

**PRELIMINARY DRAFT -- FOR DISCUSSION PURPOSES ONLY**  
**CAP SYSTEM USE AGREEMENT**  
**BETWEEN**  
**THE UNITED STATES**  
**AND**  
**THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

1. **PREAMBLE:** THIS CAP SYSTEM USE AGREEMENT, hereinafter referred to as "Agreement," is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, between the UNITED STATES OF AMERICA, acting through the Secretary of the Interior, hereinafter referred to as "Secretary," and the Central Arizona Water Conservation District, hereinafter referred to as "CAWCD," a multi-county water conservation district organized under the laws of the State of Arizona.

**WITNESSETH, THAT:**

**2. EXPLANATORY RECITALS:**

2.1 WHEREAS, Section 301(a) of the Colorado River Basin Project Act ("Basin Project Act"), Pub. L. 90-537, authorized construction of the Central Arizona Project (CAP);

2.2 WHEREAS, Section 102(a) of the Basin Project Act identified authorized purposes as "the purposes, among others, of regulating the flow of the Colorado River; controlling floods; improving navigation; providing for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies, and for municipal, industrial, and other beneficial purposes; improving water quality; providing for basic public outdoor recreation facilities; improving conditions for fish and wildlife, and the generation and sale of electrical power as an incident of the foregoing purposes;"

2.3 WHEREAS, Section 103 of the Arizona Water Settlements Act ("AWSA"), Pub. L. 108-451, provides that, "in accordance with the CAP repayment contract, the Central Arizona Project may be used to transport nonproject water for (1) domestic, municipal, fish and wildlife, and industrial purposes; and (2) any purpose authorized under the Colorado River Basin Project Act";

2.4 WHEREAS, Section 105 of the AWSA sets forth certain obligations of the Secretary and the State of Arizona to firm water supplies for Arizona Indian water right claims and settlements;

2.5 WHEREAS, as required by Section 105 of the AWSA and in accordance with A.R.S. §45-2423 and §45-2491, the Secretary and the State of Arizona, acting through the Arizona Water Banking Authority (“Banking Authority”), entered into the Agreement Between the Secretary of the Interior and the State of Arizona for the Firming of Central Arizona Project Indian Water, dated November 15, 2007;

2.6 WHEREAS, in accordance with Title 45, Chapter 14, Articles 1 through 5 of the Arizona Revised Statutes, the Banking Authority stores water in underground storage facilities and groundwater savings facilities to accrue Long-Term Storage Credits for the following purposes : (a) to carry out Arizona's obligations under Section 105 of the AWSA, (b) to firm CAP M&I supplies for Long-Term Contractors, (c) to firm water supplies for certain municipal and industrial users of Colorado River water in Arizona located outside the service area of CAWCD, (d) to meet interstate firming obligations under contracts entered into with the State of Nevada or others pursuant to 43 C.F.R. Part 414, and (e) to meet state commitments to firm Indian Settlement water;

2.7 WHEREAS, to date, the Banking Authority has accrued and acquired over 4 million Long-Term Storage Credits under A.R.S. Title 45, Chapter 3.1, which may be recovered in accordance with Arizona state law under permits issued by the ADWR;

2.8 WHEREAS, CAWCD is a multi-county water conservation district organized under A.R.S. §48-3701 et seq;

2.9 WHEREAS, CAWCD is the operating agency for the United States for the CAP and operates the Transferred Works of the CAP System in accordance with contracts between CAWCD and the United States, including, among others, the Master Repayment Contract and the Operating Agreement;

2.10 WHEREAS, under A.R.S. §§ 45-2457, 45-2472 and 45-2491, CAWCD is a recovery agent for the Banking Authority for the purpose of recovering Long-Term Storage Credits to: assist in carrying out Arizona's obligations under Section 105 of the AWSA; firm CAP M&I supplies for Long-Term Contractors; firm certain municipal and industrial users of Colorado River water in Arizona located outside the service area of CAWCD, and; meet interstate firming obligations;

2.11 WHEREAS, a Long-Term Contractor may utilize Non-Project Water supplies, including recovered Long-Term Storage Credits, for the purpose of firming its Long-Term Contract entitlement in the event of a Water Shortage;

