

ARIZONA WATER BANKING AUTHORITY
Wednesday, March 20, 2002

No.	NAME (Please print)	Phone No.
1	Sharon B. Megdal	520-792-9591 x24
2	MARVIN S. COHEN	480-425-2633
3	BOB BARRBT	623-869-2135
4	Kay Brotherly	702-258-3126
5	Jim Davenport	702-486-2689
6	Dale Ensminger	702-293-8659
7	John Hetrick	602-236-5649
8	Dorothy Penn	775-885-5210
9	STEVE HARM	775-885-5000
10	Larry Dozier	859-2377
11	Tom HARRIS	623-869-2107
12	Chuck Cull	623-869-2665
13	TIMOTHY L. RECHT (IEDA)	602-254-5908
14	Wick Stitzer	520-770-3815
15	Tim Gibson	602-366-8084
16	Diane Kusel	520-770-3804
17	Jim Peterson	520-297-2771
18	LINDA SMITH	520 791 2689
19	Mark Myers	520 742 0416
20	Harry Kuznetsov	213 217 6082
21	Cindy Shimokusa	520 770 3807
22	Michael Lacey	602 274 6725
23	Reth Miller	480-312-5009
24	Gregg Houtz	602-417-2920

No.	NAME (Please Print)	Phone No.
25	Christopher S. Harris Colorado River Board of California	218 543 4676
26	SHIRLEY MOUNA TONONO OODHAM NATION	(520) 383-5280
27	BING / RON WONG BKW	
28	Tom Buschertake City of Phoenix	602 961 8855
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Season's Greetings



MEMORANDUM

To: Authority Members
From: Tim Henley, Manager
Date: March 5, 2002
Subject: Agenda Item Briefing for March 20, 2002 Meeting



AUTHORITY MEMBERS
Joseph C. Smith, Chairman
Tom Griffin, Vice-Chairman
Bill Chase, Secretary
George Renner
Richard S. Walden

EX OFFICIO MEMBERS
Representative Mike Gleason
Senator Ken Bennett

In the course of developing a draft agenda for the March 20, 2002 Authority meeting, staff identified two items that it was felt required additional information and additional time for review. Those two items are the initiation of the public comment period for the Storage and Interstate Release Agreement (SIRA) and the impact of the 2002 and 2003 state budget shortfall on the AWBA.

The Bureau of Reclamation released the draft SIRA for review and public comment on February 21, 2002. Attached is a copy of the news release associated with the agreement and the most recent draft of the SIRA.

As discussed at the last Authority meeting, the legislature withheld distribution of the remaining \$1 million general fund appropriation for Fiscal Year (FY) 2002. Further, it is becoming apparent that the AWBA may not receive any general fund appropriation for FY 2003. Attached is a discussion paper that presents the issue and some possible options.

Please do not hesitate to contact either Gerry Wildeman or myself if you require additional information regarding these issues.

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

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 20, 2002 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 18th day of March, 2002

FINAL AGENDA

Arizona Water Banking Authority Commission Meeting

- I. Welcome/Opening Remarks
- II. Approval of Minutes of December 19, 2001 Meeting
- III. Water Banking Staff Activities
 - Deliveries
 - Legislative update
- IV. Prioritization of the Use of Credits Developed with the General Fund
 - Discussion regarding prioritizing use of credits
 - Possible action regarding a resolution to prioritize the use of the general fund credits
- V. State Budget Shortfall and Impact on Water Banking Authority
 - Discussion regarding impacts
 - Possible action directing staff to work with Central Arizona Water Conservation District and Southern Nevada Water Authority to determine potential for interstate storage in 2002 and 2003
- VI. Update on Status of Interstate Agreements
 - Storage and Interstate Release Agreement (SIRA)
 - Status of Agreement for Development of Intentionally Created Unused Apportionment (ICUA)
- VII. Update on Status of AWBA Contract Agreements
 - Status of new groundwater savings agreements
 - Status of Intergovernmental Agreement (IGA)
 - Status of excess water contract
 - Status of master facility agreement
- VIII. Presentation by Tucson Active Management Area Institutional and Policy Advisory Group (IPAG)
 - Storage and recovery options in Tucson Active Management Area
 - Firming issues

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Arizona Water Banking Authority meeting
March 20, 2002

- IX. Update on Preparation of 2001 Annual Report
- X. Call to the Public

Future Meeting Date:
Wednesday, June 19, 2002

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 19, 2001
Arizona Department of Water Resources**



AUTHORITY MEMBERS
Joseph C. Smith, Chairman
Tom Griffin, Vice-Chairman
Bill Chase, Secretary
George R. Renner
Richard S. Walden

EX OFFICIO MEMBERS
Representative Mike Gleason
Senator Ken Bennett

Welcome/Opening Remarks

All members of the Authority were present except Sen. Ken Bennett and Rep. Mike Gleason.

Approval of Minutes of September 26th Meeting

The Authority approved the minutes from the September 26, 2001 meeting.

Water Banking Staff Activities

Tim Henley, manager of the Authority, reviewed the current deliveries. Mr. Henley stated that total deliveries continue to be below projected deliveries and that total deliveries for 2001 should be approximately 295,000 acre feet. This decrease from projected is primarily due to decreased deliveries to the Granite Reef Underground Storage Project (GRUSP) and the Agua Fria Recharge Project.

Mr. Henley informed the Authority that deliveries were made to GRUSP during the Salt River siphon outage through an exchange agreement between the Salt River Project (SRP) and the Central Arizona Project (CAP). Initial projections estimated 6,000 acre feet could be stored at GRUSP during the outage. Actual storage was approximately 10,000 acre feet.

Mr. Henley reviewed the current state budget situation and the impact of the most current budget proposal on the Authority. In the proposed Fiscal Year 2002 budget, the Authority lost \$2 million. Of that amount, \$1 million was a cut to the general fund appropriation and \$1 million was taken from the interest accrued on the Water Banking Authority Fund. The legislature will address the 2003 budget at a later date and there is uncertainty about what will happen. Mr. Henley stated that he believes the current budget will support the 2002 Plan of Operation as presented, however, there could be constraints developing in 2003, especially in Pinal County. Without a general fund appropriation, Pinal County can only fund about 50% of the historical Groundwater Savings Facility (GSF) activity. Joseph C. Smith informed the Authority that the general fund appropriation request is submitted by the Arizona Department of Water Resources (ADWR) and it appears that at least \$1 million of that appropriation will be in the 2003 base budget.

Mr. Henley introduced Sandy Fabritz, new Technical Administrator for the Authority. Sandy's activities will parallel Gerry Wildeman's with emphasis on interstate activities and coordination between the Authority and the Central Arizona Groundwater Replenishment District (CAGR), CAP, and ADWR.

Gerry Wildeman reviewed the web page updates.

Discussion and Approval of 2002 Annual Plan of Operation

Mr. Henley stated that the three GUACs were supportive of the 2002 Annual Plan of Operation (Plan) and that the Plan was not presented outside of the AMA's because no non-AMA storage was planned. He reviewed the final Plan and stated that it is very similar to the draft the Authority received in September. The Plan anticipates 350,000 acre feet of deliveries at a cost

of approximately \$17 million. The Plan includes storage at one new facility, Hieroglyphics Mountains, and shows that about 130,000 acre feet of CAP capacity will remain. There is no interstate water banking component included in the Plan because all of the requisite agreements have not been executed. Interstate banking could not commence until the Plan is amended as required by statute.

Bill Chase asked a question regarding the decreased numbers at GRUSP. Mr. Henley replied that SRP has had to curtail deliveries to comply with their agreement with the Salt River Pima Maricopa Indian Community. Mr. Chase also asked whether the information in Table 4 was still correct if the general fund available was only \$1 million and what the effect would be on Pinal County. Mr. Henley replied that the budget was still not finalized so the Plan was developed with \$2 million. Looking at the current situation with a \$1 million general fund expenditure as a base in the FY 2003 budget and the carryover from interest, he felt that the deliveries for Pinal County would still be possible. Mr. Henley also stated that he could transfer funds from other accounts to pay for deliveries. Dick Walden discussed movement of funds in 2001 to provide additional money for Pinal County as the 4¢ *ad valorem* tax dollars and withdrawal fees can only be used in specific locations. Mark Myers provided public comment to the effect that any shifting of funds for 2001 should only occur after amendment of the existing Plan. He stated that the public should be informed about this. Sharon Megdal asked a question regarding the timing of spending of funds and also stated that she felt that Tucson should be involved in any decisions to utilize alternative funding sources in place of the general fund money allocated to Tucson in the Plan. Mr. Henley reiterated that the \$2 million shown for general fund in Table 4 is \$1 million from FY 2002 and \$1 million from FY 2003 and the Plan should be accomplished even though the Authority is likely to lose the FY 2002 appropriation.

The Plan was approved and adopted.

Consideration of Action to Authorize the Extension of AWBA Contract Agreements

Ms. Wildeman informed the Authority that three groups of agreements terminate on December 31, 2001. They are the intergovernmental agreement between the Authority, ADWR and Central Arizona Water Conservation District, the agreement for storage at the Avra Valley Recharge Project, and a number of GSF agreements between the Authority, the GSF operator and the CAWCD. The Authority has been working with the parties to develop new agreements but there have been delays. To allow continued storage while new agreements are being developed, staff requested authorization to extend by letter all of the agreements that will expire on December 31, 2001. The extension is requested for one year, however, the initial extension period is set at four months in hopes that the new agreements will be completed by then. It is anticipated that drafts of the agreements will be presented at the March Authority meeting.

A motion was made and adopted to authorize Mr. Smith to sign the letters extending the current agreements to April 30, 2002 with a total extension time not to exceed one year.

Approval of GRUSP Agreement

Ms. Wildeman reviewed the changes made to the existing agreement between the Authority and SRP for storage at GRUSP, specifically that the term was extended to 2006, the costs were increased slightly, and there was a change in the description of the point of delivery. George Renner had a question regarding the SRP's profit on the interconnect facility. Rich Siegel of SRP stated that the transportation costs for GRUSP are subsidized for the Authority due to the level of Authority participation at the project. The cost for use of the interconnect facility is set by the GRUSP participants as is the actual storage rate and the amounts are all cost based. Mr. Chase moved to authorize approval of the agreement. The motion was adopted.

Herb Kai GSF Concepts

Mr. Henley reviewed the conceptual plan being developed for the Herb Kai GSF facility at Avra Valley. In concept, the plan includes the Authority funding construction of infrastructure at the facility in return for a guaranteed reservation of storage capacity at the site. The concept was developed because the Tucson AMA has a limited amount of GSF capacity and GSF storage costs less than USF storage. By increasing the amount of GSF storage done in the Tucson AMA, the Authority would be able to store a greater amount of water there with the funds available. Mr. Henley stated that staff have been working with Mr. Kai, the Tucson AMA and the Tucson IPAG in development of this concept. CAP has provided comment on the concept. A copy of the letter from CAP, a draft of the agreement providing for payment and reservation of storage and a schematic showing the infrastructure needs were included in the member's books.

Mr. Chase asked Mr. Henley if the Authority had the legal authority to do capital construction. Mr. Henley stated that the Authority did because the initial facilities inventory for the Tucson AMA illustrated that there was insufficient storage there. Mr. Henley also stated that the Tucson AMA could review the available facilities to assist in making a recommendation regarding this concept. Mr. Chase asked what source of funds would be used in this plan. Mr. Henley replied that the Tucson AMA would have to provide guidance regarding use of funds. Mr. Renner stated that he felt that questions related to this plan need to be addressed by the Authority at a later date. He wanted all parties to be aware that there are significant policy decisions to be made regarding this issue and that no one should have any expectations merely because a draft agreement has been prepared. Mr. Henley replied that he believed everyone involved knew that this concept was extremely preliminary in nature.

Update on Status of Interstate Discussions

Mr. Henley informed the Authority that the Storage and Interstate Release Agreement was still the agreement of focus and that a point had been reached where all parties felt fairly comfortable with the document. The next step is the public review process that the Bureau of Reclamation must complete. Mr. Henley stated that it was his hope that the Bureau would limit the comment period to 30 days and, if so, the agreements could be in executable form by the June meeting. Prior to initiation of interstate storage, an amendment of the Plan of Operation would be necessary. Mr. Renner questioned whether the Bureau had agreed to a thirty day comment period and Mr. Henley said yes, however, that individual is retiring. Jim Davenport of the Colorado River Commission of Nevada stated that Nevada is pleased with the progress thus far and is hopeful that interstate water banking will commence in 2002.

Update Regarding Governor's Water Management Commission

Ms. Fabritz informed the Authority that the Commission has completed its tasks and submitted its recommendation to the governor. The next step is drafting of legislation for submittal during this session. Ms. Fabritz reviewed the key recommendations of the Commission and discussed some of the legislative changes that came out of the recommendations that could impact the Authority. Specifically, development of a 20% replenishment reserve by the Central Arizona Groundwater Replenishment District and their equal priority with the Authority's M&I firming needs for excess water and determination by the CAWCD board of the amount of credits developed from the 4¢ *ad valorem* tax dollars to be transferred to them during shortage. Other provisions include Commission support of the current CAWCD rate setting policies for excess water, support of development of additional recharge facilities and a recommendation for the CAWCD, the Authority, the CAGR, irrigation districts and ADWR to develop a planning process for future Authority water storage. Tom Griffith asked if there was any effect of the proposed legislation on the Authority. Mr. Henley stated

that with the CAGR advance replenishment obligation there will be another entity in the pool for excess water, however, it shouldn't impact M&I firming due to equal priority. However, there may be long term impacts so the Authority may want to start thinking about extending the available funding authorities.

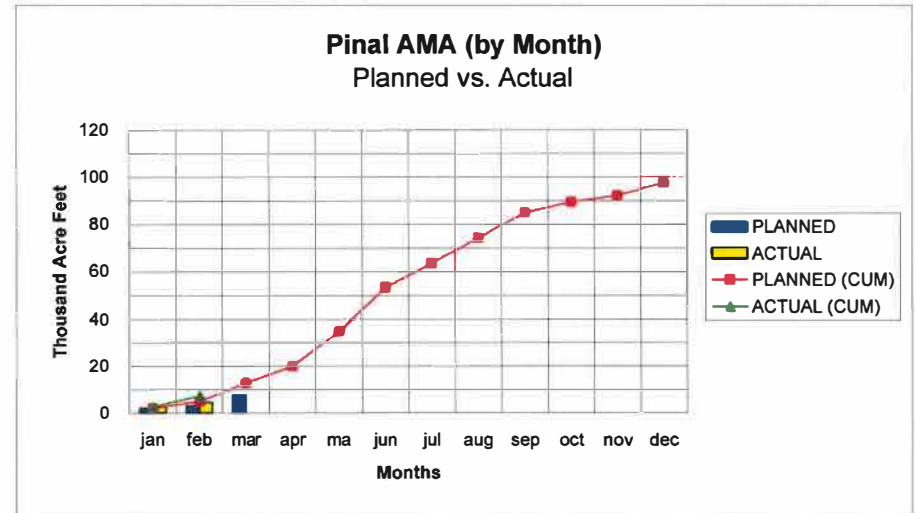
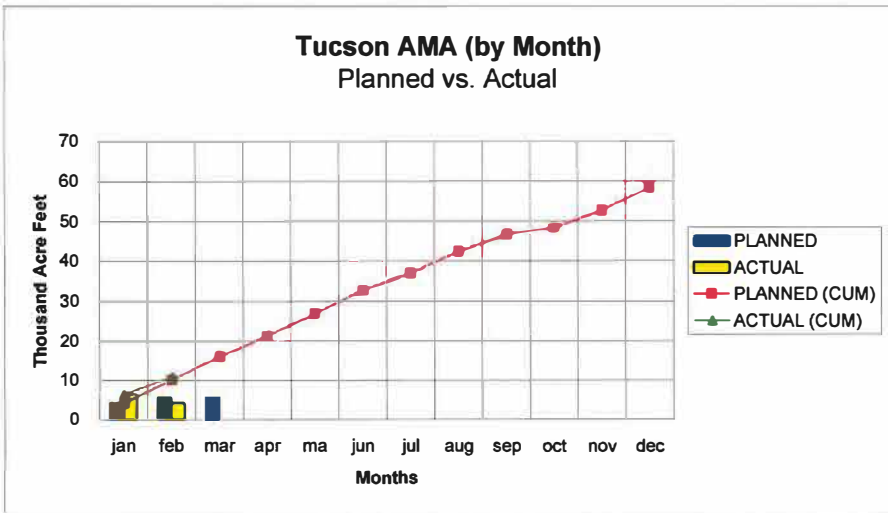
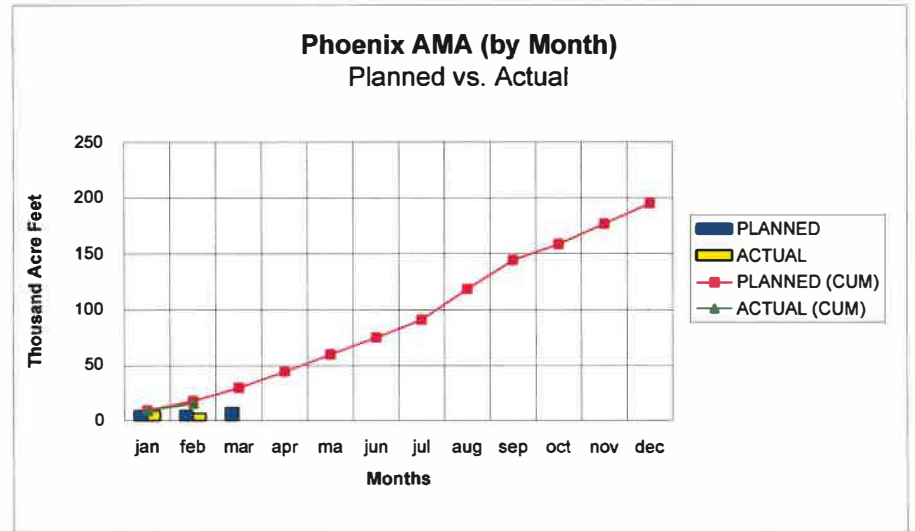
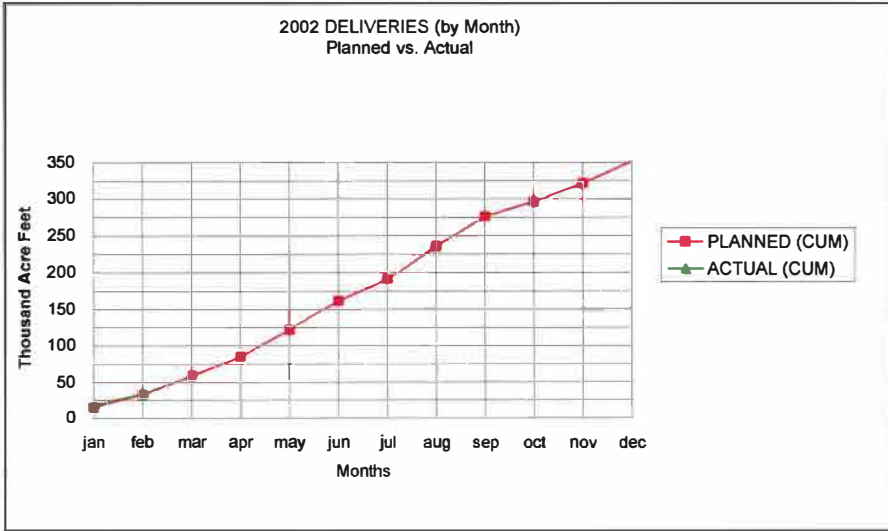
Call to the Public

Mr. Henley stated that there may need to be a special meeting held to discuss the Herb Kai concept more fully. There was no public comment.

The next AWBA meeting is scheduled for Wednesday, March 20, 2002.

The meeting concluded at 11:07 a.m.

