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DOCUMENTS RELATED TO COLORADO RIVER WATER DIVERTED AND STORED IN ARIZONA BY AWBA FOR THE BENEFIT OF SNWA

1. 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 (Contract No. 02-XX-30-W0406), dated December 18, 2002.
2. Agreement for Interstate Water Banking among AWBA and SNWA and CRCN, dated July 3, 2001.
3. Amended Agreement for Interstate Water Banking among AWBA and SNWA and CRCN, dated January 1, 2005.
4. Second Amended Agreement for Interstate Water Banking among AWBA and SNWA and CRCN, dated April 1, 2009.
5. Third Amended Agreement for Interstate Water Banking among AWBA and SNWA and CRCN, dated May 20, 2013.
6. AWBA's letter to Reclamation dated January 28, 2015, indicating they would not be storing water on behalf of Nevada in Calendar Year 2015.
7. AWBA's letter to Reclamation dated October 21, 2015, documenting the final verified accounting of SNWA's Interstate Account for Calendar Year 2014.

1 acquire and store mainstream Colorado River water in Arizona, creating Long-term
2 Storage Credits to be held for SNWA in an account established with ADWR, and at
3 a later date recover the Long-term Storage Credits and exchange the recovered water
4 with Colorado River water users in Arizona to develop ICUA.
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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 Nevada.
8 Pursuant to such authority and for the purpose of increasing the efficiency, flexibility,
9 and certainty of Colorado River management and thereby helping satisfy the regional
10 water demands that exist in the area served by SNWA, the Secretary promulgated
11 regulations (43 CFR Part 414) to establish a procedural framework for facilitating
12 interstate off-stream banking transactions, including a commitment by the Secretary
13 to release ICUA as a part of such transactions, consistent with those regulations.
14

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

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

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

25 1.1 Definitions. The following terms shall have the meaning defined here. All defined terms
26 shall be identified by initial letter capitalization.
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28 1.1.1 "ADWR" shall mean the Arizona Department of Water Resources.
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30 1.1.2 "Agreement" shall mean this Storage and Interstate Release Agreement.
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32 1.1.3 "Agreement for Development of Intentionally Created Unused Apportionment"
33 shall mean that agreement between AWBA and the Central Arizona Water
34 Conservation District dated December 18, 2002.
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36 1.1.4 "Agreement for Interstate Water Banking" shall mean that agreement among
37 AWBA, SNWA and CRCN dated July 3, 2001.
38

39 1.1.5 "AWBA" shall mean the Arizona Water Banking Authority.
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41 1.1.6 "AWBA Plan of Operation" shall mean the plan by which AWBA shall operate
42 during the Year as defined in A.R.S. § 45-2456.
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- 1.1.7 “Basin States” shall mean the Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, Wyoming, and Utah.
- 1.1.8 “CAP” shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*
- 1.1.9 “CAWCD” shall mean the Central Arizona Water Conservation District.
- 1.1.10 “CRCN” shall mean the Colorado River Commission of Nevada.
- 1.1.11 “Decree” shall mean the Decree entered by the United States Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.
- 1.1.12 “Entitlement Holder” shall mean a holder of an authorization to beneficially use Colorado River water pursuant to (i) the Decree; (ii) a water delivery contract with the United States through the Secretary; or (iii) a reservation of water from the Secretary.
- 1.1.13 “ICUA” shall mean Intentionally Created Unused Apportionment as that term is defined in 43 CFR 414.
- 1.1.14 “Long-term Storage Credit” shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01.
- 1.1.15 “SNWA” shall mean the Southern Nevada Water Authority.
- 1.1.16 “SNWA Interstate Account” shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR under the terms of this Agreement and the Agreement for Interstate Water Banking.
- 1.1.17 “Storage Facility” or “Storage Facilities” shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01. “Storage facilities” do not presently include facilities constructed or financed by the United States.
- 1.1.18 “Water Stored “ means the amount of Long-term Storage Credits properly credited to the SNWA Interstate Account under applicable Arizona law and the Agreement for Interstate Water Banking. The amount of “Water Stored” under this agreement will always be less than the amount of water diverted for storage.
- 1.1.19 “Year” shall mean calendar year.

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 Water
5 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 to
12 the State of Arizona under Articles II(B)(1) or II(B)(2) of the Decree; or (ii) the State of
13 Nevada's unused basic or surplus apportionment, apportioned to the State of Nevada
14 under Articles II(B)(1) and II(B)(2) of the Decree and released to the State of Arizona
15 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 are
20 met:
21

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

26 2.2.2 The AWBA has agreed that it will accept delivery of such water and store it
27 for the benefit of SNWA in accordance with the terms of the Agreement for
28 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 diversion
32 within their entitlements for purposes other than interstate transactions as provided in
33 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

1 CFR 414.3(a)(1). A listing of the potential Storage Facilities to be utilized is provided
2 in the AWBA storage facilities inventory dated March 1, 1997. Additional storage
3 facilities may be needed for Arizona use. If such facilities are permitted by ADWR and
4 developed by Arizona entities, and if AWBA chooses to use those Storage Facilities
5 for interstate banking, AWBA shall update the 1997 Facility Inventory to include those
6 additional facilities. If the 1997 Facility Inventory is updated, unused storage capacity
7 at those additional facilities may be used for 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 as
22 to accommodate the storage and recovery of water for the benefit of SNWA in the
23 manner provided in this Agreement and the Agreement for Interstate Water Banking.
24 AWBA shall ensure that ADWR timely and properly credits or debits the SNWA
25 Interstate Account with the correct number of Long-term Storage Credits under
26 applicable Arizona law for each Year. AWBA shall ensure that the Year-end balance
27 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 entitled
30 to the storage of water under this Agreement or the assignment of existing
31 Long-term Storage Credits pursuant to sub-article 3.3.4 to the extent such
32 storage or assignment would result in Long-term Storage Credits credited to
33 the SNWA Interstate Account in excess of 200,000 acre-feet in any Year, or
34 in excess of 1,200,000 acre-feet over the entire period of this Agreement.
35

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

1 of determining whether either of the limitations specified in sub-article 3.3.1
2 has been exceeded.

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

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

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

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

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

1 Storage Credits in the SNWA Interstate Account at the end of the Year; and
2 (vi) the cumulative amount of Long-term Storage Credits properly credited to
3 the SNWA Interstate Account for purposes of determining compliance with the
4 1,200,000 maximum credit accrual specified in sub-article 3.3.1.

5
6 3.4.3 Submission by AWBA of a report in compliance with sub-article 3.4.2 shall
7 constitute compliance with the requirements of 43 CFR § 414.4(a) as it is in
8 effect on the date of execution of this Agreement.

9
10 3.4.4 The Secretary shall include a supplement in the Secretary's annual Article V
11 Decree accounting report titled "Water Diverted and Stored in Arizona for the
12 Benefit of SNWA."

13
14 3.4.4.1 The Secretary will account for the water that is diverted by CAWCD
15 for storage by AWBA as a consumptive use in the State of Arizona
16 for the year in which it is diverted and stored.

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

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

33
34 3.4.5 All records of AWBA concerning the amount of Water Stored in that Year,
35 including all records used by AWBA to prepare the final verified accounting,
36 shall be available for inspection by the Secretary.

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

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Article 4

Development of Intentionally Created Unused Apportionment

- 4.1 AWBA shall develop ICUA for the benefit of SNWA in accordance with the provisions of this Agreement, the Agreement for Interstate Water Banking, and the Agreement for Development of Intentionally Created Unused Apportionment. All actions that AWBA takes to develop ICUA shall be consistent with the laws of the State of Arizona.
- 4.2 AWBA shall only use means to develop ICUA under this Agreement that have been approved by the Secretary. Two such approved means are the recovery and exchange method and the credit exchange method. AWBA may also use any other means of developing ICUA during the term of this Agreement provided such means comply with CFR Part 414 and are first approved by the Secretary.
- 4.2.1 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. The Long-term Storage credits may be recovered by CAWCD or by another entity scheduled to receive water from CAWCD in the Year of recovery.
- 4.2.2 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 the Year of recovery.
- 4.3. AWBA shall prepare an Interstate Recovery Schedule in accordance with the terms of the Agreement for the Development of Intentionally Created Unused Apportionment and the Agreement for Interstate Water Banking. AWBA shall meet and confer with the Bureau of Reclamation in the preparation of the Interstate Recovery Schedule. ICUA shall not exceed 100,000 acre-feet in any Year under this Agreement.
- 4.4 The Interstate Recovery Schedule shall set forth the means by which AWBA intends to create ICUA.
- 4.4.1 If AWBA intends to create ICUA using the recovery and exchange method, then the 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.

1 4.4.2 If AWBA intends to create ICUA using the credit exchange method, then the
2 Interstate Recovery Schedule shall demonstrate that CAWCD has received
3 sufficient orders for the delivery of Colorado River water for underground
4 storage and shall identify the entity or entities accepting the transfer of Long-
5 term Storage Credits in lieu of the delivery of Colorado River water.
6

7 4.4.3 If AWBA intends to create ICUA using another method approved by the
8 Secretary, after consultation with the Governors' representatives of the Basin
9 States, then the Interstate Recovery Schedule shall include such information
10 as required by the Secretary for that method.
11

12 4.5 AWBA shall require that any Agreement for Development of Intentionally Created
13 Unused Apportionment contain a provision requiring CAWCD to accept Long-term
14 Storage Credits from the SNWA Interstate Account in exchange for Colorado River
15 water that would have otherwise been diverted into the CAP by CAWCD and to reduce
16 its consumptive use of Colorado River water in accordance with that exchange. The
17 Agreement for Development of Intentionally Created Unused Apportionment shall allow
18 CAWCD to meet all scheduled deliveries to Indian contractors, CAWCD
19 subcontractors and other CAP water users, through a combination of Colorado River
20 water and recovered Long-term Storage Credits.
21

22 4.6 AWBA shall require that any Agreement for Development of Intentionally Created
23 Unused Apportionment also provide that any Long-term Storage Credits accepted by
24 CAWCD pursuant to this Article 4 shall be accounted for by CAWCD as water diverted
25 from the Colorado River for purposes of determining the amount of water that CAWCD
26 may lawfully divert from the Colorado River in the Year of development of ICUA.
27

28 4.7 In any Year that SNWA anticipates requesting the release of ICUA under sub-
29 article 5.1, SNWA shall, by June 1, make a preliminary request to the AWBA for the
30 development of ICUA in accordance with the terms of the Agreement for Interstate
31 Water Banking. Such preliminary request shall be in writing and shall specify the
32 quantity of the requested ICUA. A copy of such preliminary request shall be provided
33 to the Secretary at the same time that it is made to AWBA.
34

35 4.8 By December 1 of any year in which SNWA has made a request for development of
36 ICUA in the following Year under the Agreement for Interstate Water Banking, AWBA
37 shall prepare and deliver to Secretary three certifications: (i) a Development of ICUA
38 Certification; (ii) an Interstate Recovery Schedule Certification; and (iii) an Upcoming
39 Year Delivery Certification. These three certifications may be combined in a single
40 document.
41

42 4.8.1 The Development of ICUA Certification shall certify: (i) that sufficient Long-
43 term Storage Credits exist in the SNWA Interstate Account to support the

1 development of the requested ICUA; (ii) that ICUA will be developed in the
2 upcoming Year in an amount equal to the request using an approved means;
3 (iii) that such ICUA otherwise would not exist; and (iv) that the notice under
4 sub-Article 4.11 has been given. The Development of ICUA Certification shall
5 request that the Secretary release the ICUA for use in Nevada pursuant to
6 Article II(B)(6) of the Decree and this Agreement.

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

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

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

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

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

1 shall provide this notice by first class mail to Entitlement Holders in Arizona, or by such
2 other means as are acceptable to the Secretary.

3
4 4.12 By April 1 of the Year after ICUA is developed, AWBA shall submit to the Secretary a
5 report documenting how ICUA was created and confirming that the amount of ICUA set
6 forth in the Interstate Recovery Schedule was developed.

7
8 4.13 The Secretary shall, as he or she deems appropriate, review books and records in
9 accordance with sub-article 6.6 to ensure that ICUA was developed and, in the event
10 of a discrepancy shall require AWBA to repay to Lake Mead storage as set forth in
11 sub-article 4.14.

12
13 4.14 If AWBA does not create ICUA as required under this Article, AWBA shall create ICUA
14 in another Year to repay to Lake Mead storage the amount of ICUA consumptively
15 used by SNWA but not created by AWBA. The Secretary, in addition to any other
16 remedy available, may seek a court order requiring AWBA to do so. The Year of
17 repayment shall be at the discretion of the Secretary, but shall not be more than three
18 years after the year in which the shortfall occurred.

19 **Article 5**

20 **Release of Intentionally Created Unused Apportionment**

21
22
23 5.1 SNWA shall make a written request of the Secretary for the release of ICUA for
24 consumptive use in the State of Nevada. A request for a release of ICUA shall be
25 made by September 15 of the current Year, or an earlier date as reasonably required
26 in writing by the Secretary, for a release of ICUA in the following Year. The request
27 shall specify the quantity of ICUA to be released by the Secretary and shall certify that
28 SNWA has mailed, first class postage paid, a copy of the request to the States of
29 Nevada, Arizona, and California by providing copies to CRCN, the Arizona
30 Department of Water Resources and the Colorado River Board of California. A copy
31 of the request shall be provided to AWBA. To make a proper and timely request,
32 SNWA must be in compliance with the terms of the Agreement for Interstate Water
33 Banking and must have made a preliminary request to the AWBA to develop ICUA
34 under sub-article 4.7.

35
36 5.2 The request for the development of ICUA by SNWA shall be incorporated into the
37 Secretary's Annual Operating Plan for the Colorado River. The Annual Operating Plan
38 shall state that, upon proper certification, the Secretary intends to release that quantity
39 of ICUA to SNWA under Article II(B)(6) of the Decree in accordance with the terms of
40 this Agreement.

41
42 5.3 Release of ICUA under this Agreement for diversion by SNWA shall operate under
43 43 CFR Part 414.3(f), Anticipatory Release of ICUA, as provided in this article. The

1 Secretary shall not release ICUA in excess of 100,000 acre-feet in any Year or in
2 excess of the 1,250,000 acre-feet over the entire period of this Agreement. The
3 amount of 1,250,000 acre-feet consists of the 1,200,000 acre-feet maximum credit
4 accrual developed under the Agreement for Interstate Water Banking and the
5 50,000 acre-feet credit accrual developed pursuant to the demonstration underground
6 storage project referenced in sub-article 3.3.2.
7

8 5.4 By December 20 of the current Year, following receipt of a proper and timely request
9 for release of ICUA under sub-Article 5.1, the Secretary shall determine whether
10 AWBA has elected a means for developing ICUA approved under Article 4 and
11 whether all necessary actions required by 43 CFR Part 414 have been taken. For
12 purposes of this Agreement, all necessary actions are those actions expressly
13 enumerated in 43 CFR Part 414, as amplified by this Agreement.
14

15 5.4.1 The Secretary shall determine whether the certifications made by AWBA
16 meet the requirements under sub-article 4.8. Upon so determining, the
17 Secretary shall issue a notice of determination that shall release for diversion
18 that quantity of ICUA so certified for consumptive use in the State of Nevada.
19 The release of ICUA under this sub-article shall be effective as of January 1
20 of the following Year.
21

22 5.4.2 If the Secretary determines that the proper certifications have not been made
23 under sub-article 4.8, or that all necessary actions under 43 CFR Part 414
24 have not been taken, the notice of determination shall (i) specify which
25 certifications or necessary actions are deficient and the nature of the
26 deficiency; (ii) specify the extent to which such deficiencies preclude the
27 release of ICUA requested by SNWA for consumptive use in Nevada effective
28 as of January 1 of the following Year; and (iii) determine whether any quantity
29 of ICUA is available for release in the following year. If a quantity of ICUA
30 is available for release under (iii), the notice shall release that quantity of ICUA
31 to SNWA for consumptive use in the State of Nevada, effective on January 1
32 of the following year.
33

34 5.4.3 Any portion of ICUA not released in the notice of determination made by the
35 Secretary under this sub-article shall be released for diversion by the
36 Secretary on such date as the Secretary determines that the stated
37 deficiencies have been cured.
38

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

1 5.6 ICUA shall be released to SNWA only in the Year and to the extent that ICUA is
2 developed by AWBA, or for an anticipatory release, will be developed by AWBA as
3 certified to the Secretary in accordance with Article 4.7, by reducing Colorado River
4 water use within the State of Arizona.

5
6 5.7 Once the Secretary has determined that ICUA will be released to SNWA under sub-
7 article 5.4, such ICUA shall not be available for release to any Entitlement Holder in the
8 States of Arizona or California in that Year.

9
10 5.8 In any Year in which the Secretary has released ICUA to SNWA under this Article 5,
11 AWBA shall cause the assignment of Long-term Storage Credits from the SNWA
12 Interstate Account in accordance with the Interstate Recovery Schedule. By
13 December 31 of that Year, AWBA shall ensure that all assignments from the SNWA
14 Interstate Account have been made and properly debited by ADWR.

15
16 5.9 The amount of ICUA released for consumptive use in Nevada effective January 1 of
17 any Year shall not be subject to reduction unless:

18
19 5.9.1 SNWA requests that AWBA cease development of ICUA under the terms of
20 the Agreement for Interstate Water Banking; and

21
22 5.9.2 AWBA certifies to the Secretary that, pursuant to a SNWA request, a specific
23 quantity of Long-term Storage Credits will not be recovered or exchanged for
24 Colorado River water pursuant to an SNWA request.

25
26 5.10 ICUA that has been developed by the AWBA and released by the Secretary for
27 diversion by SNWA in a particular Year but not diverted by SNWA for consumptive use
28 in that Year may not be carried forward and diverted by SNWA in any succeeding Year.

29
30 5.11 The Secretary shall release ICUA developed by AWBA in accordance with the request
31 of the SNWA, the terms of this Agreement, the determination of the Secretary under
32 sub-article 5.4 of this Agreement, the Boulder Canyon Project Act, Article II(B)(6) of the
33 Decree and all other applicable Federal laws and executive orders.

34
35 **Article 6**
36 **General Provisions**

37
38 6.1 Upon execution of this Agreement and annually thereafter, SNWA shall pay an annual
39 administration fee of two thousand dollars (\$2,000.00) to cover the United States'
40 costs to perform the routine tasks necessary to administer this Agreement. The initial
41 annual administration fee shall be pro-rated on the basis of one hundred sixty six
42 dollars and sixty seven cents (\$166.67) per month for the first year, payable upon

1 execution of this Agreement. Thereafter, the fee for each subsequent year shall be due
2 on January 1.

3
4 6.2 The Secretary reserves the right at intervals of five (5) years, beginning five (5) years
5 after the date of execution of this Agreement, to reexamine the annual administration
6 fee and to revise the fee after three (3) months' advance written notice and after
7 consultation with SNWA if the Secretary determines that a different charge is
8 necessary to cover the United States' costs to perform the tasks described in this
9 Agreement. Upon SNWA's written request, the Secretary shall provide SNWA with a
10 detailed cost analysis supporting the adjustment to the annual administration fee.

11
12 6.3 The annual administration fee shall cover, but is not limited to, the costs for the
13 following tasks routinely performed by the Secretary:

14
15 6.3.1 Determining when unused Nevada apportionment is available for release for
16 consumptive use within Arizona pursuant to Article II(B)(6) of the Decree for
17 purposes of storage pursuant to this Agreement and releasing that unused
18 apportionment;

19
20 6.3.2 Reviewing records prepared by AWBA and SNWA pursuant to sub-article 3.4
21 and preparing and maintaining records to supplement the Article V Decree
22 accounting report;

23
24 6.3.3 Reviewing AWBA's notices of opportunities for Colorado River water users
25 in Arizona to participate in the development of ICUA;

26
27 6.3.4 Reviewing certifications from AWBA that ICUA has been or will be
28 developed;

29
30 6.3.5 Determining that all necessary actions have been taken to implement 43 CFR
31 414; and

32
33 6.3.6 Reviewing SNWA's requests for release of ICUA and scheduling delivery of
34 ICUA to SNWA.

