

ARIZONA WATER BANKING AUTHORITY
Wednesday, December 18, 2002

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21	Harry Ruzgerian	213 217 6082
22	Keith Larson	623-445-2414
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25	Dave Crockett	520 887-4192
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30	Careg Houtz ADWP	
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Arizona Water Banking Authority
500 North Third Street, Phoenix, Arizona 85004
Telephone 602-417-2418
Fax 602-417-2401
Web Page: www.awba.state.az.us

PLEASE POST

NOTICE OF PUBLIC MEETING

Pursuant to A.R.S. § 38-431.02, notice is hereby given that there will be a meeting of the Arizona Water Banking Authority Commission on December 18, 2002 at 10:00 a.m. at the Arizona Department of Water Resources, 500 North Third Street, Phoenix, Arizona 85004, third floor conference room. The meeting is open to the general public. A copy of the agenda for the meeting is posted below.

Dated this 17th day of December, 2002

FINAL AGENDA

Arizona Water Banking Authority Commission Meeting

- I. Welcome/Opening Remarks
- II. Approval of Minutes of September 18, 2002 Meeting
- III. Water Banking Staff Activities
 - Deliveries
 - Interstate deliveries
 - Discussion regarding amendment/extension of the agreement for storage at the Central Avra Valley Storage and Recovery Project (CAVSARP)
- IV. Discussion on Indian Firming
 - Overview
 - Potential role of the AWBA
- V. Discussion Regarding Determination of the Authority's Firming Goals
- VI. Discussion Regarding the Facility Inventory Update
- VII. Discussion and Approval of 2003 Annual Plan of Operation
 - Overview of public comments
 - Discussion regarding requests for regional recharge and recovery plans
 - Comments
 - Approval of 2003 Annual Plan of Operation

- VIII. Action on the Approval of the Agreement for the Development of Intentionally Created Unused Apportionment
- Discussion regarding the agreement
 - Potential approval by AWBA members for Chairman to sign agreement
- IX. Call to the Public

Future Meeting Date:
Wednesday, March 19, 2003

*This is a tentative agenda that is subject to change prior to the scheduled meeting date. Please contact the AWBA at (602) 417-2418 24 hours in advance of meeting for final agenda.

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

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Nan Flores at (602) 417-2418. Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA WATER BANKING AUTHORITY
Draft Minutes

September 18, 2002
Arizona Department of Water Resources



AUTHORITY MEMBERS

Joseph C. Smith, Chairman
Tom Griffin, Vice-Chairman
Bill Chase, Secretary
George R. Renner
Richard S. Walden

EX OFFICIO MEMBERS

Representative Mike Gleason
Senator Ken Bennett

Welcome/Opening Remarks

Present at the meeting were Joseph C. Smith, Tom Griffin, Bill Chase, Dick Walden, and George Renner. Sen. Ken Bennett was present via telephone and Rep. Mike Gleason was absent.

Minutes

The Authority approved the minutes from the June 19 and August 21, 2002 meetings.

Water Banking Staff Activities

Tim Henley, manager of the Authority, informed the Authority that the Interstate Water Banking workshop was well received by the public and many entities stated that the information provided was beneficial. Following the workshop, Mr. Henley discussed Nevada's water resources plan at the Central Arizona Water Conservation District (CAWCD) Board's September meeting. Dennis Underwood of the Metropolitan Water District of Southern California (MWD) discussed the status of the California 4.4 plan and California's resources and needs at the same meeting. Mr. Henley reported that the CAWCD Board indicated that they would like Nevada to do a presentation at a later board meeting. Mr. Henley informed the Authority that he has also been attending discussions regarding development of the new CAP agricultural pool policy that will be effective from 2004-2030. Mr. Henley also stated that he had recently met with Dennis Underwood and Harry Ruzgerian of MWD and has invited Mr. Underwood to do a presentation for the AWBA.

Mr. Henley reported that it does not appear as if Tucson is going to come to any conclusions regarding support or opposition to the participation of the AWBA in Herb Kai's Avra Valley project. This project would require the AWBA to make money available to develop infrastructure in exchange for guaranteed storage at the groundwater savings facility. Mr. Henley stated that, absent a position by Tucson, staff will continue with evaluation of the feasibility of this project.

Mr. Henley addressed the issue of the expiration of the appointed Authority member's terms. All of the appointments have expired, however, there probably will be no action taken on this issue until after the gubernatorial election. Pursuant to statute, members can continue to serve until new appointments are made.

Sandra Fabritz updated the Authority on the revision of the Facility Inventory. She has been meeting with staff from the Active Management Areas (AMA) and Central Arizona Project (CAP) to gain input for the inventory that examines the sufficiency of capacity over the next ten years. Initial evaluation of the information shows that sufficient capacity exists. Drafts should be available in the next month for review and public meetings with a final available at the December meeting.

Gerry Wildeman informed the Authority that all of the pending agreements have been signed.

Mr. Henley briefly discussed water deliveries. The Pinal AMA is exceeding projected deliveries and the Phoenix AMA is slightly lower than anticipated. Bill Chase asked whether the interstate water banking that was approved at the June meeting was occurring. Mr. Henley informed him

that the money had been received and the deliveries were being made. He also informed the Authority that there may be additional water that could be offered to Nevada at the end of the year. The original agreement/payment was for 40,000 acre feet, however, due to drought conditions, the Pinal County irrigators have taken more water than that. That additional water could be borne by the AWBA for intrastate purposes but would exacerbate the deficit of funds in the AMA. To preserve carry-over for 2003, the additional water could be offered to Nevada in the reconciliation process.

Discussion Regarding Firming of non-CAP Supplies

Ms. Wildeman discussed the paper prepared to address the firming question asked by Harold Goodman at the last AWBA meeting. Pursuant to the 1999 amendments to the statutes, the AWBA can distribute 4¢ tax credits to firm non-CAP surface water supplies if the credits accrued exceeds the firming need. She informed the Authority that staff encountered the problem of identifying the firming need in the course of preparing this paper. The firming need has been evaluated a number of times between 1997 and today and it has proven to be a dynamic number due to changes in inputs to the model. Staff recommended that the firming number be fixed with the model period 2000-2100, using 1999 reservoir levels and a fixed M&I demand. The assumptions used in the model would be those presented in the AWBA Study Commission's final report with the exception of any that had been changed by policy. Ms. Wildeman continued the discussion and stated that, regardless of the firming need used, the need had not yet been met so this authority could not be exercised at this time. It is anticipated that the firming need for Maricopa County could be exceeded in 2006. Staff also recommended that this authority not be utilized if other water was available to the M&I entities, specifically excess water from CAP.

There was discussion regarding whether policies needed to be adopted. Mr. Goodman informed the Authority that it was not his intention to request a policy regarding this issue. Instead, he merely raised the question to stimulate discussion regarding it. The Authority requested staff to prepare a policy regarding the parameters to be used in developing the firming number for discussion at the December meeting.

Draft 2003 Annual Plan of Operation

Mr. Henley apologized for only including Table 2 of the Plan for this discussion; however, changing conditions regarding water availability rendered the originally prepared draft useless. He stated that the format and content of the Plan will be similar to previous ones and that a new draft should be available the first of October. In summary: (1) 2003 appears to be "business as usual" with about 318,000 acre feet of water available to the AWBA; (2) projected storage at the Hieroglyphic Mountains facility is 22,000 acre feet. This is the first large-scale use of this new facility by the AWBA; (3) 50,000 acre feet has been scheduled at GRUSP but this amount could change if there are interconnect capacity issues; (4) CHCID could fit in because they typically use less than 1,000 acre feet per year; (5) in Tucson, there is discussion occurring with Ron Wong regarding the potential to store at his GSF; and (6) there may be some capacity available at the Clearwater facility operated by Tucson Water. Revenue constraints will impact Pinal County, as the revenues generated (including carry-over from 2002) will only fund about 50% of the average deliveries. The problems in Pinal could also be exacerbated in 2004 by the change in agricultural pool structure. The amounts allocated to the three Pinal County irrigation districts in the draft were based on a pro-rata distribution based on the 2002 Plan of Operation. Mr. Henley also reminded the Authority that an interstate water banking component doesn't show up in the draft plan but could be included in the final. He will now go to Nevada and discuss the possibilities, if any, for interstate water banking in 2003.

There was a question of Mr. Henley whether the amount of water given to the AWBA by CAP is set in October. Mr. Henley replied that the AWBA is last going in to the October allocation process but that it was his impression that after CAP generated a delivery schedule based on the October orders, that they would strive to meet that schedule. Larry Dozier informed the Authority that CAP had similar discussions earlier this year. He stated that they receive requests in October and then lay off leftover water to the AWBA. There was discussion regarding meeting with the AWBA, perhaps in August if the drought continues, to address the possibility of the AWBA moving water from storage at USFs to storage at GSFs. Mr. Dozier stated that it would not be a requirement but it would make sense to discuss the possibility if conditions warrant.

Interstate Water Banking

Mr. Henley reiterated that the AWBA is currently storing water on behalf of Nevada in Pinal County. He then provided a summary of the key points of the Storage and Interstate Release Agreement (SIRA) and discussed the requirements and responsibilities of the signatory parties.

He stated that the Agreement for Development of Intentionally Created Unused Apportionment (ICUA) is still in the drafting phase, however, it is anticipated that it will be presented to the CAWCD Board for discussion at their November meeting and approval at their early December meeting and then to the Authority for approval at the December 18 meeting. He informed the Authority that all of the other parties to the SIRA had approved it and executable copies had been received from the Bureau of Reclamation. It was Mr. Henley's recommendation that the SIRA be signed by all of the other parties prior to signature by the Authority. Mr. Henley expressed his discomfort at signing the SIRA absent an approved ICUA but thought that action should be taken to approve it and authorize signature by the Chairman following approval of the ICUA. He felt that this approval was necessary to give the other entities assurances regarding the Authority's willingness to sign.

A motion was made to approve the agreement and authorize signature by the Chairman following approval of the ICUA. Mr. Henley clarified that it was permissible for the other parties to sign even if the Authority did not. George Renner interjected that he was in agreement with the motion but would like to insure the flow of information regarding the state of Nevada's alternate water resources continued between Nevada and the Authority. Mr. Renner added that he would like to see some periodic reporting, either quarterly or semi-annually, based on staff's recommendation. The motion was approved with all members voting "yes". Jim Davenport of the Colorado River Commission of Nevada addressed the Authority and stated that they appreciate the action taken today and will continue to coordinate with Arizona in this process.

