

ARIZONA WATER BANKING AUTHORITY
Wednesday, September 18, 2002

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It's a dry heat



Arizona Water Banking Authority
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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 September 18, 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 16th day of September, 2002

FINAL AGENDA

Arizona Water Banking Authority Commission Meeting

- I. Welcome/Opening Remarks
- II. Approval of Minutes of June 19 and August 21, 2002 Meetings
- III. Water Banking Staff Activities
 - Deliveries
 - Member's Appointments
 - Agreements
 - Presentation to CAWCD Board
 - Facility Inventory
- IV. Discussion Regarding Firming of Non-CAP Supplies
- V. Draft 2003 Annual Plan of Operation
 - Water availability
 - Partner meetings
 - Public meetings
- VI. Interstate Water Banking
 - Update on status of agreement to develop ICUA
 - Discussion and potential approval of Storage and Interstate Release Agreement
- VII. Call to the Public

Future Meeting Date:
Wednesday, December 18, 2002

All visitors must stop at the lobby to sign-in and receive a visitor's badge. Badges are to be displayed at all times. Visitors are also required to return to the lobby to sign out and return their badges. Thank you for your assistance in this matter.

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

June 19, 2002
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

Richard Walden and Sen. Ken Bennett were absent from the meeting. George Renner was present via telephone for a portion of the meeting.

Minutes

The Authority approved the minutes from the March 20, 2002 meeting.

Discussion and Approval of Amended 2002 Annual Plan of Operation

Tim Henley, manager of the Authority, provided the Authority with information regarding the current situation in Pinal County in light of the loss of general fund appropriations. On the basis of the existing 2002 Annual Plan of Operation (Plan), the Authority had projected a certain level of deliveries and the irrigation districts have utilized their other water sources on the assumption of those projections. However, with the lost general fund appropriation, the Authority will not be able to meet the 2002 projected deliveries and will fully utilize all of the funds available in Pinal County; additional funds will not be available until approximately May of 2003. Further, under the current dry weather conditions, the irrigation districts would like to take more water from the Authority to help meet increased irrigation demands. In previous years, the Authority would have been able to provide this additional water.

Mr. Henley stated that delivery of additional water typically doesn't warrant an amendment of the Plan. However, an amendment of the Plan is necessary this year because there are not sufficient funds available to pay for the planned deliveries for the rest of the year. Inclusion of an interstate water banking component would be needed even to meet the planned Pinal County deliveries. Mr. Henley stated that staff recommend that the Authority commit to new schedules for the irrigation districts to accommodate the increased need for water and enter into an agreement with Nevada that would fund the water deliveries, thus reserving about \$350,000 of Pinal County funds for use in 2003.

The draft agreement that would allow this to occur absent the full complement of interstate water banking agreements required by federal rule was included in the handouts. Mr. Henley noted the following specifics regarding the draft agreement:

1. The volume listed in the agreement was 20,000 acre feet but the amount was planned to increase to 40,000 acre feet to allow some carry-over of funds into 2003.
2. The water delivery rate was only an estimate because the CAWCD Board would be evaluating a revised interstate water delivery rate at their meeting scheduled for the next day. The funds due would be paid in a single payment with provision for reconciliation. In the reconciliation process changes would be made to the number of credits but funds would not be returned.
3. There is nothing in the agreement that provides for making the water available to Nevada. If the Agreement for Development of Intentionally Created Unused Apportionment (ADICUA) is not executed, Nevada could ask for their money back. This puts Nevada at some risk.
4. Rain late in the year could decrease the need of the irrigation districts. In that case, Nevada's funds could be carried over for the future.

Mr. Renner asked that Mr. Henley reiterate the "at risk" statement regarding the absence of the ADICUA and the water staying in Arizona. Mr. Henley replied that the water is similar to the 50,000 acre feet of credits that were previously stored by CAWCD. Mr. Renner asked if the agreement spelled out repayment terms if the ADICUA is never executed. Mr. Henley replied that it is not spelled out but repayment can be done at Nevada's request. He stated that what is spelled out in the agreement is that Arizona would use its best efforts to obtain the money from CAP. Representative Mike Gleason questioned whether Nevada was interested in entering into this deal. Kay Brothers, Deputy General Manager of Engineering/Operations for the Southern Nevada Water Authority (SNWA) said that they were. Paul Orme, legal counsel for two Pinal AMA irrigation districts, stated that the districts supported staff's recommendation. A motion was made and adopted to authorize amendment of the 2002 Plan to include interstate water banking and increase deliveries to the Pinal irrigation districts. Bill Chase questioned whether the motion included providing for \$350,000 of carry-over for 2003 and offering 40,000 acre feet of storage to Nevada. Mr. Henley affirmed that it did. The Authority also approved the form of the agreement needed to include interstate water banking in the 2002 Plan.

Update on Status of Interstate Agreements

Mr. Henley informed the Authority that the Bureau of Reclamation (Bureau) had completed their environmental compliance process and was ready to sign the Storage and Interstate Release Agreement (SIRA). Dale Ensminger of the Bureau stated that the Finding of No Significant Impact had not yet been signed but the reason was merely that Bob Johnson had been out of the office. Jim Davenport of the Colorado River Commission of Nevada (CRCN) informed the Authority that approval of the SIRA was on the agenda for their next meeting and that the CRCN was ready to sign the SIRA. Ms. Brothers stated that the SIRA was on the SNWA's agenda and that she anticipated it being approved and signed the following day.

Mr. Renner stated that he would like to calendar this item for a workshop at a later time. He would like to hear more from the Bureau about the environmental process they completed and re-visit Nevada's long-term plan for replacing interstate banking water in the future. The Authority agreed with Mr. Renner and Joseph C. Smith stated that a workshop would be scheduled in the near future at the member's convenience. Mr. Henley stated that approval of the SIRA was not an action item on this agenda because the Authority bears the burden of action under the SIRA and that action cannot be completed absent the ADICUA. Therefore, he did not feel comfortable with approval of the SIRA until the ADICUA was better developed.

Water Banking Staff Activities

Mr. Henley reviewed the current deliveries and stated that they are pretty much on schedule with projected with deliveries. Deliveries were slightly below projected in the Phoenix AMA and above projected in the other two AMAs. Due to capacity constraints, the CAP will be curtailing deliveries to the Lower Santa Cruz Recharge Project and the Pima Mine Road Recharge Project in June and July. Larry Dozier of CAP stated that the curtailments should only be intermittent in those two months.

Mr. Henley informed the Authority that increased partner utilization of GRUSP may decrease the Authority's ability to store there over the next couple of years. However, in the current 10 year plan, an annual average of 50,000 acre feet was used. Finally, he reviewed the progress being made on the agreements that expired in December 31, 2001 and stated that they should all be executed in the very near future.

2001 Annual Report

Mr. Henley briefly reviewed the report and stated that new tables were provided to the Authority reflecting changes made to the tables in the draft they received the previous week. Mr. Chase noted that the interstate storage would increase from 20,000 acre feet to 40,000 acre feet and that table 6 showed more water available than stored from 2003-2009. Mr. Henley replied that he is being a bit more conservative in the estimates he's using. Mr. Chase reiterated that, while the Authority is statutorily limited to 200,000 acre feet per year for interstate storage, he felt that if water is available, it should be used for interstate purposes. There was a question regarding the text statement that said the 400,000 acre foot agricultural pool was utilized but a larger agricultural demand was used in Appendix B. Mr. Henley replied that the demand included groundwater savings facility deliveries in addition to the agricultural pool. Tom Griffin stated that he would like to see mention of the resolution approved by the Authority in 2002 added to the "Update" section of the report. Mr. Henley stated that it wasn't included because it occurred in 2002, however, it would be added per this request. A motion was made that the Authority approve the report with the changes discussed and transmit the report to the required entities. The motion was adopted.

Fiscal Year 2003 Operating Budget

Mr. Henley reviewed the budget stating that for 2003 there was a summary sheet and back-up sheets with additional information. The numbers are an average between 2002 and 2003 because the Authority operates on a calendar year for water deliveries, etc. The actual 2002 budget was less than anticipated because water deliveries were less than projected and staff did not get raises. The 2003 budget is higher in the administrative area because there is a new staff member and \$60,000 was included for outside services as the Authority may need to use the services of Mike Pearce (currently of Fennemore Craig) in the process of developing the last interstate water banking agreement. Mr. Chase questioned why the administrative budget dropped in 2004 and Mr. Henley said that outside services were not included in that budget projection. The Authority approved the fiscal year 2003 operating budget.

Discussion and Approval of Agreements

Mr. Henley briefly introduced the groundwater savings facility (GSF) agreements and noted that: (1) staff met with the irrigation districts in developing the agreements; (2) there is inclusion of a recovery component in the agreements and; (3) the agreements are now only between the Authority and the irrigation districts. Mr. Henley also noted that a slight change would be made to the agreements to recognize a comment made by the Tonopah Irrigation District regarding who bears recovery costs. Specifically, language would be included in two locations to affirm that the recovery agent bears all recovery costs. The Authority approved the form of the GSF agreements with any minor or technical changes.

Mr. Henley next briefly reviewed the agreements between the Authority and the CAP. The intergovernmental agreement addresses primarily administrative issues and not water delivery; CAP is paid a flat \$10,000 annual fee for administrative services. The excess water contract defines the rights and obligations of the Authority to use excess water. The master water storage agreement is a blanket agreement that covers Authority storage at all CAP operated facilities. Mr. Henley informed the Authority that the CAWCD board would be discussing approval of the agreements at their meeting the next day. The Authority approved all three agreements.

Update on Status of Interstate Agreements

Mr. Henley desired further discussion on one interstate issue. He introduced the agreement between the SNWA and the Metropolitan Water District of Southern California that defines the priority for interstate water banking between the two entities and gives SNWA the first right of refusal. Ms. Brothers stated that signed copies of the agreement are now available.

Call to the Public

Mr. Dozier requested that the SIRA/ADICUA workshop be coordinated with CAP staff because they are working on a similar process. Mr. Chase stated that he is very anxious that it be done in a timely manner. Mr. Henley stated that the key is the ADICUA. Before a meaningful workshop can be held, he felt that a good draft of the ADICUA was needed. Mr. Dozier stated that the next CAWCD board meeting was early August and that would be a good time frame.

Tom Harbour, hydrologist for CAP, noted an error in the 2003 budget regarding volume of storage at the Avra Valley Recharge Project.

Harold Goodman, City of Glendale, requested that the Authority determine whether credits could be available to firm shorted SRP supplies.

The next AWBA meeting is scheduled for Wednesday, September 18, 2002.

The meeting concluded at 11:15 a.m.

ARIZONA WATER BANKING AUTHORITY
Draft Minutes

AUGUST 21, 2002
Arizona Department of Water Resources



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

EX OFFICIO MEMBERS
Representative Gail Griffin
Senator Ken Bennett

I. Welcome and Purpose of Workshop

Chairman Joseph C. Smith welcomed everyone to the workshop and thanked the CAWCD Board members for attending. Mr. Smith stated that the workshop was held pursuant to a request by the Authority for a review of the interstate water banking process and an update of the Nevada Water Resources Plan. The objectives of the meeting were: (1) provide answers to questions or concerns regarding interstate water banking; (2) review the importance of the program in the context of the Law of the River; and (3) to move closer to implementation of the program.

