Appendices to

Analysis of Water Banks in the Western States

WASHINGTON STATE DEPARTMENT OF ECOLOGY

WestWater Research LLC

June 2004

Appendices to
Publication No. 04-11-011

The complete report is available on the Department of Ecology website at:
http://www.ecy.wa.gov/biblio/0411011

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Appendices to

Analysis of Water Banks in the Western States

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This report was prepared in part with funds from two sources:
the Washington State Salmon Recovery Funding Board (www.iac.wa.gov/srfb/board.htm)
and the Bonneville Power Administration through the Columbia Basin Water Transactions Program (www.cbwtp.org).

June 2004

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Appendix A: Arizona

House Bill 2494 – Chapter 45

House Bill 2463 – 441R – I Ver

Arizona Water Banking Authority: Resolution 2002-1

House Bill 2494 — Chapter 45

Arizona Water Banking Authority

Created by

House Bill 2494 – Chapter 45

42 Legislature

1996

45-2401 Declaration of policy and purpose

A. The legislature finds that this state is currently and temporarily underutilizing both the entitlement to Colorado river water confirmed to it by the United States supreme court in Arizona v. California, 373 U.S. 546 (1963), and the central Arizona project, which has the capacity to divert into this state a significant portion of this state's entitlement to Colorado river water. The legislature further finds that, due to the low priority on the Colorado river of the central Arizona project and other Arizona Colorado river water users, the susceptibility of this state to future shortages of water on the Colorado river is a threat to the general economy and welfare of this state and its citizens.

B. The legislature further finds that water users within the Central Arizona project service area also rely on other surface water supplies, that these supplies are susceptible to future shortages of water and that these shortages are a threat to the general economy and welfare of this state and its citizens.

C. The legislature further finds that future water needs in the states of California and Nevada could exceed the entitlements of those states to Colorado river water. Those future water needs could thereby affect the general economy and welfare of this state and its citizens because of the close economic ties among Arizona, California and Nevada.

D. The legislature further finds that Arizona water users could more efficiently manage, distribute and use available water resources through the storage of water supplies and through stored water lending arrangements, but that not all of these Arizona water users have the opportunities or resources needed to store water or enter into stored water lending arrangements.

E. The legislature further finds that for the purposes of this chapter diverting Colorado river water for storage off of the Colorado river system is a consumptive use of that water.

F. The legislature further finds that water banking is complimentary and compatible with existing water management efforts. The Arizona water banking authority will

compliment and assist the activities of the central Arizona water conservation district in its mission to provide a dependable and cost-effective water supply.

G. The legislature therefore finds that it is in the best interest of the general economy and welfare of this state and its citizens to:

1. Use the central Arizona project to store otherwise unused Arizona entitlement to Colorado river water within this state to meet future water needs within this state.

2. Provide the opportunity to the states of California and Nevada to store currently unused Colorado river water in Arizona to meet future needs in those states.

3. Provide the opportunity to facilitate the storage of water and stored water lending arrangements by entities in Arizona that may not have the opportunities or resources needed to store water.

H. The public policy and general purposes of this chapter are to:

1. Increase utilization of Arizona's Colorado river entitlement that was confirmed to Arizona by the United States supreme court in article ii(b)(1), (2) and (6) of the decree entered at Arizona v. California, 376 U.S. 340 (1964), and that would otherwise be unused in Arizona, by delivering that water into this state through the central Arizona project aqueducts.

2. Store water brought into this state through the central Arizona project to protect Arizona municipal and industrial water users against future water shortages on the Colorado river and disruptions of operation of the central Arizona project.

3. Store water brought into this state through the central Arizona project to fulfill the water management objectives of this state set forth in chapter 2 of this title.

4. Provide the opportunity for storing water brought into this state through the central Arizona project to be available to implement the settlement of water right claims by Indian communities within Arizona.

5. Provide the opportunity to authorized agencies in the states of California and Nevada to store otherwise unused Colorado river water in Arizona to assist those states in meeting future water needs.

6. Provide the opportunity to facilitate the storage of water and stored water lending arrangements by entities in Arizona that may not have the opportunities or resources needed to store water.

45-2402. Definitions

Unless the context otherwise requires, the terms defined in sections 45-101, 45-402 and 45-802.01 have the same meaning in this chapter and for purposes of this chapter:

1. "Authority" means the Arizona water banking authority.

2. "Banking fund" means the Arizona water banking fund.

3. "Central Arizona water conservation district" or "CAWCD" means the multi-county water conservation district established under title 48, chapter 22.

4. "Commission" means the Arizona water banking authority commission.

5. "Decree" means the decree entered by the United States supreme court in Arizona v. California, 376 U.S. 340 (1964).

6. "Water banking services" means services provided by the authority to persons and Indian communities in this state to facilitate for those persons and Indian communities storage of water and stored water lending arrangements. Water banking services include only arrangements by which water will be made available for use in this state. Water banking services do not include interstate water banking undertaken by the authority pursuant to article 4 of this chapter. Water banking services may include:

(a) Storage of water.

(b) Obtaining water storage permits.

(c) Accruing, exchanging and assigning long-term storage credits.

(d) Lending and obtaining repayment of long-term storage credits.

7. "Water banking services agreement" means an agreement entered into between the authority and a person or Indian community in this state under which the authority will provide water banking services to that person or Indian community.

45-2421. Arizona water banking authority

A. The Arizona water banking authority is established. The purposes, powers and duties of the authority shall be executed by a commission to be known as the Arizona water banking authority commission.

B. The commission consists of the following members who are residents of this state:

1. The director of water resources who serves as chairperson of the commission.

2. The president of CAWCD or a representative designated by that president.

3. One person who is appointed by the governor pursuant to section 38-211 and who is knowledgeable in water resource management.

4. One person appointed by the governor pursuant to section 38-211 who represents an entity that holds a central Arizona project municipal and industrial subcontract.

5. One person appointed by the governor pursuant to section 38-211 who represents an entity located in a county adjacent to the mainstream of the Colorado river that holds a valid contract with the secretary of the interior executed before June 1, 1996, for diversion and beneficial consumptive use of Colorado river water in that county.

C. The commission members appointed by the governor shall serve a six year term of office. A member may serve more than one term and may continue to serve beyond the expiration of the term until a successor is appointed and assumes office. The term of office for the commission members appointed by the governor begins and ends on the third Monday in January. The commission members appointed pursuant to subsection B, paragraphs 3, 4 and 5 may be removed by the governor for cause.

D. The commission members appointed by the governor serve without compensation but are eligible for reimbursement for expenses from the banking fund pursuant to title 38, chapter 4, article 2.

E. In order to qualify for office members of the commission shall take and subscribe to an official oath to perform the duties of their office. The oath shall be filed with the director. The official oaths shall be in the form prescribed by law for official oaths of state officers.

F. The president of the senate, or a senator designated by the president, and the speaker of the house of representatives, or a representative designated by the speaker, shall each serve as nonvoting ex officio members of the commission.

G. Members of the commission are public officers and are subject to all provisions of law applicable to these officers.

H. Members of the commission are immune from liability for any action necessary to carry out the purposes of this chapter.

45-2422. Organization of commission; powers and duties; exemption

A. The commission shall select a vice-chairperson and a secretary from among its membership who shall each hold office for terms of two years to begin and end on the third Monday in January.

B. The powers and authority vested in and the duties imposed on the authority shall be exercised by a minimum of three voting members of the commission voting in agreement.

C. The authority is not a public service corporation subject to regulation by the Arizona corporation commission.

45-2423. Powers and duties of authority

A. The authority, acting through its commission, shall:

1. Administer the Arizona water banking fund in accordance with this chapter.

2. Coordinate its staffing needs with the director and CAWCD.

3. Coordinate the storage of water and distribution and extinguishment of long-term storage credits with the director in accordance with this chapter and the water management objectives set forth in chapter 2 of this title.

4. Coordinate with CAWCD for the purchase, delivery and storage of Colorado river water delivered through the central Arizona project in accordance with this chapter.

5. Coordinate and confer with state agencies, municipal corporations, special districts, authorities, other political subdivisions, private entities, Indian communities and the United States on matters within their jurisdiction relating to the policy and purposes of this chapter.

6. Determine, on an annual basis, the quantity of Colorado river water to be stored by the authority and where that storage will occur.

7. Account for, hold and distribute or extinguish long-term storage credits in accordance with this chapter.

8. Comply with all aspects of chapter 3.1 of this title.

9. Adopt an official seal for the authentication of its records, decisions and resolutions.

10. Keep the minutes of its meetings and all records, reports and other information relating to its work and programs in permanent form, systematically indexed and filed.

B. The authority, acting through its commission, may:

1. Apply for and hold water storage permits.

2. Accrue, exchange, assign, lend and hold long-term storage credits in accordance with this chapter.

3. Exchange Colorado river water for any type of water in accordance with chapter 4 of this title.

4. Enter into water banking services agreements.

5. Charge fees for water banking services.

6. Apply for and hold any water quality permit required for water storage by the department of environmental quality under title 49, chapter 2, article 3 or by federal law.

7. Make and execute all contracts, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, that shall be signed by the chairperson, or in the chairperson's absence the vice-chairperson, and attested by the secretary, necessary to:

(a) Obtain for storage Colorado river water delivered through the central Arizona project. Agreements by which the authority obtains Colorado river water are exempt from the requirements of title 41, chapter 23.

(b) Obtain effluent for storage but only after the authority has stored all available excess Central Arizona project water or when central Arizona project water is otherwise unavailable or undeliverable.

(c) Affiliate water storage permits held by the authority with storage facility permits.

