

ARIZONA WATER BANKING AUTHORITY

WEDNESDAY, MARCH 18, 1998

ARIZONA DEPARTMENT OF WATER RESOURCES

PLEASE PRINT



1	NAME: FRANK SARINO REPRESENTING: TOWN OF PARKER	BUSINESS ADDRESS: PO BOX 609 PARKER 85344	ARE YOU ALREADY ON OUR MAILING LIST?	TEL: 520-669-965 FAX: 520-669-5247 E-MAIL:
2	NAME: BOB BARRETT REPRESENTING: CAP	BUSINESS ADDRESS: PO BOX 43020 23636 N. 7TH ST PHOENIX 85080 PHOENIX AZ 85024		TEL: 869-2135 FAX: 869-2678 E-MAIL: RBARRETT@CAP-AZ.COM
3	NAME: KAY BROTHERS REPRESENTING: SNWA	BUSINESS ADDRESS: 1001 VALLEY VIEW LAS VEGAS		TEL: 258-3176 FAX: 258-3159 E-MAIL:
4	NAME: MICHAEL BLOCK REPRESENTING: METRO WATER DISTRICT	BUSINESS ADDRESS: PO BOX 36870 TUCSON AZ 85746		TEL: 520-575-8100 FAX: 520-575-8454 E-MAIL: mblock@metrowater.com
5	NAME: JEFF JOHNSON REPRESENTING: SNWA	BUSINESS ADDRESS: 1001 VALLEY VIEW LAS VEGAS		TEL: FAX: E-MAIL:
6	NAME: HARRY RUZGERIAN REPRESENTING: MWD - SO CALIF	BUSINESS ADDRESS: 350 S. GRAND AVE. LOS ANGELES		TEL: 213-217-6082 FAX: E-MAIL:
7	NAME: DOROTHY PALMER REPRESENTING: VIDLER WATER	BUSINESS ADDRESS: 1755 E PLUMB LANE #151 RENO NV 89502	NO	TEL: 702-329-6022 FAX: E-MAIL:

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11	NAME: JOHN HETRICK REPRESENTING: SRP	BUSINESS ADDRESS: 		TEL: FAX: E-MAIL:
12	NAME: DON POPE REPRESENTING: YUMA CO. WATER USER'S ASSOC.	BUSINESS ADDRESS 		TEL: FAX: E-MAIL:
13	NAME: BETH MILLER REPRESENTING: CITY OF MESA	BUSINESS ADDRESS PO BOX 1406 MESA AZ 85211		TEL: 644-2647 FAX: 644-2768 E-MAIL:
14	NAME: GREG BUSHNER REPRESENTING: HYDRO SYSTEMS, INC.	BUSINESS ADDRESS 1220 S PARK LANE, STE 5 TEMPE 85281	NO	TEL: 517-9050 FAX: 517-9049 E-MAIL: GREG@HYDROSYSTEMS-INC.COM

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15	NAME: LINDA JAMES REPRESENTING: IEDA	BUSINESS ADDRESS C/O ROBERT S. LYNCH	ARE YOU ALREADY ON OUR MAILING LIST?	TEL: FAX: E-MAIL:
16	NAME: ROCK CRAMER REPRESENTING: VICKSBURG FARMS	BUSINESS ADDRESS PO BOX V PARKER 85344		TEL: 520-669-2936 FAX: 520-669-2335 E-MAIL:
17	NAME: CORTNEY BRAND REPRESENTING: DAMES & MOORE	BUSINESS ADDRESS 7500 N DREAMY DRAW DR STE 145 PHOENIX 85020	NO	TEL: 371-1110 FAX: 867-7431 E-MAIL: PHXCCB@DAMES.COM
18	NAME: JB WYCKOFF REPRESENTING: NVWRAB	BUSINESS ADDRESS 13406 W STARDUST BLVD SUN CITY 85375	NO	TEL: 546-0588 FAX: E-MAIL: JBWYCKOFF@MSN.COM
19	NAME: JAN LANEY REPRESENTING: AZ STATE LAND	BUSINESS ADDRESS 1616 W ADAMS PHOENIX 85007		TEL: 542-3500 FAX: 542-4668 E-MAIL: JLANEY@LND.STATE.AZ.US
20	NAME: GL EDWARDS REPRESENTING: CRC - NEV	BUSINESS ADDRESS 555 E. WASHINGTON AVE LAS VEGAS NV 89101		TEL: 702-486-2690 FAX: 702-486-2677 E-MAIL:
21	NAME: PAUL ORME REPRESENTING: MSIDD/CAIDD	BUSINESS ADDRESS		TEL: FAX: E-MAIL:

ARIZONA WATER BANKING AUTHORITY

WEDNESDAY, MARCH 18, 1998

ARIZONA DEPARTMENT OF WATER RESOURCES

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22	NAME: JAY MOYES REPRESENTING: MEYER, HENDRICKS, BIVENS & MOYES	BUSINESS ADDRESS 2003 N CENTRAL AVE PHOENIX	ARE YOU ALREADY ON OUR MAILING LIST?	TEL: 604-2166 FAX: 263-5333 E-MAIL: JIMOYES@MHBM.ATTMAIL.COM
23	NAME: CHUCK CULLOM REPRESENTING: BOOKMAN - EDMONSTON	BUSINESS ADDRESS 		TEL: FAX: E-MAIL:
24	NAME: KARL KOHLOFF REPRESENTING: CITY OF MESA	BUSINESS ADDRESS <i>PO BOX 1406</i> <i>MESA AZ 85211</i>		TEL: FAX: E-MAIL:
25	NAME: BILL SULLIVAN REPRESENTING: MARTINEZ & CURTIS	BUSINESS ADDRESS 		TEL: FAX: E-MAIL:
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28	NAME: REPRESENTING:	BUSINESS ADDRESS		TEL: FAX: E-MAIL:

Arizona Water Banking Authority

500 North Third Street, Phoenix, Arizona 85004

Telephone 602-417-2418

Fax 602-417-2401

FINAL AGENDA

Wednesday, March 18, 1998

9:30 a.m.

Arizona Department of Water Resources

Third floor conference room

- I. Welcome / Opening Remarks
- II. Adoption of Minutes of February 18 Meeting
- III. Discussion of the 1998 Annual Plan of Operation and Staff Activities
- IV. Presentation by Vidler Water Company on MBT Ranch
- V. AWBA approval of submission of comments to the Secretary of the Interior
- VI. Update on Study Commission Activities
- VII. Update on Interstate Discussions
- VIII. Call to the Public
- IX. Adjournment

Future Meeting Dates:

Wednesday, April 15, 1998

Wednesday, May 20, 1998

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Arizona Water Banking Authority at (602) 417-2418 or (602) 417-2455 (T.D.). Requests should be made as early as possible to allow time to arrange the accommodation.

**ARIZONA WATER BANKING AUTHORITY
Draft Minutes**

**February 18, 1998
Arizona Department of Water Resources**



Welcome / Opening Remarks

Chairman Pearson opened the Arizona Water Banking Authority meeting. All members of the Authority were present except Tom Griffin, Senator Pat Conner and Representative Gail Griffin.

AUTHORITY MEMBERS
Rita P. Pearson, Chairman
Tom Griffin, Vice-Chairman
Bill Chase, Secretary
Grady Gammage, Jr.
Richard S. Walden

EX OFFICIO MEMBERS
Senator Pat Conner
Rep. Gail Griffin

Adoption of Minutes of January 21 Meeting

The January 21 meeting minutes were adopted as submitted.

Discussion of the 1998 Annual Plan of Operation and staff activities

Mr. Henley discussed water deliveries for the month of January. Approximately 15,000 af were recharged. Mr. Henley stated that he anticipates another 15,000 af of water will be recharged in February. There is a possibility that there could be a drop in CAP in lieu deliveries for the months of February and March due to the El Niño rainfall.

Mr. Henley stated that one requirement within the State agencies is to put together a strategic plan. A draft of the plan put together by the Arizona Water Banking Authority (AWBA) staff was provided. The final version of the strategic plan is due April 1, 1998. The AWBA staff will be working in conjunction with the ADWR staff putting together the plan. The plan will include a Mission Statement, a description of the AWBA, and a financial summary of the Authority's efforts. Measurable performance goals must be included in the plan package. Four goals have been submitted by the AWBA staff: 1) recharging unused Colorado River water; 2) utilizing the funds that are available; 3) keeping the Authority members content and 4) drafting interstate agreements.

Ms. Kunasek gave an update of the status of the Innovations in American Government application. The application has been completed and sent to the John F. Kennedy School of Government at Harvard University. The AWBA should be notified in the next few months whether they have been chosen as finalist in the competition.

Ms. Kunasek gave an on-line presentation of The AWBA's web page, which is now complete and available for public use. The web page address is www.awba.state.az.us.

Discussion, public comment, and approval for staff to submit comments on the Department of Interior's Proposed Rule on Interstate Banking issued 12/31/97

Mr. Henley gave a brief discussion on the ongoing process of drafting The AWBA's comments in response to the Bureau of Reclamation's (BOR) proposed rule governing interstate water banking. A 30-day extension to the comment period has been granted, and the new comment deadline is 5:00 p.m. on April 3, 1998. To date, there has been only one request for a public hearing to the BOR on the regulation. It has been scheduled for February 23, 1998 in Ontario, California. The Colorado River Board in California will hold a meeting on March 11, 1998 to state their concerns. Mr. Henley stated that he plans to attend both meetings. At this time no other state has requested a hearing. Ms. Pearson stated that all seven Basin states agree that the three Lower Basin states should take the lead on these negotiations. Ms. Pearson stated that the Basin states would write a letter to Bob Johnson of the Bureau of Reclamation stating they would support a 30-day extension.