II. Discussion of the Interstate Water Banking Program

Summaries of the various presentations are presented below. Hard copies of presentations are available from the AWBA by contacting Nan Flores.

A. History and Importance of Interstate Water Banking – Herb Dishlip, ADWR

Mr. Dishlip prefaced his presentation with the statement that he would provide a look at how the state got to the point of interstate water banking, recognizing that history is a matter of perspective. (Mr. Dishlip's presentation is described in greater detail because handouts were not available to accompany it.)

In the mid-1980's, things got interesting in water management. There was increasing trepidation in California regarding decreased water availability in light of the near completion of the Central Arizona Project (CAP) canal. The first CAP deliveries were made in 1985. California had historically used as much as 5.2 MAF but this was within the parameters of the Law of the River because it was within the 7.5 MAF allocation of the Lower Basin, specifically from Arizona's unused allocation.

As the CAP moved nearer to completion, Arizona put pressure on California to decrease their use to 4.4 MAF. Also of importance to Arizona was that Metropolitan Water District of Southern California's (MWD) M&I use be included within the 4.4 MAF. California responded by preparing a 30-year step down plan that included such things as water transfers and conservation measures. In 1988, MWD entered into an agreement with the Imperial Irrigation District to decrease water use. The MWD also proposed an experimental program with Palo Verde Irrigation District for land fallowing and storage of water in Lake Mead. However, at this time, CAP utilization actually began to decrease due to issues associated with pricing. Consequently, the momentum for California to work toward 4.4 MAF was lost. If Arizona was going to still leave unused allocation on the river; it really didn't make sense for California to expend funds to develop alternative supplies.

At the same time, Nevada began experiencing water supply issues due to their booming population growth. It became apparent that the 300,000 AF allocation held by Nevada would soon be insufficient for their needs. In response, Nevada formed the Southern Nevada Water Authority, combined all of their contract allocations, initiated conservation efforts and worked to negotiate a favorable manner for calculation of their return flow credits. Nevada's goal with these measures was to extend the period of time until demand reached their 300,000 AF consumptive use limit.

During this period of uncertainty, the Upper Basin states believed that these issues were relative only to the Lower Basin and they asked the Lower Basin to attempt to resolve the issues of meeting California and Nevada's water needs internally. To do this, the Lower Basin states held several meetings and recognized that technical work needed to be done. A technical committee was formed to examine the widest range of possible options absent the legal and technical parameters. In short, they were looking "outside the box". Some of the options that were identified were: (1) modification of the surplus criteria to make more water available; (2) extraordinary conservation measures; (3) interstate transfers and top water banking in Lake Mead; (4) wheeling of tributary supplies through the Colorado River system; and (5) off-stream banking, primarily in Arizona due to presence of existing regulations and infrastructure. The idea of "no harm, no foul" was proposed in the process but Arizona strongly objected to this idea because it was felt that any change to the Law of the River could harm Arizona. Arizona also did not support the idea of top water banking or interstate transfers. Nonetheless, California and Nevada formed a coalition and proposed a program of conservation and interstate transfer. As a result, Arizona withdrew from the technical committee process and it ultimately terminated.

One of the options developed out of the Technical Committee process that was acceptable to Arizona was a more liberal surplus criteria. Arizona approached the other basin states and proposed that any plan to develop more generous operating criteria was actually a 7-state issue and not just a Lower Basin consideration because of the scope of its impacts. Arizona also composed a policy position statement that put forth their position on the range of options. Specifically, the state disagreed with the concept of "no harm, no foul", and rejected programs for wheeling of tributary water, interstate conservation and transfer and top water banking. The letter stated that if these options were pursued, opposition from Arizona could be expected. However, Arizona was willing to further discuss modification of operating criteria and off-stream banking to create unused apportionment under Article II.B.6 of the decree in *Arizona v. California*. This willingness to discuss some options was recognized as progress for Arizona, who had historically proved difficult where the Colorado River was concerned.

Discussion regarding the concept of off-stream banking and interstate water banking began. It was recognized that: (1) this should be a state to state program and not between individual contractors or entities; (2) it would require legislation, even though the earlier pilot project had been done between CAP and MWD and SNWA; (3) the Secretary of the Interior would need to be involved; and (4) the priority would be that intrastate needs would be met first and interstate needs only after all intrastate met. With these things in mind, there was strong support for a water banking program in Arizona and a legislative package was developed. Some key components of the legislation were: (1) the Secretary of the Interior would be required to adopt rules regarding off-stream banking to insure Arizona's rights were protected; (2) recovery was limited to 100,000 AF per year; (3) recovery would be suspended in times of shortage; (4) controversial issues would be omitted from the legislation and addressed later by a Study Commission that would be formed pursuant to legislation. Ultimately, the Study Commission made only minor revisions to the legislation pertaining to the interstate water banking process in the form of the nature of disposition of the *in lieu* tax collected from interstate entities.

Throughout the development of the AWBA, California and Nevada both expressed interest in interstate water banking. It was recognized that California's needs greatly exceeded the amount of water that could be provided through the process, however, Nevada could benefit from participation. The interstate water banking component of the AWBA's legislation was supported by the basin states because it provided a level of comfort that other options did not. This program did not fundamentally alter the Law of the River and would occur under the existing Article II.B.6 of the decree. Further, the program had limited application and a limited horizon because Arizona would ultimately fully utilize its allocation.

Development of the AWBA also led to a strong six state coalition regarding development of the Interim Surplus Guidelines (ISG). Because Nevada was now receiving some assurances that action would be taken to meet their needs, they were willing to join the other states and California eventually joined in as well. The inclusion of an interstate component in the AWBA enabled the states to reach consensus on the ISG and established principles for interstate comity. Although the processes were separate, there is a similarity between them and the consensus building process and comity resulted in decreased potential for controversy and litigation. Further, cooperative action between the states also decreased the need for federal intervention. The offer of interstate water banking paved the way for a new regime of water management in the Colorado River basin.

There were no questions for Mr. Dishlip.

B. Interstate Banking Agreements – Tim Henley, AWBA

Mr. Henley's presentation summarized the various agreements needed to initiate an interstate water banking program and updated the audience on their status. The agreements are: (1) Agreement for Interstate Water Banking (IWBA); (2) Storage

and Interstate Release Agreement (SIRA); and (3) Agreement for the Development of Intentionally Created Unused Apportionment (ICUA). For each of these agreements, Mr. Henley reviewed the objectives/role of the agreement and the responsibilities of each party entering into it ¹. Mr. Henley also discussed the availability of CAP water through 2025 and the amount that could be available for interstate water banking purposes. Finally, Mr. Henley reviewed the ancillary agreements needed to permit delivery, storage, and ultimately, recovery of water stored in the interstate water banking process.

George Renner asked Mr. Henley to explain how the stored water would be physically recovered. Mr. Henley stated that the early recovery would likely be through the exchange method (described in the SIRA) and would likely occur before Arizona needs to recover water for firming. Specific recovery plans have not yet been developed and that is why the interstate agreements require notice three years prior to development of ICUA.

CAWCD Board member Grady Gammage, Jr. asked Mr. Henley to “follow the money” and describe how the state of Arizona would benefit from interstate water banking. Mr. Henley stated that interstate water banking would provide benefit in that the CAP would gain another full-paying customer. However, he noted that the AWBA is not going to make a monetary profit through the process and was never intended to. Joseph C. Smith added that another benefit is that the *in lieu* tax collected from Nevada for water delivery directly benefits the Water Protection Fund. Rita Maguire also noted that interstate banking would allow more complete utilization of storage facilities.

Dick Walden asked Mr. Henley to address Arizona’s full utilization of their allocation. Mr. Henley replied that full utilization is occurring now without interstate banking but that AWBA use could drop off because of funding constraints. Interstate water banking could take the place of intrastate banking if that occurs. Mr. Henley stressed that the issues regarding Arizona’s full utilization of their Colorado River allocation are still out there so it is always important to fully utilize the water whenever possible.

Bill Chase asked Mr. Henley to describe other SIRA approved methods of recovery, specifically transfers. Mr. Henley described how a transfer would work using the CAGR as an example.

Mr. Renner questioned how it would be handled if Arizona did not want to participate in any year. Mr. Henley responded that: (1) the decision to store is made on an annual basis and the AWBA can choose in any year to not offer storage to Nevada; (2) for recovery (development of ICUA), there are limits during shortage years; and (3) the agreements can be terminated at any time, but to the extent that Nevada has paid for and developed credits in Arizona, they could take Arizona to court for failure to perform.

¹ Please see a hard copy of the presentation for specific information regarding the discussion.

Mr. Renner also asked about the identification of benchmarks in the agreements in addition to the inclusion of the step-down process. Mr. Henley replied that there are no other benchmarks identified. However, the IWBA states that this is a temporary supply of water to Nevada and requires Nevada to participate/cooperate in the AWBA's Annual Plan of Operation process. Mr. Henley stated that establishment of firm benchmarks could limit the flexibility of the AWBA and SNWA in this process.

C. Nevada's Water Resources – Kay Brothers, Southern Nevada Water Authority (SNWA)

Ms. Brothers presented information on the Water Resources Plan done by SNWA. The plan is reviewed and approved annually and revised as needed. The last plan was completed in 1999 and a new plan was approved in 2002. The plan was amended due to increased demand and population growth, increased diversions from the Colorado River and the need to provide the SNWA board updates regarding other water resources. Ms. Brothers described the urban development of the Las Vegas Valley, the water resources available to the SNWA and how SNWA intended to meet their forecast demand through 2050². She concluded by stating that interstate water banking is an important interim resource bridge for the SNWA.

CAWCD Board member Jim Hartdegan asked Ms. Brothers how the desalinization of water would occur. Ms. Brothers replied that it was being looked at in conjunction with Metropolitan Water District of Southern California and would cost approximately \$250/acre foot. She also stated that brine disposal was the greatest problem with desalinization.

Mr. Renner asked the source of funding for the \$600-700 million program being proposed. Ms. Brothers replied that a new capital construction program was recently developed and that the money would come from water connections.

Mr. Chase questioned whether there were social concerns about movement of groundwater between counties³. He noted that this has been an issue of concern in Arizona. Ms. Brothers replied that the water was from within Clark County and that there were some concerns but that SNWA believed the problems were solvable in the short term.

D. Role of the Bureau of Reclamation – Bob Johnson, U.S. Bureau of Reclamation

Mr. Johnson referred the audience to his presentation⁴ but did not go through it in the interest of saving time. He stated that the federal government encourages interstate cooperation and finds this interstate water banking process commendable.

² Please see a hard copy of the presentation for specific information regarding the discussion.

³ The SNWA Water Resources Plan includes importation of groundwater into Las Vegas, however, the water is still coming from within Clark County.

⁴ Please see a hard copy of the presentation for specific information regarding the discussion.

He also stated that the Bureau of Reclamation, in their role as water master of the Lower Basin, would administer the river pursuant to these agreements and the Law of the River and does not recognize interstate water banking as a permanent water supply for Nevada. He stated that the Law of the River and the interstate water banking agreements provide protection for Arizona. In closing, he used the example of California to prove his point. California has been relying on a “temporary” water supply, specifically Arizona’s unused allocation, for the past 40-45 years and the Bureau is forcing them to take tough measures to stop their use of this supply.