(d) Store Colorado river water at permitted storage facilities.

(e) Distribute long-term storage credits earned by the authority to make water available to municipal and industrial users of Colorado river water in this state that are inside or outside of the CAWCD service area, in accordance with the provisions of this chapter.

(f) Store Colorado river water in Arizona on behalf of appropriately authorized agencies in California and Nevada.

(g) Cause a decrease in Arizona diversions from the Colorado river, ensuring that Arizona will use less than its full entitlement to Colorado river water in years in which California and Nevada agencies are contractually authorized to call on the water stored on their behalf by the authority.

(h) Distribute long-term storage credits earned by the authority on behalf of agencies in California and Nevada to Colorado river water users in Arizona to use in place of Colorado river water that would have otherwise been used by those Arizona users.

8. Sue and be sued.

9. Perform all other acts necessary for the authority to carry out its purposes, powers and duties in accordance with this chapter.

10. Submit a request for a general fund appropriation to the legislature each year. A request shall be accompanied by a budget detailing how the appropriation would be used and justifying the need for the appropriation.

11. Form temporary committees as deemed necessary by the authority to provide the authority with advice on issues identified by the authority. Advisory committees may consist of members of the public selected by the authority, members of the authority and authority staff.

12. Purchase long-term storage credits accrued by an Indian community pursuant to section 45-841.01, provided such long-term storage credits are distributed or extinguished in accordance with the rules of operation specified in section 45-2457 for the funds used by the authority to purchase the credits.

45-2424. Administration

A. The director shall provide administrative, technical and legal support to the authority to the extent requested by the authority. The director may hire staff, who shall be employees of the department of water resources, necessary to provide the level of support requested by the authority.

B. The director may employ a person in the capacity of Arizona water banking authority manager who shall be an employee of the department of water resources. The person employed in this capacity shall possess a high level of expertise and experience in Colorado river and water resource management in Arizona.

C. The director, on an annual basis, shall prepare and submit to the authority a budget showing the cost of providing the services requested by the authority for the following fiscal year. The authority may adjust its request for services, or when satisfied with the budget, may adopt it. The authority shall reimburse the department of water resources with monies from the banking fund for the services provided the authority in accordance with an adopted budget.

D. The CAWCD shall provide technical support to the authority to the extent requested by the authority. That technical support shall include expertise in the annual operation and capacity of the central Arizona project aqueducts and on the use of those aqueducts to fulfill the purposes of this chapter without impeding other water deliveries by CAWCD. The CAWCD, on an annual basis, shall prepare and submit to the authority a budget showing the cost of providing the services requested by the authority for the following fiscal year. The authority may adjust its request for services, or when satisfied with the budget, may adopt it. The authority shall reimburse the cawcd with monies from the banking fund for the services provided the authority in accordance with an adopted budget.

45-2425. Arizona water banking fund

A. The Arizona water banking fund is established and shall include subaccounts based on funding sources. The authority shall administer the banking fund in accordance with this chapter.

B. The banking fund consists of all of the following:

1. Monies appropriated from the state general fund by the legislature.

2. Reimbursement for the distribution of long-tee in storage credits, collected by the authority in accordance with section 45-2457, subsection B, paragraph 2.

3. Monies paid to the authority by the recipients of in lieu water at a groundwater savings facility, in accordance with section 45-2455, subsection C.

4. Monies collected in accordance with section 45-611, subsection C, paragraph 3.

5. Monies deposited in the banking fund in accordance with section 48-3715.03, subsection B.

6. Monies paid to the authority by agencies that have entered into interstate water banking agreements with the authority in accordance with section 45-2471.

7. Monies paid to the authority by persons and Indian communities in this state that have entered into water banking services agreements with the authority in accordance with section 45-2458.

C. In addition to the monies prescribed in this section, the authority may accept any gifts, grants or donations and deposit those monies in the banking fund.

D. Monies in the banking fund are exempt from lapsing under section 35-190. On notice from the authority, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the banking fund.

E. The authority may use the banking fund to pay all reasonable expenses incurred in carrying out its duties and responsibilities in accordance with this chapter.

45-2426. Annual report

A. The commission shall make and submit to the governor, president of the senate and speaker of the house of representatives on or before July 1 of each year a report containing a full and complete account of its transactions and proceedings for the preceding calendar year.

B. The report shall contain all of the following:

1. An accounting of all monies expended from the banking fund.

2. An accounting of all monies in the banking fund remaining available to the authority.

3. The amount of water stored by the authority.

4. The number of long-term storage credits distributed or extinguished by the authority.

5. The purposes for which long-term storage credits were distributed or extinguished by the authority.

6. A description of the water banking services and interstate water banking to be undertaken by the authority during the following ten year period, and a projection of the capacity of the authority during that period to undertake those activities in addition to storing Colorado river water brought into the state through the central Arizona project for all of the following purposes:

(a) Protecting this state's municipal and industrial water users against future water shortages on the Colorado river and disruptions of operation of the central Arizona project.

(b) Fulfilling the water management objectives of this state as set forth in chapter 2 of this title.

(c) Making water available to implement the settlement of water rights claims by Indian communities within this state.

7. Any other matter determined by the authority to be relevant to the policy and purposes of this chapter.

45-2427. Limitation on powers

A. This chapter does not authorize the authority to exercise any right of eminent domain.

B. The authority shall not store Colorado river water that would otherwise have been used in this state pursuant to a contract entered into pursuant to section 48-3703, paragraph 2, a section 5 contract under the Boulder Canyon project act (P.L. 108-6; 43 United States Code section 617) with a priority that is equal to or higher than a contract entered into pursuant to section 48-3703, paragraph 2 or any other section 5 contract under the Boulder Canyon project act entered into before the effective date of this amendment to this section. The authority shall not store for interstate water banking purposes Colorado river water that would otherwise have been used in this state.

C. The authority shall not enter into contracts with agencies in California and Nevada for the storage of water on their behalf until both of the following occur:

1. Regulations are in effect, promulgated by the secretary of the interior of the United States, that facilitate and allow the contractual distribution of unused entitlement under article II(b)(6) of the decree.

2. The director finds that the rules promulgated by the secretary of the interior adequately protect this state's rights to Colorado river water, as those rights are defined by the decree.

D. The authority shall not enter into water banking services agreements that will provide water for use outside this state. The authority may cancel any water banking services agreement without penalty or further obligation if after entering into a water banking services agreement, the authority finds that the agreement will provide water for use outside of this state. Notice of this subsection shall be included in every water banking services agreement entered into by the authority. The cancellation under this subsection shall be effective when written notice from the authority is received by all other parties to the water banking services agreement.

45-2451. First year banking program

By July 1, 1997, the authority shall have used its best efforts to store pursuant to this chapter a minimum of one hundred thousand acre-feet of Colorado river water in this state. The annual report of the authority to the governor, the president of the senate and the speaker of the house of representatives due on August 1, 1997 shall report the amount of water stored since the effective date of this chapter and if one hundred thousand acre-feet of water have not been stored, the reasons why this goal has not been achieved.

45-2452. Storage facility inventory

A. By March 1, 1997, the authority shall prepare and assess an inventory of existing storage facilities in this state to determine whether existing storage facilities are available to meet the authority's needs for the following ten years. The authority shall give special consideration to storage facilities constructed with monies from the state water storage fund, established pursuant to section 45-897.01. The inventory shall identify the location and capacity of each storage facility and the feasibility of the authority storing water at the identified facilities.

B. In assessing the inventory, the authority shall consult with the department of water resources to determine whether storage by the authority at each storage facility identified in the inventory as a potential storage facility to be used by the authority promotes the water management objectives set forth in chapter 2 of this title.

C. In assessing the inventory, the authority shall consult with CAWCD to determine whether central Arizona project water delivery and storage are feasible at each storage facility identified in the inventory as a potential storage facility to be used by the authority.

D. Based on the consultations with the department of water resources and the CAWCD and any other relevant factors, the authority shall determine whether storage facilities exist in this state to meet the water storage needs of the authority for the following ten years. In making this determination, the authority shall maximize to the extent feasible storage facilities constructed with monies from the state water storage fund, established pursuant to section 45-897.01.

E. The authority shall adopt the storage facility inventory if the authority determines that all of the following apply to the storage facility inventory:

1. It represents an accurate inventory of storage facilities in this state.

2. It accurately identifies those storage facilities that are available for the authority's use.

3. It accurately determines whether additional storage facilities are needed for the authority's use during the following ten years.

F. The authority shall subsequently update the storage facility inventory at least once every five years.

45-2453. Plan for additional storage facilities

A. If a storage facility inventory or an update concludes that additional storage facilities are necessary to meet the needs of the authority for the following ten years, the authority shall develop a plan for the development of additional storage facilities that specifies the type, location, date needed and capacity of additional storage facilities necessary to meet the needs of the authority.

B. In developing the plan for additional storage facilities, the authority shall consider all of the following:

1. The amount of additional storage capacity needed to meet the authority's water storage needs.

2. The advice of the department of water resources regarding where water storage would most contribute to meeting the water management objectives set forth in chapter 2 of this title.

3. The advice of cawcd regarding the feasibility of delivering and storing central Arizona project water at any proposed storage facility.

4. The advice of the department of environmental quality regarding any potential adverse impacts from a proposed storage facility to landowners and water users in the vicinity of any proposed storage facility.

5. The potential costs to the authority of facilitating the construction or development of a proposed storage facility and the cost-effectiveness of any proposed storage facility.

6. Whether CAWCD or other entities would be willing to construct, maintain and operate any proposed storage facility.

7. The way in which water stored at a proposed storage facility could be used by the authority to achieve the policy and purposes of this chapter.