2.12 WHEREAS, Reclamation and CAWCD anticipate that the Operational Capability of the CAP System will continue to be adequate to deliver Project Water, and during Water Shortage, Project Water and Firming Water, to delivery points within the Segments where Long-Term Contractors can take delivery to their service area or reservation;

2.13 WHEREAS, Long-Term Contractors may desire to schedule delivery of Project Water, and during Water Shortage, Project Water and Firming Water, either directly or through exchange, to Segments that are Upstream or Downstream of the Long-Term Contract holder's service area or reservation;

2.14 WHEREAS, the Operational Capability of the CAP System may not be sufficient during certain months and certain Segments for the delivery of Project Water, and during Water Shortage, Project Water and Firming Water, to Segments that are Downstream of the service area or reservation of Long Term Contract holders;

2.15 WHEREAS, parties may acquire Non-Project Water and desire to ensure there is sufficient Operational Capability for the delivery of that Non-Project Water;

2.16 WHEREAS, the Operational Capability of the CAP System may be optimized through modifications of the existing CAP System for the purpose of creating additional Operational Capability. Provided, such additional Operational Capability will not exceed the annual system capacity authorized in the Basin Project Act;

2.17 WHEREAS, the existence of additional Operational Capability shall be verified by Reclamation after modifications to the CAP System are completed for this purpose;

2.18 WHEREAS, Reclamation and CAWCD anticipate that from time to time entities will request the use of the CAP System to deliver Non-Project Water, whether for firming or other purposes;

2.19 WHEREAS, it is federal Reclamation policy to maximize the benefits of a federal Reclamation project such as the CAP;

2.20 WHEREAS, Articles 8.17 and 8.18 of the Master Repayment Contract support the full use of the CAP System pursuant to contracts or other arrangements for such use;

2.21 WHEREAS, Reclamation and CAWCD desire to clarify the administration of Articles 8.17 and 8.18 of the Master Repayment Contract with respect to the use of the CAP System;

2.22 WHEREAS, the Repayment Stipulation grants CAWCD exclusive authority to sell or use all Excess Water for any authorized purpose of the CAP, subject to the terms and conditions set forth in the Repayment Stipulation; and

2.23 WHEREAS, Reclamation and CAWCD desire to enter into this Agreement: (a) to adopt a standard form of CAWCD Wheeling Contract for the transportation of Non-Project Water through the CAP System, (b) to set forth scheduling priorities in the event that Operational Capability of the CAP System is constrained, (c) to facilitate the use of the CAP System to firm Long-Term Contracts during a Water Shortage, (d) to facilitate the use of the CAP System to firm certain municipal and industrial users of Colorado River water in Arizona located outside the service area of CAWCD, (e) to facilitate the use of the CAP System to meet interstate obligations under contracts entered into with the State of Nevada or others pursuant to 43 C.F.R. Part 414, and (f) to set forth standard terms and conditions for a Reclamation Wheeling Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the United States and CAWCD agree as follows:

3. **DEFINITIONS:**

3.1 "Agricultural Settlement Pool Contracts" means Excess Water Contracts entered into pursuant the Supplemental Policy for Marketing of Excess Water for Non-Indian Agricultural Use – 2004 through 2030, as supplemented.

- 3.2 “Annual Operating Plan” means the final Water Delivery Schedules prepared annually by CAWCD, confirming the volumes of Project Water and Non-Project Water to be delivered during the following Year.
- 3.3 “CAP System” means: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (D) the Tucson Aqueduct; (E) any pumping plant or appurtenant works of a feature described in any of (A) through (D); and (F) any extension of, addition to, or replacement for a feature described in any of (A) through (E).
- 3.4 "Operational Capability" means the ability of the CAP System to deliver water given the system’s physical and operational characteristics.
- 3.5 "CAP Terminus" means the terminus of the CAP System as depicted on the map attached hereto as Exhibit A.
- 3.6 “CAWCD” means the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, or any successor operating agency for the CAP.
- 3.7 “CAWCD Wheeling Contract” means an executed contract substantially in the form of the standard form of CAWCD Wheeling Contract attached hereto as Exhibit B or such other CAWCD wheeling contract as may be approved by Reclamation.
- 3.8 "Central Arizona Groundwater Replenishment District" means the replenishment authorities granted to CAWCD in Title 48, Chapter 22, Article 4 of Arizona Revised Statutes, which are exercised as a function of the CAWCD.
- 3.9 "Downstream" means the direction along the CAP System towards the CAP Terminus.
- 3.10 "Excess Water" means that water defined as Excess Water in the Repayment Stipulation.
- 3.11 "Excess Water Contract" means an agreement between CAWCD and a water user for the delivery of Excess Water.
- 3.12 “Exchange Agreement” means an agreement between a Long-Term Contractor and a separate party holding Non-Project Water in which Project Water available for delivery to the Long-Term Contractor is exchanged for Non-Project Water.

