

ARIZONA WATER BANKING AUTHORITY
Wednesday, March 21, 2001

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Arizona Water Banking Authority
500 North Third Street, Phoenix, Arizona 85004
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Web Page: www.awba.state.az.us

PLEASE POST

NOTICE OF PUBLIC MEETING

Pursuant to A.R.S. § 38-431.02, notice is hereby given that there will be a meeting of the Arizona Water Banking Authority Commission on March 21, 2001 at 10:00 a.m. at the Arizona Department of Water Resources, 500 North Third Street, Phoenix, Arizona 85004, third floor conference room. The meeting is open to the general public. A copy of the agenda for the meeting is posted below.

Dated this 20th day of March, 2001

FINAL AGENDA

Arizona Water Banking Authority Commission Meeting

- I. Welcome/Opening Remarks
- II. Approval of Minutes of December 20, 2000 Meeting
- III. Water Banking Staff Activities
 - Deliveries
- IV. Action on the Approval of Interstate Storage Agreement
 - Discussion of the Agreement between AWBA and Nevada for Interstate Water Banking
 - Potential approval by AWBA members for Chairman to sign Agreement
- V. Update on Status of Storage and Interstate Release Agreement and Agreement for Intentionally Created Unused Apportionment
 - USBR meeting
 - Discussion with CAWCD
- VI. Update on Preparation of 2000 Annual Report
- VII. City of Goodyear Water Banking Services Agreement
 - Discussion of Agreement
 - Approval of Agreement by Authority

VIII. Vidler Water Company USF Agreement

- Discussion of Agreement
- Approval of Agreement by Authority

IX. Call to the Public

Future Meeting Date:
Wednesday, June 20, 2001

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

ARIZONA WATER BANKING AUTHORITY
Draft Minutes

December 20, 2000
Arizona Department of Water Resources



AUTHORITY MEMBERS
Rita Pearson Maguire, Chairman
Tom Griffin, Vice-Chairman
Bill Chase, Secretary
George Renner
Richard S. Walden

EX OFFICIO MEMBERS
Representative Mike Gleason
Senator Ken Bennett

Welcome/Opening Remarks

All members of the Authority were present except Senator Ken Bennett. Chairman Rita Pearson Maguire welcomed new *ex officio* member Representative Mike Gleason who replaced Representative Gail Griffin effective December 15, 2000. Ms. Pearson Maguire also informed attendees that item number four had been removed from the agenda. The reasons for its removal would be discussed later in the meeting.

Ms. Pearson Maguire provided an update of the workshop that had been held at ADWR over the past few days. The workshop focused on legislation submitted by Senator Kyle and was held to educate congressional staff. The five components of the legislation are (1) CAWCD and Bureau of Reclamation Repayment Settlement and associated CAP allocation issues, (2) the Gila River Indian Community Settlement, (3) the Southern Arizona Water Rights Settlement Act (SAWRSA), (4) the San Carlos Apache Tribe (SCAT) settlement, and (5) Waivers and Enforcement components of the various settlements. Ms. Pearson Maguire noted that the SAWRSA is the most complete and the SCAT is the farthest from completion. The expectation is that the settlements will be complete within 45 days and approved by the appropriate governmental agencies within 60 days. Senator Kyle is confident that they can achieve these goals.

Ms. Pearson Maguire also informed attendees that the final EIS for the interim surplus criteria had been released the previous week. It was Arizona's opinion that it fell short of what it wanted even though the EIS was not expected to be a complete document but relevant benchmarks. The Record of Decision (ROD) associated with the EIS is supposed to be much more detailed. Arizona wants assurances of a return to a more conservative operating criteria following the 15 year interim period which is a very liberal operating plan. The ROD is to be issued on January 17, 2001 and becomes effective within 30 days following issuance.

Minutes

The Authority approved the minutes from the September 20, 2000 meeting.

Water Banking Staff Activities

Tim Henley, manager of the AWBA, reviewed the current deliveries. Actual deliveries have begun dropping off as the end of the year approaches. This drop off is a normal occurrence and primarily due to decreases at GRUSP for their dry out period and decreases at GSFs due to low numbers of winter crops. Overall, deliveries are anticipated to be about 280,000 acre feet for the year.

Mr. Henley also provided updates regarding subcommittee activities. The Interstate Water Banking Subcommittee has been meeting frequently and the members have been educating the negotiating team regarding their requirements for components of the two party agreement. It is anticipated that staff will have a draft of the two party agreement at the January 24, 2001 meeting of the subcommittee. Staff will also begin work on the agreement for ICUA and the

existing IGA with the CAWCD may need modification to reflect the interstate components. The January 24, 2001 meeting may be the last subcommittee meeting and all further interstate issues will be addressed at the quarterly Authority meetings. The Recovery Subcommittee has not met since the last Authority meeting and will likely meet again after the first of the year. Ms. Pearson Maguire asked if there were any questions regarding subcommittee activities to be answered by Mr. Henley. There were none.

Discussion and Approval Regarding Vidler Water Company USF Agreement (Agenda Item Removed)

Ms. Pearson Maguire asked Mr. Henley why this item had been removed. Mr. Henley responded that cost for storage was still an issue that had not yet been resolved. He stated that he wanted to have a better understanding of the issue before he brought it to the Authority. He anticipated that an agreement may be ready for the March meeting. Bill Chase had a question regarding some type of holding cost within the agreement. Mr. Henley stated that he thought that concept had been removed and replaced with an administrative cost. Ms. Pearson Maguire requested progress reports and wanted to know if Vidler's counsel, Mike Brophy had any comments. Mr. Brophy did not, however, Dorothy Palmer wanted the record to show that the AWBA's presentation of the 2001 Annual Plan of Operation had been removed from the agenda of the December 18, 2000 La Paz County Board of Supervisors meeting because there was a new member being seated in January 2001. Vidler Water Company's USF is within the new member's district, therefore the Board of Supervisors wanted the presentation to be done after the new member was seated.

Discussion and Approval of the 2001 Annual Plan of Operation

Mr. Henley stated that the three GUACs were supportive of the 2001 Annual Plan of Operation (Plan). He reviewed the final Plan and stated that it is very similar to the draft the Authority received in September. There is 6,000 acre feet of storage scheduled for GRUSP in November and December that was not present in the draft. This storage will be accomplished through a water exchange with Salt River Project (SRP). The exchange will likely take place at the end of the year, however, the AWBA may choose to reverse the exchange process because water delivery costs may be greater next year. All of the necessary agreements and permits have already been obtained for the exchange. The Plan also assumes that there is storage at the Agua Fria facility in 2001. George Renner stated that the first step of the condemnation process had been undertaken and further direction will be given at the January meeting of the CAWCD board. Mr. Henley noted that there is no storage scheduled for CAVSARP due to Tucson Water's decision to operate the facility for their own annual storage and recovery. However, if they operate better than anticipated, there may be some storage capacity available later in the year for the AWBA to utilize. The cost for the Plan is estimated to be \$12 million. There were no questions of Mr. Henley from either the Authority or the public.

The Plan was approved and adopted.

Call to the Public

Dave Iwanski of the Agri-Business Council commended Mr. Henley for his efforts on behalf of the Authority.

Mr. Renner commented that he would like Larry Dozier to provide an update regarding the CAP's record breaking deliveries in 2000. Mr. Dozier stated that the CAP will exceed 1.5 million acre feet of deliveries and that there have been numerous records set including total deliveries,

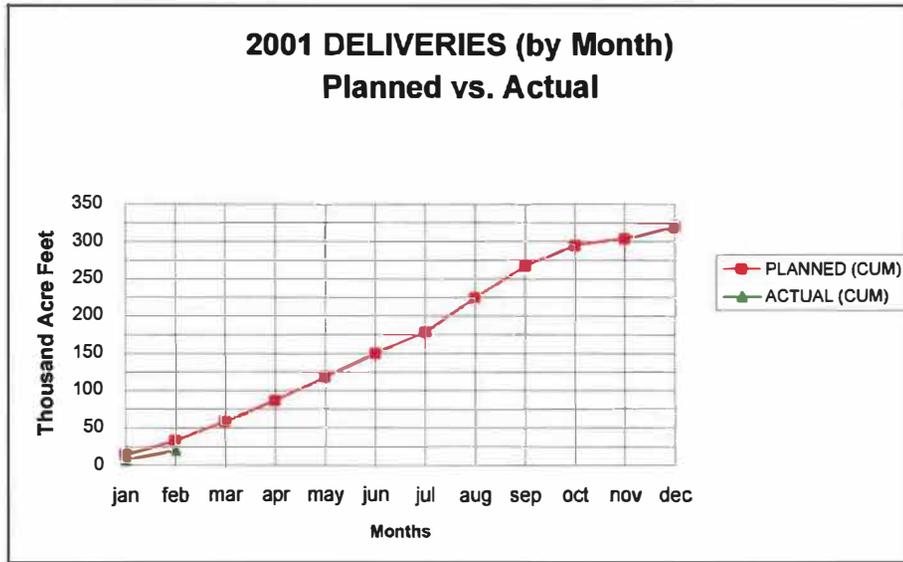
peak deliveries, monthly deliveries and others. There was a question regarding the quantity of CAP water taken by the SRP. Mr. Dozier replied that there was over 320,000 acre feet delivered to the SRP.

Mr. Chase complimented the CAP and stated that even with the unplanned deliveries to SRP, there were no curtailments.

The next AWBA meeting is scheduled for Wednesday, March 21, 2001. An Interstate Water Banking Subcommittee meeting is scheduled for Wednesday, January 24, 2001.