8. Any other factor the authority determines to be relevant.

C. Before adopting a plan for additional storage facilities, the authority shall prepare a draft plan for additional storage facilities. The authority shall solicit public comment on the draft plan for additional storage facilities by presenting the draft plan:

1. To the groundwater users advisory councils for the Tucson, Phoenix and Pinal active management areas. The presentation shall be made at publicly noticed open meetings of each advisory council at which members of the public shall be allowed to comment on the draft plan for additional storage facilities.

2. If any proposed storage facility is located outside of an active management area, to the county board of supervisors for each county in which a proposed facility is to be located. The presentation shall be made at a publicly noticed open meeting of the county board of supervisors at which members of the public shall be allowed to comment on the draft plan for additional storage facilities.

D. The authority may revise the draft plan for additional storage facilities based on the public comment received.

E. The authority shall adopt the plan for additional storage facilities if the authority determines that the plan, when implemented, will meet the needs of the authority for the following ten years. If adopting a plan for additional storage facilities, the authority shall adopt the plan within nine months of adopting the storage facility inventory or update.

F. The authority may modify an adopted plan for additional storage facilities after soliciting public comment on the modification in accordance with subsection C of this section.

45-2454. Implementation of storage facilities plan

A. The authority shall implement an adopted plan for additional storage facilities.

B. To facilitate the development or construction of additional storage facilities required by a plan, the authority shall solicit proposals from CAWCD and other entities willing to undertake the development or construction of those storage facilities. The authority

may negotiate and enter into water storage agreements in accordance with section 45-2455 with CAWCD and other entities that submit proposals acceptable to the authority.

45-2455. Water storage agreements; groundwater savings facilities

A. The authority may not own, develop, operate or construct storage facilities but may enter into contracts to reserve storage capacity at storage facilities and may pay reasonable compensation for those reservations.

B. The authority may enter into agreements with storage facility permit holders to store water at storage facilities and may pay reasonable compensation for the costs associated with operating and maintaining a storage facility to the extent that the storage facility is used to store water for the purposes of the authority.

C. To store water at a groundwater savings facility, the authority may enter into agreements that require the recipients of in lieu water to pay to the authority all or part of the cost of providing the in lieu water to the recipients.

D. Agreements entered into under this section shall not impede the ability of the CAWCD to meet the obligations of its central Arizona project water service contracts and subcontracts.

45-2456. Annual plan of operation

A. By January 1 of each year, the authority shall adopt a plan of operation for that calendar year.

B. In developing the plan of operation, the authority shall consider all of the following:

1. The amount of Colorado river water available for storage.

2. The advice of the department of water resources regarding where water storage would most contribute to fulfilling the water management objectives set forth in chapter 2 of this title.

3. The advice of CAWCD regarding the amount and location of water delivery and storage that is feasible.

4. The respective costs of storing water at available storage facilities.

5. The amount of storage allowed by water storage permits held by the authority.

6. The monies available from the banking fund.

7. The way in which water stored could be used by the authority to achieve the policy and purposes of this chapter.

8. The obligations of the authority under any water banking services agreement into which the authority has entered.

9. Any other factor the authority determines to be relevant.

C. The authority shall prepare a draft plan of operation each year. The authority shall solicit public comment on the draft plan of operation by presenting the draft plan of operation:

1. To the groundwater users advisory councils for the Tucson, Phoenix and Pinal active management areas. The presentation shall be made at publicly noticed open meetings of each advisory council at which members of the public shall be allowed to comment on the draft plan of operation.

2. If any water storage during the year is to occur outside of an active management area, to the county board of supervisors for each county in which the storage is to occur. The presentation shall be made at a publicly noticed open meeting of the county board of supervisors at which members of the public shall be allowed to comment on the draft plan of operation.

D. The authority may revise the draft plan of operation based on the public comment received.

E. An adopted plan of operation shall include all of the following:

1. A projection of expenditures for acquiring water.

2. A projection of the amount of water to be acquired each month by the authority.

3. A projection of the cost of delivering that water through the central Arizona project to a storage facility, including fees for the operation, maintenance, pumping energy and capital costs of the central Arizona project as established by CAWCD.

4. A projection of expenditures for water storage.

5. A projection of water storage permits to be obtained and a projection of with which storage facility permit each water storage permit will be affiliated.

6. A projection of the amount of water to be stored, accounted for by active management area, and if water storage will occur outside of an active management area, by groundwater basin or subbasin.

7. A projection of long-term storage credits that will be distributed or extinguished, accounted for by location where the long-term storage credits were stored, the purpose for which the distribution or extinguishment will occur and the persons to whom the long-term storage credits will be distributed.

8. A projection of long-term storage credits that will be stored, loaned, replaced or distributed pursuant to any water banking services agreement into which the authority has entered.

9. Any other matter determined to be relevant by the authority.

F. The authority may modify an adopted plan of operation.

G. The authority shall operate in accordance with its adopted or modified plan of operation.

45-2457. Accounting; rules of operation

A. The authority shall develop an accounting system for the long-term storage credits accrued by the authority. The accounting system shall be designed to allow the authority to determine which funding source of the banking fund paid for each long-term storage credit accrued by the authority.

B. The authority shall operate in accordance with all of the following rules of operation:

1. The authority shall reserve a reasonable number of long-term storage credits accrued with general fund appropriations for the benefit of municipal and industrial users of Colorado river water in this state that are outside of the service area of CAWCD.

2. The authority may distribute long-term storage credits accrued with general fund appropriations for both of the following:

(a) To make water available to a municipal and industrial user of Colorado river water in this state that is outside of the service area of CAWCD, if both of the following apply:

(i) The municipal and industrial user would otherwise suffer a water shortage. The authority may distribute long-term credits to the extent reasonably necessary to offset the water shortage.

(ii) The authority collects reimbursement for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to the person who is responsible for reimbursing the authority for the credits distributed.

(b) To make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors, if all of the following apply:

(i) CAWCD's normal diversions from the Colorado river have been or will be disrupted by shortages on the river or by disruptions in the operation of the central Arizona project.

(ii) The authority does not distribute for this purpose the long-term storage credits reserved in accordance with paragraph 1.

(iii) The authority collects reimbursement from CAWCD for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to CAWCD.

3. The authority may distribute or extinguish long-term storage credits accrued with general fund appropriations to implement the settlement of water right claims by Indian communities in this state.

4. On request from the director, the authority may extinguish long-term storage credits accrued with general fund appropriations to fulfill the water management objectives set forth in chapter 2 of this title.

5. The authority may exchange long-term storage credits accrued with general fund appropriations for long-term storage credits held by other persons if the long-term storage credits received by the authority were stored in a location that better enables the authority to fulfill the purposes and policies of this chapter than were the long-term storage credits exchanged by the authority. For the purposes of this paragraph, the authority may make exchanges of long-term storage credits stored in one active management area for long-term storage credits stored in a different active management area or of long-term storage credits stored in one groundwater basin for long-term storage credits stored in a different groundwater basin.

6. The authority shall distribute or extinguish long-term storage credits accrued with monies collected in accordance with section 45-611, subsection C, paragraph 3 only for the benefit of the active management area in which the monies were collected. The authority may distribute or extinguish these long-term storage credits to implement the settlement of water right claims by Indian communities in this state or, on request from the director, to meet the water management objectives set forth in chapter 2 of this title.

7. The authority shall distribute long-term storage credits accrued with monies deposited in the fund in accordance with section 48-3715.03, subsection B only for the benefit of the county in which the monies were collected. The authority shall distribute these long-term storage credits to CAWCD to the extent necessary to meet the demands of CAWCD's municipal and industrial subcontractors during times in which CAWCD's diversions from the Colorado river have been or will be disrupted by shortages on the Colorado river or by disruptions in operation of the central Arizona project.

8. For each county within the CAWCD service area, on a determination by the authority that the number of long-term storage credits accrued with monies deposited in the fund in accordance with section 48-3715.03, subsection B exceeds the needs specified in paragraph 7 for that county, the authority shall distribute those excess long-term storage credits to municipal water providers within that county that are at the time of distribution experiencing surface water supply shortages not associated with the central Arizona project. The authority shall distribute to each such municipal water provider the lesser of the following number of long-term storage credits:

(a) The total number of credits determined to be available by the authority under this paragraph multiplied by the percentage produced by dividing a numerator equaling the amount of revenues paid pursuant to section 48-3715.02, subsections B and C by taxpayers that are within both the boundaries of the municipal provider that is experiencing the shortage and the boundaries of the surface water supply system that is experiencing the shortage by a denominator equaling the total revenues paid pursuant to section 48-3715.02, subsections B and C by all taxpayers that are located within both the boundaries of a municipal water provider and the boundaries of a surface water supply system in the county. In making these computations, the authority shall use the amounts of revenue paid by taxpayers during the most recent tax year for which this information is available.

(b) Twenty per cent of the total surface water shortage that the municipal and industrial water provider is experiencing.

9. The authority shall distribute or replace long-term storage credits accrued with monies collected pursuant to water banking services agreements in accordance with the terms of those agreements.

C. Any other long-term storage credits accrued by the authority may be distributed or extinguished by the authority in accordance with the policy and purposes of this chapter.

D. Except as provided by subsection B, paragraph 7 of this section and except as provided by agreements entered into by the authority, the decision to distribute or extinguish any long-term storage credit accrued by the authority is at the complete discretion of the authority.

45-2471. Interstate water banking agreements

A. The authority may negotiate and enter into interstate water banking agreements with appropriately authorized agencies in California and Nevada, if all of the following apply:

1. The provisions of section 45-2427, subsection C have been met.

2. The director and at least two other voting members of the commission vote in agreement to enter into an interstate banking agreement.

