without limitation**

agreements for the purchase and delivery of Colorado River water, necessary water storage permits from ADWR, and agreements with Storage Facility operators.<sup>200</sup>

- 2.1.3 ~~On or before November 1, AWBA shall determine and advise SNWA and CRCN as to the quantity of water and storage capacity available for interstate banking under the terms of this Agreement for the following Year. AWBA shall also provide an estimate of the costs calculated pursuant to Subarticle 2.3 associated with the delivery and storage of water available for interstate banking. AWBA shall also provide the data upon which the determinations and estimates in this Subarticle were based.~~<sup>201</sup> The actions that AWBA takes to cause Long-term Storage Credits to be credited to the SNWA Interstate Account under Subarticle 2.1.1 shall be on a schedule that will ensure that there are Long-term Storage Credits in the SNWA Interstate Account as of the June 1 preceding each Year in which SNWA has the right to require the development of ICUA in an amount at least sufficient to support development of the maximum ICUA permitted under Subarticle 3.1 during that Year, without regard to whether SNWA has requested such maximum.<sup>202</sup>
- 2.1.4 ~~Within 7 business days of the notice provided in Subarticle 2.1.3, SNWA shall specify in writing to AWBA its decision to accept all or any portion of the water and storage capacity available at the estimated cost.~~<sup>203</sup>
- 2.1.5 ~~The schedule dates and periods contained in Subarticles 2.1.1 through 2.1.4 can be waived upon written agreement of all parties.~~<sup>204</sup>
- 2.1.6 ~~After consultation with SNWA, the final decision on the quantity of water to be stored and the location of the storage under the terms of this Agreement shall be at the discretion of AWBA.~~<sup>205</sup>
- 2.1.4 ~~2.1.7~~ The quantity of water to be stored in accordance with the terms of this Agreement shall be identified in the final AWBA Plan of Operation by January 1 of each Year. Unless the AWBA Plan of Operation is modified, this quantity of water shall be stored.<sup>206</sup> The amount of water to be stored during any Year shall be identified in the final AWBA Plan of Operation by January 1 of each Year.<sup>207</sup>
- 2.1.8 ~~At any time after approval of the AWBA Plan of Operation, SNWA may request a decrease in the quantity of SNWA storage for the current Year. Such request for decrease shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA and the amount of water scheduled to be stored for the benefit of SNWA. AWBA may, at its discretion and~~

~~after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect such a decrease.~~<sup>208</sup>

~~2.1.9 AWBA may modify the AWBA Plan of Operation for reasons other than a request from SNWA. If the modification results in an increase in the amount of storage available for interstate banking, AWBA shall notify SNWA and CRCN in writing of the estimated cost for delivery and storage of the increase. SNWA shall have 15 days after receipt of such notice to specify in writing to AWBA its decision to decline any or all of the increase. If SNWA fails to notify AWBA, SNWA shall be obligated to accept such increase in accordance with the terms of the modified AWBA Plan of Operation and the terms of this Agreement. If the modification results in a decrease in storage capacity available for interstate banking purposes, AWBA will notify SNWA and CRCN in writing of such a modification, the reasons for the decrease in storage, the data upon which such determination was based, and the revised amount of water that AWBA will store for SNWA during the Year.~~<sup>209</sup>

2.2 Delivery and Storage of Water by AWBA for SNWA. Delivery and storage of <sup>210</sup>any <sup>211</sup>water under the terms of this Agreement <sup>212</sup>are conditioned on <sup>213</sup>shall be subject to <sup>214</sup>the following <sup>215</sup>requirements:<sup>216,217</sup>

2.2.1 The delivery of water<sup>218</sup> to storage<sup>219</sup> shall be pursuant to the Intergovernmental Agreement among AWBA, CAWCD and ADWR, as amended, whereby AWBA is entitled to purchase Excess CAP Water from CAWCD for interstate banking purposes.<sup>220</sup>

2.2.2 AWBA shall obtain and maintain all necessary water storage permits from ADWR to allow storage under the terms of this Agreement.<sup>221</sup>

2.2.3 The storage of water shall be pursuant to AWBA's <sup>222</sup>contracts <sup>223</sup>agreements<sup>224</sup> with various Storage Facility operators whereby AWBA is entitled to store water at those various Storage Facilities.<sup>225</sup>

2.3 ~~2.2.4 AWBA shall establish with ADWR<sup>226</sup> a long term storage sub account entitled~~<sup>227</sup> SNWA Interstate Account<sup>228,229,230</sup>

2.3.1 ~~2.2.5~~<sup>231</sup> AWBA shall monitor the <sup>232</sup>accrual <sup>233</sup>crediting<sup>234</sup> and maintenance of Long-term Storage Credits in the SNWA Interstate Account from Year to Year. AWBA shall exercise due diligence in insuring that all Long-term Storage Credits <sup>235</sup>developed in accordance with the terms of this Agreement have accrued and<sup>236</sup> credited through storage for SNWA or transferred or otherwise credited to the SNWA Interstate Account<sup>237</sup> are properly accounted for in such account.<sup>238</sup>

2.3.2 ~~2.2.6~~<sup>239</sup> AWBA <sup>240</sup>agrees that it<sup>241</sup> shall timely file with ADWR an annual report for all water delivered and stored in accordance with the terms of this

Agreement by March 31 of the Year following the delivery and storage. AWBA and SNWA<sup>242,243</sup> and<sup>244</sup> CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed. ADWR determines the<sup>245</sup> quantity<sup>246</sup> amount<sup>247</sup> of Long-term Storage Credits that<sup>248</sup> accrue in<sup>249</sup> are credited to<sup>250</sup> the SNWA Interstate Account in any Year and makes a report available to AWBA detailing the credits available in AWBA's Long-term Storage Account. Upon receipt of the report from ADWR, AWBA shall make that report available to SNWA and CRCN. The report may include adjustments or corrections made by ADWR to the Long-term Storage Credits in the SNWA Interstate Account.<sup>251</sup>

