

AGREEMENT FOR INTERSTATE WATER BANKING

among

The Arizona Water Banking Authority
and
The Southern Nevada Water Authority and the
Colorado River Commission of Nevada

This Interstate Water Banking Agreement is made this 3rd day of July, 2001, among the Arizona Water Banking Authority, and the Southern Nevada Water Authority and the Colorado River Commission of Nevada.

Recitals

- A. The Arizona Water Banking Authority is an agency of the State of Arizona expressly authorized by A.R.S. § 45-2401 *et seq.* to engage in the interstate banking of Colorado River water on behalf of the State of Arizona. The statutory requirements of A.R.S. § § 45-2427 and 45-2471 have been satisfied and AWBA is empowered to enter into this Agreement.
- B. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994 and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant to its contract issued under section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert Intentionally Created Unused Apportionment released by the Secretary for use within the State of Nevada pursuant to Art. II(B)(6) of the Decree in *Arizona v. California*, 376 U.S. 340, 343 (1964).
- C. The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to facilitate the banking of Colorado River water, the creation of Long-term Storage Credits and the establishment and maintenance of a Long-term Storage Account for SNWA.

Article 1

Definitions, Fundamental Principles and Term

1.1. Definitions. For purposes of this Agreement for Interstate Water Banking, terms that are defined in Article I of the Decree in *Arizona v. California*, 376 U.S. 340 (1964), terms that are defined in Arizona Revised Statutes (A.R.S.) Title 45, Chapter 3.1, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

- 1.1.1. "ADWR" shall mean Arizona Department of Water Resources
- 1.1.2. "Agreement" shall mean this Agreement for Interstate Water Banking.
- 1.1.3. "AWBA" shall mean the Arizona Water Banking Authority.
- 1.1.4. "AWBA Plan of Operation" shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.
- 1.1.5. "Bureau of Reclamation" shall mean the United States Bureau of Reclamation, Lower Colorado Region.
- 1.1.6. "CAP" shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*, and as operated under that certain Master Repayment Contract dated December 1, 1988, Contract No. 14-06-W-245 between CAWCD and the United States Bureau of Reclamation, as amended.
- 1.1.7. "CAWCD" shall mean the Central Arizona Water Conservation District.
- 1.1.8. "CRCN" shall mean the Colorado River Commission of Nevada.
- 1.1.9. "Decree" shall mean the Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.
- 1.1.10. "Excess CAP Water" shall mean CAP water that is available for distribution by CAWCD in accordance with ¶ 8.7(e) of the Master Repayment Contract or ¶ 5(d)(2) of the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and Ultimate Judgement upon Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB(EHC) and CIV 95-1720-PHX-EHC (consolidated), and in accordance with policies established by the CAWCD Board.

- 1.1.11. "ICUA" shall mean Intentionally Created Unused Apportionment as that term is defined in 43 C.F.R. § 414.2.
- 1.1.12. "Interstate Recovery Schedule" shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.
- 1.1.13. "Long-term Storage Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).
- 1.1.14. "Master Repayment Contract" shall mean that Contract No. 14-06-W-245 dated December 1, 1988 between CAWCD and the United States Bureau of Reclamation, as amended.
- 1.1.15. "Secretary" shall mean the Secretary of the Interior for the United States, Department of the Interior.
- 1.1.16. "SNWA" shall mean the Southern Nevada Water Authority.
- 1.1.17. "SNWA/CRCN" shall mean the Southern Nevada Water Authority and the Colorado River Commission of Nevada acting together in accordance with Subarticle 1.2.5 of this agreement.
- 1.1.18. "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR pursuant to subarticle 2.2.4 of this Agreement.
- 1.1.19. "Storage Facility" or "Storage Facilities" shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01
- 1.1.20. "Year" shall mean any calendar year after the execution of this agreement.

1.2. Fundamental Principles of this Agreement

- 1.2.1. This Agreement is among AWBA and SNWA and CRCN. It is intended to create a program of interstate banking of Colorado River water. The parties to this Agreement recognize that AWBA shall not engage in interstate banking to the detriment of any water user in Arizona, and interstate banking shall be secondary to the primary interests of water management within the State of Arizona.