The AWBA, to date, has received about a half dozen letters with revisions and comments ranging from minor to extensive. The comments on the preamble are not available. ADWR's comments will be significant on the preamble, as this is where it can set some policy issues and intentions. The

AWBA will be working on these issues with ADWR. The comments should be available the week of February 23. Mr. Henley encouraged the public to submit their comments to the AWBA.

Discussion of CAP/USBR Proposed Settlement

Grady Gammage, Jr., President of the CAWCD Board and Larry Dozier, Deputy General Manager of the CAP, discussed the proposed settlement of the lawsuit between the BOR and the CAWCD over repayment of the costs of constructing the CAP. Mr. Gammage stated that there are four parts to the settlement. 1) The financial component of the settlement, wherein CAWCD would agree to a fixed annual payment schedule, which would remain the same regardless of how much water is used for municipal purposes and agricultural purposes; 2) the United State's intention to reallocate large amounts of water to Arizona's Indian tribes. This is the same offer that the Federal Government made in 1995, which amounts to an additional 240,000 af. This includes 65,000 af of unallocated M&I water. Mr. Gammage stated that this issue has drawn most of the public comments; 3) after the reallocation of additional water to the Indian tribes, any unused water could be marketed by CAP annually; and 4) when deliveries can begin to the Indian tribes. There would be no fixed M&I charges for Indian water deliveries as it would be delivered at the pumping cost only.

This agreement would allocate a large quantity of water to the tribes and would reduce the CAWCD's repayment obligation to approximately \$1.7 billion. Mr. Gammage explained that the cities are concerned about a block of unallocated CAP water (65,000 af) that will be included in the Indian allocation.

Mr. Dozier stated that he felt that it was a favorable settlement and that there is some certainty for the State in getting the water allocation settled. Mr. Dozier discussed the potential impact of the proposed settlement on the AWBA and concluded that overall, there would be increased financial certainty for the AWBA. Mr. Dozier expressed that CAP has the right to market excess water and sell it to the AWBA. Mr. Dozier commented that this also focuses on the Bank's role in Indian settlements. The Bank has some authority to use credits earned by storing water for Indian settlements.

Mr. Henley commented that the AWBA is essentially a customer and should be supportive of other customers of CAP. He felt that after a settlement there would still be unused Colorado River water. Mr. Henley also stated a settlement could remove the uncertainty over CAP's ability to continue to make the 4¢ tax available to the AWBA, which is a major source of revenue for the AWBA. Mr. Henley stated that overall, the settlement is beneficial to the AWBA as a customer, on a financial view.

Mr. Chase commented on one issue that has not been fully covered. There is a lack of certainty as to what the Federal Government is going to do with the water. There are no boundaries on how the water is going to be used. Mr. Gammage stated that a meeting scheduled for the afternoon of February 18 with the US Government will examine this issue.

Ms. Pearson felt that Mr. Henley's observation with respect to the AWBA are accurate and there is probably not a direct impact on the Bank, but there are many issues with respect to having a fixed price for CAP water and probably freeing up the 4¢ tax and committing it to the Bank's revenue stream. Because the 65,000 af at this point is proposed to move to the federal side of the ledger, it puts added pressure on the Bank to firm up more supplies for municipal use.

Update on Study Commission Activities

Mr. Henley gave an overview of the Study Commission.

January 21- Benefits for Outside CAP Service Area subcommittee met. At the subcommittee meeting Tom Carr, from Colorado River Management, presented a concept on how to make water available to the communities outside the CAP area in the future. Mr. Carr identified an exchange, where communities along the River would have the credits, and

the credits would be available for exchange with the CAP which will allow the CAP to pump groundwater. This would allow the process to work within the existing contract system the BOR has on the River.

January 22 - Interstate/Intrastate Water Banking and Marketing subcommittee met. At the subcommittee meeting, representatives from Nevada discussed their needs and willingness to participate in the process.

January 28 - Indian Issues subcommittee met. A lot of good issues and concerns were discussed through the interim report process. The subcommittee is beginning to identify where the Bank and the Indians can interface and how the Indian tribes could participate in banking.

February 4 - Finance and Taxation subcommittee met. The group was asked to review and evaluate the 4¢ tax. They will not be making any recommendations to change the process of the 4¢ tax.

In March all four subcommittees are scheduled to meet. The subcommittees will begin drafting legislation and putting together the final recommendation for the report that is due to the Governor.

Interstate Discussions

Ms. Pearson updated the Authority on Interstate discussions. She explained that California has not yet finalized the 4.4 Plan and that the major obstacle is working out the details for Imperial Irrigation District water transfers.

Call to the Public

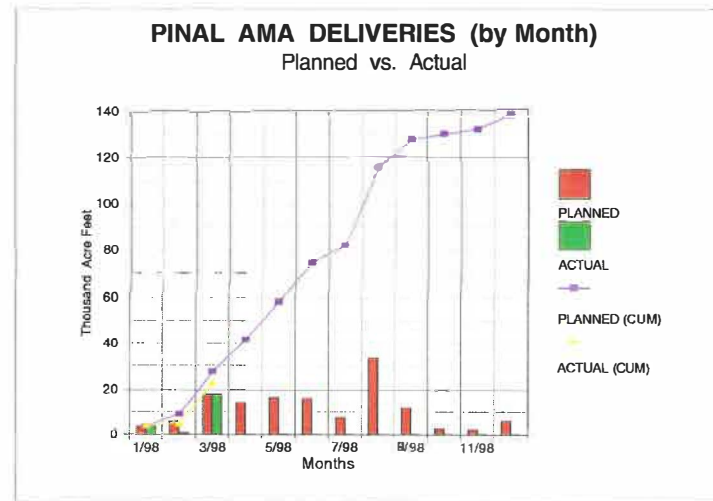
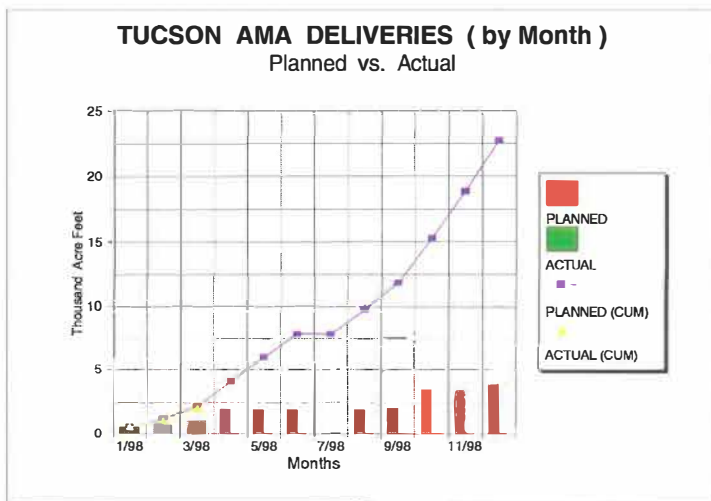
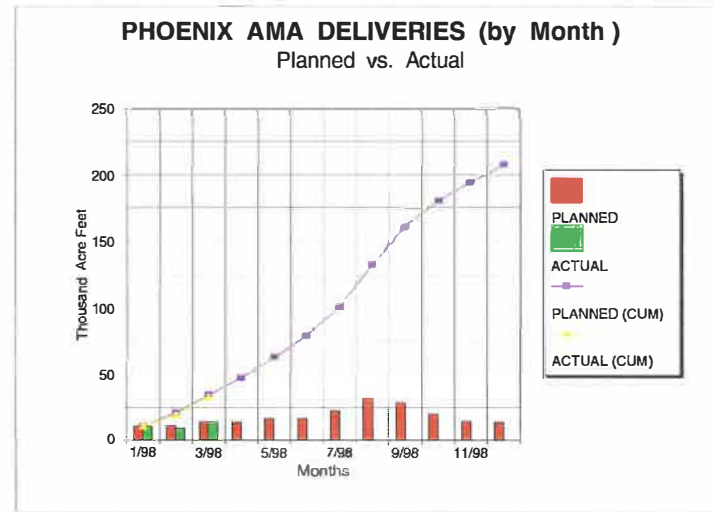
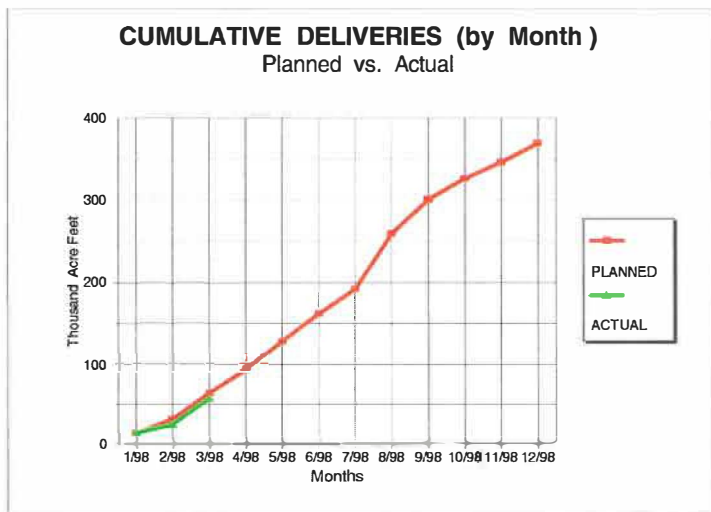
Chairman Pearson adjourned the meeting at 11:05 a.m.