2002 Plan of Operation



Actual deliveries updated <i>Plan of Operation</i>		19-Mar-02 <i>1-Jan-02</i>												
		jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	total
Phoenix AMA														
GRUSP	4,300	2,090												6,390
	<i>4,800</i>	<i>4,800</i>	<i>4,800</i>	<i>4,800</i>	<i>4,800</i>	<i>3,800</i>	<i>3,800</i>	<i>3,800</i>	<i>3,800</i>	<i>3,800</i>	<i>3,800</i>	<i>3,800</i>	<i>3,800</i>	<i>50,600</i>
AGUA FRIA	1,758	784												2,542
	<i>2,033</i>	<i>2,034</i>	<i>2,033</i>	<i>5,600</i>	<i>6,100</i>	<i>6,100</i>	<i>6,450</i>	<i>7,100</i>	<i>7,100</i>	<i>5,100</i>	<i>5,579</i>	<i>7,100</i>		<i>62,329</i>
CHCID	0	0												0
	<i>50</i>	<i>100</i>	<i>50</i>	<i>100</i>	<i>100</i>	<i>151</i>	<i>125</i>	<i>125</i>	<i>125</i>	<i>191</i>	<i>0</i>	<i>0</i>		<i>1,117</i>
NMIDD	2,619	3,529												6,148
	<i>2,000</i>	<i>2,000</i>	<i>3,200</i>	<i>2,500</i>	<i>3,000</i>	<i>3,500</i>	<i>3,700</i>	<i>9,700</i>	<i>9,600</i>	<i>3,500</i>	<i>2,500</i>	<i>2,000</i>		<i>47,200</i>
QCID	0	0												0
	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>5,711</i>	<i>3,182</i>	<i>1,682</i>	<i>1,202</i>	<i>1,723</i>		<i>13,500</i>
TID	0	0												0
	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>2,000</i>	<i>1,000</i>		<i>3,000</i>
SRP	0	0												0
	<i>0</i>	<i>0</i>	<i>1,600</i>	<i>1,600</i>	<i>1,600</i>	<i>1,600</i>	<i>1,600</i>	<i>1,600</i>	<i>1,600</i>	<i>1,600</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>11,200</i>
HIEROGLYPHIC	0	0												0
	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>3,000</i>	<i>3,000</i>		<i>6,000</i>
Subtotal	8,677	6,403	0	0	0	0	0	0	0	0	0	0	0	15,080
Total to date	8,677	15,080	15,080	15,080	15,080	15,080	15,080	15,080	15,080	15,080	15,080	15,080	15,080	15,080
<i>Projected total to date</i>	<i>8,883</i>	<i>17,817</i>	<i>29,500</i>	<i>44,100</i>	<i>59,700</i>	<i>74,851</i>	<i>90,526</i>	<i>118,562</i>	<i>143,969</i>	<i>158,242</i>	<i>176,323</i>	<i>194,946</i>		<i>194,946</i>
Pinal AMA														
CAIDD	0	0												0
	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>3,000</i>	<i>7,000</i>	<i>2,500</i>	<i>1,000</i>	<i>1,500</i>		<i>15,000</i>
MSIDD	1,020	1,350												2,370
	<i>510</i>	<i>510</i>	<i>1,350</i>	<i>620</i>	<i>4,870</i>	<i>10,700</i>	<i>6,010</i>	<i>210</i>	<i>200</i>	<i>0</i>	<i>710</i>	<i>2,140</i>		<i>27,830</i>
HIDD	1,727	3,310												5,037
	<i>1,500</i>	<i>2,500</i>	<i>6,400</i>	<i>6,500</i>	<i>10,000</i>	<i>8,000</i>	<i>4,000</i>	<i>7,600</i>	<i>3,500</i>	<i>2,000</i>	<i>1,000</i>	<i>1,500</i>		<i>54,500</i>
Subtotal	2,747	4,660	0	0	0	0	0	0	0	0	0	0	0	7,407
Total to date	2,747	7,407	7,407	7,407	7,407	7,407	7,407	7,407	7,407	7,407	7,407	7,407	7,407	7,407
<i>Projected total to date</i>	<i>2,010</i>	<i>5,020</i>	<i>12,770</i>	<i>19,890</i>	<i>34,760</i>	<i>53,460</i>	<i>63,470</i>	<i>74,280</i>	<i>84,980</i>	<i>89,480</i>	<i>92,190</i>	<i>97,330</i>		<i>97,330</i>
Tucson AMA														
Avra Valley	593	186												779
	<i>570</i>	<i>570</i>	<i>570</i>	<i>570</i>	<i>570</i>	<i>570</i>	<i>570</i>	<i>570</i>	<i>570</i>	<i>230</i>	<i>570</i>	<i>570</i>		<i>6,500</i>
Pima Mine	2,464	1,704												4,168
	<i>2,100</i>	<i>2,600</i>	<i>2,600</i>	<i>2,100</i>	<i>2,600</i>	<i>2,600</i>	<i>2,100</i>	<i>2,600</i>	<i>2,000</i>	<i>400</i>	<i>1,131</i>	<i>2,600</i>		<i>25,431</i>
Lower Santa Cruz	3,506	2,431												5,937
	<i>1,600</i>	<i>2,600</i>	<i>2,600</i>	<i>2,600</i>	<i>2,600</i>	<i>2,600</i>	<i>2,600</i>	<i>1,661</i>	<i>1,742</i>	<i>1,293</i>	<i>972</i>	<i>2,600</i>		<i>25,468</i>
Kai Red Rock	0	0												0
	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>500</i>	<i>500</i>	<i>0</i>	<i>0</i>	<i>0</i>		<i>1,000</i>
Subtotal	6,563	4,321	0	0	0	0	0	0	0	0	0	0	0	10,884
Total to date	6,563	10,884	10,884	10,884	10,884	10,884	10,884	10,884	10,884	10,884	10,884	10,884	10,884	10,884
<i>Projected total to date</i>	<i>4,270</i>	<i>10,040</i>	<i>15,810</i>	<i>21,080</i>	<i>26,850</i>	<i>32,620</i>	<i>37,890</i>	<i>43,221</i>	<i>48,033</i>	<i>49,956</i>	<i>52,629</i>	<i>58,399</i>		<i>58,399</i>
TOTAL														
	17,987	15,384	0	0	0	0	0	0	0	0	0	0	0	33,371
Total to date	17,987	33,371	33,371	33,371	33,371	33,371	33,371	33,371	33,371	33,371	33,371	33,371	33,371	33,371
<i>Projected total to date</i>	<i>15,163</i>	<i>32,877</i>	<i>58,080</i>	<i>85,070</i>	<i>121,310</i>	<i>160,931</i>	<i>191,886</i>	<i>236,063</i>	<i>276,982</i>	<i>297,678</i>	<i>321,142</i>	<i>350,675</i>		<i>350,675</i>

NEWSRELEASE

Arizona State Senate \$ 1700 W. Washington \$ Phoenix, AZ 85007

For Immediate Release
4139
March 7, 2002
4079

Contact: Sen. Herb Guenther, 602-542-
Rep. Tom O'Halleran, 602-542-

WATER COMMISSION BILLS PULLED FOR THIS LEGISLATIVE SESSION

STATE CAPITOL, Phoenix - Sponsors of legislation to implement the recommendations of Governor Hull's Water Management Commission decided to withdraw the bills from consideration during the current legislative session.

Faced with the time-consuming efforts of dealing with the state budget shortfall, sponsors elected to pull the legislation after consulting with members of the commission. The commission's legislative program is contained in Senate Bill 1344 and 1355, and House Bill 2582 and 2653.

"The cancellation of committee meetings in the Senate and House because of the state's budget difficulties add to our problem" said state Sen. Herb Guenther (D-Tacna), chairman of the Senate Natural Resources, Agriculture & Environment Committee. "The time necessary to review the state Groundwater Code in light of these recommendations just isn't there.

"We anticipate bringing back the recommendations next year when we can start earlier, involve all interested parties, and have time to answer the many questions members are asking about the legislation," Guenther added.

"These bills contain a number of important improvements to the state Groundwater Code, and are both long and complex," said state Rep. Tom O'Halleran (R-Sedona), vice chairman of the House Natural Resources & Agriculture Committee. "It will require a lot of time and focus by the members who, frankly, have other, more immediate problems facing them."

Both Guenther and O'Halleran were appointees to the 49-member commission, which studied water issues related to the 1980 Groundwater Code for more than 18 months.

According to O'Halleran, the commission's recommendations are necessary improvements to the Code, and deserve the time and attention that just cannot be provided now because of the budget negotiations.

"Next year we will make sure the bills are filed earlier, and have time for the kinds of hearings the members need and expect on this type of complicated legislation," O'Halleran said.

###

SB 1355

45-2457. Accounting; rules of operation

A. The authority shall develop an accounting system for the long-term storage credits accrued by the authority. The accounting system shall be designed to allow the authority to determine which funding source of the banking fund paid for each long-term storage credit accrued by the authority.

B. The authority shall operate in accordance with all of the following rules of operation:

1. The authority shall reserve a reasonable number of long-term storage credits accrued with general fund appropriations for the benefit of municipal and industrial users of Colorado river water in this state that are outside of the service area of CAWCD. THE LONG-TERM STORAGE CREDITS THAT ARE RESERVED PURSUANT TO THIS PARAGRAPH SHALL INCLUDE AT LEAST 375,000 ACRE FEET OF LONG-TERM STORAGE CREDITS THAT WERE ACCRUED BY THE AUTHORITY BEFORE JULY 1, 2002, WITH GENERAL FUND APPROPRIATIONS.

2. The authority may distribute long-term storage credits accrued with general fund appropriations for both of the following:

(a) To make water available to a municipal and industrial user of Colorado river water in this state that is outside of the service area of CAWCD, if both of the following apply:

(i) The municipal and industrial user would otherwise suffer a water shortage. The authority may distribute long-term credits to the extent reasonably necessary AS DETERMINED BY THE USER to offset the water shortage.

(ii) The authority collects reimbursement for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to the person who is responsible for reimbursing the authority for the credits distributed.

(b) To make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors, if all of the following apply:

(i) CAWCD's normal diversions from the Colorado River have been or will be disrupted by shortages on the river or by disruptions in the operation of the central Arizona project.

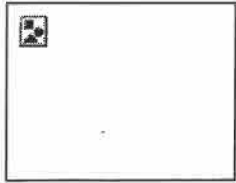
(ii) The authority does not distribute for this purpose the long-term storage credits reserved in accordance with paragraph 1 OF THIS SECTION.

(iii) The authority collects reimbursement from CAWCD for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to CAWCD.

3. EXCEPT FOR THE LONG-TERM STORAGE CREDITS THAT ARE RESERVED AS PRESCRIBED BY PARAGRAPH 1 OF THIS SECTION, The authority may distribute or extinguish long-term storage credits accrued with general fund appropriations to implement the settlement of water right claims by Indian communities in this state.

4. On request from the director, the authority may extinguish long-term storage credits accrued with general fund appropriations to fulfill the water management objectives set forth in chapter 2 of this title. EXCEPT FOR THE LONG-TERM STORAGE CREDITS RESERVED AS PRESCRIBED BY PARAGRAPH 1 OF THIS SECTION.

5. The authority may exchange long-term storage credits accrued with general fund appropriations for long-term storage credits held by other persons if the long-term storage credits received by the authority were stored in a location that better enables the authority to fulfill the purposes and policies of this chapter than were the long-term storage credits exchanged by the authority. For the purposes of this paragraph, the authority may make exchanges of long-term storage credits stored in one active management area for long-term storage credits stored in a different active management area or of long-term storage credits stored in one groundwater basin for long-term storage credits stored in a different groundwater basin.



ARIZONA STATE SENATE

RESEARCH STAFF

KERRI MOREY

LEGISLATIVE RESEARCH ANALYST
NATURAL RESOURCES, AGRICULTURE &
ENVIRONMENT COMMITTEE

Telephone: (602) 542-3171

Facsimile: (602) 542-7833

TO: MEMBERS OF THE SENATE

DATE: March 18, 2002

SUBJECT: Strike Everything Amendment to S.B. 1355

Purpose

Reserves 375,000 acre-feet of Colorado River water long-term storage credits accrued for users outside the Central Arizona Water Conservation District.

Background

In 1996, the Arizona Water Banking Authority (AWBA) was established for the purpose of increasing the utilization of Arizona's decreed allocation of Colorado River water by bringing that water to the central part of the state through the Central Arizona Project (CAP) and storing that water for the future needs of the state (Laws 1996, Chapter 308). Additionally, the AWBA was established for the future marketing of available Colorado River water to entities in California and Nevada through interstate water marketing agreements.

The AWBA stores the currently unused allocation of Colorado River water to meet future water needs for: 1) assuring adequate supply to municipal and industrial water users in times of shortages or disruptions in service of the CAP system; 2) meeting the management plan objectives of the groundwater code; 3) assisting in the settlement of Indian water rights claims; and 4) exchanging water to assist Colorado River communities. By exchanging water to assist Colorado River communities, communities along the river may acquire long-term storage credits through the AWBA for water stored in central Arizona and redeem those credits by diverting water directly from the Colorado River.

The strike everything amendment preserves 375,000 acre-feet of long-term storage credits accrued for users outside of the Central Arizona Water Conservation District (CAWCD). There is no

known fiscal impact to the state general fund relating to the provisions of this amendment.

Provisions

1. Reserves 375,000 acre-feet of Colorado River water long-term storage credits that are accrued with state general fund monies before July 1, 2002 for municipal and industrial users that are outside of the CAWCD.
2. Allows municipal and industrial users outside of the CAWCD to determine the reasonable distribution of long-term storage credits to offset a water shortage.
3. Preserves municipal and industrial long-term storage credits for users outside of the CAWCD if long-term storage credits are distributed for an Indian water rights settlement or to fulfill the management goals of the Groundwater Code.
4. Provides for a general effective date.

Amendments Adopted by Committee

- The strike everything amendment was adopted.

Senate Action

NRAE 3/14/02 DPA/SE 7-1-0-0

KM/jas

PLEASE NOTE: In most BUT NOT ALL instances, the page and line numbering of bills on this web site correspond to the page and line numbering of the official printed version of the bills.

REFERENCE TITLE: water exchanges
State of Arizona House of Representatives Forty-fifth Legislature Second Regular Session 2002
HB 2594
Introduced by Representative Gleason

AN ACT

AMENDING SECTION 45-1002, ARIZONA REVISED STATUTES; RELATING TO WATER EXCHANGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 45-1002, Arizona Revised Statutes, is amended to read:

45-1002. Water exchanges; conditions

A. A person may withdraw, divert or use water received through a water exchange only if one or more of the following apply:

1. Neither the water exchange is in an amount nor any associated water exchange contract provides for a water exchange in an amount exceeding fifty acre-feet in any twelve month period. If two or more water exchanges or water exchange contracts allow the same use at the same location, the aggregate quantity of the water exchanges and water exchanges pursuant to the water exchange contracts may not exceed fifty acre-feet in any twelve month period to qualify for this condition.

2. All water exchanged pursuant to the water exchange or water exchange contract is effluent.

3. The water exchange is made pursuant to a water exchange contract enrolled under section 45-1021 and either:

(a) The amount of water exchanged does not exceed either the maximum amount of water exchanged in any twelve month period before 1992 or any specific maximum amount established in the water exchange contract, whichever is more.

(b) If no water was exchanged in any twelve month period before 1992 and no specific maximum amount of water was established in the water exchange contract, the water to be exchanged by one of the parties is central Arizona project water for which a subcontract was not offered by the secretary of the interior by January 1, 1992.

4. The water exchange involves surface water other than Colorado river water, and the person who gives surface water other than Colorado river water in the exchange holds a permit under section 45-1041.

5. The water exchange is made pursuant to a notice of water exchange filed with the director under section 45-1051.

6. All water exchanged pursuant to the water exchange or water exchange contract is groundwater and the exchange is between an irrigation district and an irrigation grandfathered right holder within that irrigation district.

B. A party that gives water pursuant to a water exchange authorized under subsection A of this section must receive the water to be exchanged for it within a twelve month period unless one of the following applies:

1. The exchange is made pursuant to a water exchange contract enrolled under section 45-1021 and the contract contains an explicit term providing for a longer period.
2. The exchange is made pursuant to subsection A, paragraph 6 of this section.
3. The parties to the exchange demonstrate to the director that the water to be received cannot be delivered within the period allowed for the exchange or that the water to be received cannot reasonably be put to beneficial use within the period allowed for the exchange. On this demonstration the director may grant an extension of six months if the director has determined that the extension is consistent with the goal of efficient water management and does not impair vested rights to the use of water.
4. THE EXCHANGE IS BETWEEN A MULTI-COUNTY WATER CONSERVATION DISTRICT ESTABLISHED PURSUANT TO TITLE 48, CHAPTER 22 AND AN AGRICULTURAL IMPROVEMENT DISTRICT ESTABLISHED PURSUANT TO TITLE 48, CHAPTER 17 AND THE EXCHANGE INVOLVES SURFACE WATER THAT IS STORED IN RESERVOIRS THAT ARE OPERATED BY THE AGRICULTURAL IMPROVEMENT DISTRICT.

PLEASE NOTE: In most **BUT NOT ALL** instances, the page and line numbering of bills on this web site correspond to the page and line numbering of the official printed version of the bills.

REFERENCE TITLE: water protection fund; surcharge.
State of Arizona House of Representatives Forty-fifth Legislature Second Regular Session 2002
HB 2643
Introduced by Representative O'Halleran

AN ACT

AMENDING LAWS 2001, CHAPTER 238, SECTION 23; RELATING TO MULTI-COUNTY WATER CONSERVATION DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Laws 2001, chapter 238, section 23 is amended to read:

Sec. 23. Multi-county water conservation district: deposit of monies

A. Notwithstanding section 45-2112, subsection B and section 48-3715.05, Arizona Revised Statutes, monies received in fiscal year 2001-2002 ~~and 2002-2003~~ pursuant to section 48-3715, subsection B, Arizona Revised Statutes, shall be deposited in the state general fund in the fiscal year that they are received.

B. NOTWITHSTANDING SECTION 45-2112, SUBSECTION B AND SECTION 48-3715.05, ARIZONA REVISED STATUTES, MONIES RECEIVED IN FISCAL YEAR 2002-2003 PURSUANT TO SECTION 48-3715, SUBSECTION B, ARIZONA REVISED STATUTES, SHALL BE DEPOSITED IN THE ARIZONA WATER PROTECTION FUND ESTABLISHED BY SECTION 45-2111, ARIZONA REVISED STATUTES, IN THE FISCAL YEAR THAT THEY ARE RECEIVED.

RESOLUTION 2002-1

of the

Arizona Water Banking Authority

WHEREAS, The Arizona Water Banking Authority (“Authority”) is mandated by A.R.S. § 45-2457 to reserve a reasonable number of long-term storage credits accrued with general fund appropriations for the benefit of municipal and industrial users of Colorado River water in this state that are outside the service area of the Central Arizona Water Conservation District (“CAWCD”);

WHEREAS, on January 21, 1998, the Authority adopted a motion identifying 420,000 acre feet as the reasonable number of long-term storage credits to be developed and set aside for the benefit of municipal and industrial users of Colorado River water in this state that are outside the service area of CAWCD;

WHEREAS, A.R.S. § 45-2457 also authorizes the Authority, in addition to making water available to municipal and industrial users of Colorado River water in this state that are outside the service area of CAWCD, to distribute credits: 1) to make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors; 2) to implement the settlement of water right claims by Indian communities in this state; and 3) to fulfill the water management objectives set forth in chapter 2 of Title 45, Arizona Revised Statutes;

WHEREAS, the Authority recognizes the benefits for planning purposes of more clearly prioritizing the use of long-term storage credits accrued with general fund appropriations;

WHEREAS, the Authority recognizes that general fund appropriations are the sole source of funds with which it is authorized to accrue long-term storage credits for the benefit of municipal and industrial users of Colorado River water in this state that are outside the service area of CAWCD and that other funding sources are available to the Authority with which to achieve the other authorized uses of the general fund appropriation;

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

1. That the first priority of the use of long-term storage credits accrued with general fund appropriations shall be to develop and set aside a reasonable number of long-term storage credits as determined by the Commission of the Authority for the benefit of municipal and industrial users of Colorado River water in this state that are outside the service area of CAWCD.
2. That the second priority use of long-term storage credits accrued with general fund appropriations shall be to implement the settlement of water right claims by Indian communities in this state.
3. That the third priority use of long-term storage credits accrued with general fund appropriations shall be to make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors.

4. That the fourth priority use of long-term storage credits accrued with general fund appropriations shall be to fulfill the water management objectives set forth in chapter 2 of Title 45, Arizona Revised Statutes.

5. That, to effectuate these priorities, the Authority shall consider and determine that long-term storage credits are available, or that general fund appropriation will be available to develop the long-term storage credits projected to be needed, to fulfill higher priority objectives before distributing long-term storage credits for any lower priority use. In making this determination, the Authority may also consider whether long-term storage credits accrued with funds other than general appropriation funds are available to fulfill the higher priority objectives.

6. That Authority staff are directed to conduct their planning and operation of the Authority business to effectuate the priorities set forth in this resolution.