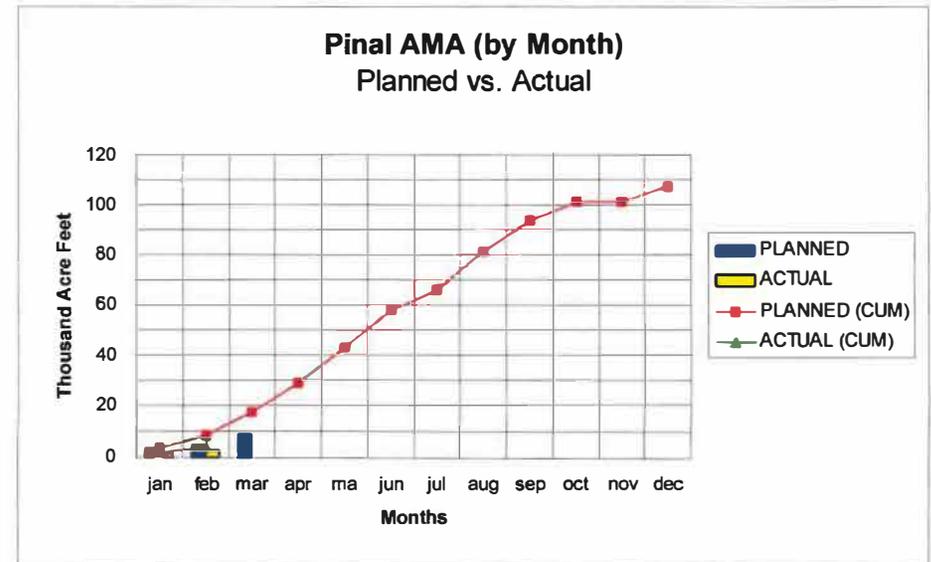
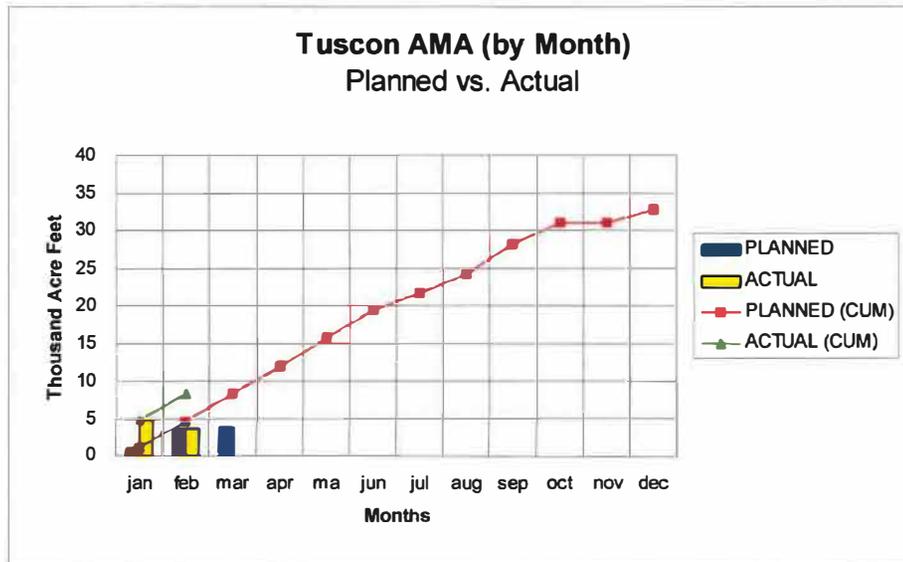
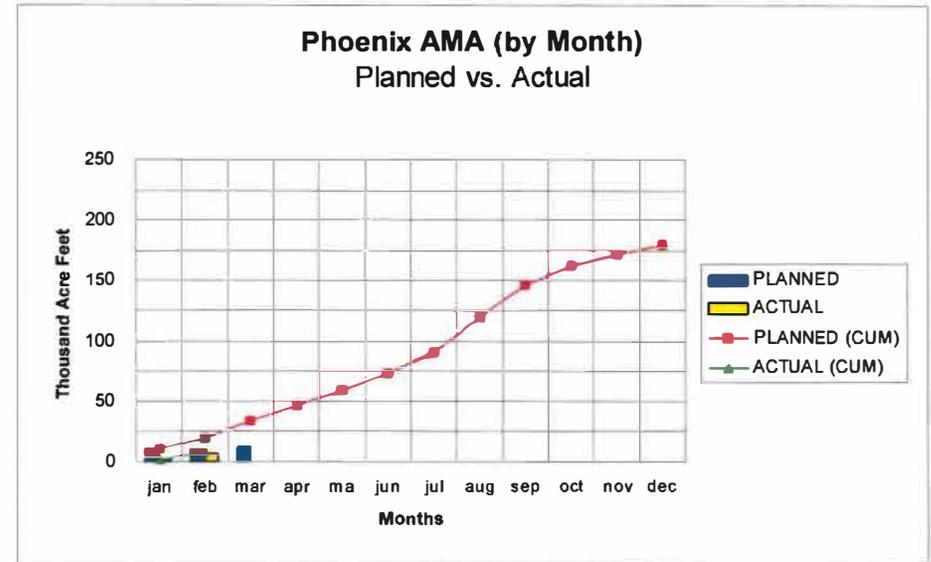
The meeting concluded at 11:30 a.m.

2001 Plan of Operation



Actual deliveries updated

19-Mar-01



Plan of Operation

	1-Jan-01	jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	total
Phoenix AMA														
GRUSP	91	5,376												5,467
	7,920	7,920	7,920	7,920	7,920	7,920	7,920	7,920	7,920	7,920	7,920	3,000	3,000	85,200
AGUA FRIA	0	0												0
	0	0	0	0	0	0	0	0	1,560	1,450	1,410	3,750	3,750	11,920
CHCID	0	100												100
	50	100	50	100	100	151	125	125	125	191	0	0	0	1,117
NMIDD	615	1,738												2,353
	2,000	2,000	3,200	2,500	3,000	3,500	4,700	10,200	10,600	5,500	0	0	0	47,200
QCID	0	0												0
	0	0	0	0	0	0	0	2,967	6,642	4,124	1,682	200	500	16,115
MWD	0	0												0
	0	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	0	2,000	1,000	3,000
SRP	0	0												0
	0	0	2,120	2,120	2,120	2,120	2,120	2,120	2,120	2,120	0	0	0	14,840
VIDLER MBT	0	0												0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	706	7,214												7,920
Total to date	706	7,920												7,920
Projected total to date	9,970	19,990	33,280	45,920	59,060	72,751	90,583	119,150	145,489	162,192	171,142	179,392	179,392	179,392
Pinal AMA														
CAIDD	0	0												0
	0	0	0	0	0	0	0	0	4,195	6,700	2,500	0	1,605	15,000
MSIDD	429	521												950
	1,750	1,860	2,170	4,150	5,590	7,250	3,220	3,530	1,830	3,280	0	2,960	0	37,590
HIDD	1,088	2,259												3,347
	2,000	2,800	6,400	7,500	9,000	7,200	5,000	7,600	3,500	2,000	0	1,500	0	54,500
Subtotal	1,517	2,780												4,297
Total to date	1,517	4,297												4,297
Projected total to date	3,750	8,410	16,980	28,630	43,220	57,670	65,890	81,215	93,245	101,025	101,025	107,090	107,090	107,090
Tucson AMA														
Avra Valley	634	306												940
	570	570	570	570	570	570	570	570	570	570	570	0	300	6,000
CAVSARP	0	0												0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pima Mine	1,548	545												2,093
	0	937	1,140	1,140	1,140	1,140	1,140	1,140	1,140	808	0	600	0	10,325
Lower Santa Cruz	2,621	2,621												5,242
	492	2,000	2,000	2,000	2,000	2,000	2,000	400	400	1,200	1,011	0	1,000	14,503
Kai/Avra	0	0												0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kai/Red Rock	0	0												0
	0	0	0	0	0	0	0	0	500	1,000	500	0	0	2,000
Subtotal	4,803	3,472												8,275
Total to date	4,803	8,275												8,275
Projected total to date	1,062	4,569	8,279	11,989	15,699	19,409	21,519	24,129	28,039	30,928	30,928	32,828	32,828	32,828
TOTAL														
	7,026	13,466												20,492
Total to date	7,026	20,492												20,492
Projected total to date	14,782	32,969	58,539	86,539	117,979	149,830	177,992	224,494	266,773	294,145	303,095	319,310	319,310	319,310

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 Interstate Water Banking Agreement is made this _____ day of _____, 2001, among the Arizona Water Banking Authority, and the Southern Nevada Water Authority and the Colorado River Commission of Nevada.

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 requirements of A.R.S. §§ 45-2427 and 45-2471 have been satisfied and AWBA is empowered to enter into this Agreement.
- B. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994 and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant to its contract issued under section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert Intentionally Created Unused Apportionment released by the Secretary for use within the State of Nevada pursuant to Art. II(B)(6) of the Decree in *Arizona v. California*, 376 U.S. 340, 343 (1964).
- 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 creation of Long-term Storage Credits and the establishment and maintenance of a Long-term Storage Account for SNWA.

Article 1

Definitions, Fundamental Principles and Term

- 1.1. Definitions. For purposes of this Agreement for Interstate Water Banking, terms that are defined in Article I of the Decree in *Arizona v. California*, 376 U.S. 340

(1964), terms that are defined in Arizona Revised Statutes (A.R.S.) 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 capitalization.

- 1.1.1. "ADWR" shall mean Arizona Department of Water Resources
- 1.1.2. "Agreement" shall mean this 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. "Decree" shall mean the Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.
- 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 Judgement upon Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central Arizona Water Conservation District v. United States 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. "Secretary" shall mean the Secretary of the Interior for the United States, Department of the Interior.
 - 1.1.16. "SNWA" shall mean the Southern Nevada Water Authority.
 - 1.1.17. "SNWA/CRCN" shall mean the Southern Nevada Water Authority and the Colorado River Commission of Nevada acting together in accordance with Subarticle 1.2.5 of this agreement.
 - 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 this Agreement.
 - 1.1.19. "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
 - 1.1.20. "Year" shall mean any calendar year after the execution of this agreement.
- 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. The parties to this Agreement recognize that AWBA shall not engage in interstate banking to the detriment of any water user in Arizona, and interstate banking shall be secondary to the primary interests of water management within the State of Arizona.
 - 1.2.2. Under the terms of this agreement, AWBA shall acquire and store mainstream Colorado River water in Arizona and thereby create Long-term Storage Credits to be held in the SNWA Interstate Account. AWBA shall recover the Long-term Storage Credits at a later date and exchange the recovered water with other Colorado River water users in Arizona to develop ICUA. The Secretary is required to release this ICUA for

consumptive use within the State of Nevada pursuant to the Storage and Interstate Release Agreement entered into by the Secretary under the regulations adopted by the Secretary in 43 C.F.R. Part 414. This Agreement is one part of a three part contractual relationship which also includes the Storage and Interstate Release Agreement and an Agreement for the Creation of Intentionally Created Unused Apportionment. This Agreement is also dependent upon 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 or Long-term Storage Credits 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. Water supply projections have indicated SNWA may require in excess of 1,200,000 acre feet of ICUA to assist in meeting future demands. SNWA desires the ability to build and draw upon a maximum balance of 1,200,000 acre feet of Long-term Storage Credits in the SNWA Interstate Account over the course of this Agreement.
 - 1.2.4.1 Realization of this goal may be limited by the amount of Colorado River water available for interstate banking and the availability of Storage Facilities after the primary goals of Arizona water users and Arizona water management have been met.
 - 1.2.4.2 To assist SNWA, AWBA agrees to use its best efforts to store an initial volume of 1,200,000 acre feet of water for SNWA under the terms of this Agreement if Arizona water needs and water management goals have been addressed. Nothing herein shall require AWBA to (i) seek a change in law; (ii) execute new contracts for Storage Facilities; or (iii) contract for the construction of new Storage Facilities, unless mutually agreed in the future consistent with the terms of this Agreement.
 - 1.2.4.3 AWBA shall recognize priorities of preferences for the storage and recovery of water in Arizona established by written agreement between SNWA and Metropolitan Water District of Southern California.
 - 1.2.4.4 AWBA recognizes that once Long-term Storage Credits have accrued to the benefit of SNWA in the SNWA Interstate Account

that SNWA shall have the right to withdraw those Long-term Storage Credits, by exchange through Lake Mead, pursuant to the requirements of this Agreement and the Storage and Interstate Release Agreement.