- 1.2.2. Under the terms of this agreement, AWBA shall acquire and store mainstream Colorado River water in Arizona and thereby create Long-term Storage Credits to be held in the SNWA Interstate Account. AWBA shall recover the Long-term Storage Credits at a later date and exchange the recovered water with other Colorado River water users in Arizona to develop ICUA. The Secretary is required to release this ICUA for consumptive use within the State of Nevada pursuant to the Storage and Interstate Release Agreement entered into by the Secretary under the regulations adopted by the Secretary in 43 CFR Part 414. This Agreement is one part of a three part contractual relationship which also includes the Storage and Interstate Release Agreement and an Agreement for the Development of Intentionally Created Unused Apportionment. This Agreement is also dependent upon an Intergovernmental Agreement among AWBA, CAWCD, and ADWR, as amended, and a series of water storage agreements between AWBA and Storage Facility operators in the State of Arizona.
- 1.2.3. This Agreement shall govern the relative rights and responsibilities of AWBA, SNWA and CRCN for the delivery, storage and recovery of Colorado River water in Arizona, and for the development of ICUA. No ownership rights in specific storage facilities or Long-term Storage Credits shall accrue to either SNWA or CRCN by this Agreement. Neither SNWA nor CRCN shall have any rights in this interstate banking arrangement except as provided in this agreement.
- 1.2.4. Water supply projections have indicated SNWA may require in excess of 1,200,000 acre feet of ICUA to assist in meeting future demands. SNWA desires the ability to build and draw upon a maximum balance of 1,200,000 acre feet of Long-term Storage Credits in the SNWA Interstate Account over the course of this Agreement.
 - 1.2.4.1 Realization of this goal may be limited by the amount of Colorado River water available for interstate banking and the availability of Storage Facilities after the primary goals of Arizona water users and Arizona water management have been met.
 - 1.2.4.2 To assist SNWA, AWBA agrees to use its best efforts to store an initial volume of 1,200,000 acre feet of water for SNWA under the terms of this Agreement if Arizona water needs and water management goals have been addressed. Nothing herein shall require AWBA to (i) seek a change in law; (ii) execute new contracts for Storage Facilities; or (iii) contract for the construction of new Storage Facilities, unless mutually agreed in the future consistent with the terms of this Agreement.

- 1.2.4.3 Nothing in this Agreement shall require AWBA to store any water for the benefit of SNWA unless the Storage and Interstate Release Agreement and the Agreement for the Development of Intentionally Created Unused Apportionment have been executed and are in full effect.
- 1.2.4.4 AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by written agreement between SNWA and Metropolitan Water District of Southern California.
- 1.2.4.5 AWBA recognizes that once Long-term Storage Credits have accrued to the benefit of SNWA in the SNWA Interstate Account that SNWA shall have the right to withdraw those Long-term Storage Credits, by exchange through Lake Mead, pursuant to the requirements of this Agreement and the Storage and Interstate Release Agreement.
- 1.2.5. For purposes of this Agreement, SNWA and CRCN may be required to act together to insure performance of their mutual obligations under this Agreement. In such circumstances, the defined term "SNWA/CRCN" shall be used. Whenever performance by SNWA/CRCN is required, SNWA and CRCN shall confer among themselves and determine a unified course of action. In the event that SNWA and CRCN cannot agree on a unified course of action, AWBA shall not be required to perform any obligation under this Agreement affected by SNWA and CRCN's disagreement until SNWA and CRCN have adopted a unified course of action.
- 1.2.6. AWBA is an agency of the State of Arizona and is required to operate in accordance with its authorizing statutes, A.R.S. § 45-2401 et seq. and in compliance with all laws of the State of Arizona which govern AWBA activities. SNWA/CRCN shall be entitled to rely upon AWBA's compliance with all statutory requirements, but SNWA/CRCN recognize that such statutes may be duly amended in the course of this Agreement and, subject to the last two sentences of this Subarticle, SNWA/CRCN recognize that AWBA will be required as a matter of Arizona law to comply with any such amendment. Any reference to a statute in this Agreement shall mean that statute, as it may be amended in the future, or its duly authorized successor statute. Nothing in this Subarticle is intended to, or shall be construed as, an agreement by SNWA or CRCN that any enactment of law by the Arizona legislature after the effective date of this Agreement shall have any effect on SNWA's rights or remedies under this Agreement with respect to water that has been placed into storage for SNWA pursuant to this Agreement as of the effective date of such enactment, on any Long-term Storage Credits in the SNWA Interstate Account as of such date, or on SNWA's rights to the development of ICUA

with respect to such water and Long-term Storage Credits. SNWA and CRCN expressly reserve all rights at law and in equity under this Agreement.