IN WITNESS WHEREOF, the Chairman of the Authority approves this Resolution by affixing his signature below on this _____ day of _____, 2002.

Joseph C. Smith, Chairman
Arizona Water Banking Authority

Attest:

William L. Chase, Secretary
Arizona Water Banking Authority

(Official Seal)

A. Water Banking Fund Balances (as of March 14, 2002)

GENERAL FUND	WITHDRAWAL FEE ¹			4¢ TAX		
	PHX AMA	TUCSON AMA	PINAL AMA	MARICOPA CTY	PIMA CTY	PINAL CTY
\$498	\$10,292,440	\$2,925,254	\$550,627	\$11,866,545	\$3,832,442	\$57,465

¹ Additional withdrawal fees will be collected in May/June based on 2001 pumping

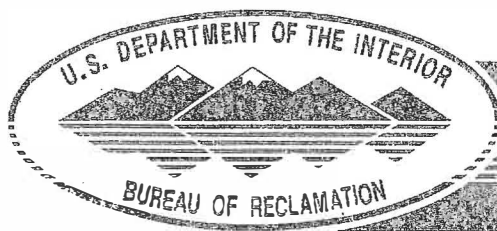
B. Monthly Payments Due from County/AMA for Water Deliveries
 (% of Monthly Payment Due Based on Proportion of the Total Plan)

AWBA Monthly Payment to CAP based on 2002 Plan of Operation = \$1,302,153.17

Maricopa County	60% of the Monthly Payment	\$781,292
Pima County	20% of the Monthly Payment	\$260,430
Pinal County	20% of the Monthly Payment	\$260,430

C. Decrease in Deliveries to Pinal County Due to Lack of Funds

Based on the current 2002 Plan of Operation, 2002 water delivery costs and funds available and estimated to be received that can be utilized in Pinal County, there is approximately \$425,000 shortfall which equates to about 12,000 acre feet or a 12% reduction in planned deliveries. This would decrease deliveries from 97,330 acre feet to approximately 85,500 acre feet.



Bureau of Reclamation
Boulder City, Nevada
February 21, 2002
FOR IMMEDIATE RELEASE

Contact: Robert Walsh (702) 293-8421
Dale Ensminger (702) 293-8659

**Draft Agreement and Associated EA Regarding Water Banking
released for public review, comment**

A draft Colorado River Storage and Interstate Release Agreement and accompanying Environmental Assessment (EA) are now available for public review and comment.

The Southern Nevada Water Authority (SNWA), Colorado River Commission of Nevada, Arizona Water Banking Authority (AWBA), and Bureau of Reclamation intend to enter into the proposed agreement to allow the contractual distribution of Colorado River water among Arizona, California and Nevada, and to extend Nevada's Colorado River water supply well into the 21st century. Reclamation and SNWA have also prepared a draft environmental assessment that analyzes the potential impacts of the storage and recovery actions that may occur when the proposed agreement is executed.

Under the terms of the agreement, which lasts until 2050 or until Nevada's accumulated storage credits are recovered, Arizona will store up to 1.2 million acre-feet of recoverable water in its groundwater aquifers for the benefit of SNWA. The SNWA would pay all of the AWBA's costs to acquire and store the water. Recovering the water would not require a pipeline; rather, Arizona would intentionally decrease its use of Colorado River water which would allow Nevada to divert some of Arizona's allocated Colorado River water from Lake Mead. Arizona would then retrieve a like amount of water from the groundwater aquifers for its own use. The agreement limits the amount of water that can be recovered in any year to a maximum of 100,000 acre-feet.

The Bureau of Reclamation, the federal agency that manages the Colorado River and will approve and implement the banking arrangements, has worked in concert with Nevada, Arizona and California to develop policies that facilitate interstate water distribution agreements. This agreement was developed under a 1999 rule developed and adopted by Reclamation in consultation with the Basin states to help meet contemporary water needs of Colorado River users.

Written comments will be accepted on the draft agreement and/or the draft EA until March 25, 2002. Interested persons and entities may request a copy of the documents, or obtain more information from: Mr. Dale Ensminger, Contract and Repayment Specialist, Boulder Canyon Operations Office, Bureau of Reclamation, PO Box 61470, Boulder City, Nevada 89006-1470; telephone: (702) 293-8659; fax: (702) 293-8042. All comments received by Reclamation become part of the public record associated with this action, and normally will be available to anyone who requests this information through the Freedom of Information Act.

STORAGE AND INTERSTATE RELEASE AGREEMENT

among

The United States of America, acting through the Secretary of the Interior; the Arizona Water Banking Authority; the Southern Nevada Water Authority; and the Colorado River Commission of Nevada

WITNESSETH, THAT:

Recitals

- A. The Secretary of the United States Department of the Interior (Secretary) in 43 CFR 414.3(c) authorized the United States Bureau of Reclamation, Lower Colorado Region, to execute and administer this Storage and Interstate Release Agreement (Agreement) on behalf of the United States. References to the Secretary in this Agreement include the United States Bureau of Reclamation, Lower Colorado Region.
- B. The Arizona Water Banking Authority (AWBA) is expressly authorized by A.R.S. § 45-2401 *et seq.* to enter into Storage and Interstate Release Agreements and develop Intentionally Created Unused Apportionment (ICUA). 43 CFR 414.2(1).
- C. 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 ICUA released by the Secretary for use within the State of Nevada pursuant to Article II(B)(6) of the Decree in *Arizona v. California*, 376 U.S. 340, 343 (1964).
- D. 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 through 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, enters into 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.

- E. On July 3, 2001, AWBA, SNWA, and CRCN entered into an Agreement for Interstate Water Banking for the purpose of creating a program of interstate banking of Colorado River water in Arizona for the benefit of SNWA. Under this program, AWBA will acquire and store mainstream Colorado River water in Arizona, creating Long-term Storage Credits to be held for SNWA in an account established with ADWR, and at a later date recover the Long-term Storage Credits and exchange the recovered water with Colorado River water users in Arizona to develop ICUA.
- F. The Boulder Canyon Project Act and Article II(B)(6) of the Decree, taken together, authorize the Secretary to release unused Arizona apportionment for use in Nevada. Pursuant to such authority and for the purpose of increasing the efficiency, flexibility, and certainty of Colorado River management and thereby helping satisfy the regional water demands that exist in the area served by SNWA, the Secretary promulgated regulations (43 CFR Part 414) to establish a procedural framework for facilitating interstate off-stream banking transactions, including a commitment by the Secretary to release ICUA as a part of such transactions, consistent with those regulations.
- G. ICUA released under this Agreement will provide SNWA with a supplemental water supply that is critical to the economy, health and safety of the area served by SNWA pending the development of other long-term sources of water supply.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Secretary, AWBA, SNWA, and CRCN hereby agree as follows:

Article 1
Definitions and Term

- 1.1 Definitions. The following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.
 - 1.1.1 "ADWR" shall mean the Arizona Department of Water Resources.
 - 1.1.2 "Agreement" shall mean this Storage and Interstate Release Agreement.
 - 1.1.3 "Agreement for Development of Intentionally Created Unused Apportionment" shall mean that agreement between AWBA and the Central Arizona Water Conservation District dated _____.
 - 1.1.4 "Agreement for Interstate Water Banking" shall mean that agreement among AWBA, SNWA and CRCN dated July 3, 2001.

- 1.1.5 “AWBA” shall mean the Arizona Water Banking Authority.
- 1.1.6 “AWBA Plan of Operation” shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.
- 1.1.7 “CAP” shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*
- 1.1.8 “CAWCD” shall mean the Central Arizona Water Conservation District.
- 1.1.9 “CRCN” shall mean the Colorado River Commission of Nevada.
- 1.1.10 “Decree” shall mean the Decree entered by the United States Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.
- 1.1.11 “Entitlement Holder” shall mean a holder of an authorization to beneficially use Colorado River water pursuant to (i) the Decree, (ii) a water delivery contract with the United States through the Secretary; or (iii) a reservation of water from the Secretary.
- 1.1.12 “ICUA” shall mean Intentionally Created Unused Apportionment as that term is defined in 43 CFR 414.
- 1.1.13 “Long-term Storage Credit” shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01.
- 1.1.14 “SNWA” shall mean the Southern Nevada Water Authority.
- 1.1.15 “SNWA Interstate Account” shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR under the terms of this Agreement and the Agreement for Interstate Water Banking.
- 1.1.16 “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. “Storage facilities” do not presently include facilities constructed or financed by the United States.
- 1.1.17 “Water Stored “ means the amount of Long-term Storage Credits properly credited to the SNWA Interstate Account under applicable Arizona law and the Agreement for Interstate Water Banking. The

amount of "Water Stored" under this agreement will always be less than the amount of water diverted for storage.

1.1.18 "Year" shall mean calendar year.

1.2 Term of the Agreement

This Agreement shall commence on the date of execution by all parties and shall continue until June 1, 2050, or until termination of the Agreement for Interstate Water Banking, whichever is sooner.

Article 2
Water Available for Storage

- 2.1 Colorado River water available for storage for purposes of this Agreement shall be within either (i) the State of Arizona's basic or surplus apportionment, apportioned to the State of Arizona under Articles II(B)(1) or II(B)(2) of the Decree; or (ii) the State of Nevada's unused basic or surplus apportionment, apportioned to the State of Nevada under Articles II(B)(1) and II(B)(2) of the Decree and released to the State of Arizona under Article II(B)(6) of the Decree.
- 2.2 Colorado River water apportioned to the State of Nevada under Articles II(B)(1) and II(B)(2) of the Decree may be used for storage in the State of Arizona under this Agreement in accordance with 43 CFR 414.3(a)(3) only if the following conditions are met:
- 2.2.1 The Secretary has decided that such unused Nevada apportionment shall be released for Consumptive Use within Arizona under Article II(B)(6) of the Decree.
- 2.2.2 The AWBA has agreed that it will accept delivery of such water and store it for the benefit of SNWA in accordance with the terms of the Agreement for Interstate Water Banking.
- 2.3 Before any water is diverted from the Colorado River for storage under this Agreement, it shall first be offered to all Entitlement Holders within Arizona for diversion within their entitlements for purposes other than interstate transactions as provided in 43 CFR 414.3(a)(2).
- 2.4 The water available for storage shall be diverted from the Colorado River and delivered to Storage Facilities by CAWCD, utilizing CAP facilities constructed by the United States.

Article 3
Storage Facilities and Accrual of Long-term Storage Credits

- 3.1 AWBA shall store water for the benefit of SNWA pursuant to the Agreement for Interstate Water Banking. All water shall be stored within the State of Arizona in the Storage Facilities for which AWBA has or then has storage agreements. 43 CFR 414.3(a)(1). A listing of the potential Storage Facilities to be utilized is provided in the AWBA storage facilities inventory dated March 1, 1997. Additional storage facilities may be needed for Arizona use. If such facilities are permitted by ADWR and developed by Arizona entities, and if AWBA chooses to use those Storage Facilities for interstate banking, AWBA shall update the 1997 Facility Inventory to include those additional facilities. If the 1997 Facility Inventory is updated, unused storage capacity at those additional facilities may be used for interstate water banking.
- 3.2 The Storage Facilities utilized in each Year shall be identified in the AWBA Plan of Operation.
- 3.2.1 The AWBA Plan of Operation may be modified in accordance with A.R.S. § 45-2456 subject to the provisions of the Agreement for Interstate Water Banking.
- 3.2.2 AWBA shall notify the Secretary in writing of any change in the AWBA Plan of Operation that may affect the amount or location of water to be stored under the Agreement for Interstate Water Banking.
- 3.3 AWBA shall establish a Long-term Storage Sub-Account with ADWR entitled the "SNWA Interstate Account." AWBA shall manage the SNWA Interstate Account so as to accommodate the storage and recovery of water for the benefit of SNWA in the manner provided in this Agreement and the Agreement for Interstate Water Banking. AWBA shall ensure that ADWR timely and properly credits or debits the SNWA Interstate Account with the correct number of Long-term Storage Credits under applicable Arizona law for each Year. AWBA shall ensure that the Year-end balance of Long-term Storage Credits in the SNWA Interstate Account is correct.
- 3.3.1 Except as provided in this sub-article 3.3, SNWA shall not be entitled to the storage of water under this Agreement or the assignment of existing Long-term Storage Credits pursuant to sub-article 3.3.4 to the extent such storage or assignment would result in Long-term Storage Credits

credited to the SNWA Interstate Account in excess of 200,000 acre-feet in any Year, or in excess of 1,200,000 acre-feet over the entire period of this Agreement.

- 3.3.2 SNWA shall be entitled to have all Long-term Storage Credits held by CAWCD for SNWA on the effective date of this Agreement that were developed pursuant to a demonstration project developed by CAWCD in 1992 and modified in 1994 to test the feasibility of underground storage of Colorado River water supplies and subsequently transferred to AWBA for credit to the SNWA Interstate Account. The 50,000 acre-feet of Long-term Storage Credits transferred to AWBA under this sub-article shall not be counted for purposes of determining whether either of the limitations specified in sub-article 3.3.1 has been exceeded.
 - 3.3.3 During the term of this Agreement, AWBA may cause the assignment of Long-term Storage Credits into and out of the SNWA Interstate Account by notifying ADWR of such assignment. If an equal number of Long-term Storage Credits are transferred into and out of the SNWA Interstate Account in a single transaction with ADWR, then the transaction shall not be counted for purposes of determining whether either of the limitations specified in sub-article 3.3.1 has been exceeded.
 - 3.3.4 During the term of this Agreement, Long-term Storage Credits may be assigned to AWBA for credit to the SNWA Interstate Account for purposes of increasing the number of Long-term Storage Credits available to SNWA. Any such assignment must have the consent of AWBA. If Long-term Storage Credits are assigned to AWBA for credit to the SNWA Interstate Account under this sub-article, those credits shall be counted for purposes of determining compliance with both of the limitations specified in sub-article 3.3.1.
- 3.4 The provisions of this sub-article 3.4 shall govern reports by AWBA to the Secretary and incorporation of the AWBA reports into the Secretary's accounting under Article V of the Decree.
- 3.4.1 By December 31 of each Year, AWBA shall provide the Secretary with an estimate of the Long-term Storage Credits to be developed for and credited to the SNWA Interstate Account in the following Year. AWBA shall update that estimate monthly during the course of the Year and provide a final estimate at the end of that Year. The estimate and updates are to be considered provisional until AWBA makes its final

annual accounting to the Secretary by September 1 of the Year following the Year of the development of the Long-term Storage Credits.

- 3.4.2 AWBA shall prepare and submit to the Secretary and the States of Arizona, California, and Nevada by September 1 of each Year a final verified accounting for the prior Year of: (i) the beginning balance of Long-term Storage Credits in the SNWA Interstate Account; (ii) the amount of Colorado River water diverted from the mainstream for the purpose of interstate water banking in that year, and the amount of Water Stored resulting from that diversion; (iii) any Long-term Storage Credits properly assigned and transferred to or from the SNWA Interstate Account under sub-articles 3.3.2, 3.3.3, or 3.3.4; (iv) any Long-term Storage Credits assigned from the SNWA Interstate Account during that Year under sub-article 5.9; (v) the net Long-term Storage Credits in the SNWA Interstate Account at the end of the Year; and (vi) the cumulative amount of Long-term Storage Credits properly credited to the SNWA Interstate Account for purposes of determining compliance with the 1,200,000 maximum credit accrual specified in sub-article 3.3.1.
- 3.4.3 Submission by AWBA of a report in compliance with sub-article 3.4.2 shall constitute compliance with the requirements of 43 CFR §414.4(a) as it is in effect on the date of execution of this Agreement.
- 3.4.4 The Secretary shall include a supplement in the Secretary's annual Article V Decree accounting report titled "Water Diverted and Stored in Arizona for the Benefit of SNWA."
- 3.4.4.1 The Secretary will account for the water that is diverted by CAWCD for storage by AWBA as a consumptive use in the State of Arizona for the year in which it is diverted and stored.
- 3.4.4.2 The Secretary will account for the diversion and consumptive use of ICUA by SNWA as a consumptive use in the State of Nevada of unused apportionment of the State of Arizona made available by the Secretary under Article II(B)(6) of the Decree for use by SNWA in accordance with the terms of this Agreement.
- 3.4.4.3 The supplement shall reflect as Water Stored, expressed in terms of acre-feet, the provisional Long-term Storage Credits identified in the AWBA reports submitted pursuant to sub-article

3.4.1 and shall identify these as provisional estimates for informational purposes only. The supplement shall also reflect as Water Stored the verified Long-term Storage Credits identified in the AWBA final verified accounting submitted pursuant to sub-article 3.4.2 subject to such review of the underlying books and records as the Secretary deems appropriate.

3.4.5 All records of AWBA concerning the amount of Water Stored in that Year, including all records used by AWBA to prepare the final verified accounting, shall be available for inspection by the Secretary.

3.5 Accrual of Long-term Storage Credits in the SNWA Interstate Account at certain Storage Facilities does not mean that those Long-term Storage Credits will be recovered at those same Storage Facilities. Recovery of Long-term Storage Credits shall be in accordance with the Agreement for Interstate Water Banking, the Agreement for Development of Intentionally Created Unused Apportionment, and applicable Arizona law.

Article 4

Development of Intentionally Created Unused Apportionment

4.1 AWBA shall develop ICUA for the benefit of SNWA in accordance with the provisions of this Agreement, the Agreement for Interstate Water Banking and the Agreement for Development of Intentionally Created Unused Apportionment.

All actions that AWBA takes to develop ICUA shall be consistent with the laws of the State of Arizona.

4.2 AWBA shall only use means to develop ICUA under this Agreement that have been approved by the Secretary. Two such approved means are the recovery and exchange method and the credit exchange method. AWBA may also use any other means of developing ICUA during the term of this Agreement provided such means comply with CFR Part 414 and are first approved by the Secretary.

4.2.1 The recovery and exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be recovered and the recovered water exchanged for Colorado River water that would otherwise have been delivered through the CAP in that Year. The Long-term Storage credits may be recovered by CAWCD or by another entity scheduled to receive water from CAWCD in the Year of recovery.

- 4.2.2 The credit exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be exchanged for Colorado River water that would otherwise have been delivered through the CAP for underground storage in that Year. The recipient of the credits shall be an entity scheduled to receive water from CAWCD for purposes of underground storage in the Year of recovery.
- 4.3. AWBA shall prepare an Interstate Recovery Schedule in accordance with the terms of the Agreement for the Development of Intentionally Created Unused Apportionment and the Agreement for Interstate Water Banking. AWBA shall meet and confer with the Bureau of Reclamation in the preparation of the Interstate Recovery Schedule. ICUA shall not exceed 100,000 acre-feet in any Year or the quantity of Long-term Storage Credits available in the SNWA Interstate Account, whichever is less.
- 4.4 The Interstate Recovery Schedule shall set forth the means by which AWBA intends to create ICUA.
 - 4.4.1 If AWBA intends to create ICUA using the recovery and exchange method, then the Interstate Recovery Schedule shall demonstrate that there is sufficient recovery capacity to recover the necessary Long-term Storage Credits from the SNWA Interstate Account and shall describe how the credits will be recovered and delivered through the CAP or how the credits will be recovered by individual CAP customers in lieu of their scheduled CAP deliveries.
 - 4.4.2 If AWBA intends to create ICUA using the credit exchange method, then the Interstate Recovery Schedule shall demonstrate that CAWCD has received sufficient orders for the delivery of Colorado River water for underground storage and shall identify the entity or entities accepting the transfer of Long-term Storage Credits in lieu of the delivery of Colorado River water.
 - 4.4.3 If AWBA intends to create ICUA using another method approved by the Secretary, then the Interstate Recovery Schedule shall include such information as required by the Secretary for that method.
- 4.5 AWBA shall require that any Agreement for Development of Intentionally Created Unused Apportionment contain a provision requiring CAWCD to accept Long-term Storage Credits from the SNWA Interstate Account in exchange for Colorado River water that would have otherwise been diverted into the CAP by CAWCD, and to reduce its consumptive use of Colorado River water in

accordance with that exchange. The Agreement for Development of Intentionally Created Unused Apportionment shall allow CAWCD to meet all scheduled deliveries to Indian contractors, CAWCD subcontractors and other CAP water users, through a combination of Colorado River water and recovered Long-term Storage Credits.