35
36 6.4 The Secretary recognizes that the Decree must be enforced fairly with respect to all
37 Entitlement Holders. Excess diversion by an Entitlement Holder that is not
38 participating in a Storage and Interstate Release Agreement other than through the
39 CAP facilities cannot be offset by reducing diversions to another Entitlement Holder
40 for the sole reason that the latter Entitlement Holder is participating in a Storage and
41 Interstate Release Agreement.
42

- 1 6.5 In the event any inconsistency is found between this Agreement and the Agreement for
2 Interstate Water Banking, as initially executed and as it may be amended, regarding
3 the rights and obligations as between AWBA and SNWA, the provisions of this
4 Agreement shall control. No agreement to which the Secretary is not a party shall be
5 construed as altering the rights and obligations as between the Secretary and the other
6 parties to this Agreement.
7
- 8 6.6 The records of any party to this Agreement that relate to the storage and recovery of
9 water, including the development and verification of Long-term Storage Credits, and
10 the creation, release and use of ICUA shall be open to inspection by any other party.
11 AWBA shall require that any Agreement for Development of Intentionally Created
12 Unused Apportionment with CAWCD provide that the records of CAWCD relating to
13 the development of ICUA shall be open to reasonable inspection by any party to this
14 Agreement.
15
- 16 6.7 The provisions of this sub-article shall govern enforcement of this Agreement.
17
- 18 6.7.1 Time is of the essence in the performance of this Agreement.
19
- 20 6.7.2 The parties recognize and acknowledge that the availability of ICUA as
21 provided in this Agreement is a critical alternative municipal water supply for
22 SNWA while other longer-term sources of supply are being developed; that
23 in planning to meet the needs of the area it serves, SNWA will rely on ICUA
24 being available to it as provided in this Agreement; that accordingly the
25 release of ICUA as provided in Article 5 is critical to the economy, health and
26 safety of the area served by SNWA; that the release of ICUA as provided in
27 this Agreement presents a unique opportunity for SNWA to obtain additional
28 Colorado River water under the Decree; and that, for these reasons, among
29 others, the water resources to be released as ICUA for use in Nevada are
30 unique and not susceptible to replacement by SNWA.
31
- 32 6.8 The expenditure or advance of any money or the performance of any obligation of the
33 United States under this Agreement shall be contingent on appropriation or allotment
34 of funds. No liability shall accrue to the United States in case funds are not
35 appropriated or allotted. Absence of appropriation or allotment of funds shall not
36 relieve AWBA, SNWA, or CRCN from any obligation under this Agreement.
37
- 38 6.9 No member or Delegate to Congress, Resident Commissioner, or official of AWBA,
39 SNWA, or CRCN shall benefit from this Agreement other than as a water user or
40 landowner in the same manner as other water users or landowners.
41
- 42 6.10 The parties to this Agreement shall indemnify the United States, its employees, agents,
43 subcontractors, successors, or assignees from loss or claims for damages and from

1 liability to persons or property, direct or indirect, and loss or claim of any nature
2 whatsoever arising by reason of actions taken by non-Federal parties to this
3 Agreement.
4

5 6.11 The parties to this Agreement are hereby notified of Arizona Revised Statutes section
6 38-511.
7

8 6.12 The parties to this Agreement recognize and acknowledge that this Agreement is a
9 contract executed pursuant to Federal Reclamation law, including the provisions of 43
10 U.S.C. § 390uu.
11

12 6.13 This Agreement shall not constitute approval by the Secretary of any other agreement
13 or water delivery program.
14

15 6.14 Nothing in this Agreement affects the rights of any Colorado River Entitlement Holder.
16

17 6.15 No party to this Agreement shall be considered to be in default in the performance of
18 any obligations under this Agreement when a failure of performance shall be due to
19 uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the
20 control of the party unable to perform such obligation, including but not limited to failure
21 or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural
22 catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute,
23 labor or material shortage, sabotage, restraint by order of a court or regulatory agency
24 of competent jurisdiction, and action or non-action by, or failure to obtain the necessary
25 authorizations or approvals from, a Federal governmental agency or authority, which
26 by exercise of due diligence and foresight such party could not reasonably have been
27 expected to overcome. Nothing contained herein shall be construed to require any
28 party to settle any strike or labor dispute in which it is involved.
29

30 6.16 Non-Federal parties to this Agreement may assign their interest in this Agreement, in
31 whole or in part, to other authorized entities, subject to the approval of all other parties
32 to this Agreement.
33

34 6.17 The Secretary does not warrant the quality of water released or delivered under
35 this Agreement. The United States is not liable for damages of any kind resulting from
36 water quality problems and the United States has no obligation to construct or furnish
37 water treatment facilities to maintain or improve water quality except as may otherwise
38 be provided in relevant Federal law.
39

Article 7
Notices

7.1 Notices and Requests

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

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

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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

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 Alt Verburg
9 Field Solicitor
10 Phoenix, Arizona

By: Robert D. Johnson
Regional Director
Lower Colorado Region
Bureau of Reclamation

11
12
13 **STATE OF NEVADA, acting through its**
14 **COLORADO RIVER COMMISSION**

15 Attest:

16
17 By: H. M. Lee
18 Executive Director

By: R. Bunker
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]
29 General Manager

By: Amanda Cyphers
Chair

30
31 Approved as to form:

32
33 By: [Signature]

Title: Deputy Counsel

34
35 **ARIZONA WATER BANKING AUTHORITY**

36
37 Attest:

38
39 By: William L. Chapp
40
41 Title: Secretary

By: [Signature]
Chair

AGREEMENT FOR INTERSTATE WATER BANKING

among

The Arizona Water Banking Authority
and
The Southern Nevada Water Authority and the
Colorado River Commission of Nevada

This Interstate Water Banking Agreement is made this 3rd day of July, 2001, among the Arizona Water Banking Authority, and the Southern Nevada Water Authority and the Colorado River Commission of Nevada.

Recitals

- A. The Arizona Water Banking Authority is an agency of the State of Arizona expressly authorized by A.R.S. § 45-2401 *et seq.* to engage in the interstate banking of Colorado River water on behalf of the State of Arizona. The statutory requirements of A.R.S. §§ 45-2427 and 45-2471 have been satisfied and AWBA is empowered to enter into this Agreement.
- B. 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 Intentionally Created Unused Apportionment released by the Secretary for use within the State of Nevada pursuant to Art. II(B)(6) of the Decree in *Arizona v. California*, 376 U.S. 340, 343 (1964).
- C. 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 and 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes 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.

Article 1

Definitions, Fundamental Principles and Term

- 1.1. Definitions. For purposes of this Agreement for Interstate Water Banking, terms that are defined in Article I of the Decree in *Arizona v. California*, 376 U.S. 340 (1964), terms that are defined in Arizona Revised Statutes (A.R.S.) Title 45, Chapter 3.1, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.
- 1.1.1. "ADWR" shall mean Arizona Department of Water Resources
 - 1.1.2. "Agreement" shall mean this Agreement for Interstate Water Banking.
 - 1.1.3. "AWBA" shall mean the Arizona Water Banking Authority.
 - 1.1.4. "AWBA Plan of Operation" shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.
 - 1.1.5. "Bureau of Reclamation" shall mean the United States Bureau of Reclamation, Lower Colorado Region.
 - 1.1.6. "CAP" shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*, and as operated under that certain Master Repayment Contract dated December 1, 1988, Contract No. 14-06-W-245 between CAWCD and the United States Bureau of Reclamation, as amended.
 - 1.1.7. "CAWCD" shall mean the Central Arizona Water Conservation District.
 - 1.1.8. "CRCN" shall mean the Colorado River Commission of Nevada.
 - 1.1.9. "Decree" shall mean the Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.
 - 1.1.10. "Excess CAP Water" shall mean CAP water that is available for distribution by CAWCD in accordance with ¶ 8.7(e) of the Master Repayment Contract or ¶ 5(d)(2) of the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and Ultimate Judgement upon Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB(EHC) and CIV 95-1720-PHX-EHC (consolidated), and in accordance with policies established by the CAWCD Board.

- 1.1.11. "ICUA" shall mean Intentionally Created Unused Apportionment as that term is defined in 43 C.F.R. § 414.2.
- 1.1.12. "Interstate Recovery Schedule" shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.
- 1.1.13. "Long-term Storage Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).
- 1.1.14. "Master Repayment Contract" shall mean that Contract No. 14-06-W-245 dated December 1, 1988 between CAWCD and the United States Bureau of Reclamation, as amended.
- 1.1.15. "Secretary" shall mean the Secretary of the Interior for the United States, Department of the Interior.
- 1.1.16. "SNWA" shall mean the Southern Nevada Water Authority.
- 1.1.17. "SNWA/CRCN" shall mean the Southern Nevada Water Authority and the Colorado River Commission of Nevada acting together in accordance with Subarticle 1.2.5 of this agreement.
- 1.1.18. "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR pursuant to subarticle 2.2.4 of this Agreement.
- 1.1.19. "Storage Facility" or "Storage Facilities" shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01
- 1.1.20. "Year" shall mean any calendar year after the execution of this agreement.

1.2. Fundamental Principles of this Agreement

- 1.2.1. This Agreement is among AWBA and SNWA and CRCN. It is intended to create a program of interstate banking of Colorado River water. The parties to this Agreement recognize that AWBA shall not engage in interstate banking to the detriment of any water user in Arizona, and interstate banking shall be secondary to the primary interests of water management within the State of Arizona.

- 1.2.2. Under the terms of this agreement, AWBA shall acquire and store mainstream Colorado River water in Arizona and thereby create Long-term Storage Credits to be held in the SNWA Interstate Account. AWBA shall recover the Long-term Storage Credits at a later date and exchange the recovered water with other Colorado River water users in Arizona to develop ICUA. The Secretary is required to release this ICUA for consumptive use within the State of Nevada pursuant to the Storage and Interstate Release Agreement entered into by the Secretary under the regulations adopted by the Secretary in 43 CFR Part 414. This Agreement is one part of a three part contractual relationship which also includes the Storage and Interstate Release Agreement and an Agreement for the Development of Intentionally Created Unused Apportionment. This Agreement is also dependent upon an Intergovernmental Agreement among AWBA, CAWCD, and ADWR, as amended, and a series of water storage agreements between AWBA and Storage Facility operators in the State of Arizona.
- 1.2.3. This Agreement shall govern the relative rights and responsibilities of AWBA, SNWA and CRCN for the delivery, storage and recovery of Colorado River water in Arizona, and for the development of ICUA. No ownership rights in specific storage facilities or Long-term Storage Credits shall accrue to either SNWA or CRCN by this Agreement. Neither SNWA nor CRCN shall have any rights in this interstate banking arrangement except as provided in this agreement.
- 1.2.4. Water supply projections have indicated SNWA may require in excess of 1,200,000 acre feet of ICUA to assist in meeting future demands. SNWA desires the ability to build and draw upon a maximum balance of 1,200,000 acre feet of Long-term Storage Credits in the SNWA Interstate Account over the course of this Agreement.
- 1.2.4.1 Realization of this goal may be limited by the amount of Colorado River water available for interstate banking and the availability of Storage Facilities after the primary goals of Arizona water users and Arizona water management have been met.
- 1.2.4.2 To assist SNWA, AWBA agrees to use its best efforts to store an initial volume of 1,200,000 acre feet of water for SNWA under the terms of this Agreement if Arizona water needs and water management goals have been addressed. Nothing herein shall require AWBA to (i) seek a change in law; (ii) execute new contracts for Storage Facilities; or (iii) contract for the construction of new Storage Facilities, unless mutually agreed in the future consistent with the terms of this Agreement.

- 1.2.4.3 Nothing in this Agreement shall require AWBA to store any water for the benefit of SNWA unless the Storage and Interstate Release Agreement and the Agreement for the Development of Intentionally Created Unused Apportionment have been executed and are in full effect.
- 1.2.4.4 AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by written agreement between SNWA and Metropolitan Water District of Southern California.
- 1.2.4.5 AWBA recognizes that once Long-term Storage Credits have accrued to the benefit of SNWA in the SNWA Interstate Account that SNWA shall have the right to withdraw those Long-term Storage Credits, by exchange through Lake Mead, pursuant to the requirements of this Agreement and the Storage and Interstate Release Agreement.
- 1.2.5. For purposes of this Agreement, SNWA and CRCN may be required to act together to insure performance of their mutual obligations under this Agreement. In such circumstances, the defined term "SNWA/CRCN" shall be used. Whenever performance by SNWA/CRCN is required, SNWA and CRCN shall confer among themselves and determine a unified course of action. In the event that SNWA and CRCN cannot agree on a unified course of action, AWBA shall not be required to perform any obligation under this Agreement affected by SNWA and CRCN's disagreement until SNWA and CRCN have adopted a unified course of action.
- 1.2.6. AWBA is an agency of the State of Arizona and is required to operate in accordance with its authorizing statutes, A.R.S. § 45-2401 et seq. and in compliance with all laws of the State of Arizona which govern AWBA activities. SNWA/CRCN shall be entitled to rely upon AWBA's compliance with all statutory requirements, but SNWA/CRCN recognize that such statutes may be duly amended in the course of this Agreement and, subject to the last two sentences of this Subarticle, SNWA/CRCN recognize that AWBA will be required as a matter of Arizona law to comply with any such amendment. Any reference to a statute in this Agreement shall mean that statute, as it may be amended in the future, or its duly authorized successor statute. Nothing in this Subarticle is intended to, or shall be construed as, an agreement by SNWA or CRCN that any enactment of law by the Arizona legislature after the effective date of this Agreement shall have any effect on SNWA's rights or remedies under this Agreement with respect to water that has been placed into storage for SNWA pursuant to this Agreement as of the effective date of such enactment, on any Long-term Storage Credits in the SNWA Interstate Account as of such date, or on SNWA's rights to the development of ICUA

with respect to such water and Long-term Storage Credits. SNWA and CRCN expressly reserve all rights at law and in equity under this Agreement.

1.2.7. This agreement is intended to operate for the mutual benefit of the citizens of the State of Arizona and the citizens of the State of Nevada. It is entered into with the understanding that it is an act of comity, and with the understanding that interstate banking of Colorado River water among the States of the Lower Division must be undertaken in accordance with express authority granted under each state's law.

1.3. Term of Agreement

This Agreement becomes effective when executed by all parties. This Agreement shall terminate when all of the Long-term Storage Credits in the SNWA Interstate Account have been recovered, or on June 1, 2050, whichever is sooner, unless this Agreement is extended by written agreement of all parties. Any Long-term Storage Credits remaining in the SNWA Interstate Account at the termination of this Agreement shall revert to the sole and exclusive benefit of AWBA.

Article 2 Delivery and Storage

2.1. Request for Water Storage by SNWA

- 2.1.1. Annually, AWBA shall develop a draft AWBA Plan of Operation. The draft AWBA Plan of Operation shall not initially include an interstate component but shall contain the information necessary to initiate discussion between AWBA and SNWA/CRCN regarding interstate banking for the following Year.
- 2.1.2. AWBA staff shall meet and confer with SNWA/CRCN staff concerning the proposed location, manner and cost by which the interstate banking could be accomplished in the following Year.
- 2.1.3. On or before November 1, AWBA shall determine and advise SNWA and CRCN as to the quantity of water and storage capacity available for interstate banking under the terms of this Agreement for the following Year. AWBA shall also provide an estimate of the costs calculated pursuant to Subarticle 2.3 associated with the delivery and storage of water available for interstate banking. AWBA shall also provide the data upon which the determinations and estimates in this Subarticle were based.

- 2.1.4. Within 7 business days of the notice provide in Subarticle 2.1.3, SNWA shall specify in writing to AWBA its decision to accept all or any portion of the water and storage capacity available at the estimated cost.
 - 2.1.5. The schedule dates and periods contained in Subarticles 2.1.1 through 2.1.4 can be waived upon written agreement of all parties.
 - 2.1.6. After consultation with SNWA, the final decision on the quantity of water to be stored and the location of the storage under the terms of this Agreement shall be at the discretion of AWBA.
 - 2.1.7. The quantity of water to be stored in accordance with the terms of this Agreement shall be identified in the final AWBA Plan of Operation by January 1 of each Year. Unless the AWBA Plan of Operation is modified, this quantity of water shall be stored.
 - 2.1.8. At any time after approval of the AWBA Plan of Operation, SNWA may request a decrease in the quantity of SNWA storage for the current Year. Such request for decrease shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA and the amount of water scheduled to be stored for the benefit of SNWA. AWBA may, at its discretion and after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect such a decrease.
 - 2.1.9. AWBA may modify the AWBA Plan of Operation for reasons other than a request from SNWA. If the modification results in an increase in the amount of storage available for interstate banking, AWBA shall notify SNWA and CRCN in writing of the estimated cost for delivery and storage of the increase. SNWA shall have 15 days after receipt of such notice to specify in writing to AWBA its decision to decline any or all of the increase. If SNWA fails to notify AWBA, SNWA shall be obligated to accept such increase in accordance with the terms of the modified AWBA Plan of Operation and the terms of this Agreement. If the modification results in a decrease in storage capacity available for interstate banking purposes, AWBA will notify SNWA and CRCN in writing of such a modification, the reasons for the decrease in storage, the data upon which such determination was based, and the revised amount of water that AWBA will store for SNWA during the Year.
- 2.2. Delivery and Storage of Water by AWBA for SNWA. Delivery and storage of water under the terms of this Agreement are conditioned on the following:
 - 2.2.1. The delivery of water shall be pursuant to the Intergovernmental Agreement among AWBA, CAWCD and ADWR, as amended, whereby

AWBA is entitled to purchase Excess CAP Water from CAWCD for interstate banking purposes.

- 2.2.2. AWBA shall obtain and maintain all necessary water storage permits from ADWR to allow storage under the terms of this Agreement.
- 2.2.3. The storage of water shall be pursuant to AWBA's contracts with various Storage Facility operators whereby AWBA is entitled to store water at those various Storage Facilities.
- 2.2.4. AWBA shall establish with ADWR a long-term storage sub-account entitled "SNWA Interstate Account".
- 2.2.5. AWBA shall monitor the accrual and maintenance of Long-term Storage Credits in the SNWA Interstate Account from Year to Year. AWBA shall exercise due diligence in insuring that all Long-term Storage Credits developed in accordance with the terms of this Agreement have accrued and are properly accounted for in such account.
- 2.2.6. AWBA agrees that it shall timely file with ADWR an annual report for all water delivered and stored in accordance with the terms of this Agreement by March 31 of the Year following the delivery and storage. AWBA and SNWA/CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed. ADWR determines the quantity of Long-term Storage Credits that accrue in the SNWA Interstate Account in any Year and makes a report available to AWBA detailing the credits available in AWBA's Long-term Storage Account. Upon receipt of the report from ADWR, AWBA shall make that report available to SNWA and CRCN. The report may include adjustments or corrections made by ADWR to the Long-term Storage Credits in the SNWA Interstate Account.

2.3. Charges for Delivery and Storage

- 2.3.1. SNWA agrees that all costs of the delivery and storage of water as described in Subarticle 2.1 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 2.3, and billed to and paid by SNWA as provided in Subarticle 2.4.
- 2.3.2. The charges to SNWA for the cost of water delivered under this Agreement shall consist of the following pricing components computed on a per acre-foot basis:
 - 2.3.2.1. the fixed operation, maintenance and replacement (OM&R) rate, set annually for CAP customers by the CAWCD Board and calculated by dividing the total fixed OM&R costs for the CAP by the estimated total delivery volume in acre feet;

2.3.2.2. the municipal and industrial (M&I) capital charge, set annually for CAP customers by the CAWCD Board;

2.3.2.3. a pumping energy rate established by the CAWCD Board to recover its costs, or if mutually agreeable among SNWA, AWBA and CAWCD, SNWA may provide energy sufficient to fully or partially meet the pumping requirements for the delivery of water under the terms of this Agreement;

2.3.2.4. a payment *in lieu* of property taxes, calculated as described in A.R.S. § 48-3715; and

2.3.2.5. Such additional costs as may be reasonably incurred by AWBA.

2.3.3. SNWA shall be charged a cost for administrative services for water stored by AWBA in accordance with the terms of this Agreement. Such charge shall equal 15% of ADWR's cost of services as provided to and accepted by AWBA annually. ADWR's cost of services is computed as a lump sum for the fiscal year beginning July 1 and includes salaries; employee related expenses and indirect costs.

2.3.4. The charges to SNWA for the cost of water storage under this Agreement shall consist of the following pricing components computed on a per acre foot of delivery basis:

2.3.4.1. Underground Storage Facility charges as paid by AWBA based on contractual agreements with those facility operators;

2.3.4.2. A capital charge for storage at Underground Storage Facilities constructed with State Demonstration Project funds as determined by CAWCD as owner/operator of the facilities;

2.3.4.3. If storage under the terms of this Agreement is accomplished at Groundwater Savings Facilities, SNWA shall pay a charge for storage as determined by AWBA in that Year; and

2.3.4.4. Such additional costs as may be reasonably incurred by AWBA.

2.4. Billing of and Payment for Delivery and Storage

2.4.1. On or before December 1, AWBA shall provide SNWA and CRCN with an estimated total annual charge for the water to be delivered under the terms of this Agreement in the upcoming Year. Charges for water delivery are described in Subarticle 2.3.2. If costs increase more than 20% AWBA shall notify SNWA.

- 2.4.2. AWBA shall provide SNWA monthly invoices equaling one-twelfth the total annual charge on or before the first of each month, starting with December for January of the following Year. SNWA shall pay one-twelfth of the total annual charge on or before December 10, followed by equal payments on or before the 10th of each month following. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's intergovernmental agreement with CAWCD.
- 2.4.3. The total annual charge for water delivery may be subject to a mid-year correction if the charges described in Subarticle 2.3.2 are changed by CAWCD. In the event of a correction, AWBA shall recompute the remaining equal monthly payments and invoice SNWA the corrected amount in the first monthly invoice following the correction. SNWA may refuse further delivery within the Year based on the adjusted monthly invoice. Refusal of further delivery by SNWA shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA in that Year and the amount of water scheduled to be stored for the benefit of SNWA. AWBA shall, after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect the decrease in storage. If the recomputed payments are acceptable then the first corrected payment shall be paid on or before the 10th of the month following receipt of the corrected invoice. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's intergovernmental agreement with CAWCD.
- 2.4.4. No later than March 15 of the Year following a Year in which water was delivered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The payment account of SNWA shall be adjusted first to reflect the amount of water actually delivered by AWBA, and second to reflect any change in the OM&R and pumping energy rates applicable to the water delivered. If additional funds are owed to AWBA, SNWA shall remit those funds within 10 business days of the date the notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year water delivery charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried and used to offset the water delivery charge for the Year in which storage resumes. If Storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.

- 2.4.5. Charges for administrative services as described in Subarticle 2.3.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.
- 2.4.6. SNWA shall pay the administrative service charges on or before the first day of the month following the notice of the charges. If such day is not a business day, the payment shall be made on the next succeeding business day.
- 2.4.7. AWBA shall provide an estimate of the Storage Facility charge as described in Subarticle 2.3.4 to SNWA on or before the fifteenth of each month prior to the actual occurrence of the storage. Such estimates may include adjustments or corrections to estimates previously provided by AWBA to SNWA.
- 2.4.8. SNWA shall pay the estimate of the Storage Facility charges on or before the tenth day of the month following notice of the charge. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate Storage Facility operators in accordance with AWBA's contractual agreements with the Storage Facility operators.
- 2.4.9. No later than March 15 of the Year following the Year in which water was stored under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The reconciliation shall show the actual amount of water stored and whether charges for the amount stored exceed the payments made or the payments exceed the amount owed. If additional funds are owed to AWBA, they shall be paid within 10 business days of the date an invoice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year water storage charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the water storage charge for the Year in which storage resumes. If storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.
- 2.4.10. The schedule dates and periods contained in this Subarticle 2.4 can be waived upon written agreement of all parties.