1.2.7. This agreement is intended to operate for the mutual benefit of the citizens of the State of Arizona and the citizens of the State of Nevada. It is entered into with the understanding that it is an act of comity, and with the understanding that interstate banking of Colorado River water among the States of the Lower Division must be undertaken in accordance with express authority granted under each state's law.

1.3. Term of Agreement

This Agreement becomes effective when executed by all parties. This Agreement shall terminate when all of the Long-term Storage Credits in the SNWA Interstate Account have been recovered, or on June 1, 2050, whichever is sooner, unless this Agreement is extended by written agreement of all parties. Any Long-term Storage Credits remaining in the SNWA Interstate Account at the termination of this Agreement shall revert to the sole and exclusive benefit of AWBA.

Article 2 Delivery and Storage

2.1. Request for Water Storage by SNWA

- 2.1.1. Annually, AWBA shall develop a draft AWBA Plan of Operation. The draft AWBA Plan of Operation shall not initially include an interstate component but shall contain the information necessary to initiate discussion between AWBA and SNWA/CRCN regarding interstate banking for the following Year.
- 2.1.2. AWBA staff shall meet and confer with SNWA/CRCN staff concerning the proposed location, manner and cost by which the interstate banking could be accomplished in the following Year.
- 2.1.3. On or before November 1, AWBA shall determine and advise SNWA and CRCN as to the quantity of water and storage capacity available for interstate banking under the terms of this Agreement for the following Year. AWBA shall also provide an estimate of the costs calculated pursuant to Subarticle 2.3 associated with the delivery and storage of water available for interstate banking. AWBA shall also provide the data upon which the determinations and estimates in this Subarticle were based.

- 2.1.4. Within 7 business days of the notice provide in Subarticle 2.1.3, SNWA shall specify in writing to AWBA its decision to accept all or any portion of the water and storage capacity available at the estimated cost.
 - 2.1.5. The schedule dates and periods contained in Subarticles 2.1.1 through 2.1.4 can be waived upon written agreement of all parties.
 - 2.1.6. After consultation with SNWA, the final decision on the quantity of water to be stored and the location of the storage under the terms of this Agreement shall be at the discretion of AWBA.
 - 2.1.7. The quantity of water to be stored in accordance with the terms of this Agreement shall be identified in the final AWBA Plan of Operation by January 1 of each Year. Unless the AWBA Plan of Operation is modified, this quantity of water shall be stored.
 - 2.1.8. At any time after approval of the AWBA Plan of Operation, SNWA may request a decrease in the quantity of SNWA storage for the current Year. Such request for decrease shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA and the amount of water scheduled to be stored for the benefit of SNWA. AWBA may, at its discretion and after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect such a decrease.
 - 2.1.9. AWBA may modify the AWBA Plan of Operation for reasons other than a request from SNWA. If the modification results in an increase in the amount of storage available for interstate banking, AWBA shall notify SNWA and CRCN in writing of the estimated cost for delivery and storage of the increase. SNWA shall have 15 days after receipt of such notice to specify in writing to AWBA its decision to decline any or all of the increase. If SNWA fails to notify AWBA, SNWA shall be obligated to accept such increase in accordance with the terms of the modified AWBA Plan of Operation and the terms of this Agreement. If the modification results in a decrease in storage capacity available for interstate banking purposes, AWBA will notify SNWA and CRCN in writing of such a modification, the reasons for the decrease in storage, the data upon which such determination was based, and the revised amount of water that AWBA will store for SNWA during the Year.
- 2.2. Delivery and Storage of Water by AWBA for SNWA. Delivery and storage of water under the terms of this Agreement are conditioned on the following:
- 2.2.1. The delivery of water shall be pursuant to the Intergovernmental Agreement among AWBA, CAWCD and ADWR, as amended, whereby

AWBA is entitled to purchase Excess CAP Water from CAWCD for interstate banking purposes.