- 4.6 AWBA shall require that any Agreement for Development of Intentionally Created Unused Apportionment also provide that any Long-term Storage Credits accepted by CAWCD pursuant to this Article 4 shall be accounted for by CAWCD as water diverted from the Colorado River for purposes of determining the amount of water that CAWCD may lawfully divert from the Colorado River in the Year of development of ICUA.
- 4.7 By December 1 of any year in which SNWA has made a request for development of ICUA in the following Year under the Agreement for Interstate Water Banking, AWBA shall prepare and deliver to Secretary three certifications: (i) a Development of ICUA Certification (ii) an Interstate Recovery Schedule Certification and (iii) an Upcoming Year Delivery Certification. These three certifications may be combined in a single document.
- 4.7.1 The Development of ICUA Certification shall certify: (i) that sufficient Long-term Storage Credits exist in the SNWA Interstate Account to support the development of the requested ICUA; (ii) that ICUA will be developed in the upcoming Year in an amount equal to the request using an approved means; (iii) that such ICUA otherwise would not exist; and (iv) that the notice under sub-Article 4.12 has been given. The Development of ICUA Certification shall request that the Secretary release the ICUA for use in Nevada pursuant to Article II(B)(6) of the Decree and this Agreement.
- 4.7.2 The Interstate Recovery Schedule Certification shall state that the Interstate Recovery Schedule has been prepared after consultation with the Bureau of Reclamation, and that the Interstate Recovery Schedule sets forth the means by which AWBA intends to develop ICUA utilizing Long-term Storage Credits in the SNWA Interstate Account and the quantity of ICUA the AWBA intends to develop. The Interstate Recovery Schedule Certification shall certify that the contractual commitments by CAWCD necessary to develop ICUA remain in full force and effect and that CAWCD will reduce its consumptive use of Colorado River water in the amount of the requested ICUA. A copy of the Interstate Recovery Schedule shall be included with the Interstate Recovery Schedule Certification.

- 4.7.3 The Delivery Certification shall indicate the amount of water ordered by CAWCD for the following Year and quantify how that order will be satisfied with diversions from the Colorado River and Long-term Storage Credits from the SNWA Interstate Account. The Delivery Certification shall state that Arizona's consumptive use of Colorado River water will be decreased in the following Year by a quantity sufficient to develop the requested ICUA.
- 4.8 Once AWBA certifies to the Secretary that ICUA will be developed during the Year of release, AWBA shall take all actions necessary in the following Year to ensure that ICUA is developed in accordance with such certifications.
- 4.9 The Secretary shall, as he or she deems appropriate, review books and records in accordance with sub-article 6.6 to ensure that ICUA was developed and, in the event of a discrepancy shall require AWBA to repay to Lake Mead storage as set forth in sub-article 4.13.
- 4.10 In years in which the Secretary has determined a shortage under Article II(B)(3) of the Decree, AWBA's obligation to develop ICUA shall be limited as provided in the Agreement for Interstate Water Banking.
- 4.11 AWBA shall give notice to Entitlement Holders in Arizona, including Indian Tribes, that SNWA has requested the development of ICUA. The notice shall state which means permitted under this Article will be used to develop ICUA. Whether and what opportunities exist for Entitlement Holders in Arizona, including Indian Tribes, to develop ICUA will depend upon the means selected. The notice shall identify any opportunities for Entitlement Holders in Arizona, including Indian Tribes, to participate in the development of ICUA associated with the particular means selected. AWBA shall provide this notice by first class mail to Entitlement Holders in Arizona, or by such other means as are acceptable to the Secretary.
- 4.12 By April 1 of the Year after ICUA is developed, AWBA shall submit to the Secretary a report documenting how ICUA was created and confirming that the amount of ICUA set forth in the Interstate Recovery Schedule was developed.
- 4.13 If AWBA does not create ICUA as required under this Article, AWBA shall create ICUA in another Year to repay to Lake Mead storage the amount of ICUA consumptively used by SNWA but not created by AWBA. The Secretary, in addition to any other remedy available, may seek a court order requiring AWBA

to do so. The Year of repayment shall be at the discretion of the Secretary, but shall not be more than three years after the year in which the shortfall occurred.

Article 5
Release of Intentionally Created Unused Apportionment

- 5.1 SNWA shall make a written request of the Secretary for the release of ICUA for consumptive use in the State of Nevada. A request for a release of ICUA shall be made by September 15 of the current Year, or an earlier date as reasonably required in writing by the Secretary, for a release of ICUA in the following Year. The request shall specify the quantity of ICUA to be released by the Secretary and shall certify that SNWA has mailed, first class postage paid, a copy of the request to the States of Nevada, Arizona, and California by providing copies to CRCN, the Arizona Department of Water Resources and the Colorado River Board of California. A copy of the request shall be provided to AWBA. To make a proper and timely request, SNWA must be in compliance with the terms of the Agreement for Interstate Water Banking.
- 5.2 Before making a request to release ICUA under sub-article 5.1, SNWA shall, by June 1, make a preliminary request for the development of ICUA in accordance with the terms of the Agreement for Interstate Water Banking. Such preliminary request shall be in writing and shall specify the quantity of the requested ICUA. A copy of such preliminary request shall be provided to the Secretary at the same time that it is made to AWBA.
- 5.3 The request for the development of ICUA by SNWA shall be incorporated into the Secretary's Annual Operating Plan for the Colorado River. The Annual Operating Plan shall state that, upon proper certification, the Secretary intends to release that quantity of ICUA to SNWA under Article II(B)(6) of the Decree in accordance with the terms of this Agreement.
- 5.4 Release of ICUA under this Agreement for diversion by SNWA shall operate under 43 CFR Part 414.3(f), Anticipatory Release of ICUA, as provided in this article. The Secretary shall not release ICUA in excess of 100,000 acre-feet in any Year or in excess of the 1,250,000 acre-feet over the entire period of this Agreement. The amount of 1,250,000 acre-feet consists of the 1,200,000 acre-feet maximum credit accrual developed under the Agreement for Interstate Water Banking and the 50,000 acre-feet credit accrual developed pursuant to the demonstration underground storage project referenced in sub-article 3.3.2.
- 5.5 By December 20 of the current Year, following receipt of a proper and timely request for release of ICUA under sub-Article 5.1, the Secretary shall determine

whether AWBA has elected a means for developing ICUA approved under Article 4, and whether all necessary actions required by 43 CFR Part 414 have been taken. For purposes of this Agreement, all necessary actions are those actions expressly enumerated in 43 CFR Part 414, as amplified by this Agreement.

- 5.5.1 The Secretary shall determine whether the certifications made by AWBA meet the requirements under sub-article 4.7. Upon so determining, the Secretary shall issue a notice of determination that shall authorize the release for diversion of the quantity of ICUA so certified for consumptive use in the State of Nevada. The release of ICUA under this sub-article shall be effective as of January 1 of the following Year.
- 5.5.2 If the Secretary determines that the proper certifications have not been made under sub-article 4.7, or that all necessary actions under 43 CFR Part 414 have not been taken, the notice of determination shall (i) specify which certifications or necessary actions are deficient and the nature of the deficiency; (ii) specify the extent to which such deficiencies preclude the release of ICUA requested by SNWA for consumptive use in Nevada effective as of January 1 of the following Year; and (iii) determine whether any quantity of ICUA is available for release in the following year. If a quantity of ICUA is available for release under (iii), the notice shall authorize the release of the quantity of ICUA to SNWA for consumptive use in the State of Nevada, effective on January 1 of the following year.
- 5.5.3 Any portion of ICUA not authorized for release in the notice of determination made by the Secretary under this sub-article shall be released for diversion by the Secretary on such date as the Secretary determines that the stated deficiencies have been cured.
- 5.6 The Secretary shall provide notice of the determination under sub-article 5.5 on or before December 20 of the current Year. If the Secretary fails to provide written notice of a determination required by sub-Article 5.5 by December 20, SNWA may seek judicial relief and shall be deemed to have exhausted any applicable administrative remedy and shall be free to seek any remedies available to it under applicable law.
- 5.7 ICUA shall be released to SNWA only in the Year and to the extent that ICUA is developed by AWBA, or for an anticipatory release, will be developed by AWBA as certified to the Secretary in accordance with Article 4.7, by reducing Colorado River water use within the State of Arizona.

- 5.8 Once the Secretary has determined that ICUA will be released to SNWA under sub-article 5.5, such ICUA shall not be available for release to any Entitlement Holder in the States of Arizona or California in that Year.
- 5.9 In any Year in which the Secretary has released ICUA to SNWA under this Article 5, AWBA shall cause the assignment of Long-term Storage Credits from the SNWA Interstate Account in accordance with the Interstate Recovery Schedule. By December 31 of that Year, AWBA shall ensure that all assignments from the SNWA Interstate Account have been made and properly debited by ADWR.
- 5.10 The amount of ICUA released for consumptive use in Nevada effective January 1 of any Year shall not be subject to reduction unless:
- 5.10.1 SNWA requests that AWBA cease development of ICUA under the terms of the Agreement for Interstate Water Banking; and
- 5.10.2 AWBA certifies to the Secretary that, pursuant to a SNWA request, a specific quantity of Long-term Storage Credits will not be recovered or exchanged for Colorado River water pursuant to an SNWA request.
- 5.11 ICUA that has been developed by the AWBA and released by the Secretary for diversion by SNWA in a particular Year but not diverted by SNWA for consumptive use in that Year may not be carried forward and diverted by SNWA in any succeeding Year.
- 5.12 The Secretary shall release ICUA developed by AWBA in accordance with the request of the SNWA, the terms of this Agreement, the determination of the Secretary under sub-article 5.5 of this Agreement, the Boulder Canyon Project Act, Article II(B)(6) of the Decree and all other applicable Federal laws and executive orders.

Article 6 General Provisions

- 6.1 Upon execution of this Agreement and annually thereafter, SNWA shall pay an annual administration fee of two thousand dollars (\$2,000.00) to cover the United States' costs to perform the routine tasks necessary to administer this Agreement. The initial annual administration fee shall be pro-rated on the basis of one hundred sixty six dollars and sixty seven cents (\$166.67) per month for

the first year, payable upon execution of this Agreement. Thereafter, the fee for each subsequent year shall be due on January 1.

- 6.2 The Secretary reserves the right at intervals of five (5) years, beginning five (5) years after the date of execution of this Agreement, to reexamine the annual administration fee and to revise the fee after three (3) months advance written notice and after consultation with SNWA if the Secretary determines that a different charge is necessary to cover the United States' costs to perform the tasks described in this Agreement. Upon SNWA's written request, the Secretary shall provide SNWA with a detailed cost analysis supporting the adjustment to the annual administration fee.
- 6.3 The annual administration fee shall cover, but is not limited to, the costs for the following tasks routinely performed by the Secretary:
 - 6.3.1 Determining when unused Nevada apportionment is available for release for consumptive use within Arizona pursuant to Article II(B)(6) of the Decree for purposes of storage pursuant to this Agreement, and releasing that unused apportionment;
 - 6.3.2 Reviewing records prepared by AWBA and SNWA pursuant to sub-article 3.4 and preparing and maintaining records to supplement the Article V Decree accounting report.
 - 6.3.3 Reviewing AWBA's notices of opportunities for Colorado River water users in Arizona to participate in the development of ICUA;
 - 6.3.4 Reviewing certifications from AWBA that ICUA has been or will be developed;
 - 6.3.5 Determining that all necessary actions have been taken to implement 43 CFR 414; and
 - 6.3.6 Reviewing SNWA's requests for release of ICUA and scheduling delivery of ICUA to SNWA.
- 6.4 The Secretary recognizes that the Decree must be enforced fairly with respect to all Entitlement Holders. Excess diversion by an Entitlement Holder that is not participating in a Storage and Interstate Release Agreement other than through the CAP facilities cannot be offset by reducing diversions to another Entitlement Holder for the sole reason that the latter Entitlement Holder is participating in a Storage and Interstate Release Agreement.

- 6.5 In the event any inconsistency is found between this Agreement and the Agreement for Interstate Water Banking, as initially executed and as it may be amended, regarding the rights and obligations as between AWBA and SNWA, the provisions of this Agreement shall control. No agreement to which the Secretary is not a party shall be construed as altering the rights and obligations as between the Secretary and the other parties to this Agreement.
- 6.6 The records of any party to this Agreement that relate to the storage and recovery of water, including the development and verification of Long-term Storage Credits, and the creation, release and use of ICUA shall be open to inspection by any other party. AWBA shall require that any Agreement for Development of Intentionally Created Unused Apportionment with CAWCD provide that the records of CAWCD relating to the development of ICUA shall be open to reasonable inspection by any party to this Agreement.
- 6.7 The provisions of this sub-article shall govern enforcement of this Agreement.
- 6.7.1 Time is of the essence in the performance of this Agreement.
- 6.7.2 The parties recognize and acknowledge that the availability of ICUA as provided in this Agreement is a critical alternative municipal water supply for SNWA while other longer-term sources of supply are being developed; that in planning to meet the needs of the area it serves, SNWA will rely on ICUA being available to it as provided in this Agreement; that accordingly the release of ICUA as provided in Article 5 is critical to the economy, health and safety of the area served by SNWA; that the release of ICUA as provided in this Agreement presents a unique opportunity for SNWA to obtain additional Colorado River water under the Decree; and that, for these reasons, among others, the water resources to be released as ICUA for use in Nevada are unique and not susceptible to replacement by SNWA.
- 6.8 The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent on appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted. Absence of appropriation or allotment of funds shall not relieve AWBA, SNWA, or CRCN from any obligation under this Agreement.
- 6.9 No member of or Delegate to Congress, Resident Commissioner, or official of AWBA, SNWA, or CRCN shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

- 6.10 The parties to this Agreement shall indemnify the United States, its employees, agents, subcontractors, successors, or assignees from loss or claims for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of actions taken by non-Federal parties to this Agreement.
- 6.11 The parties to this Agreement are hereby notified of Arizona Revised Statutes section 38-511.
- 6.12 The parties to this Agreement recognize and acknowledge that this Agreement is a contract executed pursuant to Federal Reclamation law, including the provisions of 43 U.S.C. § 390uu.
- 6.13 This Agreement shall not constitute approval by the Secretary of any other agreement or water delivery program.
- 6.14 Nothing in this Agreement affects the rights of any Colorado River Entitlement Holder.
- 6.15 No party to this Agreement shall be considered to be in default in the performance of any obligations under this agreement 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, a Federal governmental agency or authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require any party to settle any strike or labor dispute in which it is involved.
- 6.16 Non-Federal parties to this Agreement may assign their interest in this Agreement, in whole or in part, to other authorized entities, subject to the approval of all other parties to this Agreement.
- 6.17 The Secretary does not warrant the quality of water released or delivered under this Agreement. The United States is not liable for damages of any kind resulting from water quality problems and the United States has no obligation to

construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

Article 7 Notices

7.1 Notices and Requests

7.1.1 All notices and requests required or allowed under the terms of this Agreement shall be in writing and shall be mailed first class postage paid to the following entities 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

Secretary:

U.S. Department of the Interior
Bureau of Reclamation
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, Nevada 89006
Attn: Regional Director

The State of Arizona:

Arizona Department of Water Resources
500 North 3rd Street
Phoenix, AZ 85004
Attn: Director

The State of California:

Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, CA 91203-1035
Attn: Executive Director

The State of Nevada:

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

7.1.2 Any party may, at any time, change its mailing address by notice to the other parties.

7.2 Notices and Requests by Facsimile

7.2.1 Notices and requests may be given by facsimile among AWBA, SNWA, CRCN and the Secretary in lieu of first class mail as provided in sub-article 7.1. Such facsimiles shall be deemed complete upon a 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.

AWBA Facsimile Number	602-417-2401
SNWA Facsimile Number	702-258-3951
CRCN Facsimile Number	702-486-2695
Secretary Facsimile Number	702-293-8042

7.2.2 Any party may, at any time, change its facsimile number by notice to the other parties.

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

Legal Review and Approval: **THE UNITED STATES OF AMERICA**

By: _____ By: _____
Field Solicitor Regional Director
Phoenix, Arizona Lower Colorado Region
Bureau of Reclamation

**STATE OF NEVADA, acting through its
COLORADO RIVER COMMISSION**

Attest:

By: _____ By: _____
Executive Director Chair

Approved as to form:

By: _____
[Title]

THE SOUTHERN NEVADA WATER AUTHORITY

Attest:

By: _____ By: _____
General Manager Chair

Approved as to form:

By: _____
[Title]

ARIZONA WATER BANKING AUTHORITY

Attest:

By: _____ By: _____
[Title] Chair

1 AGREEMENT AMONG BETWEEN
2 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
3 THE ARIZONA WATER BANKING AUTHORITY,
4 AND QUEEN CREEK UNKNOWN IRRIGATION AND DRAINAGE DISTRICT
5 PROVIDING FOR THE DELIVERY OF
6 CENTRAL ARIZONA PROJECT WATER
7 FOR WATER STORAGE OF CENTRAL ARIZONA PROJECT WATER AT A
8 GROUNDWATER SAVINGS FACILITY
9

10 1. Preamble

11 THIS AGREEMENT, made this _____ day of _____, 2001, pursuant
12 to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory
13 thereof or supplementary thereto, including but not limited to the Boulder Canyon
14 Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation
15 Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation
16 Reform Act of October 12, 1982 (96 Stat. 1263), the Colorado River Basin Project
17 Act of September 30, 1968 (82 Stat. 885), as amended (the "Basin Project Act"),
18 and the Arizona Water Banking Authority Act, A.R.S. §§ 45-2401, et seq., among
19 the CENTRAL ARIZONA WATER CONSERVATION DISTRICT ("CAWCD"), the
20 ARIZONA WATER BANKING AUTHORITY (the "Authority") and the QUEEN
21 CREEK IRRIGATION AND DRAINAGE DISTRICT ("Facility Operator");

22 The Parties to this Agreement made and entered into this _____ day of 2002, are
23 the ARIZONA WATER BANKING AUTHORITY (the "Authority") and the xxxxx
24 ("Facility Operator").

25 2. Explanatory Recitals

26 WITNESSETH, THAT:

27 2.1. WHEREAS, the Colorado River Basin Project Act provides, among other
28 things, that for the purposes of furnishing irrigation and municipal and
29 industrial ("M&I") water supplies to water deficient areas of Arizona and
30 western New Mexico through direct diversion or exchange of water, control
31 of floods, conservation and development of fish and wildlife resources,
32 enhancement of recreation opportunities, and for other purposes, the

1 Secretary shall construct, operate, and maintain the Central Arizona Project,
2 hereinafter referred to as the "Project"; and

3 2.2. ~~WHEREAS, the United States and CAWCD have entered into Contract No.~~
4 ~~14-06 W-245, Amendment No. 1, dated December 1, 1988, hereinafter~~
5 ~~referred to as the "Repayment Contract," which is attached hereto as Exhibit~~
6 ~~A whereby CAWCD has agreed to repay to the United States the~~
7 ~~reimbursable costs of the Project properly allocated to CAWCD; and~~
8 ~~WHEREAS, Article 8.7(e) of the Repayment Contract grants CAWCD the~~
9 ~~authority to resell or exchange Excess Water; and~~

10 2.32. WHEREAS, the Arizona Legislature has declared that it is the public policy
11 of the State of Arizona to use the Project to deliver Colorado River water that
12 would otherwise be unused in Arizona for purposes specified in A.R.S. § 45-
13 2401; and

14 2.43. WHEREAS, the Arizona Legislature has created the Authority to implement
15 this policy and has specifically authorized the Authority, in A.R.S. § 45-
16 2423(B)(3), to execute agreements ~~with CAWCD~~ to obtain water for storage
17 at permitted facilities; and

18 2.54. ~~WHEREAS, CAWCD, the Authority, and the Arizona Department of Water~~
19 ~~Resources have~~ entered into an intergovernmental agreement
20 providing for the delivery of Excess Water ~~to the Authority~~ for Water Storage;
21 and

22 2.65. WHEREAS, the Facility Operator operates a Groundwater Savings Facility
23 and desires to store, for the benefit of the Authority, Excess Water obtained
24 by the Authority ~~from CAWCD pursuant to Article 8.7(e) of the Repayment~~
25 ~~Contract; and~~

26 2.6 WHEREAS, the Authority desires to appoint an agent to exercise the
27 Authority's right to recover the Long-term storage credits accrued pursuant

1 to this Agreement on behalf of the Authority, and therefore the Parties
2 recognize and intend that the Authority may designate a third party agent for
3 this purpose. Further, the Parties expressly intend that the designated agent
4 be an intended third party beneficiary of this Agreement;

5 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
6 contained, it is agreed as follows:

7 3. ~~Repayment Contract~~

8 ~~The Facility Operator expressly approves and agrees to all the terms presently set~~
9 ~~out in the Repayment Contract, or as such terms may be hereafter amended, and~~
10 ~~agrees to be bound by the actions to be taken and the determinations to be made~~
11 ~~under the Repayment Contract, except as otherwise provided herein. Definitions~~
12 ~~included in the Repayment Contract are applicable to this Agreement; Provided,~~
13 ~~however, that the terms "Agricultural Water" or "Irrigation Water" shall mean water~~
14 ~~used for the purposes defined in the Repayment Contract on tracts of land operated~~
15 ~~in units of more than 5 acres. The first letters of terms so defined are capitalized~~
16 ~~herein.~~

17 3. Additional Definitions

18 3.1 "ADWR" shall mean the Arizona Department of Water Resources

19 3.2 "Authority Water" shall mean Excess Water made available by CAWCD to
20 the Authority for Water Storage, which water would not otherwise have been
21 used within Arizona.

