

AGREEMENT BETWEEN THE CENTRAL ARIZONA
WATER CONSERVATION DISTRICT AND
THE ARIZONA WATER BANKING AUTHORITY
PROVIDING FOR THE DELIVERY OF EXCESS
CENTRAL ARIZONA PROJECT WATER

This Agreement is made as of the ___ day of _____, 2016, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended (the “Basin Project Act”), between the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), and the ARIZONA WATER BANKING AUTHORITY (“AWBA”).

RECITALS

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

B. The United States and CAWCD have entered into Contract No. 14-06-W-245, amendment No. 1, dated December 1, 1988 (the “Repayment Contract”), which is

1 incorporated by reference, providing for the delivery of water and repayment of costs of the
2 CAP.

3 C. The United States and CAWCD have entered into the Stipulation
4 Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment
5 upon the Satisfaction of Conditions, filed with the United States District Court for the District
6 of Arizona on November 21, 2007, in Central Arizona Water Conservation District v. United
7 States, No. CIV 95-625-TUC-WDB (EHC), No. CIV 95-1720-PHX-EHC (Consolidated
8 Action) (the “Stipulation”), which modifies the Repayment Contract in certain respects.
9

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

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

15 F. The Arizona Legislature has created AWBA to implement this policy
16 and has specifically authorized AWBA, in A.R.S. § 45-2423(B)(7), to execute agreements with
17 CAWCD to obtain water for storage at permitted facilities.
18

19 **AGREEMENT**

20 Repayment Contract and Stipulation Controlling

21 1. AWBA expressly acknowledges that this Agreement is subject to the Repayment
22 Contract and Stipulation including any amendments thereof, and any actions taken and
23 determinations made under those agreements, except as otherwise provided herein. In the event
24 of any inconsistency between this Agreement and the Repayment Contract, the provisions of
25 the Repayment Contract, as modified by the Stipulation, shall be controlling. Definitions

1 included in the Repayment Contract and Stipulation are applicable to this Agreement. The first
2 letters of terms so defined are capitalized herein.

3 * * *

4 Term

5 2. The initial term of this Agreement expires on December 31 of the year in which
6 it is executed. This Agreement will be automatically renewed for successive one-year terms
7 until December 31, 2026, unless AWBA notifies CAWCD by October 1 of any year that it does
8 not wish to renew the Agreement for the following year or unless sooner terminated in
9 accordance with Article 12.
10

11 Delivery of Water by CAWCD

12 3. In so far as Project Water supplies and the delivery capability of the Project will
13 permit, and subject to the provisions of the Repayment Contract and Stipulation, CAWCD will
14 deliver Excess Water to AWBA in an amount to be determined in accordance with the terms of
15 this Agreement and at a water service charge calculated in accordance with Article 10. The
16 determination of whether Excess Water is available for delivery in any Year, and, if so, the
17 amount of such Excess Water that is available for delivery under this Agreement in any Year,
18 is a determination within the exclusive discretion of CAWCD; Provided, however, That
19 delivery of Excess Water under this Agreement shall be subject to the prior satisfaction of all
20 water deliveries scheduled pursuant to a long-term contract or subcontract for Project Water
21 service, as that term is used in the Stipulation.
22

23 Conditions Relating to Delivery and Use

24 4. The delivery and use of water under this Agreement is conditioned on the
25 following, and the parties hereby agree that:

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

4 (b) Project Water furnished pursuant to this Agreement shall be delivered
5 through Project Works for storage or exchange as permitted by law.

6 (c) Project Water furnished to AWBA pursuant to this Agreement may not
7 be directly resold or transferred, but AWBA may enter into an arrangement with a groundwater
8 savings facility allowed under state law to store Project Water and may otherwise transfer,
9 assign, distribute, and extinguish long-term storage credits accrued with Project Water as
10 authorized by A.R.S. §§ 45-2401, *et seq.*

11 (d) Notwithstanding any other provision of this Agreement, Project Water
12 shall not be delivered on behalf of AWBA unless and until CAWCD has issued final
13 environmental clearance for the system or systems through which Project Water is to be
14 conveyed after delivery and CAWCD has satisfied itself that all pipelines, canals, distribution
15 systems, or other conduits that will convey Project Water after delivery under this Agreement
16 will prevent excessive conveyance losses and are constructed, operated, and maintained in
17 accordance with any condition of applicable laws, regulations, or order and to the satisfaction
18 of CAWCD.
19
20

21 Procedure for Ordering Water

22 5. (a) The amounts, times, and rates of delivery of Excess Water on behalf of
23 AWBA during each Year shall be in accordance with a water delivery schedule for that Year.
24 Such schedule shall be determined in the following manner:
25

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

4 (ii) On or before September 1 of each year during the term of this
5 Agreement, CAWCD shall provide to AWBA a preliminary schedule for delivery of Excess
6 Water for storage for intrastate purposes during the following year.