~~2.3 — Charges for Delivery and Storage<sup>252</sup>~~

~~2.3.1 — SNWA agrees that all costs of the delivery and storage of water as described in Subarticle 2.1 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 2.3, and billed to and paid by SNWA as provided in Subarticle 2.4.<sup>253</sup>~~

~~2.3.2 — The charges to SNWA for the cost of water delivered under this Agreement shall consist of the following pricing components computed on a per acre-foot basis:<sup>254</sup>~~

~~2.3.2.1 — the fixed operation, maintenance and replacement (OM&R) rate, set annually for CAP customers by the CAWCD Board and calculated by dividing the total fixed OM&R costs for the CAP by the estimated total delivery volume in acre feet;<sup>255</sup>~~

~~2.3.2.2 — the municipal and industrial (M&I) capital charge, set annually for CAP customers by the CAWCD Board;<sup>256</sup>~~

~~2.3.2.3 — a pumping energy rate established by the CAWCD Board to recover its costs, or if mutually agreeable among SNWA, AWBA and CAWCD, SNWA may provide energy sufficient to fully or partially meet the pumping requirements for the delivery of water under the terms of this Agreement;<sup>257</sup>~~

~~2.3.2.4 — a payment *in lieu* of property taxes, calculated as described in A.R.S. § 48-3715; and<sup>258</sup>~~

~~2.3.2.5 — Such additional costs as may be reasonably incurred by AWBA.<sup>259</sup>~~

2.4 <sup>260</sup> Payments by SNWA<sup>261</sup>

2.4.1 <sup>262</sup> In consideration of AWBA's obligations under this Article 2, and in particular its obligation to ensure that Long-term Storage Credits in a gross amount of 1,250,000 acre-feet are credited to the SNWA Interstate Account, SNWA shall make payments to AWBA aggregating \$

330,000,000.00, such payments to be made as specified in Subarticles 2.4.1.1 and 2.4.1.2.<sup>263</sup>

2.4.1.1 <sup>264</sup>SNWA shall make a payment of \$100,000,000.00 within 10 days of the request by AWBA for such payment made after the Effective Date.<sup>265</sup>

2.4.1.2 <sup>266</sup>SNWA shall make ten payments of \$ 23,000,000.00 each by January 10 of each Year commencing in 2009 and ending in 2018.<sup>267</sup>

2.4.2 <sup>268</sup>The Parties acknowledge that except for the payments required by Subarticle 2.4.3, AWBA has determined that the payments to be made by SNWA pursuant to Subarticle 2.4.1 are sufficient to reimburse AWBA for all capital, operation, maintenance, energy, payment in lieu of property taxes, storage, contract, permitting, and other costs that it will incur pursuant to this Article 2 during the term of this Agreement, including without limitation those costs specified in A.R.S. §§ 45-2471(C) (1) through (5), and (8).<sup>269</sup>

2.4.3 ~~2.3.3~~ SNWA shall be charged a cost for administrative services for water stored by AWBA in accordance with the terms of this Agreement. ~~Such charge~~<sup>270</sup> ~~SNWA shall pay a fee equivalent to the approximate amount of administrative, legal, and technical expenses incurred for AWBA's services under this entire Agreement. Such fee~~<sup>271</sup> shall equal 15% of ADWR's cost of ~~such~~<sup>272</sup> ~~such~~<sup>273</sup> services as provided to and accepted by AWBA annually. ADWR's cost of services is computed as a lump sum for the fiscal year beginning July 1 and includes salaries<sup>274,275</sup> ~~employee related expenses~~<sup>277 278</sup> and indirect costs.<sup>279</sup>

~~2.3.4~~ The charges to SNWA for the cost of water storage under this Agreement shall consist of the following pricing components computed on a per acre foot of delivery basis:<sup>280</sup>

~~2.3.4.1~~ Underground Storage Facility charges as paid by AWBA based on contractual agreements with those facility operators;<sup>281</sup>

~~2.3.4.2~~ A capital charge for storage at Underground Storage Facilities constructed with State Demonstration Project funds as determined by CAWCD as owner/operator of the facilities;<sup>282</sup>

~~2.3.4.3~~ If storage under the terms of this Agreement is accomplished at Groundwater Savings Facilities, SNWA shall pay a charge for storage as determined by AWBA in that Year; and<sup>283</sup>

~~2.3.4.4~~ Such additional costs as may be reasonably incurred by AWBA.<sup>284</sup>

~~2.4 — Billing of and Payment for Delivery and Storage.<sup>285</sup>~~

~~2.4.1 — On or before December 1, AWBA shall provide SNWA and CRCN with an estimated total annual charge for the water to be delivered under the terms of this Agreement in the upcoming Year. Charges for water delivery are described in Subarticle 2.3.2. If costs increase more than 20% AWBA shall notify SNWA.<sup>286</sup>~~

~~2.4.2 — AWBA shall provide SNWA monthly invoices equaling one-twelfth the total annual charge on or before the first of each month, starting with December for January of the following Year. SNWA shall pay one-twelfth of the total annual charge on or before December 10, followed by equal payments on or before the 10<sup>th</sup> of each month following. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's intergovernmental agreement with CAWCD.<sup>287</sup>~~

