

Agenda Number 3.c.

CONTACT: Laura Grignano David Johnson
(623) 869-2113 (623) 869-2375
lgrignano@cap-az.com djohnson@cap-az.com

MEETING DATE: March 2, 2017

AGENDA ITEM: Approval of the CAWCD/SNWA Recovery Funding Agreement, the CAWCD/Arizona Water Company Recovery Exchange Agreement and associated letter agreement confirming recovery for SNWA

RECOMMENDATION:

Staff recommends that the Board of Directors approve the CAWCD/SNWA Recovery Funding Agreement, the CAWCD/Arizona Water Company Recovery Exchange Agreement and the associated letter agreement confirming recovery for SNWA and authorize the General Manager to sign all three agreements contingent upon approval or authorization from the other appropriate parties

FINANCIAL IMPLICATIONS: None

LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:

CAWCD 2016 Board of Directors Strategic Plan

- *Water Supply: Implement Recovery Plan*

PREVIOUS BOARD ACTION/ACTIVITY:

- January, 5, 2017 – Mentioned in GM’s Report
- February 2, 2017 – Mentioned in GM’s Report
- December 1, 2016 – Report on Pending Recovery Agreements

ISSUE SUMMARY/DESCRIPTION:

The Arizona Water Banking Authority (AWBA) has stored approximately 600kAF of excess CAP water on behalf of Southern Nevada Water Authority (SNWA). When SNWA calls on this water in the future, Arizona will reduce its Colorado River use below 2.8 million acre-feet (or below whatever volume Arizona is entitled in a shortage year) in order to develop Intentionally Created Unused Apportionment (ICUA). This ICUA will be

left in Lake Mead for SNWA to divert and CAWCD, the recovery partner for the AWBA, will recover an equivalent volume of long-term storage credits in the CAP service area.

The Third Amended Interstate Water Banking Agreement and Arizona state law require that all costs for the development of ICUA shall be borne by SNWA. Though SNWA does not anticipate a need to develop this ICUA in the next five to ten years, SNWA would like to begin making investments to prepare for future interstate recovery.

It is important to SNWA, CAP, and the AWBA to develop recovery capacity in the Pinal AMA; because of the 600,000 long-term storage credits stored on behalf of SNWA, approximately 440,000 of them are located there. Yet there is very little recovery capacity available to CAWCD in the Pinal AMA. For example, there are currently no operating underground storage facilities (USFs) permitted for CAP water in the Pinal AMA. This lack of a USF prevents CAP from performing AWBA recovery through the credit exchange method, which is the most flexible and cost effective recovery method.

Arizona Water Company (AWC) plans to build a USF in Coolidge where it could annually deliver 9,000-10,000 AF of CAP water. With the development of this USF, AWC becomes an ideal recovery partner candidate with CAP. In years when recovery is needed, AWC would exchange up to 2,500 AF of their Project water with CAWCD in exchange for an equivalent volume of recovered credits. This means that 2,500 AF of CAP water would not be delivered to the AWC USF and would stay in Lake Mead for diversion by SNWA. In turn, AWC would accept an equivalent amount of previously stored water as recovered credits pumped through their wells.

In order to facilitate the development of recovery capacity and to manage their future recovery costs, SNWA has proposed transferring \$1M to CAWCD that CAWCD could advance to AWC to help fund the development of the AWC USF. In return for the \$1M, AWC would agree to enter into a 26 year recovery exchange agreement with CAWCD to provide long-term recovery capacity for both interstate and instate firming needs in the AMA, though SNWA's financial contribution would give them priority to the first 2,500 af/a capacity at no additional cost.

To accomplish the objectives described above, three agreements are necessary: (1) a funding agreement between SNWA and CAWCD whereby SNWA provides \$1M to CAWCD in exchange for recovery capacity, 2) an agreement between AWC and CAWCD whereby CAWCD advances \$1M to AWC to help fund the development of the AWC USF in exchange for 2,500 af of annual recovery capacity over a 26 year period; and 3) an agreement between CAWCD, the AWBA, SNWA and the Colorado River Commission of Nevada that satisfies certain requirements of the existing Interstate Recovery Agreement and which will also memorialize SNWA's priority use of the AWC capacity.

In summary, these agreements achieve a number of important goals:

- Leverage interstate funding to develop long term recovery in an area with significant needs
- Provide benefits for both interstate and instate recovery needs
- Accelerate the recovery program and recovery implementation

SUGGESTED MOTION: I move that the Board of Directors approve the CAWCD/SNWA Recovery Funding Agreement, the CAWCD/Arizona Water Company Recovery Exchange Agreement and the associated letter agreement confirming recovery for SNWA and authorize the General Manager to sign all three agreements contingent upon approval or authorization from the other appropriate parties.

Attachments.

Agenda Number 3.c. Attachment 1.

AGREEMENT FOR FUNDING THE RECOVERY OF LONG-TERM STORAGE CREDITS STORED ON BEHALF OF SOUTHERN NEVADA WATER AUTHORITY

This Agreement for Funding the Recovery of Long-Term Storage Credits Stored on Behalf of Southern Nevada Water Authority (the "Agreement") is made this __ day of _____, 20__ (the "Effective Date") between the Central Arizona Water Conservation District ("CAWCD"), a multi-county water conservation district organized under existing laws of the State of Arizona, and Southern Nevada Water Authority ("SNWA"), a Nevada joint powers agency and political subdivision of the state of Nevada. CAWCD and SNWA are sometimes collectively referred to herein as the "Parties" or individually as a "Party."

RECITALS

A. Among the statutory duties of the Arizona Water Banking Authority ("AWBA") is the authority to enter into interstate water banking agreements with appropriately authorized agencies in Nevada and California pursuant to Arizona Revised Statutes § 45-2471. On May 20, 2013, the AWBA and SNWA entered into the Third Amended and Restated Agreement for Interstate Water Banking (defined as the "Interstate Water Banking Agreement.")

B. Consistent with A.R.S. § 45-2471(C)(6), which requires the appropriate agency in Nevada or California to agree to pay all costs that are or will be incurred in storing and recovering Colorado river water, section 3.4.1 of the Interstate Water Banking Agreement states that "all costs of the development of ICUA ... shall be borne by SNWA."

C. AWBA has stored over 600,000 acre-feet of CAP Water in the aquifers of Central and Southern Arizona in order to generate long-term storage credits ("Banked LTSCs") for the purposes of interstate water banking with SNWA.

D. Pursuant to A.R.S. § 45-2423(A)(5), CAWCD has been designated the recovery agent for the AWBA for the purposes of recovering Banked LTSCs to meet interstate water banking obligations.

