

ARIZONA WATER BANKING AUTHORITY
Monday, April 9, 2001

No.	NAME (Please print)	Phone No.
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2	Bruce Brown	480-733-6666
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Arizona Water Banking Authority
500 North Third Street, Phoenix Arizona 85004
Telephone 602-417-2418
Fax 602-417-2401
Web Page: www.awba.state.az.us

NOTICE OF PUBLIC MEETING

Pursuant to A.R.S. § 38-431.02, notice is hereby given that there will be a meeting of the Arizona Water Banking Authority Commission on **Monday, April 9, 2001 at 10:00 a.m.** at the Arizona Department of Water Resources, 500 North Third Street, Phoenix, Arizona 85004, third floor Conference Room A. The meeting is open to the general public. A copy of the agenda for the meeting is posted below.

Dated this 6th day of April, 2001

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

FINAL AGENDA

- I. Welcome/Opening Remarks
- II. City of Goodyear Water Banking Services Agreement
 - Discussion of Agreement
 - Approval of Agreement by Authority
- III. Vidler Water Company USF Agreement
 - Discussion of Agreement
 - Approval of Agreement by Authority
- IV. 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 the Arizona Water Banking Authority at (602) 417-2418. Requests should be made as early as possible to allow time to arrange the accommodation.

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 2,500 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 2,500 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 2,500 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

1 **7. WATER BANKING SERVICES FEE**

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

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

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

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

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

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:
24
25

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.

1 **21. ENTIRE AGREEMENT**

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

6 **22. GOVERNORING LAW**

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

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

13 **ARIZONA WATER BANKING**
14 **AUTHORITY**

15
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17
18 **ATTEST:** _____

19 **Secretary**

BY: _____

20 **Chairman**

CITY OF GOODYEAR

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ATTEST: _____

BY: _____

Title: _____

Title: _____

Approved as to form:

ERRATA

Agreement for Storage of Water:

P. 3, Section 3.11: Replace “Person or entity” with “An entity”; insert “the” before “AWBA”; replace “Authority’s” with “AWBA’s”

P. 3, Section 4: Replace “Vidler facility” with “Vidler Facility”

P. 4, Section 5: Replace “three (3) years from such date” with “December 31, 2003,”

P. 16, Section 23: Replace “to any subsidiary corporation of Vidler or Vidler’s parent company, Pico Holdings, Inc., a California corporation,” with “to Vidler’s parent company, Pico Holdings, Inc., a California corporation, or to any subsidiary corporation of Vidler or of Pico Holdings, Inc.,”

Non-Exclusive Easement in Gross Agreement

P. 2, Line 6 of Paragraph 2: Replace “Authority” with “Grantee”

P. 2, Line 5 of Paragraph 3(a)(i): Replace “(3)” with “(4)”

P. 4, Lines 1, 2, and 8 of Paragraph 7: Replace “removed” with “recovered”

P. 4, Line 8 of Paragraph 7: Replace “removal” with “recovery”

P. 5, Paragraph 13(b): Replace “C/o” with “c/o”

**AGREEMENT FOR STORAGE OF WATER
AT THE VIDLER WATER COMPANY, INC.,
UNDERGROUND STORAGE FACILITY**

1. PARTIES

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

2. RECITALS

- 2.1 The AWBA is an authority of the State of Arizona.
- 2.2 It is the policy of the State of Arizona to increase utilization of Arizona’s Colorado River entitlement that would otherwise be unused in Arizona by delivering that water into the state through the Central Arizona Project for storage and future use for the purposes specified in A.R.S. § 45-2401.
- 2.3 The AWBA was created to implement the policy described in subsection 2.2.
- 2.4 Vidler is a Delaware corporation authorized to do business in Arizona.
- 2.5 Vidler has obtained an underground storage facility permit from the Arizona Department of Water Resources to construct and operate an underground storage facility in the Harquahala Irrigation Non-Expansion Area.
- 2.6 The AWBA desires to store excess water obtained from the Central Arizona Water Conservation District in the Vidler underground storage facility, and Vidler is willing to store such excess water at its facility.
- 2.7 The AWBA desires to appoint an agent to exercise the Authority’s right to recover the water stored under this Agreement on behalf of the Authority, and

therefore the Parties recognize and intend that the AWBA may designate a third party agent for this purpose. Further, the Parties expressly intend that the designated agent be an intended third party beneficiary of this Agreement.