~~2.4.3 — The total annual charge for water delivery may be subject to a mid-year correction if the charges described in Subarticle 2.3.2 are changed by CAWCD. In the event of a correction, AWBA shall recompute the remaining equal monthly payments and invoice SNWA the corrected amount in the first monthly invoice following the correction. SNWA may refuse further delivery within the Year based on the adjusted monthly invoice. Refusal of further delivery by SNWA shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA in that Year and the amount of water scheduled to be stored for the benefit of SNWA. AWBA shall, after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect the decrease in storage. If the recomputed payments are acceptable then the first corrected payment shall be paid on or before the 10<sup>th</sup> of the month following receipt of the corrected invoice. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's intergovernmental agreement with CAWCD.<sup>288</sup>~~

~~2.4.4 — No later than March 15 of the Year following a Year in which water was delivered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The payment account of SNWA shall be adjusted first to reflect the amount of water actually delivered by AWBA, and second to reflect any change in the OM&R and pumping energy rates applicable to the water delivered. If additional funds are owed to AWBA, SNWA shall remit those funds within 10 business days of the date the notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year~~

~~water delivery charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried and used to offset the water delivery charge for the Year in which storage resumes. If Storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.<sup>289</sup>~~

2.4.4 ~~2.4.5~~ ~~Charges~~<sup>290</sup> ~~The fee~~<sup>291</sup> for administrative services as described in Subarticle ~~2.3.3~~<sup>292</sup> 2.4.3<sup>293</sup> shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15<sup>th</sup> day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.<sup>295</sup>

2.4.5 ~~2.4.6~~<sup>296</sup> SNWA shall pay the administrative service ~~charges~~<sup>297</sup> ~~fees~~<sup>298</sup> fees<sup>299</sup> on or before the first day of the month following the notice of the ~~charges~~<sup>300</sup> ~~fees~~<sup>301</sup> fees<sup>302</sup>. If such day is not a business day, the payment shall be made on the next succeeding business day.<sup>303</sup>

~~2.4.7~~ — ~~AWBA shall provide an estimate of the Storage Facility charge as described in Subarticle 2.3.4 to SNWA on or before the fifteenth of each month prior to the actual occurrence of the storage. Such estimates may include adjustments or corrections to estimates previously provided by AWBA to SNWA.<sup>304</sup>~~

~~2.4.8~~ — ~~SNWA shall pay the estimate of the Storage Facility charges on or before the tenth day of the month following notice of the charge. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate Storage Facility operators in accordance with AWBA's contractual agreements with the Storage Facility operators.<sup>305</sup>~~

~~2.4.9~~ — ~~No later than March 15 of the Year following the Year in which water was stored under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The reconciliation shall show the actual amount of water stored and whether charges for the amount stored exceed the payments made or the payments exceed the amount owed. If additional funds are owed to AWBA, they shall be paid within 10 business days of the date an invoice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year water storage charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA~~

~~Plan of Operation for the current Year, the funds shall be carried over and used to offset the water storage charge for the Year in which storage resumes. If storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.~~<sup>306</sup>

~~2.4.10 The schedule dates and periods contained in this Subarticle 2.4 can be waived upon written agreement of all parties.~~<sup>307</sup>

~~Article 3 Development of Intentionally Created Unused Apportionment~~<sup>308</sup>

ARTICLE 3<sup>309</sup>

DEVELOPMENT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT<sup>310</sup>

3.1 ~~Request for~~<sup>311</sup> ~~Extent of Annual~~<sup>312</sup> Development of ICUA ~~by~~<sup>313</sup> ~~for~~<sup>314</sup> SNWA<sup>315</sup> ~~.~~<sup>317</sup>

3.1.1 ~~Three years prior to the initial request by SNWA for the development of ICUA under the Storage and Interstate Release Agreement, SNWA/GRCN shall meet and confer with AWBA to determine the opportunities available to commence the development of ICUA. This three year period is intended to allow for the development of a reasonable plan for development of ICUA by the recovery of Long-term Storage Credits, and may be waived by agreement of all parties if unforeseen circumstances arise.~~<sup>318</sup> SNWA shall have the right to require the recovery of Long-term Storage Credits in the SNWA Interstate Account and the development of ICUA in any Year commencing in 2007, as follows.<sup>319</sup>

3.1.2 ~~By June 1 of the Year preceding any Year for which SNWA will request the release of ICUA from the Secretary under the terms of the Storage and Interstate Release Agreement, SNWA shall provide in writing to AWBA a preliminary request for the development of ICUA in the next upcoming Year and an estimate of any requests for the development of ICUA in the next two succeeding Years.~~<sup>320</sup>

3.1.2.1 ~~Requests for the release of ICUA by SNWA to the Secretary shall not exceed 100,000 acre feet in any Year unless A.R.S. § 45-2471 has been amended to allow an increase.~~<sup>321</sup>

3.1.1.1<sup>322</sup> In each of 2007 and 2008, SNWA may require the development of ICUA in an amount not exceeding 20,000 acre-feet.<sup>323</sup>

3.1.1.2<sup>324</sup> In each of 2009 and 2010, SNWA may require the development of ICUA in an amount not exceeding 30,000 acre-feet.<sup>325</sup>

3.1.1.3<sup>326</sup> In each subsequent Year, commencing in 2011, SNWA may require the development of ICUA in an amount not exceeding 40,000 acre-feet.<sup>327</sup>

