

# STORAGE AND INTERSTATE RELEASE AGREEMENT

among

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

WITNESSETH, THAT:

## Recitals

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

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.  
5

6 F. The Boulder Canyon Project Act and Article II(B)(6) of the Decree, taken together,  
7 authorize the Secretary to release unused Arizona apportionment for use in 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.  
27

28 1.1.1 "ADWR" shall mean the Arizona Department of Water Resources.  
29

30 1.1.2 "Agreement" shall mean this Storage and Interstate Release Agreement.  
31

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.  
35

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.  
40

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.  
43

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

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.

**Article 4**  
**Development of Intentionally Created Unused Apportionment**

- 1  
2  
3  
4 4.1 AWBA shall develop ICUA for the benefit of SNWA in accordance with the provisions  
5 of this Agreement, the Agreement for Interstate Water Banking, and the Agreement for  
6 Development of Intentionally Created Unused Apportionment. All actions that AWBA  
7 takes to develop ICUA shall be consistent with the laws of the State of Arizona.  
8  
9 4.2 AWBA shall only use means to develop ICUA under this Agreement that have been  
10 approved by the Secretary. Two such approved means are the recovery and exchange  
11 method and the credit exchange method. AWBA may also use any other means of  
12 developing ICUA during the term of this Agreement provided such means comply with  
13 CFR Part 414 and are first approved by the Secretary.  
14  
15 4.2.1 The recovery and exchange method requires that Long-term Storage Credits  
16 in the SNWA Interstate Account be recovered and the recovered water  
17 exchanged for Colorado River water that would otherwise have been  
18 delivered through the CAP in that Year. The Long-term Storage credits may  
19 be recovered by CAWCD or by another entity scheduled to receive water  
20 from CAWCD in the Year of recovery.  
21  
22 4.2.2 The credit exchange method requires that Long-term Storage Credits in the  
23 SNWA Interstate Account be exchanged for Colorado River water that would  
24 otherwise have been delivered through the CAP for underground storage in  
25 that Year. The recipient of the credits shall be an entity scheduled to receive  
26 water from CAWCD for purposes of underground storage in the Year of  
27 recovery.  
28  
29 4.3. AWBA shall prepare an Interstate Recovery Schedule in accordance with the terms of  
30 the Agreement for the Development of Intentionally Created Unused Apportionment  
31 and the Agreement for Interstate Water Banking. AWBA shall meet and confer with the  
32 Bureau of Reclamation in the preparation of the Interstate Recovery Schedule. ICUA  
33 shall not exceed 100,000 acre-feet in any Year under this Agreement.  
34  
35 4.4 The Interstate Recovery Schedule shall set forth the means by which AWBA intends to  
36 create ICUA.  
37  
38 4.4.1 If AWBA intends to create ICUA using the recovery and exchange method,  
39 then the Interstate Recovery Schedule shall demonstrate that there is sufficient  
40 recovery capacity to recover the necessary Long-term Storage Credits from  
41 the SNWA Interstate Account and shall describe how the credits will be  
42 recovered and delivered through the CAP or how the credits will be recovered  
43 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 is  
30 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.

- 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 of 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 3<sup>rd</sup> Street  
Phoenix, Arizona 85004  
Attn: Director

1 The State of California:  
2 Colorado River Board of California  
3 770 Fairmont Avenue, Suite 100  
4 Glendale, California 91203-1035  
5 Attn: Executive Director  
6

7 The State of Nevada:  
8 Colorado River Commission of Nevada  
9 555 E. Washington Avenue, Suite 3100  
10 Las Vegas, Nevada 89101  
11 Attn: Director  
12

13 7.1.2 Any party may, at any time, change its mailing address by notice to the other  
14 parties.  
15

16 7.2 Notices and Requests by Facsimile  
17

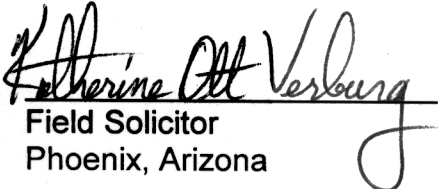
18 7.2.1 Notices and requests may be given by facsimile among AWBA, SNWA,  
19 CRCN and the Secretary in lieu of first class mail as provided in sub-  
20 article 7.1. Such facsimiles shall be deemed complete upon a receipt from  
21 sender's facsimile machine indicating that the transmission was satisfactorily  
22 completed and after phone communication with administrative offices of the  
23 recipient notifying the recipient that a facsimile has been sent.  
24

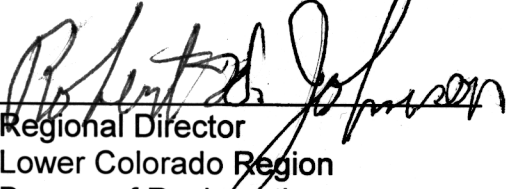
25 AWBA Facsimile Number	602-417-2401
26 SNWA Facsimile Number	702-258-3951
27 CRCN Facsimile Number	702-486-2695
28 Secretary Facsimile Number	702-293-8042

29  
30  
31  
32 7.2.2 Any party may, at any time, change its facsimile number by notice to the other  
33 parties.  
34  
35  
36

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

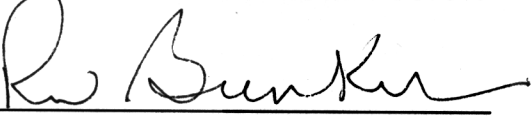
3  
4 Legal Review and Approval: **THE UNITED STATES OF AMERICA**

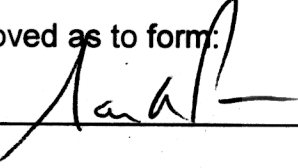
5  
6  
7  
8 By:   
9 Field Solicitor  
10 Phoenix, Arizona

By:   
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:   
18 Executive Director

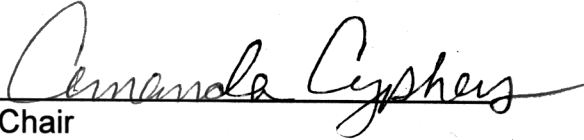
By:   
Chair

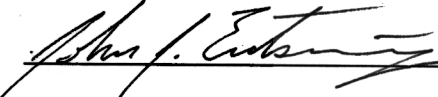
19  
20 Approved as to form:  
21  
22 By: 

Title: Sr Deputy AG

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

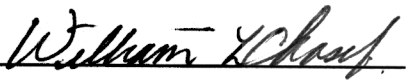
26 Attest:  
27  
28 By:   
29 General Manager

By:   
Chair

30  
31 Approved as to form:  
32  
33 By: 

Title: Deputy Counsel

34  
35  
36 **ARIZONA WATER BANKING AUTHORITY**

37 Attest:  
38  
39 By:   
40  
41 Title: Secretary

By:   
Chair