E. On June 9, 2010, CAWCD, AWBA, SNWA, and the Colorado River Commission of Nevada entered into a recovery agreement addressing some of the details of recovery of Banked LTSC. The recovery agreement contemplates various recovery methods, including credit exchange.

F. One credit exchange option available would involve CAWCD recovering Banked LTSCs and exchanging the recovered water with a CAP customer that has scheduled CAP Water for delivery at an underground storage facility for annual storage and recovery purposes. Rather than accepting CAP Water for delivery, the CAP customer will accept an equivalent amount of recovered Banked LTSCs in exchange for a reduction in its CAP Water delivery.

G. As one method for SNWA to fund this recovery option, SNWA has agreed to advance certain funds to CAWCD as pre-payment for recovery of a portion of the water stored by AWBA for SNWA. CAWCD will use the funds advanced in this Agreement to assist Arizona Water Company in designing, permitting, constructing, and operating an underground storage facility located in the Pinal AMA.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficient of which are acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 For the purposes of this Agreement, the following terms have the meaning defined in this Article. The first letters of terms so defined are capitalized herein.

1.1.1 “Banked LTSCs” shall mean the long-term storage credits as defined in A.R.S. § 45-802.01 that were accrued by the AWBA for the purposes of interstate water banking and that are transferred from the AWBA to CAWCD for recovery by CAWCD.

1.1.2 “CAP Repayment Stipulation” shall mean 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-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.1.3 “CAP Water” shall mean “Project Water” as that term is defined in the CAP Repayment Stipulation.

1.1.4 “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).

1.1.5 “ICUA” shall mean Intentionally Created Unused Apportionment as that term is defined in 43 CFR 414.

1.1.6 “Interstate Water Banking Agreement” shall mean the Third Amended and Restated Agreement for Interstate Water Banking” or any subsequent amendments or modifications to the Third Amended and Restated Agreement.

1.1.7 “SNWA Recovery Capacity” shall mean 2,500 acre-feet per year of Banked LTSCs that SNWA may request to be developed as ICUA and that may be recovered by CAWCD.

1.1.8 “Term” shall mean the 26-year period between January 1, 2025, and December 31, 2050.

ARTICLE 2 TERM AND TERMINATION

2.1 Term of SNWA Recovery Capacity. SNWA’s Recovery Capacity shall be valid for a period of 26 years commencing on January 1, 2025, and ending on December 31, 2050 (defined as the “Term”).

2.2 Termination. Should the recovery infrastructure developed pursuant to section 3.4 become permanently unavailable or non-operational for whatever reason, or if the recovery infrastructure is not completed, either Party to this Agreement may terminate the Agreement by written notice to the other Party.

2.3 Reimbursement of Payment. If this Agreement is terminated pursuant to section 2.2 due to the permanent unavailability or non-operational nature of the recovery infrastructure for any reason, CAWCD shall diligently seek from Arizona Water Company reimbursement of that portion of the Payment attributable to the balance of the Term (assuming 1/26th of the Payment is attributable to each year of the Term). To the extent CAWCD receives reimbursement from Arizona Water Company, CAWCD shall transfer those proceeds to SNWA.

ARTICLE 3 DEVELOPMENT OF SNWA RECOVERY CAPACITY

3.1 Payment. Within thirty (30) days following the Effective Date, SNWA shall transfer one million dollars (\$1,000,000) to CAWCD ("Payment").

3.2 Electronic Funds Transfer. Payment shall be made by Electronic Fund Transfer to the Treasury, State of Arizona, at the account number designated by CAWCD, or to such other account as CAWCD may designate.

3.3 Account Maintenance. CAWCD will ensure that all payments submitted by SNWA are properly accrued in the proper account maintained by CAWCD.

3.4 SNWA Recovery Capacity. CAWCD shall use the Payment exclusively to develop the SNWA Recovery Capacity and SNWA shall bear no additional costs for recovery of the SNWA Recovery Capacity.

ARTICLE 4 SNWA RECOVERY CAPACITY

4.1 SNWA Recovery Capacity. For any year during the Term in which SNWA requests development of ICUA pursuant to the Interstate Water Banking Agreement, 2,500 acre-feet per year of Banked LTSCs that are recovered by CAWCD and exchanged for an equivalent volume of CAP Water shall be recovered by CAWCD and exchanged at no charge to SNWA. Recovery of any of the SNWA Recovery Capacity pursuant to this Agreement shall not count against the 50,000 acre-feet of long-term storage credits for which recovery has been pre-paid as described in the Third Amended and Restated Agreement for Interstate Water Banking dated May 20, 2013. Furthermore, this Agreement creates capacity only and SNWA's Interstate Account balance will not be reduced if SNWA chooses not to recover any or all of SNWA's Long Term Storage Credits made available pursuant to this Agreement.

4.2 Use It or Lose It. CAWCD's obligation to recover and exchange Banked LTSCs using the SNWA Recovery Capacity at no charge to SNWA is limited to 2,500 acre-feet per year or 65,000 acre-feet for the Term. If, in a given year of the Term, SNWA does not have a need for the SNWA Recovery Capacity, the Parties agree to meet and confer to consider options to minimize the cost of future recovery in the Pinal AMA.

4.3 Maximum Total SNWA Recovery Capacity. In no event may the maximum volume of Banked LTSCs that are recovered and exchanged by CAWCD pursuant to this Agreement exceed 65,000 acre-feet for the Term; provided, however, that this Agreement shall in no way limit SNWA's right to recover Banked LTSCs under other arrangements that may run concurrently.

ARTICLE 5
DEFAULT AND REMEDIES

5.1 Specific Performance. The Parties agree that monetary damages will be ineffective in remedying any breach of this Agreement, other than nonpayment, and that a court may order specific performance.

5.2 Default. CAWCD and SNWA shall pay all monies and carry out all other performances, duties and obligations agreed to be paid and/or performed by them pursuant to this Agreement. A default by CAWCD or SNWA in the covenants and obligations to be kept and performed shall be an act of default under this Agreement.

5.3 Failure by Arizona Water Company to Perform. The Parties acknowledge that ownership, operation, maintenance, and permitting of the infrastructure developed pursuant to section 3.4 is under the care and control of Arizona Water Company and that the facility may become unavailable or non-operational for reasons outside the control of either Party. If the facility does become unavailable or non-operational due to the action or lack of action by Arizona Water Company, neither Party to this Agreement shall be considered to be in default and the Parties' only recourse is termination of this Agreement pursuant to section 2.2 and the remedies flowing therefrom.