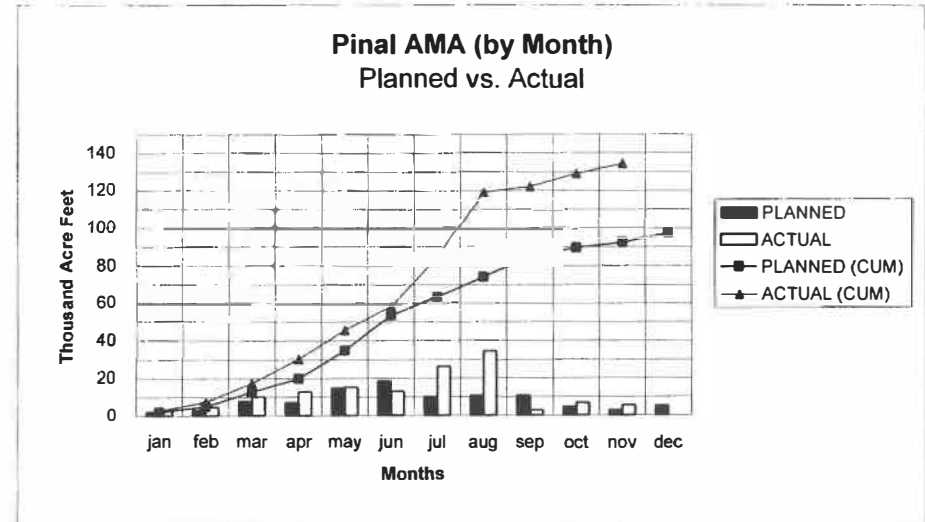
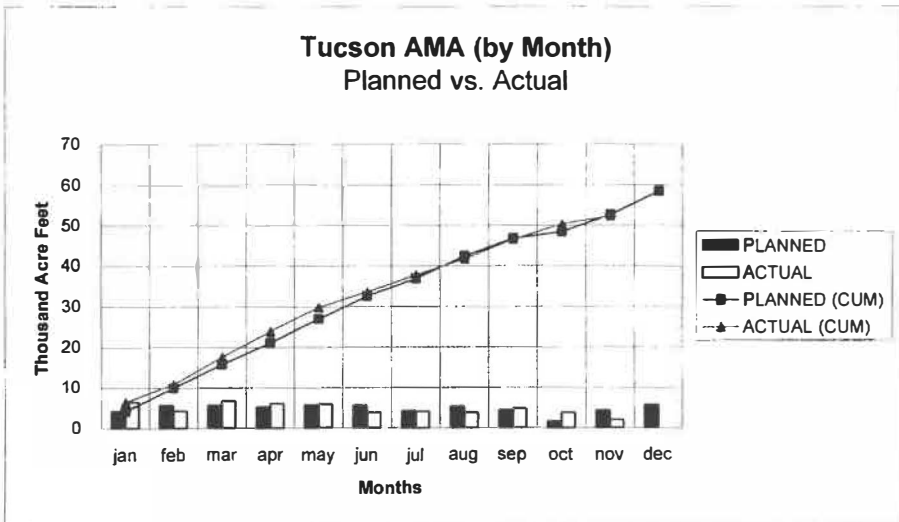
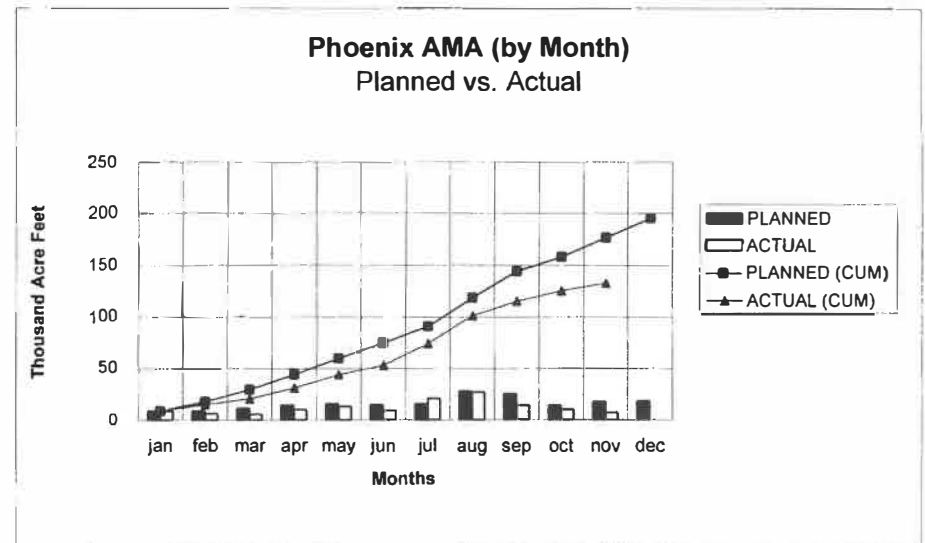
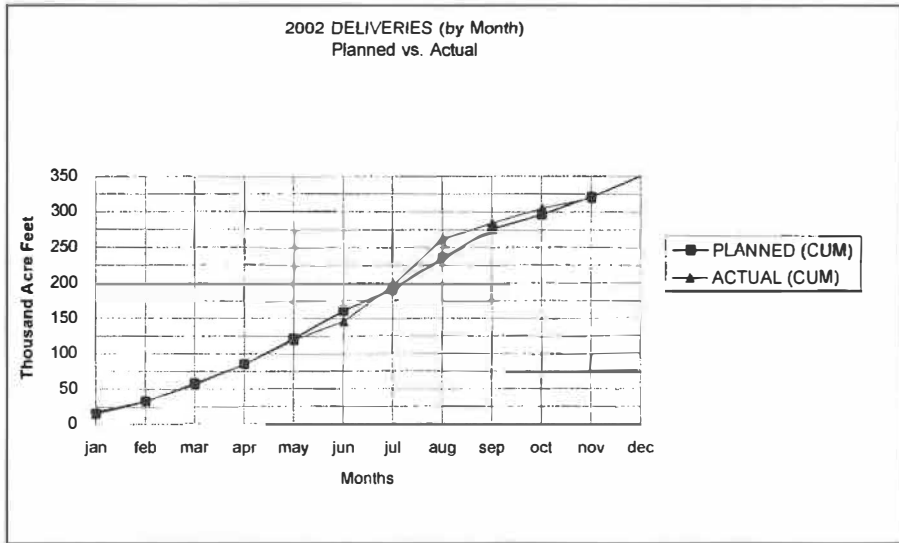
Call to the Public

Mr. Dozier addressed the Authority and stated that the state of Arizona is entering a new era in use of the Colorado River. In 2002, Arizona may actually exceed their 2.8 million acre foot allocation if care is not taken. This means that there will not be an unlimited supply of water available to the AWBA in coming years. This will require more careful consideration of where the water should be stored.

Sharon Megdal questioned the Authority about the schedule for the public meetings associated with the draft Plan of Operation. AWBA staff informed her that the meeting in Tucson is scheduled for October 11, in Phoenix for November 6 and sometime in November for the Pinal AMA. Ms. Megdal also cautioned against carry-over of general fund money.

The meeting adjourned at 11:13 a.m.

2002 Plan of Operation



Actual deliveries updated Plan of Operation Plan Modified	11-Dec-02 1-Jan-02 18-Jun-02	jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	total
Phoenix AMA														
GRUSP		4,300	2,090	304	4,156	3,382	2,996	4,071	5,130	4,363	5,079	3,970		39,841
		4,800	4,800	4,800	4,800	4,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	50,600
AGUA FRIA		1,758	784	3,820	4,181	4,949	4,360	4,243	2,735	0	0	0		26,830
		2,033	2,034	2,033	5,600	6,100	6,100	6,450	7,100	7,100	5,100	5,579	7,100	62,329
CHCID		0	0	21	22	120	100	100	108	330	107	51		959
		50	100	50	100	100	151	125	125	125	191	0	0	1,117
NMIDD		2,619	3,529	0	243	3,000	0	11,076	15,331	6,691	3,419	1,292		47,200
		2,000	2,000	3,200	2,500	3,000	3,500	3,700	9,700	9,600	3,500	2,500	2,000	47,200
QCID		0	0	0	0	0	0	0	2,960	1,944	775	953		6,632
		0	0	0	0	0	0	0	5,711	3,182	1,682	1,202	1,723	13,500
TID		0	0	0	0	0	0	0	0	0	0	0		0
		0	0	0	0	0	0	0	0	0	0	2,000	1,000	3,000
SRP		0	0	1,606	1,600	1,600	1,600	1,600	783	800	800	800		11,189
		0	0	1,600	1,600	1,600	1,600	1,600	800	800	800	800	0	11,200
HIEROGLYPHIC		0	0	0	0	0	0	0	0	0	0	0		0
		0	0	0	0	0	0	0	0	0	0	3,000	3,000	6,000
Subtotal		8,677	6,403	5,751	10,202	13,051	9,056	21,090	27,047	14,128	10,180	7,066	0	132,651
Total to date		8,677	15,080	20,831	31,033	44,084	53,140	74,230	101,277	115,405	125,585	132,651	132,651	132,651
Projected total to date		8,883	17,817	29,500	44,100	59,700	74,851	90,526	117,762	142,369	157,442	176,323	194,946	194,946
Pinal AMA														
CAIDD		0	0	0	0	0	0	6,762	18,738	0	1,866	491		27,857
		0	0	0	0	0	0	0	3,500	7,500	4,000	2,500	3,000	20,500
MSIDD		1,020	1,350	1,970	3,520	4,870	13,000	10,100	3,000	2,000	4,856	5,005		50,691
		510	510	1,350	620	4,870	13,000	11,700	1,700	700	1,000	400	600	36,960
HIDD		1,727	3,310	8,147	9,264	10,307	0	9,452	12,735	813	0	0		55,755
		1,500	2,500	6,400	6,500	10,000	8,000	3,000	6,000	2,500	1,500	1,000	1,000	49,900
Subtotal		2,747	4,660	10,117	12,784	15,177	13,000	26,314	34,473	2,813	6,722	5,496	0	134,303
Total to date		2,747	7,407	17,524	30,308	45,485	58,485	84,799	119,272	122,085	128,807	134,303	134,303	134,303
Projected total to date		2,010	5,020	12,770	19,890	34,760	55,760	70,460	81,660	92,360	98,860	102,760	107,360	107,360
Tucson AMA														
Avra Valley		593	186	469	283	744	624	533	451	690	856	764		6,193
		570	570	570	570	570	570	570	570	570	230	570	570	6,500
Pima Mine		2,464	1,704	2,972	2,775	2,326	1,139	1,633	2,281	2,101	0	257		19,652
		2,100	2,600	2,600	2,100	2,600	2,600	2,100	2,600	2,000	400	1,131	2,600	25,431
Lower Santa Cruz		3,506	2,431	3,369	3,126	2,888	2,077	2,003	346	1,990	2,981	976		25,693
		1,600	2,600	2,600	2,600	2,600	2,600	2,600	1,661	1,742	1,293	972	2,600	25,468
Kai Red Rock		0	0	0	0	0	0	0	780	771	167	4		1,722
		0	0	0	0	0	0	0	500	500	0	0	0	1,000
Subtotal		6,563	4,321	6,810	6,184	5,958	3,840	4,169	3,858	4,781	3,837	1,997	0	51,538
Total to date		6,563	10,884	17,694	23,878	29,836	33,676	37,845	41,703	46,484	50,321	52,318	52,318	51,538
Projected total to date		4,270	10,040	15,810	21,080	26,850	32,620	37,890	43,221	48,033	49,956	52,629	58,399	58,399
TOTAL		17,987	15,384	22,678	29,170	34,186	25,896	51,573	65,378	21,722	20,739	14,559	0	319,272
Total to date		17,987	33,371	56,049	85,219	119,405	145,301	196,874	262,252	283,974	304,713	319,272	319,272	319,272
Projected total to date		15,163	32,877	58,080	85,070	121,310	163,231	198,876	242,643	282,762	306,258	331,712	360,705	360,705

DRAFT
AMENDMENT AND EXTENSION
OF THE
AGREEMENT BETWEEN THE ARIZONA WATER BANKING AUTHORITY
AND THE CITY OF TUCSON PROVIDING FOR THE
STORAGE OF CENTRAL ARIZONA PROJECT WATER AT
THE CENTRAL AVRA VALLEY STORAGE AND RECOVERY PROJECT

- A. On January 4, 1999, the ARIZONA WATER BANKING AUTHORITY (“Authority”) and the CITY OF TUCSON, TUCSON WATER (“Tucson”) entered into the Agreement between the Arizona Water Banking Authority and the City of Tucson Providing for the Storage of Central Arizona Project Water at the Central Avra Valley Storage and Recovery Project (the “Agreement”).
- B. The Authority and Tucson hereby amend and extend the Agreement as provided in this Amendment and Extension of the Agreement, dated _____, 2002.
- C. Subarticle 2.4 of the Agreement is deleted and replaced with the following:
- 2.4. WHEREAS, the Central Arizona Water Conservation District and the Authority have entered into an agreement providing for the purchase and delivery of excess Project water (“Excess Water Contract”);
- D. Article 3 of the Agreement is deleted and replaced with the following:
3. Definitions
- 3.1. “Authority Water” shall mean Excess Water made available by CAWCD to the Authority for Water Storage, which water would not otherwise have been used within Arizona.
- 3.2. “CAVSARP” shall mean the Underground Storage Facility operated by Tucson pursuant to Underground Storage Facility Permit, No. 71-578806 and located in Section 31, Township 13 South, Range 11 East and Sections 5, 6 and 8, Township 14 South, Range 11 East, GSRB&M.
- 3.3. “CAVSARP Turnout” shall mean the point at which Authority water is diverted from the Project canal for delivery to the CAVSARP.
- 3.4. “Excess Water” shall mean Project water which, in any year, is available for delivery and has not been scheduled for delivery pursuant to a contract with the United States or a subcontract with the United States and CAWCD providing for Project Water service for a period of 50 years or more.
- 3.5. “Party or Parties” shall mean either one or, in the plural, both of the parties to this Agreement.
- 3.6. “Point(s) Of Delivery” shall mean the point(s) at which Authority Water is diverted into the CAVSARP basins for the Authority and measured at the flow meters represented on the attached Appendix A.
- 3.7. Terms defined in A.R.S. § 45-802.01 shall have the meanings ascribed to them therein. The first letters of such terms are also capitalized herein.
- E. Article 5 of the Agreement is deleted and replaced with the following:

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5. Term

This Agreement shall terminate on September 30, 2008, unless the Parties agree in writing to extend the term or unless it is sooner terminated or canceled in accordance with Subarticle 11.4 or Articles 15, 20, 27 or 28 of this Agreement.