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

3. **DEFINITIONS**

- 3.1 Authority Water: Excess CAP Water made available by CAWCD to the AWBA for underground storage, which water would not otherwise have been used in Arizona.
- 3.2 ADWR: The Arizona Department of Water Resources.
- 3.3 CAP Water: Water delivered through the CAP system.
- 3.4 Central Arizona Project or CAP: The water delivery works of the CAP including, but not limited to, the CAP canal, its turnout structures and associated measuring devices.
- 3.5 Central Arizona Water Conservation District or CAWCD: The multi-county water conservation district formed in accordance with Title 48, Chapter 22, Arizona Revised Statutes, to arrange for repayment of, and delivery of water from, the CAP.
- 3.6 Party or Parties: Either one or both of the Parties to this Agreement.
- 3.7 Permit: The constructed underground storage facility permit issued by the Arizona Department of Water Resources to Vidler for the construction and operation of Vidler's underground storage facility, currently Permit No. 71-576699, or any amended or subsequent constructed underground storage facility permit issued by the Arizona Department of Water Resources to Vidler for the

construction and operation of an underground storage facility on or about the same location of the underground storage facility currently operated pursuant to Permit No. 71-576699.

- 3.8 Vidler Facility: The constructed underground storage facility constructed and operated by Vidler pursuant to the Permit, and located in Section 33, Township 3 North, Range 11 West, GSRB&M, in the Harquahala Irrigation Non-Expansion Area. The location of the Vidler Facility is shown on the map attached to this Agreement as “Exhibit A,” which is hereby incorporated into this Agreement.
- 3.9 Vidler Turnout: The point at which Authority Water is diverted from the CAP canal for delivery to the Vidler Facility.
- 3.10 Director of ADWR: The Director of the Arizona Department of Water Resources, in the capacity of the Chairperson of the Arizona Water Banking Authority, a Public Officer of the State of Arizona.
- 3.11 Designated Recovery Agent: An entity appointed by the AWBA, pursuant to Section 24 of this Agreement, to exercise the AWBA’s right to recover the water stored under this Agreement.

4. **SCOPE OF SERVICES**

This Agreement is limited to Vidler’s: (i) taking delivery of Authority Water at the Vidler Turnout; (ii) transporting the Authority Water to the Vidler Facility; and (iii) storage of the Authority Water underground, in the Vidler Facility, by Vidler for the benefit of the AWBA. The AWBA shall compensate Vidler for these services only as specified by this Agreement. Vidler shall protect the Authority Water as provided in Section 13 of this Agreement and shall permit recovery of the Authority Water by the Authority, its authorized representative or its Designated Recovery Agent, as provided in Section 13 of this Agreement and as provided in the Non-Exclusive Easement In Gross

Agreement. The Non-Exclusive Easement In Gross Agreement is attached to this Agreement as "Exhibit B," which is hereby incorporated into this Agreement.

5. **TERM OF AGREEMENT**

This Agreement shall become effective on the date when it has been executed by both Parties and shall terminate December 31, 2003, unless the Parties agree in writing to extend the term or unless it is sooner terminated or canceled in accordance with the terms of this Agreement.