Article 3
Development of Intentionally Created Unused Apportionment

- 3.1. Request for Development of ICUA by SNWA
- 3.1.1. Three years prior to the initial request by SNWA for the development of ICUA under the Storage and Interstate Release Agreement, SNWA/CRCN shall meet and confer with AWBA to determine the opportunities available to commence the development of ICUA. This three year period is intended to allow for the development of a reasonable plan for development of ICUA by the recovery of Long-term Storage Credits, and may be waived by agreement of all parties if unforeseen circumstances arise.
- 3.1.2. By June 1 of the Year preceding any Year for which SNWA will request the release of ICUA from the Secretary under the terms of the Storage and Interstate Release Agreement, SNWA shall provide in writing to AWBA a preliminary request for the development of ICUA in the next upcoming Year and an estimate of any requests for the development of ICUA in the next two succeeding Years.
- 3.1.2.1. Requests for the release of ICUA by SNWA to the Secretary shall not exceed 100,000 acre feet in any Year unless A.R.S. § 45-2471 has been amended to allow an increase.
- 3.1.3. During a Year that the Secretary has determined to be a shortage Year under Article II(B)(3) of the Decree, requests for release of ICUA by SNWA to the Secretary shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet consumptive use and the quantity made available to Nevada under the shortage determination. This quantity may be greater if, after SNWA confers with AWBA, it is mutually agreed that a greater quantity of ICUA can be created.
- 3.1.4. SNWA plans to use ICUA as an alternative water supply while other longer-term sources of supply are being developed. SNWA agrees to annually provide AWBA a water resources plan projecting SNWA's demands and available supplies. SNWA agrees that when the Long-term Storage Credits in the SNWA Interstate Account have declined to or below 400,000 acre feet, SNWA shall not request the release of more than 60,000 acre feet of ICUA from the Secretary in any Year. SNWA agrees that when the Long-term Storage Credits in the SNWA Interstate Account have declined to or below 200,000 acre feet, SNWA shall not request the release of more than 40,000 acre feet of ICUA from the Secretary in any Year.

- 3.1.5. Between June 1 and September 15 of any Year in which a preliminary request for the development of ICUA is provided, AWBA staff shall meet and confer with SNWA/CRCN concerning the proposed location, manner and estimated cost by which the ICUA will be developed in the succeeding Year.
- 3.1.6. On or before September 15 of the Year in which a final request for the release of ICUA will be made to the Secretary under the terms of the Storage and Interstate Release Agreement, SNWA shall provide in writing a final request for development of ICUA for the upcoming Year to AWBA.

3.2. Development of ICUA

- 3.2.1. Upon receipt of the initial request for the development of ICUA, AWBA shall meet and confer with CAWCD to develop an Interstate Recovery Schedule under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment. The Interstate Recovery Schedule shall utilize the recovery of Long-term Storage Credits to create the ICUA.
 - 3.2.1.1. AWBA agrees to meet and confer with SNWA and CRCN concerning the location, manner and cost of recovery when developing the Interstate Recovery Schedule.
 - 3.2.1.2. AWBA agrees that the development of the Interstate Recovery Schedule shall take into account the location, manner and cost of recovering all water stored by AWBA in the State of Arizona. AWBA agrees that the selection of recovery facilities included in the Interstate Recovery Schedule shall not be made in a manner that unreasonably allocates higher recovery cost to the recovery of water for the development of ICUA under the terms of this Agreement.
 - 3.2.1.3. Factors to be considered when preparing the Interstate Recovery Schedule shall include but are not limited to:
 - 3.2.1.3.1. Arizona water management goals,
 - 3.2.1.3.2. CAP operational requirements,
 - 3.2.1.3.3. Water quality requirements,
 - 3.2.1.3.4. Opportunities for shared or joint facilities, and
 - 3.2.1.3.5. Opportunities to reduce recovery costs.

- 3.2.2. Upon receipt of a final request to develop ICUA in the upcoming Year under Subarticle 3.1.6, AWBA shall prepare the following certifications, in accordance with the Agreement for the Development of Intentionally Created Unused Apportionment: (1) an Upcoming Year Delivery Certification; (2) an Interstate Recovery Schedule Certification; and, (3) a Development of ICUA Certification. These three certifications shall be prepared and delivered to the Bureau of Reclamation no later than December 1 of the Year in which the final request to develop ICUA is received. AWBA shall identify the quantity of ICUA to be created in the AWBA Plan of Operation for the following Year. Recovery shall not commence until a written determination is made by the Secretary that ICUA will be released to SNWA under the terms of the Storage and Interstate Release Agreement.
- 3.2.3. During a Year that the Secretary has determined to be a shortage Year under Article II(B)(3) of the Decree, the recovery of Long-term Storage Credits by AWBA for the development of ICUA shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet of consumptive use and the quantity made available to Nevada under the shortage determination. This quantity can be greater if, after SNWA and CRCN confer with AWBA, it is determined that a greater quantity of ICUA can be created.
- 3.2.4. The choice of facilities utilized to recover the Long-term Storage Credits used to create the ICUA during any year shall be at the discretion of AWBA.
- 3.2.5. After the quantity of Long-term Storage Credits to be recovered to create ICUA has been included in the final AWBA Plan of Operation in accordance with the terms of this Agreement, and the availability of ICUA has been determined by the Secretary, AWBA shall recover the Long-term Storage Credits and SNWA shall be responsible for all costs of developing the requested ICUA.
- 3.2.6. Upon written request by SNWA to cease the development of ICUA, AWBA shall cease the development of ICUA by the amount of the request or by the amount of ICUA not yet developed whichever is less. AWBA shall certify to the Secretary the amount of ICUA previously requested that will not be developed and shall request that the Secretary act in accordance with that certification and the terms of the Storage and Interstate Release Agreement.
- 3.2.7. AWBA shall notify ADWR of the actual amount of credits recovered in accordance with the terms of this Agreement and shall request that ADWR debit the SNWA Interstate Account by the quantity of credits recovered when AWBA submits its annual report to ADWR. AWBA and

SNWA/CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed.

3.2.8. In the event that the aggregate Long-term Storage Credits in AWBA's Long-term Storage Account are reduced or eliminated by operation of law beyond the control of AWBA, or if the aggregate Long-term Storage Credits in AWBA's Long-term Storage Account cannot be recovered due to physical constraints beyond the control of AWBA, SNWA agrees that the Long-term Storage Credits in the SNWA Interstate Account shall be reduced proportionally. The relative proportions of the SNWA Interstate Account to the AWBA Long-term Storage Account shall be determined as of the beginning of the Year of discovery of the reduction. With respect to any aggregate reduction in the Long-term Storage Credits in AWBA's Long-term Storage Account by operation of law, nothing herein shall affect SNWA's right to challenge such aggregate reduction or to seek compensation.

3.3. Charges for Developing ICUA

3.3.1. SNWA agrees that all costs of the development of ICUA as described in Subarticle 3.2 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 3.3, and billed to and paid by SNWA as provided in Subarticle 3.4.

3.3.2. The charges to SNWA for the cost of ICUA caused to be developed by AWBA under this Agreement shall consist of the following pricing components:

3.3.2.1. A capital component consisting of (i) the cost to develop any new recovery facility as to which the SNWA shall have a prior right of use, such cost to be paid in advance in a lump sum, or (ii) a charge computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the annual capital cost of other recovery facilities to be used for SNWA's benefit during the Year.

3.3.2.2. An operation and maintenance (O&M) component computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the O&M cost (including pumping energy) incurred by the owner/operator of any recovery facility used during the Year to develop ICUA for SNWA.

3.3.2.3. An administrative component calculated as a lump sum to recover the actual administrative cost reasonably incurred by AWBA.

3.3.2.4. In the event that the cost of recovery for all or some of the water stored by AWBA in the State of Arizona increases due to unforeseen

circumstances such as a cost for water treatment, or new state or federal regulations such as new water quality standards or additional environmental compliance requirements, SNWA agrees to share a reasonable proportion of such unanticipated costs, regardless of the location of such storage.

3.4. Billing and Payment for Developing ICUA

- 3.4.1. AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle 3.3.2.1(i) after agreement between AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.
- 3.4.2. SNWA shall agree to an acceptable repayment schedule prior to the construction on any additional recovery facilities. Following receipt of the SNWA payments pursuant to that schedule, AWBA shall remit the appropriate payments to the appropriate recovery facility owner/operators in accordance with AWBA's contractual agreements with those operators.
- 3.4.3. AWBA shall provide an estimate of the charges for the capital component described in Subarticle 3.3.2.1(ii) and the recovery facility O&M described in Subarticle 3.3.2.2 to SNWA on or before the fifteenth of each month prior to the actual recovery. Such estimates may include adjustments or corrections to previous estimates.
- 3.4.4. SNWA shall pay the estimate of the capital component described in Subarticle 3.3.2.1(ii) and the recovery facility O&M charge described in Subarticle 3.3.2.2 on or before the tenth day of the month following receipt of the estimate. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate recovery facility operators in accordance with AWBA's contractual agreements with those operators.
- 3.4.5. No later than March 15 of the Year following the Year in which ICUA was recovered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation showing the actual Long-term Storage Credits recovered and whether charges for recovering the credits exceed payments made or payments exceed the amount owed. If additional funds are owed to AWBA by SNWA, they shall be paid within 10 business days of the date notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year recovery facility O&M charge and used to offset current payments in an amount equal to the excess payment. If no recovery under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the recovery facility O&M charge

for the Year in which recovery resumes. If recovery has not resumed within three years, AWBA shall remit the remaining funds to SNWA.

- 3.4.6. Charges for administrative services as described in Subarticle 3.3.2.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge agreed upon for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.
- 3.4.7. SNWA shall pay administrative charges on or before the first day of the month following the receipt of the notice. If such day is not a business day, the payment shall be made on the next succeeding business day.
- 3.4.8. The schedule dates and periods established by this Subarticle 3.4 may be waived upon written agreement of all parties.

Article 4

Delinquent Charges and Surety of Performance

- 4.1. Delinquency Charges under the terms of this Agreement
 - 4.1.1. All payments due under this Agreement shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the Bank of America, plus 6% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest owed, and then to any charges owed.
 - 4.1.2. In the event any portion of the charges are disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, SNWA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 4.1.1, prorated by days from the date payment was credited to SNWA to the date the refund check is issued.
 - 4.1.3. In the event any delinquent amount is not paid by SNWA within thirty (30) days after receipt by SNWA of written notice from AWBA of the delinquency, AWBA shall have the right, without liability of any kind, to suspend delivery, storage, or recovery of any water under the terms of this Agreement so long as the delinquent amount remains unpaid. Such

suspension shall not affect the Long-term Storage Credits remaining in the SNWA Interstate Account. Nothing herein shall limit the rights of AWBA to use any other available legal remedy to effect collection of delinquent amounts.

4.2. Surety of Performance under the terms of this Agreement

4.2.1. In the event that a dispute arises over any action to be undertaken pursuant to the terms of this Agreement, all parties recognize and acknowledge that time is of the absolute essence in the conduct of the parties under the terms of this Agreement.

4.2.2. The parties agree that the water resources being stored, forborne, and made available through exchange for use by SNWA under the terms of this Agreement are unique and very likely cannot be replaced in a timely fashion by other resources. Accordingly, the parties agree that in any dispute over the development and release of ICUA, SNWA will likely be requesting an injunction ordering specific performance of the terms of this Agreement. The parties agree that if AWBA opposes the specific enforcement of this Agreement with respect to ICUA, AWBA shall have the burden to show by clear and convincing evidence that it has the ability to, and will, make alternative water resources, other than water controlled by the United States under the Decree, available at the SNWA system, free of adverse claims. If AWBA proposes to deliver such alternative water to SNWA, AWBA shall bear any additional costs that may be incurred over the costs that would have otherwise been incurred by SNWA for the delivery of ICUA under terms of this Agreement. SNWA shall be required to accept such alternative water resources if so ordered by a court of competent jurisdiction. Nothing in this Subarticle shall limit SNWA's rights to seek money damages or a remedy at law.

4.2.3. AWBA shall use its best efforts to ensure that there are in effect all third party contracts necessary for the delivery and storage of water for SNWA as provided in Article 2 and for the development of ICUA as provided in article 3, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall use its best efforts to insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.

Article 5 Other Provisions

5.1. Consultation on the AWBA Annual Report

5.1.1. AWBA is required to submit an annual report of its transactions and proceedings for the preceding year by July 1 each Year pursuant to A.R.S. § 45-2426. SNWA/CRCN agree to confer with AWBA staff in the development of the report.

5.2. Transfer of Existing Long-term Storage Credits Held by CAWCD

5.2.1. Upon execution of this Agreement, the accompanying Storage and Interstate Release Agreement and the Agreement for the Development of Intentionally Created Unused Apportionment between AWBA and CAWCD, AWBA shall, under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment, cause to be transferred to AWBA all Long-term Storage Credits currently held by CAWCD for the benefit of SNWA. Such credits shall be administered by AWBA in accord with the terms of this Agreement.

5.2.2. The Agreement for the Development of Intentionally Created Unused Apportionment shall include any pre-existing agreements relating to the storage and recovery of those credits, and the benefits to SNWA of those pre-existing agreements shall become part of the transfer.

5.3. Payment of federal charges relating to the Execution of a Storage and Interstate Release Agreement

5.3.1. SNWA agrees that all federal charges associated with evaluating, processing and executing a Storage and Interstate Release Agreement shall be borne by SNWA.

5.3.2. These charges shall be calculated by and paid directly to the Secretary by SNWA in accordance with the Secretary's requirements.

5.4. Uncontrollable Forces

No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than obligation of SNWA to make payment) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the control of the party unable to perform such obligation, including, but not limited to, failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court

or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any federal 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 any Party to settle any strike or labor dispute in which it is involved.

5.5. Notices, Requests and Payments

5.5.1. All notices and requests required and allowed under the terms of this Agreement may be given in the following manner:

5.5.1.1. Notices and requests shall be in writing and may be mailed first class postage paid to the parties at the following addresses:

**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**

5.5.1.2. Notices and requests may be given by facsimile and shall be deemed complete upon 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.

5.5.2. All payments required under the terms of this Agreement shall be made by Electronic Fund Transfer (EFT).

5.5.2.1. AWBA will notify the Treasury, State of Arizona monthly of any anticipated EFTs to be made by SNWA.

5.5.2.2. SNWA will submit all EFTs to the Treasury, State of Arizona; account number 001-000985; routing number 122101706.

5.5.2.3. AWBA will ensure that all EFTs submitted by SNWA are properly accrued in the Nevada sub-account maintained at ADWR.


5.6 On request, AWBA shall provide SNWA with a copy of all contracts, rate schedules, and other documents that are relevant to or that form the basis for the charges specified in the Agreement.

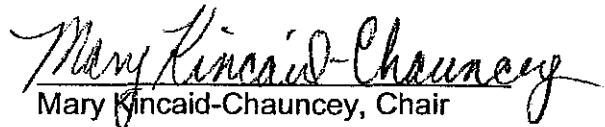
5.7 The parties to this agreement are hereby notified of Arizona Revised Statutes section 38-511.

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 3rd day of July, 2001.

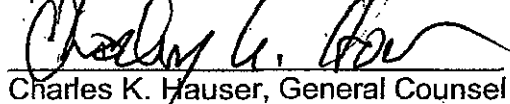
Southern Nevada Water Authority

Attest:


Patricia Mulroy, General Manager

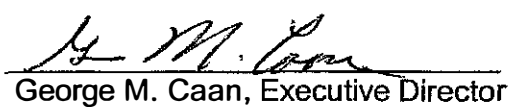

Mary Kincaid-Chauncey, Chair

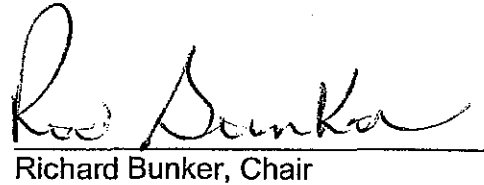
Approved as to form:


Charles K. Hauser, General Counsel

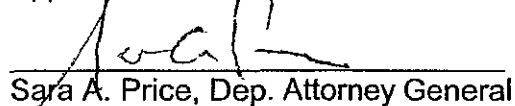
Colorado River Commission of Nevada

Attest:


George M. Caan, Executive Director


Richard Bunker, Chair

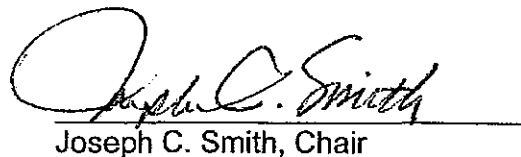
Approved as to form:


Sara A. Price, Dep. Attorney General

Arizona Water Banking Authority

Attest:


William Chase, Secretary


Joseph C. Smith, Chair

AMENDED AGREEMENT FOR INTERSTATE WATER BANKING

among

**The Arizona Water Banking Authority
and
The Southern Nevada Water Authority and the
Colorado River Commission of Nevada**

This Amended Interstate Water Banking Agreement (Agreement) is made as of January 1, 2005 (Effective Date), among the Arizona Water Banking Authority (AWBA), and the Southern Nevada Water Authority (SNWA) and the Colorado River Commission of Nevada (CRCN), collectively referred to as "Parties" and individually as "Party."

Recitals

- A. The Arizona Water Banking Authority is an agency of the State of Arizona expressly authorized by A.R.S. § 45-2401 *et seq.* to engage in the interstate banking of Colorado River water on behalf of the State of Arizona. The statutory conditions of A.R.S. §§ 45-2427 and 45-2471 have been satisfied, this Agreement conforms to all of the requirements of such sections and all other applicable provisions of Arizona law, and AWBA is empowered to enter into this Agreement.
- B. The Southern Nevada Water Authority 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 Intentionally Created Unused Apportionment released by the Secretary for use within the State of Nevada pursuant to Art. II(B)(6) of the Decree in *Arizona v California*, 376 U.S. 340, 343 (1964).
- C. 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 and 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to facilitate the banking of Colorado River water, the crediting of Long-term Storage Credits, and the development of ICUA for SNWA.
- D. On July 3, 2001, the Parties entered into the original Agreement for Interstate Water Banking (Original Agreement). In the Original Agreement, and subject to its limitations, AWBA committed to use its best efforts to create Long-term Storage Credits in an initial amount of 1,200,000 acre-feet for SNWA, to be held in an SNWA Interstate Account established with the Arizona Department of Water Resources and, on request of SNWA, to recover such credits and cause the development of Intentionally Created Unused Apportionment of Colorado River water (ICUA) for SNWA. SNWA agreed to reimburse AWBA for its costs on an annual basis.

E. On December 18, 2002, the United States, acting through the Secretary of the Interior, AWBA, SNWA, and CRCN entered into a Storage and Interstate Release Agreement (SIRA) pursuant to the Secretary's regulations at 43 C.F.R. Part 414, Offstream Storage of Colorado River Water and Development of and Release of Intentionally Created Unused Apportionment in the Lower Division States. In the SIRA, the Secretary committed to release ICUA developed by AWBA in accordance with the request of SNWA, the terms of the SIRA, and certain specified determinations of the Secretary.

F. By this Amended Agreement for Interstate Water Banking, the Parties amend and restate in its entirety the Original Agreement to provide (1) a specific commitment by AWBA to have credited to the SNWA Interstate Account Long-Term Storage Credits in an aggregate amount, including those heretofore credited, of 1,250,000 acre-feet, (2) a commitment by AWBA, on request of SNWA, to recover such credits and to develop ICUA for SNWA's benefit up to a specified annual maximum, and (3) specified payments to be made by SNWA in consideration of AWBA's commitments respecting the crediting of such Long-Term Storage Credits.

G. Prior to the Effective Date, AWBA established a long-term storage sub-account entitled "SNWA Interstate Account" with the Arizona Department of Water Resources (ADWR). As of the Effective Date Long-term Storage Credits had been credited to such account, consisting of (1) 50,000 acre-feet of Long-term Storage Credits, constituting all of the Long-term Storage Credits held by CAWCD for the benefit of SNWA as of the effective date of the Original Agreement, and (2) all of the Long-term Storage Credits existing by virtue of Colorado River water stored, or other Long-term Storage Credits transferred to such account, pursuant to the Original Agreement.

ARTICLE 1

DEFINITIONS, FUNDAMENTAL PRINCIPLES AND TERM

- 1.1 Definitions. For purposes of this Agreement, terms that are defined in Article I of the Decree in *Arizona v. California*, 376 U.S. 340 (1964), terms that are defined in Arizona Revised Statutes (A.R.S.) Title 45, Chapter 3.1, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.
- 1.1.1 “ADWR” shall mean Arizona Department of Water Resources.
- 1.1.2 “Agreement” shall mean this Amended Agreement for Interstate Water Banking.
- 1.1.3 “AWBA” shall mean the Arizona Water Banking Authority.
- 1.1.4 “AWBA Plan of Operation” shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.
- 1.1.5 “Bureau of Reclamation” shall mean the United States Bureau of Reclamation, Lower Colorado Region.
- 1.1.6 “CAP” shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*, and as operated under that certain Master Repayment Contract dated December 1, 1988, Contract No. 14-06-W-245 between CAWCD and the United States Bureau of Reclamation, as amended.
- 1.1.7 “CAWCD” shall mean the Central Arizona Water Conservation District.
- 1.1.8 “CRCN” shall mean the Colorado River Commission of Nevada.
- 1.1.9 “Decree” shall mean the Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.
- 1.1.10 “Excess CAP Water” shall mean CAP water that is available for distribution by CAWCD in accordance with §8.7(e) of the Master Repayment Contract or §5(d)(2) of the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and Ultimate Judgment upon Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC (consolidated), and in accordance with policies established by the CAWCD Board.