22 3.3 "CAWCD" shall mean the Central Arizona Water Conservation District.

23 3.4 "Excess Water" shall mean Project Water which, in any Year, is available for
24 delivery and has not been scheduled for delivery pursuant to a contract with
25 the United States or a subcontract with the United States and CAWCD
26 providing for Project Water service for a period of 50 years or more.

27 3.5 "Party or Parties" shall mean either one, or in the plural, both of the parties

1 to this Agreement.

2 3.6 "Point(s) of Delivery" shall mean

3 3.7 "Transportation Losses" shall mean

4 3.58 Terms defined in A.R.S. § 45-802.01 shall have the meanings ascribed to
5 them therein. The first letters of such terms are also capitalized herein.

6 ~~5. Delivery of Water by CAWCD~~

7 ~~Insofar as Project Water supplies and the delivery capability of the Project will~~
8 ~~permit, and subject to the provisions of the Repayment Contract, CAWCD will~~
9 ~~deliver Authority Water to the Facility Operator in an amount, and at a water service~~
10 ~~charge, to be determined in accordance with the terms of this Agreement. The~~
11 ~~determination of whether and how much Authority Water is available for delivery~~
12 ~~under this Agreement in any year is a determination within the exclusive discretion~~
13 ~~of CAWCD and the Authority.~~

14 4. Scope of Services

15 This Agreement is limited to (1) transportation of Authority Water

16 ~~65. Term~~

17 This Agreement shall terminate on December 31, 2011 unless the parties agree in
18 writing to extend the term or unless it is sooner terminated or cancelled in
19 accordance with Articles 12, 17, or 23 hereof.

20 ~~75. Conditions Relating to Delivery and Use~~

21 The delivery and use of water under this Agreement is conditioned on the following,
22 and the Facility Operator hereby agrees that:

23 ~~75.1. All uses of Authority Water and Return Flow shall be consistent with Arizona~~
24 ~~water law except to the extent that such law is inconsistent with federal law~~
25 ~~applicable to the Central Arizona Project, and with federal law applicable to~~
26 ~~the Project.~~

1 may be amended from time to time. The Facility Operator shall immediately
2 notify the Authority in the event of substantial modification of the place of
3 use.

4 ~~75.6.~~ The Facility Operator shall cause the pumping of groundwater within the
5 Facility Operator's Groundwater Savings Facility to be reduced by one acre-
6 foot for each one acre-foot of Authority Water received at the Facility.

7 5.7 Water furnished to the Facility Operator pursuant to this Agreement shall be
8 delivered only to the Facility Operator at such point(s) that have previously
9 been approved by CAWCD (moved from 12).

10 5.8 The Facility Operator shall construct, operate, and maintain its connection
11 facilities and appurtenant works in a good and workmanlike manner and in
12 full compliance with the laws of the State of Arizona and with all laws,
13 regulations, and orders of the United States affecting such operations.
14 (moved from 12)

15 5.9 The Facility Operator shall submit to the Authority a monthly report of water
16 use. The monthly report shall be in a form and submitted within a time which
17 is acceptable to the Authority and shall contain a report of water use by
18 amount and type of water used.

19 ~~8.~~ Facility Operator's Annual Forecast

20 ~~8.1.~~ Each year, prior to receiving any Authority Water under this Agreement, the
21 Facility Operator shall prepare and submit to the Authority and ADWR an
22 annual forecast of water use (the "Annual Forecast"). The Annual Forecast
23 shall be in a form acceptable to the Authority and ADWR and shall contain
24 a projection of the Facility Operator's water use by amount and type of water
25 expected to be used by the Facility Operator at the Facility Operator's
26 Groundwater Savings Facility.

27 ~~8.2.~~ Whenever it appears that the Facility Operator's water use will deviate

1 ~~substantially from the Facility Operator's previously submitted Annual~~
2 ~~Forecast or any subsequent modification thereof, the Facility Operator shall~~
3 ~~promptly modify its Annual Forecast and submit such modification to the~~
4 ~~Authority and ADWR. The Facility Operator's annual water use shall conform~~
5 ~~substantially to the Annual Forecast or any modification thereof.~~

6 ~~8.3. Following submission of the Annual Forecast or any modification thereof, the~~
7 ~~Authority shall consult with ADWR and CAWCD and determine the amount~~
8 ~~of Authority Water that may be delivered to the Facility Operator pursuant to~~
9 ~~this Agreement.~~

10 ~~86.4. The Facility Operator shall submit to the Authority a monthly report of water~~
11 ~~use. The monthly report shall be in a form and shall be submitted within a~~
12 ~~time which is acceptable to the Authority and shall contain a report of water~~
13 ~~use by amount and type of water used.~~

14 97. Procedure for Ordering Scheduling Authority Water

15 7.1 The amounts, times and rates of delivery of Authority Water to the Facility
16 Operator during any year shall be in accordance with the current plan of
17 operation of the Authority. Authority Water ordered by the Facility Operator
18 shall not exceed the amounts provided for in the current plan of operation of
19 the Authority, unless expressly approved by the Authority.

20 7.2 On or before September 1, the Facility Operator will consult with the Authority
21 and provide a written projection of the Facility Operator's water use by type
22 and amount for each month of the following year.

23 7.3 On or before December 1, the Authority will return to the Facility Operator a
24 final water delivery schedule.

25 7.4 The Authority shall authorize the Facility Operator to order Authority Water
26 for delivery to the Groundwater Savings Facility directly from CAWCD in
27 accordance with CAWCD water ordering procedures and the Authority's plan

1 of operation.

2 ~~97.1. The amounts, times, and rates of delivery of Authority Water to the Facility~~
3 ~~Operator during any year shall be in accordance with a water delivery~~
4 ~~schedule for that year. Such schedule shall be determined in the following~~
5 ~~manner:~~

6 ~~9.1.1. On or before October 15 of each year, CAWCD will issue to the~~
7 ~~Authority and the Facility Operator a notice of availability of~~
8 ~~Authority Water for the following year.~~

9 ~~9.1.2. Within thirty (30) days of CAWCD's notice of availability, the Facility~~
10 ~~Operator shall submit a written schedule to CAWCD and the~~
11 ~~Authority indicating the amounts of Authority Water desired by~~
12 ~~the Facility Operator during each month of the following year.~~

13 ~~9.1.3. Upon receipt of the schedule, CAWCD and the Authority shall~~
14 ~~review the requested schedule and determine the amount of~~
15 ~~Authority Water available for delivery to the Facility Operator~~
16 ~~during each month of the following year.~~

17 ~~9.1.4.7.1.2. On or before December 15 of each year, CAWCD shall furnish~~
18 ~~to the Facility Operator a water delivery schedule which shall~~
19 ~~show the amount of Authority Water projected to be delivered~~
20 ~~to the Facility Operator during each month of the following~~
21 ~~year, contingent on the Facility Operator's remaining eligible to~~
22 ~~receive Authority Water under this Agreement.~~

23 ~~97.25. The mMonthly water deliveryies schedule may be amended upon the Facility~~
24 ~~Operator's written request to CAWCD and with copy to the Authority.~~
25 ~~Proposed amendments shall be submitted by the Facility Operator to~~
26 ~~CAWCD and with copy to the Authority not less than fifteen (15) days before~~
27 ~~the desired change is to become effective, and shall be subject to review and~~

1 modification by CAWCD and the Authority, ~~in the same manner as the~~
2 ~~schedule. CAWCD will notify the Facility Operator of the action on the~~
3 ~~Facility Operator's requested schedule modification within ten (10) days of~~
4 ~~receipt of such request.~~ If deliveries of Authority Water are reduced in
5 accordance with this Article, the Facility Operator shall be entitled to
6 reimbursement or credit as provided in Subarticle 16.3 of this Agreement for
7 payment made in advance for water scheduled, but not delivered.

8 ~~97.36.~~ The Facility Operator shall hold ~~CAWCD, its officers, agents, and employees,~~
9 ~~and~~ the Authority, its officers, agents, and employees, harmless on account
10 of damage or claim of damage of any nature whatsoever arising out of or
11 connected with water delivery schedules furnished by or to the Facility
12 Operator.

13 ~~97.4.~~ ~~The Authority and CAWCD shall coordinate efforts to reschedule to others~~
14 ~~who store Authority Water the water that was scheduled but not delivered to~~
15 ~~the Facility Operator. CAWCD agrees not to deliver Authority Water except~~
16 ~~in amounts and in accordance with schedules agreed to by the Authority.~~
17 ~~The Authority and CAWCD, by separate agreement, have agreed and now~~
18 ~~reconfirm that the Authority shall not be responsible to CAWCD for any~~
19 ~~payments that would have been due to CAWCD from the Authority or the~~
20 ~~Facility Operator for Authority Water scheduled, but not delivered.~~

21 ~~408.~~ Recovery of Long-term storage credits

22 8.1 The Parties agree that the Authority will designate a third party agent to
23 exercise the Authority's right to recover the water stored under this
24 Agreement. The "Designated Recovery Agent" shall be a political
25 subdivision of the State of Arizona or a municipal corporation formed under
26 the laws of the State of Arizona. The Authority shall, in accordance with
27 Section XX of this Agreement, notify the Facility Operator of the appointment

1 of a Designated Recovery Agent pursuant to this Section.

2 8.2. Upon the distribution of Long-term storage credits by the Authority to a
3 Designated Recovery Agent, CAWCDthe Designated Recovery Agent may
4 recover the Long-term storage credits at the Groundwater Savings Facility
5 upon written notification to the Facility Operator.

6 ~~108.23.~~ ~~CAWCD~~ The Designated Recovery Agent shall not recover Long-term
7 storage credits within the Facility Operator's boundaries that were not
8 accrued by the Authority at the Facility Operator's Groundwater Savings
9 Facility, unless the Facility Operator agrees in writing to allow the Designated
10 Recovery Agent CAWCD to recover other Long-term storage credits.

11 ~~10.38.4.~~ To recover Long-term storage credits pursuant to this Section 8, the
12 Facility Operator shall allow CAWCDthe Designated Recovery Agent to
13 recover the Authority's Long-term storage credits using the Facility
14 Operator's wells. Such use shall be subject to the Facility Operator's
15 operational control of the wells and shall be made only when, in the sole
16 discretion of the Facility Operator, there is sufficient well capacity and water
17 transportation facilities available to recover the Long-term storage credits
18 without disrupting delivery of irrigation water to the Facility Operator's
19 customers. The Facility Operator shall provide to the Authority within 1 year
20 after execution of this Agreement a description of wells and well sites which
21 CAWCDthe Designated Recovery Agent could utilize for recovery purposes,
22 including the necessary authorization for Facility Operator's use of such wells
23 and well sites.

24 ~~10.48.5.~~ If insufficient well capacity is available within the Facility Operator's
25 boundaries to meet CAWCD's a recovery request, CAWCDthe Designated
26 Recovery Agent may install, own, operate and maintain new wells and
27 related facilities or, at CAWCD'sthe Designated Recovery Agent's request,

1 the Facility Operator may, under a separate agreement, install, own, operate
2 and maintain new wells and related facilities, provided that ~~CAWCD~~the
3 Designated Recovery Agent pays the Facility Operator in advance all
4 construction costs associated with such new wells and facilities. All of the
5 fixed and variable operating costs of such facilities attributable to the
6 recovery of Long-term storage credits shall be the sole responsibility of
7 ~~CAWCD~~the Designated Recovery Agent . Nothing herein requires the Facility
8 Operator to construct facilities that, in their judgement, would interfere with
9 the operation of existing wells within the Facility Operator's water delivery
10 system. ~~CAWCD~~The Designated Recovery Agent shall reimburse the
11 Facility Operator the cost of obtaining all permits required to drill new
12 recovery wells identified by ~~CAWCD~~the Designated Recovery Agent for
13 purposes of this Agreement.

14 ~~10-58.6.~~ CAWCDThe Designated Recovery Agent shall be responsible for
15 obtaining and maintaining recovery well permits and shall pay all permit fees
16 associated with recovery of Long-term storage credits.

17 ~~10-68.7.~~ CAWCDThe Designated Recovery Agent shall reimburse the Facility
18 Operator for all reasonable costs incurred by the Facility Operator in the
19 recovery of Long-term storage credits in accordance with this Section ~~408~~.
20 These costs may include, but are not limited to wheeling services,
21 scheduling costs, incremental increased cost of power, and incremental
22 increased cost of operation, maintenance, and replacement of wells and/or
23 pumps within the Facility Operator's Groundwater Savings Facility. Prior to
24 any recovery under this Section ~~408~~, ~~CAWCD~~the Designated Recovery
25 Agent and the Facility Operator shall agree upon the costs for which ~~CAWCD~~
26 the Designated Recovery Agent shall be responsible. ~~CAWCD~~The
27 Designated Recovery Agent and the Facility Operator may agree that

1 CAWCD-the Designated Recovery Agent shall provide power to operate the
2 wells to offset part of the agreed upon costs.

3 ~~10.7.8.8.~~ The Facility Operator does not warrant the quality of water produced
4 from recovery wells and is under no obligation to construct or furnish water
5 treatment facilities to maintain or improve the quality of such water. ~~CAWCD~~
6 The Designated Recovery Agent waives its right to make a claim against the
7 Facility Operator because of changes in water quality caused by
8 underground storage or the mixing of recovered water with other water.

9 8.9. It is the express intention of the Parties that the Designated Recovery Agent
10 be a third party beneficiary of the obligations and duties of the Facility
11 Operator under this Agreement, and as such shall be entitled to enforce this
12 Agreement, including but not limited to the provisions of XXXXX. The Parties
13 agree that the third party beneficiary shall be entitled to the same rights and
14 privileges associated with the recovery of the Authority water in the
15 Groundwater Savings Facility as held by the AWBA. The Parties agree that
16 the provisions of XX shall apply to the third party beneficiary, and that the
17 third party beneficiary shall be considered a "Party" only for the purposes of
18 Section XX. The rights of the third party beneficiary under this Section shall
19 vest immediately upon notification of the Facility Operator by the Authority
20 of the designation of a Designated Recovery Agent in accordance with this
21 Section. The Parties agree that the terms of this Section shall not, in any
22 way, limit the rights or priveleges of the Authority under this Agreement.

23 ~~10.8.8.10.~~ The obligations set forth in this Section 8 shall survive the expiration
24 or termination of this Agreement and remain in full force and effect until all
25 Authority Water stored at the Facility Operator's Groundwater Savings
26 Facility has been recovered.

27

1 11. Discontinuance of Water Deliveries at the Request of the Authority

2 11.1 The Authority may ~~cause CAWCD to~~ reduce or discontinue deliveries of
3 Authority Water to the Facility Operator under this Agreement in one or more
4 of the following events:

5 11.1.1. the Facility Operator fails to file the monthly report(s) required
6 by Subarticle 8.4 hereof;

7 11.1.2. the Facility Operator's water use deviates substantially from the
8 Annual Forecast or any modification thereof previously
9 submitted to the Authority and ADWR;

10 11.1.3. ADWR determines, after reviewing the Annual Forecast or any
11 modification thereof, that further deliveries of Authority Water
12 to the Facility Operator may not qualify for Long-term storage
13 credits.

14 11.2 The Authority shall notify ~~CAWCD and the~~ Facility Operator of any
15 determination to reduce or discontinue deliveries of Authority Water to the
16 Facility Operator. ~~Within ten (10) days after receiving such notification,~~
17 ~~CAWCD shall reduce or discontinue such deliveries in accordance with such~~
18 ~~notification. Except as permitted by such notification, CAWCD shall not~~
19 ~~thereafter deliver any Project Water to the Facility Operator as In-Lieu Water.~~

20 12. Facility Operator's Project Delivery Point, Measurement and Responsibility for
21 Distribution of Water Delivery of Water

22 ~~12.1 Priority Water furnished to the Facility Operator pursuant to this Agreement~~
23 ~~shall be delivered to the Facility Operator at such point(s) on the Water~~
24 ~~Supply System as are agreed upon in writing by CAWCD and the Facility~~
25 ~~Operator. All such point(s) shall hereinafter be referred to as the "Facility~~
26 ~~Operator's Project delivery point."~~

27 12.2. ~~Unless CAWCD and the Facility Operator agree by contract to the contrary,~~

1 ~~the Facility Operator shall construct and install, at its sole cost and expense,~~
2 ~~all connection facilities required to convey water furnished to the Facility~~
3 ~~Operator pursuant to this Agreement to the Facility Operator's service area~~
4 ~~or place of use, as the case may be. The Facility Operator shall furnish, for~~
5 ~~written approval by CAWCD, drawings and specifications showing all~~
6 ~~connection facilities to be constructed or installed within the Water Supply~~
7 ~~System right-of-way, and shall obtain such approval before commencing~~
8 ~~construction or installation of such facilities. All facilities constructed,~~
9 ~~installed, operated or maintained on the Water Supply System right-of-way~~
10 ~~by or for the Facility Operator shall be subject to such further agreements~~
11 ~~and to such restrictions and regulations as to type, location, method of~~
12 ~~installation, operation, and maintenance as may be prescribed by CAWCD.~~

13 12.32. ~~The Facility Operator shall construct, operate, and maintain its connection~~
14 ~~facilities and appurtenant works in a good and workmanlike manner and in~~
15 ~~full compliance with the laws of the State of Arizona and with all laws,~~
16 ~~regulations, and orders of the United States affecting such operations. The~~
17 ~~failure of the Facility Operator after due notice to construct, operate, and~~
18 ~~maintain its connection facilities and appurtenant works in a good and~~
19 ~~workmanlike manner or to abide by any of the terms and conditions of any~~
20 ~~applicable laws, regulations, or orders, shall cause this Agreement to be~~
21 ~~subject to immediate termination at the option of CAWCD. In the event of~~
22 ~~damage to Project facilities due to failure of the Facility Operator to operate~~
23 ~~in a good and workmanlike manner, The Facility Operator shall reimburse~~
24 ~~CAWCD pay the Authority within thirty (30) days of Facility Operator's receipt~~
25 ~~of a statement for the costs of repairing any damage to Project facilities or~~
26 ~~Project rights-of-way caused by or arising out of the Facility Operator's~~
27 ~~activities under this Agreement.~~

1 12.4. ~~Upon termination of this Agreement, the Facility Operator shall promptly~~
2 ~~remove, at its sole cost and expense, all connection facilities constructed or~~
3 ~~installed on the Water Supply System right-of-way and restore said~~
4 ~~right-of-way and all Project facilities affected to their condition immediately~~
5 ~~prior to the construction or installation of such connection facilities. If the~~
6 ~~Facility Operator fails to remove said connection facilities and restore said~~
7 ~~right-of-way and Project facilities within thirty (30) days after receiving any~~
8 ~~written notice from CAWCD to do so, CAWCD may remove said connection~~
9 ~~facilities and restore said right-of-way and Project facilities at the Facility~~
10 ~~Operator's cost and expense, and, within thirty (30) days after receiving~~
11 ~~written demand from CAWCD to do so, the Facility Operator shall pay~~
12 ~~CAWCD, as specified in such written demand, for all costs and expenses~~
13 ~~incurred by CAWCD in removing said connection facilities and restoring said~~
14 ~~right-of-way and Project facilities.~~

15 12.5. If the Facility Operator's Project delivery point is a Project turnout or Project
16 turnouts constructed by the United States, and if the Facility Operator intends
17 to convey water furnished to the Facility Operator pursuant to this Agreement
18 through connection facilities owned or operated by others, the use by the
19 Facility Operator of such connection facilities shall be the subject of written
20 agreement(s) between the Facility Operator and the owner(s) or operator(s)
21 of such connection facilities, and all such agreements shall be provided to
22 the Authority prior to initiation of deliveries.~~include such terms and conditions~~
23 ~~as may be required by CAWCD and shall be subject to the prior, written~~
24 ~~approval of CAWCD before becoming binding upon the parties thereto.~~

25 12.6. Unless the Facility Operator's Project delivery point is a Project turnout or
26 Project turnouts constructed by the United States, all water delivered from
27 the Water Supply System shall be measured with equipment furnished and

1 installed by the Facility Operator and operated and maintained by the Facility
2 Operator at the Facility Operator's sole cost and expense. The results of
3 such measurements shall be reported to CAWCD in such manner and at
4 such time(s) as CAWCD may prescribe. Upon the request of CAWCD, the
5 accuracy of such measurements shall be investigated by the Facility
6 Operator, and any errors which are determined to have occurred therein shall
7 be adjusted; Provided, however, that in the event the parties cannot agree
8 on the required adjustment, CAWCD's determination shall be conclusive.