1998 PLAN OF OPERATION BY ENTITY

Actual deliveries updated 17-Mar-98

	jan	feb	mar	total	
Phoenix AMA					
GRUSP	8,032	8,551	8,000	24,583	GRUSP
RWCD	0	0	0	0	RWCD
NMIDD	2,233	286	3,200	5,719	NMIDD
QCID	0	0	0	0	QCID
MWD	0	0	2,471	2,471	MWD
CHCID	0	0	0	0	CHCID
TID	0	0	0	0	
Subtotal	10,265	8,837	13,671	32,773	
Pinal AMA					
CAIDD	0	0	0	0	CAIDD
MSIDD	2,430	0	9,630	12,060	MSIDD
HIDD	1,819	708	8,500	<u>11,027</u>	HIDD
Subtotal	4,249	708	18,130	23,087	
Tucson AMA					
Avra Vally	0	0	400	400	Avra Vally
CAVSRP	531	579	460	1,570	CAVSRP
Pima Mine	0	0	100	100	Pima Mine
Lower Santa Cruz	<u>0</u>	0	0	<u>0</u>	L. Santa Cruz
Subtotal	531	579	960	2,070	
TOTAL	15,045	10,124	32,761	57,930	

1998 PLAN OF OPERATION



NEWS

CENTRAL ARIZONA PROJECT

P.O. BOX 43020

PHOENIX, ARIZONA 85080-3020

(602) 869-2135 FAX (602) 869-2678

FOR IMMEDIATE RELEASE:

March 5, 1998

FOR MORE INFORMATION:

Robert Barrett (602) 869-2135

Central Arizona Project

e-mail: Rbarrett@cap-az.com

CAWCD LAWSUIT LIKELY TO PROCEED IN COURT

Phoenix -- While expressing willingness to continue settlement discussions, the Central Arizona Water Conservation District Board of Directors today directed its attorneys to proceed with its lawsuit against the United States over the cost of the Central Arizona Project.

"The Board has authorized its attorneys to proceed with litigation and not delay that litigation in any way," said Board President Grady Gammage, Jr. "We are willing to continue talking but, for now, we must also prepare to proceed in court."

Gammage emphasized that the CAWCD Board is willing to keep talking with the federal government and other interested parties in the hope of finding an acceptable solution.

CAWCD and the federal government disagree over the District's share of the cost of building the system. CAWCD claims it owes the federal government no more than \$1.8 billion. That is about \$500 million less than the federal government's demand of about \$2.3 billion.

Both sides thought they had reached an agreement in 1995, but the deal collapsed in the final hours. CAWCD filed suit to resolve the dispute in court.

The latest settlement proposal calls for CAWCD to pay about \$1.7 billion for the system, but it also calls for the federal government to receive about 49 percent of the 1.5 million acre-feet of water delivered by the CAP each year. The government would use that water to settle Indian water rights claims. One of the concerns CAWCD has with the settlement is that such a reallocation of water necessarily involves other parties and interests, including the Arizona Department of Water Resources.

Arizona's single largest water resource for renewable water supplies



HydroSystems, Inc.

GARY G. SMALL, M.S., P.G., C.E.I.
1220 S. PARK LANE, SUITE 5, TEMPE, AZ 85281
TELEPHONE 602-517-9050 FAX 602-517-9049

March 13, 1998

Tim Henley
Director Arizona Water Banking Authority
Arizona Water Banking Authority
500 North Third Street
Phoenix, Arizona 85004

RE: Presentation Materials

Dear Tim:

Enclosed you will find an executive summary for the MBT Ranch Recharge Facility for inclusion with the AWBA agenda materials.

I look forward to talking with the AWBA Board on Wednesday March 18th. Please let me know if you have any questions or require further information. Thank you.

Sincerely,

Greg L. Bushner
Hydrologist

Enclosure

Vidler Water Company

MBT Ranch Recharge Facility, Harquahala Valley

Vidler Water Company¹ (VWC) has applied to the Arizona Department of Water Resources for a pilot scale constructed underground storage facility permit for the MBT Ranch Recharge Facility. The focus of the pilot scale project is mainly to demonstrate the hydrologic feasibility for a recharge project located in the Harquahala Valley. The project as conceived will evaluate several different methods of recharge and operating parameters. The development of the pilot scale MBT Ranch Recharge Facility will provide the foundation for the full scale facility in the same vicinity of the pilot project site.

Using the MBT Ranch Recharge Facility, VWC intends to store excess Central Arizona Project (CAP) water. This project, ideally situated south and down gradient of the CAP Aqueduct (Figure 1), will facilitate this water storage process. Water will be conveyed to the pilot recharge facility through two existing 15 inch PVC pipelines. The pilot scale facility as conceived will consist of three recharge basins approximately five acres each. Water flowing into each basin will be metered as well as the standing water levels within each basin. VWC is applying to store a maximum of 10,000 ac-ft over the two year pilot permit.

Each basin will be operated differently. Basin 1 will provide baseline data for comparison to the two other basins. Water will be discharged into Basin 1 and let infiltrate into the soils. No maintenance activities will be performed on Basin 1. Basin 2 will be operated similarly to Basin 1 however, a wet/dry cycle will be conducted on this basin to enhance and maintain hydraulic loading rates. Basin 3 will be similar to the other two basins however, it will incorporate two vadose zone recharge wells. The vadose zone recharge wells will allow water to infiltrate to more permeable soils that are thought to occur at depth. The performance of each basin will be determined and compared.

¹For information regarding Vidler Water Company please contact Dorothy Timian-Palmer, P.E. at 1755 E. Plumb Lane, Reno, Nevada 89502, phone: (702)329-6022

Seven soil borings were drilled in and around the MBT Ranch properties. These soil borings were used to evaluate the lithologic characteristics of the vadose zone materials and to determine the most appropriate site for the pilot recharge facility. It is evidenced from the soil borings that the lithologic materials coarsen to the south and east throughout the MBT Ranch properties. It was also confirmed through the soil boring drilling program that no perched water exists within the project area even though the site has much interfingering of fine grained clays and silts with coarse sands and gravels.

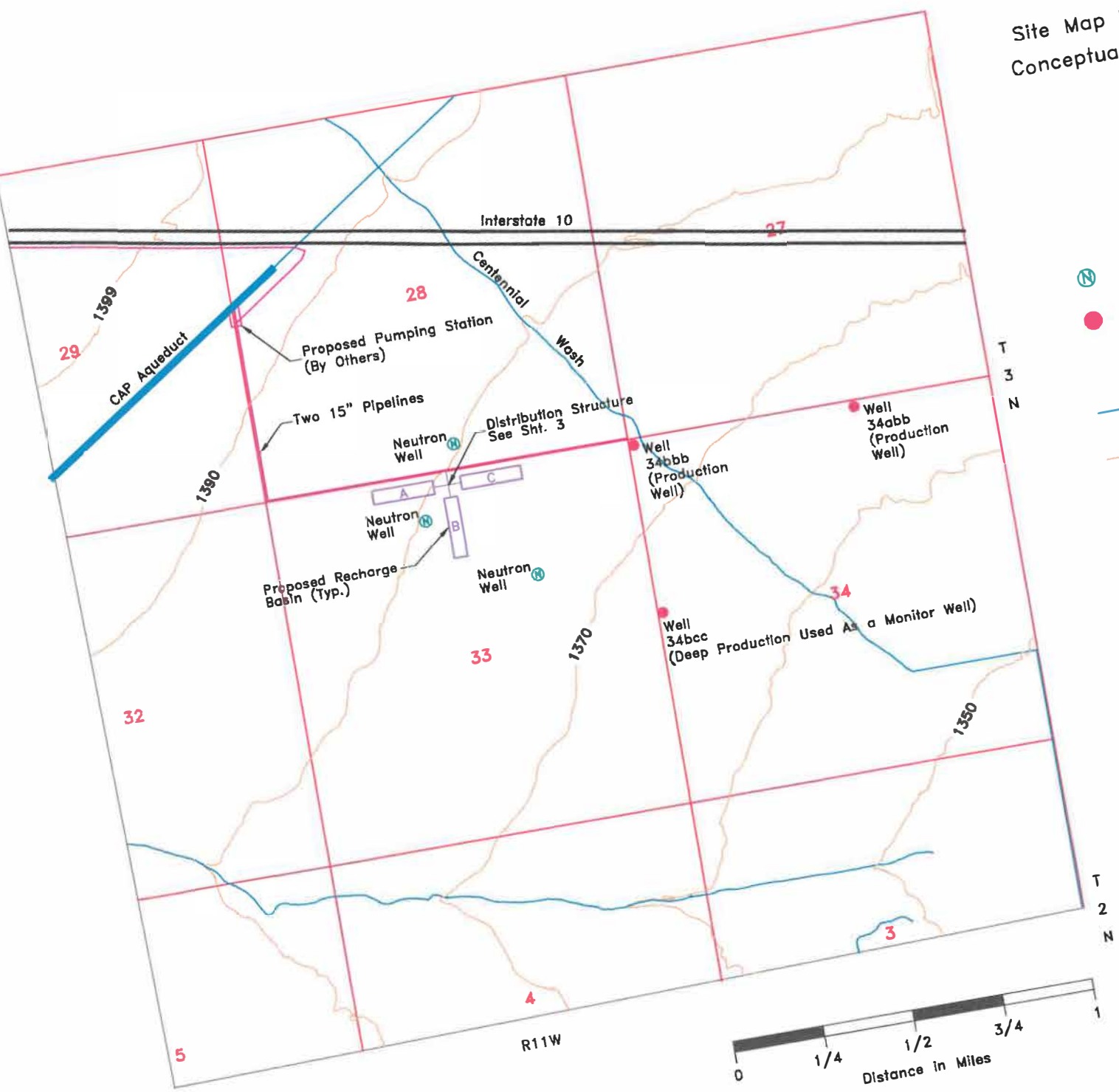
The pilot scale facility was sited in Township 3 North, Range 11 West, Section 33 for the following reasons: (1) this area is close to the 15 inch discharge pipelines that will be used to convey the source water to the recharge facility, (2) the operation of the pilot scale facility in Section 33 will not disrupt any ongoing farming activities, (3) this location is outside the 100 year floodplain zone, and (4) this location uses the natural topographic gradient to gravity flow water to the site.