- 1.1.11 “ICUA” shall mean Intentionally Created Unused Apportionment as that term is defined in 43 C.F.R. § 414.2.
- 1.1.12 “Interstate Recovery Schedule” shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.
- 1.1.13 “Long-term Storage Credit” shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).
- 1.1.14 “Master Repayment Contract” shall mean that Contract No. 14-06-W-245 dated December 1,1988, between CAWCD and the United States Bureau of Reclamation, as amended.
- 1.1.15 “Secretary” shall mean the Secretary of the Interior for the United States, Department of the Interior.
- 1.1.16 “SNWA” shall mean the Southern Nevada Water Authority.
- 1.1.17 “SNWA Interstate Account” shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR pursuant to Subarticle 2.2.4 of the Original Agreement.
- 1.1.18 “Statutory Costs” means those costs specified in A.R.S. §§ 45-2471(C) (1) through (5), and (8) that are incurred by AWBA under Subarticle 2.1.1 after the Effective Date in connection with causing the crediting of Long-term Storage Credits in a gross amount of 1,250,000 acre-feet to the SNWA Interstate Account.
- 1.1.19 “Storage Facility” or “Storage Facilities” shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01
- 1.1.20 “Year” shall mean a calendar year.

1.2 Fundamental Principles of this Agreement

- 1.2.1 This Agreement is among AWBA and SNWA and CRCN. It is intended to create a program of interstate banking of Colorado River water AWBA will not engage in interstate banking to the detriment of any water user in Arizona in fulfilling its obligations under this Agreement.
- 1.2.2 Under the terms of this Agreement, AWBA shall acquire and store mainstream Colorado River water in Arizona and cause Long-term Storage Credits to be credited and held in the SNWA Interstate Account. AWBA shall recover the Long-term Storage Credits at a later date and exchange the recovered water with other Colorado River water users in Arizona to develop ICUA. The Secretary is required to release this ICUA for consumptive use within the State of Nevada pursuant to the Storage and Interstate Release Agreement entered

into by the Secretary under the regulations adopted by the Secretary in 43 CFR Part 414. This Agreement is one part of a three part contractual relationship, which also includes the Storage and Interstate Release Agreement and an Agreement for the Development of Intentionally Created Unused Apportionment. In furtherance of its performance under this Agreement, the AWBA has also entered into an Intergovernmental Agreement among AWBA, CAWCD, and ADWR, as amended, and a series of water storage agreements between AWBA and Storage Facility operators in the State of Arizona.

1.2.3 This Agreement shall govern the relative rights and responsibilities of AWBA, SNWA and CRCN for the delivery, storage and recovery of Colorado River water in Arizona and for the development of ICUA. No ownership rights in specific storage facilities shall accrue to either SNWA or CRCN by this Agreement. Neither SNWA nor CRCN shall have any rights in this interstate banking arrangement except as provided in this Agreement.

1.2.4 AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by the Agreement Relating to Implementation of Interim Colorado River Surplus Guidelines between SNWA and The Metropolitan Water District of Southern California, dated May 16, 2002.

1.2.5 This Agreement is intended to operate for the mutual benefit of the citizens of the State of Arizona and the citizens of the State of Nevada. It is entered into with the understanding that it is an act of comity, and with the understanding that interstate banking of Colorado River water among the States of the Lower Division must be undertaken in accordance with express authority granted under each state's law.

1.3 Term of Agreement

This Agreement becomes effective when executed by all Parties. This Agreement shall terminate when all of the Long-term Storage Credits specified in Subarticle 2.1.1 have been credited to the SNWA Interstate Account and all such credits have subsequently been recovered, or on June 1, 2060, whichever is sooner. Any Long-term Storage Credits remaining in the SNWA Interstate Account at the termination of this Agreement shall revert to the sole and exclusive benefit of AWBA, unless this Agreement is extended by written agreement of all Parties.

ARTICLE 2

DELIVERY AND STORAGE

2.1 Crediting Long-term Storage Credits for SNWA; Annual Plan of Operation

2.1.1 AWBA shall take all actions necessary to ensure that Long-term Storage Credits in a gross amount of 1,250,000 acre-feet, including the Long-term Storage Credits referenced in Recital G, are credited to the SNWA Interstate

Account in sufficient time both to meet the requirements of Subarticle 2.1.3 and to allow the recovery of the full 1,250,000 acre-feet of such credits for the purpose of developing ICUA for SNWA within the term of this Agreement and the limitations of Subarticle 3.1.1. Such actions may include storage of Colorado River water, assignment of existing Long-term Storage Credits, or any other actions that will support the development of ICUA under this Agreement consistent with 43 C.F.R. Part 414 and the SIRA.

2.1.2 AWBA shall ensure that there are in effect in a timely manner all regulatory permits and approvals and all third-party agreements necessary to enable AWBA to meet its obligations under this Subarticle, including without limitation agreements for the purchase and delivery of Colorado River water, necessary water storage permits from ADWR, and agreements with Storage Facility operators.

2.1.3 The actions that AWBA takes to cause Long-term Storage Credits to be credited to the SNWA Interstate Account under Subarticle 2.1.1 shall be on a schedule that will ensure that there are Long-term Storage Credits in the SNWA Interstate Account as of the June 1 preceding each Year in which SNWA has the right to require the development of ICUA in an amount at least sufficient to support development of the maximum ICUA permitted under Subarticle 3.1 during that Year, without regard to whether SNWA has requested such maximum.

2.1.4 The amount of water to be stored during any Year shall be identified in the final AWBA Plan of Operation by January 1 of each Year.

2.2 Delivery and Storage of Water by AWBA for SNWA. Delivery and storage of any water under the terms of this Agreement shall be subject to the following requirements:

2.2.1 The delivery of water to storage shall be pursuant to the Intergovernmental Agreement among AWBA, CAWCD and ADWR, as amended, whereby AWBA is entitled to purchase Excess CAP Water from CAWCD for interstate banking purposes.

2.2.2 AWBA shall obtain and maintain all necessary water storage permits from ADWR to allow storage under the terms of this Agreement.

2.2.3 The storage of water shall be pursuant to AWBA's agreements with various Storage Facility operators whereby AWBA is entitled to store water at those various Storage Facilities.

2.2.4 AWBA agrees that the storage of water under this Agreement shall take into account the location, manner and cost of storing all water stored by AWBA in the State of Arizona. AWBA agrees that the selection of storage facilities for water stored under this Agreement and for others in Arizona shall not be made in a manner that unreasonably allocates the higher storage cost to the storage of water under this Agreement.

2.3 SNWA Interstate Account

2.3.1 AWBA shall monitor the crediting and maintenance of Long-term Storage Credits in the SNWA Interstate Account from Year to Year. AWBA shall exercise due diligence in insuring that all Long-term Storage Credits credited through storage for SNWA or transferred or otherwise credited to the SNWA Interstate Account are properly accounted for in such account.

2.3.2 AWBA shall timely file with ADWR an annual report for all water delivered and stored in accordance with the terms of this Agreement by March 31 of the Year following the delivery and storage. AWBA and SNWA and CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed. ADWR determines the amount of Long-term Storage Credits that are credited to the SNWA Interstate Account in any Year and makes a report available to AWBA detailing the credits available in AWBA's Long-term Storage Account. Upon receipt of the report from ADWR, AWBA shall make that report available to SNWA and CRCN. The report may include adjustments or corrections made by ADWR to the Long-term Storage Credits in the SNWA Interstate Account.

2.4 Payments by SNWA

2.4.1 In consideration of AWBA's obligations under this Article 2, and in particular its obligation to ensure that Long-term Storage Credits in a gross amount of 1,250,000 acre-feet are credited to the SNWA Interstate Account, SNWA shall make payments to AWBA aggregating \$ 330,000,000.00, such payments to be made by SNWA as specified in Subarticles 2.4.1.1 and 2.4.1.2

2.4.1.1 SNWA shall make a payment of \$100,000,000.00 within 10 working days of the request by AWBA for such payment made after the Effective Date, which shall be deposited into a Resource Account, which shall be established by the AWBA. SNWA shall have no authority as to the use of the Resource Account.

2.4.1.2 SNWA shall make ten payments of \$ 23,000,000.00 each by January 10 of each Year commencing in 2009 and ending in 2018, which shall be deposited into an interest-bearing Operating Account, which shall be established by the AWBA and used by the AWBA only in connection with deposits of SNWA payments under this Subarticle, payment of Statutory Costs, and loan transactions involving the Resource Account under Subarticle 2.4.1.3. Interest earned on the Operating Account shall accrue to that account for use in accordance with this Agreement.

2.4.1.3 AWBA may, at its sole discretion, loan funds from the Resource Account to the Operating Account, for the purpose of fulfilling its obligations under this Agreement, but any loaned funds must be

repaid from the Operating Account to the Resource Account, with interest, no later than June 10, 2018. For purposes of this paragraph, interest each Year shall be computed based on the average rate of return on the Operating Account for that Year.

2.4.2 The provisions of this Subarticle 2.4.2 shall apply for purposes of ensuring that payments by SNWA under this Agreement meet the requirements of A.R.S. § 45-2471(C).

2.4.2.1 The Parties acknowledge that payments made by SNWA to AWBA prior to the Effective Date cover at least all costs specified in A.R.S. §§ 45-2471(C) (7) with respect to those Long-term Storage Credits referenced in Recital G (2).

2.4.2.2 The Parties further acknowledge AWBA's conclusion that, other than those costs for which SNWA will reimburse AWBA under Subarticle 2.4.3, the payments to be made by SNWA under Subarticle 2.4.1 will be sufficient to reimburse AWBA for all capital, operation, maintenance, energy, payment in lieu of property taxes, storage, contract, permitting, and other costs that it will incur under this Article 2 after the Effective Date, subject to the adjustment provisions of Subarticles 2.4.2.5 and 2.4.2.6. Such reimbursed costs include, without limitation, (1) any costs associated with ensuring that AWBA is able to perform its obligations under Subarticle 2.1.1, and (2) all Statutory Costs incurred by AWBA.

2.4.2.3 The Parties further acknowledge that, for purposes of A.R.S. § 45-2471(C)(1), AWBA's cost of acquiring Colorado River water is the cost charged by the United States to CAWCD under CAWCD's federal water delivery contract for delivering such water.

2.4.2.4 By June 30 of each Year AWBA shall provide an annual accounting to SNWA for the period from the Effective Date through December 31 of the prior Year showing (1) all transactions involving the Operating Account during the preceding Year, including loans from the Resource Account, payments to the Resource Account of principle and interest on such loans, and a detailed statement of all Statutory Costs incurred by AWBA, and (2) a summary by Year of all Statutory Costs incurred by AWBA in prior Years,

2.4.2.5 If the annual accounting under Subarticle 2.4.2.4 indicates that there are insufficient funds in the Operating Account to complete the accrual of 1,250,000 acre-feet of Long-term Storage Credits for crediting to the SNWA Interstate Account, then the parties shall meet and confer regarding the accrual of additional Long-term Storage Credits by AWBA and the payment of additional funds by SNWA. At its sole discretion SNWA may reduce AWBA obligation to develop

1,250,000 acre-feet of Long-term Storage Credits for the SNWA Interstate Account. If SNWA determines not to reduce AWBA obligation to develop 1,250,000 acre-feet of Long-term Storage Credits for the SNWA Interstate Account, SNWA shall pay all additional Statutory Costs required to complete the accrual of 1,250,000 acre-feet of Long-term Storage Credits.

- 2.4.2.6 By June 30 of the Year after the Year in which an aggregate of 1,250,000 acre-feet of Long-term Storage Credits have been credited to the SNWA Interstate Account and all loans from the Resource Account to the Operating Account have been repaid, with interest, AWBA shall pay to SNWA any remaining balance in the Operating Account established pursuant to Subarticle 2.4.1.2 and no additional payments shall be made by SNWA.
- 2.4.3 SNWA shall pay a fee equivalent to the approximate amount of administrative, legal, and technical expenses incurred for AWBA's services under this entire Agreement. Such fee shall equal 15% of ADWR's cost of such services as provided to and accepted by AWBA annually. ADWR's cost of services is computed as a lump sum for the fiscal year beginning July 1 and includes salaries, employee related expenses, and indirect costs.
- 2.4.4 The fee for administrative services as described in Subarticle 2.4.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.
- 2.4.5 SNWA shall pay the administrative service fees on or before the first day of the month following the notice of the fees. If such day is not a business day, the payment shall be made on the next succeeding business day.

ARTICLE 3

DEVELOPMENT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT

- 3.1 Extent of Annual Development of ICUA for SNWA
- 3.1.1 SNWA shall have the right to require the recovery of Long-term Storage Credits in the SNWA Interstate Account and the development of ICUA in any Year commencing in 2007, as follows:
- 3.1.1.1 In each of 2007 and 2008, SNWA may require the development of ICUA in an amount not exceeding 20,000 acre-feet.

3.1.1.2 In each of 2009 and 2010, SNWA may require the development of ICUA in an amount not exceeding 30,000 acre-feet.

3.1.1.3 In each subsequent Year, commencing in 2011, SNWA may require the development of ICUA in an amount not exceeding 40,000 acre-feet.

3.1.2 During any Year as to which the Secretary has determined under Article II(B)(3) of the Decree that a shortage condition exists, SNWA may require the development of ICUA (1) in such amount that, when considered together with the amount of basic apportionment available for use in Nevada, will allow 300,000 acre-feet to be consumptively used in Nevada, plus (2) the amount specified for such Year in Subarticle 3.1.1. . SNWA may require the development of ICUA under this Subarticle only if after consultation with SNWA, the AWBA has determined that sufficient recovery facilities are in place for that Year to meet the needs of CAP M&I subcontractors and any post 1968 domestic use Colorado River contractor in Arizona and SNWA. If it is determined that sufficient recovery facilities are not available, SNWA may require the development of ICUA only to the extent that SNWA has contributed to new facilities in Subarticle 3.4.2.1 or additional facilities in Subarticle 3.5.1 plus any available existing recovery capacity not utilized by the CAP M&I subcontractors and post 1968 domestic use Colorado River contractors.

3.1.2.1 If a shortage determination by the Secretary under Article II(B)(3) of the Decree causes a reduction in the Colorado River water available for use by non-Indian municipal and industrial (M&I) CAP subcontractors in any Year under their subcontracts or any other post 1968 domestic use Colorado River contractor in any Year under their contract, SNWA's right to require the recovery of Long-term Storage Credits and the development of ICUA shall be reduced proportionately to the reduction in M&I water supply sustained by CAP subcontractors and any other post 1968 domestic use contractor.

3.2 SNWA Notices for Development of ICUA

3.2.1 For any Year in which SNWA will require the development of ICUA by AWBA and the release of ICUA by the Secretary, SNWA shall provide notice of the amount of such ICUA to AWBA by June 1 of the preceding Year.

3.2.2 Between June 1 and September 15 of the Year in which a notice has been given under Subarticle 3.2.1, AWBA staff shall meet and confer with SNWA and CRCN concerning the proposed location, manner and estimated cost of the development of the specified ICUA.

3.2.3 On or before September 15 of the Year in which a notice for the development of ICUA has been given to AWBA under Subarticle 3.2.1, or as otherwise

required by the Secretary, SNWA shall make a request of the Secretary for the release of such ICUA during the following Year and shall provide a copy of such notice to AWBA.

3.3 Development of ICUA

3.3.1 Upon receipt of a notice under Subarticle 3.2.1 for the development of ICUA, AWBA shall meet and confer with CAWCD to develop an Interstate Recovery Schedule under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment. The Interstate Recovery Schedule shall utilize the recovery of Long-term Storage Credits to develop the ICUA.

3.3.1.1 AWBA shall meet and confer with SNWA and CRCN concerning the location, manner and cost of recovery when developing the Interstate Recovery Schedule.

3.3.1.2 AWBA agrees that the development of the Interstate Recovery Schedule shall take into account the location, manner and cost of recovering all water stored by AWBA in the State of Arizona. AWBA agrees that the selection of recovery facilities included in the Interstate Recovery Schedule shall not be made in a manner that unreasonably allocates the higher recovery cost to the recovery of water for the development of ICUA under the terms of this Agreement.

3.3.1.3 Factors to be considered when preparing the Interstate Recovery Schedule shall include but are not limited to:

3.3.1.3.1 Arizona water management goals,

3.3.1.3.2 CAP operational requirements,

3.3.1.3.3 Water quality requirements,

3.3.1.3.4 Opportunities for shared or joint facilities, and

3.3.1.3.5 Opportunities to reduce recovery costs,

3.3.2 Upon receipt of a copy of SNWA's request under Subarticle 3.2.3 to the Secretary for the release of ICUA during the following Year, AWBA shall prepare the following certifications, in accordance with the Agreement for the Development of Intentionally Created Unused Apportionment: (1) an Upcoming Year Delivery Certification; (2) an Interstate Recovery Schedule Certification; and, (3) a Development of ICUA Certification. These three certifications shall be prepared and delivered to the Bureau of Reclamation no later than December 1 of the Year in which a notice for the development of ICUA was given to AWBA under Subarticle 3.2.1. AWBA shall identify the amount of ICUA specified to be developed in SNWA's notice under Subarticle

3.2.1 in the AWBA Plan of Operation for the following Year, and in such Year shall recover Long-term Storage Credits and develop ICUA in such amount, subject to the Secretary's determination and release of ICUA under Subarticles 5.4 and 5.5 of the SIRA. Recovery shall not commence until verification by the Secretary that ICUA will be released to SNWA under the terms of the Storage and Interstate Release Agreement.

3.3.3 The choice of facilities utilized to recover the Long-term Storage Credits used to develop the ICUA during any year shall be at the discretion of AWBA.

3.3.4 After the Secretary's notice of determination pursuant to Subarticle 5.4 of the SIRA respecting the availability and release of ICUA, AWBA shall recover Long-term Storage Credits and cause ICUA to be developed in the amount specified in the Secretary's notice. SNWA shall be responsible for all costs of developing the specified ICUA as provided in this Agreement.

3.3.5 Upon written request by SNWA to cease the development of ICUA, AWBA shall cease the development of ICUA by the amount of the request or by the amount of verified ICUA not yet developed, whichever is less. AWBA shall certify to the Secretary the amount of ICUA previously requested that will not be developed and shall request that the Secretary act in accordance with that certification and the terms of the Storage and Interstate Release Agreement.

3.3.6 AWBA shall notify ADWR of the actual amount of credits recovered in accordance with the terms of this Agreement and shall request that ADWR debit the SNWA Interstate Account by the amount of credits recovered when AWBA submits its annual report to ADWR. AWBA and SNWA and CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed.

3.4 Charges for Developing ICUA

3.4.1 SNWA agrees that, except as provided in Subarticle 3.4.3, all costs of the development of ICUA as described in Subarticle 3.3 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 3.4, and billed to and paid by SNWA as provided in Subarticle 3.5.

3.4.2 The charges to SNWA for the cost of ICUA caused to be developed by AWBA under this Agreement shall consist of the following pricing components:

3.4.2.1 A capital component consisting of (1) the cost to develop any new recovery facility as to which the SNWA shall have a prior right of use, such cost to be paid in advance in a lump sum, or (2) a charge computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the annual capital cost of other recovery facilities to be used for SNWA's benefit during the Year.

- 3.4.2.2 An operation and maintenance (O&M) component computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the O&M cost (including pumping energy) incurred by the owner/operator of any recovery facility used during the Year to develop ICUA for SNWA.
- 3.4.2.3 An administrative component calculated as a lump sum to recover the actual administrative cost reasonably incurred by AWBA.
- 3.4.2.4 In the event that the cost of recovery for all or some of the water stored by AWBA in the State of Arizona increases due to unforeseen circumstances such as a cost for water treatment, or new state or federal regulations such as new water quality standards or additional environmental compliance requirements, SNWA agrees to share a reasonable proportion of such unanticipated costs, regardless of the location of such storage.

3.4.3 SNWA shall specify in its notice given under Subarticle 3.2.1 if, and the extent to which, ICUA is to be developed through the recovery of Long-term Storage Credits previously held by CAWCD for the benefit of SNWA under its October 15, 1992 agreement with The Metropolitan Water District of Southern California. The Parties acknowledge that pursuant to the terms of such agreement and prior to the effective date of the Original Agreement, SNWA made advance payments of the entire cost to recover such credits and to develop such ICUA.

3.5 Billing and Payment for Developing ICUA

- 3.5.1 AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle 3.4.2.1(2) after agreement between AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.
- 3.5.2 SNWA shall agree to an acceptable repayment schedule for costs specified in AWBA's subarticle 3.5.1 notice prior to the construction of any additional recovery facilities. Following receipt of the SNWA payments pursuant to that schedule, AWBA shall remit the appropriate payments to the appropriate recovery facility owner/operators in accordance with AWBA's contractual agreements with those operators.
- 3.5.3 AWBA shall provide an estimate of the charges for any capital component described in Subarticle 3.4.2.1(2) and the recovery facility O&M described in Subarticle 3.4.2.2 to SNWA on or before the fifteenth of each month prior to the actual recovery. Such estimates may include adjustments or corrections to previous estimates.
- 3.5.4 SNWA shall pay the estimate of the capital component described in Subarticle 3.4.2.1(2) and the recovery facility O&M charge described in Subarticle

3.4.2.2 on or before the tenth day of the month following receipt of the estimate. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate recovery facility operators in accordance with AWBA's contractual agreements with those operators.

- 3.5.5 No later than March 15 of the Year following the Year in which ICUA was recovered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation showing the actual Long-term Storage Credits recovered and whether charges for recovering the credits exceed payments made or payments exceed the amount owed. If additional funds are owed to AWBA by SNWA, they shall be paid within 10 business days of the date notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year recovery facility O&M charge and used to offset current payments in an amount equal to the excess payment. If no recovery under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the recovery facility O&M charge for the Year in which recovery resumes. If recovery has not resumed within three years, AWBA shall remit the remaining funds to SNWA.
- 3.5.6 Charges for administrative services as described in Subarticle 3.4.2.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge agreed upon for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.
- 3.5.7 SNWA shall pay administrative charges on or before the first day of the month following the receipt of the notice. If such day is not a business day, the payment shall be made on the next succeeding business day.
- 3.5.8 The schedule dates and periods established by this Subarticle 3.5 may be changed upon written agreement of all parties.

ARTICLE 4

DELINQUENT CHARGES AND SURETY OF PERFORMANCE

- 4.1 Delinquency Charges under the Terms of this Agreement
- 4.1.1 All payments due under this Agreement shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments

may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the Bank of America, plus 6% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest owed, and then to any charges owed.