- 2.2.2. AWBA shall obtain and maintain all necessary water storage permits from ADWR to allow storage under the terms of this Agreement.
- 2.2.3. The storage of water shall be pursuant to AWBA's contracts with various Storage Facility operators whereby AWBA is entitled to store water at those various Storage Facilities.
- 2.2.4. AWBA shall establish with ADWR a long-term storage sub-account entitled "SNWA Interstate Account".
- 2.2.5. AWBA shall monitor the accrual and maintenance of Long-term Storage Credits in the SNWA Interstate Account from Year to Year. AWBA shall exercise due diligence in insuring that all Long-term Storage Credits developed in accordance with the terms of this Agreement have accrued and are properly accounted for in such account.
- 2.2.6. AWBA agrees that it shall timely file with ADWR an annual report for all water delivered and stored in accordance with the terms of this Agreement by March 31 of the Year following the delivery and storage. AWBA and SNWA/CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed. ADWR determines the quantity of Long-term Storage Credits that accrue in the SNWA Interstate Account in any Year and makes a report available to AWBA detailing the credits available in AWBA's Long-term Storage Account. Upon receipt of the report from ADWR, AWBA shall make that report available to SNWA and CRCN. The report may include adjustments or corrections made by ADWR to the Long-term Storage Credits in the SNWA Interstate Account.

2.3. Charges for Delivery and Storage

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

- 2.3.2.2. the municipal and industrial (M&I) capital charge, set annually for CAP customers by the CAWCD Board;
 - 2.3.2.3. a pumping energy rate established by the CAWCD Board to recover its costs, or if mutually agreeable among SNWA, AWBA and CAWCD, SNWA may provide energy sufficient to fully or partially meet the pumping requirements for the delivery of water under the terms of this Agreement;
 - 2.3.2.4. a payment *in lieu* of property taxes, calculated as described in A.R.S. § 48-3715; and
 - 2.3.2.5. Such additional costs as may be reasonably incurred by AWBA.
- 2.3.3. SNWA shall be charged a cost for administrative services for water stored by AWBA in accordance with the terms of this Agreement. Such charge shall equal 15% of ADWR's cost of services as provided to and accepted by AWBA annually. ADWR's cost of services is computed as a lump sum for the fiscal year beginning July 1 and includes salaries; employee related expenses and indirect costs.
- 2.3.4. The charges to SNWA for the cost of water storage under this Agreement shall consist of the following pricing components computed on a per acre foot of delivery basis:
- 2.3.4.1. Underground Storage Facility charges as paid by AWBA based on contractual agreements with those facility operators;
 - 2.3.4.2. A capital charge for storage at Underground Storage Facilities constructed with State Demonstration Project funds as determined by CAWCD as owner/operator of the facilities;
 - 2.3.4.3. If storage under the terms of this Agreement is accomplished at Groundwater Savings Facilities, SNWA shall pay a charge for storage as determined by AWBA in that Year; and
 - 2.3.4.4. Such additional costs as may be reasonably incurred by AWBA.
- 2.4. Billing of and Payment for Delivery and Storage
- 2.4.1. On or before December 1, AWBA shall provide SNWA and CRCN with an estimated total annual charge for the water to be delivered under the terms of this Agreement in the upcoming Year. Charges for water delivery are described in Subarticle 2.3.2. If costs increase more than 20% AWBA shall notify SNWA.

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

- 2.4.5. Charges for administrative services as described in Subarticle 2.3.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.
- 2.4.6. SNWA shall pay the administrative service charges on or before the first day of the month following the notice of the charges. If such day is not a business day, the payment shall be made on the next succeeding business day.
- 2.4.7. AWBA shall provide an estimate of the Storage Facility charge as described in Subarticle 2.3.4 to SNWA on or before the fifteenth of each month prior to the actual occurrence of the storage. Such estimates may include adjustments or corrections to estimates previously provided by AWBA to SNWA.
- 2.4.8. SNWA shall pay the estimate of the Storage Facility charges on or before the tenth day of the month following notice of the charge. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate Storage Facility operators in accordance with AWBA's contractual agreements with the Storage Facility operators.
- 2.4.9. No later than March 15 of the Year following the Year in which water was stored under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The reconciliation shall show the actual amount of water stored and whether charges for the amount stored exceed the payments made or the payments exceed the amount owed. If additional funds are owed to AWBA, they shall be paid within 10 business days of the date an invoice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year water storage charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the water storage charge for the Year in which storage resumes. If storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.
- 2.4.10. The schedule dates and periods contained in this Subarticle 2.4 can be waived upon written agreement of all parties.