The project will be monitored using an existing down gradient production well located at B(3-11)34bcc. This well will be used to monitor changes in groundwater levels during the pilot project testing phase as well as for any groundwater quality sampling that may be required as part of this project.

Water leaving the basins at the pilot scale recharge facility will also be monitored through the use of three neutron logging wells. These wells will help determine the wetting front as water migrates through the soils. The neutron logging wells will be useful in evaluating the depth the migrating water reaches as it leaves the basins and moves through the soil profile. Data will be collected as to the effectiveness of the vadose zone recharge wells in transmitting water to more permeable units at depth.

The MBT Ranch Recharge Facility will not impact any land owners or well users due to its remote location within the Harquahala Valley. With depths to water approximately 400 feet below land surface there is a vast amount of storage available for the recharge water. The vast storage space and the ability to recover the recharged water by existing wells makes this site one of the best facilities to recover recharge water from existing infrastructure for the Arizona Water Banking Authority program.

Site Map Showing Plan View of
Conceptual Facility Basin Designs



- Explanation**
- Ⓝ Neutron Logging Well
 - Wells
 - Recharge Basin
 - Stream Channel
 - Topographic Contour

Scale is 1:24,000
7 1/2 US Geological Survey
Topographic Maps
Lone Mountain and
Courthouse Well Quadrangles

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 GARY G. SMALL, M.S., P.G., C.E.I.
 1220 S. PARK LANE, SUITE 5 TEMPE, AZ 85281
 TELEPHONE: 602-517-9050 FAX: 602-517-9049



United States Department of the Interior

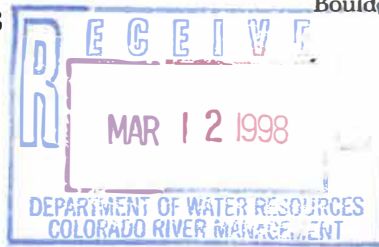
BUREAU OF RECLAMATION
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, NV 89006-1470

TIM HENLEY

IN REPLY REFER TO:

BCOO-4443

WTR-4.10



MAR 12 1998

To: Parties Interested or Potentially Interested in a Proposed Rule for Offstream Storage of Colorado River Water in the Lower Division States

Subject: Public Meeting on Proposed Rule for Offstream Storage of Colorado River Water and the Draft Programmatic Environmental Assessment (Draft EA)

The Bureau of Reclamation received additional requests for a public meeting in response to the notice of proposed rulemaking for the subject rulemaking action that was published on December 31, 1997 (62 FR 68491). In response to those requests, Reclamation has decided to hold a public meeting on the proposed rule. The meeting will be held in Ontario, California, on Friday, March 27, 1998, at the Marriott Hotel Airport, 2200 East Holt Boulevard.

This public meeting will be conducted as an open house where Reclamation will discuss and answer questions from the public on various aspects of its proposed rule and Draft EA. While spontaneous questions and answers will be accommodated in the meeting, attendees are encouraged to submit questions they may have in advance so that more thoughtful responses may be provided. This information should be provided to:

Mr. Dale Ensminger
Boulder Canyon Operations Office
Bureau of Reclamation
PO Box 61470
Boulder City, Nevada 89006-1470
(702) 293-8659
email: densminger@lc.usbr.gov

The meeting will commence at 2 p.m. and will continue until all persons wishing to speak have had an opportunity to do so or 6 p.m., whichever is earlier. In order to allow an opportunity to everyone who wishes to participate, individual questions and comments may be limited. All participation will become a part of the public record.

Reclamation will continue to accept written comments on the proposed rule and the Draft EA. Comments must be received by Reclamation on or before April 3, 1998, and meet the criteria set forth in the December 31, 1997 notice of proposed rulemaking.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward Milner".

ACTING FOR

Robert W. Johnson
Regional Director

DRAFT

Arizona Water Banking Authority
500 North Third Street, Phoenix, Arizona 85004
Telephone 602-417-2418
Fax 602-417-2401



AUTHORITY MEMBERS
Rita P. Pearson, Chairman
Tom Griffin, Vice-Chair
Bill Chase, Secretary
Grady Gammage, Jr.
Richard S. Walden

EX OFFICIO MEMBERS
Senator Pat Conner
Representative Gail Griffin

Bureau of Reclamation, Administrative Record
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, NV 89006-1470

Dear Sir or Madam,

On behalf of the Arizona Water Banking Authority, I am submitting the Authority's comments on the Bureau of Reclamation's proposed interstate water banking rule titled "Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States; Proposed Rule."

After the proposed rule was issued, Authority staff began a process of careful review and solicitation of comments from the public. Authority staff provided an overview of the proposed rule at its January and February monthly meetings and at several other meetings of water users around the state. At the January, February, and March Authority meetings, the Authority took comments from the public on the proposed rule. The Authority also mailed to over 300 people copies of the rule, an outline of the rule's salient points, and a letter requesting feedback.

The attached comments represent a broad range of interests and perspectives. We are pleased to provide the Bureau with this consensus-based document.

Very truly yours,

Rita Pearson, Chairman
Arizona Water Banking Authority

encl.

ARIZONA WATER BANKING AUTHORITY
COMMENTS ON BUREAU OF RECLAMATION,
DEPARTMENT OF THE INTERIOR,
PROPOSED 43 CFR PART 414: OFFSTREAM STORAGE
OF COLORADO RIVER WATER
AND INTERSTATE REDEMPTION
OF STORAGE CREDITS IN THE LOWER DIVISION STATES.

Submitted March __, 1998

The Arizona Water Banking Authority ("AWBA") hereby submits the following comments and suggested amendments to the proposed rule referred to above. The AWBA is an authority of the State of Arizona specifically authorized by Arizona law to participate in the type of transactions described by the proposed rule. The AWBA is therefore keenly interested in the rule.

It is the position of the AWBA that the interstate transactions described by the proposed rule could be of great benefit in allowing the States of the Lower Division of the Colorado River to make greater and more efficient use of their mainstream Colorado River allocations within the existing framework and restrictions of the Law of the River. The United States Bureau of Reclamation and its staff should be commended for their efforts in facilitating these interstate transactions through the proposed rule.

Because of the significance of the proposed rule, however, the rule must be drafted precisely to describe the type of interstate transaction that fits within the existing Law of the River and to exclude any suggestion that the Law of the River is being altered or broadened to allow interstate movement of Colorado River water beyond what is already allowed. To that end, the AWBA submits the following comments and suggested amendments.

* * *

Rule Section: Preamble

Comment: The preamble language to the proposed rule suffers from two related flaws--the language is not sufficiently detailed and descriptive of the type

of transaction contemplated by the rule, and the language seems to encourage parties to use the rule for purposes not currently contemplated.

For the last several years, Arizona and the AWBA have been promoting interstate water banking transactions as a means to provide the three Lower Division States of the Colorado River fuller use of their mainstream apportionments by storing currently unused apportionment for future use during times of shortage along the river. For this purpose, the AWBA believes that a very limited rule is necessary to provide the outline of the procedure under which 1) one state would finance the storage of mainstream water in another state; 2) the state in which the storage occurred would create intentionally unused apportionment in the Colorado River by using the previously stored water in place of part of its mainstream apportionment; and 3) the state that had financed the storage would take the intentionally created unused apportionment from the mainstream under the authority of Article II(B)(6) of the Decree.

The preamble language and the proposed rule employ what could be viewed as much broader language than is necessary to implement the type of interstate transaction that is of interest to the AWBA. The language does not clearly describe the transactions that are the subject of the rule. This problem is then compounded with statements such as, “States are encouraged to define the term ‘authorized entity’ broadly so as not to exclude appropriate entities potentially interested in entering into arrangements to develop or acquire water storage credits on an interstate basis.” The AWBA vigorously objects to the concept of adopting a rule, and, only then, deciding what is meant by that rule.

In the following comments to the proposed rule itself, the AWBA suggests specific amendments to the language which would clarify and focus the proposed rule. The AWBA recommends the preamble be redrafted to reflect those amendments.

* * *

Rule Section:

Title

Comment:

The AWBA finds that use of the terms “redemption” and “Storage Credit”¹ in the title and throughout the proposed rule mischaracterizes the

¹ Terms that are defined by the proposed rule are denoted throughout these comments by capitalization.

banking operations of the AWBA and introduces a lack of clarity and ambiguity in the proposed rule.

Use of the terms “redemption” and “Storage Credit” introduces a lack of clarity into the proposed rule about how the interstate transactions are intended to work. In 1996, the State of Arizona recognized that a limited window of opportunity existed on the Lower Colorado River. It recognized that for a limited number of years, Arizona would not fully use its Colorado River apportionment. However, through the Central Arizona Project, Arizona could bring that unused water into the State to be stored underground in its aquifers. Thus, the State enacted the Arizona Water Banking Authority Act, creating the AWBA and providing funding for the off-mainstream storage of Arizona’s unused Colorado River apportionment for its future use.