- 1.2.5. For purposes of this Agreement, SNWA and CRCN may be required to act together to insure performance of their mutual obligations under this Agreement. In such circumstances, the defined term "SNWA/CRCN" shall be used. Whenever performance by SNWA/CRCN is required, SNWA and CRCN shall confer among themselves and determine a unified course of action. In the event that SNWA and CRCN cannot agree on a unified course of action, AWBA shall not be required to perform any obligation under this Agreement affected by SNWA and CRCN's disagreement until SNWA and CRCN have adopted a unified course of action.
- 1.2.6. AWBA is an agency of the State of Arizona and is required to operate in accordance with its authorizing statutes, A.R.S. § 45-2401 et seq. and in compliance with all laws of the State of Arizona which govern AWBA activities. SNWA/CRCN shall be entitled to rely upon AWBA's compliance with all statutory requirements, but SNWA/CRCN recognize that such statutes may be duly amended in the course of this Agreement and, subject to the last two sentences of this Subarticle, SNWA/CRCN recognize that AWBA will be required as a matter of Arizona law to comply with any such amendment. Any reference to a statute in this Agreement shall mean that statute, as it may be amended in the future, or its duly authorized successor statute. Nothing in this Subarticle is intended to, or shall be construed as, an agreement by SNWA or CRCN that any enactment of law by the Arizona legislature after the effective date of this Agreement shall have any effect on SNWA's rights or remedies under this Agreement with respect to water that has been placed into storage for SNWA pursuant to this Agreement as of the effective date of such enactment, on any Long-term Storage Credits in the SNWA Interstate Account as of such date, or on SNWA's rights to the creation of ICUA with respect to such water and Long-term Storage Credits. SNWA and CRCN expressly reserve all rights at law and in equity under this Agreement.
- 1.2.7. 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 in the SNWA Interstate Account have been recovered, or on June 1, 2050, 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. Request for Water Storage by SNWA

- 2.1.1. AWBA shall develop a draft AWBA Plan of Operation. The draft AWBA Plan of Operation shall not initially include an interstate component but shall contain the information necessary to initiate discussion between AWBA and SNWA/CRCN regarding interstate banking for the following Year.
- 2.1.2. AWBA staff shall meet and confer with SNWA/CRCN staff concerning the proposed location, manner and cost by which the interstate banking could be accomplished in the following Year.
- 2.1.3. On or before November 1, AWBA shall determine and advise SNWA and CRCN as to the quantity of water and storage capacity available for interstate banking under the terms of this Agreement for the following Year. AWBA shall also provide an estimate of the costs calculated pursuant to Subarticle 2.3 associated with the delivery and storage of water available for interstate banking. AWBA shall also provide the data upon which the determinations and estimates in this Subarticle were based.
- 2.1.4. Within 7 business days of the notice provide in subarticle 2.1.3, SNWA shall specify in writing to AWBA its decision to accept all or any portion of the water and storage capacity available at the estimated cost.
- 2.1.5. The schedule dates and periods contained in subarticles 2.1.1 through 2.1.4 can be waived upon written agreement of all parties.

- 2.1.6. After consultation with SNWA, the final decision on the quantity of water to be stored and the location of the storage under the terms of this Agreement shall be at the discretion of AWBA.
- 2.1.7. The quantity of water to be stored in accordance with the terms of this Agreement shall be identified in the final AWBA Plan of Operation by January 1 of each Year. Unless the AWBA Plan of Operation is modified, this quantity of water shall be stored.
- 2.1.8. At any time after approval of the AWBA Plan of Operation, SNWA may request a decrease in the quantity of SNWA storage for the current Year. Such request for decrease shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA and the amount of water scheduled to be stored for the benefit of SNWA. AWBA may, at its discretion and after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect such a decrease.
- 2.1.9. AWBA may modify the AWBA Plan of Operation for reasons other than a request from SNWA. If the modification results in an increase in the amount of storage available for interstate banking, AWBA shall notify SNWA and CRCN in writing of the estimated cost for delivery and storage of the increase. SNWA shall have 15 days after receipt of such notice to specify in writing to AWBA its decision to decline any or all of the increase. If SNWA fails to notify AWBA, SNWA shall be obligated to accept such increase in accordance with the terms of the modified AWBA Plan of Operation and the terms of this Agreement. If the modification results in a decrease in storage capacity available for interstate banking purposes, AWBA will notify SNWA and CRCN in writing of such a modification, the reasons for the decrease in storage, the data upon which such determination was based, and the revised amount of water that AWBA will store for SNWA during the Year.

2.2. Delivery and Storage of Water by AWBA for SNWA.

Delivery and storage of water under the terms of this Agreement are conditioned on the following:

- 2.2.1. The delivery of water shall be pursuant to the Intergovernmental Agreement among AWBA, CAWCD and ADWR, as amended, whereby AWBA is entitled to purchase Excess CAP Water from CAWCD for interstate banking purposes.
- 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 contracts with various Storage Facility operators whereby AWBA is entitled to store water at those various Storage Facilities.
- 2.2.4. AWBA shall establish with ADWR a long-term storage sub-account entitled "SNWA Interstate Account".
- 2.2.5. AWBA shall monitor the accrual 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 developed in accordance with the terms of this Agreement have accrued and are properly accounted for in such account.
- 2.2.6. AWBA agrees that it 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/CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed. ADWR determines the quantity of Long-term Storage Credits that accrue in 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.

2.3. Charges for Delivery and Storage

- 2.3.1. SNWA agrees that all costs of the delivery and storage of water as described in Subarticle 2.1 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 2.3, and billed to and paid by SNWA as provided in Subarticle 2.4.
- 2.3.2. The charges to SNWA for the cost of water delivered under this Agreement shall consist of the following pricing components computed on a per acre-foot of delivery basis:
 - 2.3.2.1. the fixed operation, maintenance and replacement (OM&R) rate, set annually for CAP customers by the CAWCD Board and calculated by dividing the total fixed OM&R costs for the CAP by the estimated total delivery volume in acre feet;
 - 2.3.2.2. the municipal and industrial (M&I) capital charge, set annually for CAP customers by the CAWCD Board;
 - 2.3.2.3. a pumping energy rate established by the CAWCD Board to recover its costs, or if mutually agreeable among SNWA, AWBA

and CAWCD, SNWA may provide energy sufficient to fully or partially meet the pumping requirements for the delivery of water under the terms of this Agreement;

2.3.2.4. a payment *in lieu* of property taxes, calculated as described in A.R.S. § 48-3715; and

2.3.2.5. Such additional costs as may be reasonably incurred by AWBA.

2.3.3. SNWA shall be charged a cost for administrative services for water stored by AWBA in accordance with the terms of this Agreement. Such charge shall equal 15% of ADWR's cost of 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.

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

2.3.4.1. Underground Storage Facility charges as paid by AWBA based on contractual agreements with those facility operators;

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

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

2.3.4.4. Such additional costs as may be reasonably incurred by AWBA.

2.4. Billing of and Payment for Delivery and Storage

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

2.4.2. AWBA shall provide SNWA monthly invoices equaling one-twelfth the total annual charge on or before the first of each month, starting with December for January of the following Year. SNWA shall pay one-twelfth of the total annual charge on or before December 10, followed by equal payments on or before the 10th of each month following. If such day is not a business

day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's intergovernmental agreement with CAWCD.

- 2.4.3. The total annual charge for water delivery may be subject to a mid-year correction if the charges described in Subarticle 2.3.2 are changed by CAWCD. In the event of a correction, AWBA shall recompute the remaining equal monthly payments and invoice SNWA the corrected amount in the first monthly invoice following the correction. SNWA may refuse further delivery within the Year based on the adjusted monthly invoice. Refusal of further delivery by SNWA shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA in that Year and the amount of water scheduled to be stored for the benefit of SNWA. AWBA shall, after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect the decrease in storage. If the recomputed payments are acceptable then the first corrected payment shall be paid on or before the 10th of the month following receipt of the corrected invoice. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's intergovernmental agreement with CAWCD.
- 2.4.4. No later than March 15 of the Year following a Year in which water was delivered under with the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The payment account of SNWA shall be adjusted first to reflect the amount of water actually delivered by AWBA, and second to reflect any change in the OM&R and pumping energy rates applicable to the water delivered. If additional funds are owed to AWBA, SNWA shall remit those funds within 10 business days of the date the notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year water delivery charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried and used to offset the water delivery charge for the Year in which storage resumes. If Storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.
- 2.4.5. Charges for administrative services as described in Subarticle 2.3.3 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.

- 2.4.6. SNWA shall pay the administrative service charges on or before the first day of the month following the notice of the charges. If such day is not a business day, the payment shall be made on the next succeeding business day.
- 2.4.7. AWBA shall provide an estimate of the Storage Facility charge as described in Subarticle 2.3.4 to SNWA on or before the fifteenth of each month prior to the actual occurrence of the storage. Such estimates may include adjustments or corrections to estimates previously provided by AWBA to SNWA.
- 2.4.8. SNWA shall pay the estimate of the Storage Facility charges on or before the tenth day of the month following notice of the charge. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate Storage Facility operators in accordance with AWBA's contractual agreements with the Storage Facility operators.
- 2.4.9. No later than March 15 of the Year following the Year in which water was stored under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The reconciliation shall show the actual amount of water stored and whether charges for the amount stored exceed the payments made or the payments exceed the amount owed. If additional funds are owed to AWBA, they shall be paid within 10 business days of the date an invoice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year water storage charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the water storage charge for the Year in which storage resumes. If storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.
- 2.4.10. The schedule dates and periods contained in this Subarticle 2.4 can be waived upon written agreement of all parties.

Article 3
Development of Intentionally Created Unused Apportionment

- 3.1. Request for Development of ICUA by SNWA
- 3.1.1. Three years prior to the initial request by SNWA for the development of ICUA under the Storage and Interstate Release Agreement, SNWA/CRCN shall meet and confer with AWBA to determine the opportunities available to commence the development of ICUA. This three year period is intended to allow for the development of a reasonable plan for creation of ICUA by the recovery of Long-term Storage Credits, and may be waived by agreement of all parties if unforeseen circumstances arise.
- 3.1.2. By June 1 of the Year preceding any Year for which SNWA will request the release of ICUA from the Secretary under the terms of the Storage and Interstate Release Agreement, SNWA shall provide in writing to AWBA a preliminary request for the development of ICUA in the next upcoming Year and an estimate of any requests for the development of ICUA in the next two succeeding Years.
- 3.1.2.1. Requests for the release of ICUA by SNWA to the Secretary shall not exceed 100,000 acre feet in any Year unless A.R.S. § 45-2471 has been amended to allow an increase.
- 3.1.3. During a Year that the Secretary has determined to be a shortage Year under Article II(B)(3) of the Decree, requests for release of ICUA by SNWA to the Secretary shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet consumptive use and the quantity made available to Nevada under the shortage determination. This quantity may be greater if, after SNWA confers with AWBA, it is agreed that a greater quantity of ICUA can be created.
- 3.1.4. SNWA plans to use ICUA as an alternative water supply while other longer-term sources of supply are being developed. SNWA agrees to annually provide AWBA a water resources plan projecting SNWA's demands and available supplies. SNWA agrees that when the Long-term Storage Credits in the SNWA Interstate Account have declined to or below 400,000 acre feet, SNWA shall not request the release of more than 60,000 acre feet of ICUA from the Secretary in any Year. SNWA agrees that when the Long-term Storage Credits in the SNWA Interstate Account have declined to or below 200,000 acre feet, SNWA shall not request the release of more than 40,000 acre feet of ICUA from the Secretary in any Year.