9 12.7. If the Facility Operator's Project delivery point is a Project turnout or Project
10 turnouts constructed by the United States, all water delivered from the Water
11 Supply System shall be measured with equipment furnished and installed by
12 the United States and operated and maintained by CAWCD. Upon the
13 request of the Facility Operator, or CAWCD, the accuracy of such
14 measurements shall be investigated by CAWCD and the Facility Operator,
15 and any errors which are mutually determined to have occurred therein shall
16 be adjusted; Provided, however, that in the event the parties cannot agree
17 on the required adjustment, CAWCD's determination shall be conclusive.

18 12.8. The United States, CAWCD, and the Authority shall not be responsible for
19 the control, carriage, handling, use, disposal, or distribution of water beyond
20 the Facility Operator's Project delivery point. The Facility Operator shall hold
21 the United States, CAWCD, and the Authority harmless on account of
22 damage or claim of damage of any nature whatsoever for which there is legal
23 responsibility, including property damage, personal injury, or death arising
24 out of or connected with the control, carriage, handling, use, disposal, or
25 distribution of water beyond the Facility Operator's Project delivery point.

26 12.9. The Authority shall not be liable for any action taken by CAWCD or the
27 Facility Operator pursuant to this Article 12 regarding the construction,

1 operation, or maintenance of connection facilities.

2 13. Interruptions and Reductions

3 In addition to the right of the United States under Subarticle 8.3(a)(iv) of the
4 Repayment Contract to temporarily discontinue or reduce the amount of Project
5 Water to be delivered and the right of the Authority under Article 11 hereof to cause
6 CAWCD to reduce or discontinue deliveries of Authority Water hereunder, CAWCD
7 may discontinue or reduce the quantity of water to be furnished to the Facility
8 Operator as herein provided for the purposes of investigation, inspection,
9 construction, testing, maintenance, repair, or replacement of any of the Project
10 facilities or any part thereof. CAWCD may also discontinue or reduce the quantity
11 of water to be furnished to the Facility Operator if there is insufficient Project Water
12 or Project delivery capacity to deliver all water scheduled for delivery pursuant to a
13 contract with the United States or a subcontract with the United States and CAWCD
14 providing for Project Water service for a period of 50 years or more, all water
15 scheduled for delivery by other contractors of Excess Water service, and the Facility
16 Operator's water order. So far as feasible, CAWCD shall attempt to coordinate any
17 such discontinuance or reduction with the Authority and the Facility Operator and
18 to give the Authority and the Facility Operator due notice in advance of such
19 discontinuance or reduction. In case of emergency, no notice need be given. The
20 United States, its officers, agents, and employees, CAWCD, its officers, agents, and
21 employees, and the Authority, its officers, agents, and employees, shall not be liable
22 for damages when, for any reason whatsoever, any interruption, discontinuance, or
23 reduction in delivery of water occurs. If any such discontinuance or temporary
24 reduction results in deliveries to the Facility Operator of less Authority Water than
25 what has been paid for in advance, the Facility Operator shall be entitled to be
26 reimbursed for the appropriate proportion of such advance payments prior to the
27 date of the Facility Operator's next payment or the Facility Operator may be given

1 credit toward the next payment if the Facility Operator should so desire.

2 14. No Long-term Commitment to the Delivery of Project Water

3 14.1 Nothing in this Agreement shall be construed as an allocation of Project
4 Water to the Facility Operator, nor shall this Agreement entitle the Facility
5 Operator to any Project Water other than as provided herein.

6 14.2 Nothing in this Agreement shall be construed as requiring the Authority to
7 provide Authority Water to the Facility Operator in any year, and nothing in
8 this Agreement shall be construed as requiring the Facility Operator to
9 accept deliveries of Authority Water in any year other than the contract year
10 and in accordance with the terms of this Agreement. All parties agree that
11 in any year in which the Authority desires to provide Authority Water to the
12 Facility Operator and in which the Facility Operator agrees to accept
13 deliveries of Authority Water, the terms and conditions of this Agreement
14 shall apply.

15 15. Quality of Water

16 Neither CAWCD nor the Authority warrants the quality of any Project Water
17 furnished under this Agreement and is under no obligation to construct or furnish
18 water treatment facilities to maintain or better the quality of any Project Water. The
19 Facility Operator waives its right to make a claim against the United States,
20 CAWCD, the Authority, or any Project contractor or subcontractor on account of the
21 quality of Project Water or any changes in water quality caused by the commingling
22 of Project Water with other water.

23 16. Water Service Charges

24 16.1 CAWCD shall determine annually in advance of water deliveries the water
25 service charges due for deliveries of Authority Water. The Authority shall
26 determine annually in advance of water deliveries (1) the portion of such
27 water service charges to be paid by the Authority for deliveries of Authority

1 Water under this Agreement (the "Authority's Contribution") and (2) the
2 portion of such water service charges to be paid by the Facility Operator for
3 deliveries of Authority Water under this Agreement (the "Facility Operator's
4 Contribution"). CAWCD and the Authority have agreed that the Authority
5 shall pay CAWCD all amounts due as the Authority's Contribution for
6 deliveries of Authority Water to the Facility Operator under this Agreement
7 as provided in the intergovernmental agreement among CAWCD, the
8 Authority, and ADWR. The Facility Operator's Contribution shall be paid by
9 the Facility Operator to CAWCD as provided herein.

10 16.2. On or before October 15 of each year, CAWCD and the Authority shall notify
11 the Facility Operator of the Facility Operator's Contribution in effect for the
12 following year. On or before the first day of each month, the Facility
13 Operator shall pay CAWCD the amounts due as the Facility Operator's
14 Contribution for Authority Water scheduled for delivery during that month.

15 16.3. The Facility Operator shall pay CAWCD in advance all amounts due as the
16 Facility Operator's Contribution for Authority Water scheduled for delivery
17 under this Agreement; Provided, however, that the Facility Operator shall be
18 entitled to be reimbursed by CAWCD for any portion of the Facility
19 Operator's Contribution which is attributable to Authority Water scheduled for
20 delivery that is not subsequently delivered to the Facility Operator or shall be
21 entitled to an equivalent credit against payment in the future of the Facility
22 Operator's Contribution should the Facility Operator so desire.

23 16.4. If the Authority is not given Long-term storage credits by ADWR for any
24 Authority Water delivered to the Facility Operator's Groundwater Savings
25 Facility pursuant to this Agreement, the Facility Operator shall reimburse the
26 Authority for that portion of the Authority's Contribution attributable to the
27 amount of Authority Water delivered to the Facility Operator for which Long-

1 term storage credits are denied the Authority. The Facility Operator shall pay
2 such amount to the Authority within thirty (30) days of receiving a statement
3 from the Authority for the amount due.

4 16.5. The Facility Operator shall be relieved of the obligation to reimburse the
5 Authority as provided in Subarticle 16.4 if:

6 16.5.1 at the end of the calendar year, the Facility Operator's annual
7 water use is in substantial conformance with the Facility
8 Operator's Annual Forecast or any subsequent modification
9 thereof which has been reviewed by ADWR; or

10 16.5.2 the failure of the Authority to receive Long-term storage credits
11 is attributable to reasonable and ordinary delivery losses
12 occurring in the distribution system between the Facility
13 Operator's Project delivery point and the place of actual
14 irrigation water use.

15 16.6. The Authority shall not be liable to CAWCD for any portion of the Facility
16 Operator's Contribution which is due but unpaid by the Facility Operator to
17 CAWCD for deliveries of Authority Water.

18 17. Termination of Contract

19 17.1 This Agreement may be terminated for any of the following reasons:

20 17.1.1 if the Facility Operator remains in arrears in the payment of the
21 Facility Operator's Contribution for thirty (30) days or more,
22 CAWCD may terminate this Agreement, which termination
23 shall be effective fifteen (15) days after mailing written notice
24 of termination to the Authority and the Facility Operator;

25 17.1.2 if the Facility Operator remains in arrears in the reimbursement
26 of any portion of the Authority's Contribution for thirty (30) days
27 or more, the Authority may terminate this Agreement, which

1 termination shall be effective fifteen (15) days after mailing
2 written notice of termination to the Facility Operator and
3 CAWCD;

4 17.1.3 if the intergovernmental agreement among the Authority,
5 ADWR, and CAWCD regarding delivery of Authority Water is
6 terminated, CAWCD or the Authority may terminate this
7 Agreement, which termination shall be effective fifteen (15)
8 days after mailing written notice of termination to the Facility
9 Operator; or

10 17.1.4 if the Authority determines in its sole discretion that the Facility
11 Operator is operating the Groundwater Savings Facility in a
12 manner contrary to law or in a manner which is likely to
13 jeopardize the ability of the Authority to earn Long-term storage
14 credits for Authority Water delivered to the facility for the
15 benefit of the Authority, the Authority may terminate this
16 Agreement, which termination shall be effective ten (10) days
17 after mailing written notice of termination to the Facility
18 Operator and CAWCD.

19 17.2. The Facility Operator shall remain liable to CAWCD for any portion of the
20 Facility Operator's Contribution which is due but unpaid as of the date of
21 termination, but shall be entitled to be reimbursed by CAWCD for any portion
22 of the Facility Operator's Contribution paid in advance for Authority Water
23 which is not subsequently delivered. The Facility Operator's obligation to pay
24 amounts due but unpaid as of the date of termination and CAWCD's
25 obligation to reimburse the Facility Operator for any portion of the Facility
26 Operator's Contribution paid for any Authority Water not delivered shall
27 survive termination of this Agreement.

1 17.3. The rights of CAWCD and the Authority to terminate this Agreement as
2 provided in this Article 17 shall be in addition to all other rights of CAWCD
3 and the Authority under this Agreement and as provided by law.

4 18. Charges for Delinquent Payments

5 18.1. The Facility Operator shall be subject to interest, administrative and penalty
6 charges on delinquent installments or payments. The Facility Operator shall
7 pay an interest charge for each day the payment is delinquent beyond the
8 due date. When a payment becomes sixty (60) days delinquent, the Facility
9 Operator shall pay an administrative charge to cover additional costs of
10 billing and processing the delinquent payment. When a payment is
11 delinquent ninety (90) days or more, the Facility Operator shall pay an
12 additional penalty charge of six percent (6%) per year for each day the
13 payment is delinquent beyond the due date. Further, the Facility Operator
14 shall pay any fees incurred for debt collection services associated with a
15 delinquent payment.

16 18.2. The interest charge rate shall be the greater of the rate prescribed quarterly
17 in the Federal Register by the Department of the Treasury for application to
18 overdue payments, or the interest rate of 0.5 percent (0.5%) per month
19 prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law
20 76-260). The interest charge rate shall be determined as of the due date
21 and remain fixed for the duration of the delinquent period.

22 18.3. When a partial payment on a delinquent account is received, the amount
23 received shall be applied first to the penalty and administrative charges,
24 second, to the accrued interest, and third to the overdue payment.

25 19. Compliance with Laws

26 The Facility Operator, in carrying out this Agreement, shall comply with all
27 applicable laws and regulations of the United States and the State of Arizona and

1 shall obtain all required permits or licenses from the appropriate federal, state, and
2 local authorities.

3 20. Books, Records, and Reports

4 The Facility Operator shall establish and maintain accounts and other books and
5 records pertaining to administration of the terms and conditions of this Agreement,
6 including: the Facility Operator's water supply data, water-use data, and other
7 matters that the Authority or CAWCD may require. Reports thereon shall be
8 furnished to the Authority or CAWCD in such form and on such date or dates as the
9 Authority or CAWCD may require. Subject to applicable federal and state laws and
10 regulations, each party to this Agreement shall have the right during office hours to
11 examine and make copies of each other party's books and records relating to
12 matters covered by this Agreement.

13 21. Notices

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

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If to CAWCD:

General Manager
Central Arizona Water Conservation District
23636 North Seventh Street
Phoenix, Arizona 85024

If to the Authority:

Manager
Arizona water Banking Authority
500 North Third Street
Phoenix, Arizona 85004

If to the Facility Operator:

General Manager
Queen Creek Irrigation and Drainage District
P.O. Box 690
Queen Creek, Arizona 85242-0690

The designation of the address or addressee for the giving of notice may be changed by notice given as provided in this Article 21.

22. Assignments Limited -- Successors and Assigns Obligated

The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any interest therein shall be valid unless and until approved in writing by CAWCD and the Authority.

23. Cancellation

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

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

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: _____

By: _____

1 Secretary

President

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ARIZONA WATER BANKING AUTHORITY

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Attest: _____

By: _____

Secretary

Chairman

QUEEN CREEK IRRIGATION AND DRAINAGE DISTRICT

Attest: _____

By: _____

Secretary

President

**INTERGOVERNMENTAL AGREEMENT
AMONG THE
ARIZONA DEPARTMENT OF WATER RESOURCES,
ARIZONA WATER BANKING AUTHORITY AND
CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

This Intergovernmental Agreement is made this ____ day of _____, 2002, among the Arizona Water Banking Authority, an agency of the State of Arizona (the "AUTHORITY" or "AWBA"), the Arizona Department of Water Resources, an agency of the State of Arizona ("ADWR"), and the Central Arizona Water Conservation District, a political subdivision of the State of Arizona ("CAWCD").

RECITALS

- A. ADWR is required by A.R.S. § 45-2424.A to provide administrative, technical and legal support to the AWBA to the extent requested by the AWBA.
- B. CAWCD is required by A.R.S. § 45-2424.D to provide technical support to the AWBA to the extent requested by the AWBA.
- C. The AWBA is required by A.R.S. §45-2424 to reimburse ADWR and CAWCD for the services provided by each agency to the AWBA pursuant to the provisions of A.R.S. § 45-2424.
- D. The Parties desire to enter into this Agreement to establish the annual process by which services will be requested of CAWCD and ADWR by the AWBA pursuant to A.R.S. § 45-2424, and to establish the amounts of and process for, the AWBA to reimburse CAWCD and ADWR for the provision of such services.

AGREEMENT

Term

- 1. This Agreement shall commence on the date that it is filed with the Arizona Secretary of State and shall remain in effect until December 31, 2007.

Services Provided by ADWR to the AWBA

2. (a) Services Provided by ADWR to General Public. The services that ADWR provides to the general public shall be provided to the AWBA without charge, or at the same rate charged to the general public. Such services include, but shall not be limited to: (1) assistance in completing applications for water storage permits, including attendance at pre-application conferences; (2) responding to requests to view public records in the same manner and at the same rate charge to the public; and (3) determining the amount of long-term storage credits accrued by the AWBA. Such determinations shall be timely made, however, the AWBA shall not be entitled to preferential treatment in either the timing of the determinations or in the method by which entitlement to long-term storage credits is analyzed.

(b) Specific Services Provided by ADWR to the AWBA. Pursuant to A.R.S. § 45-2424, ADWR shall provide the following administrative, technical and legal support to the AWBA:

(i) ADWR employees necessary to directly staff the AWBA;

(ii) Legal support which shall include, but not be limited to: assistance in preparing all written agreements to which the AWBA is a party; assistance in preparing updates to Storage Site Criteria and Facilities Inventory; review and drafting of AWBA official business; attending AWBA meetings; and providing general legal guidance and advice as requested by AWBA members and staff; and

(iii) Administrative and technical support which shall be in the form of all activities allowed as indirect costs under the Office of Management and Budget Circular A-87, as amended or revised.

(c) Reimbursement by the AWBA for Specific Services Provided by ADWR. The AWBA shall reimburse ADWR for the specific services provided under Section 2.b above in accordance with Section 4 of this Agreement.

(d) Additional Technical Services. If the AWBA desires that ADWR provide technical services outside of those defined in Section 2.b above, it shall submit a written request to ADWR outlining its specific request for services. If ADWR is willing to provide such services, it shall so notify the AWBA, and provide an estimate of the cost for such services within thirty days of the AWBA request. The AWBA shall reimburse

ADWR for additional technical services rendered pursuant to this Section in accordance with Section 4.a.iv of this Agreement.

Services Provided by CAWCD to the AWBA

3. (a) Services Provided by CAWCD to General Public and/or Customers. The services that CAWCD provides to the general public or its customers shall be provided to the AWBA without charge, or at the same rate charged to general public or its customers. Such services include: (1) monthly and annual water delivery accounting reports, and (2) monthly billing and annual reconciliation of bills.

(b) Specific Services Provided by CAWCD to the AWBA. Pursuant to A.R.S. § 45-2424, CAWCD shall provide the following technical services to the AWBA:

(i) assist in development of preliminary and final AWBA Annual Plans of Operation;

(ii) develop long range projections of CAP delivery capacity and water demand;

(iii) provide copies of hydrologic analyses or feasibility studies related to underground storage facilities prepared by or for CAWCD, as requested by the AWBA; and

(iv) invoice, collect and process the groundwater savings facility operator's portion of the water service charge for Excess Water delivered on behalf of the AWBA to the groundwater savings facility operator.

(c) Reimbursement by the AWBA for Specific Services Provided by CAWCD. The AWBA shall reimburse CAWCD for the specific services provided under Section 3 (b) above in accordance with Section 5 of this Agreement.

(d) Additional Technical Services. If the AWBA desires that CAWCD provide technical services outside of those defined in Section 3.b above, it shall submit a written request to CAWCD outlining its specific request for services. If CAWCD is willing to provide such services, it shall so notify the AWBA and submit an estimate of the cost for such services within thirty days of the AWBA request. Before CAWCD provides technical services to the AWBA under this Section, CAWCD and the

AWBA shall agree in writing on the manner and timing of reimbursement to be made to CAWCD by the AWBA for such services.

Cost of and Reimbursement for
Services Provided by ADWR

4. (a) The cost of the services provided to the AWBA by ADWR pursuant to Sections 2.b and 2.d above shall be calculated as follows:
- (i) ADWR employees staffing the AWBA will be charged at the rate of 100% of the full-time equivalents (Personal Service) plus the associated standard employee related expenses (ERE);
 - (ii) Legal services will be charged at the rate of ½ of a full-time Attorney IV;
 - (iii) Costs for administrative services will be calculated quarterly based on: (1) the actual costs of direct services provided for the appropriate quarter and; (2) the actual costs of indirect services as determined by multiplying the total of the actual amount for AWBA Personal Services and ERE by the indirect rate presented by ADWR in its annual cost rate proposal submitted to the United States government.
- (b) The AWBA shall reimburse ADWR for services rendered pursuant to Sections 2.b and 2.d above through quarterly payments. Payment shall be completed via an automatic transfer from the administration account of the Arizona Water Banking Fund to ?.

Cost of and Reimbursement for
Services Provided by CAWCD

5. (a) The AWBA shall reimburse CAWCD for all costs associated with providing the services set forth in Section 3.b above, which costs shall include, but not be limited to; materials, salaries, benefits and overhead. Provided, however, the total annual cost for services provided pursuant to Section 3.b shall not exceed \$45,000 in any year.
- (b) CAWCD shall bill the AWBA annually for the technical services provided pursuant to Section 3.b of this Agreement. Within sixty days after the end of each year during the term of this Agreement, CAWCD shall submit an invoice to the

AWBA for such technical services provided during the previous year. The AWBA shall pay CAWCD within thirty days of receipt of such invoice.

Cooperative Activities and Joint Planning Process

6. (a) CAWCD, the AWBA and ADWR agree to meet and confer annually, during the month of April, to discuss long-term CAP water supplies and long-term demands for such supplies.

(b) CAWCD and AWBA shall cooperate in the preparation of annual reports submitted to ADWR and shall agree on the accuracy of the reports before they are filed.

Resolution of Disputes

7. (a) The AWBA, CAWCD and ADWR acknowledge that this Agreement is a cooperative agreement and each of the parties owes the duty of good faith and fair dealing to each of the other parties in carrying out the terms and intent of this Agreement. In the event of a dispute over the terms of this Agreement or the obligations arising under those terms, the parties agree that they shall forthwith meet and discuss their differences and attempt to resolve them informally. If the dispute cannot be resolved informally, the manager of the AWBA the director of ADWR and the general manager of CAWCD shall meet at least once to discuss the dispute and attempt resolution.

