AGREEMENT FOR THE DEVELOPMENT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT

between

The Arizona Water Banking Authority
and
The Central Arizona Water Conservation District

This Agreement for the Development of Intentionally Created Unused Apportionment is made this 18th day of December, 2002, between the Arizona Water Banking Authority and the Central Arizona Water Conservation District.

RECITALS

A. The Arizona Water Banking Authority ("AWBA") is an agency of the State of Arizona expressly authorized by A.R.S. § 45-2423 to store Colorado River water in Arizona on behalf of appropriately authorized agencies in California and Nevada and to cause a decrease in Arizona diversions from the Colorado River, ensuring that Arizona will use less than its full entitlement to Colorado River water in Years in which California and Nevada agencies are contractually authorized to call on the water stored on their behalf by AWBA.

B. On July 3, 2001, AWBA entered into the Agreement for Interstate Water Banking with the Southern Nevada Water Authority and the Colorado River Commission of Nevada for the purpose of creating an interstate water banking program as authorized by A.R.S. §§ 45-2471 *et seq.*

C. Contemporaneously with entering into this Agreement, AWBA will enter into a Storage and Interstate Release Agreement with the United States of America, acting through the Secretary of the Interior, the Southern Nevada Water Authority, and the Colorado River Commission of Nevada. The Storage and Interstate Release Agreement ensures that Intentionally Created Unused Apportionment developed by AWBA for the benefit of the Southern Nevada Water Authority under the terms of the Agreement for Interstate Water Banking and the Storage and Interstate Release Agreement will be released by the Secretary to the Southern Nevada Water Authority under Article II(B)(6) of the Decree in *Arizona v. California*, 376 U.S. 340 (1964).

D. The Central Arizona Water Conservation District ("CAWCD") is a multi-county water conservation district established under A.R.S. §§ 48-3701 *et seq.*, that operates and maintains the Central Arizona Project. CAWCD has entered into a contract with the Secretary of the Interior for the delivery to CAWCD of all Colorado River water to which Arizona is entitled under the Decree in *Arizona v. California*, 376 U.S. 340 (1964), that is not needed to satisfy the water orders of those water users in Arizona with an equal or higher priority to Colorado River water. Therefore, CAWCD can develop Intentionally Created Unused Apportionment in furtherance of the policy of the State of Arizona to assist Nevada and California in meeting future water needs through an interstate water banking program.

E. This Agreement provides the means by which Intentionally Created Unused Apportionment will be developed using Long-term Storage Credits created in accordance with the Agreement for Interstate Water Banking and the Storage and Interstate Release Agreement.

Article 1
Definitions and Term

1.1 For the purposes of this Agreement, terms that are defined in Article 1 of the Decree in *Arizona v. California*, 376 U.S. 340 (1964), in Arizona Revised Statutes (A.R.S.) Title 45, Chapter 3.1, and in 43 CFR Part 414 shall have the meaning there stated. The first letters of terms so defined are capitalized when used in this Agreement. In addition, the following definitions shall apply in this Agreement:

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

1.1.2 "AWBA" shall mean the Arizona Water Banking Authority.

1.1.3 "Agreement" shall mean this Agreement for Development of Intentionally Created Unused Apportionment.

1.1.4 "CAP" shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. §§ 1501 *et seq.*

1.1.5 "CAP Water Deliveries" shall mean in any Year all CAP water delivered by CAWCD, all Long-term Storage Credits exchanged by CAWCD in lieu of diverting water from the Colorado River, all CAP system losses, and any net change in CAP water storage at Lake Pleasant.

1.1.6 "CAWCD" shall mean the Central Arizona Water Conservation District.

1.1.7 "Consumptive Use" shall mean Consumptive Use as that term is defined in the Decree in *Arizona v. California*, 376 U.S. 340 (1964).

1.1.8 "CRCN" shall mean the Colorado River Commission of Nevada.

1.1.9 "ICUA" shall mean Intentionally Created Unused Apportionment as that term is defined in 43 CFR 414.

1.1.10 "Interstate Recovery Schedule" shall mean the plan and schedule by which AWBA and CAWCD shall develop the quantity of ICUA needed in any Year as described by Article 3 of this Agreement.

1.1.11 "IWBA" shall mean the Agreement for Interstate Water Banking entered into on July 3, 2001 by AWBA, SNWA, and CRCN.

1.1.12 "Long-term Storage Credit" or "Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01.

1.1.13 "Parties" shall mean the parties to this Agreement.

1.1.14 "Secretary" shall mean the United States of America, acting through the Secretary of the Interior or his or her designated representative.

1.1.15 "SIRA" shall mean the Storage and Interstate Release Agreement entered into contemporaneously with this Agreement by AWBA, SNWA, CRCN, and the Secretary.

1.1.16 "SNWA" shall mean the Southern Nevada Water Authority.