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 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 or state 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 Remedy. In the event of a default by CAWCD or SNWA, then, within thirty (30) days following notice of such default by the non-defaulting Party, the defaulting Party shall remedy such default either by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default.

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

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of SNWA. SNWA represents and warrants as follows: (i) 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 under 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 Art. II(B)(6) of the Consolidated Decree; (ii) to the best of SNWA's knowledge the execution and delivery hereof to CAWCD and the performance by SNWA of its obligations under this Agreement will not violate the terms or provisions of any agreement, document or instrument to which SNWA is a party or by which SNWA is bound; and (iii) all proceedings required to be taken by or on behalf of SNWA to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.

6.2 Representations and Warranties of CAWCD. CAWCD represents and warrants as follows: (i) CAWCD is a multi-county water conservation district duly organized and validly existing under the laws of the State of Arizona; (ii) to the best of CAWCD's knowledge, the execution and delivery hereof to SNWA and the performance by CAWCD of its obligation under this Agreement will not violate the terms or provisions of any agreement, document or instrument to which CAWCD is a party or by which CAWCD is bound; and (iii) all proceedings required to be taken by or on behalf of CAWCD to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.

ARTICLE 7
GENERAL PROVISIONS

7.1 Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona and any applicable federal laws, without regard to its conflicts of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

7.2 Third Party Rights. The Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established thereunder.

7.3 Successors to CAWCD and SNWA. In the event that CAWCD should be dissolved or cease to perform any of the functions provided for in this Agreement, the rights and obligations of CAWCD shall be binding upon, and inure to the benefit of, any successor multi-county water conservation district or other legal subdivision of the State of Arizona that succeeds to such functions. 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.

7.4 Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the Parties.

7.5 Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving Party. The waiver by either Party of a breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any other term, covenant, or condition of this Agreement.

7.6 Severability. Any determination by any court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Agreement.

7.7 Captions. All captions, titles, or headings in this Agreement are used for the purpose of reference and convenience only and do not limit, modify, or otherwise affect any of the provisions of this Agreement.

7.8 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate Party at the following address (or at any other address as a Party may hereafter designate by written notice given as required by this paragraph):

SNWA:

For delivery and U.S. mail use c/o General Manager
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153

With a copy to: General Counsel
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153

CAWCD:

For delivery use: c/o General Manager
23636 N. 7th Street
Phoenix, AZ 85024

For U.S. Mail use: c/o General Manager
P.O Box 43020
Phoenix, AZ 85080-3020

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

7.9 Additional Acts and Documentation: Each Party, upon the request of the other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

7.10 Cancellation: Notice is hereby given of the cancellation provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

CAWCD: **CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: _____

Its: _____

Approved as to form:

SNWA: **SOUTHERN NEVADA WATER AUTHORITY**

By: _____

Its: _____

Approved as to form:

**Agenda Number 3.c.
Attachment 2.**

AGREEMENT FOR DEVELOPMENT OF THE ARIZONA WATER COMPANY UNDERGROUND STORAGE FACILITY, RECOVERY OF ARIZONA WATER BANKING AUTHORITY LONG-TERM STORAGE CREDITS AND EXCHANGE FOR AWC'S CAP WATER

This Agreement for Development of the Arizona Water Company Underground Storage Facility, Recovery of Arizona Water Banking Authority Long-Term Storage Credits and Exchange for AWC's CAP Water ("Agreement") is made this ___ day of _____, 20__, between the Central Arizona Water Conservation District ("CAWCD"), a multi-county water conservation district organized under existing laws of the State of Arizona, and Arizona Water Company ("AWC"), a corporation organized and existing under the laws of the State of Arizona. CAWCD and AWC are sometimes collectively referred to herein as the "Parties" or individually as a "Party."

RECITALS

A. Since its creation, the AWBA has been storing CAP Water in the aquifers of Central and Southern Arizona in order to generate long-term storage credits ("Banked LTSCs") that may be used to fulfill its statutory duties.

B. Pursuant to Arizona Revised Statutes § 45-2423(A)(5), the AWBA has designated CAWCD as the recovery agent for the AWBA for the purposes of recovering Banked LTSCs to supplement reduced deliveries of CAP municipal and industrial priority ("M&I Priority Water") during Shortage. CAWCD is also contractually obligated to (1) recover Banked LTSCs to meet interstate water banking obligations with Nevada and (2) during declared shortages on the Colorado River, meet the needs of certain on-river Fourth Priority Water users. In the future, CAWCD may also become contractually obligated to recover Banked LTSCs to meet Arizona's obligations pursuant to Indian water rights settlements.

C. One option available to CAWCD as the recovery agent is to recover Banked LTSCs and exchange the recovered water with a CAP customer that has scheduled CAP Water for delivery at an underground storage facility for annual storage and recovery purposes. Rather than accepting CAP Water for delivery, the CAP customer will accept an equivalent amount of recovered Banked LTSCs in exchange for a reduction in its CAP Water delivery.

D. AWC is developing the Arizona Water Company Underground Storage Facility ("AWC USF") for the purpose of annually storing and recovering a portion of the CAP M&I water to which AWC is entitled, and is willing to accept recovered Banked LTSCs in lieu of the delivery of CAP Water.

E. AWC and CAWCD see an opportunity to partner on the development of the AWC USF and to partner and negotiate in good faith on the development of future recharge and recovery projects in the Pinal AMA.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 For the purposes of this Agreement, the following terms have the meaning defined in this Article. The first letters of terms so defined are capitalized herein.

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

1.1.2 "Banked LTSCs" shall mean long-term storage credits as defined in A.R.S. § 45-802.01 that were accrued by the AWBA to fulfill its statutory duties and transferred from the AWBA to CAWCD for recovery by CAWCD.

1.1.3 "CAP Repayment Stipulation" shall mean 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-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

1.1.4 "CAP Water" shall mean 'Project Water' as that term is defined in the CAP Repayment Stipulation.

1.1.5 "CAWCD Recovery Capacity" shall mean 2,500 acre-feet of Banked LTSCs, which is the maximum number of Banked LTSCs that may be recovered in a single Recovery Year pursuant to this Agreement except as otherwise agreed to by the Parties in section 3.5.1 and 3.6.1.

1.1.6 "Director" shall mean the Director of the Arizona Department of Water Resources.

1.1.7 "Fourth Priority Water" shall mean Colorado River water available for delivery within the State of Arizona for satisfaction of entitlements: (1) pursuant to contracts, Secretarial reservations, perfected rights, and other arrangements between the United States and water users in the State entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately owned lands in the State (for a total quantity not to exceed 164,652 acre-feet of diversions annually); and (2) after first providing for the delivery of water under 43 U.S.C. § 1524(e), pursuant to the Repayment Contract for the delivery of Colorado River water for the CAP including use of Colorado River water on Indian lands.