3.1.2 ~~3.1.3~~<sup>328</sup> During <sup>329</sup> a <sup>330</sup> any<sup>331</sup> Year <sup>332</sup> that<sup>333</sup> as to which<sup>334</sup> the Secretary has determined <sup>335</sup> ~~to be a shortage Year~~<sup>336</sup> under Article <sup>337</sup> II(B)(3) of the Decree, requests for release of ICUA by SNWA to the Secretary shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet consumptive use and the quantity made available to Nevada under the shortage determination. This quantity may be greater if after SNWA confers with AWBA, it is mutually agreed that a greater quantity of ICUA can be created.<sup>338</sup> II(B)(3) of the Decree that a shortage condition exists, SNWA may require the development of ICUA (1) in such amount that, when considered together with the amount of basic apportionment available for use in Nevada, will allow 300,000 acre-feet to be consumptively used in Nevada, plus (2) the amount specified for such Year in Subarticle 3.1.1.<sup>339</sup>

~~3.1.4~~ — SNWA plans to use ICUA as an alternative water supply while other longer term sources of supply are being developed. SNWA agrees to annually provide AWBA a water resources plan projecting SNWA's demands and available supplies. SNWA agrees that when the Long-term Storage Credits in the SNWA Interstate Account have declined to or below 400,000 acre feet, SNWA shall not request the release of more than 60,000 acre feet of ICUA from the Secretary in any Year. SNWA agrees that when the Long-term Storage Credits in the SNWA Interstate Account have declined to or below 200,000 acre feet, SNWA shall not request the release of more than 40,000 acre feet of ICUA from the Secretary in any Year.<sup>340</sup>

3.2 <sup>341</sup> SNWA Notices for Development of ICUA<sup>342</sup>

3.2.1 <sup>343</sup> For any Year in which SNWA will require the development of ICUA by AWBA and the release of ICUA by the Secretary, SNWA shall provide notice of the amount of such ICUA to AWBA by June 1 of the preceding Year.<sup>344</sup>

3.2.2 ~~3.1.5~~<sup>345</sup> Between June 1 and September 15 of <sup>346</sup> any<sup>347</sup> the<sup>348</sup> Year in which a <sup>349</sup> ~~preliminary request for the development of ICUA is provided,~~<sup>350</sup> notice has been given under Subarticle 3.2.1,<sup>351</sup> AWBA staff shall meet and confer with SNWA <sup>352</sup> ~~and~~<sup>353</sup> and<sup>354</sup> CRCN concerning the proposed location, manner and estimated cost <sup>355</sup> ~~by which~~<sup>356</sup> of<sup>357</sup> the <sup>358</sup> development of the specified<sup>359</sup> ICUA <sup>360</sup> ~~will be developed in the succeeding Year~~<sup>361</sup> <sup>362</sup>.

3.2.3 ~~3.1.6~~<sup>363</sup> On or before September 15 of the Year in which a <sup>364</sup> ~~final request for the release of ICUA will be made to the Secretary under the terms of the Storage and Interstate Release Agreement, SNWA~~<sup>365</sup> notice for the development of ICUA has been given to AWBA under Subarticle 3.2.1, or as otherwise required by the Secretary, SNWA shall make a request of the Secretary for the release of such ICUA during the following Year and<sup>366</sup>

shall provide <sup>367</sup>~~in writing a final request for development of ICUA for the upcoming Year~~ <sup>368</sup>a copy of such notice <sup>369</sup> to AWBA. <sup>370</sup>

**3.3** ~~3.2~~<sup>371</sup> Development of ICUA <sup>372</sup> ~~3.2~~<sup>373</sup>

**3.3.1** ~~3.2.1~~<sup>374</sup> Upon receipt of ~~the initial request~~ <sup>375</sup> a notice under Subarticle 3.2.1 <sup>377</sup> for the development of ICUA, AWBA shall meet and confer with CAWCD to develop an Interstate Recovery Schedule under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment. The Interstate Recovery Schedule shall utilize the recovery of Long-term Storage Credits to ~~create~~ <sup>378</sup> develop <sup>379</sup> the ICUA. <sup>380</sup> <sup>381</sup>

**3.3.1.1** ~~3.2.1.1~~<sup>382</sup> AWBA <sup>383</sup> agrees to <sup>384</sup> shall <sup>385</sup> meet and confer with SNWA and CRCN concerning the location, manner and cost of recovery when developing the Interstate Recovery Schedule. <sup>386</sup>

**3.3.1.2** ~~3.2.1.2~~<sup>387</sup> AWBA agrees that the development of the Interstate Recovery Schedule shall take into account the location, manner and cost of recovering all water stored by AWBA in the State of Arizona. AWBA agrees that the selection of recovery facilities included in the Interstate Recovery Schedule shall not be made in a manner that unreasonably allocates the higher recovery cost to the recovery of water for the development of ICUA under the terms of this Agreement. <sup>388</sup>

**3.3.1.3** ~~3.2.1.3~~<sup>389</sup> Factors to be considered when preparing the Interstate Recovery Schedule shall include but are not limited to: <sup>390</sup>

**3.3.1.3.1** ~~3.2.1.3.1~~<sup>391</sup> Arizona water management goals, <sup>392</sup>

**3.3.1.3.2** ~~3.2.1.3.2~~<sup>393</sup> CAP operational requirements, <sup>394</sup>

**3.3.1.3.3** ~~3.2.1.3.3~~<sup>395</sup> Water quality requirements, <sup>396</sup>

**3.3.1.3.4** ~~3.2.1.3.4~~<sup>397</sup> Opportunities for shared or joint facilities, and <sup>398</sup>

**3.3.1.3.5** ~~3.2.1.3.5~~<sup>399</sup> Opportunities to reduce recovery costs, <sup>400</sup>

**3.3.2** ~~3.2.2~~<sup>401</sup> Upon receipt of a ~~final~~ <sup>402</sup> copy of SNWA's <sup>403</sup> ~~request~~ <sup>404</sup> to develop ICUA in the upcoming Year <sup>406</sup> under Subarticle ~~3.1.6,~~ <sup>407</sup> 3.2.3 to the Secretary for the release of ICUA during the following Year, <sup>408</sup> <sup>409</sup> AWBA shall prepare the following certifications, in accordance with the Agreement for the Development of Intentionally Created Unused Apportionment: (1) an Upcoming Year Delivery Certification; (2) an Interstate Recovery Schedule Certification; and, (3) a Development of ICUA Certification. These three certifications shall be prepared and delivered to the Bureau of Reclamation no later than December 1 of the Year in which <sup>410</sup> ~~the final request to develop ICUA is received.~~ <sup>411</sup> a notice for the development of ICUA was given to