- 3.1.5. Between June 1 and September 15 of any Year in which a preliminary request for the development of ICUA is provided, AWBA staff shall meet and confer with SNWA/CRCN concerning the proposed location, manner and estimated cost by which the ICUA will be developed in the succeeding Year.
 - 3.1.6. On or before September 15 of the Year in which a final request for the release of ICUA will be made to the Secretary under the terms of the Storage and Interstate Release Agreement, SNWA shall provide in writing a final request for development of ICUA for the upcoming Year to AWBA.
- 3.2. Development of ICUA
- 3.2.1. Upon receipt of the initial request for the development of ICUA, AWBA shall meet and confer with CAWCD to develop an Interstate Recovery Schedule under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment. The Interstate Recovery Schedule shall utilize the recovery of Long-term Storage Credits to create the ICUA.
 - 3.2.1.1. AWBA agrees to meet and confer with SNWA and CRCN concerning the location, manner and cost of recovery when developing the Interstate Recovery Schedule.
 - 3.2.1.2. 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 unreasonably allocate the cost of recovery to the obligation to create ICUA under the terms of this Agreement.
 - 3.2.1.3. Factors to be considered when preparing the Interstate Recovery Schedule shall include but are not limited to:
 - 3.2.1.3.1. Arizona water management goals,
 - 3.2.1.3.2. CAP operational requirements,
 - 3.2.1.3.3. Water quality requirements,
 - 3.2.1.3.4. Opportunities for shared or joint facilities, and
 - 3.2.1.3.5. Opportunities to reduce recovery costs.

- 3.2.2. Upon receipt of a final request to develop ICUA in the upcoming Year under Subarticle 3.1.6, 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 the final request to develop ICUA is received. AWBA shall identify the quantity of ICUA to be created in the AWBA Plan of Operation for the following Year. 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.
- 3.2.3. During a Year that the Secretary has determined to be a shortage Year under Article II(B)(3) of the Decree, the recovery of Long-term Storage Credits by AWBA for the creation of ICUA shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet of consumptive use and the quantity made available to Nevada under the shortage determination. This quantity can be greater if, after SNWA and CRCN confer with AWBA, it is determined that a greater quantity of ICUA can be created.
- 3.2.4. The choice of facilities utilized to recover the Long-term Storage Credits used to create the ICUA during any year shall be at the discretion of AWBA.
- 3.2.5. After the quantity of Long-term Storage Credits to be recovered to create ICUA has been included in the final AWBA Plan of Operation in accordance with the terms of this Agreement, and the availability of ICUA has been verified by the Secretary, AWBA shall recover the Long-term Storage Credits and SNWA shall be responsible for all costs of developing the requested ICUA.
- 3.2.6. Upon written request by SNWA to cease the development of ICUA, AWBA shall cease the creation 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.
- 3.2.7. 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 quantity of credits recovered when AWBA submits its annual report to ADWR. AWBA and

SNWA/CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed.

- 3.2.8. In the event that the aggregate Long-term Storage Credits in AWBA's Long-term Storage Account are reduced or eliminated by operation of law beyond the control of AWBA, or if the aggregate Long-term Storage Credits in AWBA's Long-term Storage Account cannot be recovered due to physical constraints beyond the control of AWBA, SNWA agrees that the Long-term Storage Credits in the SNWA Interstate Account shall be reduced proportionally. The relative proportions of the SNWA Interstate Account to the AWBA Long-term Storage Account shall be determined as of the beginning of the Year of discovery of the reduction. With respect to any aggregate reduction in the Long-term Storage Credits in AWBA's Long-term Storage Account by operation of law, nothing herein shall affect SNWA's right to challenge such aggregate reduction or to seek compensation.
- 3.3. Charges for Developing ICUA
- 3.3.1. SNWA agrees that all costs of the development of ICUA as described in Subarticle 3.2 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 3.3, and billed to and paid by SNWA as provided in Subarticle 3.4.
- 3.3.2. 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:
- 3.3.2.1. A capital component consisting of (i) 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 (ii) 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.
- 3.3.2.2. 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.
- 3.3.2.3. An administrative component calculated as a lump sum to recover the actual administrative cost reasonably incurred by AWBA.
- 3.3.2.4. 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. Billing and Payment for Developing ICUA

- 3.4.1. AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle 3.3.2.1(i) after agreement between AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.
- 3.4.2. SNWA shall agree to an acceptable repayment schedule prior to the construction on 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.
- 3.4.3. AWBA shall provide an estimate of the charges for the capital component described in Subarticle 3.3.2.1(ii) and the recovery facility O&M described in Subarticle 3.3.2.2 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.
- 3.4.4. SNWA shall pay the estimate of the capital component described in Subarticle 3.3.2.1(ii) and the recovery facility O&M charges described in Subarticle 3.3.2.2 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.
- 3.4.5. 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.

- 3.4.6. Charges for administrative services as described in Subarticle 3.3.2.3 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.
- 3.4.7. 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.
- 3.4.8. The schedule dates and periods established by this Subarticle 3.4 can be waived upon written agreement of all parties.

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 are disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, SNWA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 4.1.1, prorated by days from the date payment was credited to SNWA to the date the refund check is issued.
 - 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 delivery, storage, or 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 United States under the Decree, available at the SNWA system, at AWBA's cost and free of adverse claims, in lieu of ICUA, and that a remedy at law for any other damage sustained by SNWA is otherwise adequate. SNWA shall be required to accept such alternative water resources if so ordered by a court of competent jurisdiction.
- 4.2.3. AWBA shall use its best efforts to ensure that there are in effect all third party contracts necessary for the delivery and storage of water for SNWA as provided in article 2 and for the development of IUCA as provided in article 3, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall use its best efforts to insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.

**Article 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/CRCN agree to confer with AWBA staff in the development of the report.

5.2. Transfer of Existing Long-term Storage Credits Held by CAWCD

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

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

5.3. Payment of federal charges relating to the Execution of a Storage and Interstate Release Agreement

5.3.1. SNWA agree that all federal charges associated with evaluating, processing and executing a Storage and Interstate Release Agreement 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. 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 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, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, 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 requests required and allowed under the terms of this Agreement may be given in the following manner:

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

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

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

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

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.

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.

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the _____ day of _____, 2001.

Arizona Water Banking Authority

by: _____
Rita Pearson Maguire, Chairman

attest: _____
William Chase, Secretary

Southern Nevada Water Authority

by: _____
Patricia Mulroy,

Colorado River Commission of Nevada

by: _____

Agreements Negotiations Timeline

Storage and Interstate Release Agreement

April through July -

- Negotiate three party agreement

- Complete environmental assessment on federal action

July - USBR holds public meeting

- federal action of signing the agreement

- environmental assessment

August - 30 day comment period

September – USBR responds to comments

October - Agreement available for USBR signature, CAWCD and AWBA Boards action

Agreement for Development of Intentionally Created Unused Apportionment

April through July - Negotiate agreement

August - Agreement available for CAWCD Board action

October - Agreement available for AWBA Board action

Plan of Operations

October – Develop draft 2002 Plan of Operation intrastate needs only

November - Notify SNWA and CRCN of water and storage capacity available for interstate banking

December – AWBA approve 2002 Plan of Operations

1 number of agreements under which it has received CAP water for storage at a
2 storage facility.

3 4.2. Goodyear hereby affirms that it has stored and accrued long-term storage credits
4 for the storage of CAP water in accordance with Arizona Revised Statutes, Title
5 45, Chapter 3.1.

6 4.3. Goodyear hereby affirms that there is no legal impediment to its storage of CAP
7 water under Arizona Revised Statutes, Title 45, Chapter 3.1.

8 **5. LOAN OF LONG-TERM STORAGE CREDITS**

9 The Authority hereby agrees to loan a maximum of 2,000 acre feet of long-term storage
10 credits accrued by the Authority in the Phoenix Active Management Area to Goodyear,
11 subject to the terms and conditions of this Agreement.

12 **6. DISTRIBUTION OF LONG-TERM STORAGE CREDITS**

13 6.1. To effectuate the loan, Goodyear may request the Authority in writing to assign to
14 Goodyear part or all of the 2,000 acre feet of long-term storage credits at any time
15 during the twelve months following the effective date of this Agreement.

16 Goodyear may request that the long-term storage credits be assigned at one time
17 or at multiple times, so long as the requested amounts do not exceed the
18 maximum total amount of 2,000 acre feet.

19 6.2. Prior to the Authority assigning the long-term storage credits to Goodyear,
20 Goodyear shall pay to the Authority \$58.00 for each acre foot of long-term
21 storage credit that Goodyear has requested to be assigned.

22 6.3. Within 30 days of receipt from Goodyear of the written request for the assignment
23 and the monies required by Section 6.2, the Authority shall assign to Goodyear
24 the long-term storage credits.

25 **7. WATER BANKING SERVICES FEE**

1 For the services provided under this Agreement, the Authority shall collect and Goodyear
2 shall pay a water banking services fee. The fee shall accrue for each 12-month period
3 during which Goodyear has received long-term storage credits from the Authority that
4 have not been repaid fully under Section 8. The fee for each 12-month period shall equal
5 2.5% of the total amount of monies paid by Goodyear to the Authority under Section 6 of
6 this Agreement. The fee for a partial 12-month period shall be prorated. The fee shall be
7 collected in accordance with Section 8 of this Agreement.

8 **8. REPAYMENT OF LONG-TERM STORAGE CREDITS**

9 8.1. Within 5 years of the assignment of the first long-term storage credit from the
10 Authority to Goodyear, Goodyear may repay its loan by assigning to the
11 Authority a quantity of long-term storage credits equal to the total number of
12 long-term storage credits assigned by the Authority to Goodyear under the terms
13 of this Agreement.

14 8.2. Within 60 days of the assignment of the total number of long-term storage credits
15 specified by Section 8.1, the Authority shall return all monies paid to the
16 Authority by Goodyear under Section 6 of this Agreement, less any accrued water
17 banking services fees.

18 8.3. If Goodyear has not repaid the loan under the terms specified in Section 8.1
19 within the time specified by that Section, the Authority shall use its good faith
20 efforts to replace the long-term storage credits loaned to Goodyear at a reasonable
21 cost. After the Authority has replaced the long-term storage credits, the Authority
22 shall bill Goodyear for all expenses incurred by the Authority in replacing the
23 long-term storage credits plus any accrued water banking services fees, less all
24 monies paid to the Authority by Goodyear under Section 6 of this Agreement.
25

1 8.4. If the Authority is unable to replace the long-term storage credits for any reason
2 during the 10-year period after the assignment of the first long-term storage credit
3 from the Authority to Goodyear, the Authority, at the end of that 10-year period,
4 shall estimate the costs to the Authority of replacing the long-term storage credits,
5 and shall bill Goodyear an amount equal to the estimated cost of replacing the
6 long-term storage credits plus any accrued water banking services fees, less all
7 monies paid to the Authority by Goodyear under Section 6 of this Agreement.

8 8.5. Payments specified in Sections 8.2, 8.3, and 8.4 shall be made in readily
9 available funds. Payments specified in Section 8.3 and 8.4 shall be made on or
10 before the 30th day following the date on which the bill was postmarked (or if
11 such day is not a business day, on the next succeeding business day). If the
12 payments are not paid by the date specified in this Agreement, the payment shall
13 be delinquent and thereafter shall accrue an interest charge at the prime rate of
14 interest as established by the Bank of America on the last business day of the
15 month following the month in which payment was due, plus 5 % per annum,
16 prorated by days of the unpaid principal, computed daily until payment is
17 received.

18 **9. LONG-TERM STORAGE CREDITS**

19 All long-term storage credits loaned and repaid under this Agreement shall have been
20 accrued by the storage of CAP water in the Phoenix Active Management Area in
21 accordance with Arizona Revised Statutes, Chapter 3.1. The long-term storage credits
22 may be recovered, conveyed, or used only in accordance with those statutes and any
23 applicable Arizona law. Neither Party makes any representations nor guarantees to the
24 other Party that any long-term storage credit loaned or repaid can be recovered in any
25 specific location. The recovery and use of the long-term storage credits is expressly

1 declared to be outside the scope of this Agreement and the sole responsibility of the Party
2 attempting to recover or make use of the long-term storage credit.