- 3.13 “Exchange Implementation Agreement” means an agreement among a non-Federal Long-Term Contractor, a separate party holding Non-Project Water and CAWCD, setting forth the terms and conditions under which CAWCD will deliver Exchange Water pursuant to an Exchange Agreement.”
- 3.14 “Exchange Water” means Project Water exchanged for Non-Project Water pursuant to an Exchange Agreement.
- 3.15 “Federal Arrangement” means an arrangement relating to use of the CAP System entered into by the United States under Article 8.17 of the Master Repayment Contract.
- 3.16 “Firming Agreement” means an agreement between the United States or CAWCD and holders of Long-Term contracts or lessees of tribal Project Water to set forth the terms and conditions under which CAWCD will deliver, and the holder of the Long-Term Contract or lessee of tribal Project Water will accept, Firming water.
- 3.17 "Firming" means satisfying all or a portion of a Long-Term Contract entitlement that has been reduced due to a Water Shortage.
- 3.18 "Firming Water" means water available for Firming a Long-Term Contract, as identified in Section 8 of this Agreement.
- 3.19 “Fixed OM&R Charge(s)” has the same meaning as under the Repayment Stipulation.
- 3.20 "Interstate Agreements" means contracts entered into in accordance with the Final Rule for Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States, 43 C.F.R. Part 414.
- 3.21 "Long-Term Contract" means a long-term contract or subcontract for delivery of a Project Water entitlement as defined in footnote 1 to Section 4(a) of the Repayment Stipulation. Excess Water Contracts are not Long-Term Contracts.
- 3.22 "Long-Term Contractor" means an entity holding a Long-Term Contract.
- 3.23 "Long-Term Storage Credit" means a Long-Term Storage Credit, as defined in A.R.S. §45-801.02(11).

- 3.24 "Master Repayment Contract" means the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, as it may be amended and supplemented.
- 3.25 "Non-Project Water" means all water, including Recovered Water, other than Project Water. For the purposes of this Agreement the term Non-Project Water does not include Long-Term Storage Credits.
- 3.26 "Notice of Completion" means the Notice of Completion to be issued by Reclamation at the conclusion of construction of a System Improvement Project.
- 3.27 "On-River Firming" means agreements entered into with certain municipal and industrial users of Colorado River water in Arizona located outside the service area of CAWCD, subject to the approval of the United States, to provide firming for such water users pursuant to A.R.S. § 45-2457.
- 3.28 "Operating Agreement" means the Operating Agreement between the United States of America and the Central Arizona Water Conservation District for Operation and Maintenance of the Central Arizona Project, dated June 15, 2000.
- 3.29 "Project Water" means that water defined as Project Water in the Repayment Stipulation.
- 3.30 "Projected Additional Operational Capability" means Reclamation's projection of the additional Operational Capability that is expected to result from a proposed System Improvement Project.
- 3.31 "Project Power" means the United States' entitlement to capacity and energy from the Navajo Generating Station and the Transmission System, or any replacement thereof, as authorized by Section 303 of the Basin Project Act and as described in contracts entered into pursuant to that Act.
- 3.32 "Pumping Energy Charge(s)" has the same meaning as under the Repayment Stipulation.
- 3.33 "Reclamation" means the United States Bureau of Reclamation.
- 3.34 "Reclamation Wheeling Contract" means a contract between Reclamation and a separate party to deliver Non-Project Water using the CAP System.