1.1.17 "SNWA Interstate Account" shall have the meaning defined in the IWBA and SIRA.

1.1.18 "Year" shall mean any calendar year after the execution of this Agreement.

1.2 This Agreement shall commence on the date of execution by both Parties and shall continue until June 1, 2050, or until the IWBA has terminated, whichever is sooner.

Article 2
Fundamental Principles

2.1 The Parties shall work cooperatively to develop ICUA to satisfy the requirements of the IWBA and the SIRA in furtherance of the State of Arizona's policy of assisting Nevada and California in meeting future water needs through an interstate water banking program.

2.2 Pursuant to A.R.S. § 45-2471(C), the California or Nevada agency participating in Arizona's interstate water banking program is required to agree to pay all costs associated with the program. Therefore, CAWCD shall bear no costs for its participation in the program, except as specifically identified in Articles 5.6 and 7 of this Agreement. As provided by the IWBA, AWBA shall seek reimbursement from SNWA for costs incurred by AWBA under this Agreement while acting in accordance with the IWBA.

2.3 CAWCD shall accept Long-term Storage Credits assigned by AWBA from the SNWA Interstate Account in exchange for Colorado River water that would have otherwise been diverted into the CAP by CAWCD. CAWCD will reduce its Consumptive Use of Colorado River water in accordance with that exchange. CAWCD will meet all scheduled deliveries to Indian contractors, CAWCD subcontractors, and other CAP water users using a combination of Colorado River water and Long-term Storage Credits.

2.4 CAWCD shall account for any Long-term Storage Credits assigned by AWBA to CAWCD from the SNWA Interstate Account as water diverted from the Colorado River for purposes of determining the amount of water that CAWCD may lawfully divert from the Colorado River in the Year of development of ICUA, unless CAWCD reassigns the Long-term Storage Credits to AWBA pursuant to Article 5.3.

2.5 CAWCD shall not be required to reduce its Consumptive Use of Colorado River water pursuant to this Agreement in any Year by more than 100,000 acre feet.

2.6 In any Year in which SNWA has made a request for development of ICUA in the following Year, AWBA is required by the SIRA to prepare an Interstate Recovery Schedule for the following Year that sets forth the means by which ICUA will be developed and the quantity of ICUA that will be developed. AWBA and CAWCD shall cooperatively develop, finalize, and implement the Interstate Recovery Schedule for any such Year in accordance with this Agreement.

Article 3
Interstate Recovery Schedule

3.1 An Interstate Recovery Schedule shall set forth the means by which CAWCD plans to create ICUA on behalf of AWBA in any Year. Except as provided in Article 3.2, an Interstate Recovery Schedule shall use the recovery and exchange method, the credit exchange method, or both of these two methods to develop ICUA.

3.2 An Interstate Recovery Schedule may use a method other than the recovery and exchange method and the credit exchange method if that method complies with 43 CFR Part 414 and if the Secretary has approved its use.

3.3 The recovery and exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be recovered and the recovered water exchanged for Colorado River water that would otherwise have been delivered through the CAP in that Year.

3.3.1 An Interstate Recovery Schedule may provide that CAWCD recover Long-term Storage Credits assigned by AWBA and deliver the recovered water in place of CAP water that would have been delivered by CAWCD in that Year.

3.3.2 An Interstate Recovery Schedule may provide that Long-term Storage Credits assigned by AWBA to CAWCD be assigned by CAWCD to an entity scheduled to receive CAP water from CAWCD in that Year for recovery and use by that entity in place of CAP water that would have been delivered by CAWCD in that Year.

3.3.3 If the recovery and exchange method will be used to develop ICUA in a Year, an Interstate Recovery Schedule shall demonstrate that there is sufficient recovery capacity to recover the necessary Long-term Storage Credits from the SNWA Interstate Account and shall describe how the Credits will be recovered and delivered through the CAP or how the Credits will be recovered by individual CAP customers in lieu of their scheduled CAP deliveries.

3.4 The credit exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be exchanged for Colorado River water that would otherwise have been delivered through the CAP for underground storage in that Year. The recipient of the Credits shall be an entity scheduled to receive water from CAWCD for purposes of underground storage in that Year.

3.4.1 The entity receiving Long-term Storage Credits under the credit exchange method shall be required to pay CAWCD the same fees and charges that it would have paid had CAP water been delivered to it for underground storage.

3.4.2 If the credit exchange method will be used to develop ICUA in a Year, an Interstate Recovery Schedule shall demonstrate that CAWCD has received sufficient orders for the delivery of Colorado River water for underground storage and shall identify the entity or

entities accepting the transfer of Long-term Storage Credits in lieu of the delivery of Colorado River water.

3.5 If a method other than the recovery and exchange method or credit exchange method is used to develop ICUA, an Interstate Recovery Schedule shall include such information as required by the Secretary for that method.

