

ARIZONA WATER BANKING AUTHORITY
Wednesday, September 16, 2009

	Name (Please print)	Affiliation	Phone No.
1	Beth Miller	Scitston	
2	Cliff CAUTHEN	Holbrook Irrigation	602-568-2209
3	Lawrence Marquez	USBR	623-773-6213
4	Juliet Mullins	Montgomery Associates	520-887-4912
5	ROSALIND BARK	UA	621 6265
6	Tim Pierson	Inla River	520-562-9760
7	Brian Hennrich	CAP	623-867-2567
8	Joni Gould	CAP	623-869-2565
9	Jeff Tanner	ADAR	520-770-3800
10	Karen Nalley		602-258-4061
11	Jocelyn Gibben	Squire Sanders & Depp	602-528-4098
12	Anne PRINE	ABC	480-550-5301
13	Tom Harbor	CARRD	623-869-2107
14	Gregg Capps	Chandler	480-782-3550
15	Wally Wilson	Tucson	520 837 2239
16	James LAPANE	SRP	602. 226. 6628
17	PAUL OARNE	CADD/MSDON	623-465-0445
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ARIZONA WATER BANKING AUTHORITY
Wednesday, September 16, 2009

Name (Please print)	Affiliation	Phone No.
1 V.C. DANUS	AMWUA	602 248 8482
2 Ken Seasholes	CAP	
3 Michael Block	Metro Water	
4 CLIFF NEAL	CAP	623-869-2672
5 DOUG KUPPEL	City of Phoenix	602-495-5853
6 Tom Maher	SNWA	702-862-3702
7 Jenny Winkler	RCA	602-440-4860
8 Collette Moore	Mesa	480-644-4364
9 Dee Koris	Tucson Water	520-837-2238
10 Dave CROCKETT	FWID	520 587 4192
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Arizona Water Banking Authority
3550 N. Central Avenue, Phoenix, Arizona 85012
Telephone 602-771-8487
Fax 602-771-8685
Web Page: www.azwaterbank.gov

PLEASE POST

NOTICE OF PUBLIC MEETING

Pursuant to A.R.S. § 38-431.02, notice is hereby given that there will be a meeting of the Arizona Water Banking Authority Commission on Wednesday, September 16, 2009 at 10:00 a.m. at the Arizona Department of Water Resources, 3550 North Central Avenue, Phoenix, Arizona 85012, Upper Verde Conference Room. The meeting is open to the general public. Members of the commission will attend either in person or by teleconference.

Dated this 15th day of September, 2009

FINAL AGENDA

Arizona Water Banking Authority Commission Meeting

- I. Welcome/Opening Remarks
- II. Approval of Minutes of June 17, 2009 Meeting
- III. Water Banking Staff Activities
 - Deliveries
 - Legislative activities
 - Southside Replenishment Bank update
 - On-river firming
 - Webpage
 - Update on potential sale of Avra Valley Recharge Project to Metro Water District
- IV. Draft 2010 Annual Plan of Operation
 - Discussion of Table 2
 - Water and facility rates
 - Partner meetings
 - Public meetings
- V. Discussion and Potential Action on Assignment of Long-term Storage Credits from the Tohono O'odham Nation pursuant to A.R.S. § 45-841.01

- VI. Interstate Water Banking
 - Discussion and potential approval of Resolution 2009-1 of the Arizona Water Banking Authority establishing guidelines for the Authorized Representative
 - Discussion and potential submittal of a Draft Third Amended Agreement for Interstate Water Banking to the SNWA and CRCN
 - Overview of interstate accounting and firming obligation
 - Interstate fiscal year accounting report to JLBC
- VII. Call to the Public
- VIII. Consideration of Action to go into Executive Session of the Authority Commission pursuant to A.R.S. §38-431.03.A.4 to discuss with their attorneys and AWBA staff potential litigation by CAWCD regarding funds of the Arizona Water Banking Authority. The discussions and minutes of the executive session shall be kept confidential. [The executive session of the Authority Commission is not open to the public]*
- IX. Reconvene in Open Session
- X. Consideration of Action Related to Items Discussed in Executive Session

Next Meeting Date:

Wednesday, December 16, 2009

*The Executive Session is expected to last approximately 45 minutes and will not be open to the public.

All visitors must use the south elevators; please stop at the 2nd floor to sign-in and receive a visitor's badge. Badges are to be displayed at all times. Visitors are also required to sign out and return their badges. Thank you for your assistance.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Virginia O'Connell at (602) 771-8491, TDD # (602) 771-8501. Requests should be made as early as possible to allow time to arrange the accommodation.

**ARIZONA WATER BANKING AUTHORITY
Draft Minutes¹**

**June 17, 2009
Arizona Department of Water Resources**



AUTHORITY MEMBERS
Herbert R. Guenther, Chairman
Maureen R. George, Vice-Chairman
Tom Buschatzke, Secretary
John Mawhinney
Lisa A. Atkins

EX OFFICIO MEMBERS
The Honorable Steve Pierce
The Honorable Kirk Adams

Welcome/Opening Remarks

Chairman Herb Guenther welcomed the attendees. All members of the Authority were present except for *ex-officio* member, Representative Kirk Adams.

Chairman Guenther sadly announced the passing of Marvin Cohen, noting he was a friend of the AWBA and acknowledged his many contributions, not only to the water community, but to diverse interests, including the arts.

Approval of Minutes of April 1, 2009 and April 28, 2009 Meetings

The Authority approved the minutes of the April 1, 2009 and April 28, 2009 meetings.

Staff Activities

Virginia O'Connell provided an overview of AWBA water deliveries for calendar year 2009. Deliveries are on track. Ms. O'Connell also reviewed the recovery schedule for developing Intentionally Created Unused Apportionment (ICUA) for the Metropolitan Water District of Southern California (Metropolitan). Recovery is ahead of schedule.

Ms. O'Connell noted that the Department of Water Resources (ADWR) is gearing up for its Fourth Management Plan. She has been assisting ADWR staff by providing historic water storage data and projections for the AWBA's future water use.

Kim Mitchell updated the Authority on the Governor's and Legislature's budget proposals for fiscal year (FY) 2010. Both budgets restore ADWR's base appropriations without transferring funds from the AWBA. The Governor's budget proposes a transfer of \$5.4 million from the Arizona Water Banking Fund (AWB Fund) to the General Fund, while Senate Bill (SB) 1188 proposes a transfer of \$4 million. Ms. Mitchell noted that previous guidance to staff with regard to transfers was to protect funds in the Nevada subaccount, thus staff reconciled the Water Banking fund subaccounts to minimize the impact on the Nevada subaccount in response to budget reductions for FY 2009. She asked the Commission for direction on the strategy for addressing the current proposed reductions. The Commission directed staff to include the issue as an agenda item for the next quarterly meeting in September so that it could be discussed in conjunction with the AWBA's obligations and the development of the 2010 Plan of Operation (Plan). Tim Henley commented that any legislative transfers would likely occur before September's meeting and

¹ Please note that these are not formal minutes but a summary of discussion and action of the meeting. Official minutes are prepared prior to the next Authority meeting and are approved at that meeting.

would come from the Nevada subaccount since it is the only fund with sufficient funds to cover the proposed transfers. He noted that staff would proceed by developing the 2010 Plan as usual, utilizing available funds for intrastate deliveries before including deliveries for interstate purposes. The preliminary Plan could be changed in September based on the Authority's direction.

Lisa Atkins inquired if staff had received any written comments of the AWBA's position statement letter. Ms. Mitchell responded that no comments had been received. Chairman Guenther noted he would continue to recuse himself from decisions on this issue, but not from the discussions. He also commented that the position of AWBA had been put forward in his meetings with the Legislature as Director of ADWR. John Mawhinney commented that based on his recent meetings, the Legislature is unaware of the purpose and activities of AWBA. He pointed out that at the last AWBA meeting he had suggested using a different type of forum for providing information to the Legislature to overcome this issue and to continue these efforts on a regular basis. Mr. Mawhinney also inquired if the AWBA would need legislative authorization to utilize the excess CAP water pool recently created by CAWCD and if so, suggested submitting legislation in September. Chairman Guenther noted that the Legislature has been busy with the State budget, but that the AWBA could establish an active program for discussing the AWBA and its activities at independent briefings. Senator Steve Pierce agreed there was little education on water related issues and encouraged opportunities for providing information. Gregg Houtz noted that the AWBA could participate in the pool, but advocated legislation to avoid any legal challenges. Tom Buschatzke commented that he also favored pursuing legislation, but also encouraged the use of the pool because there was no opposition to the creation of pools. CAWCD's process was very public and entities that supported CAWCD's policy would likely support the legislation as well. Senator Pierce noted that water was a critical issue and that he would support and assist with the AWBA's legislation.

Ms. Mitchell informed the Authority that the Water Storage Agreement between the AWBA and City of Tucson for storage at the Central and Southern Avra Valley Storage and Recovery Projects (CAVSARP/SAVSARP) has been fully executed. Chairman Guenther noted these facilities were also referred to as the Clearwater facility.

Ms. Mitchell noted that the AWBA has, for the second year, certified the creation of ICUA for Metropolitan. A total of 28,442 AF of ICUA was created in 2008 utilizing the two methods identified in the Amended Letter Agreement for Creation of ICUA: 27,442 acre-feet of Long-term Storage Credits (credits) were recovered by CAWCD and 1,000 AF of credits were exchanged with the Central Arizona Groundwater Replenishment District (CAGR) utilizing the credit exchange method. Metropolitan requested 30,000 acre-feet of ICUA for 2009 leaving a balance of approximately 6,000 acre-feet of credits remaining at the end of the year.

Ms. Mitchell also informed the Authority that the CAWCD Board adopted a resolution at its last meeting to levy the *ad valorem* tax rate for water storage for the 2009-2010 tax year at 4 cent per \$100 of assessed value on all taxable property within the

three-county service area. Taxes levied will be deposited in the District fund and be used to offset the annual water delivery charges to the Bank for water storage.

Also at that CAWCD Board meeting, a question was raised on the auditing requirements of the AWBA. Ms. Mitchell suggested that since staff had explored this matter in some detail last year, a written response from Chairman Guenther to President Bitter Smith could be provided that includes staff's discussions with the Auditor General and that outlines the AWBA's long-term storage credit and financial accounting processes. Mr. Mawhinney commented that the concern raised at the CAWCD board meeting could be because of a lack of confidence on how funds are expended. Two points should be made clear: 1) the AWBA is independent of CAWCD, just like ADWR, and 2) everything the AWBA does is in concert with CAWCD. He added that if there is concern, the AWBA should make them comfortable and suggested that it might be better to ask Ms. Atkins what type of information would serve that purpose. He also suggested that even if a cost was involved, the AWBA should pursue every attempt to make the CAWCD Board comfortable. Chairman Guenther agreed that the AWBA should pursue every opportunity. Larry Dozier noted that it was a minority that raised concern and an issue more of perception. The AWBA's Annual Report clearly identifies use of funds. He suggested that individual Board members could meet with AWBA staff to discuss the issue.

Gregg Houtz provided an update on Indian settlement negotiations. Senate Bill S. 313, the White Mountain Apache Tribe Water Rights Quantification Act, has been introduced by Senator Jon Kyl. Staff mark-up is anticipated by early July. Representative Ann Kirkpatrick has introduced the House version, however, hearings have not been held. The bill may be enacted late this year or early next year. Mr. Houtz noted that the AWBA should have a better understanding of its future firming obligation of 8,724 acre-feet of non-Indian agricultural water, since the settlement will require the AWBA to firm 3,750 acre-feet of the obligation. Settlement water will be leased to valley cities immediately upon enforceability of the settlement, meaning the water must be available at that time. Negotiations on the Navajo Nation/ Hopi Tribe settlement remain ongoing. Chairman Guenther commented that the group was working with Sen. Kyl on additional requests for information.

CAWCD Policy for Access to Excess

Ken Seasholes (CAWCD) gave a presentation on CAWCD's Procedure to Distribute Excess Water in 2010 through 2014, policy adopted June 4, 2009. The policy establishes four separate pools for Excess CAP water in addition to the Agricultural Settlement Pool, which is separate and distinct from the policy. The four pools include a CAWCD annual replenishment pool capped at 35,000 acre-feet, a municipal pool, an industrial and other uses pool, and a fixed pool of 175,000 acre-feet to be shared by the AWBA and the CAGR for its replenishment reserve purposes. The AWBA may use this water for any authorized purpose. In response to questions from the Commission on the priority of the pools, Mr. Seasholes noted that if Excess CAP supplies are reduced, the municipal and industrial/other pools would share the reduction. He commented that there was some uncertainty for water orders for 2010. It is possible the municipal and industrial/other pools will not

be fully subscribed given financial difficulty; therefore there could be more water available to the AWBA.