- 3.35 "Recovered Water" means the water resulting from the recovery of Long-Term Storage Credits from wells pursuant to a valid recovery well permit issued by the Arizona Department of Water Resources under A.R.S. §45-834.01.
- 3.36 "Repayment Stipulation" means the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States, et al.*, and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.
- 3.37 "Secretary" means the Secretary of the Interior or her duly authorized representative.
- 3.38 "Segment" means a section of the CAP System between pumping plants, as depicted on the map attached hereto as Exhibit A.
- 3.39 "System Improvement Project" means a material modification of the Transferred Works that creates Verified Additional Operational Capability in accordance with Section 13 of this Agreement.
- 3.40 "Transferred Works" means Transferred Works as defined in the Operating Agreement or as may be transferred under subsequent transfer notices.
- 3.41 "Upstream" means the direction along the CAP System towards Lake Havasu.
- 3.42 "Verified Additional Operational Capability" means the additional Operational Capability attributable to a completed System Improvement Project, measured in acre-feet per annum, as determined by Reclamation in accordance with Section 13 of this Agreement.
- 3.43 "Water Delivery Schedules" means schedules submitted to CAWCD pursuant to the terms of Long-Term Contracts, including leases and exchanges, Excess Water Contracts, CAWCD Wheeling Contracts, Firming Agreements, Reclamation Wheeling Contracts, or Federal Arrangements.
- 3.44 "Water Shortage", for the purposes of this document, means either that the Project Water supply is insufficient to satisfy all Long-Term Contract orders, or that an unplanned CAP System outage has occurred disrupting the delivery of Long-Term Contract orders.
- 3.45 "Year" means a calendar year.



4. **TERM OF AGREEMENT:** This Agreement shall commence on the date of execution by Reclamation and CAWCD and shall have the same term as the Master Repayment Contract.
5. **USE OF CAP SYSTEM:**
  - 5.1 CAWCD is authorized to use the CAP System for the following purposes, subject to the Scheduling Priorities for CAP System Use set forth in Section 11;
    - 5.1.1 Delivery of Project Water;
    - 5.1.2 Delivery of Exchange Water;
    - 5.1.3 Delivery of Non-Project Water, including Recovered Water, for the following purposes:
      - 5.1.3.1 Firming of CAP Long-Term Contracts,
      - 5.1.3.2 On-River Firming, and
      - 5.1.3.3 Satisfaction of Interstate Agreements.
  - 5.2 For purposes other than those in Subsection 5.1.1, 5.1.2, and 5.1.3, use of the CAP System to deliver water shall require a Reclamation Wheeling Contract, Federal Arrangement, or a CAWCD Wheeling Contract. All uses of the CAP System shall be subject to the Scheduling Priorities for CAP System Use set forth in Section 11 of this Agreement.
6. **STANDARD FORM OF CAWCD WHEELING CONTRACT:** In satisfaction of Article 8.18 of the Master Repayment Contract, the parties approve the standard form of CAWCD Wheeling Contract attached hereto as Exhibit B. CAWCD may enter into the standard form of CAWCD Wheeling Contract with any federal, state, local, tribal or private entity desiring to enter such an agreement. Approval of the form of CAWCD Wheeling Contract under this Agreement does not constitute approval of any specific agreement by the Secretary under Article 8.18 of the Master Repayment Contract. Any specific CAWCD Wheeling Contract must be approved by the Secretary in accordance with Article 8.18 of the Master Repayment Contract.
7. **RECLAMATION WHEELING:**

- 7.1 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to transport Non-Project Water under Reclamation Wheeling Contracts and Federal Arrangements, so long as such obligations are not inconsistent with (a) existing Long-Term Contracts, to which CAWCD is not a party, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to entering into any Reclamation Wheeling Contract or Federal Arrangements.
- 7.2 Reclamation will incorporate the terms and conditions of Exhibit C into all Reclamation Wheeling Contracts.
- 7.3 Reclamation will describe the terms of any Federal Arrangements in writing and provide a copy of such writing to CAWCD. At a minimum, the terms of any Federal Arrangements will incorporate provisions substantially similar to those in Exhibit C.