3 **10. LIABILITY**

4 10.1. Each party shall assume liability for its own negligence and shall indemnify,
5 defend, and hold the other Party harmless from any and all claims (including but
6 not limited to all costs, attorneys' fees, experts' fees, expenses and liabilities
7 incurred in connection with any claim or proceeding) arising directly or indirectly
8 from their own acts, omissions, or negligence, or that of their agents, employees,
9 sublessees, invitees, or licensees.

10 10.2. The obligations set forth in this Article shall survive expiration or termination of
11 this Agreement and remain in full force and effect.

12 **11. DEFAULT**

13 In the event of a default by a Party, within thirty (30) days following notice of such
14 default by a non-defaulting Party, the defaulting Party shall remedy such default either by
15 advancing the necessary funds and/or rendering the necessary performance. Such notice
16 shall specify the existence and nature of the default. If such default is not remedied
17 within the time specified, the non-defaulting Party may terminate this Agreement
18 effective 24 hours following written notice, without prejudice to its rights and remedies
19 established pursuant to this Agreement.

20 **12. UNCONTROLLABLE FORCES**

21 Neither Party shall be considered to be in default in the performance of any of its
22 obligations hereunder when a failure of performance shall be due to uncontrollable
23 forces. The term "uncontrollable forces" shall mean any cause beyond the control of the
24 Party unable to perform such obligation, including, but not limited to, failure of or threat
25 of failure of facilities, flood, earthquake, storm, fire, lightning and other natural

1 catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute,
2 labor or material shortage, sabotage, government priorities and restraint by court order or
3 public authority, and action or nonaction by, or failure to obtain the necessary
4 authorizations or approvals from, any governmental agency or authority, which by
5 exercise of due diligence such Party could not reasonably have been expected to avoid
6 and which by exercise of due diligence it shall be unable to overcome. Nothing
7 contained herein shall be construed to require either Party or settle any strike or labor
8 dispute in which it is involved.

9 **13. RESOLUTION OF DISPUTES**

10 13.1. A Party having a dispute under this Agreement that cannot be resolved by the
11 Parties may submit the dispute to arbitration. Arbitration shall be subject to the
12 following provisions:

13 13.1.1 Arbitration shall be binding only upon the consent of the Parties.

14 13.1.2 A Party wishing to submit a dispute to arbitration shall provide thirty (30)
15 days written notice to the other Party of its intent to pursue arbitration and
16 shall name one arbitrator at that time. Within fifteen (15) days of
17 receiving this notice, the other Party to the dispute shall name one
18 arbitrator and give written notice to the other Party of its selection. The
19 two selected arbitrators shall, within five (5) days of selection of the
20 second arbitrator, jointly select a third arbitrator.

21 13.1.3 Within thirty (30) days from the selection of the third arbitrator, the
22 arbitrators shall hold a hearing. Within thirty (30) days from the
23 conclusion of the hearing the arbitrators shall render a decision on the
24 dispute.
25

1 13.1.4 Arbitration shall be subject to the Arizona Arbitration Act, Arizona
2 Revised Statutes, Title 12, Chapter 9, Article 1. In the event of a conflict
3 between this Agreement and the Act, the provisions of this Agreement
4 shall prevail.

5 13.2. A Party that is dissatisfied with the results of non-binding arbitration may pursue
6 any other legal or equitable remedy not expressly provided for in this Section 11
7 and available to resolve the dispute.

8 14. **ACTION PENDING RESOLUTION OF DISPUTES**

9 Pending the resolution of a dispute pursuant to Section 13, each Party shall proceed, to
10 the extent legally permissible, in a manner consistent with this Agreement, and shall
11 make payments required in accordance with the applicable provisions of this Agreement.
12 Amounts paid by a Party pursuant to this Section 14 during the pendency of such dispute
13 shall be subject to refund and adjustment upon a final resolution of any dispute involving
14 an amount due. Upon such final resolution, the owed amounts shall be remitted in
15 accordance with the remittance procedures/arrangements contained in Section 8.5.

16 15. **TERMINATION OF AGREEMENT**

17 This Agreement may be terminated upon mutual written agreement of the Parties and in
18 the manner and for any reason otherwise provided herein.

19 16. **NOTICES**

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

23 If to the AWBA:

1 Manager
2 Arizona Water Banking Authority
3 500 North Third Street
4 Phoenix, Arizona 85004-3903

4 If to Goodyear:

5 Goodyear
6 Address
7 Address

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

9 17. **ASSIGNMENTS LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED**

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

13 18. **NO THIRD PARTY BENEFICIARY**

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

17 19. **WAIVER**

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

22 20. **CANCELLATION**

23 This Agreement is subject to cancellation in accordance with the provisions of A.R.S. §
24 38-511.

25 21. **ENTIRE AGREEMENT**

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

5 22. **GOVERNORING LAW**

6 This agreement shall be governed by and construed in accordance with the laws of the
7 State of Arizona.

8
9
10 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the
11 day and year first above-written.

12 **ARIZONA WATER BANKING**
13 **AUTHORITY**

14
15
16
17 ATTEST: _____ BY: _____
18 Secretary Chairman

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22 **CITY OF GOODYEAR**
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ATTEST: _____

BY: _____

Title: _____

Title: _____

Approved as to form:

1 **AGREEMENT FOR STORAGE OF WATER**
2 **AT THE VIDLER WATER COMPANY, INC.,**
3 **UNDERGROUND STORAGE FACILITY**
4

5 1. **PARTIES**

6 This Agreement is made and entered into the ____ day of _____,
7 2001, by and between the ARIZONA WATER BANKING AUTHORITY, hereinafter
8 referred to as “the AWBA” or “the Authority” and Vidler Water Company, Inc.,
9 hereinafter referred to as “Vidler.”

10 2. **RECITALS**

11 2.1 The AWBA is an authority of the State of Arizona.

12 2.2 It is the policy of the State of Arizona to increase utilization of Arizona’s
13 Colorado River entitlement that would otherwise be unused in Arizona by
14 delivering that water into the state through the Central Arizona Project for storage
15 and future use for the purposes specified in A.R.S. § 45-2401.

16 2.3 The AWBA was created to implement the policy described in subsection 2.2.

17 2.4 Vidler is a Delaware corporation authorized to do business in Arizona.

18 2.5 Vidler has obtained an underground storage facility permit from the Arizona
19 Department of Water Resources to construct and operate an underground storage
20 facility in the Harquahala Irrigation Non-Expansion Area.

21 2.6 The AWBA desires to store excess water obtained from the Central Arizona
22 Water Conservation District, hereafter referred to as “CAWCD,” in the Vidler
23 underground storage facility, and Vidler is willing to store such excess water at its
24 facility.
25

1 2.7 The ABWA desires to appoint an agent to exercise the Authority's right to
2 recover the water stored under this Agreement on behalf of the Authority, and
3 therefore the parties recognize and intend that the ABWA may designate a third
4 party agent for this purpose. Further, the parties expressly intend that the
5 designated agent be an intended third party beneficiary of this Agreement.

6 NOW THEREFORE, in consideration of the foregoing, the payments to be paid by the AWBA
7 to Vidler, the covenants and agreements contained in this Agreement, and other good and
8 valuable consideration, the AWBA and Vidler agree as follows:

9 **3. DEFINITIONS**

10 3.1 Authority Water: Excess CAP Water made available by CAWCD to the AWBA
11 for underground storage, which water would not otherwise have been used in
12 Arizona.

13 3.2 ADWR: The Arizona Department of Water Resources.

14 3.3 CAP Water: Water delivered through the CAP system.

15 3.4 Central Arizona Project or CAP: The water delivery works of the CAP including,
16 but not limited to, the CAP canal, its turnout structures and associated measuring
17 devices.

18 3.5 Central Arizona Water Conservation District or CAWCD: The multi-county
19 water conservation district formed in accordance with Title 48, Chapter 22,
20 Arizona Revised Statutes, to arrange for repayment of, and delivery of water
21 from, the CAP.

22 3.6 Party or Parties: Either one or both of the parties to this Agreement.

23 3.7 Permit: The constructed underground storage facility permit issued by the
24 Arizona Department of Water Resources to Vidler for the construction and
25 operation of Vidler's underground storage facility, currently Permit No. 71-

1 576699, or any amended or subsequent constructed underground storage facility
2 permit issued by the Arizona Department of Water Resources to Vidler for the
3 construction and operation of an underground storage facility on or about the
4 same location of the underground storage facility currently operated pursuant to
5 Permit No. 71-576699.

6 3.8 Vidler Facility: The constructed underground storage facility constructed and
7 operated by Vidler pursuant to the Permit, and located in Section 33, Township 3
8 North, Range 11 West, GSRB&M, in the Harquahala Irrigation Non-Expansion
9 Area, the location of which is shown on the map attached hereto as "Exhibit A".

10 3.9 Vidler Turnout: The point at which Authority Water is diverted from the CAP
11 canal for delivery to the Vidler Facility.

12 3.10 Director of ADWR: The Director of the Arizona Department of Water
13 Resources, in the capacity of the Chairperson of the Arizona Water Banking
14 Authority, a Public Officer of the State of Arizona.

15 3.11 Designated Recovery Agent: Person or entity appointed by AWBA, pursuant to
16 Section 24 of this Agreement, to exercise the Authority's right to recover the
17 water stored under this Agreement.

18 4. **SCOPE OF SERVICES**

19 This Agreement is limited to Vidler's: (i) taking delivery of Authority Water at the
20 Vidler Turnout; (ii) transporting the Authority Water to the Vidler Facility; and (iii)
21 storage of the Authority Water underground, in the Vidler facility, by Vidler for the
22 benefit of the AWBA. The AWBA shall compensate Vidler for these services only as
23 specified by this Agreement. Vidler shall protect the Authority Water as provided in
24 Section 13 of this Agreement and shall permit recovery of the Authority Water by the
25 Authority, its authorized representative or its Designated Recovery Agent, as provided in

1 Section 13 of this Agreement and in Exhibit "B," which is hereby made a part of this
2 Agreement.

3 5. **TERM OF AGREEMENT**

4 This Agreement shall become effective on the date when it has been executed by both
5 Parties and shall terminate three (3) years from such date unless the Parties agree in
6 writing to extend the term or unless it is sooner terminated or canceled in accordance
7 with the terms of this Agreement.

8 6. **CONDITIONS RELATING TO WATER STORAGE**

9 6.1 All storage of Authority Water at the Vidler Facility shall be in compliance with
10 Arizona law, the Vidler Permit, and the water storage permits issued by ADWR
11 authorizing the Authority to store Authority Water at the Vidler Facility.

12 6.2 The AWBA shall obtain a water storage permit from ADWR authorizing the
13 AWBA to store water at the Vidler Facility. The AWBA shall be responsible for
14 the payment of all fees and the filing of all annual reports associated with or
15 required by the water storage permit.

16 6.3 Vidler shall at all times comply with the Permit. Vidler shall be responsible for
17 the payment of all fees and the filing of all annual reports associated with or
18 required by the Permit. If, at any time, the Permit is revoked or expires and no
19 effective constructed underground storage facility permit allows the operation of
20 the Vidler Facility, the AWBA may terminate this Agreement pursuant to Section
21 21.

