

Arizona-Nevada Shortage-Sharing Agreement

This Agreement is entered into among the Arizona Department of Water Resources (“Arizona”), the Arizona Water Banking Authority (“AWBA”), the Colorado River Commission of Nevada (“CRC”) and the Southern Nevada Water Authority (“SNWA”). For convenience, Arizona, AWBA, CRC and SNWA are at times herein referred to individually as “Party” and collectively as “Parties” and CRC and SNWA are referred to as “Nevada”.

Preamble

The 1944 Mexican Water Treaty, the 1964 U.S. Supreme Court Decree in *Arizona v. California*, and the 1968 Colorado River Basin Project Act authorize and guide the Secretary of the Interior (“Secretary”) in the determination of water deliveries to the Republic of Mexico and from the mainstream of the Colorado River within the Lower Basin during shortage conditions. However, there remain significant differences of opinion between Arizona and Nevada regarding how much water would be delivered to each state within the Lower Colorado River Basin during a shortage declared by the Secretary. Arizona and Nevada have now, therefore, agreed on how Secretarial shortage declarations of up to 500,000 acre-feet within the United States would be shared between them during an Interim Period. This Agreement is conditioned upon the inclusion of all material terms from the *Seven Basin States’ Preliminary Proposal Regarding Colorado River Interim Operations* (Seven States’ Proposal) that was forwarded to the Secretary on February 3, 2006, as it may be modified, within the Record of Decision for *Colorado River Reservoir Operations: Development of Lower Basin Shortage Guidelines and Coordinated Management Strategies for Lake Powell and Lake Mead Under Low Reservoir Conditions* (“Record of Decision”). If shortage declarations within the United States exceed 500,000 acre-feet, the Secretary would consult with representatives from the seven Colorado River Basin states before allocating additional shortage reductions. That consultation would be initiated anytime that the water surface elevation of Lake Mead is at or below water surface elevation 1025 feet.

AGREEMENT

Now, therefore, based upon the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do agree as follows:

1. Definitions:

a. Interim Period. The period beginning on the date the Secretary issues a Record of Decision and ending on December 31, 2025 (through preparation of the 2026 Annual Operating Plan).

b. Shortage. Any shortage within the United States declared by the Secretary pursuant to Article II(B)(3) of the Decree during the Interim Period.

2. Reduction in Mexican Deliveries. The Parties have entered into this Agreement based on the presumption that the United States will reduce deliveries to Mexico as described in the Seven States' Proposal. In the event that the United States does not reduce deliveries to Mexico in accordance with paragraph (3)(F)(5) of the Seven States' Proposal, the Parties have agreed only to the shortage allocations described in Section 3 of this Agreement.

3. Shortage Sharing Between Arizona and Nevada. During the Interim Period the Parties agree that shortages shall be allocated between Arizona and Nevada in the following quantities:

A. In years when Lake Mead content is projected on January 1 to be at or below elevation 1075 ft. and at or above 1050 ft., then Nevada's share of the shortage within the United States shall equal 13,000 acre-feet and Arizona's share of the shortage within the United States shall equal 320,000 acre-feet.

B. In years when Lake Mead content is projected on January 1 to be below elevation 1050 ft. and at or above 1025 ft., then Nevada's share of the shortage within the United States shall equal 17,000 acre-feet and Arizona's share of the shortage within the United States shall equal 400,000 acre-feet.

C. In years when Lake Mead content is projected on January 1 to be below 1025 ft., then Nevada's share of the shortage within the United States shall equal 20,000 acre-feet and Arizona's share of the shortage within the United States shall equal 480,000 acre-feet.

4. Agreement Limited to Maximum Shortage Volume of 500,000 Acre-feet Within the United States. This Agreement and the Parties relative obligations hereunder are specifically limited to a maximum shortage volume of 500,000 acre-feet within the United States in any year during the Interim Period. Should Lower Basin total shortage volume exceed 500,000 acre-feet within the United States, then the Parties will consult with the Secretary concerning shortage sharing beyond 500,000 acre-feet within the United States.