AWBA under Subarticle 3.2.1.<sup>412</sup> AWBA shall identify the <sup>413</sup>quantity of ~~ICUA to be created~~<sup>414</sup> amount of ICUA specified to be developed in SNWA's notice under Subarticle 3.2.1<sup>415</sup> in the AWBA Plan of Operation for the following Year<sup>416</sup>, and in such Year shall recover Long-term Storage Credits and develop ICUA in such amount, subject to the Secretary's determination and release of ICUA under Subarticles 5.4 and 5.5 of the SIRA<sup>417</sup>. Recovery shall not commence until verification by the Secretary that ICUA will be released to SNWA under the terms of the Storage and Interstate Release Agreement.<sup>418</sup>

~~3.2.3~~ — ~~During a Year that the Secretary has determined to be a shortage Year under Article II(B)(3) of the Decree, the recovery of Long-term Storage Credits by AWBA for the development of ICUA shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet of consumptive use and the quantity made available to Nevada under the shortage determination. This quantity can be greater if, after SNWA and CRCN confer with AWBA, it is determined that a greater quantity of ICUA can be created.~~<sup>419</sup>

3.3.3 ~~3.2.4~~<sup>420</sup> The choice of facilities utilized to recover the Long-term Storage Credits used to <sup>421</sup>create <sup>422</sup>develop<sup>423</sup> the ICUA during any year shall be at the discretion of AWBA.<sup>424</sup>

3.3.4 ~~3.2.5~~ After the quantity of Long-term Storage Credits to be recovered to create ICUA has been included in the final AWBA Plan of Operation in accordance with the terms of this Agreement, and the availability of ICUA has been verified by the Secretary, AWBA shall recover the <sup>425</sup>After the Secretary's notice of determination pursuant to Subarticle 5.4 of the SIRA respecting the availability and release of ICUA, AWBA shall recover<sup>426</sup> Long-term Storage Credits and cause ICUA to be developed in the amount specified in the Secretary's notice.<sup>427</sup> SNWA shall be responsible for all costs of developing the <sup>428</sup>requested<sup>429</sup> specified<sup>430</sup> ICUA <sup>431</sup>as provided in this Agreement<sup>432</sup> .<sup>433 434</sup>

3.3.5 ~~3.2.6~~<sup>435</sup> Upon written request by SNWA to cease the development of ICUA, AWBA shall cease the development of ICUA by the amount of the request or by the amount of verified ICUA not yet developed<sup>436 437</sup> whichever is less. AWBA shall certify to the Secretary the amount of ICUA previously requested that will not be developed and shall request that the Secretary act in accordance with that certification and the terms of the Storage and Interstate Release Agreement.<sup>438</sup>

3.3.6 ~~3.2.7~~<sup>439</sup> AWBA shall notify ADWR of the actual amount of credits recovered in accordance with the terms of this Agreement and shall request that ADWR debit the SNWA Interstate Account by the <sup>440</sup>quantity <sup>441</sup>amount<sup>442</sup> of credits recovered when AWBA submits its annual report to ADWR. AWBA and

SNWA<sup>443,444</sup> and<sup>445</sup> CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed.<sup>446</sup>

~~3.2.8 In the event that the aggregate Long-term Storage Credits in AWBA's Long-term Storage Account are reduced or eliminated by operation of law beyond the control of AWBA, or if the aggregate Long-term Storage Credits in AWBA's Long-term Storage Account cannot be recovered due to physical constraints beyond the control of AWBA, SNWA agrees that the Long-term Storage Credits in the SNWA Interstate Account shall be reduced proportionally. The relative proportions of the SNWA Interstate Account to the AWBA Long-term Storage Account shall be determined as of the beginning of the Year of discovery of the reduction. With respect to any aggregate reduction in the Long-term Storage Credits in AWBA's Long-term Storage Account by operation of law, nothing herein shall affect SNWA's right to challenge such aggregate reduction or to seek compensation;~~<sup>447</sup>

3.4 ~~3.3~~<sup>448</sup> Charges for Developing ICUA<sup>449, 450</sup>

3.4.1 ~~3.3.1~~<sup>451</sup> SNWA agrees that<sup>452</sup> except as provided in Subarticle 3.4.3,<sup>453</sup> all costs of the development of ICUA as described in Subarticle<sup>454</sup> ~~3.2~~<sup>455</sup> 3.3<sup>456</sup> shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle<sup>457</sup> ~~3.3,~~<sup>458</sup> 3.4,<sup>459</sup> and billed to and paid by SNWA as provided in Subarticle<sup>460</sup> ~~3.4,~~<sup>461</sup> 3.5.<sup>462</sup>

3.4.2 ~~3.3.2~~<sup>463</sup> The charges to SNWA for the cost of ICUA caused to be developed by AWBA under this Agreement shall consist of the following pricing components.<sup>464</sup>