F. Subarticle 7.2 of the Agreement is deleted and replaced with the following:

7.2. Authority Water made available pursuant to this Agreement shall be stored by Tucson only at the CAVSARP. Tucson shall be responsible for all expenses and administrative requirements, including filing annual reports with the Arizona Department of Water Resources, associated with maintaining the CAVSARP permit. Tucson's storage of Authority Water at the CAVSARP shall at all times comply with Underground Storage Facility Permit No. 71-578806. If Underground Storage Facility Permit No. 71-578806 is canceled or expires for any reason, the Authority may discontinue deliveries of Authority Water to Tucson.

G. Article 10 of the Agreement is deleted and replaced with the following:

10. Rates

The water storage fee for any water stored by Tucson on behalf of the Authority pursuant to this Agreement is \$11.71 for each acre foot of water delivered to the Point(s) of Delivery at the CAVSARP.

H. Subarticle 12.3.2 of the Agreement is deleted and replaced with the following:

12.3.2. methods required by Underground Storage Facility Permit No. 71-578806; and/or

I. Subarticle 12.6 of the Agreement is deleted and replaced with the following:

12.6. Tucson shall determine evaporation losses representative of the conditions at or near CAVSARP using the method indicated in Underground Storage Facility Permit No. 71-578806, or using actual measurement, when available. Any other losses in the CAVSARP shall be calculated using generally accepted engineering practices.

J. Article 13 of the Agreement is deleted and replaced with the following:

13. Water Losses

13.1. The Authority shall not be responsible to pay CAWCD for any Authority Water that is lost or unaccounted for between the CAVSARP Turnout and the Point(s) of Delivery and that exceeds five (5) percent of the Authority Water delivered to the CAVSARP Turnout. Tucson shall be solely responsible to pay CAWCD for any Authority Water that is lost or

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unaccounted for between the CAVSARP Turnout and the Point(s) of Delivery and that exceeds five (5) percent of the Authority Water delivered to the CAVSARP Turnout.

13.2. Water delivered to the CAVSARP for storage but which exits the facility, other than by infiltration and evaporation, will be calculated using generally accepted engineering practices and water-level readings from the gauges in the basins. Water losses determined pursuant to this Subarticle 13.2 shall be apportioned by Tucson among the Authority and other entities storing water at the CAVSARP based on the amount of water delivered at the CAVSARP Turnout for each entity during the period the loss occurred.

K. Subarticle 14.2.2 of the Agreement is deleted and replaced with the following:

14.2.2. in accordance with the requirements of Underground Storage Facility Permit No. 71-578806.

L. Subarticle 20.1 of the Agreement is deleted and replaced with the following:

20.1. If the Excess Water Contract between the Authority and CAWCD is terminated, the Authority may terminate this Agreement, which termination shall be effective fifteen (15) days after mailing written notice of termination to Tucson; or

M. Article 28 of the Agreement is deleted and replaced with the following:

28. Consistency with Other Agreements

This Agreement is intended to be consistent with the Excess Water Contract between the Authority and CAWCD. Upon agreement by the Parties, this Agreement may be amended or supplemented to conform to an amended or supplemented Excess Water Contract; provided, if the Parties cannot agree within 90 days after written notice from either Party to the other Party to amend or supplement the Agreement pursuant to this Article 28, either Party may terminate this Agreement.

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

ARIZONA WATER BANKING AUTHORITY

Attest: _____ By: _____
Secretary Chairman

CITY OF TUCSON

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Attest: _____ By: _____

Title: _____ Title: _____

FIRMING CAP WATER FOR INDIAN WATER RIGHT SETTLEMENTS & THE ROLE OF THE AWBA

FIRMING FOR INDIAN SETTLEMENTS & THE ROLE OF THE AWBA

~ BACKGROUND ~

~ OBLIGATION TO FIRM ~

~ OPTIONS ~

~ RECOMMENDATIONS ~

FIRMING FOR INDIAN SETTLEMENTS & THE ROLE OF THE AWBA

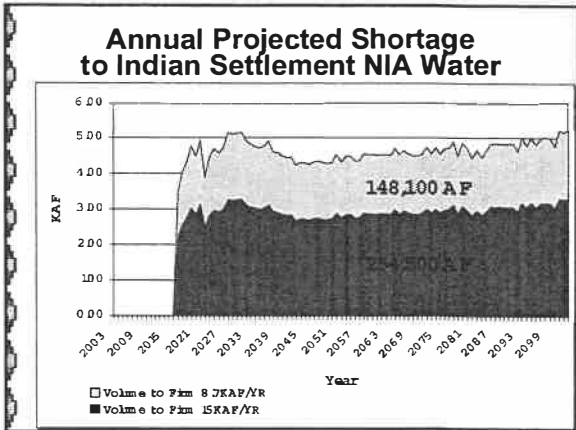
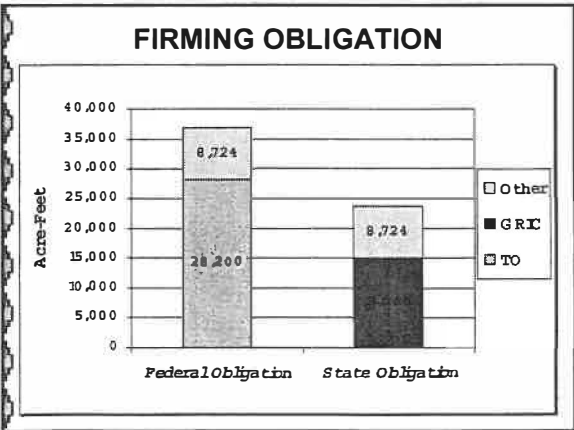
BACKGROUND

- **TRADE-OFF FOR REALLOCATION OF M&I PRIORITY WATER**
 - Volume = M&I Allocation less ASARCO transfer (65,648 AF - 5,000 AF = 60,648 AF)

FIRMING FOR INDIAN SETTLEMENTS & THE ROLE OF THE AWBA

BACKGROUND

- **SECTION 105 OF THE CAP SETTLEMENT**
 - Requires the State and the Secretary to develop a Joint FIRMing Program to ensure that 60,648 AF of Agriculture Priority CAP water, for 100 years, will be delivered in the same manner as water with an M&I Priority is delivered during water shortages.



**FIRMING FOR INDIAN
SETTLEMENTS
&
THE ROLE OF THE AWBA**

Why AWBA?

- AWBA has existing authority and has performed a similar role for M&I
- Existing Funding Authority
 - General Fund
 - Withdrawal Fees
- Can integrate needs into AWBA Plan

**FIRMING FOR INDIAN
SETTLEMENTS
&
THE ROLE OF THE AWBA**

OPTIONS

- Recharge & Recovery
- Payment In-Lieu of Damages
- Demand Reduction

**FIRMING FOR INDIAN
SETTLEMENTS
&
THE ROLE OF THE AWBA**

OPTIONS

- **Recharge & Recovery**
 - On-Reservation
 1. Under Existing State Law
 2. Contractual Arrangement **
 - Off-Reservation
 1. Direct Delivery of Recovered Water
 2. Recovery through Exchange

**FIRMING FOR INDIAN
SETTLEMENTS
&
THE ROLE OF THE AWBA
NON-AWBA OPTIONS**

- **Payment In-Lieu of Damages**
- **Demand Reduction**
 - Water conservation
 - Minimizing waste of all water supplies
 - Maximizing efficiency in indoor and outdoor watering
 - Encouraging reuse of water supplies
 - Forbearance/Land Fallowing

**FIRMING FOR INDIAN
SETTLEMENTS
&
THE ROLE OF THE AWBA
RECOMMENDATIONS**

1. Conduct a Workshop Session on this Subject to Provide Additional Information (February).
2. Explore the Need for the Formation of a Technical Advisory Group to Develop Alternatives that Benefit the State and the Tribes.

DRAFT-For Discussion Only

RESOLUTION 2002-2

of the

Arizona Water Banking Authority

WHEREAS, A.R.S. § 45-2401 sets forth that the Arizona Water Banking Authority (“Authority”) is authorized to store water brought into the state through the Central Arizona Project (“CAP”) to protect Arizona municipal and industrial water users against future water shortages on the Colorado river and disruptions of operation of the CAP;

WHEREAS, A.R.S. § 45-2457 authorizes the Authority to distribute long-term storage credits accrued with general fund appropriations and 4¢ *ad valorem* tax revenues to provide the protection against Colorado River shortages or CAP operational outages (“M&I protection”);

WHEREAS, the Arizona Water Banking Authority Study Commission (“Study Commission”) published a final report (Report) in December 1998 that presented findings and recommendations regarding the potential for shortages to Arizona’s Colorado River supply;

WHEREAS, the Authority recognizes the necessity for planning purposes of more clearly identifying the number of long-term storage credits needed for M&I protection and identifying the M&I protection time period;

WHEREAS, the Authority recognizes that the tool utilized to calculate the number of long-term storage credits needed for M&I protection (CRSSez Model) is a dynamic model that can be modified by the U.S. Bureau of Reclamation at any time ;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Authority, as follows:

1. That the five assumptions recommended by the Study Commission on page 12 of the Report will be utilized in modeling done to determine the M&I protection firming number

DRAFT-For Discussion Only

unless those assumptions are modified by policy changes that affect the operation of the Colorado River. If such changes occur, the assumptions will be modified to reflect the change.

2. That the number of long-term storage credits needed for M&I protection will be developed for the 100 year period beginning in 2000 and ending in 2100 and calculated based on the assumptions.

3. That the model used to determine the number of long-term storage credits needed for M&I protection will include the following parameters: 1) 1906-2000 time period for historic hydrology; 2) January 2000 reservoir levels for Lake Mead and Upper Basin reservoirs; 3) the M&I shortage will be firmed to 621,000 acre feet through 2044 and 649,000 acre feet from 2044-2100; and 4) the Arizona M&I demand from 2000.

4. That the total number of long-term storage credits needed for M&I protection for the CAP M&I subcontracts is _____ million acre feet to be allocated 58% to Maricopa County, 32% to Pima County and 10% to Pinal County.

ARIZONA WATER BANKING AUTHORITY
ANNUAL PLAN OF OPERATION
2003



Joseph C. Smith, Chairman

December 2002

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INTRODUCTION

The Arizona Water Banking Authority (AWBA) was created to store Arizona's unused Colorado River water entitlement in western, central and southern Arizona to develop long-term storage credits to: (1) firm existing water supplies for municipal and industrial users (M&I) along the Colorado River and Central Arizona Project (CAP) M&I users during Colorado River shortages or CAP service interruptions; (2) help meet the water management objectives of the Groundwater Code; and (3) assist in the settlement of American Indian water rights claims. Changes in the AWBA's enabling legislation in 1999 authorized the AWBA to participate in other water banking activities, however, no new water banking activities are included in this annual Plan of Operation.

The AWBA's storage (or banking) of water is accomplished through the Underground Water Storage, Savings and Replenishment Act (UWS) enacted by the Arizona legislature in 1994 and administered by the Arizona Department of Water Resources (ADWR). Through this program, the AWBA stores renewable water that currently has no immediate, direct use in either underground storage (USF) or groundwater savings (GSF) facilities. A USF is a facility that allows water to physically be added to an aquifer. A GSF is a facility where the renewable water is used in place of groundwater, creating a groundwater savings. The UWS program mandates the accounting of the renewable water stored and the development of long-term storage credits. The long-term storage credits developed by the AWBA will then be utilized by the AWBA when future conditions warrant. The use of credits for the three objectives listed above may differ and is dependent on the source of funds utilized to develop them.

The AWBA is required by statute to approve an annual Plan of Operation (Plan) by January 1 of each year. Prior to approval of the final Plan, the AWBA is required to solicit public comment. This is achieved by presenting a draft of the Plan to the Groundwater Users Advisory Councils (GUAC) for the Phoenix, Pinal and Tucson Active Management Areas (AMA) and to the county board of supervisors for counties outside of the AMA's if water storage is proposed there within the Plan. Presentation of the draft Plan must be made at publicly noticed open meetings at which members of the public are permitted to provide comment. The AWBA also accepts public comment in writing up to the time the final draft Plan is presented for approval.

The Plan is intended to govern the operations of the AWBA over the course of the entire calendar year. Projected deliveries under this Plan are likely optimistic if current weather conditions do not abate. Nonetheless, it is believed to be reasonable to approve such a Plan in order to insure that the AWBA has scheduled and purchased any additional water that could become available in the course of the year.

The AWBA recognizes that day-to-day adjustments in the normal operations of the CAP or the individual storage facilities caused by maintenance and fluctuations in the weather may affect the actual monthly deliveries made on behalf of the AWBA. If the adjustments do not impact the overall annual delivery projections contained in the Plan, they will not be deemed modifications to the Plan and will be addressed by staff and reported to the AWBA members on an as-needed basis.