1.1.8 "ICUA" shall mean Intentionally Created Unused Apportionment as that term is defined in 43 CFR 414.

1.1.9 "M&I Priority Water" shall mean that CAP Water having a municipal and industrial delivery priority.

1.1.10 "NIA Priority Water" shall mean that CAP Water having a non-Indian agricultural delivery priority.

1.1.11 "O&M Costs" shall mean the annual labor, overhead, and material costs for the operation, maintenance, monitoring, and regulatory reporting at the AWC USF and the AWC USF recovery infrastructure.

1.1.12 "Recovery Well Permit or Permits" shall mean one or more permits issued by the Arizona Department of Water Resources to CAWCD pursuant to A.R.S. § 45-834.01 that can be used to meet the obligations of this Agreement.

1.1.13 "Recovery Year" shall mean a calendar year in which CAWCD recovers Banked LTSCs pursuant to this Agreement.

1.1.14 "Repayment Contract" shall mean the contract dated December 1, 1988 (Contract No. 14-06-W-245, Amendment No. 1) between the United States and CAWCD for the delivery of water and the repayment of costs of the CAP. The term includes all amendments to and revisions of that contract.

1.1.15 "Shortage" shall mean a shortage declared by the Secretary of the United States Department of the Interior in the Annual Operating Plan for Colorado River Reservoirs.

1.1.16 "Term" shall mean the 26 year period between January 1, 2025 and December 31, 2050.

ARTICLE 2

DEVELOPMENT, DESIGN, CONSTRUCTION, FINANCING, OWNERSHIP, AND OPERATION OF THE AWC USF

2.1 Feasibility, Location, and Development. AWC has prepared a hydrologic feasibility study that has concluded that a viable, cost-effective underground storage facility can be constructed that is capable of storing at least 10,000 acre-feet of water annually at the location identified in Exhibit A.

2.2 Project Construction and Design. AWC will design, permit, and construct the AWC USF, including the AWC USF recovery infrastructure needed for annual storage and recovery purposes at the AWC USF, and for acquiring all necessary land interests or rights of way for the AWC USF. AWC shall be wholly responsible for designing, permitting, and constructing the AWC USF, including hiring contractors and project scheduling for the AWC USF and any associated AWC USF facilities. Design,

permitting, and construction of at least 2,500 acre-feet of recovery capacity at the AWC USF shall be completed by the beginning of the Term.

2.3 Project Financing. AWC will design, permit, and construct the AWC USF at its cost, including the AWC USF recovery infrastructure, as well as any costs associated with acquisition of necessary land interests or rights of way.

2.4 CAWCD payment to AWC. Within ninety days following the execution of this Agreement, CAWCD will pay \$1,000,000 to AWC.

2.5 CAWCD Recovery Capacity. During the Term, in exchange for CAWCD's payment pursuant to section 2.4 above and subject to the terms and conditions set forth in this Agreement, AWC hereby grants CAWCD an annual right to exercise CAWCD's Recovery Well Permit to recover up to 2,500 acre-feet of Banked LTSCs (the "CAWCD Recovery Capacity"). CAWCD's right to the CAWCD Recovery Capacity shall exist during Shortage and non-Shortage years and conditions.

2.6 Ownership of the AWC USF. AWC shall own the AWC USF, including the AWC USF recovery infrastructure, and all land on which the AWC USF is located.

2.7 Operation of the AWC USF. AWC shall retain all operational control over the AWC USF, including the AWC USF recovery infrastructure, and all land on which the AWC USF is located.

2.8 O&M Costs. AWC will be responsible for annual O&M Costs at the AWC USF and the AWC USF recovery infrastructure, including those costs associated with the recovery of Banked LTSCs pursuant to this Agreement that would otherwise have been paid by AWC if it had annually stored and recovered an equivalent volume of AWC CAP Water through the AWC USF recovery infrastructure, not including any long-term storage credit recovery fees required under section 5.2 below.

2.9 Maintenance of Insurance for AWC USF. While this Agreement remains in effect, AWC shall obtain and cause to be maintained at its cost, with financially sound and reputable insurers, property and liability insurance, or its equivalent, with respect to the AWC USF, including the AWC USF recovery infrastructure, and improvements now existing or hereafter erected as a part thereof, or any substitute or replacement facility, against all losses, hazards, casualties, liabilities, and contingencies as customarily carried or maintained by public services corporations of established reputation engaged in similar business.

2.10 Refund for Nonperformance. In the event that AWC decides not to construct the AWC USF, AWC shall refund the \$1,000,000 payment to CAWCD within ninety (90) days of AWC's decision not to construct.

2.11 Damage to the AWC USF. In the event of any damage to the AWC USF, including damage caused by the lack of maintenance by AWC, or physical loss of the AWC USF that will or is

reasonably likely to prevent recovery of the CAWCD Recovery Capacity during the Term, AWC shall give immediate written notice of the same to its insurance carrier and to CAWCD. To the extent an insurance claim is appropriate, AWC shall pursue an insurance claim relating to such damage or loss and AWC shall promptly commence and diligently prosecute to completion the repair and restoration of the AWC USF as nearly as possible to the condition of the AWC USF immediately prior to the damage or loss (a "Restoration"). AWC agrees to dedicate all insurance proceeds associated with such damage or loss to the Restoration of the AWC USF. If the insurance proceeds are insufficient to cover 100% of the costs of the Restoration, then AWC shall pay those costs of Restoration not covered by the insurance proceeds. At its discretion, AWC may construct a substitute facility at a new location; provided, however, that in such event AWC shall satisfy CAWCD's Recovery Capacity on the same terms and conditions as set forth in this Agreement. If damage or loss occurs during the term of this Agreement at a point in time where the Parties mutually determine that it would be economically infeasible to rebuild or restore the AWC USF, AWC shall reimburse CAWCD for its initial investment of \$1,000,000 pro-rated based on the number of years that remain during the Term.

2.12 Condemnation. AWC shall promptly notify CAWCD in writing of the actual or threatened commencement of any proceeding to acquire the AWC USF property or any substitute or replacement facility through condemnation or eminent domain (collectively, "Condemnation"), and shall deliver to CAWCD copies of any and all papers served in connection with such proceedings. If the AWC USF or any portion thereof (including any substitute or replacement facility) is taken through Condemnation such that at least 2,500 acre-feet of recharge capacity is no longer available at AWC's USF or any substitute or replacement facility, the Parties agree to negotiate in good faith on the construction of a substitute or replacement facility. If the Parties mutually determine that it would be economically infeasible to construct a substitute facility, AWC agrees to reimburse CAWCD for its initial investment of \$1,000,000 pro-rated based on the number of years that remain during the Term.