**8. FIRMING WATER:**

- 8.1 Sources of Firming Water may include, but are not limited to:
  - 8.1.1 Non-Project Water delivered through the CAP System, including Recovered Water introduced into the CAP System; and
  - 8.1.2 Exchange Water
- 8.2 Subject to the requirements of the amended Navajo Power marketing Plan published in the Federal Register on September 24, 2007, or any amendments thereto, Project Power at Project Power rates may be used to develop or deliver Firming Water.
- 8.3 CAWCD shall require Non-Federal Long-Term Contractors to enter into Firming Agreements for any Firming that involves the use of the CAP System to set forth the terms and conditions under which CAWCD will deliver, and the holder of the Long-Term Contract will accept Firming Water.
- 8.4 For any Firming of a Federal Long-Term Contract that involves the use of the CAP System, Reclamation will enter into an agreement with the Federal Long-Term Contractor to specify the terms and conditions under which Firming Water will be delivered to such Federal Long-Term Contractor. At a minimum, the terms of any such

agreement will incorporate provisions substantially similar to those in Exhibit C. If the agreement is not in writing, Reclamation will describe the terms of the agreement in writing and provide a copy of such writing to CAWCD.

8.5 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to deliver Firming Water, so long as such obligations are not inconsistent with (a) existing Long-Term Contracts, to which CAWCD is not a party, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to entering into any agreement for the delivery of Firming Water.

8.6 Firming Water shall not be subject to redistribution, nor made available for delivery, under the shortage sharing provisions of Long-Term Contracts.

9. **EXCHANGE AGREEMENTS ENTERED INTO BY LONG-TERM CONTRACTORS:**

9.1 Exchanges between Long-Term Contractors and CAWCD:

9.1.1 Exchanges of Project Water for Non-Project Water, including exchanges of Recovered Water for Firming purposes, between Long-Term Contractors and CAWCD shall be:

9.1.1.1 in accordance with the terms of Long-Term Contracts and this Agreement;

9.1.1.2 pursuant to an Exchange Agreement between the Long-Term Contractor and CAWCD, approved by Reclamation;

9.1.2 Notwithstanding Subsection 3.24, a Long-Term Contract held by CAWCD for the benefit of the Central Arizona Groundwater Replenishment District may be used to exchange Project Water for Long-Term Storage Credits, provided that those credits are transferred into a conservation district account established under A.R.S. §45-859.01 in satisfaction of a replenishment obligation, and such an exchange shall be:

9.1.2.1 in accordance with the terms of Long-Term Contracts and this Agreement;  
and

9.1.2.2 approved by Reclamation.

9.2 Exchanges between Non-Federal Long-Term Contractors and parties holding Non-Project Water supplies:

9.2.1 Other than exchanges with CAWCD under Subsection 9.1, exchanges of Project Water for Non-Project Water between Non-Federal Long-Term Contractors and separate parties holding Non-Project Water supplies shall be:

9.2.1.1 in accordance with the terms of Long-Term Contracts and this Agreement;  
and

9.2.1.2 pursuant to an Exchange Agreement between the Non-Federal Long-Term Contractor the party holding the Non-Project Water supply, which is approved by CAWCD and Reclamation; and

9.2.1.3 pursuant to an Exchange Implementation Agreement among the Non-Federal Long-Term Contractor, the party holding the Non-Project Water supply and CAWCD.

9.3 Exchanges between Federal Long-Term Contractors and parties holding Non-Project Water supplies:

9.3.1 Other than exchanges with CAWCD under Subsection 9.1, exchanges of Project Water for Non-Project Water between Federal Long-Term Contractors and separate parties holding the Non-Project Water supplies shall be:

9.3.1.1 in accordance with the terms of the Federal Long-Term Contract and this Agreement, and

9.3.1.2 pursuant to an Exchange Agreement between the Federal Long-Term Contractor and the party holding the Non-Project Water supply, which is approved by Reclamation.

9.3.2 Reclamation shall ensure that the recipient of Exchange Water from the CAP System agrees to take delivery of such water in accordance with the terms of the Federal

Long-Term Contract under which the exchange of Project Water is being implemented. Reclamation will describe the terms of any such delivery agreement in writing and provide a copy of such writing to CAWCD.

- 9.3.3 As the Operating Agency for the CAP, CAWCD will perform the delivery obligations of the United States to deliver water pursuant to exchanges of Project Water for Non-Project Water by Federal Long-Term Contractors, so long as such obligations are not inconsistent with (a) existing Long-Term Contracts, to which CAWCD is not a party, (b) the Repayment Stipulation, (c) the Master Repayment Contract, (d) the Operating Agreement, (e) priorities of Project Water; and/or (f) this Agreement. Reclamation will coordinate and consult with CAWCD prior to approving any exchange of Project Water for Non-Project Water by a Federal Long-Term Contractor.