3.4.2.1 ~~3.3.2.1~~<sup>465</sup> A capital component consisting of (<sup>466,467</sup> 1<sup>468</sup>) the cost to develop any new recovery facility as to which the SNWA shall have a prior right of use, such cost to be paid in advance in a lump sum, or (<sup>469,470</sup> 2<sup>471</sup>) a charge computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the annual capital cost of other recovery facilities to be used for SNWA's benefit during the Year.<sup>472</sup>

3.4.2.2 ~~3.3.2.2~~<sup>473</sup> An operation and maintenance (O&M) component computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the O&M cost (including pumping energy) incurred by the owner/operator of any recovery facility used during the Year to develop ICUA for SNWA.<sup>474</sup>

3.4.2.3 ~~3.3.2.3~~<sup>475</sup> An administrative component calculated as a lump sum to recover the actual administrative cost reasonably incurred by AWBA.<sup>476</sup>

~~3.4.2.4~~ ~~3.3.2.4~~<sup>477</sup> In the event that the cost of recovery for all or some of the water stored by AWBA in the State of Arizona increases due to unforeseen circumstances such as a cost for water treatment, or new state or federal regulations such as new water quality standards or additional environmental compliance requirements, SNWA agrees to share a reasonable proportion of such unanticipated costs, regardless of the location of such storage.<sup>478</sup>

3.4.3 <sup>479</sup>SNWA shall specify in its notice given under Subarticle 3.2.1 if, and the extent to which, ICUA is to be developed through the recovery of Long-term Storage Credits previously held by CAWCD for the benefit of SNWA under its October 15, 1992 agreement with The Metropolitan Water District of Southern California. The Parties acknowledge that pursuant to the terms of such agreement and prior to the effective date of the Original Agreement, SNWA made advance payments of the entire cost to recover such credits and to develop such ICUA.<sup>480</sup>

3.5 ~~3.4~~<sup>481</sup> Billing and Payment for Developing ICUA<sup>482 483</sup>

3.5.1 ~~3.4.1~~<sup>484</sup> AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle ~~3.3.2.1~~<sup>485</sup> (~~3.4.2.1~~<sup>486</sup> ~~3.4.2.1~~<sup>487</sup>) after agreement between AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.<sup>488</sup>

3.5.2 ~~3.4.2~~<sup>489</sup> SNWA shall agree to an acceptable repayment schedule <sup>490</sup>for costs specified in AWBA's subarticle 3.5.1 notice<sup>491</sup> prior to the construction ~~of~~<sup>492</sup> ~~of~~<sup>493</sup> any additional recovery facilities. Following receipt of the SNWA payments pursuant to that schedule, AWBA shall remit the appropriate payments to the appropriate recovery facility owner/operators in accordance with AWBA's contractual agreements with those operators.<sup>495</sup>

3.5.3 ~~3.4.3~~<sup>496</sup> AWBA shall provide an estimate of the charges for <sup>497</sup>the<sup>498</sup> ~~any~~<sup>499</sup> capital component described in Subarticle ~~3.3.2.1~~<sup>500</sup> (~~3.4.2.1~~<sup>501</sup> ~~3.4.2.1~~<sup>502</sup>) and the recovery facility O&M described in Subarticle ~~3.3.2.2~~<sup>503</sup> ~~3.4.2.2~~<sup>504</sup> ~~3.4.2.2~~<sup>505</sup> to SNWA on or before the fifteenth of each month prior to the actual recovery. Such estimates may include adjustments or corrections to previous estimates.<sup>506</sup>

3.5.4 ~~3.4.4~~<sup>507</sup> SNWA shall pay the estimate of the capital component described in Subarticle ~~3.3.2.1~~<sup>508</sup> (~~3.4.2.1~~<sup>509</sup> ~~3.4.2.1~~<sup>510</sup>) and the recovery facility O&M charge described in Subarticle ~~3.3.2.2~~<sup>511</sup> ~~3.4.2.2~~<sup>512</sup> ~~3.4.2.2~~<sup>513</sup> on or before the tenth day of the month following receipt of the estimate. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate recovery facility operators in accordance with AWBA's contractual agreements with those operators.<sup>514</sup>

3.5.5 ~~3.4.5~~<sup>515</sup> No later than March 15 of the Year following the Year in which ICUA was recovered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation showing the actual Long-term Storage Credits recovered and whether charges for recovering the credits exceed payments made or payments exceed the amount owed. If additional funds are owed to AWBA by SNWA, they shall be paid within 10 business days of the date notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year recovery facility O&M charge and used to offset current payments in an amount equal to the excess payment. If no recovery under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the recovery facility O&M charge for the Year in which recovery resumes. If recovery has not resumed within three years, AWBA shall remit the remaining funds to SNWA.<sup>516</sup>

3.5.6 ~~3.4.6~~<sup>517</sup> Charges for administrative services as described in Subarticle ~~3.3.2.3~~<sup>518</sup> ~~3.4.2.3~~<sup>519</sup> 3.4.2.3<sup>520</sup> shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge agreed upon for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15<sup>th</sup> day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.<sup>521</sup>

3.5.7 ~~3.4.7~~<sup>522</sup> SNWA shall pay administrative charges on or before the first day of the month following the receipt of the notice. If such day is not a business day, the payment shall be made on the next succeeding business day.<sup>523</sup>

3.5.8 ~~3.4.8~~<sup>524</sup> The schedule dates and periods established by this Subarticle ~~3.4~~<sup>525</sup> ~~3.5~~<sup>526</sup> may be ~~waived~~<sup>527</sup> changed<sup>528</sup> upon written agreement of all parties.<sup>529</sup><sup>530</sup><sup>531</sup>