Mr. Renner asked Mr. Johnson if the federal government would ever interject a federal decision into this process or if they would respect Arizona’s desires regarding storage. Mr. Johnson replied that the Bureau will only enforce the agreements as executed.

E. Public Comment

Rita Maguire reiterated some of the historical points made by Mr. Dishlip and said that when the idea of interstate banking was conceived, Arizona was facing some difficult and uncertain times. Consequently, the decision was made to work cooperatively instead of fighting the other Lower Basin states. Interstate water banking made sense and gained support because: (1) it preserved the Law of the River; (2) it was a state to state program with federal involvement, as needed, but it was not a federally mandated program; (3) decisions were made on an annual basis; and (4) it was dependent on unused apportionment. She said that the agreements described by Mr. Henley provide additional protection to Arizona in addition to that provided by federal or state statute. Ms. Maguire listed the tangible and intangible benefits of interstate water banking. Tangible benefits are: (1) flow of money into the state; (2) another entity to utilize recharge facilities; (3) makes management more flexible; and (4) forces California to the table. The two intangible benefits are: (1) a cooperative relationship is better than the uncertainty associated with litigation; and (2) enhancement of the Law of the River because it shows that the Law can be flexible and applicable to changing conditions in the Basin.

Marvin Cohen stated that water banking was developed in response to interstate needs and he is very concerned that interstate water banking will not come to fruition. The teaming up of California and Nevada was a very serious threat and should not be forgotten. He concluded by saying that there is currently a “changing of the guard” occurring and he hopes that the entities responsible for making a decision regarding interstate water banking take into consideration the damage that could be done if the trust that was created over time between Arizona and Nevada is violated.

Doug Nelson stated that the Arizona Rural Water Association supports water banking and the full use of Arizona’s allocation. However, the Association has concerns that the rural community is also being faced with lack of water supply and also requires a bridge resource in developing their water supplies.

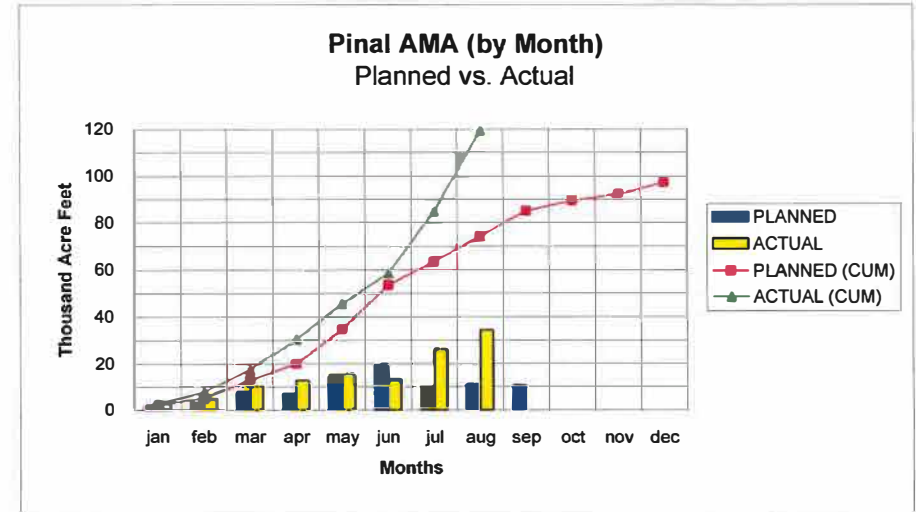
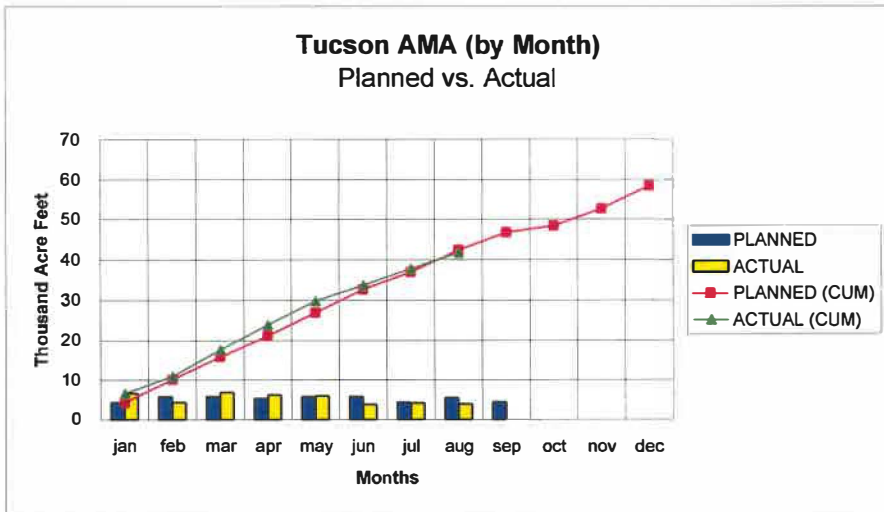
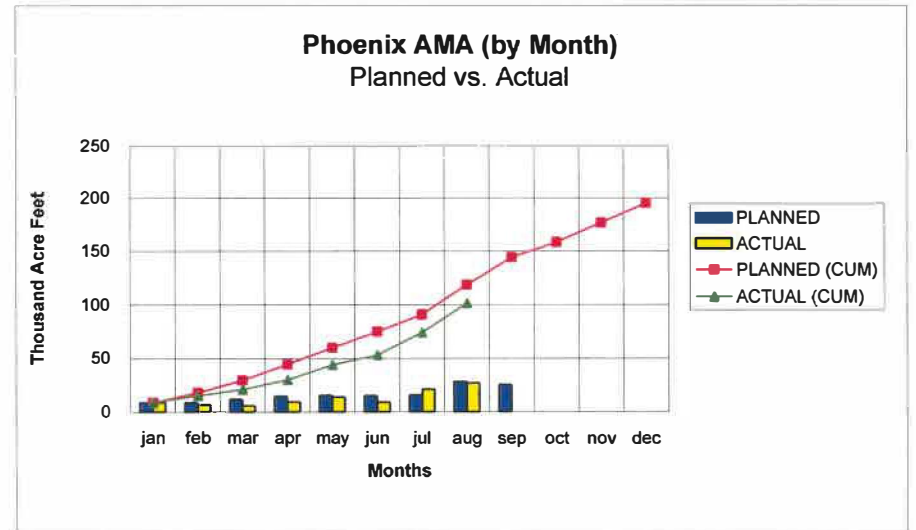
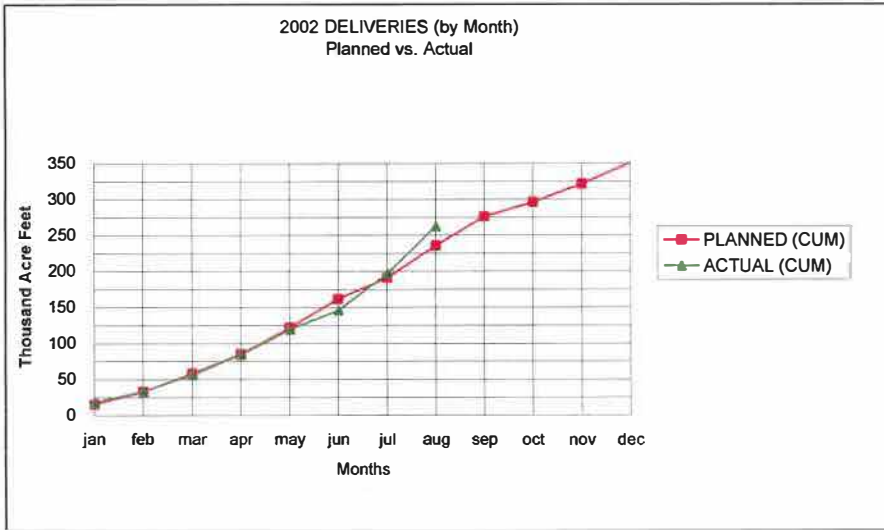
Mr. Renner stated that he is personally still struggling with the timing issue. Right now, Arizona is facing the issue of California's overuse and working toward getting their use within their allocation. And at the same time, he believes, we are looking at letting Nevada do the same thing, i.e. use more than their allocation. His question is how can we be critical of one neighbor exceeding their budget while encouraging another to do the same? He is also concerned about Arizona's ability to terminate this process because he thinks it may be necessary in the future. He asked Ms. Brothers about the inclusion of water transfers in the Water Resources Plan and mentioned entities in Nevada speaking about changing the Law of the River. He asked her if she could alleviate his concerns about future threats to the Law of the River. Ms. Brothers spoke to the water issue and said that things have changed internally in Nevada and the SNWA's is now looking at alternate, non-Colorado sources to meet their needs. She stated that the partnerships that have been developed are invaluable to Nevada and they will preserve those partnerships within the Law of the River. Mr. Henley interjected and supported Ms. Brother's statement. He said that Nevada has had opportunities to attempt to secure the ability to wheel Virgin River water through the Colorado River system and have deferred this because of the partnerships that have been built. Jim Davenport stated that we should not let the Law of the River be our straitjacket. For example, the CAP is currently the lowest priority on the river and Nevada thinks that should be changed to give the CAP a higher priority and has stated so publicly. He concluded that Nevada will continue to support Arizona in this effort.

III. Potential Action – Approval of the Storage and Interstate Release Agreement

No action or discussion on this item.

The meeting adjourned at 12:15 p.m.