- 4.1.2 In the event any portion of the charges is disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, SNWA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 4.1.1, prorated by days from the date payment was credited to SNWA to the date the refund check is issued.
- 4.1.3 In the event any delinquent amount is not paid by SNWA within thirty (30) days after receipt by SNWA of written notice from AWBA of the delinquency, AWBA shall have the right, without liability of any kind, to suspend recovery of any water under the terms of this Agreement so long as the delinquent amount remains unpaid. Such suspension shall not affect the Long-term Storage Credits remaining in the SNWA Interstate Account. Nothing herein shall limit the rights of AWBA to use any other available legal remedy to effect collection of delinquent amounts.

4.2 Surety of Performance under the Terms of this Agreement

- 4.2.1 In the event that a dispute arises over any action to be undertaken pursuant to the terms of this Agreement, all parties recognize and acknowledge that time is of the absolute essence in the conduct of the parties under the terms of this Agreement.
- 4.2.2 The parties agree that the water resources being stored, forborne, and made available through exchange for use by SNWA under the terms of this Agreement are unique and very likely cannot be replaced in a timely fashion by other resources. Accordingly, the parties agree that in any dispute over the development and release of ICUA, SNWA will likely be requesting an injunction ordering specific performance of the terms of this Agreement. The parties agree that if AWBA opposes the specific enforcement of this Agreement with respect to ICUA, AWBA shall have the burden to show by clear and convincing evidence that it has the ability to, and will, make alternative water resources, other than water controlled by the United States under the Decree, available at the SNWA system, free of adverse claims. If AWBA proposes to deliver such alternative water to SNWA, AWBA shall bear any additional costs that may be incurred over the costs that would have otherwise been incurred by SNWA for the delivery of ICUA under terms of this Agreement. SNWA shall be required to accept such alternative water resources if so ordered by a court of competent jurisdiction. Nothing in this Subarticle shall limit SNWA's rights to seek money damages or a remedy at law.

- 4.2.3 AWBA shall ensure that there are in effect all third party contracts necessary for the development of ICUA as provided in Article 3, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.

ARTICLE 5

OTHER PROVISIONS

- 5.1 Consultation on the AWBA Annual Report
- 5.1.1 AWBA is required to submit an annual report of its transactions and proceedings for the preceding year by July 1 each Year pursuant to A.R.S. § 45-2426. SNWA/CRCN agree to confer with AWBA staff in the development of the report.
- 5.2 Payment of federal charges relating to the Execution of a Storage and Interstate Release Agreement
- 5.2.1 SNWA agrees that all federal charges associated with any amendment to the SIRA shall be borne by SNWA.
- 5.2.2 These charges shall be calculated by and paid directly to the Secretary by SNWA in accordance with the Secretary's requirements.
- 5.3 Successors to AWBA and SNWA

In the event that the AWBA should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of the AWBA shall be binding upon, and inure to the benefit of, any agency of the State of Arizona that succeeds to such functions or, in the absence of any such agency, the State of Arizona. In the event that the SNWA should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of the SNWA shall be binding upon, and inure to the benefit of, any successor joint powers agency or other legal subdivision of the State of Nevada Arizona that succeeds to such functions or, in the absence of any such agency, the members of the SNWA.

5.4 Uncontrollable Forces

No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than the obligation of SNWA to make payment) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the control of the party unable to perform such obligation, including, but not limited to, failure or threat of failure of facilities, flood, earthquake, storm, fire, lighting, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or

regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any federal 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 any Party to settle any strike or labor dispute in which it is involved.

5.5 Notices, Requests and Payments

5.5.1 All notices and other communications provided for in this Agreement shall be in writing and may be given in either of the following manners:

5.5.1.1 Notices and requests shall be in writing and may be mailed first class postage paid to the parties at the following addresses:

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

5.5.1.2 Notices and requests may be given by facsimile and shall be deemed complete upon 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.

5.5.2 All payments required under the terms of this Agreement shall be made by Electronic Fund Transfer (EFT).

5.5.2.1 AWBA will notify the Treasury, State of Arizona monthly of any anticipated EFTs to be made by SNWA.

5.5.2.2 SNWA will submit all EFTs to the Treasury, State of Arizona; account number 001-000985; routing number 122101706, or to such other destination as AWBA may designate by notice.

5.5.2.3 AWBA will ensure that all EFTs submitted by SNWA are properly accrued in the Nevada sub-account maintained at ADWR.

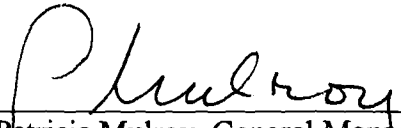
- 5.6 On request, AWBA shall provide SNWA with a copy of all contracts, rate schedules, and other documents that are relevant to or that form the basis for the charges specified in the Agreement.
- 5.7 The parties to this Agreement are hereby notified of Arizona Revised Statutes section 38-511.
- 5.8 On reasonable advance written notice to AWBA and during normal business hours, SNWA shall have the right to inspect and audit all records of AWBA pertaining to (1) all Statutory Costs incurred by AWBA under Article 2 and (2) all costs incurred by AWBA under Article 3.
- 5.9 This Agreement is not intended to confer any rights on any person other than the Parties hereto, and it shall not be construed as a third-party beneficiary contract or as conferring third-party beneficiary status or rights of any nature on any person.


In Witness of this Agreement, the Parties affix their official signatures below.

**SOUTHERN NEVADA WATER
AUTHORITY**

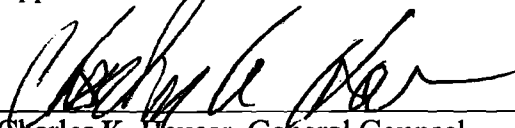
DATE: 12-16-04

Attest:


Patricia Mulroy, General Manager


Amanda Cyphers, Chair

Approved as to form:

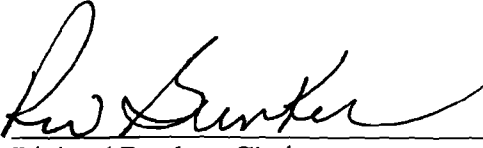

Charles K. Hauser, General Counsel

**COLORADO RIVER COMMISSION OF
NEVADA**

DATE: 12-16-04

Attest:


George M. Caan, Executive Director


Richard Bunker, Chair

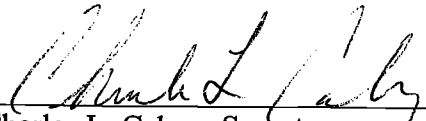
Approved as to form:


Sara A. Price, Senior Deputy Attorney General


**ARIZONA WATER BANKING
AUTHORITY**

DATE: February 3, 2005

Attest:



Charles L. Cahoy, Secretary



Herbert R. Guenther, Chair

SECOND AMENDED AGREEMENT FOR INTERSTATE WATER BANKING

among

**The Arizona Water Banking Authority
and
The Southern Nevada Water Authority and The
Colorado River Commission of Nevada**

This Second Amended Interstate Water Banking Agreement (Agreement) is made as of April 1, 2009 (Effective Date), among the Arizona Water Banking Authority (AWBA), and the Southern Nevada Water Authority (SNWA) and the Colorado River Commission of Nevada (CRCN), collectively referred to as "Parties" and individually as "Party."

Recitals

A. The Arizona Water Banking Authority is an agency of the State of Arizona expressly authorized by A.R.S. § 45-2401 *et seq.* to engage in the interstate banking of Colorado River water on behalf of the State of Arizona. The statutory conditions of A.R.S. §§ 45-2427 and 45-2471 have been satisfied, this Agreement conforms to all of the requirements of such sections and all other applicable provisions of Arizona law, and AWBA is empowered to enter into this Agreement.

B. The Southern Nevada Water Authority 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 Intentionally Created Unused Apportionment released by the Secretary for use within the State of Nevada pursuant to Art. II(B)(6) of the Consolidated Decree.

C. 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 and 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to facilitate the banking of Colorado River water, the crediting of Long-term Storage Credits, and the development of ICUA for SNWA.

D. On July 3, 2001, the Parties entered into the original Agreement for Interstate Water Banking (Original Agreement). In the Original Agreement, and subject to its limitations, AWBA committed to use its best efforts to create Long-term Storage Credits in an initial amount of 1,200,000 acre-feet for SNWA, to be held in an SNWA Interstate Account established with the Arizona Department of Water Resources and, on request of SNWA, to recover such credits and

cause the development of Intentionally Created Unused Apportionment of Colorado River water (ICUA) for SNWA. SNWA agreed to reimburse AWBA for its costs on an annual basis.

E. On December 18, 2002, the United States, acting through the Secretary of the Interior, AWBA, SNWA, and CRCN entered into a Storage and Interstate Release Agreement (SIRA) pursuant to the Secretary's regulations at 43 C.F.R. Part 414, Offstream Storage of Colorado River Water and Development of and Release of Intentionally Created Unused Apportionment in the Lower Division States. In the SIRA, the Secretary committed to release ICUA developed by AWBA in accordance with the request of SNWA, the terms of the SIRA, and certain specified determinations of the Secretary.

F. The Original Agreement was amended on January 1, 2005 (Amended Agreement) whereby the Parties amended and restated in its entirety the Original Agreement to provide (1) a specific commitment by AWBA to have credited to the SNWA Interstate Account Long-Term Storage Credits in an aggregate amount, including those heretofore credited, of 1,250,000 acre-feet, (2) a commitment by AWBA, on request of SNWA, to recover such credits and to develop ICUA for SNWA's benefit up to a specified annual maximum, and (3) specified payments to be made by SNWA in consideration of AWBA's commitments respecting the crediting of such Long-Term Storage Credits.

G. Prior to the effective date of the Amended Agreement, AWBA established a long-term storage sub-account entitled "SNWA Interstate Account" with the Arizona Department of Water Resources (ADWR). As of the effective date of the Amended Agreement Long-term Storage Credits had been credited to such account, consisting of (1) 50,000 acre-feet of Long-term Storage Credits, constituting all of the Long-term Storage Credits held by CAWCD for the benefit of SNWA as of the effective date of the Original Agreement, and (2) all of the Long-term Storage Credits existing by virtue of Colorado River water stored, or other Long-term Storage Credits transferred to such account, pursuant to the Original Agreement.

ARTICLE 1

DEFINITIONS, FUNDAMENTAL PRINCIPLES AND TERMS

1.1 Definitions. For purposes of this Agreement, terms that are defined in Article I of the Consolidated Decree, terms that are defined in Arizona Revised Statutes (A.R.S.) Title 45, Chapter 3.1, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

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

1.1.2 "Agreement" shall mean this Amended Agreement for Interstate Water Banking.

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

- 1.1.4 "AWBA Plan of Operation" shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.
- 1.1.5 "Bureau of Reclamation" shall mean the United States Bureau of Reclamation, Lower Colorado Region.
- 1.1.6 "CAP" shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*, and as operated under that certain Master Repayment Contract dated December 1, 1988, Contract No. 14-06-W-245 between CAWCD and the United States Bureau of Reclamation, as amended.
- 1.1.7 "CAWCD" shall mean the Central Arizona Water Conservation District.
- 1.1.8 "CRCN" shall mean the Colorado River Commission of Nevada.
- 1.1.9 "Consolidated Decree" shall mean the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 126 S.Ct. 1543, 547 U.S. 150 (2006).
- 1.1.10 "Excess CAP Water" shall mean CAP water that is available for distribution by CAWCD in accordance with §8.7(e) of the Master Repayment Contract or §5(d)(2) of the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and Ultimate Judgment upon Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC (consolidated), and in accordance with policies established by the CAWCD Board.
- 1.1.11 "ICUA" shall mean Intentionally Created Unused Apportionment as that term is defined in 43 C.F.R. § 414.2.
- 1.1.12 "Interstate Recovery Schedule" shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.
- 1.1.13 "Long-term Storage Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).
- 1.1.14 "Master Repayment Contract" shall mean that Contract No. 14-06-W-245 dated December 1, 1988, between CAWCD and the United States Bureau of Reclamation, as amended.
- 1.1.15 "Recovery Facilities" shall mean constructed facilities capable of recovering both intrastate and interstate Long-term Storage Credits.

- 1.1.16 "Secretary" shall mean the Secretary of the Interior for the United States, Department of the Interior.
- 1.1.17 "SNWA" shall mean the Southern Nevada Water Authority.
- 1.1.18 "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR pursuant to Subarticle 2.2.4 of the Original Agreement.
- 1.1.19 "Statutory Costs" means those costs specified in A.R.S. §§ 45-2471(C)(1) through (5), and (8) that are incurred by AWBA under Subarticle 2.1.1 after the Effective Date in connection with causing the crediting of Long-term Storage Credits in a gross amount of 1,250,000 acre-feet to the SNWA Interstate Account.
- 1.1.20 "Storage Facility" or "Storage Facilities" shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01.
- 1.1.21 "Year" shall mean a calendar year.

1.2 Fundamental Principles of this Agreement

- 1.2.1 This Agreement is among AWBA and SNWA and CRCN. It is intended to create a program of interstate banking of Colorado River water. AWBA will not engage in interstate banking to the detriment of any water user in Arizona in fulfilling its obligations under this Agreement.
- 1.2.2 Under the terms of this Agreement, AWBA shall acquire and store mainstream Colorado River water in Arizona and cause Long-term Storage Credits to be credited and held in the SNWA Interstate Account. AWBA shall utilize the Long-term Storage Credits at a later date to develop ICUA. The Secretary is required to release this ICUA for consumptive use within the State of Nevada pursuant to the Storage and Interstate Release Agreement entered into by the Secretary under the regulations adopted by the Secretary in 43 CFR Part 414. This Agreement is one part of a three part contractual relationship, which also includes the Storage and Interstate Release Agreement (SIRA) and an Agreement for the Development of Intentionally Created Unused Apportionment. In furtherance of its performance under this Agreement, the AWBA has also entered into an Intergovernmental Agreement among AWBA, CAWCD, and ADWR, as amended, and a series of water storage agreements between AWBA and Storage Facility operators in the State of Arizona.
- 1.2.3 This Agreement shall govern the relative rights and responsibilities of AWBA, SNWA and CRCN for the delivery, storage and recovery of Colorado

River water in Arizona and for the development of ICUA. No ownership rights in specific storage facilities shall accrue to either SNWA or CRCN by this Agreement. Neither SNWA nor CRCN shall have any rights in this interstate banking arrangement except as provided in this Agreement.

1.2.4 AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by the Agreement Relating to Implementation of Interim Colorado River Surplus Guidelines between SNWA and The Metropolitan Water District of Southern California, dated May 16, 2002.

1.2.5 This Agreement is intended to operate for the mutual benefit of the citizens of the State of Arizona and the citizens of the State of Nevada. It is entered into with the understanding that it is an act of comity, and with the understanding that interstate banking of Colorado River water among the States of the Lower Division must be undertaken in accordance with express authority granted under each state's law.

1.3 Term of Agreement

This Agreement becomes effective when executed by all Parties. This Agreement shall terminate when all of the Long-term Storage Credits specified in Subarticle 2.1.1 have been credited to the SNWA Interstate Account and all such credits have subsequently been recovered, or on June 1, 2060, whichever is sooner. Any Long-term Storage Credits remaining in the SNWA Interstate Account at the termination of this Agreement shall revert to the sole and exclusive benefit of AWBA, unless this Agreement is extended by written agreement of all Parties.

ARTICLE 2

DELIVERY AND STORAGE

2.1 Crediting Long-term Storage Credits for SNWA; Annual Plan of Operation

2.1.1 AWBA shall take all actions necessary to ensure that Long-term Storage Credits in a gross amount of 1,250,000 acre-feet, including the Long-term Storage Credits referenced in Recital G, are credited to the SNWA Interstate Account in sufficient time both to meet the requirements of Subarticle 2.1.3 and to allow the recovery of the full 1,250,000 acre-feet of such credits for the purpose of developing ICUA for SNWA within the term of this Agreement and the limitations of Subarticle 3.1.1. Such actions may include storage of Colorado River water, assignment of existing Long-term Storage Credits, or any other actions that will support the development of ICUA under this Agreement consistent with 43 C.F.R. Part 414 and the SIRA.

2.1.2 AWBA shall ensure that there are in effect in a timely manner all regulatory permits and approvals and all third-party agreements necessary to enable

AWBA to meet its obligations under this Subarticle, including without limitation agreements for the purchase and delivery of Colorado River water, necessary water storage permits from ADWR, and agreements with Storage Facility operators.

- 2.1.3 The actions that AWBA takes to cause Long-term Storage Credits to be credited to the SNWA Interstate Account under Subarticle 2.1.1 shall be on a schedule that will ensure that there are Long-term Storage Credits in the SNWA Interstate Account as of the June 1 preceding each Year in which SNWA has the right to require the development of ICUA in an amount at least sufficient to support development of the maximum ICUA permitted under Subarticle 3.1 during that Year, without regard to whether SNWA has requested such maximum.
 - 2.1.4 The amount of water to be stored during any Year shall be identified in the final AWBA Plan of Operation by January 1 of each Year.
- 2.2 Delivery and Storage of Water by AWBA for SNWA. Delivery and storage of any water under the terms of this Agreement shall be subject to the following requirements:
- 2.2.1 The delivery of water to storage shall be pursuant to the Agreement between CAWCD and the AWBA Providing for the Delivery of Excess CAP Water, whereby AWBA is entitled to purchase Excess CAP Water from CAWCD for interstate banking purposes.
 - 2.2.2 AWBA shall obtain and maintain all necessary water storage permits from ADWR to allow storage under the terms of this Agreement.
 - 2.2.3 The storage of water shall be pursuant to AWBA's agreements with various Storage Facility operators whereby AWBA is entitled to store water at those various Storage Facilities.
 - 2.2.4 AWBA agrees that the storage of water under this Agreement shall take into account the location, manner and cost of storing all water stored by AWBA in the State of Arizona. AWBA agrees that the selection of storage facilities for water stored under this Agreement and for others in Arizona shall not be made in a manner that unreasonably allocates the higher storage cost to the storage of water under this Agreement.
- 2.3 SNWA Interstate Account
- 2.3.1 AWBA shall monitor the crediting and maintenance of Long-term Storage Credits in the SNWA Interstate Account from Year to Year. AWBA shall exercise due diligence in insuring that all Long-term Storage Credits credited through storage for SNWA or transferred or otherwise credited to the SNWA Interstate Account are properly accounted for in such account.

2.3.2 AWBA shall timely file with ADWR an annual report for all water delivered and stored in accordance with the terms of this Agreement by March 31 of the Year following the delivery and storage. AWBA and SNWA and CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed. ADWR determines the amount of Long-term Storage Credits that are credited to the SNWA Interstate Account in any Year and makes a report available to AWBA detailing the credits available in AWBA's Long-term Storage Account. Upon receipt of the report from ADWR, AWBA shall make that report available to SNWA and CRCN. The report may include adjustments or corrections made by ADWR to the Long-term Storage Credits in the SNWA Interstate Account.

2.4 Payments by SNWA

2.4.1 In consideration of AWBA's obligations under this Article 2, and in particular its obligation to ensure that Long-term Storage Credits in a gross amount of 1,250,000 acre-feet are credited to the SNWA Interstate Account, SNWA shall make payments to AWBA aggregating \$330,000,000.00, such payments to be made by SNWA as specified in Subarticles 2.4.1.1 and 2.4.1.2.

2.4.1.1 SNWA shall make a payment of \$100,000,000.00 within 10 working days of the request by AWBA for such payment made after the Effective Date, which shall be deposited into a Resource Account, which shall be established by the AWBA. SNWA shall have no authority as to the use of the Resource Account.

2.4.1.2 SNWA shall make ten payments of \$23,000,000.00 each by January 10 of each Year commencing in 2009 and ending in 2018, which shall be deposited into an interest-bearing Operating Account, which shall be established by the AWBA and used by the AWBA only in connection with deposits of SNWA payments under this Subarticle, payment of Statutory Costs, and loan transactions involving the Resource Account under Subarticle 2.4.1.3. Interest earned on the Operating Account shall accrue to that account for use in accordance with this Agreement.

2.4.1.3 AWBA may, at its sole discretion, loan funds from the Resource Account to the Operating Account, for the purpose of fulfilling its obligations under this Agreement, but any loaned funds must be repaid from the Operating Account to the Resource Account, with interest, no later than June 10, 2018. For purposes of this paragraph, interest each Year shall be computed based on the average rate of return on the Operating Account for that Year.

- 2.4.2 The provisions of this Subarticle 2.4.2 shall apply for purposes of ensuring that payments by SNWA under this Agreement meet the requirements of A.R.S. § 45-2471(C).
- 2.4.2.1 The Parties acknowledge that payments made by SNWA to AWBA prior to the Effective Date cover at least all costs specified in A.R.S. §§ 45-2471(C)(7) with respect to those Long-term Storage Credits referenced in Recital G(2).
- 2.4.2.2 The Parties further acknowledge AWBA's conclusion that, other than those costs for which SNWA will reimburse AWBA under Subarticle 2.4.3, the payments to be made by SNWA under Subarticle 2.4.1 will be sufficient to reimburse AWBA for all capital, operation, maintenance, energy, payment in lieu of property taxes, storage, contract, permitting, and other costs that it will incur under this Article 2 after the Effective Date, subject to the adjustment provisions of Subarticles 2.4.2.5 and 2.4.2.6. Such reimbursed costs include, without limitation, (1) any costs associated with ensuring that AWBA is able to perform its obligations under Subarticle 2.1.1, and (2) all Statutory Costs incurred by AWBA.
- 2.4.2.3 The Parties further acknowledge that, for purposes of A.R.S. § 45-2471(C)(1), AWBA's cost of acquiring Colorado River water is the cost charged by the United States to CAWCD under CAWCD's federal water delivery contract for delivering such water.
- 2.4.2.4 By June 30 of each Year AWBA shall provide an annual accounting to SNWA for the period from the Effective Date through December 31 of the prior Year showing (1) all transactions involving the Operating Account during the preceding Year, including loans from the Resource Account, payments to the Resource Account of principle and interest on such loans, and a detailed statement of all Statutory Costs incurred by AWBA, and (2) a summary by Year of all Statutory Costs incurred by AWBA in prior Years.
- 2.4.2.5 If the annual accounting under Subarticle 2.4.2.4 indicates that there are insufficient funds in the Operating Account to complete the accrual of 1,250,000 acre-feet of Long-term Storage Credits for crediting to the SNWA Interstate Account, then the parties shall meet and confer regarding the accrual of additional Long-term Storage Credits by AWBA and the payment of additional funds by SNWA. At its sole discretion SNWA may reduce AWBA obligation to develop 1,250,000 acre-feet of Long-term Storage Credits for the SNWA Interstate Account. If SNWA determines

not to reduce AWBA obligation to develop 1,250,000 acre-feet of Long-term Storage Credits for the SNWA Interstate Account, SNWA shall pay all additional Statutory Costs required to complete the accrual of 1,250,000 acre-feet of Long-term Storage Credits.