2008 Annual Report

Ms. Mitchell reviewed the statutory requirements regarding the AWBA's submittal of the Annual Report (Report) and provided a brief overview of the AWBA's activities for 2008, including progress made toward meeting goals and obligations. Maureen George commented that with regard to shortage sharing within Arizona, contrary to the statement in the Annual Report it was her opinion that the Basin States Agreement incorporated "all" of Arizona's recommendations on shortage-sharing strategies, but that she would not oppose the current language because the in-state shortage-sharing agreement speaks for itself.

Virginia O'Connell outlined the components of the Ten-Year Plan, which covers the time period 2010-2019. She noted that unlike previous years, water availability was based on CAWCD's new water distribution policy. She clarified that while the policy is for a five-year period, the ten-year plan assumes the policy will continue for the entire period. In response to questions from the Authority concerning the AWBA's ability to use the pool, Mr. Henley noted that the AWBA could utilize the pool created for the AWBA because it meets the intent of the statute. CAWCD has the authority to establish pools. By limiting the amounts in the other pools, the AWBA pool is considered last. The AWBA is guided further by statute in how it can utilize the pool, i.e. interstate deliveries must be last. Chairman Guenther questioned if the AWBA could be challenged. Staff commented that it was possible and to remove that possibility the AWBA had drafted legislation to address the issue. The legislation was not pursued in this session, but staff will attempt to work with the Legislature to get the bill introduced in the next session. Ms. George inquired if the AWBA could partner with someone who could store that would resolve the issue. Lisa Atkins responded that she felt CAWCD could fulfill that role.

Tom Buschatzke made a motion to approve the 2008 Annual Report and Ten-Year Plan as submitted. Ms George provided the second to that motion. The motion carried.

Ms. George made a motion to submit the 2008 Annual Report and Ten-Year Plan to the Governor, Speaker of the House and President of the Senate, pursuant to statute. Mr. Buschatzke provided the second to that motion. The motion carried.

FY 2010 Administrative Budget

Ms. Mitchell briefed Authority members on the actual expenditures for Fiscal Year (FY) 2009. Expenditures were under budget since an administrative assistant position had remained vacant and travel expenditures were less than anticipated. The proposed FY 2010 Administrative Budget is approximately \$524,000, which is less than the previous year's approved budget because it does not include funding for an administrative assistant and funding for travel and equipment have decreased. She reminded the Authority that administrative costs are paid from the administrative account, which is funded from interest earned on the other AWBA accounts. The current balance is sufficient to pay the projected administrative costs for FY 2010.

Mr. Buschatzke made a motion to adopt the AWBA Administrative Budget for Fiscal Year 2010 as presented with any minor or technical changes. Ms. Atkins provided the second to that motion. The motion carried.

Potential approval of the Chairman to sign the Intergovernmental Agreement between the AWBA and the Gila River Indian Community

Ms. Mitchell noted that at the last meeting, the Authority approved the current form of the Intergovernmental Agreement (IGA) between the AWBA and the Gila River Indian Community (GRIC), but postponed action until the GRIC had approved the agreement. She commented that the IGA must be in place before any water is delivered for replenishment purposes. Staff provided a brief overview of the Southside Replenishment Program, which is a program designed for the protection of groundwater. The State is required to replenish any use of groundwater that exceeds the amounts established for the Protection Zones. Under the program, the AWBA is also required to establish the Southside Replenishment Bank (Bank), which is established through the delivery of 1,000 acre-feet per year to the GRIC up to 15,000 acre-feet. The Bank acts as a buffer for those times when replenishment is required to offset groundwater pumping in the various zones. Once established, the Bank must remain above 5,000 acre-feet. Ms. Mitchell informed the Authority that the Community Council had passed a resolution authorizing the IGA. There were no substantive changes. Mr. Buschatzke noted that this program had been championed by Mr. Cohen and made a motion to authorize Chairman Guenther to sign the IGA between the AWBA and the GRIC as submitted. Ms. Atkins provided the second to that motion. The motion carried.

Differential Pricing for GSFs in Tucson AMA

Mr. Henley noted that the issue of differential pricing of the cost share paid by groundwater savings facility (GSF) operators has been discussed several times. The AWBA has historically decided against setting different rates between Active Management Areas (AMAs). A recent exception however, is the cost share of \$20 per acre-foot paid by the GRIC, which is actually tied to the settlement. The Tucson AMA is in a unique situation because funding is not sufficient for meeting the M&I firming goal. Storage at GSFs is less expensive than underground storage facilities (USFs), therefore more credits could be accrued. However, there has been little interest in GSF partnerships with the AWBA in Tucson because groundwater pumping costs in that AMA have been much lower than the cost share.

Mr. Henley commented that the Authority had asked staff to evaluate the potential for GSF opportunities in the Tucson AMA through the use of differential pricing. At the last meeting staff reported that a reduced cost share could encourage some GSF partnerships and that while progress toward the firming goal would be small, there was some benefit. He added that the Tucson Groundwater Users Advisory Council was supportive of the idea. Ms. Atkins inquired if the Tucson AMA GSFs were fully subscribed. Staff responded that the Cortaro-Marana GSF was not fully utilized, but that the AWBA would need a water storage agreement to store at that facility. Mr. Buschatzke noted that the AWBA's storage cost would increase in relation to other GSFs, but that it would be less than USFs. He questioned if there were any implications shifting from USFs to GSFs. Mr. Henley noted that the location of the

GSF could be a factor, but the amount of storage would be low. There are however, some GSFs located near the USFs to the north where the AWBA also stores water. Mr. Mawhinney commented that while the use of GSFs did not solve the problem, it would help. Another benefit was that CAP water rather than groundwater would be used for agriculture. He suggested a pilot project to evaluate potential long-term effects. In response to questions from the Authority regarding funding sources, Mr. Henley noted that funds expended for storage would be from the Tucson AMA and Pima County subaccounts. The Authority directed staff to pursue GSF storage opportunities in the Tucson AMA. Paul Orme (attorney representing Maricopa-Stanfield and Central Arizona Irrigation and Drainage Districts) expressed concern, but commented that as long as funding was available and the Pinal AMA irrigation districts were not affected, he did not have an issue with differential pricing for the Tucson AMA GSFs.

Interstate Water Banking

Mr. Henley noted that at the last meeting the Authority approved the Second Amended Agreement for Interstate Water Banking (Second Amended Agreement). However, because of issues concerning the provision for an Authorized Representative (AR), staff was directed to develop a policy that identifies and outlines the duties of an AR. He reviewed Policy Guidance Statement #1(Policy), which states that 1) the Commission will determine which contracts will have a provision for an AR, 2) the Chairman is the AR, unless he or she nominates an alternative Commission member who must be approved by the majority, 3) the Commission will provide specific direction to the AR on how to perform his or her duties under the agreement, and 4) the AR must consult with Commission members before agreeing to modify or amend any contracts, and if the proposed amendment is outside of the original direction, it must be presented to the Commission for formal action. Mr. Henley commented that the AR would be identified at the time an agreement is approved. As an example, at the last meeting, Chairman Guenther was given the authority to sign the letter modifying the payment schedule for interstate monies. Ms. George commented that the Second Amended Agreement did not address specific direction and inquired if the Commission would need to meet again if other changes were needed, noting that this would be counter to the operational flexibility intended. Mr. Henley responded that it was his understanding the AR would contact each member individually to discuss the changes and that if one member disagreed, it would necessitate a formal action by the Commission. Mr. Houtz cautioned against violating the open meeting laws through a serial quorum. Mr. Buschatzke suggested developing a list of duties the AR could perform so that operational flexibility is maintained. Mr. Houtz pointed out that at this time, the Commission only authorized the AR to do one thing, which was to modify the 2009 payment schedule. If the AR wanted to do more it would not be authorized without permission.

Bill Rinne (Director of Surface Water Resources, SNWA) addressed the Commission, stating he thought the Second Amended Agreement provided reasonable operational flexibility to serve both parties and that the General Manager of SNWA, whose role is comparable to that of the AR, had guidance limits. The responsibilities of the AR are an internal matter with Arizona. He commented that

Nevada appreciated its working relationship with Arizona and noted that while Nevada respected Arizona's dialogue for a third amended agreement, he encouraged the Commission to preserve the Second Amended Agreement because it was timely and because Nevada had no intent to make substantive changes to the agreement.

Mr. Houtz suggested that staff could prepare a resolution that clearly defines the AR for the Second Amended Agreement and that states the AR cannot change the required payments. The Commission members concurred. Chairman Guenther directed staff to prepare a resolution for the September meeting that identifies the responsibilities of the AR specific to the Second Amended Agreement. The discussion and potential submittal of a Third Amended Agreement for Interstate Water Banking to Nevada would continue to be carried over as an alternative option to address the issue.

Mr. Henley reviewed the second quarter interstate accounting report for 2009. The report has been modified to include estimates on fund activity for the operating subaccount in addition to the resource subaccount. The AWBA could request approximately \$2.9 million from Nevada to be deposited to the operating subaccount to pay for 2009 deliveries. The resource subaccount has a balance of approximately \$11 million.

Mr. Henley also provided an update on staff discussions with CAWCD regarding the acquisition of additional supplies for interstate storage. Current statute does not allow the AWBA to directly enter into an agreement for the purchase of land or water rights. However, the AWBA could partner with a third party, such as CAWCD, and provide funding to pay for a lease or to fallow land. A formal process for a request for proposals would also be required. Larry Dozier (CAWCD) commented that the acquisition of additional supplies could possibly be done in conjunction with ADDWATER or the CAGR. He noted there have been some staff level discussions with the Yuma area water group. However, the acquisition of a water right has not been actively pursued at this time because it is a major policy issue; however CAWCD is ready to take the next step. CAWCD staff will discuss potential options, including yield, costs, etc., with AWBA staff as available.