2002 Plan of Operation



Actual deliveries updated		11-Sep-02												total
Plan of Operation		jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	
Plan Modified		18-Jun-02												
Phoenix AMA														
GRUSP	4,300	2,090	304	3,245	4,294	2,991	4,071	5,130						26,425
	4,800	4,800	4,800	4,800	4,800	4,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	50,600
AGUA FRIA	1,758	784	3,820	4,181	4,949	4,360	4,243	2,735						26,830
	2,033	2,034	2,033	5,600	6,100	6,100	6,450	7,100	7,100	7,100	5,100	5,579	7,100	62,329
CHCID	0	0	21	22	120	100	100	108						471
	50	100	50	100	100	151	125	125	125	191	0	0	0	1,117
NMIDD	2,619	3,529	0	243	3,000	0	11,076	15,331						35,798
	2,000	2,000	3,200	2,500	3,000	3,500	3,700	9,700	9,600	3,500	2,500	2,000	2,000	47,200
QCID	0	0	0	0	0	0	0	2,960						2,960
	0	0	0	0	0	0	0	5,711	3,182	1,682	1,202	1,723	1,723	13,500
TID	0	0	0	0	0	0	0	0						0
	0	0	0	0	0	0	0	0	0	0	2,000	1,000	1,000	3,000
SRP	0	0	1,606	1,600	1,600	1,600	1,600	783						8,789
	0	0	1,600	1,600	1,600	1,600	1,600	800	800	800	800	800	0	11,200
HIEROGLYPHIC	0	0	0	0	0	0	0	0						0
	0	0	0	0	0	0	0	0	0	0	3,000	3,000	3,000	6,000
Subtotal	8,677	6,403	5,751	9,291	13,963	9,051	21,090	27,047	0	0	0	0	0	101,273
Total to date	8,677	15,080	20,831	30,122	44,085	53,136	74,226	101,273	101,273	101,273	101,273	101,273	101,273	101,273
Projected total to date	8,883	17,817	29,500	44,100	59,700	74,851	90,526	117,762	142,369	157,442	176,323	194,946	194,946	194,946
Pinal AMA														
CAIDD	0	0	0	0	0	0	6,762	18,738						25,500
	0	0	0	0	0	0	0	3,500	7,500	4,000	2,500	3,000	3,000	20,500
MSIDD	1,020	1,350	1,970	3,520	4,870	13,000	10,100	3,000						38,830
	510	510	1,350	620	4,870	13,000	11,700	1,700	700	1,000	400	600	600	38,960
HIDD	1,727	3,310	8,147	9,264	10,307	0	9,452	12,735						54,942
	1,500	2,500	6,400	6,500	10,000	8,000	3,000	6,000	2,500	1,500	1,000	1,000	1,000	49,900
Subtotal	2,747	4,660	10,117	12,784	15,177	13,000	26,314	34,473	0	0	0	0	0	119,272
Total to date	2,747	7,407	17,524	30,308	45,485	58,485	84,799	119,272	119,272	119,272	119,272	119,272	119,272	119,272
Projected total to date	2,010	5,020	12,770	19,890	34,760	55,760	70,460	81,660	92,360	98,860	102,760	107,360	107,360	107,360
Tucson AMA														
Avra Valley	593	186	469	283	744	624	533	451						3,883
	570	570	570	570	570	570	570	570	570	230	570	570	570	6,500
Pima Mine	2,464	1,704	2,972	2,775	2,326	1,139	1,633	2,281						17,294
	2,100	2,600	2,600	2,100	2,600	2,600	2,100	2,600	2,000	400	1,131	2,600	2,600	25,431
Lower Santa Cruz	3,506	2,431	3,369	3,126	2,888	2,077	2,003	346						19,746
	1,600	2,600	2,600	2,600	2,600	2,600	2,600	1,661	1,742	1,293	972	2,600	2,600	25,468
Kai Red Rock	0	0	0	0	0	0	0	780						780
	0	0	0	0	0	0	0	500	500	0	0	0	0	1,000
Subtotal	6,563	4,321	6,810	6,184	5,958	3,840	4,169	3,858	0	0	0	0	0	40,923
Total to date	6,563	10,884	17,694	23,878	29,836	33,676	37,845	41,703	41,703	41,703	41,703	41,703	41,703	40,923
Projected total to date	4,270	10,040	15,810	21,080	26,850	32,620	37,890	43,221	48,033	49,956	52,629	58,399	58,399	58,399
TOTAL	17,987	15,384	22,678	28,259	35,098	25,891	51,573	65,378	0	0	0	0	0	262,248
Total to date	17,987	33,371	56,049	84,308	119,406	145,297	196,870	262,248	262,248	262,248	262,248	262,248	262,248	262,248
Projected total to date	15,163	32,877	58,080	85,070	121,310	163,231	198,876	242,643	282,762	306,258	331,712	360,705	360,705	360,705

DISCUSSION PAPER

Distribution of Credits by the AWBA for Firming non-CAP Surface Water Supplies

A 1999 amendment to A.R.S. § 45-2457 granted the AWBA the authority to distribute long-term storage credits developed using the 4¢ *ad valorem* tax money to municipal water providers to firm non-CAP surface water supplies in time of current shortage. Before doing so, the AWBA must first make a determination that credits sufficient to meet the county's CAP M&I firming needs had been accrued. The statute further provides that the distribution shall be the lesser amount of either: (1) a calculated amount based on the impacted municipal providers 4¢ tax revenues and their total revenues; or (2) 20% of the total surface water shortage the provider is experiencing.

At the June 19, 2002 AWBA meeting, Harold Goodman of the City of Glendale requested that the AWBA evaluate the possibility of this authority being utilized in 2003 due to concerns over the availability of Salt River Project (SRP) water to the cities. This discussion paper was prepared to provide information and present staff's recommendation.

Background information

I. Determination of the CAP M&I firming need

The AWBA Study Commission was tasked with making recommendations regarding the potential for shortages to Arizona's Colorado River supply. To achieve this objective, two issue areas were addressed. The first involved the assumptions that would be used to model the Colorado River for AWBA planning purposes. The second was a determination of how much water would need to be stored to protect against projected shortages. The Commission's 1998 final report listed the assumptions that were deemed appropriate for use in the model. Based on the assumptions and shortage protection for an annual demand of 676,000 acre feet, the report estimated 3.029 million acre feet of credits were needed to firm through 2100.

In 1999, the AWBA re-addressed the firming issue in the process of recovery planning. At that time, the model was run using the 1998 assumptions plus a current Indian shortage sharing strategy, current reservoir levels, 1906-1998 hydrology and annual demand of 648,000 acre feet. This run estimated that 2.584 million acre feet were needed to firm for the total average short through 2100.

In 2000, the staff again re-visited the firming issue, this time in the context of interstate water banking. At this time, one of the underlying assumptions of previous models was in question. Specifically, the basin states were in the process of moving toward the interim surplus guidelines and the actual surplus strategy that would be used was unknown. Additionally, in this run, a different M&I protection level was used and current reservoir levels were used. This run estimated an average of 4.524 million acre feet of credits needed to firm through 2100.

It becomes immediately obvious that the firming number is a dynamic target that can vary greatly depending on the information utilized in the model. Although the Study Commission's 1998 report provided guidance regarding the *assumptions* to be used in the model, it did not address differences that would occur due to reservoir level, the period of historical hydrology used, M&I demand levels and shortage sharing strategies with the Indian tribes. These parameters can change on an annual basis and dramatically influence the firming number. For example, model runs completed today with current reservoir levels would show a higher probability of earlier and more frequent shortages and the firming number would increase. Conversely, if the next 10 years are relatively wet years, models run in 2012 could show a decrease in the number of firming credits needed. The Commission's report also did not provide guidance regarding whether the firming number should be fixed at a specific period in time or should be updated periodically.

Therefore, AWBA staff make the following recommendations regarding model runs completed to determine the number of credits needed for M&I firming:

1. The assumptions presented in the Study Commission's final report will be utilized to the extent they have not been changed by policy. Specifically, pursuant to the interim surplus guidelines, the 70R surplus strategy will not be used in current model runs.
2. The model period will be fixed at 2000-2100 with 1906-1998 historical hydrology and 1999 reservoir levels used. The M&I demand level will be fixed at 648,000 acre feet and any shortage sharing criteria set by policy will be utilized. All model runs will have the Yuma Desalting Plant operational.

It is believed that institution of a policy that "sets" the firming number in some baseline parameters would allow the AWBA to efficiently work toward a known firming goal.

- II. Some specifics about A.R.S. §45-2457(8) are important to note:
1. The distribution will be made following “a determination by the authority that the number of long-term credits” accrued using 4¢ tax dollars “exceeds the needs” for CAP M&I firming.
 2. This distribution is authorized for any county within the CAWCD service area. However, it should be noted that it would only occur in Maricopa County because neither Pima nor Pinal County have a municipal provider that utilizes a surface water supply.
 3. The distribution of credits must be done at the time the shortage is being experienced, not in anticipation of a shortage or retroactively.

III. The Salt River Project (SRP) System

The SRP system is used to distribute a variety of types of water to lands with various priorities pursuant to various contracts and settlements. Only one type of water is subject to allocation by the SRP Board. This is water that is termed “stored and developed”. Annually, the SRP assesses reservoir storage, groundwater pumping capacity and cost, and other factors to estimate the total quantity of stored and developed water available for delivery to member lands. This amount is then used to determine the per acre allocation for the following year. It should be noted that the allocation of stored and developed water is: (1) equally available to member lands; (2) on a per acre basis regardless of ultimate use of the water; (3) composed of either all surface water or a combination of surface water and groundwater; (4) 3.0 acre feet per acre in a usual or normal year; and (5) typically approved by the Board in the fall, becoming effective in January of the following year. The actual per acre use of stored and developed water by individual entities can vary for many reasons, including meeting demand with decreed (Kent Decree) rights.

The SRP Board does not make a formal declaration regarding normal, surplus or shortage year in the allocation process. However, the magnitude and composition of the allocation is indicative of the status of the system. As previously stated, a normal allocation is 3.0 acre feet per acre. As surface water becomes more limited within the system, that allocation may include groundwater in a greater percentage. For example, when surface water is not limiting, the 3.0 acre foot allocation could be composed of all surface water. As surface water becomes limited, it could be some combination of surface and groundwater (i.e. 2.0 acre feet of surface water and 1.0 acre foot of groundwater). Finally, as surface water becomes even more limited, the allocation can be dropped to 2.5 or 2.0 acre feet per acre.

For calendar year 2002, the SRP allocation of stored and developed water is 3.0 acre feet per acre comprised of 1.7 acre feet of surface water and 1.3 acre feet of groundwater. SRP's Board of Governors recently voted to reduce the water allocation to 2.0 acre feet per acre for 2003. The composition is projected to be 1.3 acre feet of groundwater and 0.7 acre feet of surface water.

Historically, the reduction in allocation has occurred only twice. In 1951, the allocation was decreased and the decrease remained in effect the entire year. In 1991, the decreased allocation was only in effect for two months.

Discussion

There are a number of critical questions that should be answered in the process of determining whether the AWBA would distribute credits for this purpose in any given year:

1. *Have a sufficient number of credits been developed in Maricopa County to meet the statutory requirement that CAP M&I firming needs have been met prior to distribution?*¹

The total number of long-term storage credits developed in Maricopa County through 2002² using 4¢ *ad valorem* tax dollars is 796,183 acre feet. As previously discussed, the total M&I firming need has been estimated to range from 2.584-4.524 million acre feet. Maricopa County holds approximately 60% of the total M&I subcontract volume, therefore 60% of the total firming need would be for Maricopa County giving a need in the range of 1.55-2.71 million acre feet. Therefore, in 2003, the need will not have been met.

It should also be noted that review of the credits developed through the ten year plan shows that the M&I firming need (at the low end of the range) could be met in 2006. The model used to develop the ten year plan included a component for the increased CAGR demand on the excess water pool, but did not include any CAP-SRP exchange component or increased use by SRP. There could be increased demand for water by SRP if the current drought condition continues. The proposed exchange for 2002 was 150,000 acre feet and SRP has requested delivery of 100,000 acre feet in 2003 as they attempt to preserve their reservoir capacity.

¹ Information included in the ten year plan incorporated in the 2001 Annual Report is used in this discussion.

² Credits are based on cumulative totals for 1997-2002; 2002 credits are estimated based on projected deliveries.