3. The authority shall not enter into agreements with California and Nevada agencies that require the authority to reduce Arizona diversions from the Colorado river more than a total of one hundred thousand acre-feet of water in any one year.

4. No interstate banking agreement may be inconsistent with the decree.

B. In each interstate water banking agreement, the authority may agree to store Colorado river water in Arizona so that the stored water may be used in place of Arizona diversions from the Colorado river in years in which the California or Nevada agency requests water from the authority.

C. In each interstate water banking agreement, the California or Nevada agency shall agree to pay to the authority all costs that are or will be incurred by the authority in storing and recovering Colorado river water pursuant to the interstate banking agreement. The costs include all of the following:

1. The cost of acquiring Colorado river water.

2. The cost of delivering that Colorado river water through the central Arizona project to a storage facility, including fees for the operation, maintenance, pumping energy and capital costs of the central Arizona project as established by CAWCD.

3. Amounts equivalent to taxes ordinarily paid by CAWCD subcontractors and their customers to pay for the repayment, operation and maintenance costs of the central Arizona project, to the extent those equivalent amounts are not collected by paragraph 8 of this subsection.

4. The cost of storing that Colorado river water.

5. The cost of constructing, operating and maintaining a storage facility to the extent that facility stores water for the California or Nevada agency.

6. The cost of recovering the stored water and delivering it to Colorado river water users in this state to use in place of Colorado river water that would otherwise be used.

7. A fee equivalent to the approximate amount of administrative, legal and technical expenses incurred by the authority in storing water for the California or Nevada agency, recovering that stored water and making an equivalent amount of Colorado river water available to the California or Nevada agency.

8. Any fee paid in lieu of taxes pursuant to section 48-3715, subsection B by the authority in acquiring the water to be stored.

D. In each water banking agreement, the authority shall agree that in years in which the California or Nevada agency requests recovery of water stored in Arizona, the authority shall cause a decrease in Arizona diversions from the Colorado river by the amount of water requested for recovery by the California or Nevada agency, thus creating unused entitlement for delivery to that agency by the United States secretary of the interior pursuant to article ii(b)(6) of the decree. These banking agreements may provide that during years when the secretary of the interior has declared a shortage on the Colorado river, no decrease in Arizona diversions shall be required.

E. Each interstate banking agreement shall specify that if the California or Nevada agency breaches the terms of the agreement the authority shall cease creating unused entitlement for that entity until the breach is cured.

45-2472. Distribution of long-term storage credits

A. The authority may distribute long-term storage credits accrued through the use of monies paid by California and Nevada agencies pursuant to interstate banking agreements to CAWCD or other users of Colorado river water in this state, if both of the following apply:

1. CAWCD or other water user agrees to use the long-teen storage credits to replace diversions that otherwise would have been made from the Colorado river.

2. CAWCD or other water user agrees to reduce its diversion of Colorado river water in years in which the authority is obligated to recover stored water on behalf of a California or Nevada agency in an amount equivalent to the long-term storage credits distributed.

B. The authority may pay from the monies collected from the California or Nevada agency in the banking fund to CAWCD or other users of Colorado river water that have agreed to reduce diversions from the Colorado river in accordance with subsection A the amount necessary to compensate CAWCD or other water user for increased costs incurred in recovering and using the stored water in place of diverting Colorado river water.

House Bill 2463 — 441R — I Ver

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NEW LANGUAGE APPEARS LIKE THIS
Stricken language appears like this
Remaining language appears like this

HB2463 - 441R - I Ver

Reference Title: water banking amendments

AN ACT
AMENDING SECTIONS 45-2401, 45-2402, 45-2423, 45-2425, 45-2426, 45-2427, 45-2456 AND 45-2457, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 14, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-2458; AMENDING SECTION 48-3715, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA WATER BANKING AUTHORITY.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 45-2401, Arizona Revised Statutes, is amended to read:

45-2401 . Declaration of policy and purpose

A. The legislature finds that this state is currently and temporarily underutilizing both the entitlement to Colorado river water confirmed to it by the United States supreme court in Arizona v. California, 373 U.S. 546 (1963), and the central Arizona project, which has the capacity to divert into this state a significant portion of this state's entitlement to Colorado river water. The legislature further finds that, due to the low priority on the Colorado river of the central Arizona project and other Arizona Colorado river water users, the susceptibility of this state to future shortages of water on the Colorado river is a threat to the general economy and welfare of this state and its citizens.

B. THE LEGISLATURE FURTHER FINDS THAT WATER USERS WITHIN THE CENTRAL ARIZONA PROJECT SERVICE AREA ALSO RELY ON OTHER SURFACE WATER SUPPLIES, THAT THESE SUPPLIES ARE SUSCEPTIBLE TO FUTURE SHORTAGES OF WATER AND THAT THESE SHORTAGES ARE A THREAT TO THE GENERAL ECONOMY AND WELFARE OF THIS STATE AND ITS CITIZENS.

***B.* C.** The legislature further finds that future water needs in the states of California and Nevada could exceed the entitlements of those states to Colorado river water. Those future water needs could thereby affect the general economy and welfare of this state and its citizens because of the close economic ties among Arizona, California and Nevada.

D. THE LEGISLATURE FURTHER FINDS THAT ARIZONA WATER USERS COULD MORE EFFICIENTLY MANAGE, DISTRIBUTE AND USE AVAILABLE WATER RESOURCES THROUGH THE STORAGE OF WATER SUPPLIES AND THROUGH STORED WATER LENDING ARRANGEMENTS, BUT THAT NOT ALL OF THESE ARIZONA WATER USERS HAVE THE OPPORTUNITIES OR RESOURCES NEEDED TO STORE WATER OR ENTER INTO STORED WATER LENDING ARRANGEMENTS.

C. **E.** The legislature further finds that for the purposes of this chapter diverting Colorado river water for storage off of the Colorado river system is a consumptive use of that water.

D. **F.** The legislature further finds that water banking is complimentary and compatible with existing water management efforts. The Arizona water banking authority will compliment and assist the activities of the central Arizona water conservation district in its mission to provide a dependable and cost-effective water supply.

E. **G.** The legislature therefore finds that it is in the best interest of the general economy and welfare of this state and its citizens to:

1. Use the central Arizona project to store otherwise unused Arizona entitlement to Colorado river water within this state to meet future water needs within this state.

2. Provide the opportunity to the states of California and Nevada to store currently unused Colorado river water in Arizona to meet future needs in those states.

3. PROVIDE THE OPPORTUNITY TO FACILITATE THE STORAGE OF WATER AND STORED WATER LENDING ARRANGEMENTS BY ENTITIES IN ARIZONA THAT MAY NOT HAVE THE OPPORTUNITIES OR RESOURCES NEEDED TO STORE WATER.

F. **H.** The public policy and general purposes of this chapter are to:

1. Increase utilization of Arizona's Colorado river entitlement that was confirmed to Arizona by the United States supreme court in article ii(b)(1), (2) and (6) of the decree entered at Arizona v. California, 376 U.S. 340 (1964), and that would otherwise be unused in Arizona, by delivering that water into this state through the central Arizona project aqueducts.

2. Store water brought into this state through the central Arizona project to protect Arizona municipal and industrial water users against future water shortages on the Colorado river and disruptions of operation of the central Arizona project.

3. Store water brought into this state through the central Arizona project to fulfill the water management objectives of this state set forth in chapter 2 of this title.

4. Provide the opportunity for storing water brought into this state through the central Arizona project to be available to implement the settlement of water right claims by Indian communities within Arizona.

5. Provide the opportunity to authorized agencies in the states of California and Nevada to store otherwise unused Colorado river water in Arizona to assist those states in meeting future water needs.

6. PROVIDE THE OPPORTUNITY TO FACILITATE THE STORAGE OF WATER AND STORED WATER LENDING ARRANGEMENTS BY ENTITIES IN ARIZONA THAT MAY NOT HAVE THE OPPORTUNITIES OR RESOURCES NEEDED TO STORE WATER.

Sec. 2. Section 45-2402, Arizona Revised Statutes, is amended to read:

45-2402 . Definitions

Unless the context otherwise requires, the terms defined in sections 45-101, 45-402 and 45-802.01 have the same meaning in this chapter and for purposes of this chapter:

1. "Authority" means the Arizona water banking authority.

2. "Banking fund" means the Arizona water banking fund.

3. "Central Arizona water conservation district" or "CAWCD" means the multi-county water conservation district established under title 48, chapter 22.

4. "Commission" means the Arizona water banking authority commission.

5. "Decree" means the decree entered by the United States supreme court in Arizona v. California, 376 U.S. 340 (1964).

6. "WATER BANKING SERVICES" MEANS SERVICES PROVIDED BY THE AUTHORITY TO PERSONS AND INDIAN COMMUNITIES IN THIS STATE TO FACILITATE FOR THOSE PERSONS AND INDIAN COMMUNITIES STORAGE OF WATER AND STORED WATER LENDING ARRANGEMENTS. WATER BANKING SERVICES INCLUDE ONLY ARRANGEMENTS BY WHICH WATER WILL BE MADE AVAILABLE FOR USE IN THIS STATE. WATER BANKING SERVICES DO NOT INCLUDE INTERSTATE WATER BANKING UNDERTAKEN BY THE AUTHORITY PURSUANT TO ARTICLE 4 OF THIS CHAPTER. WATER BANKING SERVICES MAY INCLUDE:

(a) STORAGE OF WATER.

(b) OBTAINING WATER STORAGE PERMITS.