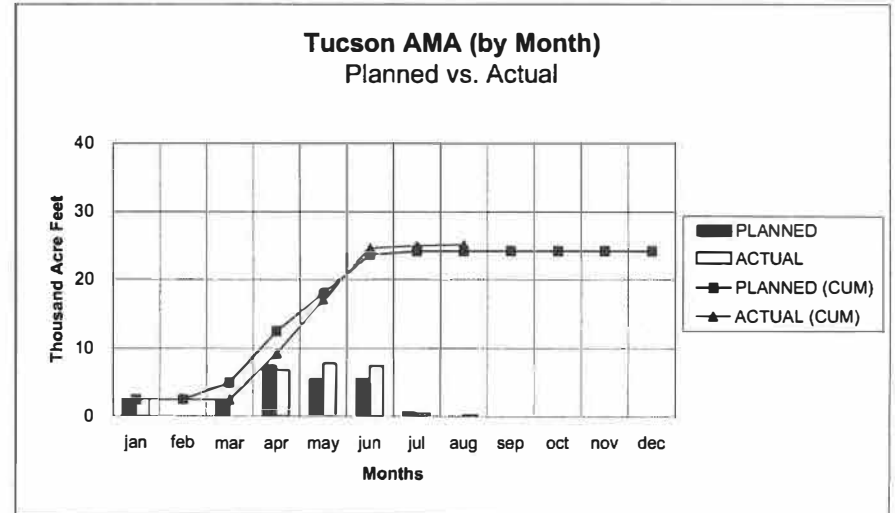
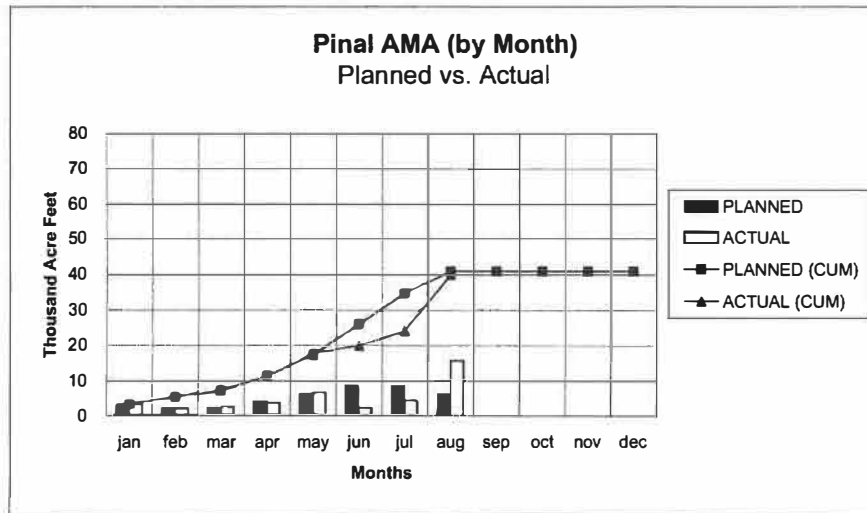
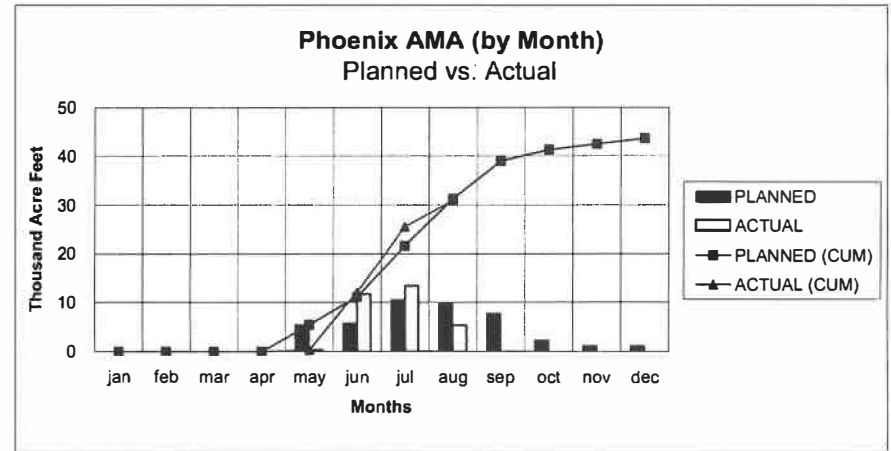
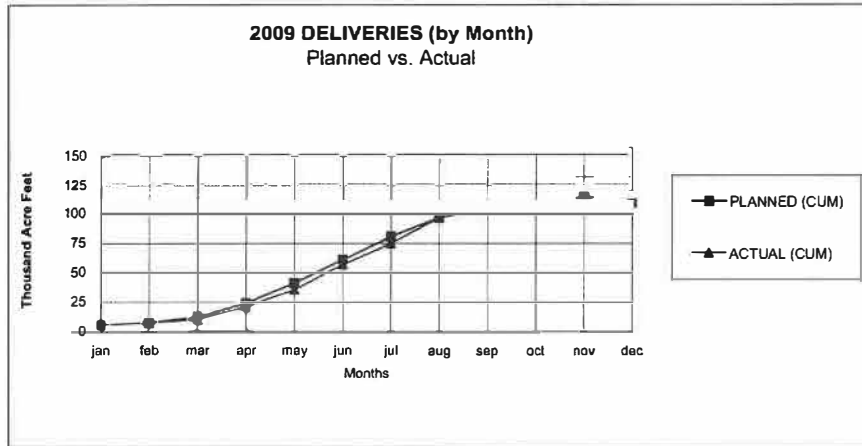
Call to the Public

There were no additional comments.

The meeting adjourned at 12:30 p.m.

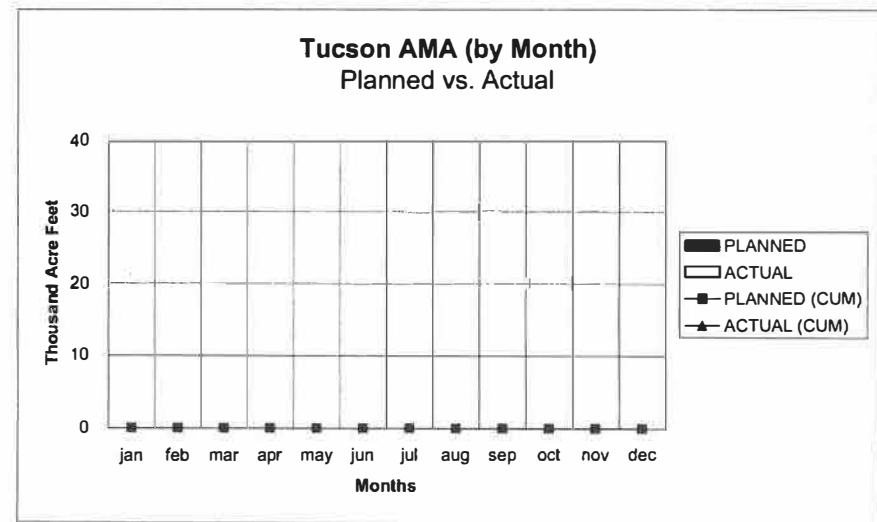
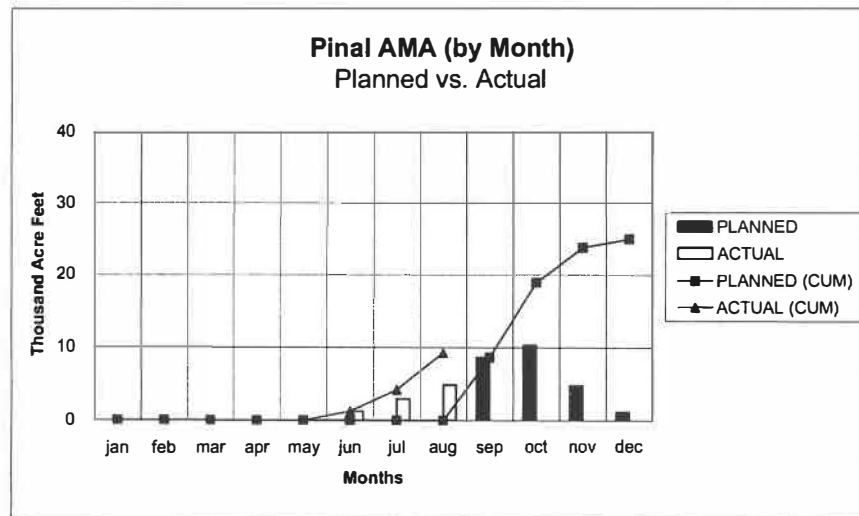
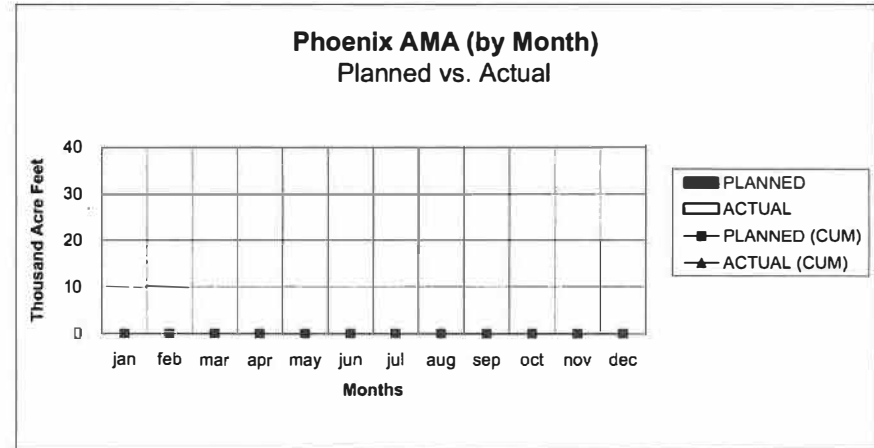
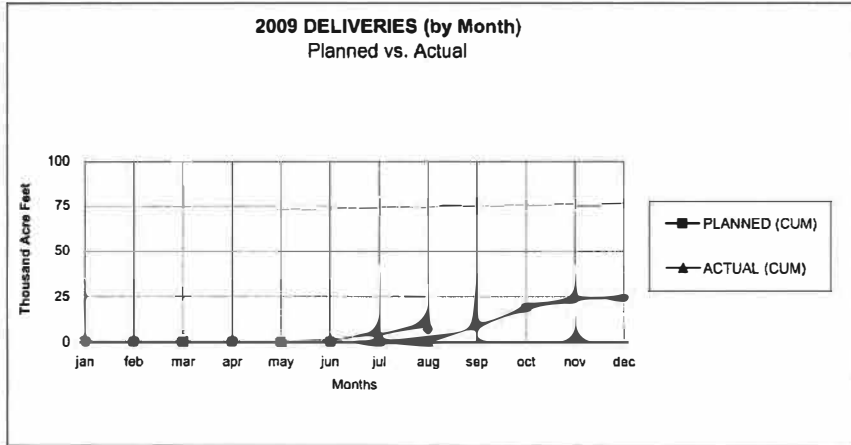
2009 Amended Plan of Operation

INTRASTATE



2009 Amended Plan of Operation

INTERSTATE



Actual deliveries updated Amended Plan of Operation	11-Sep-09 1-Apr-09	jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	total
Phoenix AMA														
Intrastate														
GRUSP		0	0	0	0	0	0	0	0	0	0	0	0	0
AGUA FRIA		0	0	0	0	0	0	0	0	0	0	0	0	0
HIEROGLYPHIC MTNS		0	0	0	0	0	0	0	0	0	0	0	0	0
TONOPAH DESERT		0	0	0	0	0	0	0	0	0	0	0	0	0
CHCID		0	0	0	0	0	0	0	0	0	0	0	0	0
NMIDD		0	0	0	0	0	0	0	0	0	0	0	0	0
QCID		0	0	0	0	0	0	0	0	0	0	0	0	0
SRP		0	0	0	0	0	0	0	1,343	2,285	2,285	1,142	1,142	8,197
GRIIDD		0	0	0	0	403	11,702	13,458	5,369	0	0	0	0	30,932
Subtotal		0	0	0	0	5,402	5,711	10,475	8,365	5,373	0	0	0	35,326
Total to date		0	0	0	0	403	12,105	25,563	30,932	30,932	30,932	30,932	30,932	30,932
Projected total to date		0	0	0	0	5,402	11,113	21,588	31,296	38,954	41,239	42,381	43,523	43,523
Interstate														
GRUSP		0	0	0	0	0	0	0	0	0	0	0	0	0
AGUA FRIA		0	0	0	0	0	0	0	0	0	0	0	0	0
HIEROGLYPHIC MTNS		0	0	0	0	0	0	0	0	0	0	0	0	0
TONOPAH DESERT		0	0	0	0	0	0	0	0	0	0	0	0	0
CHCID		0	0	0	0	0	0	0	0	0	0	0	0	0
NMIDD		0	0	0	0	0	0	0	0	0	0	0	0	0
QCID		0	0	0	0	0	0	0	0	0	0	0	0	0
SRP		0	0	0	0	0	0	0	0	0	0	0	0	0
TID		0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal		0	0	0	0	0	0	0	0	0	0	0	0	0
Total to date		0	0	0	0	0	0	0	0	0	0	0	0	0
Projected total to date		0	0	0	0	0	0	0	0	0	0	0	0	0
Combined														
Subtotal		0	0	0	0	403	11,702	13,458	5,369	0	0	0	0	30,932
Total to date		0	0	0	0	403	12,105	25,563	30,932	30,932	30,932	30,932	30,932	30,932
Projected total to date		0	0	0	0	5,402	11,113	21,588	31,296	38,954	41,239	42,381	43,523	43,523