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2002 PLAN OF OPERATION

In 2002, the AWBA's sixth full year of operation, the AWBA recharged almost 346,000 acre feet of Colorado River water and Arizona's total use of Colorado River water was forecast to be 2.80 million acre feet. The AWBA has played a significant role in bringing Arizona to the first year of full utilization of their normal year entitlement of 2.8 million acre feet (see Figure 1).

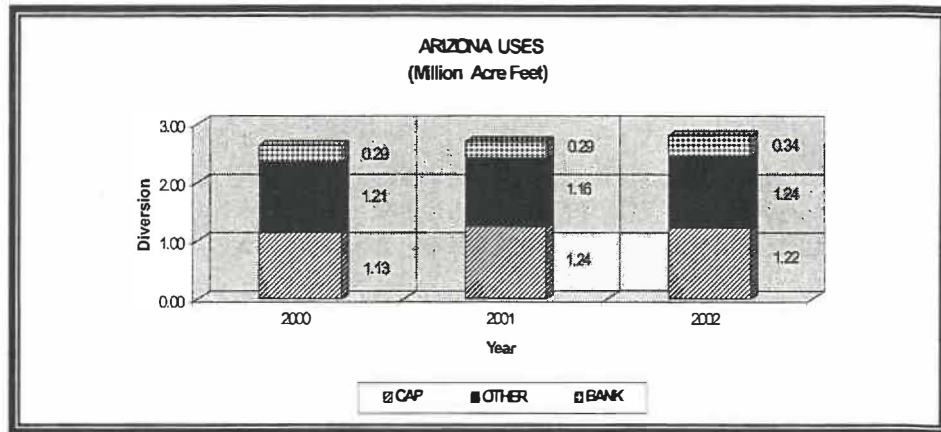


Figure 1

Total use of Colorado River water in the Lower Basin is forecast to be approximately 8.40 million acre feet in 2002 (see Figure 2) based on Bureau of Reclamation data dated November 21, 2002.

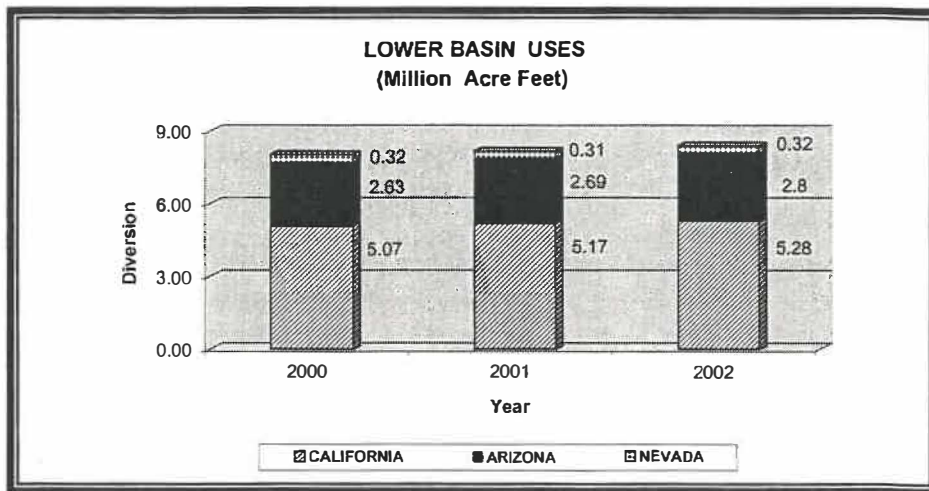


Figure 2

The AWBA recharged water at both USFs and GSFs in 2002. Table 1 lists the AWBA's recharge partners for 2002, the amount of water that can be stored under each AWBA water storage permit, and the amount of water delivered to the facility by the AWBA in

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2002. Table 1 values are based on actual deliveries through October with November and December's deliveries estimated. The amount of water delivered to a facility is always greater than the amount of long-term storage credits earned by the AWBA because credits are computed by subtracting approximately 3-5% for losses and 5% for a "cut to the aquifer" from the total annual deliveries. Final figures for credits earned generally become available in the middle of the following year after review of the annual reports filed with the ADWR and are reported in the AWBA's Annual Report.

Table 1

AMA	Facility	Type	Permit Capacity	Amount Delivered
Phoenix	GRUSP	USF	200,000 AF	43,467 AF
	Agua Fria	USF	100,000 AF	35,230 AF
	Chandler Hts Citrus ID	GSF	3,000 AF	908 AF
	Queen Creek ID	GSF	28,000 AF	8,604 AF
	New Magma IDD	GSF	54,000 AF	47,708 AF
	SRP	GSF	200,000 AF	11,200 AF
Pinal	MSIDD	GSF	120,000 AF	53,686 AF
	CAIDD	GSF	110,000 AF	28,766 AF
	Hohokam ID	GSF	55,000 AF	55,755 AF
Tucson	Avra Valley (CAP)	USF	11,000 AF	6,629 AF
	Lower Santa Cruz (CAP)	USF	30,000 AF	28,917 AF
	Pima Mine Road (CAP)	USF	30,000 AF	23,395 AF
	Kai-Red Rock	GSF	11,231 AF	1,718 AF
Total			952,231 AF	345,983 AF

The Plan was amended in June in response to the loss of the general fund appropriation. The amended Plan included the first interstate storage on behalf of Nevada. Pursuant to the amended 2002 Plan almost 346,000 acre feet of water was delivered. Of that amount, almost 64,000 acre feet were stored on behalf of Nevada utilizing the GSFs in Pinal County.

While the Plan originally had projected approximately equal storage at USFs and GSFs, the historical trend of a greater amount of storage at GSF's continued in 2002. This was primarily due to the opportunity to offset additional groundwater pumping by the irrigation districts as a result of the dry weather conditions. Due to the GSF partner's increased need for water, the AWBA was able to participate to a greater extent than originally projected. Figure 3 shows the acre foot break down between GSFs and USFs for 2002 and a comparison between 2002 and previous years.

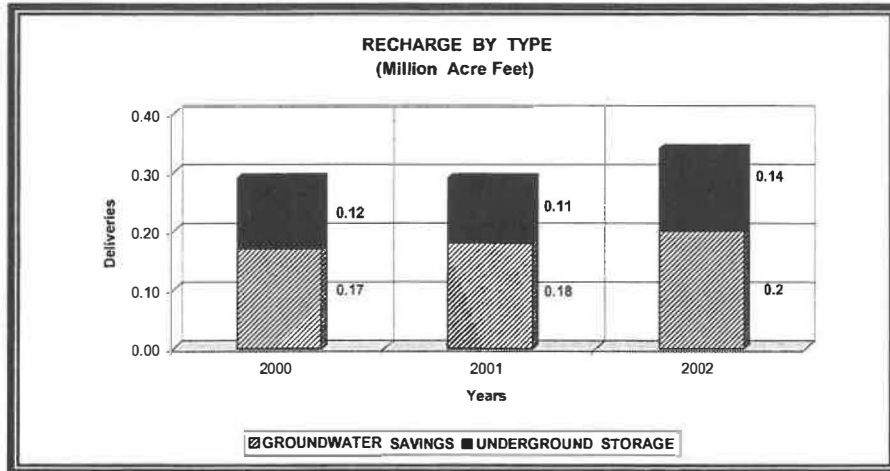


Figure 3

2003 PLAN OF OPERATION

When developing a Plan of Operation, the AWBA evaluates four critical factors: (1) the amount of unused water available to the AWBA for delivery; (2) the CAP capacity available to the AWBA for the delivery of unused water; (3) the funds available and the costs required to deliver the unused water; and (4) the capacity available for use by the AWBA at the various recharge facilities. However, due to the unique circumstances expected in 2003 with regard to higher priority CAP water requests, the 2003 Plan took the critical factors into consideration but was not limited by them. In order to allow the greatest flexibility to fully utilize Arizona’s full entitlement, the 2003 Plan was developed based on the possibility that higher priority users would not fully utilize their requested deliveries, thus making water available for the AWBA later in the year. Nonetheless, it is important to recognize the potential limits in the event that higher priority users fully utilize their requests.

I. Water Availability

The factor of water availability consists of two parts: (1) the amount of water available on the Colorado River for diversion by the CAP within Arizona’s allocation; and (2) the amount of CAP water available for delivery to the AWBA under the existing pool structure.

The Bureau of Reclamation published the final draft Annual Operating Plan (AOP) for water year 2003 on October 10, 2002. The 2003 AOP prescribes that Arizona will be limited to 2.8 million acre feet whether under the parameters of the Interim Surplus Guidelines or a normal declaration. It is anticipated that the three Lower Basin states will fully utilize their respective allocations. Based on projections, Arizona’s on-river use is forecast to be 1.204 million acre feet, leaving 1.596 million acre feet available for diversion by CAP. CAP’s original forecast for CAP diversions for 2003 was 1.616 million acre feet, however, after

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meeting with the Bureau of Reclamation, the number was decreased to 1.596 million acre feet based on projected on-river demand. Additionally, as CAP could bear the burden for inadvertent overruns by Arizona, it is possible that their Colorado River diversions may be decreased towards the end of the year if it appears Arizona will exceed 2.8 million acre feet. Conversely, there exists the possibility of increased CAP diversions if on-river uses are less than expected. Nonetheless, for the first year since the AWBA's inception, the amount of water available to be diverted by the CAP within Arizona's 2.8 million acre foot allocation was a limiting factor.

With regard to availability of CAP water, the AWBA purchases water from the category that is termed excess water. Excess water is generally recognized to be all water available for delivery through the CAP, regardless of Secretarial declaration of condition, that exceeds the quantities scheduled under long-term contracts and subcontracts. The availability of excess water is determined on an annual basis. In 2003, and until 2004, the AWBA has available to it any water not requested by another entity within Arizona. The CAP is in the process of developing a new policy regarding agricultural and excess water that will become effective in 2004.

With a 1.596 million acre foot diversion, the CAP 2003 Operating Plan accommodates the delivery of approximately 1.58 million acre feet of water. CAP's plan delivers approximately 1.41 million acre feet of water to entities with a higher priority than the AWBA. If these requests are fully utilized this would leave less than 175,000 acre feet of excess water available for the AWBA. Because the AWBA has adequate funds and there is available storage capacity in excess of 175,000 acre feet, water availability could also be a limiting factor if other higher priority users fully utilize their requests.

In the event the AWBA is limited to 175,000 acre feet, the priority for AWBA deliveries will be the GSFs. Additionally, if the AWBA's water supply is limited, the Plan would not include storage at the Granite Reef Underground Storage Project (GRUSP) for the first time since inception. This is a result of the Phoenix AMA's request to utilize USFs in the western part of the AMA for water management purposes. However, if water becomes available as a result of the Salt River Project not fully utilizing their higher priority request, that water would be first offered for storage at GRUSP.

II. CAP System Capacity

Under normal operating conditions during a normal water supply year, CAP diverts approximately 1.5 million acre feet. However, CAP staff believe that 1.8 million acre feet can be safely moved through the system. Nonetheless, there are areas within the system that can become bottlenecks depending on the magnitude of deliveries downstream. In 2003, the CAP identified a bottleneck at the New River siphon in June and July due to the high downstream demand. This bottleneck essentially eliminated AWBA deliveries in those two months and was thus, a limiting factor in development of the Plan. Again, the magnitude of

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this limiting factor is dependent on the utilization of water by higher priority entities.

III. Available Funds

The funds available to the AWBA in 2003 will be from the county *ad valorem* property tax and groundwater pumping fees only. The total amount of revenue available, including carryover from previous years, is almost \$46 million. Of that amount, \$36.1 million is available in Maricopa County, almost \$8 million in Pima County and \$1.7 million in Pinal County. Given the costs associated with the delivery of water and the continued policy of GSF operators paying \$21 of the water delivery costs to their facilities, the \$36.1 million and the \$8 million are adequate to fund the Plan in Maricopa and Pima Counties, respectively. The availability of funds will limit storage in Pinal County in 2003. For more information about the cost of the Plan, please refer to the pricing section.

The AWBA is statutorily mandated to reserve long-term storage credits accrued with general fund appropriation revenues for the benefit of M&I users of Colorado River water outside the CAP service area. By policy, the AWBA identified 420,000 acre feet as the number of credits needed for this on-river firming. In 2002, the AWBA passed a resolution identifying on-river firming as the highest priority of use of credits developed with the general fund appropriation. In 2003, there are no general fund revenues available to the AWBA. The absence of a general fund appropriation means that no on-river firming credits will be developed in 2003. To date, approximately 387,000 acre feet of credits for on-river firming have been developed.