(c) **ACCRUING, EXCHANGING AND ASSIGNING LONG-TERM STORAGE CREDITS.**

(d) **LENDING AND OBTAINING REPAYMENT OF LONG-TERM STORAGE CREDITS.**

7. "WATER BANKING SERVICES AGREEMENT" MEANS AN AGREEMENT ENTERED INTO BETWEEN THE AUTHORITY AND A PERSON OR INDIAN COMMUNITY IN THIS STATE UNDER WHICH THE AUTHORITY WILL PROVIDE WATER BANKING SERVICES TO THAT PERSON OR INDIAN COMMUNITY.

Sec. 3. Section 45-2423, Arizona Revised Statutes, is amended to read:

45-2423 . Powers and duties of authority

A. The authority, acting through its commission, shall:

1. Administer the Arizona water banking fund in accordance with this chapter.

2. Coordinate its staffing needs with the director and CAWCD.

3. Coordinate the storage of water and distribution and extinguishment of long-term storage credits with the director in accordance with this chapter and the water management objectives set forth in chapter 2 of this title.

4. Coordinate with CAWCD for the purchase, delivery and storage of Colorado river water delivered through the central Arizona project in accordance with this chapter.

5. Coordinate and confer with state agencies, municipal corporations, special districts, authorities, other political subdivisions, private entities, Indian communities and the United States on matters within their jurisdiction relating to the policy and purposes of this chapter.

6. Determine, on an annual basis, the quantity of Colorado river water to be stored by the authority and where that storage will occur.

7. Account for, hold and distribute or extinguish long-teen storage credits in accordance with this chapter.

8. Comply with all aspects of chapter 3.1 of this title.

9. Adopt an official seal for the authentication of its records, decisions and resolutions.

10. Keep the minutes of its meetings and all records, reports and other information relating to its work and programs in permanent form, systematically indexed and filed.

B. The authority, acting through its commission, may:

1. Apply for and hold water storage permits.

2. Accrue, exchange, **ASSIGN, LEND** and hold long-term storage credits in accordance with this chapter.

3. Exchange Colorado river water for any type of water in accordance with chapter 4 of this title.

4. ENTER INTO WATER BANKING SERVICES AGREEMENTS.

5. CHARGE FEES FOR WATER BANKING SERVICES.

6. APPLY FOR AND HOLD ANY WATER QUALITY PERMIT REQUIRED FOR WATER STORAGE BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER TITLE 49, CHAPTER 2, ARTICLE 3 OR BY FEDERAL LAW.

***4.* 7.** Make and execute all contracts, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, that shall be signed by the chairperson, or in the chairperson's absence the vice-chairperson, and attested by the secretary, necessary to:

(a) Obtain for storage Colorado river water delivered through the central Arizona project. Agreements by which the authority obtains Colorado river water are exempt from the requirements of title 41, chapter 23.

(b) OBTAIN EFFLUENT FOR STORAGE BUT ONLY AFTER THE AUTHORITY HAS STORED ALL AVAILABLE EXCESS CENTRAL ARIZONA PROJECT WATER OR WHEN CENTRAL ARIZONA PROJECT WATER IS OTHERWISE UNAVAILABLE OR UNDELIVERABLE.

(b) **(** c **)** Affiliate water storage permits held by the authority with storage facility permits.

(c) **(** d **)** Store Colorado river water at permitted storage facilities.

(d) **(** e **)** Distribute long-term storage credits earned by the authority to make water available to municipal and industrial users of Colorado river water in this state that are inside or outside of the CAWCD service area, in accordance with the provisions of this chapter.

(e) **(** f **)** Store Colorado river water in Arizona on behalf of appropriately authorized agencies in California and Nevada.

(f) **(** g **)** Cause a decrease in Arizona diversions from the Colorado river, ensuring that Arizona will use less than its full entitlement to Colorado river water in years in which California and Nevada agencies are contractually authorized to call on the water stored on their behalf by the authority.

(g) **(** h **)** Distribute long-term storage credits earned by the authority on behalf of agencies in California and Nevada to Colorado river water users in Arizona to use in place of Colorado river water that would have otherwise been used by those Arizona users.

5. **8.** Sue and be sued.

6. **9.** Perform all other acts necessary for the authority to carry out its purposes, powers and duties in accordance with this chapter.

7. **10.** Submit a request for a general fund appropriation to the legislature each year. A request shall be accompanied by a budget detailing how the appropriation would be used and justifying the need for the appropriation.

11. FORM TEMPORARY COMMITTEES AS DEEMED NECESSARY BY THE AUTHORITY TO PROVIDE THE AUTHORITY WITH ADVICE ON ISSUES IDENTIFIED BY THE AUTHORITY. ADVISORY COMMITTEES MAY CONSIST OF MEMBERS OF THE PUBLIC SELECTED BY THE AUTHORITY, MEMBERS OF THE AUTHORITY AND AUTHORITY STAFF.

Sec. 4. Section 45-2425, Arizona Revised Statutes, is amended to read:

45-2425 . Arizona water banking fund

A. The Arizona water banking fund is established. The state treasurer shall establish subaccounts of the banking fund based on funding sources. The authority shall administer the **BANKING** fund in accordance with this chapter.

B. The banking fund consists of all of the following:

1. Monies appropriated from the state general fund by the legislature.

2. Reimbursement for the distribution of long-term storage credits, collected by the authority in accordance with section 45-2457, subsection B, paragraph 2.

3. Monies paid to the authority by the recipients of in lieu water at a groundwater savings facility, in accordance with section 45-2455, subsection C.

4. Monies collected in accordance with section 45-611, subsection C, paragraph 3.

5. Monies deposited in the **BANKING** fund in accordance with section 48-3715.03, subsection B.

6. Monies paid to the authority by agencies that have entered into interstate **WATER** banking agreements with the authority in accordance with section 45-2471.

7. MONIES PAID TO THE AUTHORITY BY PERSONS AND INDIAN COMMUNITIES IN THIS STATE THAT HAVE ENTERED INTO WATER BANKING SERVICES AGREEMENTS WITH THE AUTHORITY IN ACCORDANCE WITH SECTION 45-2458.

C. In addition to the monies prescribed in this section, the authority may accept any gifts, grants or donations and deposit those monies in the banking fund.

D. Monies in the banking fund are exempt from lapsing under section 35-190. Interest earned on monies in the banking fund shall be credited to the banking fund.

E. The authority may use the banking fund to pay all reasonable expenses incurred in carrying out its duties and responsibilities in accordance with this chapter.

Sec. 5. Section 45-2426, Arizona Revised Statutes, is amended to read:

45-2426 . Annual report

A. The commission shall make and submit to the governor, president of the senate and speaker of the house of representatives on or before July 1 of each year a report containing a full and complete account of its transactions and proceedings for the preceding calendar year.

B. The report shall contain all of the following:

1. An accounting of all monies expended from the banking fund.

2. An accounting of all monies in the banking fund remaining available to the authority.

3. The amount of water stored by the authority.

4. The number of long-term storage credits distributed or extinguished by the authority.

5. The purposes for which long-term storage credits were distributed or extinguished by the authority.

6. A DESCRIPTION OF THE WATER BANKING SERVICES AND INTERSTATE WATER BANKING TO BE UNDERTAKEN BY THE AUTHORITY DURING THE FOLLOWING TEN YEAR PERIOD, AND A PROJECTION OF THE CAPACITY OF THE AUTHORITY DURING THAT PERIOD TO UNDERTAKE THOSE ACTIVITIES IN ADDITION TO STORING COLORADO RIVER WATER BROUGHT INTO THE STATE THROUGH THE CENTRAL ARIZONA PROJECT FOR ALL OF THE FOLLOWING PURPOSES:

(a **) PROTECTING THIS STATE'S MUNICIPAL AND INDUSTRIAL WATER USERS AGAINST FUTURE WATER SHORTAGES ON THE COLORADO RIVER AND DISRUPTIONS OF OPERATION OF THE CENTRAL ARIZONA PROJECT.**

(b) FULFILLING THE WATER MANAGEMENT OBJECTIVES OF THIS STATE AS SET FORTH IN CHAPTER 2 OF THIS TITLE.

(c) MAKING WATER AVAILABLE TO IMPLEMENT THE SETTLEMENT OF WATER RIGHTS CLAIMS BY INDIAN COMMUNITIES WITHIN THIS STATE.

***6.* 7.** Any other matter determined by the authority to be relevant to the policy and purposes of this chapter.

Sec. 6. Section 45-2427, Arizona Revised Statutes, is amended to read:

45-2427 . Limitation on powers

A. This chapter does not authorize the authority to exercise any right of eminent domain.

B. The authority shall not store Colorado river water that would otherwise have been used in this state.

C. The authority shall not enter into contracts with agencies in California and Nevada for the storage of water on their behalf until both of the following occur:

1. Regulations are in effect, promulgated by the secretary of the interior of the United States, that facilitate and allow the contractual distribution of unused entitlement under article II(b)(6) of the decree.

2. The director finds that the rules promulgated by the secretary of the interior adequately protect this state's rights to Colorado river water, as those rights are defined by the decree.

D. THE AUTHORITY SHALL NOT ENTER INTO WATER BANKING SERVICES AGREEMENTS THAT WILL PROVIDE WATER FOR USE OUTSIDE THIS STATE. THE AUTHORITY MAY CANCEL ANY WATER BANKING SERVICES AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION IF AFTER ENTERING INTO A WATER BANKING SERVICES AGREEMENT, THE AUTHORITY FINDS THAT THE AGREEMENT WILL PROVIDE WATER FOR USE OUTSIDE OF THIS STATE. NOTICE OF THIS SUBSECTION SHALL BE INCLUDED IN EVERY WATER BANKING SERVICES AGREEMENT ENTERED INTO BY THE AUTHORITY. THE CANCELLATION UNDER THIS SUBSECTION SHALL BE EFFECTIVE WHEN WRITTEN NOTICE FROM THE AUTHORITY IS RECEIVED BY ALL OTHER PARTIES TO THE WATER BANKING SERVICES AGREEMENT.