Article 3
Development of Intentionally Created Unused Apportionment

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

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

- 3.2.2. Upon receipt of a final request to develop ICUA in the upcoming Year under Subarticle 3.1.6, AWBA shall prepare the following certifications, in accordance with the Agreement for the Development of Intentionally Created Unused Apportionment: (1) an Upcoming Year Delivery Certification; (2) an Interstate Recovery Schedule Certification; and, (3) a Development of ICUA Certification. These three certifications shall be prepared and delivered to the Bureau of Reclamation no later than December 1 of the Year in which the final request to develop ICUA is received. AWBA shall identify the quantity of ICUA to be created in the AWBA Plan of Operation for the following Year. Recovery shall not commence until a written determination is made by the Secretary that ICUA will be released to SNWA under the terms of the Storage and Interstate Release Agreement.
- 3.2.3. During a Year that the Secretary has determined to be a shortage Year under Article II(B)(3) of the Decree, the recovery of Long-term Storage Credits by AWBA for the development of ICUA shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet of consumptive use and the quantity made available to Nevada under the shortage determination. This quantity can be greater if, after SNWA and CRCN confer with AWBA, it is determined that a greater quantity of ICUA can be created.
- 3.2.4. The choice of facilities utilized to recover the Long-term Storage Credits used to create the ICUA during any year shall be at the discretion of AWBA.
- 3.2.5. After the quantity of Long-term Storage Credits to be recovered to create ICUA has been included in the final AWBA Plan of Operation in accordance with the terms of this Agreement, and the availability of ICUA has been determined by the Secretary, AWBA shall recover the Long-term Storage Credits and SNWA shall be responsible for all costs of developing the requested ICUA.
- 3.2.6. Upon written request by SNWA to cease the development of ICUA, AWBA shall cease the development of ICUA by the amount of the request or by the amount of ICUA not yet developed whichever is less. AWBA shall certify to the Secretary the amount of ICUA previously requested that will not be developed and shall request that the Secretary act in accordance with that certification and the terms of the Storage and Interstate Release Agreement.
- 3.2.7. AWBA shall notify ADWR of the actual amount of credits recovered in accordance with the terms of this Agreement and shall request that ADWR debit the SNWA Interstate Account by the quantity of credits recovered when AWBA submits its annual report to ADWR. AWBA and

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

3.2.8. In the event that the aggregate Long-term Storage Credits in AWBA's Long-term Storage Account are reduced or eliminated by operation of law beyond the control of AWBA, or if the aggregate Long-term Storage Credits in AWBA's Long-term Storage Account cannot be recovered due to physical constraints beyond the control of AWBA, SNWA agrees that the Long-term Storage Credits in the SNWA Interstate Account shall be reduced proportionally. The relative proportions of the SNWA Interstate Account to the AWBA Long-term Storage Account shall be determined as of the beginning of the Year of discovery of the reduction. With respect to any aggregate reduction in the Long-term Storage Credits in AWBA's Long-term Storage Account by operation of law, nothing herein shall affect SNWA's right to challenge such aggregate reduction or to seek compensation.

3.3. Charges for Developing ICUA

3.3.1. SNWA agrees that all costs of the development of ICUA as described in Subarticle 3.2 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 3.3, and billed to and paid by SNWA as provided in Subarticle 3.4.

3.3.2. The charges to SNWA for the cost of ICUA caused to be developed by AWBA under this Agreement shall consist of the following pricing components:

3.3.2.1. A capital component consisting of (i) the cost to develop any new recovery facility as to which the SNWA shall have a prior right of use, such cost to be paid in advance in a lump sum, or (ii) a charge computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the annual capital cost of other recovery facilities to be used for SNWA's benefit during the Year.

3.3.2.2. An operation and maintenance (O&M) component computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the O&M cost (including pumping energy) incurred by the owner/operator of any recovery facility used during the Year to develop ICUA for SNWA.

3.3.2.3. An administrative component calculated as a lump sum to recover the actual administrative cost reasonably incurred by AWBA.

3.3.2.4. In the event that the cost of recovery for all or some of the water stored by AWBA in the State of Arizona increases due to unforeseen

circumstances such as a cost for water treatment, or new state or federal regulations such as new water quality standards or additional environmental compliance requirements, SNWA agrees to share a reasonable proportion of such unanticipated costs, regardless of the location of such storage.