**Article 4 — Delinquent Charges and Surety of Performance**<sup>532</sup>

**ARTICLE 4**<sup>533</sup>

**DELINQUENT CHARGES AND SURETY OF PERFORMANCE**<sup>534</sup>

4.1 Delinquency Charges under the ~~terms~~<sup>535</sup> Terms<sup>536</sup> of this Agreement<sup>537</sup> ~~538~~<sup>539</sup>

4.1.1 All payments due under this Agreement shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the Bank of America, ~~plus~~<sup>540</sup> plus<sup>541</sup> 6% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest owed, and then to any charges owed.<sup>542</sup><sup>543</sup>

- 4.1.2 In the event any portion of the charges are disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, SNWA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 4.1.1, prorated by days from the date payment was credited to SNWA to the date the refund check is issued.<sup>544</sup>
- 4.1.3 In the event any delinquent amount is not paid by SNWA within thirty (30) days after receipt by SNWA of written notice from AWBA of the delinquency, AWBA shall have the right, without liability of any kind, to suspend<sup>545</sup> ~~delivery, storage, or~~<sup>546</sup> recovery of any water under the terms of this Agreement so long as the delinquent amount remains unpaid. Such suspension shall not affect the Long-term Storage Credits remaining in the SNWA Interstate Account. Nothing herein shall limit the rights of AWBA to use any other available legal remedy to effect collection of delinquent amounts.<sup>547</sup>
- 4.2 Surety of Performance under the ~~terms~~<sup>548</sup> Terms<sup>550</sup> of this Agreement<sup>551</sup>
- 4.2.1 In the event that a dispute arises over any action to be undertaken pursuant to the terms of this Agreement, all parties recognize and acknowledge that time is of the absolute essence in the conduct of the parties under the terms of this Agreement.<sup>552</sup>
- 4.2.2 The parties agree that the water resources being stored, forborne, and made available through exchange for use by SNWA under the terms of this Agreement are unique and very likely cannot be replaced in a timely fashion by other resources. Accordingly, the parties agree that in any dispute over the development and release of ICUA, SNWA will likely be requesting an injunction ordering specific performance of the terms of this Agreement. The parties agree that if AWBA opposes the specific enforcement of this Agreement with respect to ICUA, AWBA shall have the burden to show by clear and convincing evidence that it has the ability to, and will, make alternative water resources, other than water controlled by the United States under the Decree, available at the SNWA system, free of adverse claims. If AWBA proposes to deliver such alternative water to SNWA, AWBA shall bear any additional costs that may be incurred over the costs that would have otherwise been incurred by SNWA for the delivery of ICUA under terms of this Agreement. SNWA shall be required to accept such alternative water resources if so ordered by a court of competent jurisdiction. Nothing in this Subarticle shall limit SNWA's rights to seek money damages or a remedy at law.<sup>553</sup>
- 4.2.3 AWBA shall<sup>554</sup> ~~use its best efforts to~~<sup>555</sup> ensure that there are in effect all third party contracts necessary for the ~~SNWA~~<sup>556</sup> ~~development of ICUA~~<sup>558</sup> delivery and storage of water for SNWA<sup>557</sup> development of ICUA<sup>558</sup> as provided in Article ~~2~~<sup>559</sup> 2<sup>559</sup> ~~and for the development of ICUA as provided in article~~<sup>560</sup> 3<sup>560</sup>, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall

~~use its best efforts to~~<sup>561</sup> insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.<sup>563</sup>

~~Article 5 — Other Provisions~~<sup>564</sup>

ARTICLE 5<sup>565</sup>

OTHER PROVISIONS<sup>566</sup>

5.1 Consultation on the AWBA Annual Report<sup>567</sup>

5.1.1 AWBA is required to submit an annual report of its transactions and proceedings for the preceding year by July 1 each Year pursuant to A.R.S. § 45-2426. SNWA/CRCN agree to confer with AWBA staff in the development of the report.<sup>568</sup>

~~5.2 — Transfer of Existing Long-term Storage Credits Held by CAWCD~~<sup>569</sup>

~~5.2.1 — Upon execution of this Agreement, the accompanying Storage and Interstate Release Agreement and the Agreement for the Development of Intentionally Created Unused Apportionment between AWBA and CAWCD, AWBA shall, under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment, cause to be transferred to AWBA all Long-term Storage Credits currently held by CAWCD for the benefit of SNWA. Such credits shall be administered by AWBA in accord with the terms of this Agreement.~~<sup>570</sup>

~~5.2.2 — The Agreement for the Development of Intentionally Created Unused Apportionment shall include any pre-existing agreements relating to the storage and recovery of those credits, and the benefits to SNWA of those pre-existing agreements shall become part of the transfer.~~<sup>571</sup>

5.2 ~~5.3~~<sup>572</sup> Payment of federal charges relating to the Execution of a Storage and Interstate Release Agreement<sup>573</sup>

5.2.1 ~~5.3.1~~<sup>574</sup> SNWA agrees that all federal charges associated with ~~evaluating, processing and executing a Storage and Interstate Release Agreement~~<sup>575</sup> any amendment to the SIRA<sup>577</sup> shall be borne by SNWA.<sup>578</sup>

5.2.2 ~~5.3.2~~<sup>579</sup> These charges shall be calculated by and paid directly to the Secretary by SNWA in accordance with the Secretary's requirements.<sup>580</sup>

5.3 <sup>581</sup> Successors to AWBA and SNWA<sup>582</sup>

In the event that the AWBA should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of the AWBA shall be binding upon, and inure to the benefit of, any agency of the State of Arizona that succeeds to such functions or, in the absence of any such agency, the State of Arizona. In the event that the