7 (iii) On or before October 1 of each year during the term of this
8 Agreement, AWBA shall provide to CAWCD written comments on the preliminary schedule
9 for delivery of Excess Water during the following year. AWBA shall also identify the volume
10 of Excess Water it anticipates storing for interstate purposes during the following year.

11 (iv) On or before October 15 of each year during the term of this
12 Agreement, CAWCD shall provide to AWBA a water delivery schedule, by month and by
13 storage facility, for intrastate storage. CAWCD shall also identify the volume of Excess Water
14 it anticipates being available for storage for interstate purposes during the following year.

15 (v) On or before November 10 of each year during the term of this
16 Agreement, AWBA shall submit to CAWCD a request for the delivery of Excess Water for
17 interstate storage during the following year.

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

21 (b) The monthly water delivery schedules may be amended upon AWBA's
22 written request to CAWCD. Proposed amendments shall be submitted by AWBA to CAWCD
23 no later than 15 days before the desired change is to become effective. CAWCD shall accept
24
25

1 any request by AWBA to reduce scheduled deliveries and shall take all reasonable actions
2 necessary to effect a request by AWBA to reduce scheduled deliveries. AWBA requests to
3 increase scheduled deliveries shall be subject to review and modification in like manner as the
4 schedule. CAWCD shall notify AWBA of its action on AWBA's requested schedule
5 modification within 10 days of CAWCD's receipt of such request.

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

10 (d) CAWCD shall not deliver water on behalf of AWBA except in the
11 amounts and in accordance with the schedules developed in accordance with this Article.
12 AWBA shall not be responsible for any payments due CAWCD except for water scheduled and
13 delivered in accordance with this Article.

14
15 Project Delivery Point, Measurement
16 and Responsibility for Distribution of Water

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

20 (b) All water delivered from the Water Supply System shall be measured
21 with equipment furnished and installed by the United States and operated and maintained by
22 CAWCD or with equipment furnished, installed, operated and maintained with the approval of
23 CAWCD. Upon the request of AWBA or CAWCD, the accuracy of such measurements shall
24 be investigated by CAWCD and AWBA, and any errors which are mutually determined to have
25

1 occurred therein shall be adjusted; Provided, however, That in the event the parties cannot agree
2 on the required adjustment, CAWCD's determination shall be conclusive.

3 (c) Neither the United States nor CAWCD shall be responsible for the
4 control, carriage, handling, use, disposal, or distribution of water beyond the Project delivery
5 point except as provided in the Master Water Storage Agreement between AWBA and
6 CAWCD. AWBA shall hold the United States and CAWCD harmless on account of damage
7 or claim of damage of any nature whatsoever for which there is legal responsibility, including
8 property damage, personal injury, or death arising out of or connected with the control, carriage,
9 handling, use, disposal, or distribution of water beyond the Project delivery point, except as
10 provided in the Master Water Storage Agreement between AWBA and CAWCD.
11

12 Interruptions and Reductions

13 7. In addition to the right of the United States under Subarticle 8.3(a)(iv) of the
14 Repayment Contract to temporarily discontinue or reduce the amount of water to be delivered,
15 CAWCD may discontinue or reduce the quantity of water to be furnished on behalf of AWBA
16 as herein provided for the purposes of investigation, inspection, construction, testing,
17 maintenance, repair, or replacement of any of the Project facilities or any part thereof. CAWCD
18 may also discontinue or reduce the quantity of water to be furnished on behalf of AWBA if
19 there is insufficient Project Water or Project delivery capacity to deliver AWBA's water order,
20 the water orders of other contractors of Excess Water service, and all water deliveries scheduled
21 pursuant to a contract with the United States or a subcontract with the United States and
22 CAWCD providing for Project Water service for a period of 50 years or more. So far as feasible,
23 CAWCD shall attempt to coordinate any such discontinuance or reduction with AWBA and to
24 give AWBA due notice in advance of such discontinuance or reduction. In case of emergency,
25

1 no notice need be given. The United States, its officers, agents, and employees, and CAWCD,
2 its officers, agents, and employees, shall not be liable for damages when, for any reason
3 whatsoever, any interruption, discontinuance, or reduction in delivery of water occurs.