6. **CONDITIONS RELATING TO WATER STORAGE**

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

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

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

7. **PROCEDURE FOR SCHEDULING WATER STORAGE**

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

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

- 7.2 As soon as practicable after receipt of the Authority's proposed schedule submitted pursuant to Section 7.1, Vidler shall review the proposed schedule, adjust the proposed schedule if necessary, and shall return to the AWBA the schedule, indicating the amount of water storage that is available to the AWBA for the year in which this Agreement is executed. Thereafter, on or before December 15 of each year during the term of this Agreement, Vidler shall return to the AWBA the schedule, indicating the amount of water storage that is available to the AWBA for the following year. The schedule thus agreed to and returned to the AWBA shall constitute the maximum amount of Authority Water to be delivered to the Vidler Turnout and stored at the Vidler Facility during each month of that year, subject to modification pursuant to Subsection 7.3.
- 7.3 The AWBA may increase or decrease its monthly schedule in accordance with this Subsection. Unless otherwise agreed by the Parties, the AWBA shall submit the proposed modifications to its schedule to Vidler not less than 15 days before the desired change is to become effective. Vidler shall accept the AWBA's timely request to decrease its schedule and shall revise the schedule to reflect the decrease. Vidler shall review the AWBA's timely request to increase its schedule, and Vidler shall make any necessary adjustment to that request. Vidler will notify the AWBA in writing of Vidler's action concerning the AWBA's request to increase its schedule within 10 days of receipt of such request. The schedule shall be revised to reflect any increase acceptable to Vidler.

- 7.4 The AWBA shall authorize Vidler to order Authority Water for delivery to the Vidler Turnout directly from CAWCD in accordance with CAWCD water ordering procedures. Authority Water ordered by Vidler shall not exceed the amounts provided for in the monthly schedule agreed upon in accordance with Subsection 7.2 or any modification of the schedule made in accordance with Subsection 7.3. The AWBA shall not be required to pay Vidler any storage fees for any CAP Water for which Vidler accepts delivery at the Vidler Turnout in excess of the amounts of Authority Water provided for in the agreed upon or modified schedule, and Vidler shall be solely responsible to CAWCD for any applicable fees or costs associated with the delivery of CAP Water that is in excess of the amount of Authority Water provided for in the schedule. Except as provided in Section 12, the AWBA shall be responsible for payment to CAWCD for all charges and costs for Authority Water scheduled in accordance with this Section 7 and delivered at the Vidler Turnout for storage in the Vidler Facility.
- 7.5 Unless otherwise provided by this Agreement, Vidler shall accept delivery of Authority Water scheduled in accordance with this Section at the Vidler Turnout, transport the Authority Water to the Vidler Facility, and release and store the Authority Water in the Vidler Facility.

8. VIDLER AS UNDERGROUND STORAGE FACILITY OPERATOR

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

- 8.2 Vidler shall retain sole responsibility and authority for decisions relating to operation and maintenance practices at the Vidler Facility, including scheduling and selection of periods when maintenance will be done.
- 8.3 Whenever practicable, Vidler shall inform the AWBA ninety (90) days in advance of any event or occurrence that may affect the ability of Vidler to store Authority Water that was scheduled for storage in accordance with Section 7.

9. WATER STORAGE FEES

- 9.1 Vidler shall bill the AWBA and the AWBA shall pay Vidler a water storage fee for each acre foot of Authority Water that Vidler releases into the Vidler Facility on behalf of the AWBA.
- 9.2 The water storage fee for any water stored during the year in which this Agreement becomes effective is \$45.00 per acre foot.
- 9.3 The water storage fee for any water stored during the first year immediately following the year in which this Agreement becomes effective is \$46.50 per acre foot. The water storage fee of any water stored during the second year immediately following the year in which this Agreement becomes effective is \$48.00 per acre foot.
- 9.4 Vidler shall bill the AWBA and the AWBA shall pay Vidler an annual administration fee of \$10,000.00 for any year in which the AWBA stores water at the Vidler Facility. The administration fee shall be billed in December for any year in which an administration fee may be billed under this Subsection. The administration fee shall be paid in accordance with Section 10 of this Agreement.