3.6 An Interstate Recovery Schedule shall identify the total quantity of Long-term Storage Credits to be assigned to CAWCD by AWBA from the SNWA Interstate Account to develop the quantity of ICUA needed for the following Year. The Long-term Storage Credits shall be assigned in accordance with Article 5.1.

Article 4
Development of Interstate Recovery Schedule

4.1 By June 15 of the Year preceding any Year for which SNWA will request the release of ICUA from the Secretary under the terms of the SIRA, AWBA shall provide a copy to CAWCD of SNWA's written preliminary request for the development of ICUA in the next upcoming Year and SNWA's estimate of any requests for the development of ICUA in the next two succeeding Years.

4.2 By October 15 of the Year in which a final request for the release of ICUA will be made for the upcoming Year to the Secretary under the terms of the SIRA, AWBA shall provide a copy to CAWCD of SNWA's final request for development of ICUA for the upcoming Year.

4.3 By November 15 of the Year preceding any Year for which SNWA will request the release of ICUA from the Secretary under the terms of the SIRA, AWBA and CAWCD shall jointly and cooperatively develop a final Interstate Recovery Schedule for the next upcoming Year. Any agreements and permits necessary to effectuate the final Interstate Recovery Schedule shall be effective no later than November 15 of the Year preceding any Year for which SNWA will request the release of ICUA.

4.4 The development of an Interstate Recovery Schedule shall take into account the location, manner, and cost of recovery of all water stored by AWBA in the State of Arizona, and the selection of recovery facilities included in an Interstate Recovery Schedule shall not be made in a manner that unreasonably allocates higher recovery costs to the recovery of water for the development of ICUA.

4.5 The development of an Interstate Recovery Schedule shall take into account, but not be limited to, the following factors:

4.5.1 Arizona water management goals.

4.5.2 CAP operational requirements.

4.5.3 Water quality requirements.

4.5.4 Opportunities for shared or joint facilities.

4.5.5 Opportunities to reduce recovery costs.

4.6 While developing an Interstate Recovery Schedule, AWBA and CAWCD shall jointly consult and confer with all of the following:

4.6.1 SNWA and CRCN.

4.6.2 United States Bureau of Reclamation.

4.6.3 ADWR.

4.7 Under the terms of the IWBA, SNWA is required to meet with AWBA to discuss the development of ICUA three Years prior to the initial request for the development of ICUA by SNWA. AWBA shall notify CAWCD within ten days of the initiation of discussions of the development of ICUA with SNWA. CAWCD recognizes that the three-Year period may be waived by the parties to the IWBA. AWBA shall not waive the three-Year period without first consulting with CAWCD. After AWBA notifies CAWCD of the initiation of discussions of the development of ICUA, AWBA and CAWCD shall meet and confer regarding opportunities for developing ICUA.

Article 5
Implementation of Interstate Recovery Schedule

5.1 Within five days of AWBA receiving the Secretary's notice of determination under Article 5.4 of the SIRA, AWBA shall assign the quantity of Long-term Storage Credits from the SNWA Interstate Account to CAWCD necessary to create the quantity of ICUA released by the Secretary.

5.2 In any Year in which the Secretary releases ICUA to SNWA, the Parties shall implement the Interstate Recovery Schedule for that Year.

5.3 In accordance with the IWBA, SNWA may submit a written request to AWBA during any Year in which ICUA is being developed to cease development of ICUA by the amount of the request or by the amount of

ICUA not yet developed, whichever is less. AWBA shall consult with CAWCD regarding the SNWA request before certifying to the Secretary the amount of ICUA previously requested that will not be developed and shall not provide the certification unless CAWCD is authorized to increase its Consumptive Use of Colorado River water to replace the Long-term Storage Credits that were to have been used to create ICUA. CAWCD shall reassign to AWBA the quantity of Long-term Storage Credits that would have been used to develop the previously requested ICUA that will not be developed in that Year.

5.4 By March 1 of any Year following the Year in which ICUA was developed, CAWCD shall provide AWBA a report confirming that its Consumptive Use of Colorado River water in that Year was equal to its CAP Water Deliveries less the ICUA it was required to develop in that Year.

5.5 By March 31 of any Year following the Year in which ICUA was developed, CAWCD and AWBA shall jointly prepare and file with ADWR an annual report of the recovery of Long-term Storage Credits in accordance with A.R.S. § 45-875.01. In accordance with the terms of the IWBA, SNWA and CRCN shall cooperate in the preparation of the report and shall agree upon the accuracy of the data to be filed. AWBA shall bear the cost of any Long-term Storage Credit withdrawal fee associated with a Long-term Storage Credit recovered by CAWCD in accordance with an Interstate Recovery Plan.