Actual deliveries updated		11-Sep-09												total
Amended Plan of Operation		1-Apr-09												
		jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	
Pinal AMA														
Intrastate	CAIDD	0	0	0	0	0	0	4,217	15,783	0	0	0	0	20,000
		0	0	0	1,500	2,000	5,500	5,500	5,500	0	0	0	0	20,000
MSIDD		3,240	2,000	2,500	3,600	6,650	2,010	0	0	0	0	0	0	20,000
		3,240	2,000	2,070	2,590	3,110	3,120	3,110	760	0	0	0	0	20,000
HIDD		0	0	0	0	0	0	0	0	0	0	0	0	0
GRIIDD		0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	1,000	0	0	0	0	0	0	0	1,000
Subtotal		3,240	2,000	2,500	3,600	6,650	2,010	4,217	15,783	0	0	0	0	40,000
Total to date		3,240	5,240	7,740	11,340	17,990	20,000	24,217	40,000	40,000	40,000	40,000	40,000	40,000
Projected total to date		3,240	5,240	7,310	11,400	16,510	25,130	33,740	40,000	40,000	40,000	40,000	40,000	41,000
Interstate	CAIDD	0	0	0	0	0	0	0	2,117	0	0	0	0	2,117
		0	0	0	0	0	0	0	0	5,500	4,750	1,750	500	12,500
MSIDD		0	0	0	0	0	1,290	2,990	2,800	0	0	0	0	7,080
		0	0	0	0	0	0	0	0	3,120	5,570	3,090	720	12,500
HIDD		0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal		0	0	0	0	0	1,290	2,990	4,917	0	0	0	0	9,197
Total to date		0	0	0	0	0	1,290	4,280	9,197	9,197	9,197	9,197	9,197	9,197
Projected total to date		0	0	0	0	0	0	0	0	8,620	18,940	23,780	25,000	25,000
Combined														
Subtotal		3,240	2,000	2,500	3,600	6,650	3,300	7,207	20,700	0	0	0	0	49,197
Total to date		3,240	5,240	7,740	11,340	17,990	21,290	28,497	49,197	49,197	49,197	49,197	49,197	49,197
Projected total to date		3,240	5,240	7,310	11,400	16,510	25,130	33,740	40,000	48,620	58,940	63,780	65,000	66,000
Tucson AMA														
Intrastate	AVRA VALLEY	480	0	0	605	763	610	389	132	0	0	0	0	2,979
		480	0	500	500	500	500	500	0	0	0	0	0	2,980
CAVSARP		0	0	0	4,348	4,910	2,341	0	0	0	0	0	0	11,599
		0	0	0	5,000	5,000	5,124	0	0	0	0	0	0	15,124
PIMA MINE		0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0
LOWER SANTA CRUZ		2,000	0	0	1,855	2,145	0	0	0	0	0	0	0	6,000
		2,000	0	2,000	2,000	0	0	0	0	0	0	0	0	6,000
SAVSARP		0	0	0	0	0	4,525	0	0	0	0	0	0	4,525
		0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal		2,480	0	0	6,808	7,818	7,476	389	132	0	0	0	0	25,103
Total to date		2,480	2,480	2,480	9,288	17,106	24,582	24,971	25,103	25,103	25,103	25,103	25,103	25,103
Projected total to date		2,480	2,480	4,980	12,480	17,980	23,604	24,104	24,104	24,104	24,104	24,104	24,104	24,104
Interstate	AVRA VALLEY	0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0
CAVSARP		0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0
PIMA MINE		0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0
LOWER SANTA CRUZ		0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0
SAVSARP		0	0	0	0	0	0	0	0	0	0	0	0	0
		0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal		0	0	0	0	0	0	0	0	0	0	0	0	0
Total to date		0	0	0	0	0	0	0	0	0	0	0	0	0
Projected total to date		0	0	0	0	0	0	0	0	0	0	0	0	0
Combined														
Subtotal		2,480	0	0	6,808	7,818	7,476	389	132	0	0	0	0	25,103
Total to date		2,480	2,480	2,480	9,288	17,106	24,582	24,971	25,103	25,103	25,103	25,103	25,103	25,103
Projected total to date		2,480	2,480	4,980	12,480	17,980	23,604	24,104	24,104	24,104	24,104	24,104	24,104	24,104
TOTAL														
Subtotal		5,720	2,000	2,500	10,408	14,871	22,478	21,054	26,201	0	0	0	0	105,232
Total to date		5,720	7,720	10,220	20,628	35,499	57,977	79,031	105,232	105,232	105,232	105,232	105,232	105,232
Projected total to date		5,720	7,720	12,290	23,880	39,892	59,847	79,432	95,400	111,678	124,283	130,265	132,627	133,627

**CENTRAL ARIZONA PROJECT
ANNUAL RECOVERY PLAN & USE**

Calendar Year 2009

(in acre-feet)

Revised 9/9/09

Pinal County Irrigation Districts Recovery Schedule:

MONTH	MSIDD		CAIDD		HIDD		CAGRDX EXCHANGE		TOTAL	
	SCH	Used	SCH	Used	SCH	Used	SCH	Used	SCH	Used
Jan	700	816	500	605	0	0	0	0	1,200	1,421
Feb	900	1,122	500	631	0	0	0	0	1,400	1,753
Mar	1,500	1,587	1,200	1,369	0	0	0	0	2,700	2,956
Apr	1,600	1,699	1,200	1,290	0	0	0	0	2,800	2,989
May	1,200	1,004	1,400	1,524	0	0	0	0	2,600	2,528
Jun	700	999	1,500	1,511	500	0	0	0	2,700	2,510
Jul	500	1,586	1,500	1,570	500	0	0	0	2,500	3,156
Aug	1,100	1,630	1,500	1,660	500	0	0	0	3,100	3,290
Sep	1,500	0	1,200	0	500	0	0	0	3,200	0
Oct	1,500	0	250	0	500	0	0	0	2,250	0
Nov	1,800	0	250	0	500	0	0	0	2,550	0
Dec	0	0	0	0	0	0	3,000	0	3,000	0
Total	13,000	10,443	11,000	10,160	3,000	0	3,000	0	30,000	20,603

* Recovered water will be posted as Ag Settlement Pool water on all monthly delivery reports.

Total MWD credits for recovery (5% cut to aquifer + 4,909 af losses)	= 80,909 AF
Less 2007 total recovered credits:	= 16,804 AF
Less 2008 total recovered credits:	= 28,442 AF
Less 2009 total recovered credits:	= <u>20,603 AF</u>
Remaining credits to be recovered by CAP:	= 15,060 AF

Arizona Water Banking Authority

3550 N. Central Avenue, Phoenix, Arizona 85012
Telephone 602-771-8487
Fax 602-771-8685



August 13, 2009

Governor William R. Rhodes,
Gila River Indian Community
P.O. Box 97
Sacaton, Arizona 85247

AUTHORITY MEMBERS
Herbert R. Guenther, Chairman
Maureen R. George, Vice Chairman
Tom Buschatzke, Secretary
John Mawhinney
Lisa A. Atkins

EX OFFICIO MEMBERS
Honorable Steve Pierce
Honorable Kirk Adams

**RE: Establishment of the Southside Replenishment Bank for the
Gila River Indian Community**

Dear Governor Rhodes:

The Arizona Water Banking Authority (AWBA) is required under the Arizona Revised Statutes § 45-2624 to establish the Southside Replenishment Bank (Bank) for the Gila River Indian Community (Community). The Bank is established through the delivery of water to the Community pursuant to an intergovernmental agreement (IGA) between the AWBA and the Community. The AWBA and the Community executed this IGA on June 19, 2009.

Pursuant to the IGA, the AWBA must deliver to the Community a minimum of 1,000 acre-feet of water annually, beginning in the year the IGA is executed, until a 15,000 acre-feet Bank is created. The Bank is to be created at no cost to the Community using excess Central Arizona Project (CAP) water. The AWBA must use appropriated funds or withdrawal fees collected in the Pinal Active Management Area (AMA) to create the Bank. In October 2008, the time in which orders for 2009 water deliveries were requested, an agreement with the Community had not been executed. However, in anticipation of such an IGA, the potential was recognized to shift a portion of the deliveries scheduled for the Gila River Indian Irrigation and Drainage District Groundwater Savings Facility (GRIIDD GSF) from in-lieu groundwater recharge to direct deliveries for the purpose of establishing the Bank. The Amended 2009 Plan of Operation recognizes 36,326 acre-feet scheduled for the GRIIDD turnout (Phoenix and Pinal AMA combined). Of this total, 1,000 acre-feet of water has been identified for this purpose of shifting deliveries from in-lieu storage to direct delivery.

The 1,000 acre-feet of water will be paid for with Pinal Active Management Area withdrawal fees and will not be considered as in-lieu water delivered to the GSF for storage, but rather as a direct delivery for the purpose of establishing the Bank. The deliveries to the GRIIDD GSF were approved at the time the water was scheduled for delivery by the Central Arizona Water Conservation District (CAWCD). Because these direct deliveries are at no cost to the Community, if a payment has been made by the Community for this 1,000 acre-feet, the Community will be reimbursed. The AWBA will coordinate with CAWCD and the GRIIDD to resolve any accounting issues. Furthermore, since this delivery is not considered water stored by the AWBA, the AWBA would not accrue long-term storage credits for this amount.

Excess CAP water deliveries for in-lieu groundwater recharge to the GRIIDD turnout have been approved and scheduled through September, 2009. However, in accordance with the IGA the Community is required to approve direct deliveries for the purpose of creating the Bank. In the future this approval will be required at the time deliveries are initially requested of CAWCD. By this letter, we respectfully request the Community approve the delivery of the 1,000 acre-feet of water to the GRIIDD turnout for the purpose of establishing the Bank as shown on the attached Amended 2009 Annual Plan of Operation, Table 2, Water Delivery Schedule, Calendar Year 2009.

Sincerely,

A handwritten signature in black ink that reads "Kim Mitchell". The signature is written in a cursive, flowing style.

Kim Mitchell
Manager

Enclosure

Cc: Joseph Manual, Gila River Indian Community
Jennifer Giff, Gila River Indian Community
Lucius Kyyitan, Gila River Indian Community
Gary Parker, Gila River Indian Irrigation Drainage District
Larry Dozier, Central Arizona Water Conservation District
Joe Singleton, Pinal AMA, Arizona Department of Water Resources

Amended 4-1-09

**Amended Table 2
Water Delivery Schedule
Calendar Year 2009
(AF/AF)**

AWBA-Recharge Sites		Permitted Capacity (AF)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
PHOENIX AMA :															
USF	West Maricopa Combine	25,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	HIEROGLYPHIC	35,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	AGUA FRIA	100,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	TONOPAH DESERT	150,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	TONOPAH Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
															0
GSF	SRP	100,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	CHANDLER HGTS ID	3,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	NEW MAGMA	54,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	QUEEN CREEK	28,000	0	0	0	0	0	0	0	1,343	2,285	2,285	1,142	1,142	8,197
	TONOPAH ID	15,000	0	0	0	0	0	0	0	0	0	0	0	0	0
GILA RIVER INDIAN IDD	37,520	0	0	0	0	5,402	5,711	10,475	8,365	5,373	0	0	0	0	35,326
															43,523
	TOTAL INTRASTATE		0	0	0	0	5,402	5,711	10,475	9,708	7,658	2,285	1,142	1,142	43,523
	TOTAL INTERSTATE		0	0	0	0	0	0	0	0	0	0	0	0	0
AMA TOTAL			0	0	0	0	5,402	5,711	10,475	9,708	7,658	2,285	1,142	1,142	43,523
PINAL AMA :															
GSF	CAIDD	110,000	0	0	0	1,500	2,000	5,500	5,500	5,500	0	0	0	0	20,000
	CAIDD Interstate		0	0	0	0	0	0	0	0	5,500	4,750	1,750	500	12,500
	HOHOKAM	55,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	HOHOKAM Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
	MSIDD	120,000	3,240	2,000	2,070	2,590	3,110	3,120	3,110	760	0	0	0	0	20,000
	MSIDD Interstate		0	0	0	0	0	0	0	0	3,120	5,570	3,090	720	12,500
GILA RIVER INDIAN IDD	18,480	0	0	0	0	1,000	0	0	0	0	0	0	0	1,000	
															66,000
	TOTAL INTRASTATE		3,240	2,000	2,070	4,090	6,110	8,620	8,610	6,260	0	0	0	0	41,000
	TOTAL INTERSTATE		0	0	0	0	0	0	0	8,620	10,320	4,840	1,220	25,000	
AMA TOTAL			3,240	2,000	2,070	4,090	6,110	8,620	8,610	6,260	8,620	10,320	4,840	1,220	66,000
TUCSON AMA:															
USF	AVRA VALLEY	11,000	480	0	500	500	500	500	520	0	0	0	0	0	3,000
	PIMA MINE RD	30,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	PMR Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
	LOWER SANTA CRUZ	50,000	2,000	0	2,000	2,000	0	0	0	0	0	0	0	0	6,000
	LSC Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
	CAVSARP	100,000	0	0	0	5,000	5,000	5,124	0	0	0	0	0	0	15,124
SAVSARP	60,000	0	0	0	0	0	0	0	0	0	0	0	0	0	
															24,124
GSF	BKW	16,615	0	0	0	0	0	0	0	0	0	0	0	0	0
	KAJ FARMS (Red Rock)	11,231	0	0	0	0	0	0	0	0	0	0	0	0	0
															0
	TOTAL INTRASTATE		2,480	0	2,500	7,500	5,500	5,624	520	0	0	0	0	0	24,124
	TOTAL INTERSTATE		0	0	0	0	0	0	0	0	0	0	0	0	
AMA TOTAL			2,480	0	2,500	7,500	5,500	5,624	520	0	0	0	0	0	24,124
Outside AMA:															
	HARQUAHALA VALLEY ID	50,000	0	0	0	0	0	0	0	0	0	0	0	0	0
OUTSIDE TOTAL															0
TOTAL INTRASTATE			5,720	2,000	4,570	11,590	17,012	19,955	19,605	15,968	7,658	2,285	1,142	1,142	108,647
TOTAL INTERSTATE			0	0	0	0	0	0	0	8,620	10,320	4,840	1,220	25,000	
TOTAL			5,720	2,000	4,570	11,590	17,012	19,955	19,605	15,968	16,278	12,605	5,982	2,362	133,647