10. BILLING AND PAYMENT

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

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

- 10.2 Payment by the AWBA to Vidler shall be made in readily available funds on or before the thirtieth (30th) day following the date on which the bill was postmarked (or if such day is not a business day, on the next succeeding business day). Bills that are not paid by this date shall be considered delinquent and thereafter shall accrue an interest charge at the prime rate of interest as established by the Bank of America on the last business day of the month following the month for which the bill was submitted, plus 3% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment shall first be applied to any interest charges owed, and then to amounts owed for the storage of Authority Water in the Vidler Facility.
- 10.3 In the event any portion of any bill is disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, the Authority shall, at the Authority's option, be refunded any overpayment plus interest, accrued at the rate set forth in Subsection 10.2, prorated by days from the date payment was credited to the AWBA to the date the refund check is mailed, or the overpayment, plus accrued interest may be applied to outstanding amounts owed by AWBA to Vidler.
- 10.4 In the event any delinquent amount is not paid by the AWBA within thirty (30) days after receipt by AWBA of written notice from Vidler of the delinquency, Vidler shall have the right without liability of any kind, to refuse to accept

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

11. WATER MEASUREMENT AND ACCOUNTING

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

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

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

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

12. WATER LOSSES

The AWBA shall not be responsible to pay CAWCD for any Authority Water that is lost or unaccounted for between the Vidler turnout and the point at which the water enters the Vidler Facility and that exceeds five (5) % of the Authority Water delivered to the Vidler

Turnout. Vidler shall be solely responsible to pay CAWCD for any Authority Water that is lost or unaccounted for between the Vidler turnout and the point at which the water enters the Vidler Facility and that exceeds five (5) % of the Authority Water delivered to the Vidler Turnout.

13. ASSURANCES FOR THE PROTECTION AND RECOVERY OF STORED WATER

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

13.2 Vidler agrees that Vidler, its agents, and affiliated companies shall take no action that causes the quality of the Authority Water stored in the Vidler Facility to fall below acceptable Aquifer Water Quality Standards as set by the Arizona Department of Environmental Quality. For purposes of this Subsection “action” includes, but is not limited to, conveying or assigning Vidler property, or permitting or granting license to any other persons, with the knowledge or reasonable expectation that the transferee or licensee may cause the quality of the stored Authority Water to decline. “Action” does not include Vidler, its agents, or

affiliated companies recovering water stored at the Vidler Facility in accordance with Arizona Revised Statutes, Title 45, Chapter 3.1.

13.3 Vidler agrees that the AWBA shall be entitled to recover the Authority Water stored under this Agreement and that the AWBA may designate a third party agent, in accordance with Section 24 of this Agreement, to recover the Authority Water stored under this Agreement on behalf of the AWBA. In tandem with this Agreement, Vidler shall, in accordance with Arizona law, execute and convey to the AWBA the easement in gross attached as Exhibit B to this Agreement. The easement shall provide the AWBA, or the Designated Recovery Agent appointed pursuant to Section 24 of this Agreement, with the right to enter the property identified in Exhibit A to this Agreement for the purposes of constructing and operating wells with which to recover Authority Water stored by Vidler under this Agreement for the benefit of the AWBA and for constructing and operating a water conveyance system by which to deliver the recovered Authority Water to the CAP canal, as provided in Exhibit B. Vidler shall record the easement as provided by law in the office of the county recorder of the county in which the property is located.

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

14. **AMOUNT OF WATER STORAGE**

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

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

15. **QUALITY OF WATER**

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

16. **LIABILITY**

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

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

17. **DEFAULT**

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

18. **UNCONTROLLABLE FORCES**

Neither Party shall be considered to be in default in the performance of any of its obligations hereunder (other than obligations of the AWBA to make payment for service hereunder) when a failure of performance shall be due to uncontrollable forces. The term “uncontrollable forces” shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any 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 either Party or settle any strike or labor dispute in which it is involved.