3.4. Billing and Payment for Developing ICUA

- 3.4.1. AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle 3.3.2.1(i) after agreement between AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.
- 3.4.2. SNWA shall agree to an acceptable repayment schedule prior to the construction on any additional recovery facilities. Following receipt of the SNWA payments pursuant to that schedule, AWBA shall remit the appropriate payments to the appropriate recovery facility owner/operators in accordance with AWBA's contractual agreements with those operators.
- 3.4.3. AWBA shall provide an estimate of the charges for the capital component described in Subarticle 3.3.2.1(ii) and the recovery facility O&M described in Subarticle 3.3.2.2 to SNWA on or before the fifteenth of each month prior to the actual recovery. Such estimates may include adjustments or corrections to previous estimates.
- 3.4.4. SNWA shall pay the estimate of the capital component described in Subarticle 3.3.2.1(ii) and the recovery facility O&M charge described in Subarticle 3.3.2.2 on or before the tenth day of the month following receipt of the estimate. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate recovery facility operators in accordance with AWBA's contractual agreements with those operators.
- 3.4.5. No later than March 15 of the Year following the Year in which ICUA was recovered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation showing the actual Long-term Storage Credits recovered and whether charges for recovering the credits exceed payments made or payments exceed the amount owed. If additional funds are owed to AWBA by SNWA, they shall be paid within 10 business days of the date notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year recovery facility O&M charge and used to offset current payments in an amount equal to the excess payment. If no recovery under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the recovery facility O&M charge

for the Year in which recovery resumes. If recovery has not resumed within three years, AWBA shall remit the remaining funds to SNWA.

- 3.4.6. Charges for administrative services as described in Subarticle 3.3.2.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge agreed upon for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.
- 3.4.7. SNWA shall pay administrative charges on or before the first day of the month following the receipt of the notice. If such day is not a business day, the payment shall be made on the next succeeding business day.
- 3.4.8. The schedule dates and periods established by this Subarticle 3.4 may be waived upon written agreement of all parties.

Article 4

Delinquent Charges and Surety of Performance

- 4.1. Delinquency Charges under the terms of this Agreement
 - 4.1.1. All payments due under this Agreement shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the Bank of America, plus 6% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest owed, and then to any charges owed.
 - 4.1.2. In the event any portion of the charges are disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, SNWA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 4.1.1, prorated by days from the date payment was credited to SNWA to the date the refund check is issued.
 - 4.1.3. In the event any delinquent amount is not paid by SNWA within thirty (30) days after receipt by SNWA of written notice from AWBA of the delinquency, AWBA shall have the right, without liability of any kind, to suspend delivery, storage, or recovery of any water under the terms of this Agreement so long as the delinquent amount remains unpaid. Such

suspension shall not affect the Long-term Storage Credits remaining in the SNWA Interstate Account. Nothing herein shall limit the rights of AWBA to use any other available legal remedy to effect collection of delinquent amounts.

4.2. Surety of Performance under the terms of this Agreement

- 4.2.1. In the event that a dispute arises over any action to be undertaken pursuant to the terms of this Agreement, all parties recognize and acknowledge that time is of the absolute essence in the conduct of the parties under the terms of this Agreement.
- 4.2.2. The parties agree that the water resources being stored, forborne, and made available through exchange for use by SNWA under the terms of this Agreement are unique and very likely cannot be replaced in a timely fashion by other resources. Accordingly, the parties agree that in any dispute over the development and release of ICUA, SNWA will likely be requesting an injunction ordering specific performance of the terms of this Agreement. The parties agree that if AWBA opposes the specific enforcement of this Agreement with respect to ICUA, AWBA shall have the burden to show by clear and convincing evidence that it has the ability to, and will, make alternative water resources, other than water controlled by the United States under the Decree, available at the SNWA system, free of adverse claims. If AWBA proposes to deliver such alternative water to SNWA, AWBA shall bear any additional costs that may be incurred over the costs that would have otherwise been incurred by SNWA for the delivery of ICUA under terms of this Agreement. SNWA shall be required to accept such alternative water resources if so ordered by a court of competent jurisdiction. Nothing in this Subarticle shall limit SNWA's rights to seek money damages or a remedy at law.
- 4.2.3. AWBA shall use its best efforts to ensure that there are in effect all third party contracts necessary for the delivery and storage of water for SNWA as provided in Article 2 and for the development of ICUA as provided in article 3, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall use its best efforts to insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.

Article 5 Other Provisions

5.1. Consultation on the AWBA Annual Report

5.1.1. AWBA is required to submit an annual report of its transactions and proceedings for the preceding year by July 1 each Year pursuant to A.R.S. § 45-2426. SNWA/CRCN agree to confer with AWBA staff in the development of the report.