**SNWA should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of the SNWA shall be binding upon, and inure to the benefit of, any successor joint powers agency or other legal subdivision of the State of Nevada Arizona that succeeds to such functions or, in the absence of any such agency, the members of the SNWA.**<sup>583</sup>

5.4 Uncontrollable Forces<sup>584</sup>

No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than <sup>585</sup>~~the~~<sup>586</sup> obligation of SNWA to make payment) when a failure of performance shall be due to uncontrollable forces.<sup>587</sup> The term <sup>588,589</sup>“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, lighting, 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, any federal 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 any Party to settle any strike or labor dispute in which it is involved.<sup>590</sup>

5.5 Notices, Requests and Payments<sup>591</sup>

5.5.1 All notices and <sup>592</sup>~~requests required and allowed under the terms of~~<sup>593</sup> **other communications provided for in**<sup>594</sup> this Agreement <sup>595</sup>**shall be in writing and**<sup>596</sup> may be given in <sup>597</sup>**either of**<sup>598</sup> the following <sup>599</sup>~~manner~~<sup>600</sup> **manners**<sup>601,602</sup>:

5.5.1.1 Notices and requests shall be in writing and may be mailed first class postage paid to the parties at the following addresses:<sup>603</sup>

AWBA: Arizona Water Banking Authority<sup>604</sup>  
500 North Third Street<sup>605</sup>  
Phoenix, Arizona 85004<sup>606</sup>  
Attn: Manager<sup>607</sup>

SNWA: Southern Nevada Water Authority<sup>608</sup>  
1001 S. Valley View Boulevard<sup>609</sup>  
Las Vegas, Nevada 89153<sup>610</sup>  
Attn: General Manager<sup>611</sup>

CRCN: Colorado River Commission of Nevada<sup>612</sup>  
555 E. Washington Avenue, Suite 3100<sup>613</sup>  
Las Vegas, Nevada 89101<sup>614</sup>  
Attn: Director<sup>615</sup>

5.5.1.2 Notices and requests may be given by facsimile and shall be deemed complete upon 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.<sup>616</sup>

5.5.2 All payments required under the terms of this Agreement shall be made by Electronic Fund Transfer (EFT).<sup>617</sup>

5.5.2.1 AWBA will notify the Treasury, State of Arizona monthly of any anticipated EFTs to be made by SNWA.<sup>618</sup>

5.5.2.2 SNWA will submit all EFTs to the Treasury, State of Arizona; account number 001-000985; routing number ~~619 422401706.~~<sup>620</sup> 122101706, or to such other destination as AWBA may designate by notice.<sup>621</sup>

5.5.2.3 AWBA will ensure that all EFTs submitted by SNWA are properly accrued in the Nevada sub-account maintained at ADWR.<sup>622</sup>

5.6 On request, AWBA shall provide SNWA with a copy of all contracts, rate schedules, and other documents that are relevant to or that form the basis for the charges specified in the Agreement.<sup>623</sup>

5.7 The parties to this ~~624 agreement~~<sup>625</sup> Agreement<sup>626</sup> are hereby notified of Arizona Revised Statutes section 38-511.<sup>627</sup>

In Witness of this Agreement, the Parties affix their official signatures below<sup>628</sup>, ~~acknowledging execution of this document on the~~ 3<sup>rd</sup> day of July, 2001.<sup>629 630</sup>

~~Southern Nevada Water Authority~~<sup>631</sup>

Attest:<sup>632</sup>

~~Patricia Mulroy, General Manager~~ \_\_\_\_\_ ~~Mary Kincaid-Chauncey, Chair~~<sup>633</sup>

Approved as to form:<sup>634</sup>

~~Charles K. Hauser, General Counsel~~<sup>635</sup>

~~Colorado River Commission of Nevada~~<sup>636</sup>

Attest:<sup>637</sup>

~~George M. Caan, Executive Director~~ \_\_\_\_\_ ~~Richard Bunker, Chair~~<sup>638</sup>

~~Approved as to form:~~<sup>639</sup>

~~Sara A. Price, Dep. Attorney General~~<sup>640</sup>

~~Arizona Water Banking Authority~~<sup>641</sup>

~~Attest:~~<sup>642</sup>

~~William Chase, Secretary~~  
~~SOUTHERN NEVADA WATER~~  
~~AUTHORITY~~<sup>644</sup>

~~Joseph C. Smith, Chair~~<sup>643</sup>  
~~DATE:~~

648

~~Attest:~~<sup>645</sup>

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~~Patricia Mulroy, General Manager~~<sup>647</sup>

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~~Amanda Cyphers, Chair~~<sup>650</sup>

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~~Approved as to form:~~<sup>651</sup>

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6

~~Charles K. Hauser, General Counsel~~<sup>653</sup>

~~COLORADO RIVER COMMISSION OF~~  
~~NEVADA~~<sup>654</sup>

~~DATE:~~

658

~~Attest:~~<sup>655</sup>

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~~George M. Caan, Executive Director~~<sup>657</sup>

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~~Richard Bunker, Chair~~<sup>660</sup>

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~~Approved as to form:~~<sup>661</sup>

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Sara A. Price, Senior Deputy Attorney  
General<sup>663</sup>

ARIZONA WATER BANKING  
AUTHORITY<sup>664</sup>

DATE: \_\_\_\_\_<sup>668</sup>

Attest:<sup>665</sup>

\_\_\_\_\_<sup>666</sup>

Charles L. Cahoy, Secretary<sup>667</sup>

\_\_\_\_\_<sup>669</sup>

Herbert R. Guenther, Chair<sup>670</sup>

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