(b) In the event that a dispute arises over the payment of money under the terms of this Agreement, the parties agree that, to the extent possible, payment should be made in timely fashion, but may be made under protest. That protest shall then be resolved according to the dispute resolution process provided for in this Agreement.

Designation of CAWCD as Third Party

Beneficiary of AWBA's Recovery Rights

8. In any water storage agreement between the AWBA and the operator of an underground storage facility, the AWBA agrees to attempt to secure the inclusion of a

clause which provides that CAWCD shall be a third party beneficiary of the AWBA's rights to recover water stored pursuant to the storage agreement.

Notice

9. (a) Any notice, demand or request authorized or required by this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Central Arizona Water Conservation District
C/o General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020

The Arizona Water Banking Authority
C/o Manager
500 North Third Street
Phoenix, AZ 85004-3903

The Arizona Department of Water Resources
C/o Director
500 North Third Street
Phoenix, AZ 85004-3903

(b) A party may, at any time, by notice to the other parties, designate different or additional persons or different addresses for the giving of notices.

Third Party Beneficiaries

10. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Waiver

11. The waiver by any Party of a breach of any term, covenant or condition in 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.

Headings

12. Title and paragraph headings are for reference only and are not part of this Agreement.

IN WITNESS WHEREOF, CAWCD, the AWBA and ADWR enter into this Agreement by signing below.

Attest: CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Secretary

By: _____
George Renner, President

Attest: ARIZONA WATER BANKING AUTHORITY

Secretary

By: _____
Joseph Smith, President

ARIZONA DEPARTMENT OF WATER
RESOURCES

By: _____
Joseph Smith, Director

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Central Arizona Water Conservation District. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to Central Arizona Water Conservation District.

Dated this ____ day of _____, 2002

Central Arizona Water Conservation District
Douglas K. Miller, General Counsel

By: _____

Title: _____

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Arizona Department of Water Resources. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to the Arizona Department of Water Resources.

Dated this ____ day of _____, 2002

Arizona Department of Water Resources
Patrick W. Schiffer, Chief Counsel

By: _____

Title: _____

LEGAL DETERMINATION

Pursuant to A.R.S. § 11-952, the foregoing Intergovernmental Agreement has been submitted to the legal counsel of the Arizona Water Banking Authority. The undersigned counsel has determined that said Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona and to the Arizona Water Banking Authority.

Dated this ____ day of _____, 2002

Arizona Water Banking Authority
Patrick W. Schiffer, Chief Counsel

By: _____

Title: _____

1
2 AGREEMENT BETWEEN THE CENTRAL ARIZONA
3 WATER CONSERVATION DISTRICT AND
4 THE ARIZONA WATER BANKING AUTHORITY
5 PROVIDING FOR THE DELIVERY OF EXCESS
6 CENTRAL ARIZONA PROJECT WATER

7 This Agreement is made as of the ____ day of _____, 2002, in pursuance
8 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary
9 thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat.
10 1057, as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the
11 Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River
12 Basin Project Act of September 30, 1968 (82 Stat. 885), as amended (the "Basin Project Act"),
13 between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT ("CAWCD"), and THE
14 ARIZONA WATER BANKING AUTHORITY ("AWBA").

15 **RECITALS**

16 A. The Basin Project Act provides, among other things, that for the purposes of
17 furnishing irrigation and municipal and industrial ("M&I") water supplies to water deficient areas of
18 Arizona and western New Mexico through direct diversion or exchange of water, control of floods,
19 conservation and development of fish and wildlife resources, enhancement of recreation
20 opportunities, and for other purposes, the Secretary shall construct, operate, and maintain the Central
21 Arizona Project ("CAP").

22 B. The United States and CAWCD have entered into Contract No. 14-06-W-245,
23 Amendment No. 1, dated December 1, 1988 (the "Repayment Contract"), which is incorporated by
24 reference, providing for the delivery of water and repayment of costs of the CAP.

25 C. The United States and CAWCD have entered into the Stipulation Regarding
26 a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment upon the
Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in Central

Arizona Water Conservation District v. United States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated Action) (the "Stipulation"), which modifies the Repayment Contract in certain respects.

D. Paragraph 5(d)(2) of the Stipulation grants CAWCD the exclusive right to sell or use Excess Water.

E. The Arizona Legislature has declared that it is the public policy of the State of Arizona to use the CAP to deliver Colorado River water that would otherwise be unused in Arizona for purposes specified in A.R.S. § 45-2401.

F. The Arizona Legislature has created the AWBA to implement this policy and has specifically authorized the AWBA, in A.R.S. § 45-2423(B)(7) to execute agreements with the CAWCD to obtain water for storage at permitted facilities.

AGREEMENT

Repayment Contract and Stipulation Controlling

1. AWBA expressly acknowledges that this Agreement is subject to the Repayment Contract and Stipulation, including any amendments thereof, and any actions taken and determinations made under those agreements, except as otherwise provided herein. In the event of any inconsistency between this Agreement and the Repayment Contract, the provisions of the Repayment Contract, as modified by the Stipulation, shall be controlling. Definitions included in the Repayment Contract and Stipulation are applicable to this Agreement. The first letters of terms so defined are capitalized herein.

Term

2. The initial term of this Agreement expires on December 31 of the year in which it is executed. This Agreement will be automatically renewed for successive one-year terms until December 31, 2017, unless AWBA notifies CAWCD by October 1 of any year that it does not wish to renew the Agreement for the following year or unless sooner terminated in accordance with Article 11.

Delivery of Water by CAWCD

3. In so far as Project Water supplies and the delivery capability of the Project will permit, and subject to the provisions of the Repayment Contract and Stipulation, CAWCD will

1 deliver Excess Water to AWBA in an amount, and at a water service charge, to be determined in
2 accordance with the terms of this Agreement. The determination of whether Excess Water is
3 available for delivery in any Year, and, if so, the amount of such Excess Water that is available for
4 delivery under this Agreement in any Year, is a determination within the exclusive discretion of
5 CAWCD; Provided, however, That delivery of Excess Water under this Agreement shall be subject
6 to the prior satisfaction of all water deliveries scheduled pursuant to a long-term contract or
7 subcontract for Project Water service, as that term is used in the Stipulation.

8 Conditions Relating to Delivery and Use

9 4. The delivery and use of water under this Agreement is conditioned on the following,
10 and AWBA hereby agrees that:

11 (a) All uses of Project Water and Return Flow shall be consistent with Arizona
12 water law unless such law is inconsistent with the Congressional directives applicable to the Central
13 Arizona Project.

14 (b) The system or systems through which Project Water is conveyed after delivery
15 on behalf of AWBA shall consist of pipelines, canals, distribution systems, or other conduits which
16 will prevent excessive conveyance losses.

17 (c) Project Water furnished pursuant to this Agreement shall be delivered through
18 Project Works for use directly or by exchange as permitted by law.

19 (d) Project Water furnished to AWBA pursuant to this Agreement may not be
20 resold or transferred, but AWBA may enter into an arrangement with a groundwater savings facility
21 allowed under state law to store Project Water.

22 (e) Notwithstanding any other provision of this Agreement, Project Water shall
23 not be delivered on behalf of AWBA unless and until CAWCD has issued final environmental
24 clearance for the system or systems through which Project Water is to be conveyed after delivery.

25 Procedure for Ordering Water

26 5. (a) The amounts, times, and rates of delivery of Excess Water on behalf of AWBA
during each Year shall be in accordance with a water delivery schedule for that Year. Such schedule

shall be determined in the following manner:

1 (i) On or before August 1 of each year during the term of this Agreement,
2 AWBA shall provide to CAWCD a list of all storage facilities for which AWBA has storage rights
3 and the estimated capacity at each such facility available to AWBA during the following year.

4 (ii) On or about September 1 of each year during the term of this
5 Agreement, AWBA and CAWCD shall meet and confer regarding the development of AWBA's draft
6 plan of operation for the following year.

7 (iii) On or about September 15 of each year during the term of this
8 Agreement, CAWCD shall provide to AWBA a draft plan of operation for AWBA for the following
9 year. The draft plan will include an estimate of the volume of Excess Water available for storage for
10 intrastate storage purposes at each storage facility available to AWBA during the following year.

11 CAWCD will also identify the volume of Excess Water that is anticipated to be available for storage
12 for interstate storage purposes at each storage facility available to AWBA during the following year.

13 (iv) On or before October 1 of each year during the term of this Agreement,
14 AWBA shall provide to CAWCD written comments on the AWBA draft plan of operation. AWBA
15 shall identify in such comments the volume of Excess Water and the storage facilities, including
16 storage capacity volumes, for any interstate storage it desires to accomplish during the following year.

17 (v) On or before October 15 of each year during the term of this
18 Agreement, CAWCD shall provide to AWBA a draft water delivery and storage capacity schedule,
19 by month and by storage facility, for intrastate and interstate storage purposes.

20 (vi) On or before November 10 of each year during the term of this
21 Agreement, AWBA shall submit to CAWCD its written request for changes to the draft water
22 delivery and storage capacity schedule.

23 (vii) On or before November 15 of each year during the term of this
24 Agreement, CAWCD shall provide to AWBA a final water delivery and storage schedule for
25 intrastate and interstate storage purpose.

26 (b) The monthly water delivery schedules may be amended upon AWBA's written

request to CAWCD. Proposed amendments shall be submitted by AWBA to CAWCD no later than 15 days before the desired change is to become effective, and shall be subject to review and modification in like manner as the schedule. CAWCD shall notify AWBA of its action on the requested schedule modification within 10 days of CAWCD's receipt of such request.

(c) AWBA shall hold CAWCD, its officers, agents, and employees, harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the actions of CAWCD regarding water delivery schedules furnished by or to AWBA.

Project Delivery Point, Measurement
and Responsibility for Distribution of Water

6. (a) Excess Water furnished on behalf of AWBA pursuant to this agreement shall be delivered at such point(s) on the Water Supply System as are agreed upon in writing by CAWCD and AWBA.

(b) All water delivered from the Water Supply System shall be measured with equipment furnished and installed by the United States and operated and maintained by CAWCD. Upon the request of AWBA or CAWCD, the accuracy of such measurements shall be investigated by CAWCD and AWBA, and any errors which are mutually determined to have occurred therein shall be adjusted; Provided, however, That in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive.

(c) Neither the United States nor CAWCD shall be responsible for the control, carriage, handling, use, disposal, or distribution of water beyond the Project delivery point. AWBA shall hold the United States and CAWCD harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water beyond Project delivery point.

Interruptions and Reductions

7. In addition to the right of the United States under Subarticle 8.3(a)(iv) of the Repayment Contract to temporarily discontinue or reduce the amount of water to be delivered,

1 CAWCD may discontinue or reduce the quantity of water to be furnished on behalf of AWBA as
2 herein provided for the purposes of investigation, inspection, construction, testing, maintenance,
3 repair, or replacement of any of the Project facilities or any part thereof. CAWCD may also
4 discontinue or reduce the quantity of water to be furnished on behalf of AWBA if there is insufficient
5 Project Water or Project delivery capacity to deliver AWBA's water order, the water orders of other
6 contractors of Excess Water service, and all water deliveries scheduled pursuant to a contract with
7 the United States or a subcontract with the United States and CAWCD providing for Project Water
8 service for a period of 50 years or more. So far as feasible, CAWCD shall attempt to coordinate any
9 such discontinuance or reduction with AWBA and to give AWBA due notice in advance of such
10 discontinuance or reduction. In case of emergency, no notice need be given. The United States, its
11 officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable
12 for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in
13 delivery of water occurs.

13 No Long-Term Commitment to the Delivery of Project Water

14 8. Nothing in this Agreement shall be construed as an allocation of Project Water to
15 AWBA nor shall this Agreement entitle AWBA to any Project Water other than as provided herein.
16

17 Quality of Water

18 9. CAWCD does not warrant the quality of any Project Water furnished under this
19 Agreement and is under no obligation to construct or furnish water treatment facilities to maintain
20 or better the quality of any Project Water. AWBA waives its right to make a claim against the United
21 States, CAWCD, or any other Project subcontractor or contractor on account of the quality of Project
22 Water or any changes in water quality caused by the commingling of Project Water with other water.
23

23 Water Service Charges

24 10. (a) AWBA shall pay or provide for payment of water service charges established
25 annually by CAWCD. All monies owed to CAWCD from AWBA for water delivered or to be
26 delivered under the terms of this agreement shall be paid in advance in accordance with standard

1 CAWCD billing practices. The invoice for the upcoming month shall be mailed no later than the first
2 day of the current month. Payment for the upcoming month shall be due by approximately the 20th
3 day of the current month, and shall be past due on the first day of the upcoming month. AWBA and
4 CAWCD agree that the monthly installments due for water delivered shall be invoiced and paid on
5 a levelized basis. By November 15 of each calendar year, CAWCD shall provide AWBA with an
6 estimated cost for all water to be delivered for AWBA's benefit in the upcoming year. The total
7 estimate shall be divided by 12, yielding an equal sum to be paid by AWBA as a levelized monthly
8 payment for the upcoming calendar year. At the end of each year, and no later than March 1 of the
9 next year, CAWCD shall provide AWBA with a year end account reconciliation showing water
10 delivered in excess of the levelized payments, if any, and any payment in excess of the amount owed
11 for water delivered in the calendar year. If additional funds are owed to CAWCD, they shall be paid
12 within 30 days of the date an invoice is submitted by CAWCD. If funds are due to AWBA, they may
13 be applied to AWBA's account for the current calendar year and reduce the monthly levelized
14 payments at the direction of AWBA, or, at AWBA's option, be paid to AWBA by negotiable
instrument no later than 30 days after the AWBA has notified CAWCD of the preferred option.

15 (b) The payment of all water service charges when due under this Agreement is
16 a condition precedent to delivery of Excess Water.

17 (c) The obligation of AWBA to pay CAWCD as provided in this Agreement is
18 a general obligation of AWBA.

19 Termination of Contract

20 11. If AWBA remains in arrears in the payment of any charges due CAWCD for a period
21 of 60 days or more, CAWCD may terminate this Agreement, which termination shall be effective 30
22 days after mailing written notice of termination to AWBA. AWBA shall remain obligated to pay all
23 charges required to be paid under this Agreement during the time period until and including the date
24 of termination. AWBA's obligation to pay any amounts due but unpaid as of the date of termination
25 shall survive termination of this Agreement. CAWCD's right to terminate this Agreement as
26 provided in this Article 11 shall be in addition to the other rights of CAWCD under this Agreement

and to all other rights provided by law.

Charges for Delinquent Payments

12. (a) AWBA shall be subject to interest, administrative and penalty charges on delinquent installments or payments. AWBA shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes 60 days delinquent, AWBA shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent 90 days or more, AWBA shall pay an additional penalty charge of 6 percent per year for each day the payment is delinquent beyond the due date. Further, AWBA shall pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty and administrative charges, second, to the accrued interest, and third to the overdue payment.

Rules, Regulations and Determinations

13. (a) The parties agree that the delivery of water or the use of Federal facilities pursuant to this Agreement is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law.

(b) AWBA shall have the right to make determinations necessary to administer this Agreement that are consistent with the expressed and implied provisions of this Agreement, the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with CAWCD and AWBA.

Compliance with Environmental Laws

14. AWBA, in carrying out this Agreement, shall comply with all applicable environmental laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

Equal Opportunity

15. During the performance of this Agreement, AWBA agrees as follows:

(a) AWBA will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. AWBA will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. AWBA agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by AWBA setting forth the provisions of this nondiscrimination clause.

(b) AWBA will, in all solicitations or advertisements for employees placed by or

on behalf of AWBA, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

1 (c) AWBA will send to each labor union or representative of workers with which
2 it has a collective bargaining agreement or other contract or understanding, a notice, to be provided
3 by the AWBA, advising said labor union or workers' representative of AWBA's commitments under
Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of
the notice in conspicuous places available to employees and applicants for employment.

4 (d) AWBA will comply with all provisions of Executive Order No. 11246 of
5 September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary
of Labor.

6 (e) AWBA will furnish all information and reports required by said amended
7 Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant
thereto, and will permit access to its books, records, and accounts by AWBA and the Secretary of
Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

8 (f) In the event of AWBA's noncompliance with the nondiscrimination clauses
9 of this agreement or with any of such rules, regulations, or orders, this agreement may be canceled,
10 terminated, or suspended, in whole or in part, and AWBA may be declared ineligible for further
Government contracts in accordance with procedures authorized in said amended Executive Order,
11 and such other sanctions may be imposed and remedies invoked as provided in said amended
Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
by law.

12 (g) AWBA will include the provisions of paragraphs (a) through (g) in every
13 subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of
Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will
14 be binding upon each subcontractor or vendor. AWBA will take such action with respect to any
subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing
15 such provisions, including sanctions for noncompliance; Provided, however, That in the event
AWBA becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a
16 result of such direction, AWBA may request the United States to enter into such litigation to protect
the interests of the United States.

17 Compliance With Civil Rights Laws and Regulations

18 16. (a) AWBA shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C.
19 2000d), Section 504 of the Rehabilitation Act of 1975 (Public Law 93-112, as amended), the Age
Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
20 well as with their respective implementing regulations and guidelines imposed by the U.S.
Department of the Interior and/or Bureau of Reclamation.

21 (b) These statutes require that no person in the United States shall, on the grounds
22 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
benefits of, or be otherwise subjected to discrimination under any program or activity receiving
23 financial assistance from the Bureau of Reclamation. By executing this agreement, AWBA agrees
to immediately take any measures necessary to implement this obligation, including permitting
24 officials of the United States to inspect premises, programs, and documents.

25 (c) AWBA makes this agreement in consideration of and for the purpose of
26 obtaining any and all Federal grants, loans, contracts, property discounts or other Federal financial
assistance extended after the date hereof to AWBA by the Bureau of Reclamation, including
installment payments after such date on account of arrangements for Federal financial assistance

which were approved before such date. AWBA recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article, and that the United States reserves the right to seek judicial enforcement thereof.

Books, Records, and Reports

17. AWBA shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including: AWBA's financial transactions, water supply data, project operation, maintenance and replacement logs, and Project land and right-of-way use agreements; the water users' land-use (crop census), land ownership, land-leasing and water-use data; and other matters that CAWCD may require. Reports thereon shall be furnished to CAWCD in such form and on such date or dates as CAWCD may require. Subject to applicable Federal laws and regulations, each party to this Agreement shall have the right during office hours to examine and make copies of each other party's books and records relating to matters covered by this Agreement.

Notices

18. Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of CAWCD, when mailed, postage prepaid, or delivered to _____, and on behalf of AWBA when mailed, postage prepaid, or delivered to the General Manager, Central Arizona Water Conservation District, 23636 North 7th Street, Phoenix, Arizona 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

Assignment Limited--Successors and Assigns Obligated

19. The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by CAWCD.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement No. _____
effective the day and year first above-written.

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Attest: _____
Secretary

By: _____
President

* * *

* * *

THE ARIZONA WATER BANKING
AUTHORITY

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Attest: _____ By: _____

wpdocs\excess\awba

MASTER WATER STORAGE AGREEMENT

This Agreement is made as of the ____ day of _____, 2002, between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), and the ARIZONA WATER BANKING AUTHORITY (“AWBA”).

RECITALS

A. Pursuant to A.R.S. § 48-3713.B.7 CAWCD has the authority to plan, analyze, propose, apply for, construct, operate, maintain and dismantle state demonstration projects for water storage and recovery under title 45, Chapter 3.1, Article 6, Arizona Revised Statutes (the “State Demonstration Projects Statutes”).

B. The general purposes of the State Demonstration Projects Statutes, as set forth in A.R.S. § 45- 891.01 are: (1) to protect the general economy and welfare of this state and its citizens by wise resource management of the water of the Central Arizona Project (“CAP”); (2) to store for future needs or use for replenishment purposes the CAP water not now utilized by CAP subcontractors; and (3) to provide an additional source of water for times of serious water shortage due to a substantial reduction in the supply of CAP water available for delivery to CAP subcontractors or a prolonged interruption of deliveries of CAP water.

C. CAWCD has constructed and is operating the State Demonstration Projects identified in Exhibit A, which is incorporated by this reference.