IV. Available Storage Facility Capacity

In September, AWBA staff met with facility operators to discuss their delivery schedules and confirm their continued interest in participating with the AWBA. These discussions confirmed that there was significant interest in partnering with the AWBA and there was substantial permitted recharge capacity but, as in the past, previous commitments to other partners somewhat limited the availability of both the GSFs and the USFs to the AWBA.

As the AWBA had sufficient facility capacity to store all of the remaining CAP water available, storage facility capacity was not a limiting factor in development of the 2003 Plan. However, based on the quantity of water and funding available, the AWBA could not meet all of the requests from its partners.

Table 2 shows the AWBA's 2003 delivery schedule. Line One of this table provides estimates of the CAP's monthly deliveries to its M&I, agricultural, incentive recharge, and Indian customers. These deliveries have a scheduling priority over the AWBA's deliveries. These estimates do not include deliveries to New Waddell Dam.

Line Two shows the operational capacity of the CAP available after it makes its priority deliveries and its deliveries to New Waddell Dam. Although the CAP is capable of

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Table 2 ARIZONA WATER BANKING AUTHORITY Water Delivery Schedule Calendar Year 2003 (ACRE-FEET)																	2002 Deliveries (AF)
			Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total		
1	Estimated CAP Deliveries + Losses : (M&I, Indian, Ag Pools 1, 2 & 3, Incentive Recharge)		48,200	57,800	110,500	138,000	167,700	208,600	212,100	183,600	97,100	80,500	53,600	48,700	1,406,400		
2	Available Excess CAP Capacity for AWBA :		15,600	16,400	23,500	27,000	18,100	250	250	17,600	13,300	12,800	14,400	15,600	174,800		
	AWBA -- Recharge Sites :	Permitted Capacity (AF)	Requested Capacity (AF)														
LA PAZ COUNTY:																	
3	USF VIDLER	100,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
PHOENIX A M A :																	
4	USF GRUSP	200,000	25,900	0	0	0	0	0	3,800	3,800	3,800	3,800	3,800	3,800	3,100	25,900	43,467
5	HIEROGLYPHIC MTN.	35,000	28,400	2,000	2,500	2,500	1,500	0	3,000	3,000	3,000	3,000	2,750	2,650	2,500	28,400	0
6	AGUA FRIA	100,000	36,000	1,500	500	500	2,000	2,250	4,250	4,250	4,250	4,000	4,000	4,250	4,250	36,000	35,230
7	GSF CHCID	3,000	1,117	50	100	140	100	100	152	125	125	125	100	0	0	1,117	908
8	MARICOPA WTR DIST.	18,000	4,600	0	0	0	0	0	0	0	0	2,050	2,550	0	0	4,600	0
9	NEW MAGMA	54,000	32,900	1,800	1,800	0	7,500	4,000	0	0	5,500	4,300	3,500	2,500	2,000	32,900	47,708
10	QUEEN CREEK	28,000	2,843	0	0	0	0	0	0	0	2,091	0	0	0	752	2,843	8,604
11	ROOSEVELT WCD	100,000	12,500	0	0	2,500	5,000	2,500	0	0	2,500	0	0	0	0	12,500	0
12	SRP	200,000	11,000	1,100	1,100	1,100	1,100	1,100	0	0	1,100	1,100	1,100	1,100	1,100	11,000	11,200
13	TONOPAH ID	15,000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PINAL A M A :																	
14	GSF CAIDD	110,000	5,500	0	0	0	0	0	0	0	500	3,000	1,000	500	500	5,500	28,766
15	HOHOKAM	55,000	27,075	1,700	3,475	8,000	5,300	5,600	0	0	3,000	0	0	0	0	27,075	55,755
16	MSIDD	120,000	10,950	1,120	1,130	2,320	2,570	2,000	0	0	1,030	780	0	0	0	10,950	53,686
17	INTERSTATE																
TUCSON A M A :																	
18	USF AVRA VALLEY	11,000	4,270	0	0	0	0	0	600	600	600	600	670	600	600	4,270	6,629
19	CAVSARP	60,000	10,000	0	0	0	0	0	1,000	1,500	1,500	1,500	1,500	1,500	1,500	10,000	0
20	PIMA MINE ROAD	30,000	28,225	2,600	2,025	2,600	0	0	3,000	3,000	3,000	3,000	3,000	3,000	3,000	28,225	23,395
21	LOWER SANTA CRUZ	30,000	29,955	3,500	3,500	3,500	1,955	0	2,500	2,500	2,500	2,500	2,500	2,500	2,500	29,955	28,917
22	GSF KAI - RED ROCK	11,231	2,000	0	0	0	0	500	0	0	250	500	500	250	0	2,000	1,718
23	BKW	16,615	1,250	200	250	400	0	0	0	0	0	200	100	50	50	1,250	0
24	T O T A L (USF + GSF) :		274,485	15,570	16,380	23,560	27,025	18,050	18,302	18,775	34,746	30,455	27,070	22,700	21,852	274,485	345,983
25	Remaining CAP Capacity :		30	20	(60)	(25)	50	(18,052)	(18,525)	(17,146)	(17,155)	(14,270)	(8,300)	(6,252)	(99,685)		

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delivering approximately 180,000 acre feet per month, the available capacity does not always total that because of unique situations, i.e. the filling of Lake Pleasant in the winter months, deliveries to the western portion of the aqueduct, New Waddell Dam releases to the aqueduct in the summer months and scheduled maintenance and outages. During the fall and winter months, the capacity available to the AWBA is constrained because the CAP is making deliveries to Lake Pleasant. In June and July, capacity is constrained at the New River siphon due to the high volume of downstream demand.

Lines Three through Twenty-three represent the AWBA's 2003 Plan of Operation. This section identifies the AWBA's partners for 2003 and the amount of water scheduled to be recharged. The second column in this section identifies the AWBA's water storage permit capacities for each facility based on the facility permits and the amount of that capacity that is available to the AWBA in 2003. The capacity available does not always equal the storage permit capacity because the storage facility operators may have agreements with other storage partners. Line Twenty-four lists the total amount of AWBA storage scheduled for the year 2003. Line Twenty-five lists the CAP capacity remaining after the AWBA's deliveries are scheduled. The negative values in the second half of the year are a result of the AWBA developing the 2003 Plan to maximize utilization of water that may be unused by higher priority customers. Because higher priority users would likely decrease their CAP water use if there is a wet winter, that water has been included in the latter part of the year. If unused water does not become available, the AWBA deliveries would be limited to the point that line Twenty-five is approximately zero.

No recovery is scheduled in 2003. The AWBA will continue to work with CAWCD to pursue recovery concepts in 2003 and beyond. Pending the outcome of on-going discussions in California, the Metropolitan Water District of Southern California (MWD) has indicated they might request the recovery and delivery of Intentionally Created Unused Apportionment (ICUA) in 2003 based on credits developed under a previous agreement with CAWCD. If MWD actually makes such a request, agreements would need to be developed and executed and this Plan would be amended to accommodate the recovery and creation of ICUA.

NEW FACILITIES

The BKW Farms, Inc. groundwater savings facility is located in the Avra Valley sub-basin of the Tucson AMA. The GSF was permitted to the Central Arizona Water Conservation District in January 1999 with a maximum volume of 16,614.6 acre feet. Prior storage has been done at the GSF by the City of Tucson, however, 2003 is the first year AWBA storage is planned.

INTERSTATE WATER BANKING

The Plan does not include an interstate water banking component. However, in the event that conditions change and the opportunity to store water on behalf of Nevada presents itself, the Plan may be amended to include interstate water banking as was done in 2002.

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PRICING

On June 20, 2002, the CAWCD board adopted final water delivery rates for 2003. The rate for AWBA and other M&I Incentive recharge will be \$54 per acre foot. The delivery rate is the pumping energy rate 2 component (\$48 per acre foot) plus 10 percent of the fixed OM&R charge (\$3.50 per acre foot) plus a component to recover lost revenues from federal deliveries (\$2.00 per acre foot). The components of the rate are the same as those in the 2001 and 2002 rates. For 2003, the pumping energy rate 2 was calculated using the average of the actual or forecast above threshold energy rates for the previous three years.

The AWBA's policy of recovering \$21 from its groundwater savings facility partners will continue for 2003. Table 3 reflects the water delivery rate the CAP will charge the AWBA, the rate the GSF operators will pay for use of the AWBA's water and the various rates the AWBA will be charged to utilize the different USFs.

Table 3

2003 Water and Facility Rates – Intrastate	
CAP's delivery rate to AWBA	\$54 per acre foot
Groundwater Savings Facility operator portion of delivery rate	\$21 per acre foot ¹
Underground Storage Facility rate paid by AWBA	
GRUSP (SRP)	\$18.05 per acre foot
Avra Valley (CAP)	\$24.70 per acre foot
CAVSARP (Tucson Water)	\$11.71 per acre foot
Hieroglyphic Mtns. (CAP)	\$9.10 per acre foot
Pima Mine Road (CAP)	\$7.00 per acre foot
Lower Santa Cruz (CAP/Pima County)	\$10.90 per acre foot
Agua Fria Recharge Project (CAP)	\$4.30 per acre foot

¹ This rate is paid directly to CAP by the GSF operators and is not available as revenue to the AWBA. The AWBA's rate for delivery of in lieu water is thus reduced to \$33/af.

The Master Water Storage Agreement executed on July 1, 2002 mandates the cost components paid by the AWBA for storage at CAP facilities. Costs for storage at CAP facilities can include capital costs, costs of operating, maintaining and monitoring, water transportation costs and other costs determined necessary by CAP. There is no administration cost component in the facility cost because the AWBA pays the CAP administrative costs on an annual basis.

For GRUSP, the cost is comprised of an annual administration component, a component for use of the SRP interconnection facility, a transportation component and

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a general facility component. For CAVSARP, the cost includes an administration component, a capital component and an operations and maintenance component.

The estimated total cost of the AWBA's 2003 Plan of Operation is almost \$13.7 million which includes the USF use fees and the CAP delivery rate minus cost recovery from the GSF operator by the CAWCD.

ACCOUNTING

The AWBA's enabling legislation required the development of an accounting system that allows the tracking of all long-term storage credits accrued by the AWBA and the funding sources from which they were developed. The ADWR has established accounts that track both credits and funds.

Table 4 provides estimates of the funds available including funds carried over from previous years and an estimate of funds to be collected during the year, the funds to be expended, and the credits that will accrue to those accounts based on the 2003 Plan.

Table 4

2003 PLAN OF OPERATION				
	FUNDING¹		CREDITS²	
	AVAILABLE	EXPENDED	AMOUNT	LOCATION
Withdrawal Fee				
Phoenix AMA	\$14,933,117	\$7,488,115	142,000	Phoenix AMA
Tucson AMA	\$4,091,180	\$3,876,510	58,000	Tucson AMA
Pinal AMA	\$1,407,781	\$1,136,325	32,000	Pinal AMA
Four Cent Tax				
Maricopa County	\$21,180,808	\$0	0	Phoenix AMA
Pima County	\$3,900,677	\$889,693	13,000	Tucson AMA
Pinal County	\$300,000	\$300,000	8,000	Pinal AMA
Other				
General Fund	\$0	\$0	0	
		\$0	0 AF	Phoenix AMA
		\$0	0 AF	Tucson AMA
		\$0	0 AF	Pinal AMA
California	(not applicable)			
Nevada	(not applicable)			
TOTAL	\$45,813,562	\$13,690,644	253,000	

¹ Does not include groundwater savings facility partners' payment. The AWBA's partners make payments directly to the CAWCD.

² Estimate based on historical average losses for each facility minus the 5% cut to the aquifer.

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Since inception, the AWBA has primarily utilized only the general fund and county *ad valorem* property tax revenues to purchase and store water. In 2003, the AWBA will fund the Plan almost entirely through expenditure of groundwater withdrawal fees. While developing firming credits using the *ad valorem* tax revenues has been the AWBA's emphasis in the past, it is now believed that developing credits for water management purposes is appropriate.

Although no specific management issues have been identified by the AMA's, several, including provision of credits to facilitate Indian water rights settlements, are on the horizon. On September 24, 2002, the Arizona Water Settlements Act of 2002 was introduced into Congress. Although introduction of the bill is merely the first step, it is recognized that use of long-term storage credits developed by the AWBA could be a component of the legislation.

Table 5 provides an estimate of the funds expended and the credits that will accrue to various accounts based on the AWBA's recharge activities since its inception.