10. **ANNUAL OPERATING PLAN FOR CAP SYSTEM USE:**

- 10.1 Each year, after receipt of Water Delivery Schedules, CAWCD shall develop an Annual Operating Plan confirming the monthly Water Delivery Schedules for the subsequent Year.
- 10.1.1 The Annual Operating Plan shall, to the extent reasonable, make maximum use of the CAP System, subject to the provisions of Subsection 10.1.2 of this Agreement, and shall be made available for Secretarial review. In the development of the Annual Operating Plan, CAWCD shall:
- 10.1.2 Take into account the Operational Capability, by month and Segment, following established technical procedures that address such factors as physical and operational constraints, projected Project and Non-Project Water supplies, system losses, projected location and timing of deliveries including constraints caused by deliveries scheduled for delivery Downstream of a Long-Term Contractors' reservations or service areas, scheduled maintenance activities, energy programs, Lake Pleasant operations, underground storage facility capacity, daily peak flows, and the reasonable reservation of Operational Capability, not to exceed 50,000 acre-feet, for operational efficiency.
- 10.1.3 Apply an annual uniform loss assessment of 5% to the volume of any Non-Project Water delivered by the CAP System, provided, however, Firming Water shall bear no loss assessment.

- 10.1.4 In accordance with the terms of Long-Term Contracts, including leases and exchanges, Excess Water Contracts, Reclamation Wheeling Contracts, other Federal Arrangements, and CAWCD Wheeling Contracts, make only such adjustments to the Water Delivery Schedules as are necessary to accommodate the physical and operational constraints identified in 10.1.2 and in accordance with the Scheduling Priorities for CAP System Use set forth in Section 11 of this Agreement.
- 10.1.5 By December 15 of each year prior, provide a copy of the Annual Operating Plan to Reclamation.

**11. SCHEDULING PRIORITIES FOR CAP SYSTEM USE:**

- 11.1 If, in preparation of the Annual Operating Plan in Section 10 of this Agreement, CAWCD determines that there is insufficient Operational Capability to satisfy Water Delivery Schedules in specific Segments, in specific months, and if, after affected parties have been consulted and provided opportunities to amend their Water Delivery Schedules, Water Delivery Schedule modifications are required, CAWCD shall utilize the following priorities for scheduling Operational Capability in those Segments and months.
  - 11.1.1 First, Water Delivery Schedules pursuant to Long-Term Contracts for: (a) delivery, directly or by exchange, for use within the Long-Term Contractor's reservation or service area, and/or (b) for leases, exchanges and underground storage delivered within the same Segment as the Long-Term Contractor's service area or reservation, or within a Segment located Upstream of the Long-Term Contractor's service area or reservation.
  - 11.1.2 Second, through 2030, Water Delivery Schedules pursuant to Agricultural Settlement Pool Contracts.
  - 11.1.3 Third, Water Delivery Schedules pursuant to CAWCD Wheeling Contracts that are associated with Verified Additional Operational Capability.
  - 11.1.4 Fourth, Water Delivery Schedules pursuant to Long-Term Contracts for leases, exchanges and underground storage delivered within a Segment located Downstream of the Long-Term Contractor's service area or reservation.
  - 11.1.5 Fifth, Water Delivery Schedules pursuant to Excess Water Contracts, other than Agricultural Settlement Pool Contracts.

- 11.1.6 Sixth, Water Delivery Schedules for Non-Project Water, other than Firming Water, pursuant to Reclamation Wheeling Contracts or Federal Arrangements for Indian and federal agency purposes.
- 11.1.7 Seventh, Water Delivery Schedules for Non-Project Water, other than Firming Water, pursuant to Reclamation Wheeling Contracts or Federal Arrangements for purposes other than Indian and federal agency purposes.
- 11.1.8 Eighth, Water Delivery Schedules pursuant to CAWCD Wheeling Contracts that are associated with Projected Additional Operational Capability.
- 11.2 During Water Shortage, Firming Water shall carry the scheduling priority of the Project Water it replaces.
- 11.3 Any further reductions to Water Delivery Schedules that are necessary within the priorities as described in Subsection 11.1 shall be based on any applicable provisions specified in water delivery contracts, and if further necessary, on a *pro-rata* basis.
- 11.4 This Section is not intended, and shall not be construed to, to contravene the provisions of any Long-Term Contract, or lease pursuant to a Long-Term Contract.