2.13 Indemnification. AWC agrees to indemnify, defend, and hold harmless CAWCD from and against any and all loss, liability, claim, damage, or expense (including reasonable legal fees and expenses), which CAWCD may incur to the extent caused by, arising out of, or relating to the acts or omissions of AWC or its employees, contractors, agents, or consultants arising from or related to the ownership or operation of the AWC USF.

ARTICLE 3

RECOVERY AND EXCHANGE OF LONG-TERM STORAGE CREDITS

3.1 Exchange Agreement. Prior to recovery and exchange of Banked LTSCs, AWC and CAWCD shall:

3.1.1 Approval by Reclamation. Obtain approval of the exchange by Reclamation consistent with the requirements in the CAP System Use Agreement Section 9.1 and in accordance with AWC's subcontract language.

3.1.2 Notice of Exchange with ADWR. Following approval of the exchange agreement by Reclamation and at CAWCD's cost, file a notice of water exchange with ADWR consistent with Arizona Revised Statutes §§ 45-1051 and 1052 (or replacement statutes).

3.2 Recovery Well Permit. Prior to recovery and exchange of Banked LTSCs, CAWCD shall obtain at its cost a Recovery Well Permit(s) issued by the Director that will allow CAWCD to recover Banked LTSCs using the AWC USF recovery infrastructure. A list of the recovery infrastructure as of the effective date of this Agreement is included in Exhibit B. CAWCD shall maintain the Recovery Well Permit(s) or a similar Recovery Well Permit(s) throughout the Term. All such Recovery Well Permit(s) obtained by CAWCD shall be coordinated with AWC. Upon receipt of notice from AWC, CAWCD agrees to obtain at its cost additional Recovery Well Permit(s) if AWC adds additional recovery wells to its Pinal Valley service area.

3.3 Recovery of Banked LTSCs. CAWCD may recover Banked LTSCs pursuant to this Agreement in any year in which Nevada requests the development of ICUA, any year in which there is a Shortage that reduces the pool of water available to CAP M&I Priority subcontractors or certain on-river Fourth Priority Water users, or if necessary to meet Arizona's obligations pursuant to the Arizona Water Settlement Act of 2004 for certain CAP NIA Priority Water. AWC retains the right to determine which of its recovery wells CAWCD will use (through AWC's operation of such recovery wells) in any Recovery Year to fulfill the Parties' obligations under this Agreement. All Banked LTSCs recovered under this Agreement from AWC's wells used by CAWCD for recovery must be delivered to AWC's Pinal Valley water system and to no other entity or point of delivery.

3.4 Exchange of Recovered Banked LTSCs. For every Banked LTSC that CAWCD recovers in a Recovery Year and delivers to AWC, AWC agrees to exchange an equivalent volume of its CAP Water with CAWCD and accept a delivery reduction of one acre-foot in its CAP Water order at the AWC USF.

3.5 Maximum Annual CAWCD Recovery Capacity. The amount of Banked LTSCs recovered in any year shall not exceed the CAWCD Recovery Capacity except pursuant to subsection 3.5.1 below.

3.5.1 Recovery Above CAWCD Recovery Capacity. Upon mutual agreement, the Parties may recover and exchange Banked LTSCs at a volume greater than the CAWCD Recovery Capacity. If the Parties so agree, CAWCD shall pay AWC an agreed upon price per acre-foot for any Banked LTSCs recovered and exchanged greater than the CAWCD Recovery Capacity of 2,500 acre-feet per year.

3.5.2 Recovery Below CAWCD Recovery Capacity. In no event will recovery by CAWCD of less than the Recovery Capacity in any Recovery Year be the basis for any refund of monies paid by CAWCD except as specifically provided in sections 2.11 and 2.12 herein.

3.6 Term of CAWCD Recovery Capacity. CAWCD's Recovery Capacity shall be valid for a period of 26 years commencing on January 1, 2025 and ending on December 31, 2050 (defined as the "Term").

3.6.1 Recovery Prior to the Term. Should the AWC USF become operational prior to January 1, 2025, upon mutual agreement the Parties may recover and exchange Banked LTSCs prior to the Term at a quantity agreed to by the Parties. If the Parties so agree, CAWCD shall pay AWC \$15 per acre-foot for any Banked LTSCs recovered and exchanged prior to the Term. Recovery and exchange of Banked LTSCs prior to the Term shall not affect the duration of the Term or the total amount of Banked LTSCs that CAWCD could recover during the Term subject to CAWCD's Recovery Capacity.

ARTICLE 4

PROCEDURE FOR RECOVERING AND EXCHANGING LONG-TERM STORAGE CREDITS

4.1 Water Delivery Order. On or before October 1 of the year prior to a Recovery Year, AWC shall submit in writing to CAWCD a water delivery schedule that is consistent with the terms of its water services subcontracts.

4.2 Notification of Intent to Recover Banked LTSCs. By November 15 of the year prior to a Recovery Year, CAWCD shall notify AWC in writing of its intent to recover Banked LTSCs at the AWC USF pursuant to this Agreement and the quantity of Banked LTSCs to be recovered by CAWCD and exchanged with AWC for CAP Water. CAWCD will coordinate all actions necessary within its own operations concerning any CAP water orders made by AWC for delivery to the AWC USF that are affected by CAWCD's recovery of Banked LTSCs as part of this Agreement.

4.3 Modifications to Recovery Volume. During a Recovery Year, but no later than September 30 of a Recovery Year, CAWCD may request a modification to the volume of Banked LTSCs to be recovered by CAWCD and exchanged for CAP Water not to exceed the CAWCD Recovery Capacity. If AWC agrees to the modification, AWC also agrees to accept any associated increase or reduction, as applicable, to the physical delivery of CAP Water to the AWC USF. In the event that CAWCD's requested modification would result in increased delivery of CAP Water to the AWC USF, AWC may condition their approval of the modification on the physical ability of the facility to recharge the additional volume.

4.4 Water Use Reports. By February 28 of the year following a Recovery Year, AWC and CAWCD shall work together to complete any applicable ADWR annual water use reports that indicate the volumes of Banked LTSCs recovered pursuant to this Agreement. In producing the ADWR annual water use reports, AWC shall make available all applicable data to CAWCD for verification. By March 31 of the year following a Recovery Year, CAWCD shall submit to ADWR all applicable ADWR annual water use reports for the AWC USF recovery infrastructure used pursuant to this Agreement.