Table 5

CUMULATIVE TOTALS			
1997-2002			
	EXPENDED	AMOUNT	CREDITS ¹
			LOCATION
Withdrawal Fee			
Phoenix AMA	\$2,600,000	46,000	Phoenix AMA
Tucson AMA	\$0	0	Tucson AMA
Pinal AMA	\$4,971,116	177,969	Pinal AMA
Four Cent Tax			
Maricopa County	\$29,041,976	708,183 AF	Phoenix AMA
Pima County	\$8,286,172	130,765 AF	Tucson AMA
Pinal County	\$1,719,983	72,884 AF	Pinal AMA
Other			
General Fund	\$10,695,000	372,678 AF	
	\$2,054,489	61,612 AF	Phoenix AMA
	\$2,325,112	39,748 AF	Tucson AMA
	\$6,315,399	271,318 AF	Pinal AMA
California			
Nevada	\$7,938,500	58,000	
TOTAL	\$65,252,747	1,566,479 AF	

¹ Actual credits used for 1997-2001; credits estimated for 2002

DRAFT

PUBLIC REVIEW AND COMMENT

The AWBA staff held meetings in conjunction with the GUACs for the Phoenix, Pinal and Tucson AMAs as required by the AWBA's enabling legislation. Additionally, the Plan was discussed at a Tucson IPAG meeting in December and was posted on the AWBA web page for review and comment.

Phoenix GUAC

In general, the GUAC supported the Plan and had no requests for changes to it. The GUAC requested that the AWBA focus on storage in the West Salt River Valley to assist in meeting water management goals. Finally, the GUAC requested that the AWBA identify a process that would use withdrawal fees to fund a regional recharge and recovery plan.

Pinal GUAC

General discussion regarding the Plan included: the addition of new partners not present in the first distributed draft; the distribution of water between the irrigation districts as limited by available funds; and the possibility of interstate water banking. There was also discussion and questions regarding CAP's new agricultural pool policy that begins in 2003 and the continuation of the \$21 per acre foot cost-share. Like the Phoenix GUAC, the Pinal GUAC requested that the AWBA identify a process that could use withdrawal fees to fund a regional recharge and recovery plan.

Tucson GUAC

The Tucson GUAC had no specific comments regarding the Plan. There was general discussion and questions regarding the reason for decreased storage in the Pinal AMA, differences in facility fees, how AWBA staff administration fees are paid and the possibility of interstate water banking. The GUAC also had questions regarding the status of the California 4.4 plan.

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 _____ day of _____, 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

1 AWBA will acquire and store mainstream Colorado River water in Arizona, creating
2 Long-term Storage Credits to be held for SNWA in an account established with
3 ADWR, and at a later date recover the Long-term Storage Credits and exchange
4 the recovered water with Colorado River water users in Arizona to develop ICUA.
5

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

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

20 NOW THEREFORE, in consideration of the mutual covenants herein contained, the
21 Secretary, AWBA, SNWA, and CRCN hereby agree as follows:
22

23 **Article 1**
24 **Definitions and Term**
25

26 1.1 Definitions. The following terms shall have the meaning defined here. All defined
27 terms shall be identified by initial letter capitalization.
28

29 1.1.1 "ADWR" shall mean the Arizona Department of Water Resources.
30

31 1.1.2 "Agreement" shall mean this Storage and Interstate Release Agreement.
32

33 1.1.3 "Agreement for Development of Intentionally Created Unused
34 Apportionment" shall mean that agreement between AWBA and the
35 Central Arizona Water Conservation District dated _____.
36

37 1.1.4 "Agreement for Interstate Water Banking" shall mean that agreement
38 among AWBA, SNWA and CRCN dated July 3, 2001.
39

40 1.1.5 "AWBA" shall mean the Arizona Water Banking Authority.
41

42 1.1.6 "AWBA Plan of Operation" shall mean the plan by which AWBA shall
43 operate during the Year as defined in A.R.S. § 45-2456.
44

- 1 1.1.7 "Basin States" shall mean the Colorado River Basin States of Arizona,
2 California, Colorado, Nevada, New Mexico, Wyoming, and Utah.
3
4 1.1.8 "CAP" shall mean the Central Arizona Project, as authorized by the
5 Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*
6
7 1.1.9 "CAWCD" shall mean the Central Arizona Water Conservation District.
8
9 1.1.10 "CRCN" shall mean the Colorado River Commission of Nevada.
10
11 1.1.11 "Decree" shall mean the Decree entered by the United States Supreme
12 Court in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or
13 amended.
14
15 1.1.12 "Entitlement Holder" shall mean a holder of an authorization to beneficially
16 use Colorado River water pursuant to (i) the Decree; (ii) a water delivery
17 contract with the United States through the Secretary; or (iii) a reservation
18 of water from the Secretary.
19
20 1.1.13 "ICUA" shall mean Intentionally Created Unused Apportionment as that
21 term is defined in 43 CFR 414.
22
23 1.1.14 "Long-term Storage Credit" shall mean Long-term Storage Credit as
24 defined in A.R.S. § 45-802.01.
25
26 1.1.15 "SNWA" shall mean the Southern Nevada Water Authority.
27
28 1.1.16 "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-
29 account established by AWBA with ADWR under the terms of this
30 Agreement and the Agreement for Interstate Water Banking.
31
32 1.1.17 "Storage Facility" or "Storage Facilities" shall mean an Underground
33 Storage Facility or a Groundwater Savings Facility as those terms are
34 defined in A.R.S. § 45-802.01. "Storage facilities" do not presently include
35 facilities constructed or financed by the United States.
36
37 1.1.18 "Water Stored " means the amount of Long-term Storage Credits properly
38 credited to the SNWA Interstate Account under applicable Arizona law and
39 the Agreement for Interstate Water Banking. The amount of "Water
40 Stored" under this agreement will always be less than the amount of water
41 diverted for storage.
42
43 1.1.19 "Year" shall mean calendar year.
44

1 1.2 Term of the Agreement
2

3 This Agreement shall commence on the date of execution by all parties and shall
4 continue until June 1, 2050, or until termination of the Agreement for Interstate
5 Water Banking, whichever is sooner.
6

7 **Article 2**
8 **Water Available for Storage**
9

10 2.1 Colorado River water available for storage for purposes of this Agreement shall be
11 within either (i) the State of Arizona's basic or surplus apportionment, apportioned
12 to the State of Arizona under Articles II(B)(1) or II(B)(2) of the Decree; or (ii) the
13 State of Nevada's unused basic or surplus apportionment, apportioned to the State
14 of Nevada under Articles II(B)(1) and II(B)(2) of the Decree and released to the
15 State of Arizona under Article II(B)(6) of the Decree.
16

17 2.2 Colorado River water apportioned to the State of Nevada under Articles II(B)(1) and
18 II(B)(2) of the Decree may be used for storage in the State of Arizona under this
19 Agreement in accordance with 43 CFR 414.3(a)(3) only if the following conditions
20 are met:
21

22 2.2.1 The Secretary has decided that such unused Nevada apportionment shall
23 be released for Consumptive Use within Arizona under Article II(B)(6) of
24 the Decree.
25

26 2.2.2 The AWBA has agreed that it will accept delivery of such water and store
27 it for the benefit of SNWA in accordance with the terms of the Agreement
28 for Interstate Water Banking.
29

30 2.3 Before any water is diverted from the Colorado River for storage under this
31 Agreement, it shall first be offered to all Entitlement Holders within Arizona for
32 diversion within their entitlements for purposes other than interstate transactions as
33 provided in 43 CFR 414.3(a)(2).
34

35 2.4 The water available for storage shall be diverted from the Colorado River and
36 delivered to Storage Facilities by CAWCD, utilizing CAP facilities constructed by the
37 United States.
38

39 **Article 3**
40 **Storage Facilities and Accrual of Long-term Storage Credits**

41 3.1 AWBA shall store water for the benefit of SNWA pursuant to the Agreement for
42 Interstate Water Banking. All water shall be stored within the State of Arizona in the
43 Storage Facilities for which AWBA has or then has storage agreements. 43
44 CFR 414.3(a)(1). A listing of the potential Storage Facilities to be utilized is

1 provided in the AWBA storage facilities inventory dated March 1, 1997. Additional
2 storage facilities may be needed for Arizona use. If such facilities are permitted by
3 ADWR and developed by Arizona entities, and if AWBA chooses to use those
4 Storage Facilities for interstate banking, AWBA shall update the 1997 Facility
5 Inventory to include those additional facilities. If the 1997 Facility Inventory is
6 updated, unused storage capacity at those additional facilities may be used for
7 interstate water banking.

8
9 3.2 The Storage Facilities utilized in each Year shall be identified in the AWBA Plan of
10 Operation.

11
12 3.2.1 The AWBA Plan of Operation may be modified in accordance with A.R.S.
13 § 45-2456 subject to the provisions of the Agreement for Interstate Water
14 Banking.

15
16 3.2.2 AWBA shall notify the Secretary in writing of any change in the AWBA Plan
17 of Operation that may affect the amount or location of water to be stored
18 under the Agreement for Interstate Water Banking.

19
20 3.3 AWBA shall establish a Long-term Storage Sub-Account with ADWR entitled the
21 "SNWA Interstate Account." AWBA shall manage the SNWA Interstate Account so
22 as to accommodate the storage and recovery of water for the benefit of SNWA in
23 the manner provided in this Agreement and the Agreement for Interstate Water
24 Banking. AWBA shall ensure that ADWR timely and properly credits or debits the
25 SNWA Interstate Account with the correct number of Long-term Storage Credits
26 under applicable Arizona law for each Year. AWBA shall ensure that the Year-end
27 balance of Long-term Storage Credits in the SNWA Interstate Account is correct.

28
29 3.3.1 Except as provided in sub-articles 3.3.2 and 3.3.3, SNWA shall not be
30 entitled to the storage of water under this Agreement or the assignment of
31 existing Long-term Storage Credits pursuant to sub-article 3.3.4 to the
32 extent such storage or assignment would result in Long-term Storage
33 Credits credited to the SNWA Interstate Account in excess of
34 200,000 acre-feet in any Year, or in excess of 1,200,000 acre-feet over the
35 entire period of this Agreement.

36
37 3.3.2 SNWA shall be entitled to all Long-term Storage Credits held by CAWCD
38 for SNWA on the effective date of this Agreement that were developed
39 pursuant to a demonstration project developed by CAWCD in 1992 and
40 modified in 1994 to test the feasibility of underground storage of Colorado
41 River water supplies and subsequently transferred to AWBA for credit to
42 the SNWA Interstate Account. The 50,000 acre-feet of Long-term Storage
43 Credits transferred to AWBA under this sub-article shall not be counted for
44 purposes of determining whether either of the limitations specified in sub-
45 article 3.3.1 has been exceeded.

1 3.3.3 During the term of this Agreement, AWBA may cause the assignment of
2 Long-term Storage Credits into and out of the SNWA Interstate Account by
3 notifying ADWR of such assignment. If an equal number of Long-term
4 Storage Credits are transferred into and out of the SNWA Interstate
5 Account in a single transaction with ADWR, then the transaction shall not
6 be counted for purposes of determining whether either of the limitations
7 specified in sub-article 3.3.1 has been exceeded.
8

9 3.3.4 During the term of this Agreement, Long-term Storage Credits may be
10 assigned to AWBA for credit to the SNWA Interstate Account for purposes
11 of increasing the number of Long-term Storage Credits available to SNWA.
12 Any such assignment must have the consent of AWBA. If Long-term
13 Storage Credits are assigned to AWBA for credit to the SNWA Interstate
14 Account under this sub-article, those credits shall be counted for purposes
15 of determining compliance with both of the limitations specified in sub-
16 article 3.3.1.
17

18 3.4 The provisions of this sub-article 3.4 shall govern reports by AWBA to the Secretary
19 and incorporation of the AWBA reports into the Secretary's accounting under Article
20 V of the Decree.
21

22 3.4.1 By December 31 of each Year, AWBA shall provide the Secretary with an
23 estimate of the Long-term Storage Credits to be developed for and credited
24 to the SNWA Interstate Account in the following Year. AWBA shall update
25 that estimate monthly during the course of the Year and provide a final
26 estimate at the end of that Year. The estimate and updates are to be
27 considered provisional until AWBA makes its final annual accounting to the
28 Secretary by September 1 of the Year following the Year of the
29 development of the Long-term Storage Credits.
30

31 3.4.2 AWBA shall prepare and submit to the Secretary and the States of Arizona,
32 California, and Nevada by September 1 of each Year a final verified
33 accounting for the prior Year of: (i) the beginning balance of Long-term
34 Storage Credits in the SNWA Interstate Account; (ii) the amount of
35 Colorado River water diverted from the mainstream for the purpose of
36 interstate water banking in that year, and the amount of Water Stored
37 resulting from that diversion; (iii) any Long-term Storage Credits properly
38 assigned and transferred to or from the SNWA Interstate Account under
39 sub-articles 3.3.2, 3.3.3, or 3.3.4; (iv) any Long-term Storage Credits
40 assigned from the SNWA Interstate Account during that Year under sub-
41 article 5.8; (v) the net Long-term Storage Credits in the SNWA Interstate
42 Account at the end of the Year; and (vi) the cumulative amount of Long-
43 term Storage Credits properly credited to the SNWA Interstate Account for
44 purposes of determining compliance with the 1,200,000 maximum credit
45 accrual specified in sub-article 3.3.1.