12. **WATER QUALITY:**

- 12.1 Reclamation and CAWCD shall establish uniform water quality standards for any Non-Project Water introduced into the CAP System.
- 12.2 The party introducing the Non-Project Water, including CAWCD or Reclamation, shall be responsible for compliance with the standards of 12.1.
- 12.3 The party introducing the Non-Project Water shall indemnify the United States and CAWCD against all losses to third parties resulting from commingling of said Non-Project Water with Project Water and/or other Non-Project Water in the CAP System.

13. **CAP SYSTEM IMPROVEMENT PROJECTS:**

- 13.1 System Improvement Projects shall be modifications of the Transferred Works of the CAP System, which increase the Operational Capability of the CAP System.
- 13.2 Prior to commencing any System Improvement Project, CAWCD shall submit a proposal for the System Improvement Project to Reclamation, together with CAWCD's estimate of the associated increase in Operational Capability if the System Improvement

Project were to be completed, a technical justification for the CAWCD estimate, and the results of such additional analysis as Reclamation determines to be appropriate.

- 13.3 Reclamation within 60 days of receiving the information specified under Subsection 13.2, shall evaluate the proposed System Improvement Project and determine if the proposed System Improvement Project qualifies as a Substantial Change under Article 12 of the Operating Agreement.
- 13.4 If under Subsection 13.3 Reclamation determines the proposed System Improvement Project qualifies as a Substantial Change under Article 12 of the Operating Agreement, Reclamation, in consultation with CAWCD and within 180 days of receiving the information specified under Subsection 13.2, shall evaluate the proposed System Improvement Project and make a determination of Projected Additional Operational Capability, which shall be quantified in acre-feet per annum.
- 13.5 Upon Reclamation's determination of Projected Additional Operational Capability under Subsection 13.4, CAWCD may deliver Non-Project Water pursuant to CAWCD Wheeling Contracts, approved by Reclamation, up to the amount of the Projected Additional Operational Capability, and subject to eighth priority as defined in the Scheduling Priorities for CAP System Use in Section 11.
- 13.6 Reclamation shall perform all necessary environmental compliance for the proposed System Improvement Project. The time required will be dependent on the scope of the proposed System Improvement Project.
- 13.7 If Reclamation approves the proposed System Improvement Project, CAWCD may proceed with the proposed System Improvement Project, after completion of Subsection 13.6.
- 13.8 Upon completion of a System Improvement Project that received a determination of Projected Additional Operational Capability under Subsection 13.4, CAWCD shall provide Reclamation with written notice that the System Improvement Project has been completed and the extent to which, if any, CAWCD estimates that the actual additional Operational Capability resulting from the System Improvement Project is the same, greater, or lesser than the Projected Additional Operational Capability, a technical justification for the CAWCD estimate, and the results of such additional analysis as Reclamation determines to be appropriate.



- 13.8.1 Reclamation, in consultation with CAWCD, shall evaluate the completion of the System Improvement Project in accordance with the terms of the Operating Agreement and shall issue a Notice of Completion.
- 13.9 Within 180 days of issuance of a Notice of Completion under Subsection 13.8.1, Reclamation, in consultation with CAWCD, shall:
  - 13.9.1 evaluate CAWCD's estimate of the actual associated increase in Operational Capability and the CAWCD technical justification; and
  - 13.9.2 make a determination of Verified Additional Operational Capability.
- 13.10 Upon Reclamation's determination of Verified Additional Operational Capability under Subsection 13.9, CAWCD may deliver Non-Project Water pursuant to CAWCD Wheeling Contracts, approved by Reclamation, up to the amount of the Verified Additional Operational Capability, and subject to third priority as defined in the Scheduling Priorities for CAP System Use in Section 11.
- 13.11 Title to any modifications of the Transferred Works resulting from a System Improvement Project shall remain with the United States.