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

5 8. Nothing in this Agreement shall be construed as an allocation of Project Water
6 to AWBA, nor shall this Agreement entitle AWBA to any Project Water other than as provided
7 herein.

8 Quality of Water

9 9. CAWCD does not warrant the quality of any Project Water furnished under this
10 Agreement and is under no obligation to construct or furnish water treatment facilities to
11 maintain or better the quality of any Project Water. AWBA waives its right to make a claim
12 against the United States, CAWCD, or any other Project subcontractor or contractor on account
13 of the quality of Project Water or any changes in water quality caused by the commingling of
14 Project Water with other water during delivery of the Project Water. Water quality and liability
15 issues that arise from the storage of Project Water by CAWCD on behalf of AWBA at CAWCD
16 underground storage facilities shall be governed by the Water Storage Agreement between
17 CAWCD and AWBA.
18

19 Water Service Charges

20 10. (a) By August 1 of each year, CAWCD shall establish water service charges
21 for water to be delivered under this Agreement during the following year for interstate and
22 intrastate storage.
23

24 (b) By the 20th of each month, CAWCD shall bill AWBA for water delivered
25 in the preceding month under this Agreement. The payment due shall be computed by

1 multiplying the total amount of water delivered in the preceding month by that portion of the
2 applicable water service charge that is not paid directly to CAWCD by Groundwater Savings
3 Facility Operators in accordance with Article 12.

4 (c) AWBA shall pay or provide for payment of the amount billed by
5 CAWCD within 30 days.

6 (d) If, during any year in which water is being delivered for interstate storage
7 under this Agreement, CAWCD determines that its interstate water storage costs will increase
8 20% or more over the estimates CAWCD used to establish the water service charge for
9 interstate storage for that year, it shall within thirty (30) days of becoming aware of such
10 increase: (1) notify AWBA in writing of the increase and (2) provide AWBA with an estimate
11 of the increased costs for water delivery for interstate storage for that year. Following such
12 notice, CAWCD shall give AWBA a reasonable opportunity to amend its interstate schedule
13 for the remainder of that year.

14 (e) By May 31 of each year, CAWCD shall reconcile: (1) the actual quantity
15 of water delivered for interstate storage during the previous year to the quantity of water prepaid
16 by AWBA under Article 11 of this Agreement and (2) the actual operation, maintenance, and
17 replacement costs and energy costs associated with water delivered for interstate storage to the
18 costs estimated when the water service rate for interstate storage was established. If that year-
19 end account reconciliation demonstrates that money is owed to CAWCD, AWBA shall pay the
20 amount owed within 30 days of CAWCD's invoice. If funds are due to AWBA, CAWCD shall
21 pay AWBA the amount due within 30 days of completing the reconciliation. Upon termination
22 of this Agreement of any reason, CAWCD shall provide AWBA a reconciliation for any year
23 or partial year for which a reconciliation has not been performed. The obligation to provide the
24 reconciliation, and of either party to pay any funds as a result of the reconciliation, shall survive
25 termination of this Agreement.

1 Interstate Storage Account

2 11. (a) AWBA may prepay CAWCD for water to be delivered under this
3 Agreement for interstate storage.

4 (b) Any prepayments made by AWBA shall be deposited into a separate
5 interstate storage account established and maintained by CAWCD.

6 (c) All interest earned on funds in the interstate storage account shall accrue
7 to and remain in that account.

8 (d) CAWCD may only use funds in the interstate storage account to pay the
9 costs of delivering and storing water for interstate storage under this Agreement.

10 (e) Any payment due from AWBA for water actually delivered for interstate
11 storage under this Agreement shall be deducted from the interstate storage account until that
12 account is exhausted.

13 (f) If funds are due to AWBA as a result of the year-end account
14 reconciliation under subparagraph 10(e), CAWCD shall deposit the amount due in the interstate
15 storage account.

16 (g) If funds are owed to CAWCD as a result of the year-end account
17 reconciliation under subparagraph 10(e), CAWCD shall deduct the amount due from the
18 interstate storage account. If there are insufficient funds in the interstate storage account to pay
19 the full amount due CAWCD, then AWBA shall pay the balance owed within 30 days of
20 CAWCD's invoice.