1 3.4.3 Submission by AWBA of a report in compliance with sub-article 3.4.2 shall
2 constitute compliance with the requirements of 43 CFR § 414.4(a) as it is
3 in effect on the date of execution of this Agreement.
4

5 3.4.4 The Secretary shall include a supplement in the Secretary's annual Article
6 V Decree accounting report titled "Water Diverted and Stored in Arizona for
7 the Benefit of SNWA."
8

9 3.4.4.1 The Secretary will account for the water that is diverted by
10 CAWCD for storage by AWBA as a consumptive use in the State
11 of Arizona for the year in which it is diverted and stored.
12

13 3.4.4.2 The Secretary will account for the diversion and consumptive use
14 of ICUA by SNWA as a consumptive use in the State of Nevada
15 of unused apportionment of the State of Arizona made available
16 by the Secretary under Article II(B)(6) of the Decree for use by
17 SNWA in accordance with the terms of this Agreement.
18

19 3.4.4.3 The supplement shall reflect as Water Stored, expressed in terms
20 of acre-feet, the provisional Long-term Storage Credits identified
21 in the AWBA reports submitted pursuant to sub-article 3.4.1 and
22 shall identify these as provisional estimates for informational
23 purposes only. The supplement shall also reflect as Water Stored
24 the verified Long-term Storage Credits identified in the AWBA final
25 verified accounting submitted pursuant to sub-article 3.4.2 subject
26 to such review of the underlying books and records as the
27 Secretary deems appropriate.
28

29 3.4.5 All records of AWBA concerning the amount of Water Stored in that Year,
30 including all records used by AWBA to prepare the final verified
31 accounting, shall be available for inspection by the Secretary.
32

33 3.5 Accrual of Long-term Storage Credits in the SNWA Interstate Account at certain
34 Storage Facilities does not mean that those Long-term Storage Credits will be
35 recovered at those same Storage Facilities. Recovery of Long-term Storage Credits
36 shall be in accordance with the Agreement for Interstate Water Banking, the
37 Agreement for Development of Intentionally Created Unused Apportionment, and
38 applicable Arizona law.
39

40 **Article 4**

41 **Development of Intentionally Created Unused Apportionment**

42
43 4.1 AWBA shall develop ICUA for the benefit of SNWA in accordance with the
44 provisions of this Agreement, the Agreement for Interstate Water Banking, and the

1 Agreement for Development of Intentionally Created Unused Apportionment. All
2 actions that AWBA takes to develop ICUA shall be consistent with the laws of the
3 State of Arizona.
4

5 4.2 AWBA shall only use means to develop ICUA under this Agreement that have been
6 approved by the Secretary. Two such approved means are the recovery and
7 exchange method and the credit exchange method. AWBA may also use any other
8 means of developing ICUA during the term of this Agreement provided such means
9 comply with CFR Part 414 and are first approved by the Secretary.
10

11 4.2.1 The recovery and exchange method requires that Long-term Storage
12 Credits in the SNWA Interstate Account be recovered and the recovered
13 water exchanged for Colorado River water that would otherwise have been
14 delivered through the CAP in that Year. The Long-term Storage credits
15 may be recovered by CAWCD or by another entity scheduled to receive
16 water from CAWCD in the Year of recovery.
17

18 4.2.2 The credit exchange method requires that Long-term Storage Credits in the
19 SNWA Interstate Account be exchanged for Colorado River water that
20 would otherwise have been delivered through the CAP for underground
21 storage in that Year. The recipient of the credits shall be an entity
22 scheduled to receive water from CAWCD for purposes of underground
23 storage in the Year of recovery.
24

25 4.3. AWBA shall prepare an Interstate Recovery Schedule in accordance with the terms
26 of the Agreement for the Development of Intentionally Created Unused
27 Apportionment and the Agreement for Interstate Water Banking. AWBA shall meet
28 and confer with the Bureau of Reclamation in the preparation of the Interstate
29 Recovery Schedule. ICUA shall not exceed 100,000 acre-feet in any Year under
30 this Agreement.
31

32 4.4 The Interstate Recovery Schedule shall set forth the means by which AWBA intends
33 to create ICUA.
34

35 4.4.1 If AWBA intends to create ICUA using the recovery and exchange method,
36 then the Interstate Recovery Schedule shall demonstrate that there is
37 sufficient recovery capacity to recover the necessary Long-term Storage
38 Credits from the SNWA Interstate Account and shall describe how the
39 credits will be recovered and delivered through the CAP or how the credits
40 will be recovered by individual CAP customers in lieu of their scheduled
41 CAP deliveries.
42

43 4.4.2 If AWBA intends to create ICUA using the credit exchange method, then
44 the Interstate Recovery Schedule shall demonstrate that CAWCD has
45 received sufficient orders for the delivery of Colorado River water for

1 underground storage and shall identify the entity or entities accepting the
2 transfer of Long-term Storage Credits in lieu of the delivery of
3 Colorado River water.
4

5 4.4.3 If AWBA intends to create ICUA using another method approved by the
6 Secretary, after consultation with the Governors' representatives of the
7 Basin States, then the Interstate Recovery Schedule shall include such
8 information as required by the Secretary for that method.
9

10 4.5 AWBA shall require that any Agreement for Development of Intentionally Created
11 Unused Apportionment contain a provision requiring CAWCD to accept Long-term
12 Storage Credits from the SNWA Interstate Account in exchange for Colorado River
13 water that would have otherwise been diverted into the CAP by CAWCD and to
14 reduce its consumptive use of Colorado River water in accordance with that
15 exchange. The Agreement for Development of Intentionally Created Unused
16 Apportionment shall allow CAWCD to meet all scheduled deliveries to Indian
17 contractors, CAWCD subcontractors and other CAP water users, through a
18 combination of Colorado River water and recovered Long-term Storage Credits.
19

20 4.6 AWBA shall require that any Agreement for Development of Intentionally Created
21 Unused Apportionment also provide that any Long-term Storage Credits accepted
22 by CAWCD pursuant to this Article 4 shall be accounted for by CAWCD as water
23 diverted from the Colorado River for purposes of determining the amount of water
24 that CAWCD may lawfully divert from the Colorado River in the Year of
25 development of ICUA.
26

27 4.7 In any Year that SNWA anticipates requesting the release of ICUA under sub-
28 article 5.1, SNWA shall, by June 1, make a preliminary request to the AWBA for the
29 development of ICUA in accordance with the terms of the Agreement for Interstate
30 Water Banking. Such preliminary request shall be in writing and shall specify the
31 quantity of the requested ICUA. A copy of such preliminary request shall be
32 provided to the Secretary at the same time that it is made to AWBA.
33

34 4.8 By December 1 of any year in which SNWA has made a request for development
35 of ICUA in the following Year under the Agreement for Interstate Water Banking,
36 AWBA shall prepare and deliver to Secretary three certifications: (i) a Development
37 of ICUA Certification; (ii) an Interstate Recovery Schedule Certification; and (iii) an
38 Upcoming Year Delivery Certification. These three certifications may be combined
39 in a single document.
40

41 4.8.1 The Development of ICUA Certification shall certify: (i) that sufficient Long-
42 term Storage Credits exist in the SNWA Interstate Account to support the
43 development of the requested ICUA; (ii) that ICUA will be developed in the
44 upcoming Year in an amount equal to the request using an approved
45 means; (iii) that such ICUA otherwise would not exist; and (iv) that the

1 notice under sub-Article 4.11 has been given. The Development of ICUA
2 Certification shall request that the Secretary release the ICUA for use in
3 Nevada pursuant to Article II(B)(6) of the Decree and this Agreement.
4

5 4.8.2 The Interstate Recovery Schedule Certification shall state that the
6 Interstate Recovery Schedule has been prepared after consultation with
7 the Bureau of Reclamation and that the Interstate Recovery Schedule sets
8 forth the means by which AWBA intends to develop ICUA utilizing Long-
9 term Storage Credits in the SNWA Interstate Account and the quantity of
10 ICUA the AWBA intends to develop. The Interstate Recovery Schedule
11 Certification shall certify that the contractual commitments by CAWCD
12 necessary to develop ICUA remain in full force and effect and that CAWCD
13 will reduce its consumptive use of Colorado River water in the amount of
14 the requested ICUA. A copy of the Interstate Recovery Schedule shall be
15 included with the Interstate Recovery Schedule Certification. The
16 Secretary shall provide a copy of the Interstate Recovery Schedule and the
17 Interstate Recovery Certification to the Governors' representatives of the
18 Basin States.
19

20 4.8.3 The Delivery Certification shall indicate the amount of water ordered by
21 CAWCD for the following Year and quantify how that order will be satisfied
22 with diversions from the Colorado River and Long-term Storage Credits
23 from the SNWA Interstate Account. The Delivery Certification shall state
24 that Arizona's consumptive use of Colorado River water will be decreased
25 in the following Year by a quantity sufficient to develop the requested
26 ICUA.
27

28 4.9 Once AWBA certifies to the Secretary that ICUA will be developed during the Year
29 of release, AWBA shall take all actions necessary in the following Year to ensure
30 that ICUA is developed in accordance with such certifications.
31

32 4.10 In years in which the Secretary has determined a shortage under Article II(B)(3) of
33 the Decree, AWBA's obligation to develop ICUA shall be limited as provided in the
34 Agreement for Interstate Water Banking.
35

36 4.11 AWBA shall give notice to Entitlement Holders in Arizona, including Indian Tribes,
37 that SNWA has requested the development of ICUA. The notice shall state which
38 means permitted under this Article will be used to develop ICUA. Whether and what
39 opportunities exist for Entitlement Holders in Arizona, including Indian Tribes, to
40 develop ICUA will depend upon the means selected. The notice shall identify any
41 opportunities for Entitlement Holders in Arizona, including Indian Tribes, to
42 participate in the development of ICUA associated with the particular means
43 selected. AWBA shall provide this notice by first class mail to Entitlement Holders
44 in Arizona, or by such other means as are acceptable to the Secretary.
45

- 1 4.12 By April 1 of the Year after ICUA is developed, AWBA shall submit to the Secretary
2 a report documenting how ICUA was created and confirming that the amount of
3 ICUA set forth in the Interstate Recovery Schedule was developed.
4
- 5 4.13 The Secretary shall, as he or she deems appropriate, review books and records in
6 accordance with sub-article 6.6 to ensure that ICUA was developed and, in the
7 event of a discrepancy shall require AWBA to repay to Lake Mead storage as set
8 forth in sub-article 4.14.
9
- 10 4.14 If AWBA does not create ICUA as required under this Article, AWBA shall create
11 ICUA in another Year to repay to Lake Mead storage the amount of ICUA
12 consumptively used by SNWA but not created by AWBA. The Secretary, in addition
13 to any other remedy available, may seek a court order requiring AWBA to do so.
14 The Year of repayment shall be at the discretion of the Secretary, but shall not be
15 more than three years after the year in which the shortfall occurred.
16

Article 5
Release of Intentionally Created Unused Apportionment

- 17
- 18
- 19
- 20 5.1 SNWA shall make a written request of the Secretary for the release of ICUA for
21 consumptive use in the State of Nevada. A request for a release of ICUA shall be
22 made by September 15 of the current Year, or an earlier date as reasonably
23 required in writing by the Secretary, for a release of ICUA in the following Year. The
24 request shall specify the quantity of ICUA to be released by the Secretary and shall
25 certify that SNWA has mailed, first class postage paid, a copy of the request to the
26 States of Nevada, Arizona, and California by providing copies to CRCN, the Arizona
27 Department of Water Resources and the Colorado River Board of California. A
28 copy of the request shall be provided to AWBA. To make a proper and timely
29 request, SNWA must be in compliance with the terms of the Agreement for
30 Interstate Water Banking and must have made a preliminary request to the AWBA
31 to develop ICUA under sub-article 4.7.
32
- 33 5.2 The request for the development of ICUA by SNWA shall be incorporated into the
34 Secretary's Annual Operating Plan for the Colorado River. The Annual Operating
35 Plan shall state that, upon proper certification, the Secretary intends to release that
36 quantity of ICUA to SNWA under Article II(B)(6) of the Decree in accordance with
37 the terms of this Agreement.
38
- 39 5.3 Release of ICUA under this Agreement for diversion by SNWA shall operate under
40 43 CFR Part 414.3(f), Anticipatory Release of ICUA, as provided in this article. The
41 Secretary shall not release ICUA in excess of 100,000 acre-feet in any Year or in
42 excess of the 1,250,000 acre-feet over the entire period of this Agreement. The
43 amount of 1,250,000 acre-feet consists of the 1,200,000 acre-feet maximum credit
44 accrual developed under the Agreement for Interstate Water Banking and the