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

William R. Rhodes
Governor



Joseph Manuel
Lieutenant Governor

September 8, 2009

Arizona Water Banking Authority
Attn.: Kim Mitchell
3550 North Central Avenue
Phoenix, Arizona 85012

Re: Response to August 13, 2009 letter from the AWBA to the Gila River Indian Community regarding plans to set up the Southside Replenishment Bank and direct delivery of 1,000 acre feet

Dear Ms. Mitchell:

Thank you for your letter of August 13, 2009. I am writing in response to advise you that your proposed direct delivery of 1,000 acre feet as outlined in your letter is acceptable to the Gila River Indian Community (the "Community"). If you have further questions or need to make delivery arrangements, please contact Gary Parker, Acting General Manager for the Gila River Indian Irrigation and Drainage District or Tim Pierson of the Community's Law Office.

This approval is also with the understanding that the AWBA will make appropriate arrangements for reimbursement to the Community for the costs associated with these 1,000 acre feet.

Thank you for following up on this matter.

Sincerely,


William R. Rhodes, Governor
Gila River Indian Community

cc: Jennifer Giff, General Counsel, GRIC Law Office
Gary Parker, Director, Acting General Manager, GRIC Irrigation & Drainage District
Tim Pierson, Associate Water Counsel II, GRIC Law Office

Table 2
Preliminary Water Delivery Schedule (Acre-Feet)
Calendar Year 2010

AWBA-Recharge Sites		Permitted Capacity (AF)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
PHOENIX AMA :															
USF	West Maricopa Combine	25,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	HIEROGLYPHIC	35,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	AGUA FRIA	100,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	TONOPAH DESERT	150,000	3,000	3,000	6,000	6,000	6,000	6,000	6,000	2,603	0	0	0	0	38,603
	TONOPAH Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
															38,603
CSF	RWCD	105,000	2,500	2,500	0	0	0	0	0	0	0	0	0	0	5,000
	CHANDLER HGTS ID	3,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	NEW MAGMA	54,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	QUEEN CREEK	28,000	0	0	0	0	0	0	0	1,343	2,285	2,285	1,142	1,142	8,197
	TONOPAH ID	15,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL INTRASTATE		5,500	5,500	6,000	6,000	6,000	6,000	6,000	3,946	2,285	2,285	1,142	1,142	51,800
	TOTAL INTERSTATE		0	0	0	0	0	0	0	0	0	0	0	0	0
AMA TOTAL			5,500	5,500	6,000	6,000	6,000	6,000	6,000	3,946	2,285	2,285	1,142	1,142	51,800
PINAL AMA :															
GSF	CAIDD	110,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	400	11,400
	CAIDD Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
	HOHOKAM	55,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	400	11,400
	HOHOKAM Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
	MSIDD	120,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	400	11,400
	MSIDD Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL INTRASTATE		3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	1,200	34,200
	TOTAL INTERSTATE		0	0	0	0	0	0	0	0	0	0	0	0	0
AMA TOTAL			3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	1,200	34,200
TUCSON AMA:															
USF	AVRA VALLEY	11,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	PIMA MINE RD	30,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	LOWER SANTA CRUZ	50,000	2,500	2,500	0	0	0	0	2,500	2,500	2,500	2,500	2,500	2,500	20,000
	LSC Interstate		0	0	0	0	0	0	0	0	0	0	0	0	0
	CAVSARP	100,000	0	2,500	3,500	4,000	4,000	5,000	5,000	5,000	2,000	0	0	0	31,000
	SAVSARP	60,000	0	2,500	2,500	2,500	2,500	0	0	0	0	0	0	0	10,000
															61,000
CSF	BKW FARMS	14,316	0	0	0	0	0	0	0	0	0	0	0	0	0
	KAI FARMS (Red Rock)	11,231	0	0	0	0	0	0	0	0	0	0	0	0	0
															0
	TOTAL INTRASTATE		2,500	5,000	3,500	4,000	4,000	5,000	7,500	7,500	4,500	2,500	2,500	2,500	61,000
	TOTAL INTERSTATE		0	0	0	0	0	0	0	0	0	0	0	0	0
AMA TOTAL			2,500	5,000	3,500	4,000	4,000	5,000	7,500	7,500	4,500	2,500	2,500	2,500	61,000
Outside AMA:															
	HARQUAHALA VALLEY ID	50,000	0	0	0	0	0	0	0	0	0	0	0	0	0
OUTSIDE TOTAL															0
TOTAL INTRASTATE			11,000	13,500	12,500	13,000	13,000	14,000	16,500	14,446	9,785	7,785	6,642	4,842	147,000
TOTAL INTERSTATE			0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL RECHARGE			11,000	13,500	12,500	13,000	13,000	14,000	16,500	14,446	9,785	7,785	6,642	4,842	147,000
DIRECT DELIVERY (Non-Storage):															
	Southside Replenishment Bank		0	0	0	0	1,000	0	0	0	0	0	0	0	1,000
	Southside Replenishment Obligation		0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL DIRECT		0	0	0	0	1,000	0	0	0	0	0	0	0	1,000
TOTAL DELIVERIES			11,000	13,500	12,500	13,000	14,000	14,000	16,500	14,446	9,785	7,785	6,642	4,842	148,000

Table 4. 2010 Water and Facility Rates

CAWCD delivery rate to AWBA	\$133 per acre-foot
Interstate rate	\$231 per acre-foot
Groundwater Savings Facility operator portion of delivery rate ¹	
Intrastate	\$33 per acre-foot
Interstate	\$26 per acre-foot
Underground Storage Facility rate paid by AWBA	
Agua Fria Recharge Project (CAWCD) ²	\$8.00 per acre-foot
Hieroglyphic Mtns. (CAWCD) ²	\$8.00 per acre-foot
Tonopah Desert Recharge Project (CAWCD) ²	\$8.00 per acre-foot
West Maricopa Combine	\$26.00 per acre-foot
Avra Valley (CAWCD) ³	\$15.00 per acre-foot
Lower Santa Cruz (CAWCD/Pima County) ³	\$15.00 per acre-foot
Pima Mine Road (CAWCD) ³	\$15.00 per acre-foot
Clearwater Facility (Tucson Water)	\$14.30 per acre-foot

¹ This rate is paid directly to CAP by the GSF operators and is not available as revenue to the AWBA. The AWBA's rate for delivery of in lieu water is thus reduced to \$100/af for intrastate deliveries and \$205/af for interstate deliveries.

² Additional capital charge of \$15 per acre-foot for interstate storage.

³ Additional capital charge of \$9 per acre-foot for interstate storage.

Table 5. Funding for 2010 Annual Plan of Operation

	Funds Available (\$)		Funds Utilized (\$)		Credits (AF)
	AWBA	CAWCD	AWBA	CAWCD	
Withdrawal Fees					
Phoenix AMA	\$1,700,000	-	\$1,700,000	-	13,250
Pinal AMA ¹	\$1,525,000	-	\$1,525,000	-	12,810
Tucson AMA	\$450,000	-	\$450,000	-	2,800
Four Cent Tax					
Phoenix AMA	\$0	\$110,217,000	\$0	\$4,412,000	34,400
Pinal AMA	\$0	\$2,032,000	\$0	\$2,028,000	18,660
Tucson AMA ²	\$0	\$8,618,000	\$0	\$8,578,000	53,320
Other					
General	\$0				
Phoenix AMA		-	\$0	-	0
Pinal AMA		-	\$0	-	0
Tucson AMA		-	\$0	-	0
Indian Firming	\$0				
Phoenix AMA		-	\$0	-	0
Pinal AMA		-	\$0	-	0
Tucson AMA		-	\$0	-	0
Gifts, Grants, Donations					
Shortage Reparations (NV):	\$0				
Phoenix AMA		-	\$0	-	0
Pinal AMA		-	\$0	-	0
Tucson AMA		-	\$0	-	0
Interstate Banking- Nevada					
Operating ³	\$43,315,000		\$0		0
Resource	\$5,169,000		\$0		0
	Total Funds Available		Total Funds Expended		Credits
	\$173,026,000		\$18,693,000		135,240

¹ Includes expenditures for 1,000 acre-feet of direct deliveries for establishing the Southside Replenishment Bank under the Gila River Indian Water Settlement Program.

² Includes CAWCD's capital charge recovery for costs of construction of state demonstration projects when facilities are used for interstate purposes and by entities that do not pay the 4¢ *ad valorem* tax. Revenue through 2009 is estimated to be \$1,719,467.

³ The amount of funding that will be available from the Southern Nevada Water Authority if water becomes available for interstate storage.



TOHONO O'ODHAM NATION

OFFICE OF THE CHAIRMAN AND VICE CHAIRMAN

We:si: T-we:ni

ALL OF US TOGETHER

NED NORRIS JR.
CHAIRMAN

ISIDRO LOPEZ
VICE CHAIRMAN
August 20, 2009

Kim Mitchell, Manager
Arizona Water Banking Authority
3550 North Central Avenue
Phoenix, Arizona 85012

Re: Tohono O'odham Nation – Offer to Sell Storage Credits

Dear Ms. Mitchell:

In accordance with A.R.S. §45-841.01.F.3., the Tohono O'odham Nation hereby offers to sell to the Arizona Water Banking Authority (AWBA) 234 long-term storage credits accrued to the Nation during 2008 as provided for in the above-referenced statute.

The price payable by the AWBA for each long-term storage credit shall be \$97.00 pursuant to the Central Arizona Project Final 2009/2010 Rate Schedule effective June 4, 2009.

Please advise at your earliest convenience whether the AWBA would like to purchase these long-term storage credits. If so, we will make proper arrangements with the Arizona Department of Water Resources to make the transfer of the credits upon receipt of the funds which we calculate total \$22,698.00.

If you have any questions or would like to discuss this matter further, please feel free to contact Jonathan Jantzen, Attorney General of the Tohono O'odham Nation, at 520-383-3410 or at jonathan.jantzen@tonation-nsn.gov.

Sincerely,

Ned Norris, Jr.
Chairman

cc: Gregg Houtz, Deputy Counsel, Arizona Department of Water Resources
Robert Hoffman, Counsel to Asarco LLC
Steve Weatherspoon, Counsel to Tohono O'odham Nation
Jonathan Jantzen, Attorney General, Tohono O'odham Nation
Thomas Luebben, Counsel to San Xavier Allottees Association
Louis Barassi, Counsel to San Xavier District
Selso Villegas, Director, Tohono O'odham Nation Department of Water Resources

P.O. BOX 837 • SELLS, ARIZONA 85634

PHONE: 520 282 2028 FAX: 520 282 2270

Draft RESOLUTION 2009-1
of the
Arizona Water Banking Authority

WHEREAS, the Commission of the Arizona Water Banking Authority (“Commission”) has entered into the Second Amended Agreement for Interstate Water Banking (“Agreement”) with Nevada;

WHEREAS, the Agreement has a provision that allows the Commission’s authorized representative to make changes to specific articles of the Agreement;

WHEREAS, the Chairman of the Commission has been identified as the authorized representative;

WHEREAS, the Agreement has no specific guidance on the extent of the authorized representative’s authority;

WHEREAS, the members of the Commission deem that it is in the best interest of the Commission to provide such guidance.