- 2.4.2.6 By June 30 of the Year after the Year in which an aggregate of 1,250,000 acre-feet of Long-term Storage Credits have been credited to the SNWA Interstate Account and all loans from the Resource Account to the Operating Account have been repaid, with interest, AWBA shall pay to SNWA any remaining balance in the Operating Account established pursuant to Subarticle 2.4.1.2 and no additional payments shall be made by SNWA.
- 2.4.3 SNWA shall pay a fee equivalent to the approximate amount of administrative, legal, and technical expenses incurred for AWBA's services under this entire Agreement. Such fee shall equal 15% of ADWR's cost of such services as provided to and accepted by AWBA annually. ADWR's cost of services is computed as a lump sum for the fiscal year beginning July 1 and includes salaries, employee related expenses, and indirect costs.
- 2.4.4 The fee for administrative services as described in Subarticle 2.4.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.
- 2.4.5 SNWA shall pay the administrative service fees on or before the first day of the month following the notice of the fees. If such day is not a business day, the payment shall be made on the next succeeding business day.

ARTICLE 3

DEVELOPMENT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT

- 3.1 Extent of Annual Development of ICUA for SNWA
 - 3.1.1 SNWA shall have the right to require the recovery of Long-term Storage Credits in the SNWA Interstate Account and the development of ICUA in any Year, as follows:
 - 3.1.1.1 The initial year request for ICUA shall not exceed 20,000 acre-feet, the second year request for ICUA shall not exceed 30,000

acre-feet and any request for ICUA thereafter shall not exceed 40,000 acre-feet.

3.1.2 During any Year as to which the Secretary has determined under Article II(B)(3) of the Consolidated Decree that a shortage condition exists, SNWA may require the development of ICUA (1) in such amount that, when considered together with the amount of basic apportionment available for use in Nevada, will allow 300,000 acre-feet to be consumptively used in Nevada, plus (2) the amount specified for such Year in Subarticle 3.1.1. SNWA may require the development of ICUA under this Subarticle only if after consultation with SNWA, the AWBA has determined that sufficient recovery facilities are in place for that Year to meet the needs of CAP M&I subcontractors and any post 1968 domestic use Colorado River contractor in Arizona and SNWA. If it is determined that sufficient recovery facilities are not available, SNWA may require the development of ICUA only to the extent that SNWA has contributed to new facilities in Subarticle 3.4.2.1 or additional facilities in Subarticle 3.5.1 plus any available existing recovery capacity not utilized by the CAP M&I subcontractors and post 1968 domestic use Colorado River contractors.

3.1.2.1 If a shortage determination by the Secretary under Article II(B)(3) of the Consolidated Decree causes a reduction in the Colorado River water available for use by non-Indian municipal and industrial (M&I) CAP subcontractors in any Year under their subcontracts or any other post 1968 domestic use Colorado River contractor in any Year under their contract, SNWA's right to require the recovery of Long-term Storage Credits and the development of ICUA shall be reduced proportionately to the reduction in M&I water supply sustained by CAP subcontractors and any other post 1968 domestic use contractor.

3.2 SNWA Notices for Development of ICUA

3.2.1 For any Year in which SNWA will require the development of ICUA by AWBA and the release of ICUA by the Secretary, SNWA shall confer with the AWBA prior to June 1 of the preceding Year and provide notice of the amount of such ICUA to AWBA by June 1 of the preceding Year.

3.2.2 Between June 1 and September 15 of the Year in which a notice has been given under Subarticle 3.2.1, AWBA staff shall meet and confer with SNWA concerning the proposed location, manner and estimated cost of the development of the specified ICUA.

3.2.3 On or before September 15 of the Year in which a notice for the development of ICUA has been given to AWBA under Subarticle 3.2.1, or as otherwise required by the Secretary, SNWA shall make a request of the Secretary for the

release of such ICUA during the following Year and shall provide a copy of such notice to AWBA.

3.3 Development of ICUA

3.3.1 Upon receipt of a notice under Subarticle 3.2.1 for the development of ICUA, AWBA shall meet and confer with CAWCD to develop an Interstate Recovery Schedule under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment. The Interstate Recovery Schedule shall utilize the recovery of Long-term Storage Credits to develop the ICUA through recovery methods identified in the corresponding Storage and Interstate Release Agreement. These methods include recovery and exchange of Long-term Storage Credits for Colorado River water and/or credit exchange of Long-term Storage Credits for Colorado River water that would have otherwise been delivered for underground storage in that Year.

3.3.1.1 AWBA shall meet and confer with SNWA concerning the location, manner and cost of recovery when developing the Interstate Recovery Schedule.

3.3.1.2 AWBA agrees that the development of the Interstate Recovery Schedule shall take into account the location, manner and cost of recovering all water stored by AWBA in the State of Arizona. AWBA agrees that the selection of recovery facilities included in the Interstate Recovery Schedule shall not be made in a manner that unreasonably allocates the higher recovery cost to the recovery of water for the development of ICUA under the terms of this Agreement.

3.3.1.3 Factors to be considered when preparing the Interstate Recovery Schedule shall include but are not limited to:

3.3.1.3.1 Arizona water management goals,

3.3.1.3.2 CAP operational requirements,

3.3.1.3.3 Water quality requirements,

3.3.1.3.4 Opportunities for shared or joint facilities, and

3.3.1.3.5 Opportunities to reduce recovery costs.

3.3.2 Upon receipt of a copy of SNWA's request under Subarticle 3.2.3 to the Secretary for the release of ICUA during the following Year, AWBA shall prepare the following certifications, in accordance with the Agreement for the Development of Intentionally Created Unused Apportionment: (1) an

Upcoming Year Delivery Certification; (2) an Interstate Recovery Schedule Certification; and, (3) a Development of ICUA Certification. These three certifications shall be prepared and delivered to the Bureau of Reclamation no later than December 1 of the Year in which a notice for the development of ICUA was given to AWBA under Subarticle 3.2.1. AWBA shall identify the amount of ICUA specified to be developed in SNWA's notice under Subarticle 3.2.1 in the AWBA Plan of Operation for the following Year, and in such Year shall recover Long-term Storage Credits and develop ICUA in such amount, subject to the Secretary's determination and release of ICUA under Subarticles 5.4 and 5.5 of the SIRA. Recovery shall not commence until verification by the Secretary that ICUA will be released to SNWA under the terms of the Storage and Interstate Release Agreement.

- 3.3.3 The choice of facilities utilized to recover the Long-term Storage Credits used to develop the ICUA during any year shall be at the discretion of AWBA.
- 3.3.4 After the Secretary's notice of determination pursuant to Subarticle 5.4 of the SIRA respecting the availability and release of ICUA, AWBA shall recover Long-term Storage Credits and cause ICUA to be developed in the amount specified in the Secretary's notice. SNWA shall be responsible for all costs of developing the specified ICUA as provided in this Agreement.
- 3.3.5 Upon written request by SNWA to cease the development of ICUA, AWBA shall cease the development of ICUA by the amount of the request or by the amount of verified ICUA not yet developed, whichever is less. AWBA shall certify to the Secretary the amount of ICUA previously requested that will not be developed and shall request that the Secretary act in accordance with that certification and the terms of the Storage and Interstate Release Agreement.
- 3.3.6 AWBA shall notify ADWR of the actual amount of credits recovered in accordance with the terms of this Agreement and shall request that ADWR debit the SNWA Interstate Account by the amount of credits recovered when AWBA submits its annual report to ADWR. AWBA and SNWA shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed.

3.4 Charges for Developing ICUA

- 3.4.1 SNWA agrees that, except as provided in Subarticle 3.4.3, all costs of the development of ICUA as described in Subarticle 3.3 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 3.4, and billed to and paid by SNWA as provided in Subarticle 3.5.

- 3.4.2 The charges to SNWA for the cost of ICUA caused to be developed by AWBA under this Agreement shall consist of the following pricing components:
- 3.4.2.1 A capital component consisting of (1) the cost to develop any new recovery facility as to which the SNWA shall have a prior right of use, such cost to be paid in advance in a lump sum, or (2) a charge computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the annual capital cost of other recovery facilities to be used for SNWA's benefit during the Year.
 - 3.4.2.2 An operation and maintenance (O&M) component computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the O&M cost (including pumping energy) incurred by the owner/operator of any recovery facility used during the Year to develop ICUA for SNWA.
 - 3.4.2.3 An administrative component calculated as a lump sum to recover the actual administrative cost reasonably incurred by AWBA.
 - 3.4.2.4 In the event that the cost of recovery for all or some of the water stored by AWBA in the State of Arizona increases due to unforeseen circumstances such as a cost for water treatment, or new state or federal regulations such as new water quality standards or additional environmental compliance requirements, SNWA agrees to share a reasonable proportion of such unanticipated costs, regardless of the location of such storage.
- 3.4.3 SNWA shall specify in its notice given under Subarticle 3.2.1 if, and the extent to which, ICUA is to be developed through the recovery of Long-term Storage Credits previously held by CAWCD for the benefit of SNWA under its October 15, 1992 agreement with The Metropolitan Water District of Southern California. The Parties acknowledge that pursuant to the terms of such agreement and prior to the effective date of the Original Agreement, SNWA made advance payments of the entire cost to recover such credits and to develop such ICUA.

3.5 Billing and Payment for Developing ICUA

- 3.5.1 AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle 3.4.2.1(2) after agreement between AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.
- 3.5.2 SNWA shall agree to an acceptable repayment schedule for costs specified in AWBA's Subarticle 3.5.1 notice prior to the construction of any additional

recovery facilities. Following receipt of the SNWA payments pursuant to that schedule, AWBA shall remit the appropriate payments to the appropriate recovery facility owner/operators in accordance with AWBA's contractual agreements with those operators.

- 3.5.3 AWBA shall provide an estimate of the charges for any capital component described in Subarticle 3.4.2.1(2) and the recovery facility O&M described in Subarticle 3.4.2.2 to SNWA on or before the fifteenth of each month prior to the actual recovery. Such estimates may include adjustments or corrections to previous estimates.
- 3.5.4 SNWA shall pay the estimate of the capital component described in Subarticle 3.4.2.1(2) and the recovery facility O&M charge described in Subarticle 3.4.2.2 on or before the tenth day of the month following receipt of the estimate. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate recovery facility operators in accordance with AWBA's contractual agreements with those operators.
- 3.5.5 No later than March 15 of the Year following the Year in which ICUA was recovered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation showing the actual Long-term Storage Credits recovered and whether charges for recovering the credits exceed payments made or payments exceed the amount owed. If additional funds are owed to AWBA by SNWA, they shall be paid within 10 business days of the date notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year recovery facility O&M charge and used to offset current payments in an amount equal to the excess payment. If no recovery under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the recovery facility O&M charge for the Year in which recovery resumes. If recovery has not resumed within three years, AWBA shall remit the remaining funds to SNWA.
- 3.5.6 Charges for administrative services as described in Subarticle 3.4.2.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge agreed upon for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.

- 3.5.7 SNWA shall pay administrative charges on or before the first day of the month following the receipt of the notice. If such day is not a business day, the payment shall be made on the next succeeding business day.

ARTICLE 4

DELINQUENT CHARGES AND SURETY OF PERFORMANCE

4.1 Delinquency Charges under the Terms of this Agreement

- 4.1.1 All payments due under this Agreement shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the Bank of America, plus 6% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest owed, and then to any charges owed.
- 4.1.2 In the event any portion of the charges is disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, SNWA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 4.1.1, prorated by days from the date payment was credited to SNWA to the date the refund check is issued.
- 4.1.3 In the event any delinquent amount is not paid by SNWA within thirty (30) days after receipt by SNWA of written notice from AWBA of the delinquency, AWBA shall have the right, without liability of any kind, to suspend recovery of any water under the terms of this Agreement so long as the delinquent amount remains unpaid. Such suspension shall not affect the Long-term Storage Credits remaining in the SNWA Interstate Account. Nothing herein shall limit the rights of AWBA to use any other available legal remedy to effect collection of delinquent amounts.

4.2 Surety of Performance under the Terms of this Agreement

- 4.2.1 In the event that a dispute arises over any action to be undertaken pursuant to the terms of this Agreement, all parties recognize and acknowledge that time is of the absolute essence in the conduct of the parties under the terms of this Agreement.
- 4.2.2 The parties agree that the water resources being stored, forborne, and made available through exchange for use by SNWA under the terms of this Agreement are unique and very likely cannot be replaced in a timely fashion

by other resources. Accordingly, the parties agree that in any dispute over the development and release of ICUA, SNWA will likely be requesting an injunction ordering specific performance of the terms of this Agreement. The parties agree that if AWBA opposes the specific enforcement of this Agreement with respect to ICUA, AWBA shall have the burden to show by clear and convincing evidence that it has the ability to, and will, make alternative water resources, other than water controlled by the United States under the Consolidated Decree, available at the SNWA system, free of adverse claims. If AWBA proposes to deliver such alternative water to SNWA, AWBA shall bear any additional costs that may be incurred over the costs that would have otherwise been incurred by SNWA for the delivery of ICUA under terms of this Agreement. SNWA shall be required to accept such alternative water resources if so ordered by a court of competent jurisdiction. Nothing in this Subarticle shall limit SNWA's rights to seek money damages or a remedy at law.

- 4.2.3 AWBA shall ensure that there are in effect all third party contracts necessary for the development of ICUA as provided in Article 3, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.

ARTICLE 5

OTHER PROVISIONS

- 5.1 Consultation on the AWBA Annual Report
 - 5.1.1 AWBA is required to submit an annual report of its transactions and proceedings for the preceding year by July 1 each Year pursuant to A.R.S. § 45-2426. SNWA agree to confer with AWBA staff in the development of the report.
- 5.2 The terms established by Articles 2.4, 3.1, 3.2 and 3.5 may be changed upon written agreement of AWBA's authorized representative and the SNWA's General Manager.
- 5.3 Payment of federal charges relating to the Execution of a Storage and Interstate Release Agreement.
 - 5.3.1 SNWA agrees that all federal charges associated with any amendment to the SIRA shall be borne by SNWA.
 - 5.3.2 These charges shall be calculated by and paid directly to the Secretary by SNWA in accordance with the Secretary's requirements.

5.4 Successors to AWBA and SNWA

In the event that the AWBA should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of the AWBA shall be binding upon, and inure to the benefit of, any agency of the State of Arizona that succeeds to such functions or, in the absence of any such agency, the State of Arizona. In the event that the SNWA should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of the SNWA shall be binding upon, and inure to the benefit of, any successor joint powers agency or other legal subdivision of the State of Nevada that succeeds to such functions or, in the absence of any such agency, the members of the SNWA.

5.5 Uncontrollable Forces

No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than the obligation of SNWA to make payment) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the control of the party unable to perform such obligation, including, but not limited to, failure or threat of failure of facilities, flood, earthquake, storm, fire, lighting, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any federal 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 any Party to settle any strike or labor dispute in which it is involved.

5.6 Notices, Requests and Payments

5.6.1 All notices and other communications provided for in this Agreement shall be in writing and may be given in either of the following manners:

5.6.1.1 Notices and requests shall be in writing and maybe mailed first class postage paid to the parties at the following addresses:

AWBA: Arizona Water Banking Authority
3550 North Central Avenue
Phoenix, Arizona 85012
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: Executive Director

- 5.6.1.2 Notices and requests may be given by facsimile and shall be deemed complete upon 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.
- 5.6.2 All payments required under the terms of this Agreement shall be made by Electronic Fund Transfer (EFT).
 - 5.5.2.1 AWBA will notify the Treasury, State of Arizona monthly of any anticipated EFTs to be made by SNWA.
 - 5.5.2.2 SNWA will submit all EFTs to the Treasury, State of Arizona; account number 001-000985; routing number 122101706, or to such other destination as AWBA may designate by notice.
 - 5.5.2.3 AWBA will ensure that all EFTs submitted by SNWA are properly accrued in the Nevada sub-account maintained at ADWR.
- 5.7 On request, AWBA shall provide SNWA with a copy of all contracts, rate schedules, and other documents that are relevant to or that form the basis for the charges specified in the Agreement.
- 5.8 The parties to this Agreement are hereby notified of Arizona Revised Statutes section 38-511.
- 5.9 On reasonable advance written notice to AWBA and during normal business hours, SNWA shall have the right to inspect and audit all records of AWBA pertaining to (1) all Statutory Costs incurred by AWBA under Article 2 and (2) all costs incurred by AWBA under Article 3.
- 5.10 This Agreement is not intended to confer any rights on any person other than the Parties hereto, and it shall not be construed as a third-party beneficiary contract or as conferring third-party beneficiary status or rights of any nature on any person.

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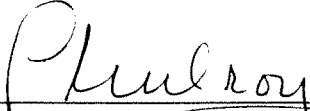
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In Witness of this Agreement, the Parties affix their official signatures below.

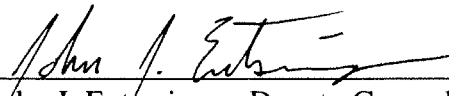
SOUTHERN NEVADA WATER
AUTHORITY

DATE 3-19-09



Patricia Mulroy, General Manager

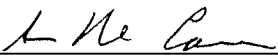
Approved as to form:



John J. Entsminger, Deputy General Counsel

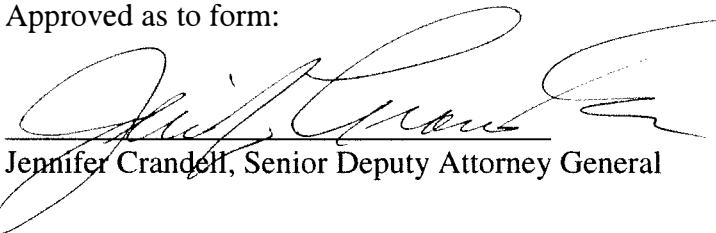
COLORADO RIVER COMMISSION OF
NEVADA

DATE 3/6/09



George M. Caan, Executive Director

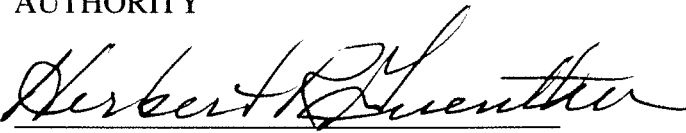
Approved as to form:



Jennifer Crandell, Senior Deputy Attorney General

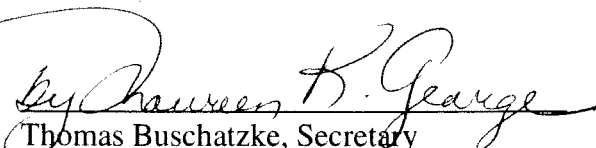
ARIZONA WATER BANKING
AUTHORITY

DATE 4-1-09



Herbert R. Guenther, Chair

Attest:



Thomas Buschatzke, Secretary

THIRD AMENDED AND RESTATED AGREEMENT FOR INTERSTATE WATER BANKING

among

**The Arizona Water Banking Authority
and
The Southern Nevada Water Authority and The
Colorado River Commission of Nevada**

This Third Amended and Restated Interstate Water Banking Agreement (Agreement) is made as of this 20th day of May, 2013 (Effective Date), among the Arizona Water Banking Authority (AWBA), the Southern Nevada Water Authority (SNWA), and the Colorado River Commission of Nevada (CRCN), collectively referred to as "Parties" and individually as "Party." This Agreement amends, restates in its entirety, and supersedes that certain Agreement for Interstate Water Banking dated July 3, 2001, together with all prior amendments and modifications thereto.

Recitals

A. The Arizona Water Banking Authority is an agency of the State of Arizona expressly authorized by A.R.S. § 45-2401 *et seq.* to engage in the interstate banking of Colorado River water on behalf of the State of Arizona. The statutory conditions of A.R.S. §§ 45-2427 and 45-2471 have been satisfied, this Agreement conforms to all of the requirements of such sections and all other applicable provisions of Arizona law, and AWBA is empowered to enter into this Agreement.

B. The Southern Nevada Water Authority 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 Intentionally Created Unused Apportionment released by the Secretary for use within the State of Nevada pursuant to Art. II(B)(6) of the Consolidated Decree.

C. 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 and 538.251. More specifically, CRCN is authorized by N.R.S. §§ 538.161 and 538.186 to enter into this Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to facilitate the banking of Colorado River water, the crediting of Long-term Storage Credits, and the development of ICUA for SNWA.

D. On July 3, 2001, the Parties entered into the original Agreement for Interstate Water Banking (Original Agreement). In the Original Agreement, and subject to its limitations, AWBA committed to use its best efforts to create for SNWA Long-term Storage Credits in an initial amount of 1,200,000 acre-feet, to be held in an SNWA Interstate Account established with the Arizona Department of Water Resources and, on request of SNWA, to recover for SNWA such credits and cause the development of Intentionally Created Unused Apportionment of Colorado River water (ICUA). SNWA agreed to reimburse AWBA for its costs on an annual basis.

E. On December 18, 2002, the United States, acting through the Secretary of the Interior, AWBA, SNWA, and CRCN entered into a Storage and Interstate Release Agreement (SIRA) pursuant to the Secretary's regulations at 43 C.F.R. Part 414, Offstream Storage of Colorado River Water and Development of and Release of Intentionally Created Unused Apportionment in the Lower Division States. In the SIRA, the Secretary committed to release ICUA developed by AWBA in accordance with the request of SNWA, the terms of the SIRA, and certain specified determinations of the Secretary.