D. AWBA has been created for the purposes set forth in A.R.S. §45-2401, which include, among others: (1) storing otherwise unused Arizona entitlement to Colorado river water within Arizona to meet future water needs within Arizona; and (2) providing the opportunity to the states of California and Nevada to store currently unused Colorado river water in Arizona to meet future needs in those states.

E. AWBA and CAWCD have executed an Excess CAP Water Contract, providing for, among other things the purchase of Excess CAP Water by AWBA for

storage at permitted underground storage facilities. The Excess CAP Water Contract is incorporated by this reference.

F. AWBA desires to store Excess CAP Water at the State Demonstration Projects, and CAWCD agrees to make available unused storage capacity at the State Demonstration Projects for such storage in accordance with this Agreement.

G. CAWCD and AWBA have entered into the following water storage agreements: *(list Water Storage Agreements and their expiration dates and add to the Agreement a provision to the effect that this Agreement, when executed, will supersede all these other agreements.)*

AGREEMENT

Definitions

1. (a) “ADWR” shall mean the Arizona Department of Water Resources.
- (b) “Authority Water” shall mean specifically priced Excess Water made available by CAWCD to AWBA on an annual basis for underground storage pursuant to the terms of the Excess CAP Water Contract.
- (b) “Excess Water” shall mean all Project Water that is in excess of the amounts, used, resold, or exchanged pursuant to long-term contracts and subcontracts for Project Water service.
- (b) “Excess CAP Water Contract” shall mean the Excess CAP Water Contract entered into by CAWCD and AWBA, dated _____.
- (c) “Party/Parties” shall mean one or both of the parties to this Agreement.
- (d) “State Demonstration Project(s)” shall mean project(s) for the storage of Excess Water at an underground storage facility pursuant to permits issued by ADWR under A.R.S. §§ 45- 891.01 *et seq.*, and shall include those underground storage facilities identified in Exhibit A to this Agreement. Exhibit A may be amended or supplemented by the Parties.
- (e) Definitions included in the Excess CAP Water Contract are applicable to this Agreement. The first letters of terms so defined are capitalized herein.

Term

2. The initial term of this Agreement expires on December 31, 2002. This Agreement will be automatically renewed for successive one-year terms unless either Party notifies the other by October 1 of any year that it does not wish to renew the Agreement for the following year or unless sooner terminated or canceled in accordance with the provisions of this Agreement. *(Do we want the term of this Agreement to be coextensive with the term of AWBA's Excess Water Contract?)*

Conditions Relating to Storage

3. The storage of Authority Water at State Demonstration Projects under this Agreement is conditioned on the following and AWBA agrees that:

(a) All storage of Authority Water at a State Demonstration Project shall be consistent with Arizona law.

(b) AWBA shall obtain and maintain water storage permits from ADWR authorizing it to store Authority Water at the State Demonstration Projects.

(c) CAWCD's storage of Authority Water at a State Demonstration Project shall, at all times, comply with the Underground Storage Facility Permit issued by ADWR for that particular State Demonstration Project. CAWCD shall be responsible for filing annual reports as required by the Underground Storage Facility Permits for the State Demonstration Projects.

Procedure for Scheduling Storage Capacity

4. (a) On or before August 1 of each year during the term of this Agreement, AWBA shall provide to CAWCD a list of all storage facilities for which AWBA has storage rights and the estimated capacity at each such facility available to AWBA during the following year.

(b) On or about September 1 of each year during the term of this Agreement, AWBA and CAWCD shall meet and confer regarding the development of AWBA's draft plan of operation for the following year.

(c) On or about September 15 of each year during the term of this Agreement, CAWCD shall provide to AWBA a draft plan of operation for AWBA for the following year. The draft plan will include an estimate of the volume of Excess Water available for storage for intrastate storage purposes at each storage facility available to AWBA during the following year. CAWCD will also identify the volume of Excess Water that is anticipated to be available for storage for interstate storage purposes at each storage facility available to AWBA during the following year.

(d) On or before October 1 of each year during the term of this Agreement, AWBA shall provide to CAWCD written comments on the AWBA draft plan of operation. AWBA shall identify in such comments the volume of Excess Water and the storage facilities, including storage capacity volumes, for any interstate storage it desires to accomplish during the following year.

(e) On or before October 15 of each year during the term of this Agreement, CAWCD shall provide to AWBA a draft water delivery and storage capacity schedule, by month and by storage facility, for intrastate and interstate storage purposes.

(f) On or before November 10 of each year during the term of this Agreement, AWBA shall submit to CAWCD its written request for changes to the draft water delivery and storage capacity schedule.

(g) On or before November 15 of each year during the term of this Agreement, CAWCD shall provide to AWBA a final water delivery and storage capacity schedule for intrastate and interstate storage purposes.

Water Storage Charges

5. (a) The charges for water storage at State Demonstration Projects shall be set annually by the CAWCD Board of Directors. For each State Demonstration Project, CAWCD shall set an annual storage charge for the storage of Authority Water for intrastate purposes and an annual storage charge for the storage of Authority Water for interstate purposes.

(b) On or before the date of execution of this Agreement, or as soon thereafter as practicable, CAWCD shall furnish AWBA with a schedule of the water storage charges for each State Demonstration Project for the initial year of water storage

under this Agreement (the “Initial Year”). For each subsequent year, CAWCD will establish water storage charges as set forth in Section 5(a) above, and CAWCD will furnish AWBA with a schedule of these water storage charges on or before November 15 preceding each said subsequent year.

(c) AWBA shall pay the applicable water storage rate charge for each acre-foot of Authority Water delivered to a State Demonstration Project on behalf of AWBA. Payment of the applicable water storage charges is not related to and is not contingent on AWBA’s accrual of long-term storage credits from water stored under this Agreement.

(d) On or before the 15th day of each month, CAWCD will submit a bill to AWBA for water storage charges for State Demonstration Project capacity used by AWBA during the previous month. AWBA shall pay CAWCD within thirty (30) days of receipt of such bill.

(f) The water storage charges are estimated charges, based on estimated annual operation and maintenance costs. The actual costs may be higher or lower. At the end of the Initial Year of water storage under this Agreement, and each year thereafter, if necessary, CAWCD will determine the actual costs of water storage at each State Demonstration Project for the previous twelve-month period. If the actual costs of water storage at any State Demonstration Project are higher than those used to estimate the annual storage charges for that facility, CAWCD will adjust the water storage charges for that facility and will bill AWBA for the difference in proportion to the amount of the storage capacity utilized by AWBA at that facility during the year. AWBA shall pay CAWCD within thirty (30) days of receipt of such bill. If the actual costs of water storage at any State Demonstration Project are lower than those used to estimate the annual storage charges for that facility, CAWCD will adjust the water storage charges for that facility and will either, at AWBA’s election, pay AWBA the difference in proportion to the amount of the storage capacity utilized by AWBA at that facility during the year, or credit such amount to AWBA’s account for water storage charges for the following year.

Operating Agent

6. (a) CAWCD shall be responsible for operating the State Demonstration Projects.

(b) CAWCD shall retain sole responsibility and authority for decisions relating to operating and maintenance practices at the State Demonstration Projects, including maintenance scheduling and the selection of periods when maintenance will be done.

(c) Whenever practicable, CAWCD shall inform AWBA ninety (90) days in advance of any matter which may substantially affect the storage of Authority Water at any State Demonstration Project.

Water Measurement and Accounting

7. (a) CAWCD shall base its accounting for water delivered to State Demonstration Projects on actual measurements, methods required by the applicable underground storage facility permit and/or generally accepted accounting and engineering practices.

(b) CAWCD shall install and maintain flow measurement systems to measure the amount of Authority Water diverted from the CAP into each State Demonstration Project, and shall maintain the accuracy of such systems within plus or minus 5 percent of actual flows.

(c) CAWCD shall determine evaporation losses representative of the conditions at or near each State Demonstration Project using the method indicated in the applicable underground storage facility permit or using actual measurements, when available. Any other losses at State Demonstration Projects shall be calculated using generally accepted engineering practices.

(d) All losses that occur at any State Demonstration Project, other than by evaporation, will be calculated using generally accepted engineering practices and water-level readings from the gages in the basins.

(f) CAWCD shall prepare a monthly water accounting report of Authority Water stored at each State Demonstration Project. The report shall include the daily amount of water stored and the losses calculated as described in this Section.

(g) CAWCD shall provide ADWR with reports for the State Demonstration Recharge Projects as required by the applicable underground storage facility permit.

Water Quality

8. AWBA shall indemnify and hold harmless CAWCD against losses to third parties resulting from water quality degradation or harm to property caused by AWBA's water storage at any State Demonstration Project, due to the commingling of AWBA's infiltrating water with groundwater and/or other surface water. Further, AWBA wives any claim on its own behalf against CAWCD for water quality degradation or harm to property arising from such commingling, unless such claim is intended to enforce the indemnification provision of this Section; provided, however, that AWBA shall indemnify and hold harmless CAWCD only to the extent that indemnification is not provided to CAWCD by the State of Arizona pursuant to A.R.S. § 45-898.01; and provided further, however, that AWBA's indemnification shall only extend to the percentage of degradation attributable to the water stored on behalf of AWBA at the State Demonstration Project at issue. AWBA retains the right to claim over against any other entity, including CAWCD, storing water in the State Demonstration Project at issue in the amount proportionate to such amount stored by those other entities. In no event shall CAWCD assume liability for water quality degradation resulting from the storage of Authority Water at State Demonstration Projects, solely due to its performance of obligations as the operating agent under this Agreement.

Authorizations and Approvals

9. AWBA shall be responsible for obtaining, at its own expense, any permits, authorizations and approvals required for the underground storage of Authority Water at the State Demonstration Projects or for AWBA's performance under this Agreement. AWBA shall keep CAWCD informed of its applications for such permits and authorizations. CAWCD will share information with AWBA to assist AWBA in its permit applications. AWBA shall also be responsible for filing any annual reports or

other documents necessary to maintain its right to store Authority Water at the State Demonstration Projects.

Liability

10. (a) Each Party shall assume liability for its own negligence and shall indemnify the other against any damages the non-negligent Party incurs as a result of the negligent Party's action or inaction.

(b) CAWCD shall assume no liability to AWBA for claims of damage resulting from CAWCD's decision to curtail or stop water flows to any State Demonstration Project during storm or emergency conditions.

(c) CAWCD shall assume no liability to AWBA for quantities of recoverable or unrecoverable water stored underground or removed from underground storage; nor to replace water lost, misdirected or otherwise failing to reach the underlying aquifer. CAWCD, AWBA and any other lessee of the State Demonstration Project experiencing the type of water losses described in this Section shall share in any deficiency resulting from such lost, misdirected or otherwise unstored water in proportion to the amount of the storage capacity utilized at such facility in any given year.

(d) Liability, as described in Section 8, related to Authority Water stored in State Demonstration Projects prior to the termination of the Agreement shall remain with AWBA after termination of this Agreement. This Section 10(d) shall survive expiration or termination of this Agreement, and remain in full force and effect.

Default

11. (a) CAWCD and AWBA shall pay all monies and carry out all other performances, duties and obligations agreed to be paid and/r performed by them pursuant to this Agreement. A default by CAWCD or AWBA in the covenants and obligations to be kept and performed by it shall be an act of default under this Agreement.

(b) In the event of a default by CAWCD or AWBA, then, within thirty (30) days following notice of such default by the 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 such

default. If such default is not remedied within the time specified, the non-defaulting party may terminate this Agreement upon twenty-four (24) hours written notice.

Uncontrollable Forces

12. Neither Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than the obligation of AWBA to make payment for service under this Agreement) 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, terrorism, 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 non-action 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 to settle any strike or labor dispute in which it is involved.

Resolution of Disputes

13. (a) 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:

(i) Arbitration shall be binding only upon the consent of the Parties.

(ii) A Party wishing to submit a dispute to arbitration shall provide thirty (30) day 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.

(iii) 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.

(iv) 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.

(b) 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 and available to resolve the dispute.

Actions Pending Resolution of Disputes

14. Pending the resolution of a dispute pursuant to Section 13, 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. Any amount paid by a Party pursuant this Section during the pendency of such dispute shall be subject to refund and adjustment upon a final resolution of any dispute involving an amount due.

Governing Law

15. This Agreement shall be governed by the laws of the State of Arizona.

Binding Obligations

16. All of the obligations set forth in this Agreement shall bind CAWCD and its successors and assigns. This Agreement shall not be assigned by AWBA or accrue to AWBA's successor, nor shall any State Demonstration Project storage capacity use rights under this Agreement be used by another party. This Agreement shall not be assigned by CAWCD or accrue to CAWCD's successor without the express written consent of AWBA.

Notices

17. (a) Notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Central Arizona Water Conservation District
C/o General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020

The Arizona Water Banking Authority
C/o Manager
500 North Third Street
Phoenix, AZ 85004-3903

(b) A Party may, at any time, by notice to the other Party, designate different or additional persons or different addresses for the giving of notices.

Third Party Beneficiaries

18. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Waiver

19. The waiver by either Party of a breach of any term, covenant or condition in 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.

Headings

20. Title and paragraph headings are for reference only and are not part of this Agreement.

Entire Agreement

21. The terms, covenants and conditions of this Agreement constitute the entire agreement between the Parties relative to the use of State Demonstration Projects storage capacity, and no understandings or agreements not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by both Parties.

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

Attest:

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

Secretary

By: _____
George Renner, President

Attest:

ARIZONA WATER BANKING AUTHORITY

Secretary

By: _____
Joseph Smith, President

CAP Storage & Recovery in the Tucson AMA

**Preliminary Observations &
Policy Options from the Institutional
and Policy Advisory Group (IPAG)**

**Informational Briefing
AWBA Board Meeting, March 20, 2002**

Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

IPAG Background

- ◆ ***Regional Recharge Plan (1998)***
- ◆ ***AWBA Facilities Plan for TAMA (1998)***
- ◆ **Ongoing examination**
 - **Recharge capacity & sites**
 - » *Kai-Avra proposal (2000)*
 - **Subcontract firming**
 - **Recovery**

Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

Analysis

◆ Re-examination of the 1998 *Regional Recharge Plan*



- Much of the report remains valid and useful
- Partially outdated due to additional facilities and other factors

◆ Updated analysis

- More comprehensive exploration of physical & financial variables
- Emphasis on AWBA activities

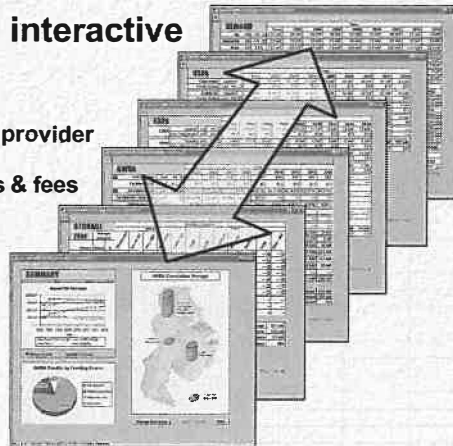
Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

Analytic Tool

◆ Series of linked, interactive spreadsheets

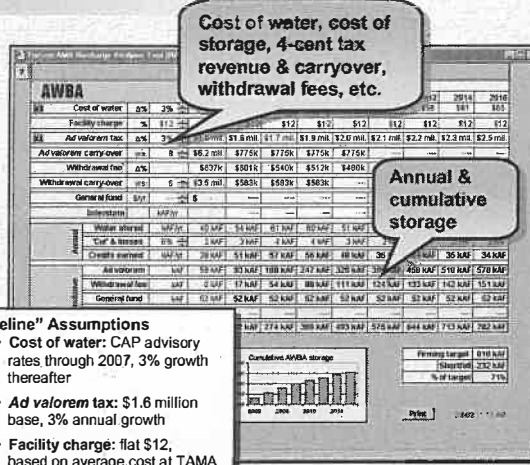
- DEMAND by sector & provider
- USE & GSE capacities & fees
- AWBA funding & storage
- STORAGE by facility, storer & year
- SUMMARY



Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

AWBA Spreadsheet



“Baseline” Assumptions

- Cost of water: CAP advisory rates through 2007, 3% growth thereafter
- Ad valorem tax: \$1.6 million base, 3% annual growth
- Facility charge: flat \$12, based on average cost at TAMA USFs and 2% GSF

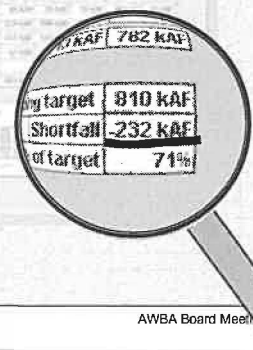
Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

CAP Firming

◆ The AWBA’s firming target for the Tucson AMA will not be met with projected revenue

- 200,000+ AF shortfall (30% below target)
- Shortfall reflects revenue constraints and cost of credits
- Will likely result in future groundwater mining



Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

Firming Options

◆ Bridging the firming gap *{options under consideration}*

– Lower the cost of credits

- Continue to lower water costs
 - Seek low-cost energy
- Continue to lower storage costs at USFs
 - Spread fixed costs by utilizing available capacity
- Increase utilization of TAMA GSFs
 - Invest in infrastructure to GSFs willing to pay \$21/AF
 - Use Withdrawal Fee money to buy-down the \$21
 - Lower the AWBA GSF price for the Tucson AMA

Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

Firming Options

◆ Bridging the firming gap *{options under consideration}*

– Restructure existing TAMA revenue sources

- Extend *ad valorem* revenue stream
- Use Withdrawal Fee money for firming

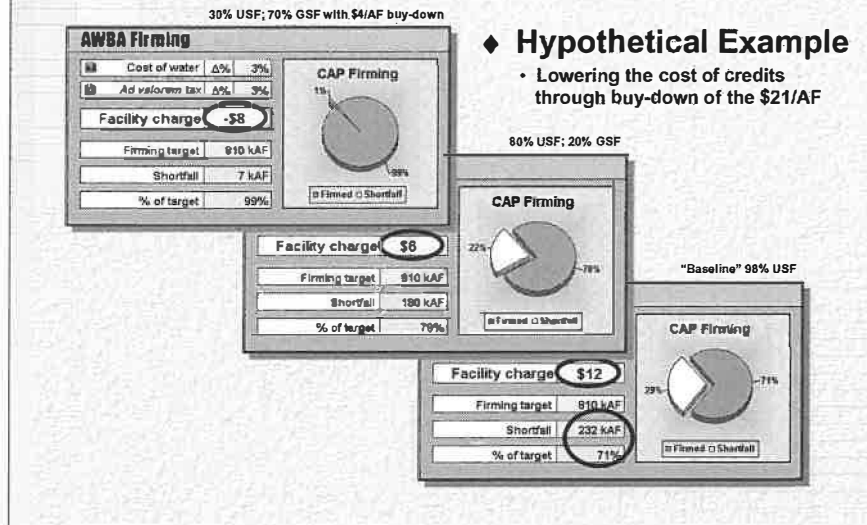
– Other

◆ *It is likely that a combination of solutions will be required*

Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

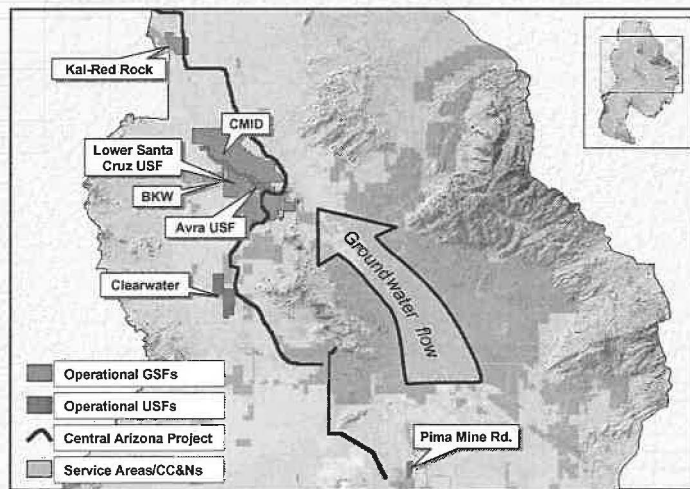
Firming Options



Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

CAP Recharge Locations



Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

Recovery

- ◆ **There is strong interest in where water is stored and how it will be recovered**
- ◆ **Recovery planning activities**
 - Encourage & participate in dialog with CAWCD, AWBA, ADWR, *et al.*
 - Further identify TAMA subcontractors' recovery needs
 - Explore the recovery implications of interstate storage

Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002

Next Steps

- ◆ **Continue to refine analysis**
 - Develop recommendations
- ◆ **Participate in recovery discussions**

Tucson AMA Institutional and Policy Advisory Group (IPAG)

AWBA Board Meeting, March 20, 2002