22 7. **PROCEDURE FOR SCHEDULING WATER STORAGE**

23 7.1 As soon as practicable after the date of execution of this Agreement, the Authority
24 shall submit to Vidler a proposed schedule indicating the amount of Authority
25 Water, if any, the AWBA desires to store in the Vidler Facility during the year in

1 which this Agreement becomes effective. Thereafter, on or before November 15
2 of each year during the term of this Agreement, the AWBA shall submit to Vidler
3 a proposed schedule indicating the amount of water storage, if any, the AWBA
4 desires during the following year.

5 7.2 As soon as practicable after receipt of the Authority's proposed schedule
6 submitted pursuant to Section 7.1, Vidler shall review the proposed schedule,
7 adjust the proposed schedule if necessary, and shall return to the AWBA the
8 schedule, indicating the amount of water storage that is available to the AWBA
9 for the year in which this Agreement is executed. Thereafter, on or before
10 December 15 of each year during the term of this Agreement, Vidler shall return
11 to the AWBA the schedule, indicating the amount of water storage that is
12 available to the AWBA for the following year. The schedule thus agreed to and
13 returned to the AWBA shall constitute the maximum amount of Authority Water
14 to be delivered to the Vidler Turnout and stored at the Vidler Facility during each
15 month of that year, subject to modification pursuant to Subsection 7.3.

16 7.3 The AWBA may increase or decrease its monthly schedule in accordance with
17 this Subsection. Unless otherwise agreed by the Parties, the AWBA shall submit
18 the proposed modifications to its schedule to Vidler not less than 15 days before
19 the desired change is to become effective. Vidler shall accept the AWBA's
20 timely request to decrease its schedule and shall revise the schedule to reflect the
21 decrease. Vidler shall review the AWBA's timely request to increase its
22 schedule, and Vidler shall make any necessary adjustment to that request. Vidler
23 will notify the AWBA in writing of Vidler's action concerning the AWBA's
24 request to increase its schedule within 10 days of receipt of such request. The
25 schedule shall be revised to reflect any increase acceptable to Vidler.

1 7.4 The AWBA shall authorize Vidler to order Authority Water for delivery to the
2 Vidler Turnout directly from CAWCD in accordance with CAWCD water
3 ordering procedures. Authority Water ordered by Vidler shall not exceed the
4 amounts provided for in the monthly schedule agreed upon in accordance with
5 Subsection 7.2 or any modification of the schedule made in accordance with
6 Subsection 7.3. The AWBA shall not be required to pay Vidler any storage fees
7 for any CAP Water for which Vidler accepts delivery at the Vidler Turnout in
8 excess of the amounts of Authority Water provided for in the agreed upon or
9 modified schedule, and Vidler shall be solely responsible to CAWCD for any
10 applicable fees or costs associated with the delivery of CAP Water that is in
11 excess of the amount of Authority Water provided for in the schedule. The
12 AWBA shall be responsible for payment to CAWCD for all charges and costs for
13 Authority Water scheduled in accordance with this Section 7 and delivered at the
14 Vidler Turnout for storage in the Vidler Facility.

15 7.5 Unless otherwise provided by this Agreement, Vidler shall accept delivery of
16 Authority Water scheduled in accordance with this Section at the Vidler Turnout,
17 transport the Authority Water to the Vidler Facility, and release and store the
18 Authority Water in the Vidler Facility.

19 8. **VIDLER AS UNDERGROUND STORAGE FACILITY OPERATOR**

20 8.1 As the operator of the Vidler Facility, Vidler shall have the sole discretion in
21 determining whether a curtailment or stoppage of water deliveries to the Vidler
22 Facility are necessary, and Vidler shall have no liability or obligation to the
23 AWBA for such curtailment or stoppage.

1 8.2 Vidler shall retain sole responsibility and authority for decisions relating to
2 operation and maintenance practices at the Vidler Facility, including scheduling
3 and selection of periods when maintenance will be done.

4 8.3 Whenever practicable, Vidler shall inform the AWBA ninety (90) days in advance
5 of any event or occurrence that may affect the ability of Vidler to store Authority
6 Water that was scheduled for storage in accordance with Section 7.

7 **9. WATER STORAGE FEES**

8 9.1 Vidler shall bill the AWBA and the AWBA shall pay Vidler a water storage fee
9 for each acre foot of Authority Water that Vidler releases into the Vidler Facility
10 on behalf of the AWBA.

11 9.2 The water storage fee for any water stored during the year in which this
12 Agreement becomes effective is \$45.00 per acre foot.

13 9.3 The water storage fee for any water stored during the first year immediately
14 following the year in which this Agreement becomes effective is \$46.50 per acre
15 foot. The water storage fee of any water stored during the second year
16 immediately following the year in which this Agreement becomes effective is
17 \$48.00 per acre foot.

18 9.4 Vidler shall bill the AWBA and the AWBA shall pay Vidler an annual
19 administration fee of \$ _____ for any year in which the AWBA stores water at
20 the Vidler Facility. The administration fee shall be billed in December for any
21 year in which an administration fee may be billed under this Subsection. The
22 administration fee shall be paid in accordance with Section 10 of this Agreement.

23 **10. BILLING AND PAYMENT**

24 10.1 Bills for storage of Authority Water shall be submitted to the AWBA by Vidler on
25 or before the twenty-fifth (25th) day of each month (or if such day is not a

1 business day, on the next succeeding business day) immediately following the
2 month during which Vidler has stored the Authority Water for the benefit of the
3 AWBA. Such bills may include adjustments or corrections to bills previously
4 submitted by Vidler to the AWBA.

5 10.2 Payment by the AWBA to Vidler shall be made in readily available funds on or
6 before the thirtieth (30th) day following the date on which the bill was
7 postmarked (or if such day is not a business day, on the next succeeding business
8 day). Bills that are not paid by this date shall be considered delinquent and
9 thereafter shall accrue an interest charge at the prime rate of interest as established
10 by the Bank of America on the last business day of the month following the
11 month for which the bill was submitted, plus 3% per annum, prorated by days of
12 the unpaid principal, computed daily until payment is received. Any payment
13 shall first be applied to any interest charges owed, and then to amounts owed for
14 the storage of Authority Water in the Vidler Facility.

15 10.3 In the event any portion of any bill is disputed, the disputed amount shall be paid
16 when due, but may be accompanied by a written statement indicating the basis for
17 any dispute. If the dispute is found to be valid, the Authority shall, at the
18 Authority's option, be refunded any overpayment plus interest, accrued at the rate
19 set forth in Subsection 10.2, prorated by days from the date payment was credited
20 to the AWBA to the date the refund check is mailed, or the overpayment, plus
21 accrued interest may be applied to outstanding amounts owed by AWBA to
22 Vidler.

23 10.4 In the event any delinquent amount is not paid by the AWBA within thirty (30)
24 days after receipt by AWBA of written notice from Vidler of the delinquency,
25 Vidler shall have the right without liability of any kind, to refuse to accept

1 delivery of Authority Water for storage at the Vidler Facility so long as the said
2 amount remains unpaid. Nothing herein shall limit the rights of Vidler to use any
3 other available legal remedy to effect collection of said amounts.

4 **11. WATER MEASUREMENT AND ACCOUNTING**

5 11.1 Vidler shall measure all Authority Water: (1) at the location Vidler accepts
6 delivery of the Authority Water at the Vidler Turnout, and (2) at the location the
7 Authority Water enters the Vidler Facility. Vidler shall maintain daily records of
8 the amount of Authority Water measured at these two points, and Vidler shall
9 maintain daily records of water measurements for at least three (3) years. Vidler
10 shall make the daily records available to the AWBA for inspection upon the
11 AWBA's request.

12 11.2 Vidler shall prepare a monthly Authority Water accounting report based upon the
13 daily records required under Subsection 11.1. The report shall include the amount
14 of Authority Water measured at the two locations specified in Subsection 11.1
15 and an accounting of any water losses between the two measuring points.

16 11.3 Vidler shall measure Authority Water using water measurement devices and
17 methods that comply with the rules adopted by the Arizona Department of Water
18 Resources at A.A.C. R12-15-901 *et seq.*

19 11.4 Vidler shall not submit a bill for water storage fees to the AWBA, and the AWBA
20 shall not be required to pay water storage fees to Vidler, for any Authority Water
21 that is not measured or accounted for as prescribed by this Section.

22 **12. WATER LOSSES**

23 The Parties agree that water losses of ten (10) % can be expected to occur between the
24 Vidler Turnout and the point at which the water enters the Vidler Facility. Vidler shall be
25

1 solely responsible to CAWCD for any applicable fees or costs associated with any water
2 that is lost in excess of this amount.

3 **13. ASSURANCES FOR THE PROTECTION AND RECOVERY OF STORED**
4 **WATER**

5 13.1 Vidler agrees that Vidler, its agents, and affiliated companies shall take no action,
6 except with the agreement of the Authority, that causes water levels in the vicinity
7 of the Vidler Facility, as measured at the water level monitoring wells specified
8 by Table 1 of the Permit, to drop below the water levels measured on the day
9 Vidler begins water storage on behalf of the Authority. For the purposes of this
10 Subsection, “action” includes, but is not limited to, authorizing persons to
11 withdraw groundwater from Vidler property or conveying or assigning Vidler
12 property for the purpose of allowing groundwater to be withdrawn from that
13 property. “Action” does not include Vidler, its agents, or affiliated companies
14 recovering water stored at the Vidler Facility in accordance with Arizona Revised
15 Statutes, Title 45, Chapter 3.1.

16 13.2 Vidler agrees that Vidler, its agents, and affiliated companies shall take no action
17 that causes the quality of the Authority Water stored in the Vidler Facility to fall
18 below acceptable Aquifer Water Quality Standards as set by the Arizona
19 Department of Environmental Quality. For purposes of this Subsection “action”
20 includes, but is not limited to, conveying or assigning Vidler property, or
21 permitting or granting license to any other persons, with the knowledge or
22 reasonable expectation that the transferee or licensee may cause the quality of the
23 stored Authority Water to decline. “Action” does not include Vidler, its agents, or
24 affiliated companies recovering water stored at the Vidler Facility in accordance
25 with Arizona Revised Statutes, Title 45, Chapter 3.1.

1
2 13.3 Vidler agrees that the AWBA shall be entitled to recover the Authority Water
3 stored under this Agreement and that the AWBA may designate a third party
4 agent, in accordance with Section 24 of this Agreement, to recover the Authority
5 Water stored under this Agreement on behalf of the AWBA. In tandem with this
6 Agreement, Vidler shall, in accordance with Arizona law, execute and convey to
7 the AWBA the easement in gross attached as Exhibit "B" to this Agreement. Said
8 easement is hereby incorporated into and made part of this Agreement. The
9 easement shall provide the AWBA, or the Designated Recovery Agent appointed
10 pursuant to Section 24 of this Agreement, with the right to enter the property
11 identified in Exhibit "A" to this Agreement for the purposes of constructing and
12 operating wells with which to recover Authority Water stored by Vidler under this
13 Agreement for the benefit of the AWBA and for constructing and operating a
14 water conveyance system by which to deliver the recovered Authority Water to
15 the CAP canal, as provided in Exhibit "B." Vidler shall record the easement as
16 provided by law in the office of the county recorder of the county in which the
17 property is located.

18 13.3 The obligations set forth in this Section 13 and Exhibit "B" shall survive the
19 expiration or termination of this Agreement and remain in full force and effect
20 until all of the Authority Water stored pursuant to this Agreement has been
21 recovered.