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

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

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

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

5.3.1. SNWA agrees that all federal charges associated with evaluating, processing and executing a Storage and Interstate Release Agreement shall be borne by SNWA.

5.3.2. These charges shall be calculated by and paid directly to the Secretary by SNWA in accordance with the Secretary's requirements.

5.4. Uncontrollable Forces

No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than obligation of SNWA to make payment) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the control of the party unable to perform such obligation, including, but not limited to, failure or threat of failure of facilities, flood, earthquake, storm, fire, lighting, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court

or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any federal governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

5.5. Notices, Requests and Payments

5.5.1. All notices and requests required and allowed under the terms of this Agreement may be given in the following manner:

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

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

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

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

5.5.1.2. Notices and requests may be given by facsimile and shall be deemed complete upon receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

5.5.2. All payments required under the terms of this Agreement shall be made by Electronic Fund Transfer (EFT).

5.5.2.1. AWBA will notify the Treasury, State of Arizona monthly of any anticipated EFTs to be made by SNWA.

5.5.2.2. SNWA will submit all EFTs to the Treasury, State of Arizona; account number 001-000985; routing number 122101706.

5.5.2.3. AWBA will ensure that all EFTs submitted by SNWA are properly accrued in the Nevada sub-account maintained at ADWR.

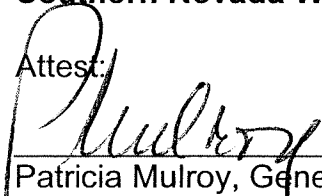
5.6 On request, AWBA shall provide SNWA with a copy of all contracts, rate schedules, and other documents that are relevant to or that form the basis for the charges specified in the Agreement.

5.7 The parties to this agreement are hereby notified of Arizona Revised Statutes section 38-511.

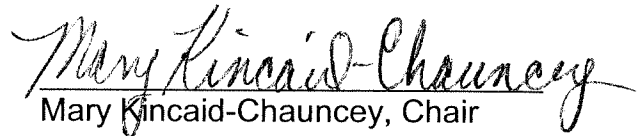
In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 3rd day of July, 2001.

Southern Nevada Water Authority

Attest:

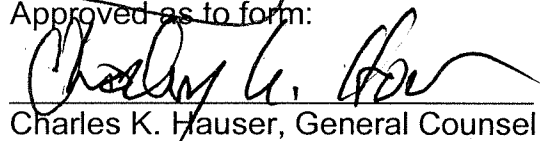


Patricia Mulroy, General Manager



Mary Kincaid-Chauncey, Chair

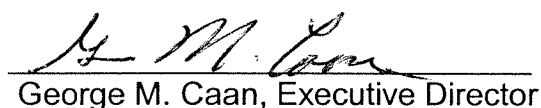
Approved as to form:



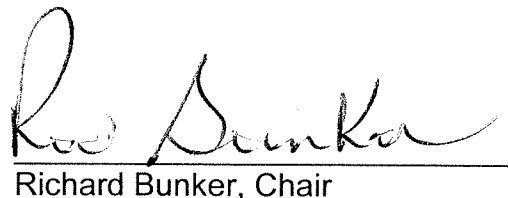
Charles K. Hauser, General Counsel

Colorado River Commission of Nevada

Attest:

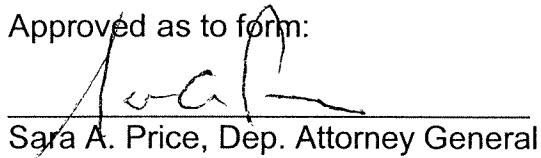


George M. Caan, Executive Director



Richard Bunker, Chair

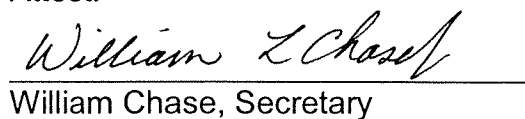
Approved as to form:



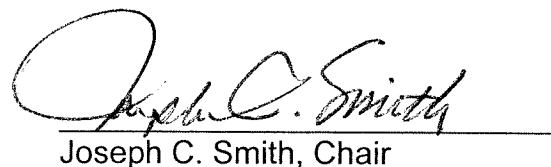
Sara A. Price, Dep. Attorney General

Arizona Water Banking Authority

Attest:



William Chase, Secretary



Joseph C. Smith, Chair