5.6 If ICUA developed in any Year is less than the amount that was needed to fulfill AWBA's contractual obligations under the IWBA and the SIRA, AWBA shall assign to CAWCD sufficient Long-term Storage Credits, and CAWCD shall develop ICUA using those Credits, to make up the shortfall to Lake Mead. The shortfall shall be made up in a Year to be determined by the Secretary but shall not be more than three Years after the Year in which the shortfall occurred. AWBA shall bear the cost of developing such ICUA except in the following circumstances:

5.6.1 If CAWCD was previously provided funds to develop ICUA that was not developed, thus resulting in the shortfall, CAWCD shall bear the expense of developing the ICUA to offset the shortfall up to the amount of the funds previously provided by AWBA.

5.6.2 If the shortfall occurred due to circumstances within CAWCD's control and responsibility, CAWCD shall bear the expense of developing the ICUA to offset the shortfall.

5.7 AWBA and CAWCD's records relating to the development of ICUA shall be open to reasonable inspection by any party to the SIRA.

5.8 The specific methods and facilities used to create ICUA in any Year shall be at the discretion of CAWCD, after consultation with AWBA, so long as the methods and facilities selected are consistent with those included in the Interstate Recovery Schedule.

5.9 Nothing in this Agreement shall prohibit CAWCD from taking delivery of Colorado River water that was scheduled by an Arizona water user with a higher priority than CAP but not used by that entity.

Article 6
Charges and Payments

6.1 Except as provided by Articles 5.6 and 7, all costs incurred by CAWCD in developing ICUA and complying with this Agreement shall be determined by CAWCD, in consultation with AWBA, and borne by AWBA. Development of ICUA shall not cause an increase in the water delivery rates charged to other CAP customers.

6.2 CAWCD shall provide AWBA an estimate of the monthly charges for developing ICUA on or before the 10th day of the month preceding the development of the ICUA.

6.3 AWBA shall pay the estimated charges no later than the 15th day of the month following receipt of the estimate.

6.4 By May 30 of any Year following a Year in which ICUA was developed, CAWCD shall provide AWBA a reconciliation of the estimated charges for developing ICUA that were paid by AWBA against the actual costs of developing ICUA. AWBA shall pay any additional funds owed within 30 days. Any credit due AWBA shall be applied against current charges payable by AWBA or refunded to AWBA within 30 days, as determined by AWBA.

6.5 All costs incurred by CAWCD because of SNWA's request to cease development of ICUA shall be determined by CAWCD and borne by AWBA.

Article 7
Transfer of Long-term Storage Credits

7. Within 15 days of the execution of the SIRA, CAWCD shall assign to AWBA the 50,000 acre-feet of Long-term Storage Credits currently held by CAWCD for the benefit of SNWA. Within 5 days of notice from ADWR that the assignment from CAWCD to AWBA has been completed, AWBA shall assign the 50,000 acre-feet of Long-term Storage Credits to the SNWA Interstate Account. Costs associated with recovering water and

creating ICUA with the Long-term Storage Credits assigned pursuant to this Article shall be as provided in the agreement under which those Credits were accrued and shall not be borne by AWBA.

Article 8
Default and Remedies

8.1 The Parties agree that monetary damages will be ineffective in remedying any breach of this Agreement and that a court may order specific performance of its terms.

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

8.3 In the event of a default by CAWCD or AWBA, then, within thirty (30) days following notice of such default by the non-defaulting Party, the defaulting Party shall remedy such default either by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default.

Article 9
Uncontrollable Forces

9. Neither Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than the obligation of AWBA to make payment for service under this Agreement) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, terrorism, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it is involved.

Article 10
Governing Law

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

Article 11
Notices

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

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

Arizona Water Banking Authority
Manager
500 North Third Street
Phoenix, AZ 85004-3903
Facsimile Number: (602) 417-2401

11.2 Notices, demands and requests provided for in this Agreement may be given by facsimile between AWBA and CAWCD in lieu of delivery in person or first class mail. A facsimile shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after telephone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

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

Article 12
Waiver

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

Article 13
Headings

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

Article 14
Entire Agreement

14. The terms, covenants and conditions of this Agreement constitute the entire agreement between the Parties relative to the development of ICUA, and no understandings or agreements not herein expressly set forth shall be binding upon them. The Parties, however, recognize that this Agreement is intended to fulfill the contractual obligations required of AWBA by the IWBA and the SIRA and that this Agreement is intended, and shall be interpreted whenever possible, to be consistent with those agreements. This Agreement may not be modified or amended in any manner unless in writing and signed by both Parties.

Article 15
Cancellation

15. The Parties to this Agreement are hereby notified of A.R.S. § 38-511.

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

Attest:

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

_____
Secretary

By: _____
George R. Renner, President

Attest:

ARIZONA WATER BANKING AUTHORITY

_____
Secretary

By: _____
Joseph C. Smith, Chairman