Sec. 7. Section 45-2456, Arizona Revised Statutes, is amended to read:

45-2456 . Annual plan of operation

A. By January 1 of each year, the authority shall adopt a plan of operation for that calendar year.

B. In developing the plan of operation, the authority shall consider all of the following:

1. The amount of Colorado river water available for storage.

2. The advice of the department of water resources regarding where water storage would most contribute to fulfilling the water management objectives set forth in chapter 2 of this title.

3. The advice of CAWCD regarding the amount and location of water delivery and storage that is feasible.

4. The respective costs of storing water at available storage facilities.

5. The amount of storage allowed by water storage permits held by the authority.

6. The monies available from the banking fund.

7. The way in which water stored could be used by the authority to achieve the policy and purposes of this chapter.

8. THE OBLIGATIONS OF THE AUTHORITY UNDER ANY WATER BANKING SERVICES AGREEMENT INTO WHICH THE AUTHORITY HAS ENTERED.

***8.* 9.** Any other factor the authority determines to be relevant.

C. The authority shall prepare a draft plan of operation each year. The authority shall solicit public comment on the draft plan of operation by presenting the draft plan of operation:

1. To the groundwater users advisory councils for the Tucson, Phoenix and Pinal active management areas. The presentation shall be made at publicly noticed open meetings of each advisory council at which members of the public shall be allowed to comment on the draft plan of operation.

2. If any water storage during the year is to occur outside of an active management area, to the county board of supervisors for each county in which the storage is to occur. The presentation shall be made at a publicly noticed open meeting of the county board of supervisors at which members of the public shall be allowed to comment on the draft plan of operation.

D. The authority may revise the draft plan of operation based on the public comment received.

E. An adopted plan of operation shall include all of the following:

1. A projection of expenditures for acquiring water.

2. A projection of the amount of water to be acquired each month by the authority.

3. A projection of the cost of delivering that water through the central Arizona project to a storage facility, including fees for the operation, maintenance, pumping energy and capital costs of the central Arizona project as established by CAWCD.

4. A projection of expenditures for water storage.

5. A projection of water storage permits to be obtained and a projection of with which storage facility permit each water storage permit will be affiliated.

6. A projection of the amount of water to be stored, accounted for by active management area, and if water storage will occur outside of an active management area, by groundwater basin or subbasin.

7. A projection of long-term storage credits that will be distributed or extinguished, accounted for by location where the long-term storage credits were stored, the purpose for which the distribution or extinguishment will occur and the persons to whom the long-term storage credits will be distributed.

8. A PROJECTION OF LONG-TERM STORAGE CREDITS THAT WILL BE STORED, LOANED, REPLACED OR DISTRIBUTED PURSUANT TO ANY WATER BANKING SERVICES AGREEMENT INTO WHICH THE AUTHORITY HAS ENTERED.

***8.* 9.** Any other matter determined to be relevant by the authority.

F. The authority may modify an adopted plan of operation.

G. The authority shall operate in accordance with its adopted or modified plan of operation.

Sec. 8. Section 45-2457, Arizona Revised Statutes, is amended to read:

45-2457 Accounting; rules of operation

A. The authority shall develop an accounting system for the long-term storage credits accrued by the authority. The accounting system shall be designed to allow the authority to determine which funding source of the banking fund paid for each long-term storage credit accrued by the authority.

B. The authority shall operate in accordance with all of the following rules of operation:

1. The authority shall reserve a reasonable number of long-term storage credits accrued with general fund appropriations for the benefit of municipal and industrial users of Colorado river water in this state that are outside of the service area of CAWCD.

2. The authority may distribute long-term storage credits accrued with general fund appropriations for both of the following:

(a) To make water available to a municipal and industrial user of Colorado river water in this state that is outside of the service area of CAWCD, if both of the following apply:

(i) The municipal and industrial user would otherwise suffer a water shortage. The authority may distribute long-term credits to the extent reasonably necessary to offset the water shortage.

(ii) The authority collects reimbursement for the cost to the authority of replacing the long-term storage credits distributed. **THE AUTHORITY MAY REPLACE THE LONG-TERM STORAGE CREDITS IN ANY YEAR IT DEEMS APPROPRIATE BUT SHALL USE GOOD FAITH EFFORTS TO REPLACE THE LONG-TERM STORAGE CREDITS AT A REASONABLE COST TO THE PERSON WHO IS RESPONSIBLE FOR REIMBURSING THE AUTHORITY FOR THE CREDITS DISTRIBUTED.**

(b) To make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors, if all of the following apply:

(i) CAWCD's normal diversions from the Colorado river have been or will be disrupted by shortages on the river or by disruptions in the operation of the central Arizona project.

(ii) The authority does not distribute for this purpose the long-term storage credits reserved in accordance with paragraph 1 *of this subsection* .

(iii)The authority collects reimbursement from CAWCD for the cost to the authority of replacing the long-term storage credits distributed. **THE AUTHORITY MAY REPLACE THE LONG-TERM STORAGE CREDITS IN ANY YEAR IT DEEMS APPROPRIATE BUT SHALL USE GOOD FAITH EFFORTS TO REPLACE THE LONG-TERM STORAGE CREDITS AT A REASONABLE COST TO CAWCD.**

3. The authority may distribute or extinguish long-term storage credits accrued with general fund appropriations to implement the settlement of water right claims by Indian communities in this state.

4. On request from the director, the authority may extinguish long-term storage credits accrued with general fund appropriations to fulfill the water management objectives set forth in chapter 2 of this title.

5. The authority may exchange long-term storage credits accrued with general fund appropriations for long-term storage credits held by other persons if the long-term storage credits received by the authority were stored in a location that better enables the authority to fulfill the purposes and policies of this chapter than were the long-term storage credits exchanged by the authority. For the purposes of this paragraph, the authority may make exchanges of long-term storage credits stored in one active management area for long-term storage credits stored in a different active management area or of long-term storage credits stored in one groundwater basin for long-term storage credits stored in a different groundwater basin.

6. The authority shall distribute or extinguish long-term storage credits accrued with monies collected in accordance with section 45-611, subsection C, paragraph 3 only for the benefit of the active management area in which the monies were collected. The authority may distribute or extinguish these long-term storage credits to implement the settlement of water right claims by Indian communities in this state or, on request from the director, to meet the water management objectives set forth in chapter 2 of this title.

7. The authority shall distribute long-term storage credits accrued with monies deposited in the fund in accordance with section 48-3715.03, subsection B only for the benefit of the county in which the monies were collected. The authority shall distribute these long-term storage credits to CAWCD to the extent necessary to meet the demands of CAWCD's municipal and industrial subcontractors during times in which CAWCD's diversions from the Colorado river have been or will be disrupted by shortages on the Colorado river or by disruptions in operation of the central Arizona project.

8. FOR EACH COUNTY WITHIN THE CAWCD SERVICE AREA, ON A DETERMINATION BY THE AUTHORITY THAT THE NUMBER OF LONG-TERM STORAGE CREDITS ACCRUED WITH MONIES DEPOSITED IN THE FUND IN ACCORDANCE WITH SECTION 48-3715.03, SUBSECTION B EXCEEDS THE NEEDS SPECIFIED IN PARAGRAPH 7 FOR THAT COUNTY,

THE AUTHORITY SHALL DISTRIBUTE THOSE EXCESS LONG-TERM STORAGE CREDITS TO MUNICIPAL WATER PROVIDERS WITHIN THAT COUNTY THAT ARE AT THE TIME OF DISTRIBUTION EXPERIENCING SURFACE WATER SUPPLY SHORTAGES NOT ASSOCIATED WITH THE CENTRAL ARIZONA PROJECT. THE AUTHORITY SHALL DISTRIBUTE TO EACH SUCH MUNICIPAL WATER PROVIDER THE LESSER OF THE FOLLOWING NUMBER OF LONG-TERM STORAGE CREDITS:

(a) THE TOTAL NUMBER OF CREDITS DETERMINED TO BE AVAILABLE BY THE AUTHORITY UNDER THIS PARAGRAPH MULTIPLIED BY THE PERCENTAGE PRODUCED BY DIVIDING A NUMERATOR EQUALING THE AMOUNT OF REVENUES PAID PURSUANT TO SECTION 48-3715.02, SUBSECTIONS B AND C BY TAXPAYERS THAT ARE WITHIN BOTH THE BOUNDARIES OF THE MUNICIPAL PROVIDER THAT IS EXPERIENCING THE SHORTAGE AND THE BOUNDARIES OF THE SURFACE WATER SUPPLY SYSTEM THAT IS EXPERIENCING THE SHORTAGE BY A DENOMINATOR EQUALING THE TOTAL REVENUES PAID PURSUANT TO SECTION 48-3715.02, SUBSECTIONS B AND C BY ALL TAXPAYERS THAT ARE LOCATED WITHIN BOTH THE BOUNDARIES OF A MUNICIPAL WATER PROVIDER AND THE BOUNDARIES OF A SURFACE WATER SUPPLY SYSTEM IN THE COUNTY. IN MAKING THESE COMPUTATIONS, THE AUTHORITY SHALL USE THE AMOUNTS OF REVENUE PAID BY TAXPAYERS DURING THE MOST RECENT TAX YEAR FOR WHICH THIS INFORMATION IS AVAILABLE.