19. **RESOLUTION OF DISPUTES**

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

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

19.1.2. A Party wishing to submit a dispute to arbitration shall provide thirty (30) days written notice to the other Party of its intent to pursue arbitration and shall name one arbitrator at that time. Within fifteen (15) days of receiving this notice, the other Party to the dispute shall name one arbitrator and give written notice to the other Party of its selection. The

two selected arbitrators shall, within five (5) days of selection of the second arbitrator, jointly select a third arbitrator.

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

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

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

20. ACTION PENDING RESOLUTION OF DISPUTES

Pending the resolution of a dispute pursuant to Section 19, each Party shall proceed, to the extent legally permissible, in a manner consistent with this Agreement, and shall make payments required in accordance with the applicable provisions of this Agreement. Amounts paid by a Party pursuant to Section 19 during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due. Upon such final resolution, the owed amounts shall be remitted in accordance with the remittance procedures/arrangements contained in Section 10.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated under the following circumstances:

21.1. If the intergovernmental agreement among the AWBA, ADWR, and CAWCD regarding delivery of the AWBA Water is terminated, the AWBA may terminate

this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to Vidler; or

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

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

22. **NOTICES**

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

If to the AWBA:

Manager
Arizona Water Banking Authority
500 North Third Street
Phoenix, Arizona 85004-3903

If to Vidler:

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

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

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

The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Agreement or any interest therein shall

be valid unless and until approved in writing by the non-assigning Party, which approval shall not be unreasonably withheld. Notwithstanding the preceding, Vidler may assign its interest in this Agreement to Vidler's parent company, Pico Holdings, Inc., a California corporation, or to any subsidiary corporation of Vidler or of Pico Holdings, Inc., without the written approval of the Authority.

24. DESIGNATED RECOVERY AGENT AS THIRD PARTY BENEFICIARY

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

24.2 It is the express intention of the Parties that the Designated Recovery Agent be a third party beneficiary of the obligations and duties of Vidler under this Agreement, and as such shall be entitled to enforce this Agreement, including, but not limited to, the provisions of Subsection 7.4, Section 12, Section 13, and Exhibit B as incorporated into this Agreement. The Parties agree that the third party beneficiary shall be entitled to the same rights and privileges associated with the recovery of the Authority Water stored in the Vidler Facility as held by the AWBA or the Director under this Agreement, including Exhibit B. The Parties agree that the provisions of Sections 19 and 20 shall apply to the third party beneficiary, and that the third party beneficiary shall be considered a "Party" only for the purposes of Sections 19 and 20. The rights of the third party beneficiary under this Section shall vest immediately upon notification of Vidler by the

AWBA of the designation of a Designated Recovery Agent in accordance with this Section. The Parties agree that the terms of this Section shall not, in any way, limit the rights or privileges of the AWBA under this Agreement.