22 14. **AMOUNT OF WATER STORAGE**

23 The AWBA shall consider storage of Authority Water at the Vidler Facility each year as
24 a part of its annual planning process, undertaken pursuant to A.R.S. § 45-2456. The
25

1 AWBA has no obligation to store any minimum amount of Authority Water in any year
2 or during the term of this Agreement at the Vidler Facility.

3 **15. QUALITY OF WATER**

4 Nothing in this Agreement shall be construed so as to require that Vidler receive or store
5 water from any source when Vidler reasonably determines that such receipt or storage is
6 likely to result in a violation of then existing federal, state or local laws or regulations
7 regarding water quality.

8 **16. LIABILITY**

9 16.1 Each party shall assume liability for its own negligence and shall indemnify,
10 defend, and hold the other Party harmless from any and all claims (including but
11 not limited to all costs, attorneys' fees, experts' fees, expenses and liabilities
12 incurred in connection with any claim or proceeding) arising directly or indirectly
13 from their own acts, omissions, or negligence, or that of their agents, employees,
14 sublessees, invitees, or licensees.

15
16 16.2 The obligations set forth in this Article shall survive expiration or termination of
17 this Agreement and remain in full force and effect, until all Authority Water
18 Stored under this Agreement has been recovered.

19 **17. DEFAULT**

20 In the event of a default by a Party, within thirty (30) days following notice of such
21 default by a non-defaulting Party, the defaulting Party shall remedy such default either by
22 advancing the necessary funds and/or rendering the necessary performance. Such notice
23 shall specify the existence and nature of the default. If such default is not remedied with
24 the time specified, the non-defaulting Party may terminate this Agreement effective 24
25

1 hours following written notice, without prejudice to its rights and remedies established
2 pursuant to this Agreement.

3 **18. UNCONTROLLABLE FORCES**

4 Neither Party shall be considered to be in default in the performance of any of its
5 obligations hereunder (other than obligations of the AWBA to make payment for service
6 hereunder) when a failure of performance shall be due to uncontrollable forces. The term
7 “uncontrollable forces” shall mean any cause beyond the control of the Party unable to
8 perform such obligation, including, but not limited to, failure of or threat of failure of
9 facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes,
10 epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or
11 material shortage, sabotage, government priorities and restraint by court order or public
12 authority, and action or nonaction by, or failure to obtain the necessary authorizations or
13 approvals from, any governmental agency or authority, which by exercise of due
14 diligence such Party could not reasonably have been expected to avoid and which by
15 exercise of due diligence it shall be unable to overcome. Nothing contained herein shall
16 be construed to require either Party or settle any strike or labor dispute in which it is
17 involved.
18

19 **19. RESOLUTION OF DISPUTES**

20 19.1 A Party having a dispute under this Agreement that cannot be resolved by the
21 Parties, may submit the dispute to arbitration. Arbitration shall be subject to the
22 following provisions:
23

24 19.1.1. Arbitration shall be binding only upon the consent of the Parties.
25

1 19.1.2. A Party wishing to submit a dispute to arbitration shall provide
2 thirty (30) days written notice to the other Party of its intent to
3 pursue arbitration and shall name one arbitrator at that time.
4 Within fifteen (15) days of receiving this notice, the other Party to
5 the dispute shall name one arbitrator and give written notice to the
6 other Party of its selection. The two selected arbitrators shall,
7 within five (5) days of selection of the second arbitrator, jointly
8 select a third arbitrator.

9
10 19.1.3. Within thirty (30) days from the selection of the third arbitrator,
11 the arbitrators shall hold a hearing. Within thirty (30) days from
12 the conclusion of the hearing the arbitrators shall render a decision
13 on the dispute.

14 19.1.4. Arbitration shall be subject to the Arizona Arbitration Act, Arizona
15 Revised Statutes, Title 12, Chapter 9, Article 1. In the event of a
16 conflict between this Agreement and the Act, the provisions of this
17 Agreement shall prevail.

18 19.2 A Party that is dissatisfied with the results of non-binding arbitration may pursue
19 any other legal or equitable remedy not expressly provided for in this Section 19
20 and available to resolve the dispute.

21
22 20. **ACTION PENDING RESOLUTION OF DISPUTES**

23 Pending the resolution of a dispute pursuant to Section 19, each Party shall proceed, to
24 the extent legally permissible, in a manner consistent with this Agreement, and shall
25 make payments required in accordance with the applicable provisions of this Agreement.

1 Amounts paid by a Party pursuant to Section 19 during the pendency of such dispute
2 shall be subject to refund and adjustment upon a final resolution of any dispute involving
3 an amount due. Upon such final resolution, the owed amounts shall be remitted in
4 accordance with the remittance procedures/arrangements contained in Section 10.

5 21. **TERMINATION OF AGREEMENT**

6 This Agreement may be terminated under the following circumstances:

7 21.1. If the intergovernmental agreement among the AWBA, ADWR, and CAWCD
8 regarding delivery of the AWBA Water is terminated, the AWBA may terminate
9 this Agreement, which termination shall be effective fifteen (15) days after
10 mailing written notice of termination to Vidler; or

11 21.2. If the AWBA determines in its sole discretion that Vidler is operating the Vidler
12 Facility in a manner that is likely to jeopardize the ability of the AWBA to earn
13 Long-Term Storage Credits for the Authority Water delivered to the Vidler
14 facility for the benefit of the AWBA, the AWBA may terminate this Agreement,
15 which termination shall be effective ten (10) days after mailing written notice of
16 termination to Vidler; or

17 21.3. In the manner and for any reason otherwise provided in this Agreement.

18 22. **NOTICES**

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

22 If to the AWBA:

23
24 Manager
25 Arizona Water Banking Authority

1 500 North Third Street
2 Phoenix, Arizona 85004-3903

3 If to Vidler:

4 Vidler Water Company, Inc.
5 3264 Goni Road, Ste. 153
6 Carson City, Nevada 89706
7 Attn: Ms. Dorothy Timian-Palmer

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

10 **23. ASSIGNMENTS LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED**

11 The provisions of this Agreement shall apply to and bind the successors and assigns of
12 the Parties, but no assignment or transfer of this Agreement or any interest therein shall
13 be valid unless and until approved in writing by the non-assigning Party, which approval
14 shall not be unreasonably withheld. Notwithstanding the preceding, Vidler may assign its
15 interest in this Agreement to any subsidiary corporation of Vidler or Vidler's parent
16 company, Pico Holdings, Inc., a _____ corporation, without the written approval of the
17 Authority.

18 **24. DESIGNATED RECOVERY AGENT AS THIRD PARTY BENEFICIARY**

19 24.1 The parties agree that the AWBA may, at its election, designate a third party
20 agent ("Designated Recovery Agent") to exercise the Authority's right to recover
21 the water stored under this Agreement. The AWBA shall, in accordance with
22 Section 22 of this Agreement, notify Vidler of its election to appoint a Designated
23 Recovery Agent pursuant to this Section.

24 24.2 It is the express intention of the parties that the Designated Recovery Agent be a
25 third party beneficiary of the obligations and duties of Vidler under this

1 Agreement, and as such shall be entitled to enforce this Agreement, including, but
2 not limited to, the provisions of Subsection 7.4, Section 12, Section 13, and
3 Exhibit "B" as incorporated into this Agreement. The parties agree that the third
4 party beneficiary shall be entitled to the same rights and privileges associated with
5 the recovery of the Authority Water stored in the Vidler Facility as held by the
6 AWBA or the Director under this Agreement, including Exhibit "B." The parties
7 agree that the provisions of Sections 19 and 20 shall apply to the third party
8 beneficiary, and that the third party beneficiary shall be considered a "party" only
9 for the purposes of Sections 19 and 20. The rights of the third party beneficiary
10 under this Section shall vest immediately upon notification of Vidler by the
11 AWBA of the designation of a Designated Recovery Agent in accordance with
12 this Section. The parties agree that the terms of this Section shall not, in any way,
13 limit the rights or privileges of the AWBA under this Agreement.
14

15 **25. WAIVER**

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

20 **26. CANCELLATION**

21 This Agreement is subject to cancellation in accordance with the provisions of A.R.S. §
22 38-511.
23

24 **27. CONSISTENCY WITH OTHER AGREEMENTS**

1 This Agreement is intended to be consistent with the intergovernmental agreement
2 entered into among the AWBA, the Arizona Department of Water Resources and
3 CAWCD; provided, if the Parties cannot agree within 90 days after written notice from
4 either Party to the other Party to amend or supplement this Agreement pursuant to this
5 Section, either Party may terminate this Agreement.

6 **28. ENTIRE AGREEMENT**

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

11 **29. GOVERNING LAW**

12 This agreement shall be governed by and construed in accordance with the laws of the
13 State of Arizona.

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

16
17 ARIZONA WATER BANKING
18 AUTHORITY

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22 ATTEST: _____

23 Secretary

22 BY: _____

23 Chairman

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VIDLER

ATTEST: _____

BY: _____

Title: _____

Title: _____

Approved as to form:

When Recorded, Return to:

Attn: _____

NON-EXCLUSIVE EASEMENT IN GROSS AGREEMENT

DATE: _____, 2001

PARTIES: SOUTHWESTERN AGRICULTURAL SERVICES, INC., a Delaware corporation (the "Grantor"), a wholly owned subsidiary of Vidler Water Company, Inc., a Delaware Corporation ("Vidler")

ARIZONA WATER BANKING AUTHORITY, a public agency of the State of Arizona ("Grantee")

RECITALS:

A. The Grantor is the owner of certain real property legally described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Real Property"). The Real Property is graphically depicted on Exhibit "A-1" attached hereto and incorporated herein by this reference.

B. The Grantee and Vidler have entered into an agreement for storage of water at Vidler's underground storage facility of even date herewith (the "Agreement") regarding the storage of "Authority Water," as defined in the Agreement, in an underground storage facility ("the Facility") owned and operated by Vidler and described in the Agreement. As used herein, the term "Authority Water" shall mean the excess of CAP Water made available by the Central Arizona Water Conservation District to the Grantee which Grantee stores in the Facility, pursuant to the Agreement.

C. Grantor desires to grant and Grantee desires to acquire solely in furtherance of the purposes and duties of the Authority a non-exclusive easement in gross in the Real Property under the terms and conditions hereof for the construction, operation, maintenance, and replacement of recovery wells, pipelines and related water conveyancing or withdrawal structures and facilities for the recovery of Authority Water from the Real Property and for the delivery of Authority Water to the Central Arizona Project ("CAP") canal (the "CAP Canal").

GRANT OF EASEMENTS:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. Defined Terms. Unless otherwise defined, capitalized terms in this Non-Exclusive Easement Agreement (hereinafter the "Easement") shall have the meaning ascribed thereto in the "Recitals" section hereof, except that "Authority" shall mean the Arizona Water Banking Authority or a "Designated Recovery Agent," as described in Section 12 hereof, which has been designated by the Arizona Water Banking Authority to construct, operate, maintain and replace recovery wells and pipelines for the purposes of recovering Authority Water in the Facility stored pursuant to the Agreement and delivering that water to the CAP Canal.