F. The Original Agreement was amended on January 1, 2005 (Amended Agreement) and again on April 1, 2009 (Second Amended Agreement) whereby the Parties amended and restated in its entirety the Original Agreement to provide (1) a specific commitment by AWBA to have credited to the SNWA Interstate Account Long-Term Storage Credits in an aggregate amount, including those theretofore credited, of 1,250,000 acre-feet, (2) a commitment by AWBA, on request of SNWA, to recover such credits and to develop ICUA for SNWA's benefit up to a specified annual maximum, and (3) specified payments to be made by SNWA in consideration of AWBA's commitments respecting the crediting of such Long-Term Storage Credits.

G. Prior to the effective date of the Amended Agreement, AWBA established a long-term storage sub-account entitled "SNWA Interstate Account" with the Arizona Department of Water Resources (ADWR). As of the effective date of the Amended Agreement, the following Long-term Storage Credits had been credited to the SNWA Interstate Account: (1) 50,000 acre-feet of Long-term Storage Credits held by CAWCD for the benefit of SNWA as of the effective date of the Original Agreement; and (2) all of the Long-term Storage Credits existing by virtue of Colorado River water stored, or other Long-term Storage Credits transferred to such account, pursuant to the Original Agreement.

H. The Second Amended Agreement was further modified by "letter agreements" dated April 2, 2009, December 17, 2009, June 15, 2010, and December 8, 2010. The letter agreements addressed operational adjustments to the Second Amended Agreement and modification to the payment schedule.

I. AWBA has accrued 600,651 acre feet of the Long-term Storage Credits on behalf of the SNWA in the SNWA Interstate Account pursuant to the previous agreements, including 50,000 acre feet of Long-term Storage Credits described in Recital G created for the benefit of the SNWA under a separate agreement between SNWA and CAWCD and transferred to the AWBA under the Original Agreement.

J. SNWA has provided \$122,738,945 to AWBA for the delivery and storage of Colorado River water in Arizona on SNWA's behalf. This amount was exclusive of any funding provided to CAWCD for the Long-term Storage Credits described in Recital G.

K. On June 9, 2010, the Parties along with CAWCD entered into a Recovery Agreement addressing some of the details of interstate and intrastate recovery of Long-term Storage Credits. As described in the Recovery Agreement, there is no charge for recovery of the 50,000 acre-feet of Long-Term Storage Credits described in Recital G as SNWA has already pre-paid those costs.

L. SNWA, CRCN, and AWBA desire to enter into this Agreement to amend, restate, and supersede the Original Agreement and all amendments and modifications thereto such that this Agreement and the Recovery Agreement will govern the future rights and obligations of the Parties with respect to SNWA's existing Long-term Storage Credits in the SNWA Interstate Account, banking of additional Colorado River water in Arizona on behalf of SNWA, and related matters as set forth herein.

ARTICLE 1

DEFINITIONS, FUNDAMENTAL PRINCIPLES AND TERMS

- 1.1 Definitions. For purposes of this Agreement, terms that are defined in Article I of the Consolidated Decree, terms that are defined in Arizona Revised Statutes (A.R.S.) Title 45, Chapter 3.1, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.
- 1.1.1 "ADWR" shall mean Arizona Department of Water Resources.
 - 1.1.2 "Agreement" shall mean this Third Amended and Restated Agreement for Interstate Water Banking.
 - 1.1.3 "AWBA" shall mean the Arizona Water Banking Authority.
 - 1.1.4 "AWBA Plan of Operation" shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.
 - 1.1.5 "Bureau of Reclamation" shall mean the United States Bureau of Reclamation, Lower Colorado Region.
 - 1.1.6 "CAP" shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*, and as operated under that certain Master Repayment Contract dated December 1, 1988, Contract No. 14-06-W-245 between CAWCD and the United States Bureau of Reclamation, as amended.

- 1.1.7 "CAWCD" shall mean the Central Arizona Water Conservation District.
- 1.1.8 "CRCN" shall mean the Colorado River Commission of Nevada.
- 1.1.9 "Consolidated Decree" shall mean the Consolidated Decree entered by the United States Supreme Court in *Arizona v. California*, 126 S.Ct. 1543, 547 U.S. 150 (2006).
- 1.1.10 "Excess CAP Water" shall mean CAP water that is available for distribution by CAWCD in accordance with §8.7(e) of the Master Repayment Contract or §5(d)(2) of the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and Ultimate Judgment upon Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC (consolidated), and in accordance with policies established by the CAWCD Board.
- 1.1.11 "ICUA" shall mean Intentionally Created Unused Apportionment as that term is defined in 43 C.F.R. § 414.2.
- 1.1.12 "Interstate Recovery Schedule" shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.
- 1.1.13 "Long-term Storage Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).
- 1.1.14 "Master Repayment Contract" shall mean that Contract No. 14-06-W-245 dated December 1, 1988, between CAWCD and the United States Bureau of Reclamation, as amended.
- 1.1.15 "Recovery Agreement" shall mean that agreement entitled "Recovery Agreement Among Arizona Water Banking Authority, Central Arizona Water Conservation District, Southern Nevada Water Authority and Colorado River Commission of Nevada," dated June 9, 2010.
- 1.1.16 "Recovery Facilities" shall mean constructed facilities capable of recovering both intrastate and interstate Long-term Storage Credits.
- 1.1.17 "Secretary" shall mean the Secretary of the Interior for the United States, Department of the Interior.
- 1.1.18 "SNWA" shall mean the Southern Nevada Water Authority.
- 1.1.19 "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR pursuant to Subarticle 2.2.4 of the Original Agreement.

1.1.20 "Storage Facility" or "Storage Facilities" shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01.

1.1.21 "Year" shall mean a calendar year.

1.2 Fundamental Principles of this Agreement

1.2.1 This Agreement is among AWBA and SNWA and CRCN. It is intended to create a program of interstate banking of Colorado River water. AWBA will not engage in interstate banking to the detriment of any water user in Arizona in fulfilling its obligations under this Agreement.

1.2.2 Under the terms of this Agreement, AWBA shall utilize the existing Long-term Storage Credits accrued in the SNWA Interstate Account, as well as any new Long-term Storage Credits created pursuant to this Agreement, at a later date to develop ICUA for the benefit of SNWA. The Secretary is required to release this ICUA for consumptive use within the State of Nevada pursuant to the Storage and Interstate Release Agreement entered into by the Secretary under the regulations adopted by the Secretary in 43 CFR Part 414. This Agreement is one part of a four part contractual relationship, which also includes the Storage and Interstate Release Agreement (SIRA), an Agreement for the Development of Intentionally Created Unused Apportionment and a Recovery Agreement. In furtherance of its performance under this Agreement, the AWBA has also entered into an Intergovernmental Agreement among AWBA, CAWCD, and ADWR, as amended, and a series of water storage agreements between AWBA and Storage Facility operators in the State of Arizona.

1.2.3 This Agreement and the Recovery Agreement shall govern the relative rights and responsibilities of AWBA, SNWA and CRCN for the delivery, storage and recovery of Colorado River water in Arizona and for the development of ICUA. No ownership rights in specific storage facilities shall accrue to either SNWA or CRCN by this Agreement. Neither SNWA nor CRCN shall have any rights in this interstate banking arrangement except as provided in this Agreement.

1.2.4 AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by the Agreement Relating to Implementation of Interim Colorado River Surplus Guidelines between SNWA and The Metropolitan Water District of Southern California, dated May 16, 2002.

1.2.5 This Agreement is intended to operate for the mutual benefit of the citizens of the State of Arizona and the citizens of the State of Nevada. It is entered into with the understanding that it is an act of comity, and with the understanding that interstate banking of Colorado River water among the States of the Lower

Division must be undertaken in accordance with express authority granted under each state's law.

1.3 Term of Agreement

This Agreement becomes effective when executed by all Parties. This Agreement shall terminate when all of the Long-term Storage Credits accrued in the SNWA Interstate Account as of the Effective Date or developed thereafter have subsequently been recovered, unless this Agreement is extended by written agreement of all Parties. Recovery of the Long-term Storage Credits accrued in the SNWA Interstate Account as of the Effective Date shall be complete by December 31, 2063. Recovery of any Long-term Storage Credits created after the Effective Date shall be complete no later than 50 years after the date of storage. Unless SNWA and AWBA mutually agree otherwise, Long-term Storage Credits accrued in the SNWA Interstate Account as of the Effective Date shall be recovered before Long-term Storage Credits created after the Effective Date. Unless SNWA and AWBA mutually agree otherwise, Long-term Storage Credits accrued in the SNWA Interstate Account after the Effective Date will be recovered on a first in, first out basis so that the oldest credits will be recovered first.

ARTICLE 2

DELIVERY AND STORAGE

2.1 Current Balance in SNWA Interstate Account

As of the Effective Date, AWBA has created 600,651 acre feet of Long-term Storage Credits in the SNWA Interstate Account. Upon the request by SNWA for development of ICUA as described in Article 3, the AWBA shall use Long-term Storage Credits available in the SNWA Interstate Account to fulfill that request.

2.2 Payments Previously Made by SNWA

In consideration of the Long-term Storage Credits created by AWBA prior to the Effective Date, SNWA made payments to AWBA aggregating to the sum of \$122,738,945. These payments are exclusive of any payments SNWA made to CAWCD for the 50,000 acre-feet of Long-term Storage Credits described in Recital G. The Parties acknowledge that the payments described above made by SNWA to AWBA for the delivery and storage of Colorado River water covered at least all costs specified in A.R.S. §§ 45-2471(C) and are not refundable.

2.3 Request for Additional Water Storage by SNWA

- 2.3.1 On or before September 1, AWBA, SNWA, and CRCN shall confer concerning the amount of water anticipated to be available for storage, including any Nevada apportionment, and the proposed location, manner, and

cost by which the interstate banking could be accomplished in the following Year.

- 2.3.2 Annually, AWBA develops a draft AWBA Plan of Operation. The draft AWBA Plan of Operation may include an interstate component.
- 2.3.3 On or before November 1, AWBA shall determine and advise SNWA and CRCN in writing as to the quantity of water and storage capacity available for interstate banking under the terms of this Agreement for the following Year. AWBA shall also provide an estimate of the costs calculated pursuant to Subarticle 2.5 associated with the delivery and storage of water available for interstate banking. AWBA shall also provide the data upon which the determinations and estimates in this Subarticle were based.
- 2.3.4 Within 30 days of the notice provided in Subarticle 2.3.3, SNWA shall specify in writing to AWBA its decision to accept all or any portion of the water and storage capacity available at the estimated cost.
- 2.3.5 After consultation with SNWA, the final decision on the quantity of water to be stored and the location of the storage under the terms of this Agreement shall be at the discretion of AWBA. However, except as otherwise provided in Subarticle 2.3.8.1, the maximum quantity of water to be stored in any Year shall not be greater than the amount specified by SNWA pursuant to Subarticle 2.3.4.
- 2.3.6 The quantity of water to be stored in accordance with the terms of this Agreement shall be identified in the final AWBA Plan of Operation by January 1 of each Year. Unless the final AWBA Plan of Operation is modified, this quantity of water shall be stored. AWBA shall provide SNWA and CRCN with a copy of the final AWBA Plan of Operations and any amendments thereto.
- 2.3.7 At any time after approval of the AWBA Plan of Operation, SNWA may request a change in the quantity of SNWA storage for the current Year. Such request for change shall be in writing to AWBA and, if the request results in a decrease in storage, it shall not be greater than the difference between the amount of water already stored in that Year for the benefit of SNWA and the amount of water scheduled in that Year to be stored for the benefit of SNWA. AWBA may, at its discretion and after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect such a change.
- 2.3.8 AWBA may modify the AWBA Plan of Operation for reasons other than a request from SNWA.
 - 2.3.8.1 If the modification results in an increase in the amount of Excess CAP Water available for storage for interstate banking, AWBA

shall notify SNWA and CRCN in writing of the estimated cost for delivery and storage of the increase. SNWA shall have 30 days after receipt of such notice to specify in writing to AWBA its decision to decline any or all of the increase.

2.3.8.2 If the modification results in a decrease in Excess CAP Water available for storage for interstate banking, AWBA will notify SNWA and CRCN in writing of such a modification, the reasons for the decrease in storage, the data upon which such determination was based, and the revised amount of water that AWBA will store for SNWA during the Year.

2.3.8.3 If SNWA directs Nevada unused apportionment to AWBA for storage pursuant to this Agreement, AWBA agrees that no decrease in the amount of storage for SNWA will be made after October 1 of each Year.

2.3.8.4 AWBA agrees to notify SNWA if costs are expected to increase by more than 20% due to the modification of the AWBA Plan of Operation or any other reason.

2.3.9 The schedule dates and periods contained in this Subarticle 2.3 can be changed upon written agreement of AWBA and SNWA.

2.4 Delivery and Storage of Additional Water by AWBA for SNWA. Delivery and storage of additional water under the terms of this Agreement shall be subject to the following:

2.4.1 The delivery of additional water to storage shall be pursuant to the agreement between CAWCD and the AWBA providing for the Delivery of Excess CAP Water, whereby AWBA is entitled to purchase Excess CAP Water from CAWCD for interstate banking purposes.

2.4.2 AWBA has obtained and shall continue to maintain all necessary water storage permits from ADWR to allow storage under the terms of this Agreement.

2.4.3 The storage of water shall be pursuant to AWBA's contracts with various Storage Facility operators whereby AWBA is entitled to store water at those various Storage Facilities.

2.4.4 AWBA shall monitor the accrual and maintenance of Long-term Storage Credits in the SNWA Interstate Account from Year to Year. AWBA shall exercise due diligence in ensuring that all Long-term Storage Credits developed in accordance with the terms of this Agreement have accrued and are properly accounted for in such account.

2.4.5 AWBA agrees that it shall timely file with ADWR an annual report for all water delivered and stored in accordance with the terms of this Agreement by March 31 of the Year following the delivery and storage. AWBA, SNWA and CRCN shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed. ADWR determines the quantity of Long-term Storage Credits that accrue in the SNWA Interstate Account in any Year and makes a report available to AWBA detailing the credits available in AWBA's Long-term Storage Account. Upon receipt of the report from ADWR, AWBA shall make that report available to SNWA and CRCN. The report may include adjustments or corrections made by ADWR to the Long-term Storage Credits in the SNWA Interstate Account created after the Effective Date of this Agreement.

2.5 Charges for Additional Delivery and Storage

2.5.1 SNWA agrees that all costs of the additional delivery and storage of water as described in Subarticle 2.4 (including the costs referred to in A.R.S. § 45-2471(C)) shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 2.5, and billed to and paid by SNWA as provided in Subarticle 2.6. The Parties acknowledge that, for purposes of A.R.S. § 45-2471(C)(1), AWBA's cost of acquiring Colorado River water is the cost charged by the United States to CAWCD under CAWCD's federal water delivery contract for delivering such water.

2.5.2 The charges to SNWA for the cost of water delivered under this Agreement shall consist of the following pricing components computed on a per acre-foot basis:

2.5.2.1 The fixed operation, maintenance and replacement (OM&R) rate for water deliveries, set annually by the CAWCD Board for CAP (excluding any costs for non-CAP project water);

2.5.2.2 The M&I capital charge, set annually for CAP M&I subcontractors by the CAWCD Board;

2.5.2.3 A pumping energy rate established by the CAWCD Board for interstate banking. SNWA or CRCN may provide energy sufficient to fully or partially meet the pumping requirements for the delivery of water under the terms of this Agreement, if mutually agreeable among SNWA, CRCN, AWBA and CAWCD;

2.5.2.4 A payment *in lieu* of property taxes, calculated as described in A.R.S. § 48-3715; and

2.5.2.5 Such additional costs as may be reasonably incurred by AWBA with approval by SNWA.

- 2.5.3 The charges to SNWA for the cost of water storage under this Agreement shall consist of the following pricing components computed on a per acre foot of delivery basis:
- 2.5.3.1 Underground Storage Facility charges as paid by AWBA based on contractual agreements with those facility operators;
 - 2.5.3.2 A capital charge for storage at Underground Storage Facilities constructed with State Demonstration Project funds as determined by CAWCD as owner/operator of the facilities;
 - 2.5.3.3 If storage under the terms of this Agreement is accomplished at Groundwater Savings Facilities, SNWA shall pay a charge for storage as determined by AWBA in that Year; and
 - 2.5.3.4 Such additional costs as may be reasonably incurred by AWBA with approval by SNWA.

2.6 Billing of and Payment for Additional Delivery and Storage

- 2.6.1 In any Year that additional water is to be delivered and stored by the AWBA for the benefit of SNWA, the AWBA will on or before January 1 of that Year, provide SNWA a statement detailing the total annual charge for the water to be delivered and stored in that Year for the benefit of the SNWA. The charges are described in Subarticle 2.5.
- 2.6.2 AWBA shall provide SNWA monthly invoices equaling one-twelfth of the total annual charge on or before the first of each month. SNWA shall pay the total amount of the invoice on or before the 10th of each month. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's Master Water Storage Agreement with CAWCD.
- 2.6.3 The total annual charge for water delivery may be subject to a mid-year correction if the charges described in Subarticle 2.5.2 are changed by the CAWCD Board. In the event of a correction, AWBA shall re-compute the remaining equal monthly payments and invoice SNWA the corrected amount in the first monthly invoice following the correction.
- 2.6.4 No later than March 15 of the Year following a Year in which water was delivered and stored under the terms of this Agreement, AWBA shall provide SNWA a Year end account reconciliation. The payment account of SNWA shall be adjusted first to reflect the amount of water actually delivered by AWBA, and second to reflect any change in the OM&R and pumping energy

rates applicable to the water delivered. If additional funds are owed to AWBA, SNWA shall remit those funds within 10 business days of the date the notice is provided by AWBA. If funds are due to SNWA, they shall be remitted to SNWA within 10 business days, including interest accrued on those funds, unless SNWA requests that the funds including interest be used to offset the water delivery charge for a future Year in which additional storage and delivery occurs. If additional delivery and storage has not occurred within three years, SNWA may request that the AWBA remit all remaining funds.

2.6.5 The schedule dates and periods contained in this Subarticle 2.6 can be changed upon written agreement of AWBA and SNWA.

2.7 Administrative Service Cost for Stored Water

2.7.1 In any Year when AWBA does not deliver and store water for SNWA pursuant to this Agreement, SNWA shall be charged \$20,000 per year for AWBA's continuing administrative services in accordance with the terms of this Agreement.

2.7.2 Charges for administrative services as described in Subarticle 2.7.1 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge for the Year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of December, March, June, and September for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.

2.7.2.1 The first payment for administrative costs due under this Agreement will be invoiced on June 15, 2013.

2.7.3 In any Year when AWBA delivers and stores water for SNWA pursuant to this Agreement, SNWA shall pay AWBA 15% of AWBA's actual administrative costs. AWBA's actual administrative costs are computed as a lump sum for the Year in which the storage occurred and includes salaries, employee-related expenses and indirect costs.

2.7.4 Charges for administrative services as described in Subarticle 2.7.3 shall be paid in arrears on an annual basis. AWBA shall provide an invoice for the annual administration charge to SNWA on or before the 15th day of January for the actual administrative costs incurred in the previous Year. Such invoice shall apply a credit for any payments made pursuant to Subarticle 2.7.1. If such day is not a business day, the invoice shall be made on the next succeeding business day.

- 2.7.5 SNWA shall pay the administrative service charges on or before the first day of the month following the notice of the charges. If such day is not a business day, the payment shall be made on the next succeeding business day.
- 2.7.6 The administrative service cost is not refundable.

ARTICLE 3

DEVELOPMENT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT

3.1 Extent of Annual Development of ICUA for SNWA

- 3.1.1 SNWA shall have the right to require the recovery of Long-term Storage Credits in the SNWA Interstate Account and the development of ICUA in any Year, as follows:
 - 3.1.1.1 The initial year request for ICUA shall not exceed 20,000 acre-feet, the second year request for ICUA shall not exceed 30,000 acre-feet and any request for ICUA thereafter shall not exceed 40,000 acre-feet.
- 3.1.2 During any Year as to which the Secretary has determined under Article II(B)(3) of the Consolidated Decree that a shortage condition exists, SNWA may require the development of ICUA (1) in such amount that, when considered together with the amount of basic apportionment available for use in Nevada, will allow 300,000 acre-feet to be consumptively used in Nevada, plus (2) the amount specified for such Year in Subarticle 3.1.1. SNWA may require the development of ICUA under this Subarticle only if after consultation with SNWA and CRCN, the AWBA has determined that sufficient recovery facilities are in place for that Year to meet the needs of CAP M&I subcontractors and any post 1968 domestic use Colorado River contractor in Arizona and SNWA's request. If it is determined that sufficient recovery facilities are not available, SNWA may require the development of ICUA only to the extent that SNWA has contributed to new facilities in Subarticle 3.4.2.1 or additional facilities in Subarticle 3.5.1 plus any available existing recovery capacity not utilized by the CAP M&I subcontractors and post 1968 domestic use Colorado River contractors.
 - 3.1.2.1 If a shortage determination by the Secretary under Article II(B)(3) of the Consolidated Decree causes a reduction in the Colorado River water available for use by non-Indian municipal and industrial (M&I) CAP subcontractors in any Year under their subcontracts or any other post 1968 domestic use Colorado River

contractor in any Year under their contract, SNWA's right to require the recovery of Long-term Storage Credits and the development of ICUA shall be reduced proportionately to the reduction in M&I water supply sustained by CAP subcontractors and any other post 1968 domestic use contractor.