1 50,000 acre-feet credit accrual developed pursuant to the demonstration
2 underground storage project referenced in sub-article 3.3.2.
3

4 5.4 By December 20 of the current Year, following receipt of a proper and timely
5 request for release of ICUA under sub-Article 5.1, the Secretary shall determine
6 whether AWBA has elected a means for developing ICUA approved under Article 4
7 and whether all necessary actions required by 43 CFR Part 414 have been taken.
8 For purposes of this Agreement, all necessary actions are those actions expressly
9 enumerated in 43 CFR Part 414, as amplified by this Agreement.
10

11 5.4.1 The Secretary shall determine whether the certifications made by AWBA
12 meet the requirements under sub-article 4.8. Upon so determining, the
13 Secretary shall issue a notice of determination that shall release for
14 diversion that quantity of ICUA so certified for consumptive use in the State
15 of Nevada. The release of ICUA under this sub-article shall be effective as
16 of January 1 of the following Year.
17

18 5.4.2 If the Secretary determines that the proper certifications have not been
19 made under sub-article 4.8, or that all necessary actions under 43 CFR
20 Part 414 have not been taken, the notice of determination shall (i) specify
21 which certifications or necessary actions are deficient and the nature of the
22 deficiency; (ii) specify the extent to which such deficiencies preclude the
23 release of ICUA requested by SNWA for consumptive use in Nevada
24 effective as of January 1 of the following Year; and (iii) determine whether
25 any quantity of ICUA is available for release in the following year. If a
26 quantity of ICUA is available for release under (iii), the notice shall release
27 that quantity of ICUA to SNWA for consumptive use in the State of Nevada,
28 effective on January 1 of the following year.
29

30 5.4.3 Any portion of ICUA not released in the notice of determination made by
31 the Secretary under this sub-article shall be released for diversion by the
32 Secretary on such date as the Secretary determines that the stated
33 deficiencies have been cured.
34

35 5.5 The Secretary shall provide notice of the determination under sub-article 5.4 on or
36 before December 20 of the current Year. If the Secretary fails to provide written
37 notice of a determination required by sub-Article 5.4 by December 20, SNWA may
38 seek judicial relief and shall be deemed to have exhausted any applicable
39 administrative remedy and shall be free to seek any remedies available to it under
40 applicable law.
41

42 5.6 ICUA shall be released to SNWA only in the Year and to the extent that ICUA is
43 developed by AWBA, or for an anticipatory release, will be developed by AWBA as
44 certified to the Secretary in accordance with Article 4.7, by reducing Colorado River
45 water use within the State of Arizona.

- 1 5.7 Once the Secretary has determined that ICUA will be released to SNWA under sub-
2 article 5.4, such ICUA shall not be available for release to any Entitlement Holder
3 in the States of Arizona or California in that Year.
4
- 5 5.8 In any Year in which the Secretary has released ICUA to SNWA under this Article
6 5, AWBA shall cause the assignment of Long-term Storage Credits from the SNWA
7 Interstate Account in accordance with the Interstate Recovery Schedule. By
8 December 31 of that Year, AWBA shall ensure that all assignments from the SNWA
9 Interstate Account have been made and properly debited by ADWR.
10
- 11 5.9 The amount of ICUA released for consumptive use in Nevada effective January 1
12 of any Year shall not be subject to reduction unless:
13
- 14 5.9.1 SNWA requests that AWBA cease development of ICUA under the terms
15 of the Agreement for Interstate Water Banking; and
16
- 17 5.9.2 AWBA certifies to the Secretary that, pursuant to a SNWA request, a
18 specific quantity of Long-term Storage Credits will not be recovered or
19 exchanged for Colorado River water pursuant to an SNWA request.
20
- 21 5.10 ICUA that has been developed by the AWBA and released by the Secretary for
22 diversion by SNWA in a particular Year but not diverted by SNWA for consumptive
23 use in that Year may not be carried forward and diverted by SNWA in any
24 succeeding Year.
25
- 26 5.11 The Secretary shall release ICUA developed by AWBA in accordance with the
27 request of the SNWA, the terms of this Agreement, the determination of the
28 Secretary under sub-article 5.4 of this Agreement, the Boulder Canyon Project Act,
29 Article II(B)(6) of the Decree and all other applicable Federal laws and executive
30 orders.
31

32 **Article 6**
33 **General Provisions**
34

- 35 6.1 Upon execution of this Agreement and annually thereafter, SNWA shall pay an
36 annual administration fee of two thousand dollars (\$2,000.00) to cover the
37 United States' costs to perform the routine tasks necessary to administer this
38 Agreement. The initial annual administration fee shall be pro-rated on the basis of
39 one hundred sixty six dollars and sixty seven cents (\$166.67) per month for the first
40 year, payable upon execution of this Agreement. Thereafter, the fee for each
41 subsequent year shall be due on January 1.
42
- 43 6.2 The Secretary reserves the right at intervals of five (5) years, beginning five (5)
44 years after the date of execution of this Agreement, to reexamine the annual
45 administration fee and to revise the fee after three (3) months' advance written

1 notice and after consultation with SNWA if the Secretary determines that a different
2 charge is necessary to cover the United States' costs to perform the tasks described
3 in this Agreement. Upon SNWA's written request, the Secretary shall provide
4 SNWA with a detailed cost analysis supporting the adjustment to the annual
5 administration fee.

6
7 6.3 The annual administration fee shall cover, but is not limited to, the costs for the
8 following tasks routinely performed by the Secretary:

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

14
15 6.3.2 Reviewing records prepared by AWBA and SNWA pursuant to sub-article
16 3.4 and preparing and maintaining records to supplement the Article V
17 Decree accounting report;

18
19 6.3.3 Reviewing AWBA's notices of opportunities for Colorado River water users
20 in Arizona to participate in the development of ICUA;

21
22 6.3.4 Reviewing certifications from AWBA that ICUA has been or will be
23 developed;

24
25 6.3.5 Determining that all necessary actions have been taken to implement
26 43 CFR 414; and

27
28 6.3.6 Reviewing SNWA's requests for release of ICUA and scheduling delivery
29 of ICUA to SNWA.

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

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

- 1 6.6 The records of any party to this Agreement that relate to the storage and recovery
2 of water, including the development and verification of Long-term Storage Credits,
3 and the creation, release and use of ICUA shall be open to inspection by any other
4 party. AWBA shall require that any Agreement for Development of Intentionally
5 Created Unused Apportionment with CAWCD provide that the records of CAWCD
6 relating to the development of ICUA shall be open to reasonable inspection by any
7 party to this Agreement.
8
- 9 6.7 The provisions of this sub-article shall govern enforcement of this Agreement.
10
- 11 6.7.1 Time is of the essence in the performance of this Agreement.
12
- 13 6.7.2 The parties recognize and acknowledge that the availability of ICUA as
14 provided in this Agreement is a critical alternative municipal water supply
15 for SNWA while other longer-term sources of supply are being developed;
16 that in planning to meet the needs of the area it serves, SNWA will rely on
17 ICUA being available to it as provided in this Agreement; that accordingly
18 the release of ICUA as provided in Article 5 is critical to the economy,
19 health and safety of the area served by SNWA; that the release of ICUA
20 as provided in this Agreement presents a unique opportunity for SNWA to
21 obtain additional Colorado River water under the Decree; and that, for
22 these reasons, among others, the water resources to be released as ICUA
23 for use in Nevada are unique and not susceptible to replacement by
24 SNWA.
25
- 26 6.8 The expenditure or advance of any money or the performance of any obligation of
27 the United States under this Agreement shall be contingent on appropriation or
28 allotment of funds. No liability shall accrue to the United States in case funds are
29 not appropriated or allotted. Absence of appropriation or allotment of funds shall
30 not relieve AWBA, SNWA, or CRCN from any obligation under this Agreement.
31
- 32 6.9 No member of or Delegate to Congress, Resident Commissioner, or official of
33 AWBA, SNWA, or CRCN shall benefit from this Agreement other than as a water
34 user or landowner in the same manner as other water users or landowners.
35
- 36 6.10 The parties to this Agreement shall indemnify the United States, its employees,
37 agents, subcontractors, successors, or assignees from loss or claims for damages
38 and from liability to persons or property, direct or indirect, and loss or claim of any
39 nature whatsoever arising by reason of actions taken by non-Federal parties to this
40 Agreement.
41
- 42 6.11 The parties to this Agreement are hereby notified of Arizona Revised Statutes
43 section 38-511.
44

1 6.12 The parties to this Agreement recognize and acknowledge that this Agreement is
2 a contract executed pursuant to Federal Reclamation law, including the provisions
3 of 43 U.S.C. § 390uu.
4

5 6.13 This Agreement shall not constitute approval by the Secretary of any other
6 agreement or water delivery program.
7

8 6.14 Nothing in this Agreement affects the rights of any Colorado River Entitlement
9 Holder.
10

11 6.15 No party to this Agreement shall be considered to be in default in the performance
12 of any obligations under this Agreement when a failure of performance shall be due
13 to uncontrollable forces. The term "uncontrollable force" shall mean any cause
14 beyond the control of the party unable to perform such obligation, including but not
15 limited to failure or threat of failure of facilities, flood, earthquake, storm, fire,
16 lightning, and other natural catastrophes, epidemic, war, civil disturbance or
17 disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint
18 by order of a court or regulatory agency of competent jurisdiction, and action or non-
19 action by, or failure to obtain the necessary authorizations or approvals from, a
20 Federal governmental agency or authority, which by exercise of due diligence and
21 foresight such party could not reasonably have been expected to overcome.
22 Nothing contained herein shall be construed to require any party to settle any strike
23 or labor dispute in which it is involved.
24

25 6.16 Non-Federal parties to this Agreement may assign their interest in this Agreement,
26 in whole or in part, to other authorized entities, subject to the approval of all other
27 parties to this Agreement.
28

29 6.17 The Secretary does not warrant the quality of water released or delivered under
30 this Agreement. The United States is not liable for damages of any kind resulting
31 from water quality problems and the United States has no obligation to construct or
32 furnish water treatment facilities to maintain or improve water quality except as may
33 otherwise be provided in relevant Federal law.
34

35 **Article 7** 36 **Notices**

37 7.1 **Notices and Requests**

38 7.1.1 All notices and requests required or allowed under the terms of this
39 Agreement shall be in writing and shall be mailed first class postage paid
40 to the following entities at the following addresses:
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43

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AWBA:

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

SNWA:

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

CRCN:

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

Secretary:

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

The State of Arizona:

Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004
Attn: Director

The State of California:

Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1035
Attn: Executive Director

The State of Nevada:

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

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7.1.2 Any party may, at any time, change its mailing address by notice to the other parties.

7.2 Notices and Requests by Facsimile

7.2.1 Notices and requests may be given by facsimile among AWBA, SNWA, CRCN and the Secretary in lieu of first class mail as provided in sub-article 7.1. Such facsimiles shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

AWBA Facsimile Number	602-417-2401
SNWA Facsimile Number	702-258-3951
CRCN Facsimile Number	702-486-2695
Secretary Facsimile Number	702-293-8042

7.2.2 Any party may, at any time, change its facsimile number by notice to the other parties.

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

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

By: *Katherine Ott Verburg* By: *Robert D. Johnson*
Field Solicitor Regional Director
Phoenix, Arizona Lower Colorado Region
Bureau of Reclamation

STATE OF NEVADA, acting through its COLORADO RIVER COMMISSION

Attest:
By: *H. M. Lee* By: *R. Bunker*
Executive Director Chair

Approved as to form:
By: *[Signature]* Title: *Sr Deputy AG*

THE SOUTHERN NEVADA WATER AUTHORITY

Attest:
By: *[Signature]* By: *Carmela Cyprien*
General Manager Chair

Approved as to form:
By: *[Signature]* Title: *Deputy Counsel*

ARIZONA WATER BANKING AUTHORITY

Attest:
By: _____ By: _____
Chair
Title: _____