

SECOND 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 1, 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.

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.

3.3 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.
- 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 The terms established by Articles 2.4, 3.1, 3.2 and 3.5 may be changed upon written agreement of AWBA's authorized representative and the SNWA's General Manager.
- 5.3 Payment of federal charges relating to the Execution of a Storage and Interstate Release Agreement.
 - 5.3.1 SNWA agrees that all federal charges associated with any amendment to the SIRA shall be borne by SNWA.
 - 5.3.2 These charges shall be calculated by and paid directly to the Secretary by SNWA in accordance with the Secretary's requirements.

5.4 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.

5.5 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.

5.6 Notices, Requests and Payments

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

5.6.1.1 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

- 5.6.1.2 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.
- 5.6.2 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.
- 5.7 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.
- 5.8 The parties to this Agreement are hereby notified of Arizona Revised Statutes section 38-511.
- 5.9 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.
- 5.10 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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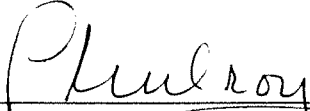
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In Witness of this Agreement, the Parties affix their official signatures below.

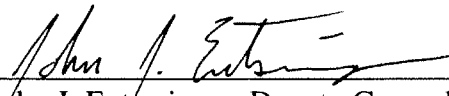
SOUTHERN NEVADA WATER
AUTHORITY

DATE 3-19-09



Patricia Mulroy, General Manager

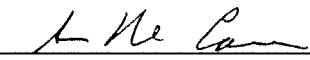
Approved as to form:



John J. Entsminger, Deputy General Counsel

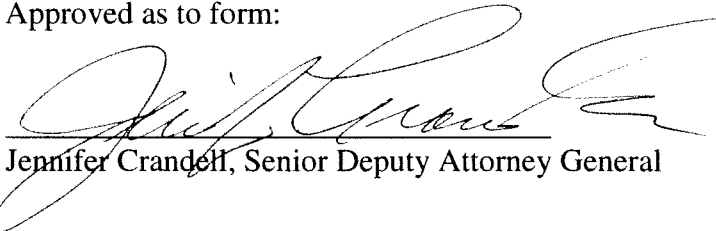
COLORADO RIVER COMMISSION OF
NEVADA

DATE 3/6/09



George M. Caan, Executive Director

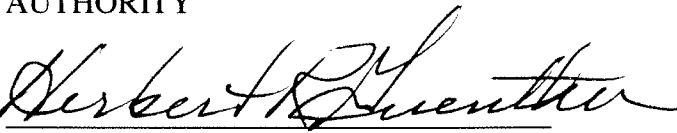
Approved as to form:



Jennifer Crandell, Senior Deputy Attorney General

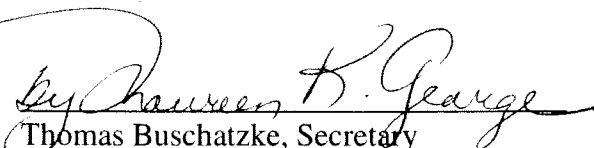
ARIZONA WATER BANKING
AUTHORITY

DATE 4-1-09



Herbert R. Guenther, Chair

Attest:



Thomas Buschatzke, Secretary