NOW, THEREFORE, BE IT RESOLVED by the Commission as follows:

1. The authorized representative may modify or amend provisions of the Agreement that deal with performance dates, annual quantities of Intentionally Created Unused Apportionment and administration fees;
2. The authorized representative may not modify or amend provisions of the Agreement that deal with the quantity of long-term credits to be accrued or payment amounts by Nevada, other than administration fees;
3. Before modifying or amending the Agreement in a manner authorized by paragraph 1 above, the authorized representative shall consult individually

with each Commission member. If a Commission member determines that the proposed modification or amendment is outside the scope of the authorized representative's authority as provided in paragraph 1, the modification or amendment shall be referred to the Commission for further discussion and possible formal action. In such an event, the authorized representative shall not make the amendment or modification unless specifically authorized to do so by the Commission;

4. If the Chairman cannot act as the authorized representative due to a conflict of interest, illness or other circumstance, the Commission shall appoint an alternate authorized representative who shall be a member of the Commission.

IN WITNESS WHEREOF, the Chairman of the Commission ratifies the action of the Commission approving this Resolution by affixing his signature below on this _____ day of _____, 2009.

Herbert R. Guenther, Chairman
Arizona Water Banking Authority

Attest:

Thomas Buschatzke, Secretary
Arizona Water Banking Authority

Long-term Storage Credits Accrued on Behalf of Nevada

	Year	Credits ¹ Earned	Cumulative Credits	Percent of Goal Achieved (1,250,000 AF)	Cost of Storage	Received from SNWA		Funds Available	
						Subaccounts		Subaccounts	
						Resource	Operating	Resource	Operating
Actual	2002	61,098	61,098	5%	\$ 8,617,393	\$ 5,000,000		\$ -	
	2003	50,000	111,098	9%	\$ -	\$ 3,723,945		\$ 106,552 ²	
	2004	14,162	125,260	10%	\$ 2,899,647	\$ 1,330,000		\$ -	
	2005	111,805	237,065	19%	\$ 25,723,366	\$ 100,000,000		\$ 72,813,539 ³	
	2006	175,569	412,634	33%	\$ 35,386,306	\$ -		\$ 37,427,233	
	2007	114,886	527,520	42%	\$ 21,853,906	\$ -		\$ 15,573,327	
	2008	0	527,520	42%	\$ -	\$ -		\$ 15,573,327	
Estimated	2009								
	1 st Quarter	0	527,520	42%	\$ -	\$ (8,564,916) ⁴		\$ 7,008,411	
	2 nd Quarter	1,200	528,720	42%	\$ 267,030	\$ -		\$ 6,741,381	
	3 rd Quarter	6,817	535,537	43%	\$ 1,517,310	\$ -	\$ 2,685,000	\$ 5,874,474 ⁵	\$ 2,685,000
	Sub-total				\$ 94,747,648				
	4 th Quarter	15,233	550,770	44%	\$ 3,390,660	\$ -	\$ -	\$ 5,168,814	\$ 3,540
Total				\$ 98,138,308	\$ 101,489,029	\$ -	\$ 5,168,814	\$ 3,540	

¹ 2003 credits transferred from CAWCD pursuant to Amended Agreement for Interstate Water Banking. Credits for 2009 are estimated.

² Includes expenditure of \$3,617,393 from monies collected in 2003 as part of the 2002 reconciliation.

³ Includes expenditure of \$1,463,095 from monies collected in 2005 as part of the 2004 reconciliation.

⁴ Pursuant to S.B.1001, \$12.7 million was transferred from the Arizona Water Banking Fund; \$8.57 million of the total reduction was transferred from the NV Resource Acct.

⁵ Includes expenditure of \$650,404 in interest that had accrued on monies previously disbursed to CAWCD.

ARIZONA WATER BANKING AUTHORITY

INTERSTATE WATER BANKING REPORT Fiscal Year 2009



Submitted

October 1, 2009

Interstate Water Banking Report Requirement

Section 2473 to Title 45, Chapter 14, Article 4 directs the Arizona Water Banking Authority (AWBA) to submit a report about interstate water banking to the Joint Legislative Budget Committee on or before October 1 of each year for the previous fiscal year. This report contains information for fiscal year 2009.

The report requires an accounting report of the AWBA's interstate water banking activities with the State of Nevada, including the Southern Nevada Water Authority (SNWA), and includes the following:

1. An accounting of all monies received through the Interstate Water Banking Agreement (Agreement) with the (SNWA).
2. An accounting of all disbursements made with interstate monies, including monies used to purchase or store water.
3. An accounting of any prepaid monies to the Central Arizona Water Conservation District (CAWCD).
4. An accounting of any monies received under the Agreement that are placed in an account with the State Treasurer.
5. Any contract that obligates the AWBA to pay or disburse monies to any other entity, including the CAWCD.

Section 2473 directs that the AWBA may only use the monies received pursuant to an interstate water banking agreement to pay the costs directly incurred in meeting the interstate water banking obligations.

BACKGROUND

The "Law of the River" is comprised of federal and state statutes, interstate compacts, court decisions and decrees, contracts with the United States, an international treaty, operating criteria and administrative decisions concerning the Colorado River. Together, these have resulted in a division of the waters of the Colorado River among the various states and their water users. Over the past several years, the seven states that utilize the Colorado River (the Basin states) have had discussions over various issues and the majority of the issues have been resolved via negotiation instead of litigation. Currently, the issue facing the Basin states is drought and the potential impact to river operations and water supply. Because Arizona is the most junior user on the river, it is important for the state to take steps to protect the Colorado River water supply for Arizona water users.

The 2006 U.S. Supreme Court Consolidated Decree in *Arizona v. California*, confirmed the allocation of water to the three states of the Lower Colorado River basin. This allocation is 4.4 million acre-feet (maf) to California, 2.8 maf to Arizona and 300,000 acre-feet to Nevada.

Agreement for Interstate Water Banking

On July 3, 2001, the Agreement for Interstate Water Banking (2001 Agreement) among the AWBA, the Southern Nevada Water Authority (SNWA) and the Colorado River Commission of Nevada (CRCN) was executed¹. In the 2001 Agreement, the AWBA agreed to use its "best efforts" to store water in Arizona in an amount sufficient to develop an aggregate total of 1.25 million acre-feet of long-term storage credits. Those credits would then be recovered to develop Intentionally Created Unused Apportionment (ICUA) for Nevada as a temporary supply of water to allow Nevada time to develop other long-term water supplies. The 2001 Agreement contained specific provisions to insure that any water stored for Nevada was water that could not be utilized by water users in Arizona. Nevada would pay the full cost of water delivery and storage in addition to all costs associated with recovery of the long-term storage credits.

In 2004, Nevada began exploring alternative ways to meet their water supply needs and approached Arizona with a proposal to amend the 2001 Agreement in such a manner that Nevada's water supply could be made more secure in the shorter term. The AWBA began negotiations regarding amendments to the original agreement with SNWA and CAWCD staff.

Amended Agreement for Interstate Water Banking

The intent of the amendments was to assure Nevada access to the full 1.25 million acre-feet anticipated under the 2001 Agreement. For this access, Nevada would continue to bear the full cost of storing excess CAP water and later recovering that water. Nevada would also provide \$100 million to the State of Arizona to ensure that Arizona could acquire additional water resources if conditions warranted.

In summary, the amendments negotiated were as follows: (1) guaranteed Nevada a total of 1.25 million acre-feet of credits; (2) recognized that water other than Colorado River water may be the source of credits; (3) Nevada would pay the full cost of delivery, storage and recovery in addition

¹ For purposes of this discussion, the SNWA and the CRCN will be collectively referred to as "Nevada".

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to the \$100 million to mitigate the risk of the guarantee; (4) identified a set schedule for recovery of long-term storage credits; and (5) a sufficient supply of credits would be recovered to allow Nevada to use up to 340,000 acre-feet during a declared shortage on the Colorado River. The Amended Agreement for Interstate Water Banking (Amended Agreement) was approved by the AWBA Commission on December 9, 2004 and executed on February 3, 2005.

The two most significant provisions of the Amended Agreement are that Arizona has now guaranteed Nevada that a sum total of 1.25 million acre-feet of credits will be developed on their behalf. In exchange for this guarantee, Nevada agreed to pay Arizona \$100 million above the actual cost of water delivery and storage. The initial \$100 million dollar payment was made in two installments in 2005, and deposited in a Resource Account of the AWBA Fund .

The AWBA began storing water pursuant to the Amended Agreement in 2005, under a provision recognizing that the AWBA may store water on behalf of SNWA prior to the commencement of scheduled payments, using a loan from the Resource Account. The Annual Report published by the AWBA in July of each year, for the previous calendar year, details the amount of interstate water stored and long-term storage credits accrued by the AWBA. The Amended Agreement provides a temporary water supply for Nevada allowing time for development of other non-Colorado River resources and it provides Arizona additional flexibility to achieve its long-term water management goals.

The loans from the Resource Account, has allowed the AWBA to take advantage of the available water supply and store water on Nevada's behalf. Credits accrued by Nevada through the end of calendar year 2008 totaled 527,520 acre-feet (AWBA Annual Report 2008, Table 4). No water was stored on behalf of Nevada in calendar year 2008 due to limited water availability. (Note: the total volume of interstate credits accrued through calendar year 2007 has increased by 73 acre-feet from the volume previously reported, 527,447 acre-feet, due to an adjustment following final confirmation by ADWR).

In January, 2009, the AWBA held a special meeting in response to a request from SNWA for the opportunity to discuss potential changes to the Amended Agreement. The type of modifications discussed focused on creating flexibility in the interstate operations and included allowing changes to the schedule dates and period, dates of water recovery, and coordination schedules in forecasting water storage and recovery. The AWBA agreed that conditions had changed since the Amended Agreement was executed and agreed to toll the performance dates for a period of 90 days to allow time for both state parties to work on permanent modifications to the Amended Agreement.

Second Amended Agreement for Interstate Water Banking

On April 1, 2009, the AWBA approved and executed the Second Amended Agreement for Interstate Water Banking (Second Amended Agreement; Interstate Agreement). While the Second Amended Agreement does provide flexibility in administering the contract, it did not change provisions requiring Nevada to pay the full cost of storage and recovery or Arizona's obligation to create 1.25 million acre-feet of long-term storage credits.

The AWBA Plan of Operation for 2009 approved in December, 2008 did not include storing water for Nevada because of limited water availability. Pursuant to the Second Amended Agreement and because no water was scheduled to be stored in 2009, Nevada requested that the initial

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payment of \$23 million to the Operating Account be delayed. The intent of the Operating Account is to pay for the delivery and storage of water (see description of Operating Account in section entitled Interstate Accounting).

Recognizing that additional water became available to the AWBA in March, 2009, the AWBA amended its Annual Plan of Operation for 2009 to include storage for Nevada. The AWBA notified SNWA of this fact in a letter agreement executed with SNWA that approved a modification to the payment schedule. In the letter agreement, SNWA was notified that a partial payment to the Operating Account would be required to pay the cost of delivery and storage of the new water supplies that became available for interstate banking.

Presently, an estimated 25,000 acre-feet of interstate water are forecasted to be delivered during the 2009 calendar year (AWBA Annual Plan of Operation 2009, Amended Table 2). The AWBA will have an estimated, cumulative total of 550,770 acre-feet of credits stored on behalf of Nevada by the end of calendar year 2009. These credits amount to about 44% of the total 1.25 million acre-feet of water storage guaranteed to Nevada. Although this interstate report is based on fiscal year accounting, the AWBA operates on a calendar year. The AWBA approves a Plan of Operation for the entire year through the end of 2009; thus, the credits are estimated through the end of 2009.

Benefits to Arizona

Our Interstate Agreement with Nevada provides an opportunity for the State of Arizona to secure numerous benefits for Arizona water users. Current projections indicate excess water within Arizona's 2.8 million acre-foot entitlement will be available for storage in the future. Without interstate banking, the AWBA does not have sufficient in-state funding to store the quantities of excess CAP water currently projected to be available. Interstate water banking is a mechanism that can maximize Arizona's utilization of its 2.8 million acre-foot entitlement.