3.2 SNWA Notices for Development of ICUA

- 3.2.1 By September 1, 2015 and each Year after that, SNWA shall provide AWBA and CAWCD a plan describing any potential ICUA requests for the following ten year period. SNWA and CRCN shall confer with AWBA and CAWCD when developing such a plan. The plan is for information and planning purposes only and is not binding.
- 3.2.2 For any Year in which SNWA will require the development of ICUA by AWBA and the release of ICUA by the Secretary, SNWA shall confer with the AWBA prior to June 1 of the preceding Year and provide notice of the amount of such ICUA to AWBA by June 1 of the preceding Year.
- 3.2.3 Between June 1 and September 15 of the Year in which a notice has been given under Subarticle 3.2.2, AWBA staff shall meet and confer with SNWA concerning the proposed location, manner and estimated cost of the development of the specified ICUA.
- 3.2.4 On or before September 15 of the Year in which a notice for the development of ICUA has been given to AWBA under Subarticle 3.2.2, or as otherwise required by the Secretary, SNWA shall make a request of the Secretary for the release of such ICUA during the following Year and shall provide a copy of such notice to AWBA.

3.3 Development of ICUA

- 3.3.1 Upon receipt of a notice under Subarticle 3.2.2 for the development of ICUA, AWBA shall meet and confer with CAWCD to develop an Interstate Recovery Schedule under the terms of the Agreement for the Development of Intentionally Created Unused Apportionment. The Interstate Recovery Schedule shall utilize the recovery of Long-term Storage Credits to develop the ICUA through recovery methods identified in the corresponding Storage and Interstate Release Agreement. These methods include recovery and exchange of Long-term Storage Credits for Colorado River water and/or credit exchange of Long-term Storage Credits for Colorado River water that would have otherwise been delivered for underground storage in that Year.

- 3.3.1.1 AWBA shall meet and confer with SNWA concerning the location, manner and cost of recovery when developing the Interstate Recovery Schedule.
- 3.3.1.2 AWBA agrees that the development of the Interstate Recovery Schedule shall take into account the location, manner and cost of recovering all water stored by AWBA in the State of Arizona. AWBA agrees that the selection of recovery facilities included in the Interstate Recovery Schedule shall not be made in a manner that unreasonably allocates the higher recovery cost to the recovery of water for the development of ICUA under the terms of this Agreement.
- 3.3.1.3 Factors to be considered when preparing the Interstate Recovery Schedule shall include but are not limited to:
 - 3.3.1.3.1 Arizona water management goals,
 - 3.3.1.3.2 CAP operational requirements,
 - 3.3.1.3.3 Water quality requirements,
 - 3.3.1.3.4 Opportunities for shared or joint facilities, and
 - 3.3.1.3.5 Opportunities to reduce recovery costs that will not burden Arizona water users.
- 3.3.2 Upon receipt of a copy of SNWA's request under Subarticle 3.2.4 to the Secretary for the release of ICUA during the following Year, AWBA shall prepare the following certifications, in accordance with the Agreement for the Development of Intentionally Created Unused Apportionment: (1) an Upcoming Year Delivery Certification; (2) an Interstate Recovery Schedule Certification; and, (3) a Development of ICUA Certification. These three certifications shall be prepared and delivered to the Bureau of Reclamation no later than December 1 of the Year in which a notice for the development of ICUA was given to AWBA under Subarticle 3.2.2. AWBA shall identify the amount of ICUA specified to be developed in SNWA's notice under Subarticle 3.2.2 in the AWBA Plan of Operation for the following Year, and in such Year shall recover Long-term Storage Credits and develop ICUA in such amount, subject to the Secretary's determination and release of ICUA under Subarticles 5.4 and 5.5 of the SIRA. Recovery shall not commence until verification by the Secretary that ICUA will be released to SNWA under the terms of the Storage and Interstate Release Agreement.
- 3.3.3 The choice of facilities utilized to recover the Long-term Storage Credits used to develop the ICUA during any year shall be at the discretion of AWBA.

- 3.3.4 After the Secretary's notice of determination pursuant to Subarticle 5.4 of the SIRA respecting the availability and release of ICUA, AWBA shall recover Long-term Storage Credits and cause ICUA to be developed in the amount specified in the Secretary's notice. SNWA shall be responsible for all costs of developing the specified ICUA as provided in this Agreement.
- 3.3.5 Upon written request by SNWA to cease the development of ICUA, AWBA shall cease the development of ICUA by the amount of the request or by the amount of verified ICUA not yet developed, whichever is less. AWBA shall certify to the Secretary the amount of ICUA previously requested that will not be developed and shall request that the Secretary act in accordance with that certification and the terms of the Storage and Interstate Release Agreement.
- 3.3.6 AWBA shall notify ADWR of the actual amount of credits recovered in accordance with the terms of this Agreement and shall request that ADWR debit the SNWA Interstate Account by the amount of credits recovered when AWBA submits its annual report to ADWR. AWBA and SNWA shall cooperate in the preparation of such report, and shall agree upon the accuracy of the data to be filed.

3.4 Charges for Developing ICUA

- 3.4.1 SNWA agrees that, except as provided in Subarticle 3.4.3, all costs of the development of ICUA as described in Subarticle 3.3 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 3.4, and billed to and paid by SNWA as provided in Subarticle 3.5.
- 3.4.2 The charges to SNWA for the cost of ICUA caused to be developed by AWBA under this Agreement shall consist of the following pricing components:
 - 3.4.2.1 A capital component consisting of (1) the cost to develop any new recovery facility as to which the SNWA shall have a prior right of use, such cost to be paid in advance in a lump sum, or (2) a charge computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the annual capital cost of other recovery facilities to be used for SNWA's benefit during the Year.
 - 3.4.2.2 An operation and maintenance (O&M) component computed on a per acre-foot of ICUA developed basis to recover SNWA's proportionate share of the O&M cost (including pumping energy) incurred by the owner/operator of any recovery facility used during the Year to develop ICUA for SNWA.
 - 3.4.2.3 An administrative component calculated as a lump sum to recover the actual administrative cost reasonably incurred by AWBA.

3.4.2.4 In the event that the cost of recovery for all or some of the water stored by AWBA in the State of Arizona increases due to unforeseen circumstances such as a cost for water treatment, or new state or federal regulations such as new water quality standards or additional environmental compliance requirements, SNWA agrees to share a reasonable proportion of such unanticipated costs, regardless of the location of such storage.

3.4.3 SNWA shall specify in its notice given under Subarticle 3.2.2 if, and the extent to which, ICUA is to be developed through the recovery of Long-term Storage Credits previously held by CAWCD for the benefit of SNWA under its October 15, 1992 agreement with The Metropolitan Water District of Southern California (identified in Recital G). The Parties acknowledge that pursuant to the terms of such agreement and prior to the effective date of the Original Agreement, SNWA made advance payments of the entire cost to recover such credits and to develop such ICUA.

3.5 Billing and Payment for Developing ICUA

3.5.1 AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle 3.4.2.1(2) after agreement between AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.

3.5.2 SNWA shall agree to an acceptable repayment schedule for costs specified in AWBA's Subarticle 3.5.1 notice prior to the construction of any additional recovery facilities. Following receipt of the SNWA payments pursuant to that schedule, AWBA shall remit the appropriate payments to the appropriate recovery facility owner/operators in accordance with AWBA's contractual agreements with those operators.

3.5.3 AWBA shall provide an estimate of the charges for any capital component described in Subarticle 3.4.2.1(2) and the recovery facility O&M described in Subarticle 3.4.2.2 to SNWA on or before the fifteenth of each month prior to the actual recovery. Such estimates may include adjustments or corrections to previous estimates.

3.5.4 SNWA shall pay the estimate of the capital component described in Subarticle 3.4.2.1(2) and the recovery facility O&M charge described in Subarticle 3.4.2.2 on or before the tenth day of the month following receipt of the estimate. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate recovery facility operators in accordance with AWBA's contractual agreements with those operators.

- 3.5.5 No later than March 15 of the Year following the Year in which ICUA was recovered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation showing the actual Long-term Storage Credits recovered and whether charges for recovering the credits exceed payments made or payments exceed the amount owed. If additional funds are owed to AWBA by SNWA, they shall be paid within 10 business days of the date notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year recovery facility O&M charge and used to offset current payments in an amount equal to the excess payment. If no recovery under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the recovery facility O&M charge for the Year in which recovery resumes. If recovery has not resumed within three years, AWBA shall remit the remaining funds to SNWA.
- 3.5.6 Charges for administrative services as described in Subarticle 3.4.2.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge agreed upon for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.
- 3.5.7 SNWA shall pay administrative charges on or before the first day of the month following the receipt of the notice. If such day is not a business day, the payment shall be made on the next succeeding business day.

ARTICLE 4

DELINQUENT CHARGES AND SURETY OF PERFORMANCE

- 4.1 Delinquency Charges under the Terms of this Agreement
- 4.1.1 All payments due under this Agreement shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the Bank of America, plus 6% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest owed, and then to any charges owed.
- 4.1.2 In the event any portion of the charges is disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating

the basis for any dispute. If the dispute is found to be valid, SNWA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 4.1.1, prorated by days from the date payment was credited to SNWA to the date the refund check is issued.

4.1.3 In the event any delinquent amount is not paid by SNWA within thirty (30) days after receipt by SNWA of written notice from AWBA of the delinquency, AWBA shall have the right, without liability of any kind, to suspend recovery of any water under the terms of this Agreement so long as the delinquent amount remains unpaid. Such suspension shall not affect the Long-term Storage Credits remaining in the SNWA Interstate Account. Nothing herein shall limit the rights of AWBA to use any other available legal remedy to effect collection of delinquent amounts.

4.2 Surety of Performance under the Terms of this Agreement

4.2.1 In the event that a dispute arises over any action to be undertaken pursuant to the terms of this Agreement, all Parties recognize and acknowledge that time is of the absolute essence in the conduct of the Parties under the terms of this Agreement.

4.2.2 The Parties agree that the water resources being stored, forborne, and made available through exchange for use by SNWA under the terms of this Agreement are unique and very likely cannot be replaced in a timely fashion by other resources. Accordingly, the Parties agree that in any dispute over the development and release of ICUA, SNWA will likely be requesting an injunction ordering specific performance of the terms of this Agreement. The Parties agree that if AWBA opposes the specific enforcement of this Agreement with respect to ICUA, AWBA shall have the burden to show by clear and convincing evidence that it has the ability to, and will, make alternative water resources, other than water controlled by the United States under the Consolidated Decree, available at the SNWA system, free of adverse claims. If AWBA proposes to deliver such alternative water to SNWA, AWBA shall bear any additional costs that may be incurred over the costs that would have otherwise been incurred by SNWA for the delivery of ICUA under terms of this Agreement. SNWA shall be required to accept such alternative water resources if so ordered by a court of competent jurisdiction. Nothing in this Subarticle shall limit SNWA's rights to seek money damages or a remedy at law.

4.2.3 AWBA shall ensure that there are in effect all third party contracts necessary for the development of ICUA as provided in Article 3, the provisions of such contracts to be consistent with the provisions of this Agreement. AWBA shall insure that all such third party contracts are enforced in a manner consistent with the terms of this Agreement.

- 4.2.4 As required by A.R.S § 45-2471(E), if the terms of this Agreement are breached by SNWA or CRCN, AWBA shall cease the creation of ICUA until the breach is cured.

ARTICLE 5

OTHER PROVISIONS

5.1 Consultation on the AWBA Annual Report

- 5.1.1 AWBA is required to submit an annual report of its transactions and proceedings for the preceding year by July 1 each Year pursuant to A.R.S. § 45-2426. SNWA agrees to confer with AWBA staff in the development of the report.

5.2 The terms established by Subarticles 3.1, 3.2 and 3.5 may be changed upon written agreement of AWBA's authorized representative and the SNWA's General Manager.

5.3 Payment of federal charges relating to the Execution of a Storage and Interstate Release Agreement.

- 5.3.1 SNWA agrees that all federal charges associated with any amendment to the SIRA shall be borne by SNWA.

- 5.3.2 These charges shall be calculated by and paid directly to the Secretary by SNWA in accordance with the Secretary's requirements.

5.4 Successors to AWBA and SNWA

In the event that the AWBA should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of the AWBA shall be binding upon, and inure to the benefit of, any agency of the State of Arizona that succeeds to such functions or, in the absence of any such agency, the State of Arizona. In the event that the SNWA should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of the SNWA shall be binding upon, and inure to the benefit of, any successor joint powers agency or other legal subdivision of the State of Nevada that succeeds to such functions or, in the absence of any such agency, the members of the SNWA.

5.5 Uncontrollable Forces

No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than the obligation of SNWA to make payment) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure or threat of failure of facilities, flood, earthquake, storm, fire, lighting, and other natural catastrophes, epidemic, war, civil disturbance or disobedience,

strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any federal 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 any Party to settle any strike or labor dispute in which it is involved.

5.6 Notices, Requests and Payments

5.6.1 All notices and other communications provided for in this Agreement shall be in writing and may be given in either of the following manners:

5.6.1.1 Notices and requests shall be in writing and maybe mailed first class postage paid to the Parties at the following addresses:

AWBA: Arizona Water Banking Authority
3550 North Central Avenue
Phoenix, Arizona 85012
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: Executive Director

5.6.1.2 Notices and requests may be given by facsimile and shall be deemed complete upon 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.

5.6.2 All payments required under the terms of this Agreement shall be made by Electronic Fund Transfer (EFT).

5.6.2.1 AWBA will notify the Treasury, State of Arizona monthly of any anticipated EFTs to be made by SNWA.

5.6.2.2 SNWA will submit all EFTs to the Treasury, State of Arizona at the account number designated by AWBA, or to such other destination as AWBA may designate by notice.

5.6.2.3 AWBA will ensure that all EFTs submitted by SNWA are properly accrued in the Nevada sub-account maintained at ADWR.

- 5.7 On request, AWBA shall provide SNWA with a copy of all contracts, rate schedules, and other documents that are relevant to or that form the basis for the charges specified in the Agreement.
- 5.8 The Parties to this Agreement are hereby notified of Arizona Revised Statutes section 38-511.
- 5.9 On reasonable advance written notice to AWBA and during normal business hours, SNWA shall have the right to inspect and audit all records of AWBA pertaining to the performance of AWBA's obligations pursuant to this Agreement.
- 5.10 This Agreement is not intended to confer any rights on any person other than the Parties hereto, and it shall not be construed as a third-party beneficiary contract or as conferring third-party beneficiary status or rights of any nature on any person.
- 5.11 This Agreement contains the entire understanding between the Parties relating to the transactions contemplated by this Agreement, notwithstanding any previous negotiations or agreements, oral or written, between the Parties with respect to the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, regarding the subject matter of this Agreement are merged in this Agreement and shall be of no further force or effect.

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In Witness of this Agreement, the Parties affix their official signatures below.

SOUTHERN NEVADA WATER
AUTHORITY

DATE 3/22/13

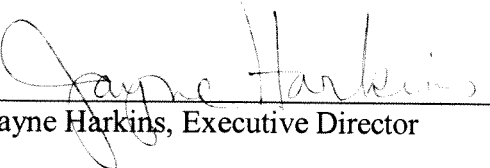

Patricia Mulvey, General Manager

Approved as to form:

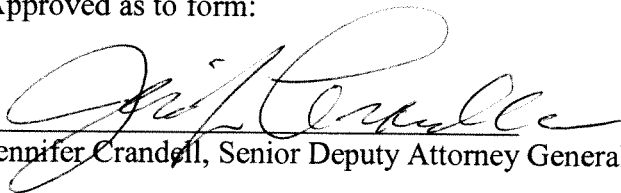

Dana R. Walsh, Deputy Counsel

COLORADO RIVER COMMISSION OF
NEVADA

DATE 5/14/13

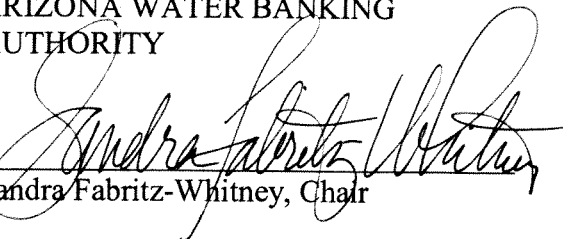

Jayne Harkins, Executive Director

Approved as to form:


Jennifer Crandall, Senior Deputy Attorney General

ARIZONA WATER BANKING
AUTHORITY

DATE 5-20-13


Sandra Fabritz-Whitney, Chair

Approved as to form:


Nicole D. Klobas, Deputy Counsel

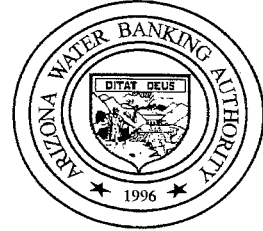
**Table 3
Water Delivery Schedule (Acre-Feet)
Calendar Year 2015**

AWBA-Storage Sites		Permitted Capacity (AF)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
PHOENIX AMA :															
USF	AGUA FRIA	100,000	0	0	0	500	2,500	0	0	0	0	1,818	0	0	4,818
	GRUSP ¹	93,000	0	0	0	0	0	0	0	0	0	500	500	500	1,500
	HIEROGLYPHIC MTN	35,000	0	0	700	700	0	0	0	0	600	0	0	0	2,000
	SUPERSTITION MTNS	35,000	0	0	0	1,000	1,000	0	0	0	0	0	0	0	2,000
	TONOPAHD DESERT	150,000	0	0	0	0	0	0	0	0	0	0	0	0	0
															10,318
GSF	NEW MAGMA	54,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	QUEEN CREEK	28,000	0	0	0	0	0	0	0	1,230	2,000	1,000	1,000	0	5,230
	TONOPAHD ID	15,000	0	0	0	0	0	0	0	0	0	0	0	0	0
															5,230
AMA TOTAL INTRASTATE			0	0	700	2,200	3,500	0	0	1,230	2,600	3,318	1,500	500	15,548
PINAL AMA :															
GSF	CAIDD	110,000	0	0	0	0	0	3,000	200	0	0	0	0	0	3,200
	HOHOKAM	55,000	0	0	0	0	0	1,600	1,600	0	0	0	0	0	3,200
	MSIDD	120,000	200	300	500	500	500	300	200	200	200	200	100	0	3,200
															9,600
AMA TOTAL INTRASTATE			200	300	500	500	500	4,900	2,000	200	200	200	100	0	9,600
TUCSON AMA:															
USF	AVRA VALLEY	11,000	0	0	0	0	0	0	0	0	450	450	450	450	1,800
	LOWER SANTA CRUZ	50,000	0	0	1,000	0	0	0	0	0	0	1,000	0	0	2,000
	PIMA MINE ROAD	30,000	0	0	500	0	0	0	0	0	0	0	0	0	500
	CAVSARP	100,000	0	0	0	0	0	0	0	0	0	0	0	0	0
	SAVSARP	60,000	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	0	1,000	1,300	14,000
															18,300
GSF	CORTARO-MARANA ID	20,000	0	0	0	0	0	0	0	500	0	0	0	0	500
	KAI FARMS (Red Rock)	11,231	0	0	0	0	500	500	0	0	0	0	0	0	1,000
	BKW Farms	14,316	0	0	0	0	0	0	0	0	200	200	100	0	500
															2,000
AMA TOTAL INTRASTATE			1,300	1,300	2,800	1,300	1,800	1,800	1,300	1,800	1,950	1,650	1,550	1,750	20,300
TOTAL INTRASTATE			1,500	1,600	4,000	4,000	5,800	6,700	3,300	3,230	4,750	5,168	3,150	2,250	45,448
TOTAL INTERSTATE			0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL RECHARGE			1,500	1,600	4,000	4,000	5,800	6,700	3,300	3,230	4,750	5,168	3,150	2,250	45,448
DIRECT DELIVERY (Non-Storage):															
	Southside Replenishment Bank		0	0	1,250	0	0	0	0	0	1,250	1,250	0	1,250	5,000
	Southside Replenishment Obligation		0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL DIRECT		0	0	1,250	0	0	0	0	0	1,250	1,250	0	1,250	5,000
TOTAL DELIVERIES			1,500	1,600	5,250	4,000	5,800	6,700	3,300	3,230	6,000	6,418	3,150	3,500	50,448

¹ Water storage at this facility is conditional on issuance of a water storage permit from ADWR.

Arizona Water Banking Authority

3550 N. Central Avenue, Phoenix, Arizona 85012
Telephone 602-771-8487
Fax 602-771-8686



AUTHORITY MEMBERS
Thomas Buschatzke, Chair
Ray L. Jones, Vice-Chair
Clifford A. Neal, Secretary
Jim Hartdegen
Steven C. Moss

EX OFFICIO MEMBERS
The Honorable Gail Griffin
The Honorable David M. Gowan Sr.

October 21, 2015

U.S. Department of the Interior
Bureau of Reclamation
Lower Colorado River Regional Office
Mr. Terry Fulp, Regional Director
P.O. Box 61470
Boulder City, Nevada 89006

Dear Mr. Fulp:

In accordance with sub-article 3.4.2 of the Storage and Interstate Release Agreement, the Arizona Water Banking Authority submits the enclosed final verified accounting of the Southern Nevada Water Authority Interstate Account for calendar year 2014.

If you or your staff have any questions regarding this report, please contact me at (602) 771-8491.

Sincerely,

A handwritten signature in cursive script that reads "Virginia O'Connell".

Virginia O'Connell, Manager
Arizona Water Banking Authority

cc: w/enc John Entsminger, SNWA
 Jayne Harkin, CRCN
 Thomas Buschatzke, ADWR
 Ted Cooke, CAWCD
 Tanya Trujillo, CRBC
 Roger Patterson, MWD
 Paul Matuska, USBR

Annual Accounting of the Southern Nevada Water Authority Interstate Account 2014

Beginning Balance of Long-Term Storage Credits as of January 1, 2014 (AF)	601,041
Volume of Colorado River water delivered for storage by AWBA on behalf of SNWA (AF)	0
Number of Long-term Storage Credits Assigned/Transferred-IN (AF)	0
Number of Long-term Storage Credits Assigned/Transferred-OUT (AF)	0
Number of Long-Term Storage Credits Assigned/Transferred for Purposes of Development of Intentionally Created Unused Apportionment (AF)	0
Number of Long-Term Storage Credits Earned in 2014 ¹ (AF)	0
Total Number of Long-Term Storage Credits (AF)	601,041
Total Number of Long-Term Storage Credits to Determine Compliance with sub-article 3.3.1 (AF)	551,041

¹Calculated by taking water delivered for storage through December 31, 2014 minus operational and evaporation losses minus the mandatory 5% cut to the aquifer.