While the AWBA may benefit through payback of exchanges to some extent, SRP would receive excess water at a higher priority than the AWBA, consequently decreasing the amount of water available to the AWBA in any given year. There are also other factors that could impact the AWBA's ability to store water including competition for storage facilities and loss of money. Specifically, the AWBA has lost storage at GRUSP in 2002 as other higher priority participants more fully utilize the capacity available and this trend could continue in the future as GRUSP participants increasingly include recharge in their water management portfolios. With regard to money, the 4¢ *ad valorem* tax is given to the AWBA by annual resolution of the CAWCD board. In 2002, the resolution to levy and transfer the funds to the AWBA in 2003 passed by only one vote. If this annual resolution is not made, the AWBA's ability to meet the firming goals would be severely impacted.

2. *Is there a surface water shortage?*

Identification of the point at which SRP supplies are considered in shortage is relatively arbitrary because a shortage declaration is not made by the SRP Board. Further, the AWBA cannot rely on a statewide drought declaration because a declaration is based on factors that may not indicate an actual surface water shortage. Therefore, staff recommends that a decrease in SRP's annual allocation of stored and developed water be used to identify when a shortage exists on the SRP system. Using this "trigger" for a shortage, it is anticipated that a shortage would exist on the SRP system in 2003.

3. *What is the magnitude of the shortage and how many credits would need to be distributed pursuant to the statute?*

The determination of the magnitude of the shortage could be calculated two different ways:

Example 1: An analysis could be made between the previous year and the shortage year, i.e. the surface water component of the allocation for 2002 (a non-shortage year) is 1.7 acre feet per acre and the allocation is 2.0 acre feet with a 50% surface water composition in 2003. By subtracting 2003 from 2002 the result is a 0.7 acre foot difference. If the total acreage in the municipal account is 210,627 acre feet³ and the value of 20% of the surface water shortage is utilized:

³ This number was taken from the 1996 Assured Water Supply Study for SRP Member Lands and is the estimated year 2040 "Acreage in Municipal Account". Consequently, this calculation uses an acreage that likely exceeds the current acreage.

210,627 acres X 0.7 acre-foot/acre= 147,438 acre-feet of shortage

147,438 acre-feet of shortage X 20%= **29,488** acre-feet of credits⁴

Example 2: The total loss of surface water could be utilized, i.e. the normal allocation is 3.0 acre feet and in adequate water years the composition is likely all surface water. If projected 2003 allocation is used, the surface water difference would be 2 acre feet. Therefore, the calculation would be:

210,627 acres X 2 acre-feet/acre=421,254 acre-feet of storage

421,254 acre feet of storage X 20%= **84,250** acre-feet of credits

4. *Are other alternative water sources available to the municipal provider?*

Excess water is all water that is available to be delivered through the CAP that exceeds the amounts scheduled under long-term contracts and subcontracts. Excess water can be available when the river is declared to be normal, surplus or shortage. The CAP sets the priorities and volumes of the pools of excess water. One of the highest priority pools of water is that contracted for direct M&I, recharge, agriculture, Indian, federal or any other use at the full OM&R and capital cost or at a rate established by the CAWCD board. This pool of water would likely be an available alternative to the M&I provider in times of surface water shortage.

Summary and Recommendation

The exercise of this authority by the AWBA would require that a determination be made that adequate firming credits exist. This would most likely require a resolution reserving a specific number of credits for firming CAP M&I uses in Maricopa County and stating a specific number available for distribution. It is believed that this would be an annual resolution only as distribution can only occur during the actual shortage and the number of credits would be calculated based on current parameters.

Due to the uncertainty regarding development of credits in the long term, staff recommends that the AWBA adopt a policy that this authority would not be exercised in years when the M&I provider has an alternate source available, specifically, in years when an excess water pool is available.

⁴ The lesser amount of either 20% of the shortage or a calculation based on revenues must be used. Due to the complexity of the calculation, the 20% of the shortage was utilized and it should be recognized that this quantity would be the maximum amount.

DRAFT

Table 2
ARIZONA WATER BANKING AUTHORITY
 Water Delivery Schedule
 Calendar Year 2003
 (ACRE-FEET)

2002
 Deliveries
 (AF)

			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total		
1	Estimated CAP Deliveries + Losses : (M&I, Indian, Ag Pools 1, 2 & 3, Incentive Recharge)		44,000	53,000	99,000	147,000	152,000	194,000	206,000	146,000	74,000	55,000	53,000	36,000	1,259,000		
2	Available Excess CAP Capacity for AWBA :		15,000	18,000	24,000	22,000	31,000	31,000	29,000	46,000	41,000	24,000	20,000	17,000	318,000		
	AWBA -- Recharge Sites :	Permitted Capacity (AF)														Requested Capacity (AF)	
	PHOENIX A M A :																
3	USF GRUSP	200,000	50,000	4,400	4,000	4,800	4,200	4,800	3,800	3,800	4,200	3,800	3,800	3,800	3,600	50,000	41,625
4	HIEROGLYPHIC MTN.	35,000	22,000	1,333	1,333	1,833	1,833	2,333	2,333	2,333	2,433	1,833	1,833	1,333	1,237	22,000	6,000
5	AGUA FRIA	100,000	70,000	3,333	3,333	5,333	3,833	8,333	6,833	6,833	8,333	8,333	6,133	5,233	4,137	70,000	43,630
6	GSF CHCID	3,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	787
7	NEW MAGMA	54,000	42,516	615	1,738	767	1,896	3,000	3,500	4,700	10,200	10,600	3,000	2,000	500	42,516	53,389
8	QUEEN CREEK	28,000	12,772	0	0	0	0	0	0	2,067	5,020	2,185	1,000	1,000	1,500	12,772	10,749
9	SRP	200,000	12,250	0	1,750	1,750	1,750	1,750	1,750	1,750	1,750	0	0	0	0	12,250	11,189
10	TONOPAH ID	15,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	PINAL A M A :																
11	GSF CAIDD	110,000	7,706	0	0	0	0	0	0	0	2,155	3,442	1,284	514	311	7,706	30,500
12	HOHOKAM	55,000	27,998	580	1,205	3,418	3,605	4,299	3,939	2,166	4,253	2,666	800	587	480	27,998	55,755
13	MSIDD	120,000	14,296	183	222	1,642	354	2,034	3,142	1,373	1,905	780	1,023	853	785	14,296	41,830
	TUCSON A M A :																
14	USF AVRA VALLEY	11,000	4,000	333	333	333	333	333	333	333	333	333	333	333	337	4,000	6,283
15	PI MAMINE ROAD	30,000	20,000	1,666	1,666	1,666	1,666	1,666	1,666	1,166	2,166	1,666	1,666	1,666	1,674	20,000	25,094
16	LOWER SANTA CRUZ	30,000	30,000	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000	28,146
17	KAI - RED ROCK	11,231	2,000	0	0	0	0	0	0	0	500	1,000	500	0	0	2,000	1,280
18	TOTAL (USF + GSF) :		315,538	14,943	18,080	24,042	21,970	31,048	30,796	29,021	45,748	39,138	23,872	19,819	17,061	315,538	356,266
19	Remaining CAP Capacity :		57	(80)	(42)	30	(48)	204	(21)	252	1,862	128	181	(61)	2,462		

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.

1 E. On July 3, 2001, AWBA, SNWA, and CRCN entered into an Agreement for
2 Interstate Water Banking for the purpose of creating a program of interstate banking
3 of Colorado River water in Arizona for the benefit of SNWA. Under this program,
4 AWBA will acquire and store mainstream Colorado River water in Arizona, creating
5 Long-term Storage Credits to be held for SNWA in an account established with
6 ADWR, and at a later date recover the Long-term Storage Credits and exchange the
7 recovered water with Colorado River water users in Arizona to develop ICUA.
8

9 F. The Boulder Canyon Project Act and Article II(B)(6) of the Decree, taken together,
10 authorize the Secretary to release unused Arizona apportionment for use in
11 Nevada. Pursuant to such authority and for the purpose of increasing the efficiency,
12 flexibility, and certainty of Colorado River management and thereby helping satisfy
13 the regional water demands that exist in the area served by SNWA, the Secretary
14 promulgated regulations (43 CFR Part 414) to establish a procedural framework for
15 facilitating interstate off-stream banking transactions, including a commitment by the
16 Secretary to release ICUA as a part of such transactions, consistent with those
17 regulations.
18

19 G. ICUA released under this Agreement will provide SNWA with a supplemental water
20 supply that is critical to the economy, health and safety of the area served by SNWA
21 pending the development of other long-term sources of water supply.
22

23 NOW THEREFORE, in consideration of the mutual covenants herein contained, the
24 Secretary, AWBA, SNWA, and CRCN hereby agree as follows:
25

26 **Article 1**
27 **Definitions and Term**
28

29 1.1 Definitions. The following terms shall have the meaning defined here. All defined
30 terms shall be identified by initial letter capitalization.
31

32 1.1.1 "ADWR" shall mean the Arizona Department of Water Resources.
33

34 1.1.2 "Agreement" shall mean this Storage and Interstate Release Agreement.
35

36 1.1.3 "Agreement for Development of Intentionally Created Unused
37 Apportionment" shall mean that agreement between AWBA and the Central
38 Arizona Water Conservation District dated _____.
39

40 1.1.4 "Agreement for Interstate Water Banking" shall mean that agreement
41 among AWBA, SNWA and CRCN dated July 3, 2001.
42

- 1 1.1.5 "AWBA" shall mean the Arizona Water Banking Authority.
2
3 1.1.6 "AWBA Plan of Operation" shall mean the plan by which AWBA shall
4 operate during the Year as defined in A.R.S. § 45-2456.
5
6 1.1.7 "Basin States" shall mean the Colorado River Basin States of Arizona,
7 California, Colorado, Nevada, New Mexico, Wyoming, and Utah.
8
9 1.1.8 "CAP" shall mean the Central Arizona Project, as authorized by the
10 Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*
11
12 1.1.9 "CAWCD" shall mean the Central Arizona Water Conservation District.
13
14 1.1.10 "CRCN" shall mean the Colorado River Commission of Nevada.
15
16 1.1.11 "Decree" shall mean the Decree entered by the United States Supreme
17 Court in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or
18 amended.
19
20 1.1.12 "Entitlement Holder" shall mean a holder of an authorization to beneficially
21 use Colorado River water pursuant to (i) the Decree; (ii) a water delivery
22 contract with the United States through the Secretary; or (iii) a reservation
23 of water from the Secretary.
24
25 1.1.13 "ICUA" shall mean Intentionally Created Unused Apportionment as that
26 term is defined in 43 CFR 414.
27
28 1.1.14 "Long-term Storage Credit" shall mean Long-term Storage Credit as
29 defined in A.R.S. § 45-802.01.
30
31 1.1.15 "SNWA" shall mean the Southern Nevada Water Authority.
32
33 1.1.16 "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-
34 account established by AWBA with ADWR under the terms of this
35 Agreement and the Agreement for Interstate Water Banking.
36
37 1.1.17 "Storage Facility" or "Storage Facilities" shall mean an Underground
38 Storage Facility or a Groundwater Savings Facility as those terms are
39 defined in A.R.S. § 45-802.01. "Storage facilities" do not presently include
40 facilities constructed or financed by the United States.
41

1 1.1.18 "Water Stored " means the amount of Long-term Storage Credits properly
2 credited to the SNWA Interstate Account under applicable Arizona law and
3 the Agreement for Interstate Water Banking. The amount of "Water
4 Stored" under this agreement will always be less than the amount of water
5 diverted for storage.
6