The Interstate Agreement also provides additional financial resources that could be used to develop alternative water supplies. Additionally, water stored for interstate purposes provides revenues for the Arizona Water Protection Fund, which is the sole state funding source for riparian protection in Arizona. Furthermore, the water that Nevada may recover has and will help facilitate the full development of recovery arrangements for Arizona water users. Most importantly, the Interstate Agreement helps strengthen Arizona's interstate relationship with Nevada. A strong relationship is critical as the seven Basin states continue discussions regarding the drought and shortages on the Colorado River.

INTERSTATE ACCOUNTING

Pursuant to the Second Amended Agreement, funds are to be received by the AWBA from the SNWA in two ways:

1. \$100 million will be used to guarantee that AWBA can meet the terms of the Interstate Agreement. This amount is intended to be the “insurance” payment to be used to develop alternative water resources to meet obligations to Nevada. Any alternative water supplies developed under the Second Interstate Agreement that are not needed to meet the Nevada obligation would be available for Arizona water users. This payment was made upon request in two installments in June, 2005 and October, 2005 and deposited into a “Resource Account”. If the \$100 million is not needed as “insurance” then it continues to be available to Arizona for whatever purpose deemed appropriate.
2. \$230 million was scheduled to be paid in 10 annual payments of \$23 million beginning in 2009 and deposited into an “Operating Account”. Money in the Operating Account will be used to pay CAWCD for the cost of water delivery and to pay facility operators for storage. The Second Amended Agreement now recognizes additional flexibility in operations. The AWBA and SNWA executed a letter agreement on April 2, 2009 approving a modification to the payment schedule for 2009 given the availability of excess CAP water.

The total quantity of interstate storage is dynamic from year to year, but cannot exceed a quantity that would result in more than 200,000 acre-feet of long-term storage credits in any year pursuant to the Storage and Interstate Release Agreement (SIRA) among the Secretary of the Interior, the AWBA, the SNWA and CRCN. As stated above, \$100 million was received from Nevada in two installments in 2005 and deposited in a subaccount with the Arizona State Treasury. In fiscal year 2009, the AWBA did not receive any additional funds from SNWA for the delivery and storage of water pursuant to the Interstate Agreement.

On February 1, 2009, Governor Brewer signed into law Senate Bill 1001 that addressed budget reductions and transfers for FY 2009. The total legislative transfer from the Arizona Water Banking Fund was \$12.7¹ million. As a result of Senate Bill 1001, \$8.57 million of the total reduction was transferred from the Nevada Resource Account (see Interstate Accounting FY 2009 table).

It is important to note that although this report is based on fiscal year accounting, the AWBA operates on a calendar year. A.R.S. § 45-2456 requires by January 1 of each year, the AWBA shall adopt a Plan of Operation for that calendar year. Along with adoption of the annual Plan of Operation, funds are committed for the purchase, delivery, and storage of water for that calendar year.

¹ SB 1001 signed February 1, 2009 specifically identified \$12.6 million to be transferred from the Arizona Water Banking Fund [Sec. 4(A)(47) \$9,196,600; Sec. 5(A)(36) \$387,300; Sec. 14 \$3,000,000]. An additional transfer of \$130,700 was identified by JLBC in March, 2009 pursuant to SB 1001 [Sec. 7]. Total legislative transfer from the Arizona Water Banking Fund pursuant to SB 1001 was \$12,714,600.

INTERSTATE ACCOUNTING - Fiscal Year 2009						
Interstate Accounts	Beginning Balance FY 2009	\$ Received from NV ¹	Disbursements ²	Prepayment Forwarded to CAWCD ³	AZ State Treasury End of FY Balance ⁴	\$ Committed for AWBA CY Plan of Operation ⁵
Resource	\$18,936,271	- 0 -	\$8,564,916	- 0 -	\$10,715,149 ⁶	- 0 -
Operating	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	\$2,685,000

¹Initial payment of \$100 million deposited into a "Resource Account" in 2005. Ten subsequent payments of \$23 million were scheduled to begin annually in 2009 to be deposited into an "Operating Account" (see Interstate Accounting section for description of payment modification).

²Monies disbursed from "Resource Account" at Arizona State Treasurer's Office as a consequence of SB 1001 signed February 1, 2009. No monies were disbursed for the purchase and storage of water.

³Prepaid monies forwarded to CAWCD for delivery and storage of water on behalf of SNWA.

⁴End of fiscal year balance, including accrued interest, in subaccount at Arizona State Treasurer's Office.

⁵Monies committed for purchase of deliveries and storage of interstate water for remainder of the calendar year. Monies in the Operating Account to be received in FY 2010.

⁶SB 1188 and HB 2643 ("Trailer bill" making revisions to SB 1188) signed July 1, 2009 transferred an additional \$5.4 million from the Resource Account; this transfer will be reflected in the FY 2010 report to JLBC.

THIRD AMENDED AGREEMENT FOR INTERSTATE WATER BANKING

among

**The Arizona Water Banking Authority
and
The Southern Nevada Water Authority and The
Colorado River Commission of Nevada**

This Second Amended Interstate Water Banking Agreement (Agreement) is made as of April __, 2009 (Effective Date), among the Arizona Water Banking Authority (AWBA), and the Southern Nevada Water Authority (SNWA) and the Colorado River Commission of Nevada (CRCN), collectively referred to as "Parties" and individually as "Party."

Recitals

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 conditions of A.R.S. §§ 45-2427 and 45-2471 have been satisfied, this Agreement conforms to all of the requirements of such sections and all other applicable provisions of Arizona law, and AWBA is empowered to enter into this Agreement.

B. The Southern Nevada Water Authority 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 Consolidated Decree.

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. 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 crediting of Long-term Storage Credits, and the development of ICUA for SNWA.

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.

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.

F. The Original Agreement was amended on January 1, 2005 (Amended Agreement) whereby the Parties amended and restated 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.

G. Prior to the effective date of the Amended Agreement, AWBA established a long-term storage sub-account entitled "SNWA Interstate Account" with the Arizona Department of Water Resources (ADWR). As of the effective date of the Amended Agreement 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.

ARTICLE 1

DEFINITIONS, FUNDAMENTAL PRINCIPLES AND TERMS

1.1 Definitions. For purposes of this Agreement, terms that are defined in Article I of the Consolidated Decree, terms that are defined in Arizona Revised Statutes (A.R.S.) 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.

1.1.1 "ADWR" shall mean Arizona Department of Water Resources.

1.1.2 "Agreement" shall mean this Amended Agreement for Interstate Water Banking.

1.1.3 "AWBA" shall mean the Arizona Water Banking Authority.

- 1.1.4 "AWBA Plan of Operation" shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.
- 1.1.5 "Bureau of Reclamation" shall mean the United States Bureau of Reclamation, Lower Colorado Region.
- 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.
- 1.1.7 "CAWCD" shall mean the Central Arizona Water Conservation District.
- 1.1.8 "CRCN" shall mean the Colorado River Commission of Nevada.
- 1.1.9 "Consolidated Decree" shall mean the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 126 S.Ct. 1543, 547 U.S. 150 (2006).
- 1.1.10 "Excess CAP Water" shall mean CAP water that is available for distribution by CAWCD in accordance with §8.7(e) of the Master Repayment Contract or §5(d)(2) of the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and Ultimate Judgment 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.*, No. CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC (consolidated), and in accordance with policies established by the CAWCD Board.
- 1.1.11 "ICUA" shall mean Intentionally Created Unused Apportionment as that term is defined in 43 C.F.R. § 414.2.
- 1.1.12 "Interstate Recovery Schedule" shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.
- 1.1.13 "Long-term Storage Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).
- 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.
- 1.1.15 "Recovery Facilities" shall mean constructed facilities capable of recovering both intrastate and interstate Long-term Storage Credits.

- 1.1.16 "Secretary" shall mean the Secretary of the Interior for the United States, Department of the Interior.
- 1.1.17 "SNWA" shall mean the Southern Nevada Water Authority.
- 1.1.18 "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR pursuant to Subarticle 2.2.4 of the Original Agreement.
- 1.1.19 "Statutory Costs" means those costs specified in A.R.S. §§ 45-2471(C)(1) through (5), and (8) that are incurred by AWBA under Subarticle 2.1.1 after the Effective Date in connection with causing the crediting of Long-term Storage Credits in a gross amount of 1,250,000 acre-feet to the SNWA Interstate Account.
- 1.1.20 "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.
- 1.1.21 "Year" shall mean a calendar year.

1.2 Fundamental Principles of this Agreement

- 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. AWBA will not engage in interstate banking to the detriment of any water user in Arizona in fulfilling its obligations under this Agreement.
- 1.2.2 Under the terms of this Agreement, AWBA shall acquire and store mainstream Colorado River water in Arizona and cause Long-term Storage Credits to be credited and held in the SNWA Interstate Account. AWBA shall utilize the Long-term Storage Credits at a later date 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 (SIRA) and an Agreement for the Development of Intentionally Created Unused Apportionment. In furtherance of its performance under this Agreement, the AWBA has also entered into 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.
- 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 shall accrue to either SNWA or CRCN by this Agreement. Neither SNWA nor CRCN shall have any rights in this interstate banking arrangement except as provided in this Agreement.

1.2.4 AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by the Agreement Relating to Implementation of Interim Colorado River Surplus Guidelines between SNWA and The Metropolitan Water District of Southern California, dated May 16, 2002.

1.2.5 This Agreement is intended to operate for the mutual benefit of the citizens of the State of Arizona and the citizens of the State of Nevada. 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.

1.3 Term of Agreement

This Agreement becomes effective when executed by all Parties. This Agreement shall terminate when all of the Long-term Storage Credits specified in Subarticle 2.1.1 have been credited to the SNWA Interstate Account and all such credits have subsequently been recovered, or on June 1, 2060, 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 Parties.

ARTICLE 2

DELIVERY AND STORAGE

2.1 Crediting Long-term Storage Credits for SNWA; Annual Plan of Operation

2.1.1 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.

2.1.2 AWBA 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.

- 2.1.3 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.
 - 2.1.4 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.
- 2.2 Delivery and Storage of Water by AWBA for SNWA. Delivery and storage of any water under the terms of this Agreement shall be subject to the following requirements:
- 2.2.1 The delivery of water to storage shall be pursuant to the Agreement between CAWCD and the AWBA Providing for the Delivery of Excess CAP Water, whereby AWBA is entitled to purchase Excess CAP Water from CAWCD for interstate banking purposes.
 - 2.2.2 AWBA shall obtain and maintain all necessary water storage permits from ADWR to allow storage under the terms of this Agreement.
 - 2.2.3 The storage of water shall be pursuant to AWBA's agreements with various Storage Facility operators whereby AWBA is entitled to store water at those various Storage Facilities.
 - 2.2.4 AWBA agrees that the storage of water under this Agreement shall take into account the location, manner and cost of storing all water stored by AWBA in the State of Arizona. AWBA agrees that the selection of storage facilities for water stored under this Agreement and for others in Arizona shall not be made in a manner that unreasonably allocates the higher storage cost to the storage of water under this Agreement.
- 2.3 SNWA Interstate Account
- 2.3.1 AWBA shall monitor the crediting 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 credited through storage for SNWA or transferred or otherwise credited to the SNWA Interstate Account are properly accounted for in such account.

2.3.2 AWBA 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 and CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed. ADWR determines the amount of Long-term Storage Credits that are credited to 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.

2.4 Payments by SNWA

2.4.1 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 by SNWA as specified in Subarticles 2.4.1.1 and 2.4.1.2.

2.4.1.1 SNWA shall make a payment of \$100,000,000.00 within 10 working days of the request by AWBA for such payment made after the Effective Date, which shall be deposited into a Resource Account, which shall be established by the AWBA. SNWA shall have no authority as to the use of the Resource Account.

2.4.1.2 SNWA shall make ten payments of \$23,000,000.00 each by January 10 of each Year commencing in 2009 and ending in 2018, which shall be deposited into an interest-bearing Operating Account, which shall be established by the AWBA and used by the AWBA only in connection with deposits of SNWA payments under this Subarticle, payment of Statutory Costs, and loan transactions involving the Resource Account under Subarticle 2.4.1.3. Interest earned on the Operating Account shall accrue to that account for use in accordance with this Agreement. The terms established by this Subarticle may be changed upon written agreement of AWBA's authorized representative and the SNWA's General Manager.

2.4.1.3 AWBA may, at its sole discretion, loan funds from the Resource Account to the Operating Account, for the purpose of fulfilling its obligations under this Agreement, but any loaned funds must be repaid from the Operating Account to the Resource Account, with interest, no later than June 10, 2018. For purposes of this paragraph, interest each Year shall be computed based on the average rate of return on the Operating Account for that Year.