5. Shortage Assistance. For the purpose of assisting Arizona in offsetting impacts from shortages that may occur during the Interim Period, SNWA agrees to provide to the Arizona Water Banking Authority the sum of \$8,000,000.00 (Eight Million Dollars) ("the Funds"). The Arizona Water Banking Authority will use the Funds to purchase and/or store water supplies. This sum shall be paid to Arizona within 60 days of the date the Secretary issues a Record of Decision, unless otherwise agreed in writing by the SNWA and Arizona. Neither the payment nor the use of the Funds are conditioned on the occurrence of a shortage during the Interim Period, and the Funds shall be nonrefundable.

6. Condition Precedent to Effectiveness of Agreement. The Parties agree, as an express condition precedent to the effectiveness and enforceability of this Agreement,

that the Secretary must issue a Record of Decision that is consistent with all material terms included in the Seven States' Proposal, including this Agreement, by July 1, 2008, unless otherwise agreed to in writing by the Parties. If such condition precedent does not occur by the date set forth herein or as extended or modified by written agreement of the Parties, this Agreement shall be of no force or effect among the Parties.

7. Nevada's Use of Tributary Conservation Water and Nevada State Groundwater During Declared Shortage Condition. The Parties anticipate that following the issuance of the Record of Decision, Nevada will be able to create Intentionally Created Surplus ("ICS") by introducing into the Colorado River mainstream Nevada State Groundwater ("Imported ICS") and Virgin and Muddy River water pursuant to Nevada water rights that pre-date the Boulder Canyon Project Act ("Tributary Conservation ICS"). Pursuant to a mutually agreed upon forbearance agreement, the Secretary will deliver such ICS for municipal and industrial uses within Nevada. The Parties have agreed that the water that would be used to create Tributary Conservation ICS and Imported ICS during non-shortage years will be available during declared shortages. It is anticipated by the Parties that the Record of Decision will establish guidelines whereby the Secretary of Interior, through the Bureau of Reclamation, may enter into agreements to verify and deliver ICS to the party that created it.

Arizona agrees that if in any year, pursuant to Article II (B)(3) of the Decree, there is insufficient mainstream water available to satisfy the consumptive use of 7.5 maf in the lower division states, then Arizona will not object to the delivery by the Secretary to Nevada of water that would otherwise qualify for creation and release of Tributary Conservation ICS or Imported ICS during a non-shortage year nor otherwise claim a right to use such water in any form or fashion. Arizona's agreement not to object to any secretarial delivery of and Nevada's diversion of such water shall be binding on Arizona only to the extent that such delivery does not cause the total deliveries within the lower division states to exceed 7.5 maf in any year in which the Secretary has declared a shortage. Furthermore, Arizona's agreement is conditioned on application of the same provisions for verification that would apply to the creation of Tributary Conservation ICS or Imported ICS under the Seven States' Proposal.

8. Reservation of Rights. Notwithstanding the terms of this Agreement, in the event that for any reason this Agreement is terminated, or that the term of this Agreement is not extended, or upon the withdrawal of any Party from this Agreement, the Parties reserve, and shall not be deemed to have waived, any and all rights, including any claims or defenses, they may have as of the date hereof or as may accrue during the term hereof, including specifically the respective legal positions of Nevada and Arizona regarding how the delivery of water under a shortage declaration by the Secretary would be administered within the Lower Colorado River Basin and any other rights, claims or defenses under any existing federal or state law or administrative rule, regulation or guideline, including without limitation the Colorado River Compact, the Decree in *Arizona v. California* (the "Decree"), the Colorado River Basin Project Act of 1968, and any other applicable provision of federal law, rule, regulation, or guideline.

Draft 12/19/2006

In Witness of this Agreement, the Parties affix their official signatures below, this _____ day of _____, 2007.

Herbert R. Guenther
Director
Arizona Department of Water Resources

Herbert R. Guenther
Chairman
Arizona Water Banking Authority

Richard Bunker
Chairman
Colorado River Commission of Nevada

Patricia Mulroy
General Manager
Southern Nevada Water Authority