In the Arizona Water Banking Authority Act, Arizona also allowed its fellow Lower Division States, under certain conditions, also to take advantage of this limited window of opportunity to make use of currently unused water. The mechanism contemplated for such arrangements was for Arizona and another Lower Division State to enter into an agreement under which the other State would fund the delivery and storage of unused Colorado River water in Arizona. *See* A.R.S. § 45-2471. In exchange, the AWBA would agree that in the future, when the other State called upon the AWBA, the AWBA would use that stored water to replace water that Arizona would otherwise divert from the mainstream Colorado River. The Intentionally Created Unused Apportionment would then be available for delivery by the Secretary to the other Lower Division State pursuant to Article II(B)(6) of the Decree. *See* A.R.S. § 45-2472.

If the use of the terms “redemption” and “Storage Credits” in the proposed rule is intended to be used as shorthand terms for the concepts described above, their use leaves the proposed rule unclear as to the exact mechanism intended. If implementing the mechanisms described above is intended by the proposed rule, more precise language describing those concepts should be utilized; if other mechanisms are intended, it is unlikely the AWBA would be authorized to participate in such mechanisms.

In addition, ambiguity results from potential confusion between the interstate transactions addressed by the proposed rule and the actual offstream storage and recovery of mainstream water in the Storing State. There are a number of instances throughout the proposed rule where the terms “Storage Credit” and “redemption” could be construed as referring

to the actual storage and recovery within and by the Storing State for later use as replacement water for Intentionally Created Unused Apportionment. (See, e.g., § 414.3(a), “*An Interstate Storage Agreement will allow an authorized entity in a Storing State to store unused entitlement and/or unused apportionment for the credit of an authorized entity located in a Consuming State and will provide for the subsequent redemption of the credit.*”) This ambiguity is unnecessary and could be cured by more precise language describing the proposed interstate mechanism.

For these reasons, the AWBA recommends that the terms “Storage Credit” and “redeem” or “redemption” be eliminated from the title of the proposed rule and from the proposed rule itself.

**Proposed
Amendment:**

**PART 414--OFFSTREAM STORAGE OF COLORADO RIVER
WATER AND *CREATION AND DELIVERY OF INTENTIONALLY
CREATED UNUSED APPORTIONMENT INTERSTATE
REDEMPTION STORAGE CREDITS* IN THE LOWER DIVISION
STATES**

* * *

Rule Section: § 414.1 Purpose

Comments: As explained above, use of the terms “redemption” and “Storage Credit” results in lack of clarity and ambiguity. The lack of clarity is further demonstrated by citation to Article II(B)(6) of the Decree as legal authority to “develop and redeem storage credits.” If the reader of the proposed rule has considerable understanding of how the interstate mechanism is intended to work, the legal citation can be understood. It is doubtful, however, that a more casual reader of these rules would understand how Article II(B)(6) provides legal authority for this concept.

**Proposed
Amendment:**

This part sets forth the procedural framework for approval by the Secretary of the Interior of interstate agreements for the offstream storage of Colorado River water in the Lower Division States by State-authorized entities consistent with State law. In accordance with the Secretary's authority under Article II (B) (6) of the Decree entered March 9, 1964 (376 U.S. 340), in the case of *Arizona v. California, et al.* as supplemented and amended, this part also includes the ~~procedural~~ framework FOR THE SECRETARY TO MAKE AVAILABLE INTENTIONALLY CREATED

UNUSED APPORTIONMENT TO LOWER DIVISION STATES
PURSUANT TO INTERSTATE STORAGE AGREEMENTS ~~to develop
and redeem storage credits associated with Colorado River water stored
offstream by authorized entities consistent with State law.~~ This part does
not address intrastate storage or distribution of water not subject to an
Interstate Storage Agreement.

* * *

Rule Section: § 414.2 Definition of “Authorized Entity”

Comment: The phrase “or other entity . . . holding entitlements” suggests that all entities must hold an entitlement in order to qualify as an “Authorized Entity.” The AWBA does not hold an entitlement. Holding an entitlement does not need to be a prerequisite to participate in Interstate Storage Agreements. It is of much greater significance that the entities be specifically authorized to participate by State law because the transactions involve the apportionments to Colorado River Water held by the individual States.

The fourth item on the list in § 414.2 is unnecessary. It uses the terms “redeem” and “Storage Credits,” which are discussed above, and creates further confusion or redundancy by suggesting that the terms mean something other than developing or acquiring Intentionally Created Unused Apportionment, which is specifically mentioned in items 2 and 3 in the list. This fourth item should be deleted from the proposed rule.

**Proposed
Amendment:**

Authorized entity means a State water banking authority, or other entity of a Lower Division State ~~holding entitlements to Colorado River water,~~ expressly authorized pursuant to applicable laws of Lower Division States to:

- (1) Enter into Interstate Storage Agreements;
- (2) Develop intentionally created unused apportionment; OR
- (3) Acquire the right to use intentionally created unused apportionment; ~~or~~
- (4) ~~Develop or redeem storage credits for the benefit of an authorized entity in another Lower Division State.~~

* * *

Rule Section: § 414.2 Definition of “Consuming State”

Comment: For the reasons discussed above, the phrase “redeeming storage credits” should be deleted.

Proposed Amendment: *Consuming State* means a Lower Division State where INTENTIONALLY CREATED UNUSED APPORTIONMENT ~~water made available by redeeming storage credits is or~~ will be used.

* * *

Rule Section: § 414.2 Definition of “Intentionally Created Unused Apportionment”

Comment: This definition should specify that Intentionally Created Unused Apportionment is created by the Storing State using water previously stored pursuant to an Interstate Storage Agreement in place of water that would otherwise be diverted by the Storing State from the Colorado River. This mechanism is the only one mentioned in the proposed rule, but the proposed rule never specifies that this is the only allowable mechanism. Other mechanisms that might create Intentionally Created Unused Apportionment, such as land fallowing, would require limitations and details not established by the proposed rule. Also, any intimation that Intentionally Created Unused Apportionment could be created through the forbearance from use of Entitlements not previously exercised, which would have a detrimental impact on other entitlement holders, should be eliminated.

Because Article II(B)(6) of the Decree is the legal authority by which Intentionally Created Unused Apportionment is to be made available by the Secretary to a Consuming State in satisfaction of an Interstate Storage Agreement, that provision should be cited.

For the reasons discussed above, the phrase “redemption of storage credits” should be deleted.

Proposed Amendment: *Intentionally created unused apportionment* means unused apportionment that is created solely as a result of ~~an agreement within~~ a Storing State USING WATER PREVIOUSLY STORED PURSUANT TO AN INTERSTATE STORAGE AGREEMENT IN PLACE OF WATER WITHIN ITS APPORTIONMENT THAT THE STORING STATE WOULD HAVE OTHERWISE DIVERTED FROM THE MAINSTREAM for the purposes of making Colorado River water available for ~~use in~~ a Consuming State PURSUANT TO ARTICLE

II(B)(6) OF THE DECREE in ACCORDANCE WITH fulfillment of a request for redemption of storage credits pursuant to an Interstate Storage Agreement.

* * *

Rule Section: § 414.2 Definition of “Interstate Storage Agreement”

Comment: Use of the phrase “storage . . . for authorized entities in Consuming State” indicates that those Authorized Entities might hold the right to use the water in storage in the Storing State. Within Arizona, the right to use that water will be held by the AWBA until the right is distributed by the AWBA, in order to create Intentionally Created Unused Apportionment, to Colorado River users in Arizona that would otherwise divert mainstream water. This language should be clarified to specify that an Authorized Entity in a Consuming State will not obtain water rights within the Storing State under an Interstate Storage Agreement.

Use of the phrase “recovery of the stored water” is nondescriptive. The language should specify that the Interstate Storage Agreement shall provide for the creation and delivery of Intentionally Created Unused Apportionment.

**Proposed
Amendment:**

Interstate storage agreement means an agreement, consistent with this part, AMONG AUTHORIZED ENTITIES OF TWO OR MORE LOWER DIVISION STATES that provides for offstream storage of Colorado River water BY AN AUTHORIZED ENTITY in a Storing State for FUTURE USE IN THE STORING STATE IN PLACE OF WATER WITHIN THE STORING STATE’S APPORTIONMENT THAT THE STORING STATE WOULD OTHERWISE DIVERT FROM THE MAINSTREAM, THEREBY MAKING AVAILABLE INTENTIONALLY CREATED UNUSED APPORTIONMENT TO AUTHORIZED ENTITIES IN CONSUMING STATES ~~authorized entities in Consuming States and for the recovery of the stored water.~~ An Interstate Storage Agreement ~~will be among authorized entities of two or more Lower Division States and~~ may include other entities that are determined to be appropriate to the performance and enforcement of the agreement under Federal law and the respective laws of the Storing State and the Consuming State.

* * *

Rule Section: § 414.2 Definition of “Storage Credit”

Comment: As explained above, use of the term “Storage Credit” lacks clarity and is ambiguous. The AWBA recommends the term and definition be deleted from the proposed rule.

Proposed Amendment: ~~Storage Credit refers to an accounting device to reflect a quantity of Colorado River water that is stored offstream.~~

* * *

Rule Section: § 414.2 Definition of “Storing State”

Comment: The definition does not tie water storage to interstate transactions contemplated by the proposed rule. Therefore, any state in which Colorado River water is stored offstream meets the definition of this term. The proposed rule should be amended to more specifically define a Storing State as one participating in an interstate transaction under the proposed rule.

Proposed Amendment: *Storing State* means a Lower Division State in which water is stored off the mainstream FOR FUTURE USE IN THAT STATE, IN ACCORDANCE WITH AN INTERSTATE STORAGE AGREEMENT, IN PLACE OF WATER WITHIN THE STORING STATE’S APPORTIONMENT THAT THE STORING STATE WOULD OTHERWISE DIVERT FROM THE MAINSTREAM.