ARTICLE 5

CAP WATER DELIVERY CHARGES AND BANKED LTSC RECOVERY FEES

5.1 CAP Water Delivery Charges. AWC agrees to pay all charges established by CAWCD for the delivery of CAP Water pursuant to long-term subcontract, including CAP Fixed OM&R Charges and CAP Pumping Energy Charges, that would otherwise have been associated with delivery of AWC's CAP

Water order as if the CAP Water order was fully delivered to AWC as ordered and no recovery or exchange had taken place.

5.2 Long-Term Storage Credit Recovery Fees. CAWCD agrees to pay the long-term storage credit recovery fee required by Arizona Revised Statute § 45-874.01 for each Banked LTSC recovered pursuant to this Agreement.

ARTICLE 6 WATER QUALITY

6.1 No Representation or Warranty as to Water Quality. CAWCD makes no representations or warranties as to the water quality of any water recovered and exchanged with AWC pursuant to the operation of this Agreement and is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of such water.

6.2 Water Quality Waiver. AWC waives its right to make a claim against CAWCD for any diminution or degradation of the quality of water due to a change in the salinity or concentration of naturally or artificially occurring chemical constituents of water and any effect of such a change resulting from the operation of this Agreement.

ARTICLE 7 DEFAULT AND REMEDIES

7.1 Specific Performance. The Parties agree that monetary damages will be ineffective in remedying any breach of this Agreement, other than nonpayment, and that a court may order specific performance.

7.2 Default. CAWCD and AWC shall pay all monies and carry out all other performances, duties and obligations agreed to be paid and/or performed by them pursuant to this Agreement. A default by CAWCD or AWC in the covenants and obligations to be kept and performed shall be an act of default under this Agreement.

7.3 Remedy. In the event of a default by CAWCD or AWC, then, within thirty (30) days following notice of such default by the non-defaulting Party, the defaulting Party shall remedy such default either by advancing the necessary funds and/or rendering the necessary performance. Such notice shall specify the existence and nature of such default.

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

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of AWC. AWC represents and warrants as follows: (i) AWC is a corporation duly organized and validly existing under the laws of the State of Arizona. To the best of AWC's knowledge the execution and delivery hereof to CAWCD and the performance by AWC of its obligation under this Agreement will not violate the terms or provisions of any agreement, document or instrument to which AWC is a party or by which AWC is bound; (ii) All proceedings required to be taken by or on behalf of AWC to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, except that AWC may file a copy of this Agreement with the Arizona Corporation Commission ("Commission") for its consideration, but that approval of the Agreement by the Commission is not a requirement for the enforceability of this Agreement. If the Commission disapproves the Agreement or requires other material conditions or terms, either Party may cancel this Agreement and any monies paid by CAWCD to AWC will be refunded within thirty (30) days of such Commission action on a prorated basis similar to the refund provisions of sections 2.11 and 2.12 herein.

8.2 Representations and Warranties of CAWCD. CAWCD represents and warrants as follows: (i) CAWCD is a multi-county water conservation district duly organized and validly existing under the laws of the State of Arizona. To the best of CAWCD's knowledge, the execution and delivery hereof to AWC and the performance by CAWCD of its obligation under this Agreement will not violate the terms or provisions of any agreement, document or instrument to which CAWCD is a party or by which CAWCD is bound; (ii) All proceedings required to be taken by or on behalf of CAWCD to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken.

ARTICLE 9 GENERAL PROVISIONS

9.1 Interpretation. This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona and any applicable federal laws, without regard to its conflict of laws provisions. Any action to resolve any dispute regarding this Agreement shall be taken in a state court of competent jurisdiction located in Maricopa County, Arizona.

9.2 Third Party Rights. The Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established thereunder.

9.3 Assignment. No Party may assign, delegate, or otherwise transfer this Agreement, in interest therein, or the Party's rights or obligations under this Agreement without the prior written consent of the other Party.

9.4 Amendments. This Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

9.9 Additional Acts and Documentation. Each Party, upon the request of the other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

9.10 Cancellation. This Agreement is subject to cancellation in accordance with the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

CAWCD: **CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: _____

Its: _____

ATTEST:

AzWC: **ARIZONA WATER COMPANY**

By: _____

Its: _____

ATTEST:

Exhibit A

Legal Description

A parcel lying East of the Florence-Casa Grande Canal and being a part of the East half of the West half of Section 18, Township 6 South, Range 9 East of the Gila and Salt River Base and Meridian, Pinal County, Arizona, said parcel being more particularly described as follows:

BEGINNING at the South quarter corner of said Section 18;

THENCE North 89 degrees 53 minutes 45 seconds West, coincident with the south line of said Section 18, a distance of 857.95 feet;

THENCE leaving said south line, North 02 degrees 21 minutes 47 seconds West, a distance of 401.81 feet;

THENCE North 02 degrees 18 minutes 22 seconds West, a distance of 636.51 feet to a point of curvature, the center of which bears North 87 degrees 41 minutes 38 seconds East, a distance of 3229.02 feet;

THENCE northerly along the arc of said curve to the right, concave to the East, through a central angle of 17 degrees 53 minutes 00 seconds, an arc length of 1007.85 feet to a point of non-tangency;

THENCE North 21 degrees 22 minutes 02 seconds East, a distance of 184.65 feet to a point of curvature, the center of which bears North 68 degrees 37 minutes 58 seconds West, a distance of 491.83 feet;

THENCE northerly along the arc of said curve to the left, concave to the West, through a central angle of 35 degrees 05 minutes 07 seconds, an arc length of 301.17 feet to a point of non-tangency;

THENCE North 17 degrees 15 minutes 46 seconds West, a distance of 94.15 feet to a point on a non-tangent curvature, the radius of which bears North 52 degrees 54 minutes 47 seconds East, a distance of 360.05 feet;

THENCE northerly along the arc of said curve to the right, concave to the East, through a central angle of 62 degrees 36 minutes 47 seconds, an arc length of 393.46 feet;

THENCE North 25 degrees 31 minutes 34 seconds East, a distance of 442.59 feet;