(b) TWENTY PER CENT OF THE TOTAL SURFACE WATER SHORTAGE THAT THE MUNICIPAL AND INDUSTRIAL WATER PROVIDER IS EXPERIENCING.

9. THE AUTHORITY SHALL DISTRIBUTE OR REPLACE LONG-TERM STORAGE CREDITS ACCRUED WITH MONIES COLLECTED PURSUANT TO WATER BANKING SERVICES AGREEMENTS IN ACCORDANCE WITH THE TERMS OF THOSE AGREEMENTS.

C. Any other long-term storage credits accrued by the authority may be distributed or extinguished by the authority in accordance with the policy and purposes of this chapter.

D. Except as provided by subsection B, paragraph 7 of this section and except as provided by agreements entered into by the authority, the decision to distribute or extinguish any long-term storage credit accrued by the authority is at the complete discretion of the authority.

Sec. 9. Title 45, chapter 14, article 3, Arizona Revised Statutes, is amended by adding section 45-2458, to read:

45-2458. Water banking services agreements

A. THE AUTHORITY MAY ENTER INTO A WATER BANKING SERVICES AGREEMENT UNDER WHICH THE AUTHORITY WILL LOAN LONG-TERM STORAGE CREDITS TO A PERSON OR AN INDIAN COMMUNITY IN THIS STATE IF ALL OF THE FOLLOWING APPLY:

1. THE PERSON OR INDIAN COMMUNITY COULD HAVE LEGALLY OBTAINED THE WATER THAT WAS STORED TO ACCRUE THE LONG-TERM STORAGE CREDITS THAT WILL BE LOANED UNDER THE AGREEMENT, COULD HAVE ACCRUED, IN ACCORDANCE WITH CHAPTER 3.1 OF THIS TITLE, THE LONG-TERM STORAGE CREDITS THAT WILL BE LOANED AND COULD OTHERWISE LEGALLY STORE WATER IN ACCORDANCE WITH THE LAWS OF THIS STATE.

2. THE AGREEMENT REQUIRES THE PERSON OR INDIAN COMMUNITY TO PAY THE AUTHORITY ALL COSTS INCURRED BY THE AUTHORITY IN ACCRUING THE LONG-TERM STORAGE CREDITS TO BE LOANED UNDER THE AGREEMENT.

3. THE AGREEMENT REQUIRES THAT THE COSTS PRESCRIBED BY PARAGRAPH 2 OF THIS SUBSECTION FOR EACH LONG-TERM STORAGE CREDIT TO BE LOANED UNDER THE AGREEMENT ARE TO BE PAID TO THE AUTHORITY BEFORE THE AUTHORITY DISTRIBUTES THE CREDITS PURSUANT TO THE AGREEMENT.

4. THE AGREEMENT REQUIRES THE PERSON OR INDIAN COMMUNITY TO REIMBURSE THE AUTHORITY FOR THE COSTS OF REPLACING EACH LONG-TERM STORAGE CREDIT LOANED UNDER THE AGREEMENT, TO THE EXTENT THAT COST EXCEEDS THE AMOUNT PAID IN ACCORDANCE WITH PARAGRAPH 3 OF THIS SUBSECTION.

5. THE AGREEMENT REQUIRES THE AUTHORITY TO USE GOOD FAITH EFFORTS TO REPLACE THE LONG-TERM STORAGE CREDITS AT A REASONABLE COST TO THE PERSON OR INDIAN COMMUNITY.

6. THE AGREEMENT REQUIRES THAT IF THE AUTHORITY IS UNABLE TO REPLACE THE LONG-TERM STORAGE CREDITS FOR ANY REASON DURING THE TEN YEARS FOLLOWING THE DISTRIBUTION OF THE CREDITS, THE PERSON OR INDIAN COMMUNITY SHALL NOT BE EXCUSED FROM REIMBURSING THE COSTS SPECIFIED IN PARAGRAPH 4 OF THIS SUBSECTION, AND THE PERSON OR INDIAN COMMUNITY SHALL PAY TO THE AUTHORITY AT THE END OF THAT TEN YEAR PERIOD THE APPROXIMATE COST THE AUTHORITY WILL EXPEND IN REPLACING THE CREDITS DISTRIBUTED, LESS THE AMOUNT PAID PURSUANT TO PARAGRAPH 2 OF THIS SUBSECTION.

7. THE AGREEMENT MAY PROVIDE THAT, SUBJECT TO APPROVAL BY THE AUTHORITY, THE OTHER PARTY TO THE AGREEMENT MAY ASSIGN TO THE AUTHORITY THE NUMBER OF LONG-TERM STORAGE CREDITS LOANED TO THE PARTY IN LIEU OF THE PARTY PAYING THE COSTS REQUIRED BY PARAGRAPHS 4, 5 AND 6 OF THIS SECTION.

B. THE AUTHORITY MAY ENTER INTO A WATER BANKING SERVICES AGREEMENT WITH A PERSON OR INDIAN COMMUNITY TO STORE WATER ON BEHALF OF THE PERSON, INDIAN COMMUNITY OR OTHER BENEFICIARY NAMED IN THE AGREEMENT, IF ALL OF THE FOLLOWING APPLY:

1. THE PERSON, INDIAN COMMUNITY OR NAMED BENEFICIARY COULD LEGALLY OBTAIN THE WATER THAT THE AUTHORITY WILL STORE UNDER THE AGREEMENT, COULD ACCRUE LONG-TERM STORAGE CREDITS IN ACCORDANCE WITH CHAPTER 3.1 OF THIS TITLE FOR THE WATER TO BE STORED AND COULD OTHERWISE LEGALLY STORE WATER IN ACCORDANCE WITH THE LAWS OF THIS STATE.

2. THE AGREEMENT REQUIRES THE PERSON OR INDIAN COMMUNITY ENTERING INTO THE AGREEMENT TO PAY TO THE AUTHORITY ALL COSTS THAT ARE OR WILL BE INCURRED BY THE AUTHORITY IN ENTERING INTO AND EXECUTING ITS OBLIGATIONS UNDER A WATER BANKING SERVICES AGREEMENT.

C. IN DETERMINING COSTS OF PERFORMING WATER BANKING SERVICES PURSUANT TO SUBSECTIONS A AND B, THE AUTHORITY MAY INCLUDE THE FOLLOWING COSTS:

1. THE COST OF ACQUIRING WATER.

2. THE COST OF DELIVERING THAT WATER TO A STORAGE FACILITY, INCLUDING FEES FOR THE OPERATION, MAINTENANCE, PUMPING ENERGY AND CAPITAL COSTS OF THE CENTRAL ARIZONA PROJECT, AS ESTABLISHED BY THE CAWCD, AND OTHER AQUEDUCTS.

3. THE COST OF STORING WATER, INCLUDING CONSTRUCTION, OPERATION AND MAINTENANCE COSTS ASSOCIATED WITH USING A STORAGE FACILITY.

4. A FEE EQUIVALENT TO THE APPROXIMATE AMOUNT OF ADMINISTRATIVE, LEGAL AND TECHNICAL EXPENSES INCURRED BY THE AUTHORITY IN ENTERING INTO AND EXECUTING ITS OBLIGATIONS UNDER A WATER BANKING SERVICES AGREEMENT.

5. ANY ADDITIONAL COSTS THE AUTHORITY DEEMS NECESSARY TO ENTER INTO AND EXECUTE ITS OBLIGATIONS UNDER A WATER BANKING SERVICES AGREEMENT.

D. A WATER BANKING SERVICES AGREEMENT SHALL REQUIRE A PERSON ENTERING INTO THE AGREEMENT TO OBTAIN A PERFORMANCE BOND TO ENSURE PAYMENT TO THE AUTHORITY OF ALL MONIES OWED TO THE AUTHORITY UNDER THE AGREEMENT, UNLESS THE PERSON IS AN INDIAN COMMUNITY IN THIS STATE OR A GOVERNMENT ENTITY, POLITICAL SUBDIVISION OR MUNICIPAL CORPORATION ORGANIZED UNDER OR SUBJECT TO THE CONSTITUTION AND LAWS OF THIS STATE. IF THE PERSON ENTERING INTO THE WATER BANKING SERVICES AGREEMENT IS AN INDIAN COMMUNITY IN THIS STATE OR A GOVERNMENT ENTITY, POLITICAL SUBDIVISION OR MUNICIPAL CORPORATION ORGANIZED UNDER OR SUBJECT TO THE CONSTITUTION AND LAWS OF THIS STATE, THE BANKING SERVICES AGREEMENT MAY REQUIRE THAT PERSON TO OBTAIN A PERFORMANCE BOND TO ENSURE PAYMENT TO THE

AUTHORITY OF ALL MONIES OWED TO THE AUTHORITY UNDER THE AGREEMENT.

Sec. 10. Section 48-3715, Arizona Revised Statutes, is amended to read:

48-3715 . Tax levy

A. On or before the second Monday in August of each year, the clerk of the county board of supervisors of each county within the district shall certify to the district board the total assessed valuation of all taxable property in the county. On or before the third Monday in August of each year, the district board shall fix the amount to be raised by direct taxation for the purpose of carrying out the provisions of this chapter , and shall levy a tax sufficient to raise such amount. Such tax shall not exceed ten cents on each one hundred dollars of assessed valuation in the district. The district board shall forthwith certify such tax rate to the board of supervisors of each county within the district, which boards at the time of levying general county taxes shall levy and cause to be collected taxes on the taxable property within such county at the tax rate fixed by the district board. The tax when collected shall be paid to the state treasurer and be credited to the district fund to be expended by the district only for purposes authorized by this chapter, which shall include costs and expenses of administration.