* * *

Rule Section: § 414.2 Definition of “Unused Entitlement”

Comment: This term is used in the proposed rule only in § 414.3(a). As is discussed below in the Comment on that section, reference to “Unused Entitlement” is inappropriate in that section and should be deleted. Therefore, this term need not be defined.

Proposed Amendment: ~~Unused entitlement means any Colorado River water that is made available to but not scheduled and used by an entitlement holder during the year for which it is made available.~~

* * *

Rule Section: § 414.3(a)

Comment: The citation to Article II(B)(6) of the Decree as legal authority for entering into Interstate Storage Agreements is inappropriate.

The type of interstate transaction that is of interest to the AWBA, in which the AWBA would likely participate and which should be the subject of the proposed rule, are those in which the Lower Division States are allowed to make fuller use of their apportionments of Lower Colorado River water within the language of the Decree. Because those apportionments are held by the three States, only entities specifically authorized by those States should be allowed to participate in these interstate transactions, and only to the extent authorized by each State and in accordance with the Decree. There is nothing in the Decree that would allow an individual entitlement holder to store “unused entitlement” “for the credit of an authorized entity in a Consuming State,” and the AWBA would not participate in a program that allowed for such an event. Therefore, reference to “unused entitlement” should be stricken.

The statement that an Interstate Storage Agreement would allow a Storing State to store “Unused Apportionment” inappropriately implies that offstream storage of mainstream Colorado River Water is not a “Consumptive Use” of the water. Offstream storage fits the definition of “Consumptive Use” in the Decree and the proposed rule. Further, § 414.4 of the proposed rule supports this conclusion in that it provides that the Secretary will charge water stored offstream as a “Consumptive Use” against the Storing State’s apportionment in the year in which the water is diverted from the river and stored underground. The AWBA suggests the statement referring to storing “Unused Apportionment” be eliminated, but in the alternative, the AWBA proposes the language be amended to state that an Interstate Storage Agreement would allow a Storing State to store “otherwise Unused Apportionment” or simply “Colorado River Water.”

For the reasons discussed above, the phrases “for the credit” and “subsequent redemption of the credit” should be deleted. The previously defined term “Interstate Storage Agreement” clarifies the type of transaction that would be allowed by this section. Further, although the AWBA proposes deleting reference to the term “Storage Credit” completely from the proposed rule, if this proposal is not accepted, in this section the defined term “Storage Credit” should be used in place of the undefined term “credit.”

**Proposed
Amendment:**

Sec. 414.3 Interstate storage agreements ~~and redemption of storage credits.~~

(a) Interstate storage agreements. ~~In accordance with Article II(B)(6) of the Decree; a~~ Authorized entities of two or more Lower Division States may enter into Interstate Storage Agreements subject to the approval of the Secretary in accordance with paragraph (b) of this section. ~~An Interstate Storage Agreement will allow an authorized entity in a Storing State to store unused entitlement and/or unused apportionment for the credit of an authorized entity located in a Consuming State and will provide for the subsequent redemption of the credit.~~ Such an agreement must:

* * *

Rule Section: § 414.3(a)(2)

Comment: The proposed rule authorizes only the storage of Basic Apportionment of the Storing State pursuant to an Interstate Storage Agreement. The AWBA is authorized by Arizona law to store any part of Arizona's Colorado River apportionment that is not used or stored by other Arizona water users. This authority includes Arizona's share of Surplus Apportionment. *See* A.R.S. § 45-2401(F)(1). Further, the AWBA asserts that Arizona, and any other Lower Division State, currently has the legal authority to divert for storage or use within that State any water apportioned to it by the Decree. Therefore, the proposed rule should not purport to narrow the Lower Division States' current authority and should allow for storage of Surplus Apportionment, as well as Basic Apportionment, of the Storing State pursuant to an Interstate Storage Agreement.

The provision allowing for storage of a Consuming State's unused apportionment in a Storing State should be amended to clarify that unused apportionment delivered for these purposes would be delivered to the Storing State pursuant to Article II(B)(6) of the Decree.

**Proposed
Amendment:**

(2) Specify whether the water to be stored will be basic apportionment OR SURPLUS APPORTIONMENT OF ~~from~~ the Storing State or unused basic apportionment or unused surplus apportionment of the Consuming State. If it is to be unused apportionment, it may only be made available from the Consuming State BY THE SECRETARY TO THE STORING STATE IN ACCORDANCE WITH ARTICLE II(B)(6) OF THE

DECREE and the agreement must so specify.

* * *

Rule Section: § 414.3(a)(3)

Comment: For the reasons discussed above, the term “Storage Credit” should be deleted.

Proposed Amendment: (3) Specify the MAXIMUM quantity of INTENTIONALLY CREATED UNUSED APPORTIONMENT ~~storage credits associated with water stored offstream~~ that will be available to the authorized entity in the Consuming State ~~at the time water is actually stored under the agreement.~~

* * *

Rule Section: § 414.3(a)(4)

Comment: Instead of protecting the Storing State from requests for Intentionally Created Unused Apportionment by the Consuming State only in the year in which the water is stored, the protection offered the Storing State by this section should guarantee that the Storing State will never be required to create Intentionally Created Unused Apportionment in an amount that exceeds the amount of water currently in storage pursuant to an Interstate Storage Agreement in the Storing State.

For the reasons discussed above, the terms “Storage Credit” and “redeemed” should be deleted.

Proposed Amendment: (4) Specify that INTENTIONALLY CREATED UNUSED APPORTIONMENT MAY NOT BE REQUESTED BY THE AUTHORIZED ENTITY IN THE CONSUMING STATE IN AN AMOUNT THAT EXCEEDS THE AMOUNT OF WATER THEN IN STORAGE PURSUANT TO AN INTERSTATE STORAGE AGREEMENT IN THE STORING STATE. ~~accumulated storage credits may not be redeemed within the same calendar year in which the water that generated those credits was stored offstream.~~

* * *

Rule Section: § 414.3(a)(5)

Comment: November 30 is too late in the year to provide notice to the Storing State that it will be required to create Intentionally Created Unused Apportionment in the following year. The proposed rule should allow the parties and the Secretary to reach a mutually acceptable date for the notice in the Interstate Storage Agreement.

For the reasons discussed above, the term “Storage Credit” should be deleted.

**Proposed
Amendment:**

(5) Specify that, BY A DATE CERTAIN TO BE SPECIFIED IN THE INTERSTATE STORAGE AGREEMENT, the authorized entity in the Consuming State will provide notice to the Lower Division States and to the Secretary ~~no later than November 30~~ of its intention to request delivery of a specific quantity of INTENTIONALLY CREATED UNUSED APPORTIONMENT ~~Colorado River water by redeeming accumulated storage credits~~ in the following calendar year.

* * *

Rule Section: § 414.3(a)(6) and (7)

Comment: Sections 414.3(a)(6) and (7) are redundant, or at least very closely related, and should be combined.

For the reasons discussed above, the term “Storage Credit” should be deleted.

For the reasons discussed above, the proposed rule should specify that use of previously stored water is the only allowable method to create Intentionally Created Unused Apportionment.

The section should clearly explain the mechanism by which the Storing State creates Intentionally Created Unused Apportionment and how that relates to additional water delivered to the Consuming State.

The section should specify that Intentionally Created Unused Apportionment created by the Authorized Entity in the Storing State should only be made available to the Authorized Entity in the Consuming State.

Proposed

Amendment:

(6) Specify that the authorized entity of a Storing State, after receiving a notice of intention to REQUEST DELIVERY OF A SPECIFIC QUANTITY OF INTENTIONALLY CREATED UNUSED APPORTIONMENT ~~redeem offstream storage credits~~, will USE WATER PREVIOUSLY STORED PURSUANT TO AN INTERSTATE STORAGE AGREEMENT ~~take actions~~ to ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop THE REQUESTED AMOUNT OF intentionally created unused apportionment ~~to offset the delivery of Colorado River water~~ WHICH SHALL BE MADE AVAILABLE BY THE SECRETARY TO THE AUTHORIZED ENTITY ~~for use in the Consuming State in fulfillment of the storage credits.~~

~~(7) Specify which actions the authorized entity will take to develop intentionally created unused apportionment.~~

* * *

Rule Section:

§ 414.3(a)(8)

Comment:

For the reasons discussed above, the term "Storage Credit" should be deleted.

The section should specify that Intentionally Created Unused Apportionment should be delivered to the participating Authorized Entity in the Consuming State.

Proposed

Amendment:

(8) Specify ~~that~~ THE PROCEDURE UNDER WHICH the authorized entity of the Storing State ~~must~~ WILL certify to the Secretary that intentionally created unused apportionment has been OR WILL BE developed that would not otherwise exist and ~~that, the authorized entity~~ will request the Secretary to make available that quantity of Colorado River water TO THE AUTHORIZED ENTITY ~~for use in the Consuming State pursuant to Article II(B)(6) of the Decree to redeem storage credits.~~

* * *

Rule Section:

§ 414.3(b)

Comment:

The word "should" is unclear. If the procedure outlined is mandatory, the word "shall" must be used. If the procedure outlined is permissive, the word "may" must be used.

**Proposed
Amendment:**

b) Approval by the Secretary. A request for approval of an Interstate Storage Agreement SHALL ~~should~~ be made in writing to the Secretary. The request will be acknowledged in writing by the Secretary within 10 business days of receipt. The request SHALL ~~should~~ include copies of the proposed interstate agreement and any additional supporting data that clearly set forth the details of the proposed transaction. . . .

* * *

Rule Section: § 414.3(c)

Comment: For the reasons discussed above, the term “Storage Credit” should be deleted.

This section should be amended to clarify the sequence of events that would occur before water is delivered to the Consuming State.