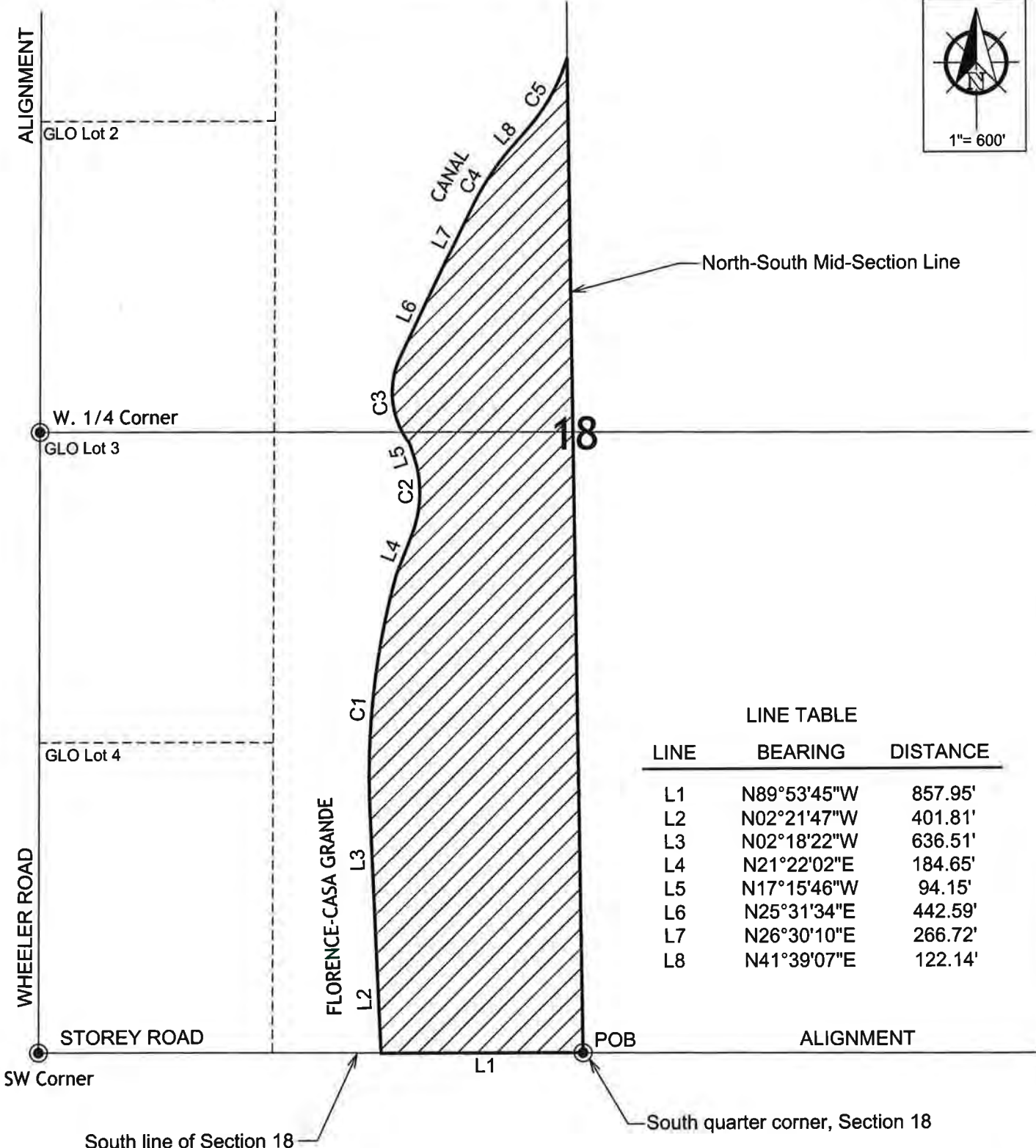
THENCE North 26 degrees 30 minutes 10 seconds East, a distance of 266.72 feet to a point of curvature the center of which bears South 63 degrees 29 minutes 50 seconds East, a distance of 1132.35 feet;

THENCE northeasterly along the arc of said curve to the right, concave to the Southeast, through a central angle of 14 degrees 08 minutes 46 seconds, an arc length of 279.57 feet to a point of non-tangency;

THENCE North 41 degrees 39 minutes 07 seconds East, a distance of 122.14 feet to a point of curvature the center of which bears North 48 degrees 20 minutes 53 seconds West, a distance of 813.67 feet;

THENCE northerly along the arc of said curve to the left, concave to the Northwest, through a central angle of 24 degrees 23 minutes 16 seconds, an arc length of 346.34 feet to a point of non-tangency, said point also being on the North-South mid-section line of said Section 18;

THENCE Southerly, coincident with the North-South mid-section line of said Section 18 to the South quarter corner of said Section 18 and the POINT OF BEGINNING of the herein described parcel of land.



LINE TABLE

LINE	BEARING	DISTANCE
L1	N89°53'45"W	857.95'
L2	N02°21'47"W	401.81'
L3	N02°18'22"W	636.51'
L4	N21°22'02"E	184.65'
L5	N17°15'46"W	94.15'
L6	N25°31'34"E	442.59'
L7	N26°30'10"E	266.72'
L8	N41°39'07"E	122.14'

CURVE TABLE

CURVE	RADIUS	DELTA	ARC LENGTH
C1	3229.02'	17°53'00"	1007.85'
C2	491.83'	35°05'07"	301.17'
C3	360.05'	62°36'47"	393.46'
C4	1132.35'	14°08'46"	279.57'
C5	813.67'	24°23'16"	346.34'

MAP TO EXHIBIT A
 West half of Section 18, Township 6 South, Range 9 East,
 of the Gila and Salt River Base and Meridian,
 Pinal County, Arizona