25. **WAIVER**

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

26. **CANCELLATION**

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

27. **CONSISTENCY WITH OTHER AGREEMENTS**

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

28. **ENTIRE AGREEMENT**

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

29. **GOVERNING LAW**

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

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

ARIZONA WATER BANKING
AUTHORITY

ATTEST: _____
Secretary

BY: _____
Chairman

VIDLER

ATTEST: _____

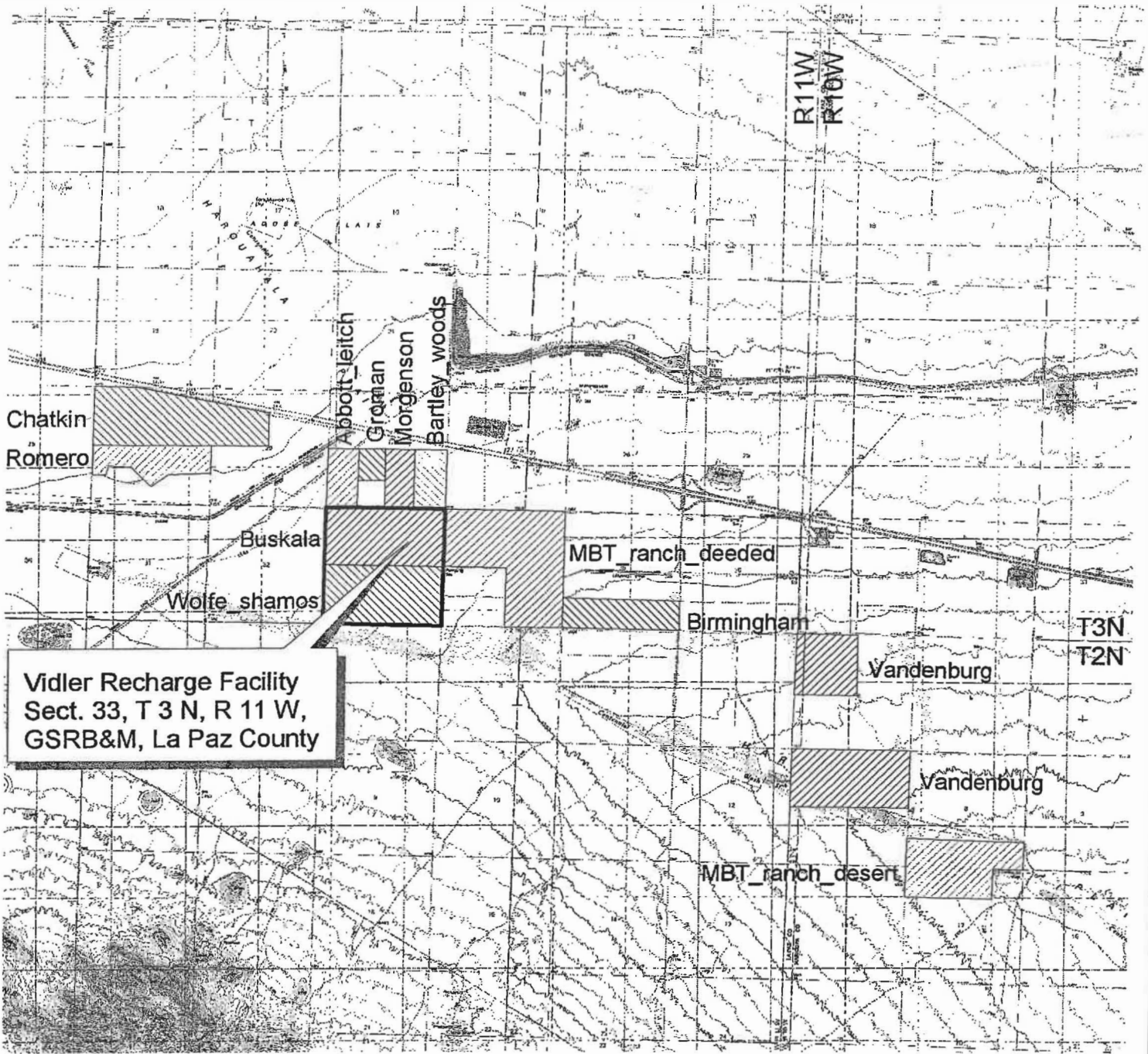
BY: _____

Title: _____

Title: _____

Approved as to form:

EXHIBIT - A



Vidler Recharge Facility
 Sect. 33, T 3 N, R 11 W,
 GSRB&M, La Paz County

**VIDLER HARQUAHALA PROPERTIES
 DESIGNATED AS
 RECHARGE PROPERTIES**
 Drawing Revised 03/22/01



0.8 0 0.8 1.6 Miles



- Abbott_leitch - 80 Ac
- Bartley_woods - 80 Ac
- Birmingham - 160 Ac
- Buskala - 320 Ac
- Chatkin - 393 Ac
- Groman - 40 Ac
- Morgenson - 80 Ac
- MBT_ranch_deeded - 480 Ac
- MBT_ranch_desert - 280 Ac
- Romero - 156 Ac
- Vandenburg - 133 Ac
- Vandenburg - 342 Ac
- Wolfe_shamos - 320 Ac

TOTAL ACRES = 2864 +/-

EXHIBIT A

Abbott Leitch

The West half of the Southwest quarter of Section 28, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

Bartley Woods

The East half of the Southeast quarter of Section 28, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

Birmingham

PARCEL NO. 1:

The West 2970 feet of the South half of the South half of Section 35, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

EXCEPTING therefrom the East 660 feet thereof.