**Proposed
Amendment:**

(c) Stored water. The authorized entity of the Storing State will account for the water diverted and stored offstream under an Interstate Storage Agreement, and ~~prior to any~~ AFTER RECEIVING FROM AN AUTHORIZED ENTITY IN A CONSUMING STATE A NOTICE OF INTENTION TO REQUEST DELIVERY OF INTENTIONALLY CREATED UNUSED APPORTIONMENT, THE AUTHORIZED ENTITY OF THE STORING STATE ~~redemption of storage credits~~ will certify to the Secretary that SUFFICIENT water ~~associated with storage credits~~ has been stored FOR THE STORING STATE TO CREATE THE REQUESTED AMOUNT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT.

* * *

Rule Section: § 414.3(d)

Comment: For the reasons discussed above, the term “Storage Credit” should be deleted.

This section should more clearly specify that, if all terms of the proposed rule and Interstate Storage Agreement are met, the Secretary will make available the Intentionally Created Unused Apportionment to the Authorized Entity in the Consuming State.

**Proposed
Amendment:**

(d) DELIVERY OF INTENTIONALLY CREATED UNUSED APPORTIONMENT ~~Redemption of storage credits. The~~ IF THE Secretary ~~must be~~ IS satisfied that ALL necessary actions have been taken PURSUANT TO THIS PART AND THE INTERSTATE STORAGE AGREEMENT to develop THE REQUESTED AMOUNT OF intentionally created unused apportionment ~~for redemption of storage credits. Once this determination has been made,~~ the Secretary will make available THE REQUESTED AMOUNT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT TO THE AUTHORIZED ENTITY IN THE CONSUMING STATE ~~a quantity of Colorado River water to redeem those credits~~ consistent with the BCPA, Article II(B)(6) of the Decree, and all other applicable laws. Intentionally created unused apportionment that is developed by the authorized entity of the Storing State will be made available to the authorized entity of the Consuming State and will not be made available to other contractors or Federal entitlement holders.

* * *

Rule Section: § 414.4

Comment: The reporting date should be made more flexible. Under Arizona's underground water storage program, annual reports of water storage are not required to be submitted to the Arizona Department of Water Resources for storage credit calculation until March 31 for the previous year. A.R.S. § 45-875.01. It then can take several months for the Department to review and process those reports. The AWBA would be unlikely to have its credit balance for the previous year until July.

The section should specify that only the Authorized Entity in a Storing State need report storage amounts to the Secretary.

The suggestion that water is stored in the Storing State "on behalf of" water users outside that State should be eliminated.

The description of the accounting for Intentionally Created Unused Apportionment in the Consuming State should be clarified.

For the reasons discussed above, the term "Storage Credits" should be deleted.

**Proposed
Amendment:**

Reporting requirements and accounting UNDER INTERSTATE STORAGE AGREEMENTS ~~for storage credits.~~

Each authorized entity OF A STORING STATE will annually report to the Secretary, BY A DATE TO BE AGREED UPON BY THE PARTIES AND THE SECRETARY ~~by January 31~~, the quantity of water it diverted and stored DURING THE PRIOR YEAR PURSUANT TO AN INTERSTATE STORAGE AGREEMENT AND THE TOTAL AMOUNT OF WATER STORED AND AVAILABLE FOR THE AUTHORIZED ENTITY TO CREATE INTENTIONALLY CREATED UNUSED APPORTIONMENT PURSUANT TO AN INTERSTATE STORAGE AGREEMENT ~~on behalf of authorized users in other Lower Division States and the balance of storage credits remaining in interstate storage for each entity~~ as of December 31 of the prior calendar year. This water will be accounted for, in the records maintained by the Secretary under Article V of the Decree, as a consumptive use in the Storing State for the year in which it is stored. The Secretary will maintain individual balances of THE AMOUNT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT THAT MAY BE REQUESTED BY AN AUTHORIZED ENTITY IN A CONSUMING STATE ~~storage credits established by the offstream storage of water~~ under Interstate Storage Agreements. The balances will be reduced when intentionally created unused apportionment is developed by the authorized entity in a Storing State and made available for use BY AN AUTHORIZED ENTITY in a Consuming State. In the records maintained by the Secretary under Article V of the Decree, the taking of INTENTIONALLY CREATED unused apportionment for use in a Consuming State by an authorized entity in ACCORDANCE WITH AN INTERSTATE STORAGE AGREEMENT ~~redemption of its storage credits~~ will be accounted for as consumptive use by the Consuming State of unused apportionment PURSUANT TO ARTICLE II(B)(6) OF THE DECREE in the year the water is used, the same as with any other unused apportionment taken by that State.

* * *

Rule Section: § 414.5(a)

Comment: The defined term “Interstate Storage Agreement” should be used in place of the undefined term “interstate agreement.”

**Proposed
Amendment:** (a) No guarantee of water quality. The Secretary does not warrant the

quality of water released or delivered under interstate STORAGE agreements, and the United States will not be liable for damages of any kind resulting from water quality problems. The United States will not be under any obligation to construct or furnish water treatment facilities to maintain or improve water quality standards.

* * *

The Arizona Water Banking Authority also endorses and hereby incorporates those comments on the proposed rule submitted by the Arizona Department of Water Resources.

ARIZONA DEPARTMENT OF WATER RESOURCES
COMMENTS ON BUREAU OF RECLAMATION,
DEPARTMENT OF THE INTERIOR,
PROPOSED 43CFR PART 414: OFFSTREAM STORAGE
OF COLORADO RIVER WATER
AND INTERSTATE REDEMPTION
OF STORAGE CREDITS IN THE LOWER DIVISION STATES.

Submitted March __, 1998

I. Introduction

The Arizona Department of Water Resources (“ADWR”) appreciates the opportunity to comment on the Proposed 43 CFR Part 414: Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States, published by the Bureau of Reclamation, United States Department of the Interior. The Bureau and its staff should be commended for their efforts to facilitate resolution of some of the many difficult issues facing users of Colorado River water.

Arizona is very supportive of the proposed rule’s general framework for allowing the States of the Lower Division of the Colorado River to make more efficient use of their apportionments through Interstate Storage Agreements. It is crucial, however, that this proposal in no way impact the basic elements of the Law of the River that guarantee each Lower Division State their current apportionment of mainstream water. ADWR’s primary concern with the proposed rule is that certain imprecise language might be interpreted or viewed as supporting arrangements that are contrary to the existing Law of the River.

ADWR, therefore, submits the following comments to the proposed rule.

II. The proposed rule and its accompanying preamble lack sufficient specificity.

In 1944, the State of Arizona entered into a contract with the Secretary of the Interior for the consumptive use within Arizona of 2,800,000 acre feet of Colorado River water per year. The United State Supreme Court later found that by entering into this contract, the Secretary had apportioned this amount of the mainstream of the Colorado River to Arizona. *Arizona v. California*, 373 U.S. 549 (1963). That apportionment was then incorporated into the Decree issued by the Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964).

The Arizona rights to mainstream Colorado River water that are embodied in the State's contract with the Secretary and in the *Arizona v. California* opinion and Decree were confirmed to the State only after a half century of struggle by Arizona. Therefore, those rights are zealously guarded. The State legislature has reserved to itself the right to impact those rights. See A.R.S. § 45-106.

In 1996, however, Arizona recognized that an opportunity was available for the Lower Division States to make fuller use of the apportionments granted them by the Decree. That opportunity exists only for the next twenty to thirty years, while Arizona is not making full direct use of its apportionment and while excess capacity exists in the Arizona's Central Arizona Project to bring that water into the State for storage in the State's underground aquifers until it is needed during future times of shortage. In order to take advantage of this limited opportunity, the Arizona legislature created and funded the Arizona Water Banking Authority ("AWBA").

It was recognized in Arizona, however, that this opportunity could also be afforded to the other states of the Lower Division. Arizona understands the difficulties faced by its neighboring states. Growth in Nevada continues unabated, and Nevada projects that its mainstream apportionment will be fully put to direct use within the next decade. California has throughout recent history used more mainstream water than the 4,400,000 acre foot annual basic apportionment specified to that state in the Boulder Canyon Project Act and incorporated into the Decree. As the other states of the Lower Division increase their use of water, less water will be available for California's use. Compounding these difficulties, there are limited opportunities within California and Nevada to store significant amounts of Colorado River water within their own states for future use. Both states are struggling to find sufficient Colorado River water for direct use; little opportunity remains for storage for the future.

In contrast, Arizona is still working up to its full apportionment. The Central Arizona Project affords the physical means to divert significant quantities of Colorado River water into central Arizona, and capacity is currently available in the aqueduct for this purpose. Once the water is transported to central Arizona, the State's vast underground aquifers are available to store the water in a cost-effective manner. If California or Nevada were to choose to fund the transportation and storage in Arizona of currently unused Arizona apportionment, Arizona could use that water in the future, leaving more water on the mainstream for the other Lower Division states, thus abating some of the water problems faced by those states.

Thus, Arizona recognized that it had a unique opportunity that could benefit all three Lower Division States. It was therefore decided, through the AWBA enabling legislation, that Arizona would offer to share that opportunity with California and Nevada, but, understandably, only on the condition that Arizona not be harmed by such arrangements. In particular, the integrity of the Law of the River, which protects Arizona's Colorado River apportionment, cannot be in any way threatened.

In summary, from Arizona's perspective, it was for the limited purpose of allowing the

other two Lower Division States to take advantage of the limited opportunity to store water now, when it is available, for future use that the Arizona legislature authorized the mechanism by which Arizona may, under limited conditions, forbear from the full use of its mainstream Colorado River apportionment to make more water available, under Article II(B)(6) of the Decree, to the other Lower Division States. In addition, it is only under the limited circumstances in which Arizona can be assured that the State, its water users and its mainstream Colorado River apportionment would not be adversely impacted that the Arizona legislature has authorized Arizona's participation in such arrangements.