7 1.1.19 "Year" shall mean calendar year.
8

9 1.2 Term of the Agreement
10

11 This Agreement shall commence on the date of execution by all parties and shall
12 continue until June 1, 2050, or until termination of the Agreement for Interstate
13 Water Banking, whichever is sooner.
14

15 **Article 2**
16 **Water Available for Storage**
17

18 2.1 Colorado River water available for storage for purposes of this Agreement shall be
19 within either (i) the State of Arizona's basic or surplus apportionment, apportioned
20 to the State of Arizona under Articles II(B)(1) or II(B)(2) of the Decree; or (ii) the
21 State of Nevada's unused basic or surplus apportionment, apportioned to the State
22 of Nevada under Articles II(B)(1) and II(B)(2) of the Decree and released to the
23 State of Arizona under Article II(B)(6) of the Decree.
24

25 2.2 Colorado River water apportioned to the State of Nevada under Articles II(B)(1) and
26 II(B)(2) of the Decree may be used for storage in the State of Arizona under this
27 Agreement in accordance with 43 CFR 414.3(a)(3) only if the following conditions
28 are met:
29

30 2.2.1 The Secretary has decided that such unused Nevada apportionment shall
31 be released for Consumptive Use within Arizona under Article II(B)(6) of
32 the Decree.
33

34 2.2.2 The AWBA has agreed that it will accept delivery of such water and store
35 it for the benefit of SNWA in accordance with the terms of the Agreement
36 for Interstate Water Banking.
37

38 2.3 Before any water is diverted from the Colorado River for storage under this
39 Agreement, it shall first be offered to all Entitlement Holders within Arizona for
40 diversion within their entitlements for purposes other than interstate transactions as
41 provided in 43 CFR 414.3(a)(2).
42

1 2.4 The water available for storage shall be diverted from the Colorado River and
2 delivered to Storage Facilities by CAWCD, utilizing CAP facilities constructed by the
3 United States.

4 **Article 3**

5 **Storage Facilities and Accrual of Long-term Storage Credits**

6
7 3.1 AWBA shall store water for the benefit of SNWA pursuant to the Agreement for
8 Interstate Water Banking. All water shall be stored within the State of Arizona in the
9 Storage Facilities for which AWBA has or then has storage agreements. 43
10 CFR 414.3(a)(1). A listing of the potential Storage Facilities to be utilized is
11 provided in the AWBA storage facilities inventory dated March 1, 1997. Additional
12 storage facilities may be needed for Arizona use. If such facilities are permitted by
13 ADWR and developed by Arizona entities, and if AWBA chooses to use those
14 Storage Facilities for interstate banking, AWBA shall update the 1997 Facility
15 Inventory to include those additional facilities. If the 1997 Facility Inventory is
16 updated, unused storage capacity at those additional facilities may be used for
17 interstate water banking.

18
19 3.2 The Storage Facilities utilized in each Year shall be identified in the AWBA Plan of
20 Operation.

21
22 3.2.1 The AWBA Plan of Operation may be modified in accordance with A.R.S.
23 § 45-2456 subject to the provisions of the Agreement for Interstate Water
24 Banking.

25
26 3.2.2 AWBA shall notify the Secretary in writing of any change in the AWBA Plan
27 of Operation that may affect the amount or location of water to be stored
28 under the Agreement for Interstate Water Banking.

29
30 3.3 AWBA shall establish a Long-term Storage Sub-Account with ADWR entitled the
31 "SNWA Interstate Account." AWBA shall manage the SNWA Interstate Account so
32 as to accommodate the storage and recovery of water for the benefit of SNWA in
33 the manner provided in this Agreement and the Agreement for Interstate Water
34 Banking. AWBA shall ensure that ADWR timely and properly credits or debits the
35 SNWA Interstate Account with the correct number of Long-term Storage Credits
36 under applicable Arizona law for each Year. AWBA shall ensure that the Year-end
37 balance of Long-term Storage Credits in the SNWA Interstate Account is correct.

38
39 3.3.1 Except as provided in sub-articles 3.3.2 and 3.3.3, SNWA shall not be
40 entitled to the storage of water under this Agreement or the assignment of
41 existing Long-term Storage Credits pursuant to sub-article 3.3.4 to the
42 extent such storage or assignment would result in Long-term Storage

1 Credits credited to the SNWA Interstate Account in excess of
2 200,000 acre-feet in any Year, or in excess of 1,200,000 acre-feet over the
3 entire period of this Agreement.
4

5 3.3.2 SNWA shall be entitled to all Long-term Storage Credits held by CAWCD
6 for SNWA on the effective date of this Agreement that were developed
7 pursuant to a demonstration project developed by CAWCD in 1992 and
8 modified in 1994 to test the feasibility of underground storage of Colorado
9 River water supplies and subsequently transferred to AWBA for credit to
10 the SNWA Interstate Account. The 50,000 acre-feet of Long-term Storage
11 Credits transferred to AWBA under this sub-article shall not be counted for
12 purposes of determining whether either of the limitations specified in sub-
13 article 3.3.1 has been exceeded.
14

15 3.3.3 During the term of this Agreement, AWBA may cause the assignment of
16 Long-term Storage Credits into and out of the SNWA Interstate Account by
17 notifying ADWR of such assignment. If an equal number of Long-term
18 Storage Credits are transferred into and out of the SNWA Interstate
19 Account in a single transaction with ADWR, then the transaction shall not
20 be counted for purposes of determining whether either of the limitations
21 specified in sub-article 3.3.1 has been exceeded.
22

23 3.3.4 During the term of this Agreement, Long-term Storage Credits may be
24 assigned to AWBA for credit to the SNWA Interstate Account for purposes
25 of increasing the number of Long-term Storage Credits available to SNWA.
26 Any such assignment must have the consent of AWBA. If Long-term
27 Storage Credits are assigned to AWBA for credit to the SNWA Interstate
28 Account under this sub-article, those credits shall be counted for purposes
29 of determining compliance with both of the limitations specified in sub-
30 article 3.3.1.
31

32 3.4 The provisions of this sub-article 3.4 shall govern reports by AWBA to the Secretary
33 and incorporation of the AWBA reports into the Secretary's accounting under Article
34 V of the Decree.
35

36 3.4.1 By December 31 of each Year, AWBA shall provide the Secretary with an
37 estimate of the Long-term Storage Credits to be developed for and credited
38 to the SNWA Interstate Account in the following Year. AWBA shall update
39 that estimate monthly during the course of the Year and provide a final
40 estimate at the end of that Year. The estimate and updates are to be
41 considered provisional until AWBA makes its final annual accounting to the

1 Secretary by September 1 of the Year following the Year of the
2 development of the Long-term Storage Credits.

3
4 3.4.2 AWBA shall prepare and submit to the Secretary and the States of Arizona,
5 California, and Nevada by September 1 of each Year a final verified
6 accounting for the prior Year of: (i) the beginning balance of Long-term
7 Storage Credits in the SNWA Interstate Account; (ii) the amount of
8 Colorado River water diverted from the mainstream for the purpose of
9 interstate water banking in that year, and the amount of Water Stored
10 resulting from that diversion; (iii) any Long-term Storage Credits properly
11 assigned and transferred to or from the SNWA Interstate Account under
12 sub-articles 3.3.2, 3.3.3, or 3.3.4; (iv) any Long-term Storage Credits
13 assigned from the SNWA Interstate Account during that Year under sub-
14 article 5.8; (v) the net Long-term Storage Credits in the SNWA Interstate
15 Account at the end of the Year; and (vi) the cumulative amount of Long-
16 term Storage Credits properly credited to the SNWA Interstate Account for
17 purposes of determining compliance with the 1,200,000 maximum credit
18 accrual specified in sub-article 3.3.1.

19
20 3.4.3 Submission by AWBA of a report in compliance with sub-article 3.4.2 shall
21 constitute compliance with the requirements of 43 CFR § 414.4(a) as it is
22 in effect on the date of execution of this Agreement.

23
24 3.4.4 The Secretary shall include a supplement in the Secretary's annual Article
25 V Decree accounting report titled "Water Diverted and Stored in Arizona for
26 the Benefit of SNWA."

27
28 3.4.4.1 The Secretary will account for the water that is diverted by
29 CAWCD for storage by AWBA as a consumptive use in the State
30 of Arizona for the year in which it is diverted and stored.

31
32 3.4.4.2 The Secretary will account for the diversion and consumptive use
33 of ICUA by SNWA as a consumptive use in the State of Nevada
34 of unused apportionment of the State of Arizona made available
35 by the Secretary under Article II(B)(6) of the Decree for use by
36 SNWA in accordance with the terms of this Agreement.

37
38 3.4.4.3 The supplement shall reflect as Water Stored, expressed in terms
39 of acre-feet, the provisional Long-term Storage Credits identified
40 in the AWBA reports submitted pursuant to sub-article 3.4.1 and
41 shall identify these as provisional estimates for informational
42 purposes only. The supplement shall also reflect as Water Stored

1 the verified Long-term Storage Credits identified in the AWBA final
2 verified accounting submitted pursuant to sub-article 3.4.2 subject
3 to such review of the underlying books and records as the
4 Secretary deems appropriate.

5
6 3.4.5 All records of AWBA concerning the amount of Water Stored in that Year,
7 including all records used by AWBA to prepare the final verified accounting,
8 shall be available for inspection by the Secretary.

9
10 3.5 Accrual of Long-term Storage Credits in the SNWA Interstate Account at certain
11 Storage Facilities does not mean that those Long-term Storage Credits will be
12 recovered at those same Storage Facilities. Recovery of Long-term Storage Credits
13 shall be in accordance with the Agreement for Interstate Water Banking, the
14 Agreement for Development of Intentionally Created Unused Apportionment, and
15 applicable Arizona law.

16 17 **Article 4**

18 **Development of Intentionally Created Unused Apportionment**

19
20 4.1 AWBA shall develop ICUA for the benefit of SNWA in accordance with the
21 provisions of this Agreement, the Agreement for Interstate Water Banking, and the
22 Agreement for Development of Intentionally Created Unused Apportionment. All
23 actions that AWBA takes to develop ICUA shall be consistent with the laws of the
24 State of Arizona.

25
26 4.2 AWBA shall only use means to develop ICUA under this Agreement that have been
27 approved by the Secretary. Two such approved means are the recovery and
28 exchange method and the credit exchange method. AWBA may also use any other
29 means of developing ICUA during the term of this Agreement provided such means
30 comply with CFR Part 414 and are first approved by the Secretary.

31
32 4.2.1 The recovery and exchange method requires that Long-term Storage
33 Credits in the SNWA Interstate Account be recovered and the recovered
34 water exchanged for Colorado River water that would otherwise have been
35 delivered through the CAP in that Year. The Long-term Storage credits
36 may be recovered by CAWCD or by another entity scheduled to receive
37 water from CAWCD in the Year of recovery.