PARCEL NO. 2:

The South half of the South half of Section 35, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

EXCEPTING therefrom the West 2970.00 feet thereof.

Buskala

The North half of Section 33, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

Chatkin

PARCEL NO. 1:

The North half (N 1/2) of section 29, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, Yuma (now La Paz) County, Arizona, lying South and adjacent to Interstate Highway 10.

EXHIBIT A

Chatkin (Cont'd)

EXCEPT the East 80 acres thereof.

EXCEPT therefrom that portion of said land lying East of a line which runs parallel to and is 67.30 feet West of the West line of the Northeast quarter (NE 1/4) of said Section 29.

PARCEL NO. 2:

The North half (N 1/2) Section 30, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, Yuma (now La Paz) County, Arizona, lying South and adjacent to the southerly boundary line of Interstate Highway 10.

Groman

The northeast quarter of the southwest quarter section 28, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona

Morgenson

The West half of the Southeast quarter of Section 28, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

MBT Ranch Deeded

The North half and the Southeast quarter of Section 34, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

MBT Ranch Desert

PARCEL NO. 1:

The South half of the South half of Section 8, Township 2 North, Range 10 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXHIBIT A

MBT Ranch Desert (Cont'd)

PARCEL NO. 2:

The West half of the North half of the North half, and the West half of the East half of the North half of the North half of Section 17, Township 2 North, Range 10 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Romero

That portion of the South half (S 1/2) of Section 30, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona, described as follows:

The South half (S 1/2) of said Section 30, lying North of the following described line:

COMMENCING at the southwest corner of Said Section 30;
Thence North along the West line of said Section 30, 1320.93 feet to the POINT OF BEGINNING of the herein described line;
Thence North 88 degrees 06 minutes 56 seconds East 579.82 feet;
Thence North 16 degrees 33 minutes 05 seconds East 412.25 feet;
Thence South 87 degrees 29 minutes 07 seconds East 999.87 feet;
Thence South 42 degrees 29 minutes 10 seconds East 1272.62 feet;
Thence North 51 degrees 54 minutes 49 seconds East 921.83 feet;
Thence South 89 degrees 38 minutes 14 seconds East 1927.80 feet to a point on the East line of said Section 30, said point being the end of said line

Vandenburg

PARCEL NO. 1:

Lots 1 and 2, the East half of the Northwest quarter, and the Northeast quarter of Section 7, Township 2 North, Range 10 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona

EXCEPT that portion lying within La Paz County, Arizona being approximately the West 390 feet thereof.

EXHIBIT A

Vandenburg (Cont'd)

PARCEL NO. 2:

GLO Lots One (1) and Two (2), Section 7, Township 2 North, Range 10 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

PARCEL NO. 3:

GLO Lots Four (4) and Five (5), Section 6, Township 2 North, Range 10 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona.