0 300 600 1200
 Graphic Scale in Feet

EXHIBIT B
AWC RECOVERY INFRASTRUCTURE

COMPANY WELL DESIGNATION	55 WELL REGISTRATION NUMBER	WELL LOCATION: TOWNSHIP, RANGE, SECTION, 160, 40, 10	DESIGN PUMP CAPACITY (GPM)	HOLE DEPTH (FEET)	WELL CASING DIAMETER (IN)	PROPOSED ANNUAL VOLUME (AC-FT)	DATE WELL CONSTRUCTED
CG30	208822	D(6-6) 22 SE, SE, SE	1000	1500	18	1129	4/10/2006
CG31	210294	D(6-6) 15 SE, NE, SW	1200	1506	18	1156	5/7/2006
CG33	212523	D(6-6) 25 NE, SW, NE	800	1000	19	1290	4/4/2007
CG32	214248	D(6-6) 36, NE, SW, NE	1500	1200	19	1850	5/24/2007
CG21	506809	D(6-6)22 SW,SE,SW	800	1238	20	1290	10/12/1983
CG14	513443	D(6-6)21 NW, NW, NW	800	1230	12	1291	7/3/1986
CG23	522319	D(6-6) 22 NW, NE, NE	1600	1005	18	2016	2/1/1989
TT3	526586	D(6-4) 19 NE, SE, SW	230	1002	18	685.5	4/9/1990
CG24	540306	D(6-6) 22 SW, SE, SE	1000	1000	18	1137	12/23/1993
CG25	546719	D(6-6) 22 NW, SE, NE	1600	1074	18	2580	2/17/1995
CG26	560803	D(6-6) 15 SW, SE, SE	1200	1240	18	1828	2/18/1997
CG27	568553	D(6-7) 5 NW, NE, NE	500	1110	19	1202	11/24/1998
CG28	571205	D(7-6) 35 SE, SE, SE	500	820/ 1387	18	2322	4/30/1999
CG29	595284	D(6-6) 25 NW, SW, NW	1500	1120	18	1153	3/2/2004
MONT1	616583	D(7-5) 6 SE, SE, SE	750	650	20		11/1/1951
CG34	616588	D(8-6) 1 SE, SE, NW	300	1100	16		1/1/1970
CG10	616595	D(6-6) 21 NW, NW, SW	1000	1260	20		1/1/1960
CG17	616601	D(6-6) 15 SW, SW, NW	450	805	16		4/28/1975
CG19	616603	D(6-6) 23 SW, NW, NW	1500	1000	20		8/8/1980
CG20	616604	D(6-6) 22 NW, NE, SE	1200	1000	20		11/2/1977
CL7	616606	D(5-8) 22 SW, NE, NE	1150	1105	20		4/4/1956
CL9	616608	D(5-8) 10 NW, SW, NE	1360	475	20		5/10/1961
CL10	616609	D(5-8) 10 NW, SW, NE	1200	1000	20		5/1/1978

TG1	616682	D(6-7) 36 NE, SE, SE	800	578	20		4/1/1969
ST1	616684	D(6-4) 20 SW, SW, SW	350	811	16		8/6/1963
VF1	616686	D(5-9) 17 SW, SE, SW	–	345	10		1/1/1930
VF2	616687	D(5-9) 17 SW, SE, SW	312	700	8		3/3/1971
CA1	620899	D(6-9) 4 NE, NE, NW	333	475	16		2/3/2010
CA2	620900	D(6-9) 4 NE, NE, NW	1000	545	16		1/1/1942
TG3	801030	D(6-7) 36 NE, SE, SE	600	585	20/16		6/1/1972

Agenda Number 3.c. Attachment 3.

_____, 201_

Mr. John Entsminger
General Manager
Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, NV 89153

Ms. Jayne Harkins
Executive Director
Colorado River Commission of Nevada
555 E Washington Avenue, #3100
Las Vegas, NV 89101

RE: Recovery Funding Agreement for Arizona Water Company Underground Storage Facility

Dear Mr. Entsminger and Ms. Harkins:

In the Recovery Agreement among the Arizona Water Banking Authority (“AWBA”), Central Arizona Water Conservation District (“CAWCD”), Southern Nevada Water Authority (“SNWA”) and Colorado River Commission of Nevada (“CRCN”) (collectively known as the “Parties”) executed on June 9, 2010 (the “Recovery Agreement”), the Parties agreed that they would meet annually to discuss the options available to meet the recovery needs of SNWA.

Among those options is for CAWCD to recover long-term storage credits and exchange those recovered long-term storage credits with a Central Arizona Project (“CAP”) customer that has scheduled CAP water for delivery at an underground storage facility (“USF”) for annual storage and recovery purposes for an equivalent acre-foot volume reduction in the CAP customer’s CAP water delivery order. Any CAP water that is not delivered pursuant to such a recovery option could remain in Lake Mead for development by SNWA as Intentionally Created Unused Apportionment (“ICUA”).

While it is possible that some credit exchange opportunities used for interstate recovery purposes may utilize existing infrastructure, other opportunities for credit exchange will require new infrastructure. Presently, one opportunity exists whereby SNWA will transfer \$1,000,000 to CAWCD for CAWCD to use to assist the Arizona Water Company (“AWC”) to design, permit, construct, and operate an underground storage facility located in the Pinal AMA. In exchange for the \$1,000,000 payment, AWC would grant to CAWCD the right to 2,500 acre-feet of annual recovery capacity at the AWC USF from January 1, 2025, until December 31, 2050. CAWCD would in turn grant SNWA a first right to this 2,500 acre-feet of annual recovery capacity at no additional cost to SNWA.

Subsection 3.3.3 of the Third Amended and Restated Agreement for Interstate Water Banking among the Arizona Water Banking Authority, the Southern Nevada Water Authority, and the Colorado River Commission of Nevada executed on May 20, 2013 (“Interstate Water Banking Agreement”) states that, in a given year, “[t]he 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 [the Arizona Water Banking Authority].”

In order to comply with subsection 3.3.3 of the Interstate Water Banking Agreement and preserve SNWA’s first right to the 2,500 acre-feet of annual recovery capacity at the AWC USF at no additional cost to SNWA,

the AWBA and CAWCD are sending this letter to confirm that, from January 1, 2025, until December 31, 2050, the first 2,500 acre-feet of interstate recovery requested by SNWA shall be from the AWC USF at no additional cost to SNWA. SNWA's right to the first 2,500 acre-feet at the AWC USF is contingent on the AWC USF remaining available and operational, and SNWA's right to receive reimbursement of all or a portion of the \$1,000,000 if the facility becomes non-operational shall be consistent with the terms of the Agreement for Funding the Recovery of Long-Term Storage Credits Stored on Behalf of Southern Nevada Water Authority executed on _____, 201_ between CAWCD and SNWA (Agreement). In addition, any water recovered pursuant the aforementioned Agreement shall not count against the 50,000 acre-feet of long-term storage credits for which recovery has been pre-paid as described in the Third Amended and Restated Agreement for Interstate Water Banking dated May 20, 2013. Furthermore, this Agreement creates capacity only and SNWA's Interstate Account balance will not be reduced if SNWA chooses not to recover any or all of SNWA's Long Term Storage Credits made available pursuant to this Agreement. And finally, SNWA shall not be precluded from concurrently recovering additional Long Term Storage Credits through other arrangements.

Should you have any questions on this letter, please contact either David Johnson, CAWCD Senior Attorney at djohnson@cap-az.com or Virginia O'Connell, AWBA Manager at voconnell@azwater.gov. Thank you,

Sincerely:

Ted Cooke
General Manager
Central Arizona Water Conservation District

Thomas Buschatzke
Chairman
Arizona Water Banking Authority

By signing below, I agree to the understanding regarding recovery capacity outlined above.

John Entsminger
General Manager
Southern Nevada Water Authority

Jayne Harkins
Executive Director
Colorado River Commission of Nevada

cc: AWBA Commission Members
Mr. David Johnson, CAWCD
Ms. Virginia O'Connell, AWBA