- 2.4.2 The provisions of this Subarticle 2.4.2 shall apply for purposes of ensuring that payments by SNWA under this Agreement meet the requirements of A.R.S. § 45-2471(C).
- 2.4.2.1 The Parties acknowledge that payments made by SNWA to AWBA prior to the Effective Date cover at least all costs specified in A.R.S. §§ 45-2471(C)(7) with respect to those Long-term Storage Credits referenced in Recital G(2).
- 2.4.2.2 The Parties further acknowledge AWBA's conclusion that, other than those costs for which SNWA will reimburse AWBA under Subarticle 2.4.3, the payments to be made by SNWA under Subarticle 2.4.1 will be 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 under this Article 2 after the Effective Date, subject to the adjustment provisions of Subarticles 2.4.2.5 and 2.4.2.6. Such reimbursed costs include, without limitation, (1) any costs associated with ensuring that AWBA is able to perform its obligations under Subarticle 2.1.1, and (2) all Statutory Costs incurred by AWBA.
- 2.4.2.3 The Parties further acknowledge that, for purposes of A.R.S. § 45-2471(C)(1), AWBA's cost of acquiring Colorado River water is the cost charged by the United States to CAWCD under CAWCD's federal water delivery contract for delivering such water.
- 2.4.2.4 By June 30 of each Year AWBA shall provide an annual accounting to SNWA for the period from the Effective Date through December 31 of the prior Year showing (1) all transactions involving the Operating Account during the preceding Year, including loans from the Resource Account, payments to the Resource Account of principle and interest on such loans, and a detailed statement of all Statutory Costs incurred by AWBA, and (2) a summary by Year of all Statutory Costs incurred by AWBA in prior Years.
- 2.4.2.5 If the annual accounting under Subarticle 2.4.2.4 indicates that there are insufficient funds in the Operating Account to complete the accrual of 1,250,000 acre-feet of Long-term Storage Credits for crediting to the SNWA Interstate Account, then the parties shall meet and confer regarding the accrual of additional Long-term Storage Credits by AWBA and the payment of additional funds by SNWA. At its sole discretion SNWA may reduce AWBA obligation to develop 1,250,000 acre-feet of Long-term Storage Credits for the SNWA Interstate Account. If SNWA determines

not to reduce AWBA obligation to develop 1,250,000 acre-feet of Long-term Storage Credits for the SNWA Interstate Account, SNWA shall pay all additional Statutory Costs required to complete the accrual of 1,250,000 acre-feet of Long-term Storage Credits.

- 2.4.2.6 By June 30 of the Year after the Year in which an aggregate of 1,250,000 acre-feet of Long-term Storage Credits have been credited to the SNWA Interstate Account and all loans from the Resource Account to the Operating Account have been repaid, with interest, AWBA shall pay to SNWA any remaining balance in the Operating Account established pursuant to Subarticle 2.4.1.2 and no additional payments shall be made by SNWA.
- 2.4.3 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 shall equal 15% of ADWR's cost of such 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, employee related expenses, and indirect costs.
- 2.4.4 The fee for administrative services as described in Subarticle 2.4.3 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 15th 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.
- 2.4.5 SNWA shall pay the administrative service fees on or before the first day of the month following the notice of the fees. If such day is not a business day, the payment shall be made on the next succeeding business day.

ARTICLE 3

DEVELOPMENT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT

- 3.1 Extent of Annual Development of ICUA for SNWA
 - 3.1.1 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, as follows:
 - 3.1.1.1 The initial year request for ICUA shall not exceed 20,000 acre-feet, the second year request for ICUA shall not exceed 30,000

acre-feet and any request for ICUA thereafter shall not exceed 40,000 acre-feet.

3.1.2 During any Year as to which the Secretary has determined under Article II(B)(3) of the Consolidated 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. SNWA may require the development of ICUA under this Subarticle only if after consultation with SNWA, the AWBA has determined that sufficient recovery facilities are in place for that Year to meet the needs of CAP M&I subcontractors and any post 1968 domestic use Colorado River contractor in Arizona and SNWA. If it is determined that sufficient recovery facilities are not available, SNWA may require the development of ICUA only to the extent that SNWA has contributed to new facilities in Subarticle 3.4.2.1 or additional facilities in Subarticle 3.5.1 plus any available existing recovery capacity not utilized by the CAP M&I subcontractors and post 1968 domestic use Colorado River contractors.

3.1.2.1 If a shortage determination by the Secretary under Article II(B)(3) of the Consolidated Decree causes a reduction in the Colorado River water available for use by non-Indian municipal and industrial (M&I) CAP subcontractors in any Year under their subcontracts or any other post 1968 domestic use Colorado River contractor in any Year under their contract, SNWA's right to require the recovery of Long-term Storage Credits and the development of ICUA shall be reduced proportionately to the reduction in M&I water supply sustained by CAP subcontractors and any other post 1968 domestic use contractor.

3.2 SNWA Notices for Development of ICUA

3.2.1 For any Year in which SNWA will require the development of ICUA by AWBA and the release of ICUA by the Secretary, SNWA shall confer with the AWBA prior to June 1 of the preceding Year and provide notice of the amount of such ICUA to AWBA by June 1 of the preceding Year.

3.2.2 Between June 1 and September 15 of the Year in which a notice has been given under Subarticle 3.2.1, AWBA staff shall meet and confer with SNWA concerning the proposed location, manner and estimated cost of the development of the specified ICUA.

3.2.3 On or before September 15 of the Year in which a 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 shall provide a copy of such notice to AWBA

3.2.4 The terms established by this Article may be changed upon written agreement of AWBA's authorized representative and the SNWA's General Manager.

3.3 Development of ICUA

3.3.1 Upon receipt of a notice under Subarticle 3.2.1 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 develop the ICUA through recovery methods identified in the corresponding Storage and Interstate Release Agreement. These methods include recovery and exchange of Long-term Storage Credits for Colorado River water and/or credit exchange of Long-term Storage Credits for Colorado River water that would have otherwise been delivered for underground storage in that Year.

3.3.1.1 AWBA shall meet and confer with SNWA concerning the location, manner and cost of recovery when developing the Interstate Recovery Schedule.

3.3.1.2 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.

3.3.1.3 Factors to be considered when preparing the Interstate Recovery Schedule shall include but are not limited to:

3.3.1.3.1 Arizona water management goals,

3.3.1.3.2 CAP operational requirements,

3.3.1.3.3 Water quality requirements,

3.3.1.3.4 Opportunities for shared or joint facilities, and

3.3.1.3.5 Opportunities to reduce recovery costs.

- 3.3.2 Upon receipt of a copy of SNWA's request under Subarticle 3.2.3 to the Secretary for the release of ICUA during the following Year, 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 a notice for the development of ICUA was given to AWBA under Subarticle 3.2.1. AWBA shall identify the amount of ICUA specified to be developed in SNWA's notice under Subarticle 3.2.1 in the AWBA Plan of Operation for the following Year, 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. 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.
- 3.3.3 The choice of facilities utilized to recover the Long-term Storage Credits used to develop the ICUA during any year shall be at the discretion of AWBA.
- 3.3.4 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 Long-term Storage Credits and cause ICUA to be developed in the amount specified in the Secretary's notice. SNWA shall be responsible for all costs of developing the specified ICUA as provided in this Agreement.
- 3.3.5 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, 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.
- 3.3.6 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 amount of credits recovered when AWBA submits its annual report to ADWR. AWBA and SNWA shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed.

3.4 Charges for Developing ICUA

- 3.4.1 SNWA agrees that, except as provided in Subarticle 3.4.3, all costs of the development of ICUA as described in Subarticle 3.3 shall be borne by

SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 3.4, and billed to and paid by SNWA as provided in Subarticle 3.5.

3.4.2 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:

3.4.2.1 A capital component consisting of (1) 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 (2) 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.

3.4.2.2 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.

3.4.2.3 An administrative component calculated as a lump sum to recover the actual administrative cost reasonably incurred by AWBA.

3.4.2.4 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.

3.4.3 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.

3.5 Billing and Payment for Developing ICUA

3.5.1 AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle 3.4.2.1(2) after agreement between

AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.

- 3.5.2 SNWA shall agree to an acceptable repayment schedule for costs specified in AWBA's Subarticle 3.5.1 notice prior to the construction of 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.
- 3.5.3 AWBA shall provide an estimate of the charges for any capital component described in Subarticle 3.4.2.1(2) and the recovery facility O&M described in Subarticle 3.4.2.2 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.
- 3.5.4 SNWA shall pay the estimate of the capital component described in Subarticle 3.4.2.1(2) and the recovery facility O&M charge described in Subarticle 3.4.2.2 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.
- 3.5.5 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. The terms established by this Subarticle may be changed upon written agreement of AWBA's authorized representative and the SNWA's General Manager.
- 3.5.6 Charges for administrative services as described in Subarticle 3.4.2.3 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 15th 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.

- 3.5.7 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.

ARTICLE 4

DELINQUENT CHARGES AND SURETY OF PERFORMANCE

4.1 Delinquency Charges under the Terms of this Agreement

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 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.

4.1.2 In the event any portion of the charges is 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.

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 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.

4.2 Surety of Performance under the Terms of this Agreement

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.

- 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 Consolidated 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.
- 4.2.3 AWBA shall ensure that there are in effect all third party contracts necessary for the development of ICUA as provided in Article 3, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.

ARTICLE 5

OTHER PROVISIONS

- 5.1 Consultation on the AWBA Annual Report
- 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 agree to confer with AWBA staff in the development of the report.
- 5.2 Payment of federal charges relating to the Execution of a Storage and Interstate Release Agreement.
- 5.2.1 SNWA agrees that all federal charges associated with any amendment to the SIRAs shall be borne by SNWA.
- 5.2.2 These charges shall be calculated by and paid directly to the Secretary by SNWA in accordance with the Secretary's requirements.

5.3 Successors to AWBA and SNWA

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 that succeeds to such functions or, in the absence of any such agency, the members of the SNWA.

5.4 Uncontrollable Forces

No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than the obligation of SNWA to make payment) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the control of the party unable to perform such obligation, including, but not limited to, failure or threat of failure of facilities, flood, earthquake, storm, fire, 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.

5.5 Notices, Requests and Payments

5.5.1 All notices and other communications provided for in this Agreement shall be in writing and may be given in either of the following manners:

5.5.1.1 Notices and requests shall be in writing and maybe mailed first class postage paid to the parties at the following addresses:

AWBA: Arizona Water Banking Authority
3550 North Central Avenue
Phoenix, Arizona 85012
Attn: Manager

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

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

- 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.
- 5.5.2 All payments required under the terms of this Agreement shall be made by Electronic Fund Transfer (EFT).
 - 5.5.2.1 AWBA will notify the Treasury, State of Arizona monthly of any anticipated EFTs to be made by SNWA.
 - 5.5.2.2 SNWA will submit all EFTs to the Treasury, State of Arizona; account number 001-000985; routing number 122101706, or to such other destination as AWBA may designate by notice.
 - 5.5.2.3 AWBA will ensure that all EFTs submitted by SNWA are properly accrued in the Nevada sub-account maintained at ADWR.
- 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.
- 5.7 The parties to this Agreement are hereby notified of Arizona Revised Statutes section 38-511.
- 5.8 On reasonable advance written notice to AWBA and during normal business hours, SNWA shall have the right to inspect and audit all records of AWBA pertaining to (1) all Statutory Costs incurred by AWBA under Article 2 and (2) all costs incurred by AWBA under Article 3.
- 5.9 This Agreement is not intended to confer any rights on any person other than the Parties hereto, and it shall not be construed as a third-party beneficiary contract or as conferring third-party beneficiary status or rights of any nature on any person.

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In Witness of this Agreement, the Parties affix their official signatures below.

SOUTHERN NEVADA WATER
AUTHORITY

DATE _____

Patricia Mulroy, General Manager

Approved as to form:

John J. Entsminger, Deputy General Counsel

COLORADO RIVER COMMISSION OF
NEVADA

DATE _____

George M. Caan, Executive Director

Approved as to form:

Jennifer Crandell, Senior Deputy Attorney General

ARIZONA WATER BANKING
AUTHORITY

DATE _____

Herbert R. Guenther, Chair

Attest:

Thomas Buschatzke, Secretary