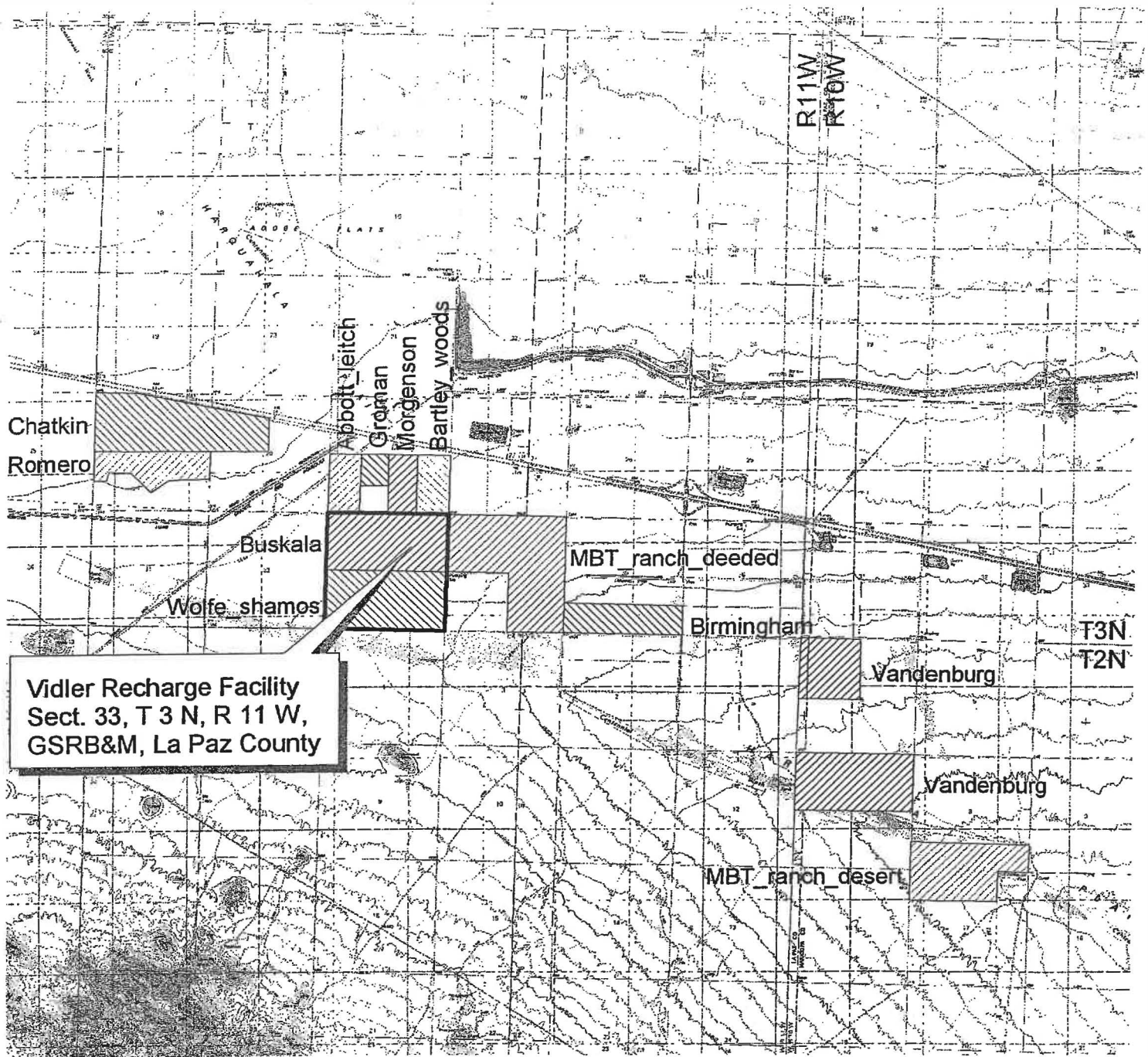
PARCEL NO. 4:

Lots 3, 4 and 5 and the Southeast quarter of the Northwest quarter of Section 6, Township 2 North, Range 10 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

EXCEPT that portion lying within La Paz County, Arizona being approximately the West 390 feet thereof.

Wolf Shamos

The south half of section 33, Township 3 North, Range 11 West of the Gila and Salt River Base and Meridian, La Paz County, Arizona
















Vidler Recharge Facility
 Sect. 33, T 3 N, R 11 W,
 GSRB&M, La Paz County

**VIDLER HARQUAHALA PROPERTIES
 DESIGNATED AS
 RECHARGE PROPERTIES
 Drawing Revised 03/22/01**



0.8 0 0.8 1.6 Miles



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TOTAL ACRES = 2864 +/-