2. Grant of Non-Exclusive Easement In Gross. Subject to the terms and conditions hereof, the Grantor hereby grants to Grantee, for the sole benefit of and exercise by the Authority, the following easements in gross on, over, under and across the Real Property: (i) a non-exclusive easement for the construction, operation, maintenance and replacement of a recovery well or wells (collectively, "the Wells") for the withdrawal of Authority Water stored by the Authority in the Facility pursuant to the Agreement from the Real Property, (ii) a non-exclusive easement for the construction, operation, maintenance and replacement of a pipeline or pipelines for the conveyance of Authority Water (collectively the "Pipelines") from the Wells to the CAP canal, (iii) a non-exclusive easement for the construction, operation, maintenance and replacement of utility facilities necessary to support the construction, operation, maintenance and replacement of the Wells and Pipelines, and (iv) a non-exclusive easement for ingress and egress to and from the Pipelines and the Wells.

3. Grantor's Approval of Construction of Wells and Pipeline.

(a) Approval Procedure. The Grantee acknowledges and agrees that the number, location, design and types of Wells and Pipelines that may be constructed, operated, maintained and replaced under the terms and conditions of this Easement are subject to the prior written reasonable approval of the Grantor, which approval shall not be unreasonably withheld. Grantor acknowledges that the location of the Wells and Pipelines shall be in such locations that minimize the construction and operation costs to be incurred by the Authority. In connection with the Grantor's approval, the Authority shall:

(i) Deliver to Grantor for Grantor's approval (1) the proposed location of the Wells or Pipelines on the Real Property established pursuant to a survey prepared by a surveyor licensed in the State of Arizona, (2) proposed specifications for the construction of the Wells or Pipelines, (3) plans for the delivery of utility service to the Wells, and (3) the proposed construction schedule. Approval or disapproval shall be communicated in the manner provided for notices under this Easement, and disapproval shall be accompanied by written specifications of the grounds for disapproval; provided that Grantor's failure to disapprove preliminary plans and specifications in writing within thirty (30) days after delivery of same to Grantor shall be conclusively considered to be

approved by Grantor. The Authority shall not deliver working drawings to the appropriate governmental authorities for permits unless the construction plans are in conformity with those plans approved in this Section. Following Grantor's first or any subsequent disapproval, the Authority shall submit to Grantor revised plans and specifications.

(ii) The Authority shall notify Grantor of the Authority's intention to commence construction at least five (5) days before commencement of any such work or delivery of any materials.

(b) Permits. The Grantor authorizes the Authority to apply for, obtain and utilize such permits, registrations and authorizations as are necessary in accordance with applicable law and the rules and regulations of the Arizona Department of Water Resources ("ADWR") to enable the Authority to construct and use the Wells to withdraw Authority Water from the Real Property pursuant to the Agreement and to construct Pipelines to convey the Authority Water. The Authority shall pay all fees and costs associated with all permits. Grantee acknowledges that the Authority is solely responsible for obtaining all permits necessary for the construction, operation and maintenance of the Wells and Pipeline.

(c) Work/Lien Free Completion. All work on the Wells and Pipelines shall be performed in a good and workmanlike manner and shall comply with all applicable permits, laws, ordinances and regulations of the governmental authorities.

The Authority shall pay or cause to be paid the total cost and expense of all works of improvement undertaken for the construction, operation and maintenance of the Wells and Pipelines. The Authority shall defend and indemnify Grantor against all liability and loss of any type arising out of work performed on the Real Property by, or under the authorization of, the Authority.

(d) Inspection and Notice of Non-Responsibility. Grantor shall have the right to post and maintain on the Real Property any notices of non-responsibility provided for under applicable law, and to inspect, or cause its employees or agents to inspect, the construction of the Wells and Pipeline at all reasonable times.

4. Insurance. Prior to commencement of construction of the Wells or Pipelines, the Authority shall provide the Grantor a copy of a Certificate of Insurance from the State of Arizona evidencing that the Authority is a covered party under insurance or self-insurance maintained by the State of Arizona. The insurance or self-insurance shall be for the coverage and amounts deemed appropriate by the State of Arizona, Department of Administration, Risk Management Section, for the construction, operation and maintenance of the Wells and Pipelines.

5. Indemnification. The Authority shall indemnify, defend, and hold Grantor, its agents, employee, officers, and directors harmless for, from, and against any claims, losses, damages, costs, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments, arising directly or

indirectly from the Authority's use of the Real Property, or from any act, omission, or negligence of the Authority, or that of its agents, employees, sublessees, contractors, invitees or grantees in or about the Real Property. The Authority further agrees that the indemnification obligations and liability of the Authority under this Section 5 shall not be limited by the insurance maintained by the Authority under this Easement. The indemnity provisions and the obligations of the Authority and Grantor under this Section 5 shall survive the termination or expiration of this Easement.

6. Maintenance and Operation of Wells. Until such time as the Authority has completed the withdrawal of the Authority Water under the terms of the Agreement, Authority shall, at the Authority's sole cost and expense, maintain and repair the Wells and the Pipelines, in good and safe order and condition and repair, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of governmental authorities having or claiming jurisdiction and all their respective departments, bureaus, and officials, including but not limited to the ADWR. As used herein, the term "repair" includes all necessary replacements, renewals, alterations, additions and betterments.

7. Completion of Withdrawal. At such time as the Authority has removed the amount of Authority Water from the Real Property that is permitted to be removed pursuant to the provisions of the Agreement, the Authority shall be responsible for all costs and expenses associated with the closure of the Wells and Pipelines in accordance with applicable law and the requirements and regulations of all applicable governmental authorities, including, but not limited to, the ADWR. Subsequent to the closure of the Wells, Grantor shall be free, at its sole risk and expense, to use such Wells for Grantor's purposes without payment to Grantee or the Authority. Upon the removal of all Authority Water that is permitted to be removed pursuant to the Agreement (i) the Grantee and Grantor shall execute, in recordable form, a notice of termination of easement, or (ii) the Grantee shall execute a quit claim deed in favor of Grantor, quit claiming any interest in the Real Property.

8. Utilities. The Grantor makes no representations or warranties regarding the availability of utilities or the ability of the Authority to obtain utilities necessary to service the Wells constructed in accordance with this Easement and the Grantee acknowledges that the Authority will be solely responsible for all costs associated with the delivery of utilities, including but not limited to electrical power, to the Wells constructed by the Authority in accordance with the terms and conditions of this Easement.

9. Non-Exclusive. An exclusive right to the use of the Real Property is not hereby granted by the Grantor. Grantor reserves the right: (a) to use the Real Property in common with the Authority, (b) to grant to others the right to use the Real Property in common with Grantor, the Authority and others entitled to the use thereof, (c) to use the Real Property (and to grant to others the right to use the Real Property) for any surface or subsurface use that does not unreasonably interfere with the Authority's use of the Real Property for the aforesaid purposes; and (d) to grant to public authorities and/or utility companies easements over or across the easement parcel for utility purposes, provided no such easement shall preclude or restrict the use of the Real Property by the Authority for the purposes set forth in this Easement.

10. Central Arizona Project Canal. The Grantee acknowledges that the Authority is responsible for obtaining all other consents, rights and agreements necessary to deliver the Authority Water to the CAP Canal and that the Grantor makes no representations or warranties regarding the ability of the Authority to construct Pipelines necessary for the delivery of recovered Authority Water to the CAP Canal or gain access to the CAP Canal.

11. Binding Obligations. All of the provisions of this instrument including the benefits and burdens run with the land and are binding upon and inure to the benefit of the parties hereto and their respective successors in interest and assigns.

12. Assignment of Rights. The Grantee may (a) assign, transfer, or convey all of its rights or interest under this Easement to a political subdivision of the State of Arizona or a municipal corporation formed under the laws of the State of Arizona, or (b) designate a "Designated Recovery Agent" to exercise the Authority's rights or interests under this Easement; provided, however, the Designated Recovery Agent or the entity to which the Grantee assigns, transfers, or conveys its rights or interest under this Easement must expressly agree to be bound by all of the terms and conditions of this Easement. The "Designated Recovery Agent" shall be a political subdivision of the State of Arizona or a municipal corporation formed under the laws of the State of Arizona. The Grantor may, without the consent of the Grantee or the Authority, assign its rights under this Agreement to any purchaser of the Real Property.

13. Miscellaneous.

(a) Attorneys' Fees. If, on account of any breach or default by either party of its obligations to the other under the terms, conditions and covenants of this Easement, it shall become necessary for the non-breaching party to employ an attorney to enforce or defend any of its rights or remedies hereunder, then the prevailing party shall be entitled to reasonable attorneys' fees, court costs and related expenses, including experts' expenses, incurred therein, whether or not legal suit is actually brought.

(b) Notices. Any notice given under the terms of this Easement shall be in writing and shall be either delivered by hand or sent by United States mail, registered or certified, return receipt requested, postage prepaid. Such address may be changed from time to time by either party by giving notice as provided herein. Notice is considered given either (i) when delivered in person to the recipient named as below, or (ii) two (2) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended as follows:

If to Grantor:	Southwestern Agricultural Services, Inc. C/o Vidler Water Company, Inc. 3264 Goni Road Suite 153 Carson City, Nevada 89706 Attn: Ms. Dorothy Timian-Palmer
----------------	---

If to Grantee: Manager
Arizona Water Banking Authority
500 North Third Street
Phoenix, Arizona 85004

(c) Time of the Essence. In all instances where any party hereto or Grantor is required to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

(d) Applicable Law. The laws of the State of Arizona shall govern the interpretation, validity, performance and enforcement of this Easement.

(e) Relationship of Parties. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, landlord and tenant or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither any provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of a grantor and a grantee under an easement in gross.

(f) Use of Language. Words of any gender used in this Easement shall be held and construed to include any other gender and words in the singular shall be held to include the plural, unless the context otherwise requires. The captions or headings of paragraphs in this Easement are inserted for convenience only and shall not be considered in construing the provisions hereof if any question of intent should arise.

(g) Successors. The provisions of this Easement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

(h) Severability. If any term or provision of this Easement shall to any extent be held invalid or unenforceable by a final judgment of a court of competent jurisdiction, the remainder of this Easement shall not be affected thereby.

(i) Entire Agreement. This Easement and the Agreement into which this Easement Agreement is incorporated is the entire agreement of the parties with regard to the subject matter hereof; that no prior representations, warranties, understandings, stipulations, agreements or promises pertaining to this Easement or the Real Property shall be binding on either party unless such representations, warranties, understandings, stipulations, agreements or promises are expressly stated in this Easement or the documents incorporated herein. All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied at full length herein. It is likewise agreed that this Easement may not be altered, waived, amended, or extended except by an instrument in writing signed by both Grantor and Grantee.

(j) No Dedication to Public. Nothing contained in this easement shall be deemed to be a gift or dedication of any portion of the Real Property to the general public or any public use or purpose whatsoever other than the purposes of the Authority, it being the intention

of the parties hereto that this Easement is for the exclusive benefit of the Grantor, the Grantee and the Authority and that nothing in this Easement, express or implied, shall confer upon anyone, other than as specified herein, any rights or remedies under or by reason of this Easement.

IN WITNESS WHEREOF, the parties have executed this Easement as of the day and year first above written.

SOUTHWESTERN AGRICULTURAL SERVICES, INC., a Delaware corporation

By: _____

Its: _____

("Grantor")

ARIZONA WATER BANKING AUTHORITY

Attest: _____

Secretary

By: _____

Chairman

("Grantee")

STATE OF ARIZONA)
)ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2001, by _____, the _____ of Southwestern Agricultural Services, Inc., a Delaware corporation, on behalf of the corporation.

Notary Public

My commission expires:
