

STORAGE AND INTERSTATE RELEASE AGREEMENT

among

The United States of America, acting through the Secretary of the Interior; the Arizona Water Banking Authority; the Southern Nevada Water Authority; and the Colorado River Commission of Nevada

WITNESSETH, THAT:

Recitals

- A. The Secretary of the United States Department of the Interior (Secretary) in 43 CFR 414.3(c) authorized the United States Bureau of Reclamation, Lower Colorado Region, to execute and administer this Storage and Interstate Release Agreement (Agreement) on behalf of the United States. References to the Secretary in this Agreement include the United States Bureau of Reclamation, Lower Colorado Region.
- B. The Arizona Water Banking Authority (AWBA) is expressly authorized by A.R.S. § 45-2401 *et seq.* to enter into Storage and Interstate Release Agreements and develop Intentionally Created Unused Apportionment (ICUA). 43 CFR 414.2(1).
- C. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant to its contract issued under section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICUA released by the Secretary for use within the State of Nevada pursuant to Article II(B)(6) of the Decree in *Arizona v. California*, 376 U.S. 340, 343 (1964).
- D. The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 through 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, enters into this Agreement to facilitate the banking of Colorado River water, the creation of Long-term Storage Credits and the establishment and maintenance of a Long-term Storage Account for SNWA.
- E. On July 3, 2001, AWBA, SNWA, and CRCN entered into an Agreement for Interstate Water Banking for the purpose of creating a program of interstate banking of Colorado River water in Arizona for the benefit of SNWA. Under this program,

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 December 18, 2002.
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

17 **Article 5**

18 **Release of Intentionally Created Unused Apportionment**

- 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.
44

- 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

38 7.1 Notices and Requests
39

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

1 In Witness of this Agreement, the Parties affix their official signatures below,
2 acknowledging execution of this document on the 18th day of DECEMBER, 2002.

3
4 Legal Review and Approval: **THE UNITED STATES OF AMERICA**

5
6
7
8 By: Katherine Ott Verburg By: Robert W. Johnson
9 Field Solicitor Regional Director
10 Phoenix, Arizona Lower Colorado Region
11 Bureau of Reclamation

12
13 **STATE OF NEVADA, acting through its**
14 **COLORADO RIVER COMMISSION**

15 Attest:
16
17 By: [Signature] By: [Signature]
18 Executive Director Chair

19
20 Approved as to form:
21
22 By: [Signature] Title: Sr. Deputy AG

23
24
25 **THE SOUTHERN NEVADA WATER AUTHORITY**

26 Attest:
27
28 By: [Signature] By: Amanda Cyphers
29 General Manager Chair

30
31 Approved as to form:
32
33 By: [Signature] Title: Deputy Counsel

34
35 **ARIZONA WATER BANKING AUTHORITY**

36 Attest:
37
38 By: William Wood By: [Signature]
39 Secretary Chair
40
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