38
39 4.2.2 The credit exchange method requires that Long-term Storage Credits in the
40 SNWA Interstate Account be exchanged for Colorado River water that
41 would otherwise have been delivered through the CAP for underground
42 storage in that Year. The recipient of the credits shall be an entity

1 scheduled to receive water from CAWCD for purposes of underground
2 storage in the Year of recovery.
3

4 4.3. AWBA shall prepare an Interstate Recovery Schedule in accordance with the terms
5 of the Agreement for the Development of Intentionally Created Unused
6 Apportionment and the Agreement for Interstate Water Banking. AWBA shall meet
7 and confer with the Bureau of Reclamation in the preparation of the Interstate
8 Recovery Schedule. ICUA shall not exceed 100,000 acre-feet in any Year under
9 this Agreement.

10
11 4.4 The Interstate Recovery Schedule shall set forth the means by which AWBA intends
12 to create ICUA.

13
14 4.4.1 If AWBA intends to create ICUA using the recovery and exchange method,
15 then the Interstate Recovery Schedule shall demonstrate that there is
16 sufficient recovery capacity to recover the necessary Long-term Storage
17 Credits from the SNWA Interstate Account and shall describe how the
18 credits will be recovered and delivered through the CAP or how the credits
19 will be recovered by individual CAP customers in lieu of their scheduled
20 CAP deliveries.

21
22 4.4.2 If AWBA intends to create ICUA using the credit exchange method, then
23 the Interstate Recovery Schedule shall demonstrate that CAWCD has
24 received sufficient orders for the delivery of Colorado River water for
25 underground storage and shall identify the entity or entities accepting the
26 transfer of Long-term Storage Credits in lieu of the delivery of
27 Colorado River water.

28
29 4.4.3 If AWBA intends to create ICUA using another method approved by the
30 Secretary, after consultation with the Governors' representatives of the
31 Basin States, then the Interstate Recovery Schedule shall include such
32 information as required by the Secretary for that method.
33

34 4.5 AWBA shall require that any Agreement for Development of Intentionally Created
35 Unused Apportionment contain a provision requiring CAWCD to accept Long-term
36 Storage Credits from the SNWA Interstate Account in exchange for Colorado River
37 water that would have otherwise been diverted into the CAP by CAWCD and to
38 reduce its consumptive use of Colorado River water in accordance with that
39 exchange. The Agreement for Development of Intentionally Created Unused
40 Apportionment shall allow CAWCD to meet all scheduled deliveries to Indian
41 contractors, CAWCD subcontractors and other CAP water users, through a
42 combination of Colorado River water and recovered Long-term Storage Credits.

1 4.6 AWBA shall require that any Agreement for Development of Intentionally Created
2 Unused Apportionment also provide that any Long-term Storage Credits accepted
3 by CAWCD pursuant to this Article 4 shall be accounted for by CAWCD as water
4 diverted from the Colorado River for purposes of determining the amount of water
5 that CAWCD may lawfully divert from the Colorado River in the Year of development
6 of ICUA.
7

8 4.7 In any Year that SNWA anticipates requesting the release of ICUA under sub-
9 article 5.1, SNWA shall, by June 1, make a preliminary request to the AWBA for the
10 development of ICUA in accordance with the terms of the Agreement for Interstate
11 Water Banking. Such preliminary request shall be in writing and shall specify the
12 quantity of the requested ICUA. A copy of such preliminary request shall be
13 provided to the Secretary at the same time that it is made to AWBA.
14

15 4.8 By December 1 of any year in which SNWA has made a request for development
16 of ICUA in the following Year under the Agreement for Interstate Water Banking,
17 AWBA shall prepare and deliver to Secretary three certifications: (i) a Development
18 of ICUA Certification; (ii) an Interstate Recovery Schedule Certification; and (iii) an
19 Upcoming Year Delivery Certification. These three certifications may be combined
20 in a single document.
21

22 4.8.1 The Development of ICUA Certification shall certify: (i) that sufficient Long-
23 term Storage Credits exist in the SNWA Interstate Account to support the
24 development of the requested ICUA; (ii) that ICUA will be developed in the
25 upcoming Year in an amount equal to the request using an approved
26 means; (iii) that such ICUA otherwise would not exist; and (iv) that the
27 notice under sub-Article 4.11 has been given. The Development of ICUA
28 Certification shall request that the Secretary release the ICUA for use in
29 Nevada pursuant to Article II(B)(6) of the Decree and this Agreement.
30

31 4.8.2 The Interstate Recovery Schedule Certification shall state that the
32 Interstate Recovery Schedule has been prepared after consultation with
33 the Bureau of Reclamation and that the Interstate Recovery Schedule sets
34 forth the means by which AWBA intends to develop ICUA utilizing Long-
35 term Storage Credits in the SNWA Interstate Account and the quantity of
36 ICUA the AWBA intends to develop. The Interstate Recovery Schedule
37 Certification shall certify that the contractual commitments by CAWCD
38 necessary to develop ICUA remain in full force and effect and that CAWCD
39 will reduce its consumptive use of Colorado River water in the amount of
40 the requested ICUA. A copy of the Interstate Recovery Schedule shall be
41 included with the Interstate Recovery Schedule Certification. The
42 Secretary shall provide a copy of the Interstate Recovery Schedule and the

1 Interstate Recovery Certification to the Governors' representatives of the
2 Basin States.

3
4 4.8.3 The Delivery Certification shall indicate the amount of water ordered by
5 CAWCD for the following Year and quantify how that order will be satisfied
6 with diversions from the Colorado River and Long-term Storage Credits
7 from the SNWA Interstate Account. The Delivery Certification shall state
8 that Arizona's consumptive use of Colorado River water will be decreased
9 in the following Year by a quantity sufficient to develop the requested
10 ICUA.

11
12 4.9 Once AWBA certifies to the Secretary that ICUA will be developed during the Year
13 of release, AWBA shall take all actions necessary in the following Year to ensure
14 that ICUA is developed in accordance with such certifications.

15
16 4.10 In years in which the Secretary has determined a shortage under Article II(B)(3) of
17 the Decree, AWBA's obligation to develop ICUA shall be limited as provided in the
18 Agreement for Interstate Water Banking.

19
20 4.11 AWBA shall give notice to Entitlement Holders in Arizona, including Indian Tribes,
21 that SNWA has requested the development of ICUA. The notice shall state which
22 means permitted under this Article will be used to develop ICUA. Whether and what
23 opportunities exist for Entitlement Holders in Arizona, including Indian Tribes, to
24 develop ICUA will depend upon the means selected. The notice shall identify any
25 opportunities for Entitlement Holders in Arizona, including Indian Tribes, to
26 participate in the development of ICUA associated with the particular means
27 selected. AWBA shall provide this notice by first class mail to Entitlement Holders
28 in Arizona, or by such other means as are acceptable to the Secretary.

29
30 4.12 By April 1 of the Year after ICUA is developed, AWBA shall submit to the Secretary
31 a report documenting how ICUA was created and confirming that the amount of
32 ICUA set forth in the Interstate Recovery Schedule was developed.

33
34 4.13 The Secretary shall, as he or she deems appropriate, review books and records in
35 accordance with sub-article 6.6 to ensure that ICUA was developed and, in the
36 event of a discrepancy shall require AWBA to repay to Lake Mead storage as set
37 forth in sub-article 4.14.

38
39 4.14 If AWBA does not create ICUA as required under this Article, AWBA shall create
40 ICUA in another Year to repay to Lake Mead storage the amount of ICUA
41 consumptively used by SNWA but not created by AWBA. The Secretary, in addition
42 to any other remedy available, may seek a court order requiring AWBA to do so.

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

4 **Article 5**

5 **Release of Intentionally Created Unused Apportionment**

6
7 5.1 SNWA shall make a written request of the Secretary for the release of ICUA for
8 consumptive use in the State of Nevada. A request for a release of ICUA shall be
9 made by September 15 of the current Year, or an earlier date as reasonably
10 required in writing by the Secretary, for a release of ICUA in the following Year. The
11 request shall specify the quantity of ICUA to be released by the Secretary and shall
12 certify that SNWA has mailed, first class postage paid, a copy of the request to the
13 States of Nevada, Arizona, and California by providing copies to CRCN, the Arizona
14 Department of Water Resources and the Colorado River Board of California. A
15 copy of the request shall be provided to AWBA. To make a proper and timely
16 request, SNWA must be in compliance with the terms of the Agreement for
17 Interstate Water Banking and must have made a preliminary request to the AWBA
18 to develop ICUA under sub-article 4.7.

19
20 5.2 The request for the development of ICUA by SNWA shall be incorporated into the
21 Secretary's Annual Operating Plan for the Colorado River. The Annual Operating
22 Plan shall state that, upon proper certification, the Secretary intends to release that
23 quantity of ICUA to SNWA under Article II(B)(6) of the Decree in accordance with
24 the terms of this Agreement.

25
26 5.3 Release of ICUA under this Agreement for diversion by SNWA shall operate under
27 43 CFR Part 414.3(f), Anticipatory Release of ICUA, as provided in this article. The
28 Secretary shall not release ICUA in excess of 100,000 acre-feet in any Year or in
29 excess of the 1,250,000 acre-feet over the entire period of this Agreement. The
30 amount of 1,250,000 acre-feet consists of the 1,200,000 acre-feet maximum credit
31 accrual developed under the Agreement for Interstate Water Banking and the
32 50,000 acre-feet credit accrual developed pursuant to the demonstration
33 underground storage project referenced in sub-article 3.3.2.

34
35 5.4 By December 20 of the current Year, following receipt of a proper and timely
36 request for release of ICUA under sub-Article 5.1, the Secretary shall determine
37 whether AWBA has elected a means for developing ICUA approved under Article 4
38 and whether all necessary actions required by 43 CFR Part 414 have been taken.
39 For purposes of this Agreement, all necessary actions are those actions expressly
40 enumerated in 43 CFR Part 414, as amplified by this Agreement.
41

- 1 5.4.1 The Secretary shall determine whether the certifications made by AWBA
2 meet the requirements under sub-article 4.8. Upon so determining, the
3 Secretary shall issue a notice of determination that shall release for
4 diversion that quantity of ICUA so certified for consumptive use in the State
5 of Nevada. The release of ICUA under this sub-article shall be effective as
6 of January 1 of the following Year.
7
- 8 5.4.2 If the Secretary determines that the proper certifications have not been
9 made under sub-article 4.8, or that all necessary actions under 43 CFR
10 Part 414 have not been taken, the notice of determination shall (i) specify
11 which certifications or necessary actions are deficient and the nature of the
12 deficiency; (ii) specify the extent to which such deficiencies preclude the
13 release of ICUA requested by SNWA for consumptive use in Nevada
14 effective as of January 1 of the following Year; and (iii) determine whether
15 any quantity of ICUA is available for release in the following year. If a
16 quantity of ICUA is available for release under (iii), the notice shall release
17 that quantity of ICUA to SNWA for consumptive use in the State of Nevada,
18 effective on January 1 of the following year.
19
- 20 5.4.3 Any portion of ICUA not released in the notice of determination made by
21 the Secretary under this sub-article shall be released for diversion by the
22 Secretary on such date as the Secretary determines that the stated
23 deficiencies have been cured.
24
- 25 5.5 The Secretary shall provide notice of the determination under sub-article 5.4 on or
26 before December 20 of the current Year. If the Secretary fails to provide written
27 notice of a determination required by sub-Article 5.4 by December 20, SNWA may
28 seek judicial relief and shall be deemed to have exhausted any applicable
29 administrative remedy and shall be free to seek any remedies available to it under
30 applicable law.
31
- 32 5.6 ICUA shall be released to SNWA only in the Year and to the extent that ICUA is
33 developed by AWBA, or for an anticipatory release, will be developed by AWBA as
34 certified to the Secretary in accordance with Article 4.7, by reducing Colorado River
35 water use within the State of Arizona.
36
- 37 5.7 Once the Secretary has determined that ICUA will be released to SNWA under sub-
38 article 5.4, such ICUA shall not be available for release to any Entitlement Holder
39 in the States of Arizona or California in that Year.
40
- 41 5.8 In any Year in which the Secretary has released ICUA to SNWA under this Article
42 5, AWBA shall cause the assignment of Long-term Storage Credits from the SNWA