In view of this background, ADWR has concerns that certain provisions of the proposed rule and certain statements in the preamble expressly or impliedly indicate that the proposed rule could be used in circumstances other than those discussed above. For this reason, the following sections of the proposed rule or statements of the preamble are of concern to ADWR:

a) Definition of "Authorized Entity:" Section V of Preamble; § 414.2 of Proposed Rule

ADWR takes exception to the comment in the preamble to the proposed rule that the term "Authorized Entity" should be defined "broadly, so as not to exclude appropriate entities potentially interested in entering into arrangements to develop or acquire water storage credits on an interstate basis." Quite to the contrary, ADWR asserts that this term should be interpreted very narrowly.

Because the proposed interstate transactions involve the apportionments held by the individual states, Arizona has always viewed these transactions as state-to-state transactions, only to be undertaken by those agencies or instrumentalities clearly authorized, like the AWBA, to act on behalf of its state in these transactions. Entities not clearly authorized to participate should not qualify as "Authorized Entities." In Arizona, the AWBA is the only entity with the authority to participate in the type of interstate transaction contemplated by the proposed rule.

In addition, the type of interstate transaction endorsed by Arizona has been discussed in the Lower Division States for the past several years, the concept has been well developed and its place within the existing Law of the River has been fully explored. Neither the proposed rule or the preamble should encourage individual entitlement holders to exploit the proposed rule for purposes not intended. Arizona will not support a vague rule, the consequences of which cannot be adequately analyzed or foreseen at the time the rule is adopted. Therefore, the rule should very specifically describe which entities qualify as "Authorized Entities."

Arizona recognizes that numerous issues face the states, tribes and other users of the mainstream Colorado River. It is impossible, however, to solve all of the problems with one program or one rule. Resolution of problems should not be attempted by adopting a vague rule that might be later distorted to address an issue not currently contemplated. ADWR continues its

willingness to explore all issues and potential resolutions, and if necessary and appropriate, to support other specific rules tailored to specific issues.

The statement in the preamble that the term “Authorized Entity” should be interpreted broadly should be deleted.

b) Discussion of “Entitlements:” Section V of Preamble: § 414.3(a) of Proposed Rule

As was discussed above, the interstate transactions bear directly on the apportionments held by the Lower Division States. Therefore, they are state-to-state transactions, and individual “Entitlement” holders should not qualify for participation. Reference to entitlement holders participating in the interstate transactions contemplated by the proposed rule should be stricken from the preamble and the proposed rule.

c) Use of the terms “Storage Credit” and “Redemption” throughout the Preamble and Proposed Rule

Use of the terms “Storage Credit” and “redemption” in the proposed rule leads to unnecessary confusion. The terms are not sufficiently clear to provide the reader an accurate understanding of what transactions are contemplated by the proposed rule. In addition, the terms can easily be confused with the offstream storage and recovery of water within the Storing State. The terms should be eliminated and replaced with language that accurately describes the transactions.

d) Measures the Secretary would approve as producing Intentionally Created Unused Apportionment

In the preamble, the Department of Interior solicits comments on whether the proposed rule should specify what types of measures the Secretary would approve as producing Intentionally Created Unused Apportionment. ADWR asserts that Intentionally Created Unused Apportionment should be directly tied to the recovery and use of water previously stored pursuant to the Interstate Agreements. This method is the only method the AWBA is currently authorized to make use of, and it is the only method that has been fully explored. It would be inappropriate to include or allow other methods to be inserted into the Proposed Rule without describing those methods and allowing the opportunity for all interested parties to fully analyze whether other methods are appropriate.

III. Basic or Surplus Apportionment of the Storing State is available for storage in that state.

Section 414.3 of the proposed rule and the discussion of that section in the preamble state that basic apportionment of the Storing State may be stored by the Storing State pursuant to an

Interstate Storage Agreement. The rule excludes by implication storing the Storing State's surplus apportionment for these purposes. There is no legal impediment to any state storing offstream whatever mainstream Colorado River water available to it under the Decree, and the proposed rule should not imply that surplus water could not be stored by the Storing State pursuant to an Interstate Storage Agreement. Therefore, the preamble and proposed rule should be amended to include surplus apportionment of the Storing State as a source of water that could be stored pursuant to interstate storage arrangements.

IV. Secretarial Approval of Interstate Storage Agreements

ADWR agrees that the Secretary has a role to play in the interstate storage arrangements. The proposed rule gives the Secretary a very significant voice by requiring his "approval" of any Interstate Storage Agreement. Section 414.3(b) contains a lengthy, non-exclusive listing of factors the Secretary may consider in the approval process. Section III of the preamble expounds on that list as it pertains to Indian Tribes. ADWR is concerned that the proposed rule seems to place no limits on the issues the Secretary may consider when examining whether to "approve" an Interstate Storage Agreement. The lack of limitations on the Secretary's authority might lead to an attempt to inappropriately link approval of Interstate Storage Agreements with unrelated issues. Therefore, the proposed rule should be more specifically drafted to list only those relevant issues that will be considered by the Secretary prior to approval of an Interstate Storage Agreement, and the preamble should be amended to negate any inference that the Secretary would seek extraneous concessions as a condition of approval.

V. Endorsement of AWBA Comments

The Arizona Department of Water Resources also endorses and hereby incorporates those comments on the proposed rule submitted by the Arizona Water Banking Authority.

ARIZONA WATER BANKING STUDY COMMISSION
Interstate and Intrastate Banking and Marketing Issues Subcommittee
Wednesday, February 25, 1998
10:00 a.m. - 12:00 p.m.

Arizona Department of Water Resources
500 North Third Street
Third Floor Conference Room A
Phoenix, Arizona

AGENDA

- I. Further comments or discussion of USBR Interstate Banking Regulations**

- II. Examples of how water banking integrates with Colorado River management** **Herb Dishlip**

- III. Augmentation issues discussion**
 - A. Short-term supplies**
 - B. Long-term supplies**

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Arizona Water Banking Authority Study Commission at (602) 417-2440 or (602) 417-2455 (TDD). Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA WATER BANKING STUDY COMMISSION

Indian Issues

Subcommittee Members

Wednesday, February 25, 1998

1:00 p.m. - 3:00 p.m.

Arizona Department of Water Resources

500 North Third Street

Third Floor Conference Room A

Phoenix, Arizona

AGENDA

- I. Further comments or discussion of USBR Interstate Banking Regulations**
- II. Issues associated with on-reservation water storage and recovery**
- III. Banking to mitigate off-reservation groundwater overdraft**
- IV. Land leasing for water supply or shortage protection**

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Arizona Water Banking Authority at (602) 417-2440 or (602) 417-2455 (TDD). Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA WATER BANKING STUDY COMMISSION

Financing and Tax Issues

Subcommittee Members

Wednesday, March 4 , 1998

9:30 a.m. - 12:00 p.m.

Arizona Department of Water Resources

500 North Third Street

Third Floor Conference Room A

Phoenix, Arizona

AGENDA

- I. Discussion of in-lieu tax provisions
- II. Discussion of four-cent tax
- III. Review of draft paper regarding interstate water pricing

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Arizona Water Banking Authority Study Commission at (602) 417-2440 or (602) 417-2455 (TDD). Requests should be made as early as possible to allow time to arrange the accommodation.

**ARIZONA WATER BANKING STUDY COMMISSION
Water Banking Benefits Outside of CAP Service Area
Subcommittee Members
Wednesday, March 18, 1998
1:00 p.m. to 3:00 p.m.**

**Arizona Department of Water Resources
500 North Third Street
Third Floor Conference Room A
Phoenix, Arizona**

AGENDA

- | | | |
|-------------|---|----------------------|
| I. | Role of Water Bank for Communities Outside CAP Service Area | Doug Nelson |
| II. | Projections of Water Demands for River Area Communities | Tricia McCraw |
| III. | Grand Canyon Village Proposal | Tom Griffin |
| IV. | Discussion of Exchange Mechanism with River Area Communities | Tom Griffin |
| | Other Items for Consideration | |

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Arizona Water Banking Authority Study Commission at (602) 417-2440 or (602) 417-2455 (TDD). Requests should be made as early as possible to allow time to arrange the accommodation.

**Arizona Water Banking Study Commission
Subcommittee Membership / Upcoming Meetings**

Benefits Outside CAP Service Area Issues

Wednesday, March 18, 1998
1:00 pm to 3:00 pm
Phoenix Office of ADWR
500 North 3rd Street, Phoenix
Conference Room A

Wednesday, April 15, 1998
1:00 pm to 3:00 pm
Phoenix Office of ADWR
500 North 3rd Street, Phoenix
Conference Room A

Indian Issues

Tuesday, March 31, 1998
1:00 pm to 3:00 pm
Phoenix Office of ADWR
500 North 3rd Street, Phoenix
Conference Room A

Wednesday, April 22, 1998
1:00 pm to 3:00 pm
Phoenix Office of ADWR
500 North 3rd Street, Phoenix
Conference Room A

Interstate and Intrastate Marketing Issues

Tuesday, March 31, 1998
9:30 am to 11:30 pm
Phoenix Office of ADWR
500 North 3rd Street, Phoenix
Conference Room A

APRIL - To be determined

Financing and Tax Issues Subcommittee (Previously Planning & Modeling Subcommittee)

Tuesday, March 31, 1998
11:30 am to 12:30 am
Phoenix Office of ADWR
500 North 3rd Street, Phoenix
Conference Room A

APRIL - To be determined