#### **14. FEES, CHARGES, AND REVENUES**

- 14.1 Long-Term Contractors exchanging Project Water for Non-Project Water pursuant to Section 9 shall pay the Fixed OM&R and Pumping Energy Charge established annually by CAWCD, and applicable capital charges.
- 14.2 Parties taking delivery of Non-Project Water pursuant to CAWCD Wheeling Contracts, Reclamation Wheeling Contracts or Federal Arrangements shall pay the same Fixed OM&R and Pumping Energy Charge established annually by CAWCD for Project Water.
- 14.3 Capital charges shall be applied to Non-Project Water as set forth in CAWCD Wheeling Contracts, Reclamation Wheeling Contracts or Federal Arrangements.
- 14.4 Firming Agreements authorized under Subsection 8.3 and 8.4 may contain provisions for CAWCD to collect charges based on CAWCD estimates of CAWCD's actual

expenses to be incurred in the development and delivery of Firming Water and the revenues collected from such charges shall be available for use by CAWCD solely for such purposes.

14.5 Fixed OM&R Charges shall not be used to pay the costs to complete a System Improvement Project.

15. **NO CONFLICT; NO DELEGATION OF AUTHORITY:** Nothing in this Agreement, or any Annual Operating Plan, is intended to contravene or diminish the Secretary's or CAWCD's rights and obligations under the provisions of the Master Repayment Contract, the Stipulation, any Long-Term Contract or federal law. In the case of a conflict between this Agreement and existing agreements between Reclamation and CAWCD (e.g., the Master Repayment Contract, Repayment Stipulation, and the Operating Agreement), those existing agreements will prevail. Nothing in this Agreement shall be construed as a delegation of authority to perform or interpret inherently Federal functions.

**16. GENERAL PROVISIONS<sup>1</sup>**

16.1 **INDEMNIFICATION:** [CAWCD and the United States are developing language as to possible indemnification between CAWCD and the United States].

16.2 **NOTICES:** Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of CAWCD, when mailed, postage prepaid, or delivered to the Regional Director, Lower Colorado Region, Bureau of Reclamation, 500 Date Street, Boulder City, NV 89005, and the Phoenix Area Office Area Manager, 6150 West Thunderbird Road, Glendale AZ 85306-4001, and on behalf of the United States, when mailed, postage prepaid, or delivered to the General Manager of the Central Arizona Water Conservation District, 23636 North 7<sup>th</sup> Street, Phoenix, AZ 85024. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

16.3 **CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS:** The expenditure or advance of any money or the performance of any obligation of the United

---

<sup>1</sup> These provisions are still under review and consideration by CAWCD and the United States and subject to revision.

States under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve CAWCD from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

16.4 OFFICIALS NOT TO BENEFIT: No Member of or Delegate to the Congress, Resident Commissioner, or official of CAWCD shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

16.5 CHANGES IN CAWCD'S ORGANIZATION: While this Agreement is in effect, no change may be made in CAWCD's organization, by exclusion of lands, by dissolution, consolidation, merger or otherwise which may affect the respective rights, obligations, privileges, and duties of either the United States or CAWCD under this Agreement, except upon the Secretary's written consent.

16.6 ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED: The provisions of this Agreement shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or interest therein by either party shall be valid until approved in writing by the other party.

16.7 BOOKS, RECORDS, AND REPORTS: CAWCD shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including CAWCD's financial transactions; water supply data; project operation, maintenance and replacement logs; project land and rights-of-way use agreements; and other matters that the Secretary may require. Reports thereon shall be furnished to the Secretary in such form and on such date or dates as the Secretary may require. Subject to applicable Federal laws and regulations, each party to this Agreement shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Agreement.

16.8 RULES, REGULATIONS, AND DETERMINATIONS:

16.8.1 The parties agree that the delivery of water or the use of Federal facilities pursuant to this Agreement is subject to Federal reclamation law, as amended

and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

16.8.2 The Secretary shall have the right to make determinations necessary to administer this Agreement that are consistent with its expressed and implied provisions, the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with CAWCD.

16.9 EXHIBITS MADE PART OF AGREEMENT: The Exhibits to this Agreement may change during the term of this Agreement. The initial Exhibits are attached hereto and made a part hereof, and each shall be in force and effect in accordance with its respective provisions until superseded by a subsequent exhibit executed by the parties.

16.10 CONTRACT DRAFTING CONSIDERATIONS: This Agreement has been, negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. Articles 1 through 16 of this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

IN WITNESS WHEREOF, the Parties have executed this CAP System Use Agreement the day and year first above written.

**THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation

**CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT**

Approved as to Form:

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President