21 (h) Within fifteen days of AWBA's written request, CAWCD shall return
22 all funds in the interstate storage account to AWBA.

23 Collection of Water Service Charges
24 From Groundwater Savings Facility Recipients

25 12. (a) In accordance with the Intergovernmental Agreement entered into
among AWBA, CAWCD, and the Arizona Department of Water Resources, CAWCD has

1 agreed to invoice, collect, and process that portion of the water services fees assessed under this
2 Agreement that AWBA will charge to a Facility Operator of a Groundwater Savings Facility
3 which receives water scheduled by AWBA under this Agreement. On or before October 15 of
4 each year, AWBA shall notify CAWCD of the portion of the water services fee that it will
5 charge to the Facility Operator. In any agreement with a Facility operator, AWBA shall require
6 the Facility operator to make timely payment of such fees to CAWCD in accordance with
7 normal CAWCD invoicing and billing practices, shall authorize CAWCD as a third party
8 beneficiary to collect fees owed, as well as interest, administrative fees, and penalty charges on
9 delinquent payments, and shall ensure that CAWCD's rights as a third party beneficiary to
10 collect any unpaid fees, interest, and charges survive termination of the Agreement.

11 (b) CAWCD agrees that a Groundwater Savings Facility Operator shall be
12 entitled to be reimbursed by CAWCD for any portion of the Facility Operator's water services
13 fee that is attributable to water that is scheduled for delivery under this Agreement but that is
14 not subsequently delivered to the Facility Operator. CAWCD agrees that in lieu of
15 reimbursement for scheduled, but undelivered water, the Facility Operator shall be entitled to
16 an equivalent credit against payment in the future of any fees owed CAWCD, should the
17 Facility Operator so desire.

18 Termination and Cancellation of Contract

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

1 right to terminate this Agreement as provided in this Article 13 shall be in addition to the other
2 rights of CAWCD under this Agreement and to all other rights provided by law.

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

5 Charges for Delinquent Payments

6 14. (a) Each party to this Agreement shall be subject to interest, administrative
7 and penalty charges on delinquent installments or payments owed by that party under this
8 Agreement. The party shall pay an interest charge for each day the payment is delinquent
9 beyond the due date. When a payment becomes 60 days delinquent, the party shall pay an
10 administrative charge to cover additional costs of billing and processing the delinquent
11 payment. When a payment is delinquent 90 days or more, the party shall pay an additional
12 penalty charge of 6 percent per year for each day the payment is delinquent beyond the due
13 date. Further, the party shall pay any fees incurred for debt collection services associated with
14 a delinquent payment.

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

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

1 Rules, Regulations and Determinations

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

5 (b) AWBA shall have the right to make determinations necessary to
6 administer this Agreement that are consistent with the expressed provisions of this Agreement,
7 the laws of the United States and the State of Arizona, and the rules and regulations promulgated
8 by the Secretary of the Interior.

9 Compliance with Environmental Laws

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

13 Equal Opportunity

14 17. During the performance of this Agreement, the parties shall comply with all
15 applicable laws and regulations of the United States and the State of Arizona relating to labor,
16 employment, civil rights, and equal opportunity in employment.

17 Notices

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

21 Central Arizona Water Conservation District
22 General Manager
23 P.O. Box 43020
24 Phoenix, AZ 85080-3020
25 Facsimile Number: (623) 869-2332

Arizona Water Banking Authority
Manager
P.O. Box 36020

1 Phoenix, AZ 85067-6020
2 Facsimile Number: (602) 771-8686

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

5 Assignment Limited—Successors and Assigns Obligated

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

9 Annual Reporting Requirements

10 20. By May 31 of each Year, CAWCD shall provide to AWBA a report showing:

11 (a) The amount of water delivered for intrastate and interstate storage under
12 this Agreement during the previous calendar year.

13 (b) The amount of money collected by CAWCD from Groundwater Savings
14 Facility Operators in accordance with Article 12 during the previous calendar year.

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

3
4 CENTRAL ARIZONA WATER
5 CONSERVATION DISTRICT

6 Attest: _____
7 Secretary

6 By: _____
7 President

8 ARIZONA WATER BANKING
9 AUTHORITY

10
11 Attest: _____
12 Secretary

11 By: _____
12 Chair

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