1 Interstate Account in accordance with the Interstate Recovery Schedule. By
2 December 31 of that Year, AWBA shall ensure that all assignments from the SNWA
3 Interstate Account have been made and properly debited by ADWR.
4

5 5.9 The amount of ICUA released for consumptive use in Nevada effective January 1
6 of any Year shall not be subject to reduction unless:
7

8 5.9.1 SNWA requests that AWBA cease development of ICUA under the terms
9 of the Agreement for Interstate Water Banking; and
10

11 5.9.2 AWBA certifies to the Secretary that, pursuant to a SNWA request, a
12 specific quantity of Long-term Storage Credits will not be recovered or
13 exchanged for Colorado River water pursuant to an SNWA request.
14

15 5.10 ICUA that has been developed by the AWBA and released by the Secretary for
16 diversion by SNWA in a particular Year but not diverted by SNWA for consumptive
17 use in that Year may not be carried forward and diverted by SNWA in any
18 succeeding Year.
19

20 5.11 The Secretary shall release ICUA developed by AWBA in accordance with the
21 request of the SNWA, the terms of this Agreement, the determination of the
22 Secretary under sub-article 5.4 of this Agreement, the Boulder Canyon Project Act,
23 Article II(B)(6) of the Decree and all other applicable Federal laws and executive
24 orders.
25

26 **Article 6**

27 **General Provisions**

28

29 6.1 Upon execution of this Agreement and annually thereafter, SNWA shall pay an
30 annual administration fee of two thousand dollars (\$2,000.00) to cover the
31 United States' costs to perform the routine tasks necessary to administer this
32 Agreement. The initial annual administration fee shall be pro-rated on the basis of
33 one hundred sixty six dollars and sixty seven cents (\$166.67) per month for the first
34 year, payable upon execution of this Agreement. Thereafter, the fee for each
35 subsequent year shall be due on January 1.
36

37 6.2 The Secretary reserves the right at intervals of five (5) years, beginning five (5)
38 years after the date of execution of this Agreement, to reexamine the annual
39 administration fee and to revise the fee after three (3) months' advance written
40 notice and after consultation with SNWA if the Secretary determines that a different
41 charge is necessary to cover the United States' costs to perform the tasks described
42 in this Agreement. Upon SNWA's written request, the Secretary shall provide

1 SNWA with a detailed cost analysis supporting the adjustment to the annual
2 administration fee.

3
4 6.3 The annual administration fee shall cover, but is not limited to, the costs for the
5 following tasks routinely performed by the Secretary:

6
7 6.3.1 Determining when unused Nevada apportionment is available for release
8 for consumptive use within Arizona pursuant to Article II(B)(6) of the
9 Decree for purposes of storage pursuant to this Agreement and releasing
10 that unused apportionment;

11
12 6.3.2 Reviewing records prepared by AWBA and SNWA pursuant to sub-article
13 3.4 and preparing and maintaining records to supplement the Article V
14 Decree accounting report;

15
16 6.3.3 Reviewing AWBA's notices of opportunities for Colorado River water users
17 in Arizona to participate in the development of ICUA;

18
19 6.3.4 Reviewing certifications from AWBA that ICUA has been or will be
20 developed;

21
22 6.3.5 Determining that all necessary actions have been taken to implement
23 43 CFR 414; and

24
25 6.3.6 Reviewing SNWA's requests for release of ICUA and scheduling delivery
26 of ICUA to SNWA.

27
28 6.4 The Secretary recognizes that the Decree must be enforced fairly with respect to
29 all Entitlement Holders. Excess diversion by an Entitlement Holder that is not
30 participating in a Storage and Interstate Release Agreement other than through the
31 CAP facilities cannot be offset by reducing diversions to another Entitlement Holder
32 for the sole reason that the latter Entitlement Holder is participating in a Storage and
33 Interstate Release Agreement.

34
35 6.5 In the event any inconsistency is found between this Agreement and the Agreement
36 for Interstate Water Banking, as initially executed and as it may be amended,
37 regarding the rights and obligations as between AWBA and SNWA, the provisions
38 of this Agreement shall control. No agreement to which the Secretary is not a party
39 shall be construed as altering the rights and obligations as between the Secretary
40 and the other parties to this Agreement.

- 1 6.6 The records of any party to this Agreement that relate to the storage and recovery
2 of water, including the development and verification of Long-term Storage Credits,
3 and the creation, release and use of ICUA shall be open to inspection by any other
4 party. AWBA shall require that any Agreement for Development of Intentionally
5 Created Unused Apportionment with CAWCD provide that the records of CAWCD
6 relating to the development of ICUA shall be open to reasonable inspection by any
7 party to this Agreement.
8
- 9 6.7 The provisions of this sub-article shall govern enforcement of this Agreement.
10
- 11 6.7.1 Time is of the essence in the performance of this Agreement.
12
- 13 6.7.2 The parties recognize and acknowledge that the availability of ICUA as
14 provided in this Agreement is a critical alternative municipal water supply
15 for SNWA while other longer-term sources of supply are being developed;
16 that in planning to meet the needs of the area it serves, SNWA will rely on
17 ICUA being available to it as provided in this Agreement; that accordingly
18 the release of ICUA as provided in Article 5 is critical to the economy,
19 health and safety of the area served by SNWA; that the release of ICUA as
20 provided in this Agreement presents a unique opportunity for SNWA to
21 obtain additional Colorado River water under the Decree; and that, for
22 these reasons, among others, the water resources to be released as ICUA
23 for use in Nevada are unique and not susceptible to replacement by
24 SNWA.
25
- 26 6.8 The expenditure or advance of any money or the performance of any obligation of
27 the United States under this Agreement shall be contingent on appropriation or
28 allotment of funds. No liability shall accrue to the United States in case funds are
29 not appropriated or allotted. Absence of appropriation or allotment of funds shall
30 not relieve AWBA, SNWA, or CRCN from any obligation under this Agreement.
31
- 32 6.9 No member of or Delegate to Congress, Resident Commissioner, or official of
33 AWBA, SNWA, or CRCN shall benefit from this Agreement other than as a water
34 user or landowner in the same manner as other water users or landowners.
35
- 36 6.10 The parties to this Agreement shall indemnify the United States, its employees,
37 agents, subcontractors, successors, or assignees from loss or claims for damages
38 and from liability to persons or property, direct or indirect, and loss or claim of any
39 nature whatsoever arising by reason of actions taken by non-Federal parties to this
40 Agreement.
41

- 1 6.11 The parties to this Agreement are hereby notified of Arizona Revised Statutes
2 section 38-511.
3
- 4 6.12 The parties to this Agreement recognize and acknowledge that this Agreement is
5 a contract executed pursuant to Federal Reclamation law, including the provisions
6 of 43 U.S.C. § 390uu.
7
- 8 6.13 This Agreement shall not constitute approval by the Secretary of any other
9 agreement or water delivery program.
10
- 11 6.14 Nothing in this Agreement affects the rights of any Colorado River Entitlement
12 Holder.
13
- 14 6.15 No party to this Agreement shall be considered to be in default in the performance
15 of any obligations under this Agreement when a failure of performance shall be due
16 to uncontrollable forces. The term “uncontrollable force” shall mean any cause
17 beyond the control of the party unable to perform such obligation, including but not
18 limited to failure or threat of failure of facilities, flood, earthquake, storm, fire,
19 lightning, and other natural catastrophes, epidemic, war, civil disturbance or
20 disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint
21 by order of a court or regulatory agency of competent jurisdiction, and action or non-
22 action by, or failure to obtain the necessary authorizations or approvals from, a
23 Federal governmental agency or authority, which by exercise of due diligence and
24 foresight such party could not reasonably have been expected to overcome.
25 Nothing contained herein shall be construed to require any party to settle any strike
26 or labor dispute in which it is involved.
27
- 28 6.16 Non-Federal parties to this Agreement may assign their interest in this Agreement,
29 in whole or in part, to other authorized entities, subject to the approval of all other
30 parties to this Agreement.
31
- 32 6.17 The Secretary does not warrant the quality of water released or delivered under
33 this Agreement. The United States is not liable for damages of any kind resulting
34 from water quality problems and the United States has no obligation to construct or
35 furnish water treatment facilities to maintain or improve water quality except as may
36 otherwise be provided in relevant Federal law.
37

1 **Article 7**
2 **Notices**

3
4 7.1 Notices and Requests

5
6 7.1.1 All notices and requests required or allowed under the terms of this
7 Agreement shall be in writing and shall be mailed first class postage paid
8 to the following entities at the following addresses:
9

10 AWBA:

11 Arizona Water Banking Authority
12 500 North Third Street
13 Phoenix, Arizona 85004
14 Attn: Manager

15
16 SNWA:

17 Southern Nevada Water Authority
18 1001 S. Valley View Boulevard
19 Las Vegas, Nevada 89153
20 Attn: General Manager

21
22 CRCN:

23 Colorado River Commission of Nevada
24 555 E. Washington Avenue, Suite 3100
25 Las Vegas, Nevada 89101
26 Attn: Director

27
28 Secretary:

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

35
36 The State of Arizona:

37 Arizona Department of Water Resources
38 500 North 3rd Street
39 Phoenix, Arizona 85004
40 Attn: Director
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The State of California:
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1035
Attn: Executive Director

The State of Nevada:
Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 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.

1 In Witness of this Agreement, the Parties affix their official signatures below,
2 acknowledging execution of this document on the _____ day of _____, 2002.

3
4 Legal Review and Approval: **THE UNITED STATES OF AMERICA**

5
6 By: _____ By: _____
7 Field Solicitor Regional Director
8 Phoenix, Arizona Lower Colorado Region
9 Bureau of Reclamation

10
11 **STATE OF NEVADA, acting through its**
12 **COLORADO RIVER COMMISSION**

13 Attest:

14
15 By: _____ By: _____
16 Executive Director Chair

17
18 Approved as to form:

19
20 By: _____
21 [Title]

22
23
24 **THE SOUTHERN NEVADA WATER AUTHORITY**

25 Attest:

26
27 By: _____ By: _____
28 General Manager Chair

29
30 Approved as to form:

31
32 By: _____
33 [Title]

34
35 **ARIZONA WATER BANKING AUTHORITY**

36
37 Attest:

38
39 By: _____ By: _____
40 [Title] Chair