B. The district board shall charge and collect a fee in lieu of taxes paid pursuant to subsection A for each acre-foot of central Arizona project water purchased or leased and delivered to or credited to a purchaser or lessee. The amount of this fee shall be computed by dividing the sum of the taxes levied in each county within the district pursuant to subsection A in the **PREVIOUS** year in which the fee is charged by the **AVERAGE ANNUAL** amount of Colorado river water ***available for diversion into the central Arizona project as determined by the secretary during that year*** **DELIVERED THROUGH THE CENTRAL ARIZONA PROJECT SYSTEM FOR NONFEDERAL MUNICIPAL AND INDUSTRIAL AND AGRICULTURAL USE OVER THE PREVIOUS THREE YEARS .** This fee does not apply to:

1. Indian tribes with respect to water used directly on Indian reservation land in this state or on land owned in this state by the Indian tribe.

2. Water service providers whose customers are real property owners within the service area of the district and who pay the tax levied pursuant to subsection A. For purposes of this paragraph, "water service provider" means any person that has any obligation or duty of any nature to deliver water within the district's service area.

3. Persons who have entered into a contract with the district under which they agree to make payments in lieu of the tax levied pursuant to subsection A.

4. Persons that are real property owners within the service area of the district and that will use the water within the district's service area.

5. The Arizona water banking authority if that authority is acquiring water that will be used for the benefit of those persons prescribed in this subsection.

Arizona Water Banking Authority: Resolution 2002-1

RESOLUTION 2002–1

of the

Arizona Water Banking Authority

WHEREAS, The Arizona Water Banking Authority ("Authority") is mandated by A.R.S. § 45-2457 to reserve a reasonable number of long-term storage credits accrued with general fund appropriations for the benefit of municipal and industrial users of Colorado River water in this state that are outside the service area of the Central Arizona Water Conservation District ("CAWCD");

WHEREAS, on January 21, 1998, the Authority adopted a motion identifying 420,000 acre feet as the reasonable number of long-term storage credits to be developed and set aside for the benefit of municipal and industrial users of Colorado River water in this state that are outside the service area of CAWCD;

WHEREAS, A.R.S. § 45-2457 also authorizes the Authority, in addition to making water available to municipal and industrial users of Colorado River water in this state that are outside the service area of CAWCD, to distribute credits: 1) to make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors; 2) to implement the settlement of water right claims by Indian communities in this state; and 3) to fulfill the water management objectives set forth in chapter 2 of Title 45, Arizona Revised Statutes;

WHEREAS, the Authority recognizes the benefits for planning purposes of more clearly prioritizing the use of long-term storage credits accrued with general fund appropriations;

WHEREAS, the Authority recognizes that general fund appropriations are the sole source of funds with which it is authorized to accrue long-term storage credits for the benefit of municipal and industrial users of Colorado River water in this state that are outside the service area of CAWCD and that other funding sources are available to the Authority with which to achieve the other authorized uses of the general fund appropriation;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the Authority, as follows:

1. That the first priority of the use of long-term storage credits accrued with general fund appropriations shall be to develop and set aside a reasonable number of long-term storage credits as determined by the Commission of the Authority for the benefit of municipal and industrial users of Colorado River water in this state that are outside the service area of CAWCD.

2. That the second priority use of long-term storage credits accrued with general fund appropriations shall be to implement the settlement of water right claims by Indian communities in this state.

3. That the third priority use of long-term storage credits accrued with general fund appropriations shall be to make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors.

4. That the fourth priority use of long-term storage credits accrued with general fund appropriations shall be to fulfill the water management objectives set forth in chapter 2 of Title 45, Arizona Revised Statutes.

5. That, to effectuate these priorities, the Authority shall consider and determine that long-term storage credits are available, or that general fund appropriation will be available to develop the long-term storage credits projected to be needed, to fulfill higher priority objectives before distributing long-term storage credits for any lower priority use. In making this determination, the Authority may also consider whether long-term storage credits accrued with funds other than general appropriation funds are available to fulfill the higher priority objectives.

6. That Authority staff are directed to conduct their planning and operation of the Authority business to effectuate the priorities set forth in this resolution.

IN WITNESS WHEREOF, the Chairman of the Authority approves this Resolution by affixing his signature below on this 20th day of MARCH, 2002.

Joseph C. Smith, Chairman
Arizona Water Banking Authority

Attest:

William L. Chase, Secretary
Arizona Water Banking Authority

(Official Seal)

Appendix B: California

Executive Order No. W-3-91

AB1 1584 – Chapter 725

Executive Order No. W-3-91

EXECUTIVE DEPARTMENT

STATE OF CALIFORNIA

FILED
In the office of the Secretary of State
of the State of California
FEB 01 1991
MARCH FONG EU, Secretary of State
By Michael E. Gilliam
Deputy

EXECUTIVE ORDER NO. W-3-91

WHEREAS, most regions of the state of California have experienced conditions of drought for the previous four years, and some regions in Central and Southern California have experienced drought conditions for the past seven years; and

WHEREAS, California has received less than 25 percent of its normal rainfall for this water year, and there only remains two and one-half months in which significant rainfall can be anticipated; and

WHEREAS, reservoir storage throughout California is substantially depleted; with most reservoirs at or near an all-time low; with many reservoirs dropping to near their minimum pool levels; and some reservoirs holding less than they did in the 1976-77 drought; and

WHEREAS, the State Water Resources Control Board has held special hearings on the need to take specific steps to mitigate the effects of the current and possible future drought conditions; and

WHEREAS, the Emergency Services Act confers extraordinary powers on the Governor to provide leadership in responding to emergencies which are beyond the control of any individual city or county or which require a coordinated statewide response; and

WHEREAS, it is now necessary for all agencies of the State of California to undertake steps to mitigate the effects of the current drought, and to develop the information necessary to enable the Governor to coordinate and direct remedial actions at all levels of government within the state to combat existing or threatened drought-caused conditions of disaster or peril to persons or property should it become necessary to proclaim a state of emergency under the Emergency Services Act; and

WHEREAS, many cities, counties, and water purveyors in California have already taken significant actions to deal with the drought; those which do not already have drought emergency plans should be encouraged to plan now for future actions necessary to mitigate the effects of the drought, and all counties should be encouraged to appoint a drought coordinator, so that State and local agencies can make a coordinated response to any future drought emergency; and

WHEREAS, impacts of the drought can reach virtually all of California's population, affect it's natural resources and its economy, and mitigating the drought's impact will require the cooperation of all of our citizens, elected officials, and public agencies;

NOW THEREFORE, I, Pete Wilson, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue the following orders and directives to become effective immediately:

IT IS ORDERED that The Director of Water Resources is hereby appointed as the Governor's Drought Administrator who shall be the Governor's representative with respect to all matters related to implementing this Executive Order, and any subsequent orders or directives with respect to the drought; and

IT IS FURTHER ORDERED that the Drought Action Team is hereby established. The Governor's Drought Administrator shall serve as its Chair. The Action Team shall consist of the following persons, together with the directors or executive officers of such other agencies as may be appointed upon the recommendation of the Administrator, where he finds that their department or agency has statutory responsibilities, expertise, or resources which would significantly contribute to mitigation of the effects of the drought:

Secretary of the Resources Agency
Director of the Department of Food and Agriculture
Director of the Office of Emergency Services
Director of the Department of Finance
Director of the Department of Fish and Game
Director of the Department of Forestry and Fire Protection
Director of the Department of health Services
Director of the Office of Planning and Research
Adjutant General of the Military Department

The Governor's Drought Administrator shall also invite the participation of any independent boards and commissions and federal agencies which have jurisdiction, expertise and resources which would significantly contribute to the mitigation of the effects of the drought, including, but not limited to the following;

State Water Resources Control Board
Public Utilities Commission
United States Department of Agriculture
United States Department of the Interior
United States Army Corps of Engineers
Federal Emergency Management Agency

IT IS FURTHER ORDED, that the general duties of the Drought Action Team include, but are not limited to directing and coordinating state efforts to combat the effects of the drought, encouraging the preparation and implementation of local drought emergency plans, providing liaison and coordination between state and local efforts, and providing the Executive Department of the State of California with periodic reports on the status of the drought, together with recommendations for timely actions to remedy the effects of the drought. Specific duties of the Action Team shall include, but are not limited to, the following:

* The Action Team shall report regularly to the Governor De water supply conditions in California and the status of state and local efforts to combat the drought's effects. The Action Team shall recommend any additional measures which it deems necessary to combat the drought and protect the health, safety, and property of the people, while providing maximum feasible protection to the important environmental resources of the State. The first report shall emphasize water supply conditions and shall be made no later than February 15, 1991.

  The reports shall contain any information the Action Team finds to be of assistance to the Governor in determining whether and when to proclaim a state of emergency due to drought conditions and shall include an assessment of equitable issues and a rational framework for "sharing the pain" if extraordinary measures are recommended.

* The Action Team shall review and report on the availability and effectiveness of state and federal financial assistance programs for the relief of critical domestic water supply shortages, drought-induced water shortages which threaten the viability of environmental resources, including significant fish and wildlife populations,, drought-induced adverse impacts to the economy, and any other adverse effects of the drought. The Action Team shall also recommend state and federal legislation, as appropriate, to provide emergency financial assistance.

IT IS FURTHER ORDERED, that the Department of Water Resources and the Office of Emergency services shall provide staff to assist the Action Team in carrying out its responsibilities. The Governor's Drought Administrator may also call upon other departments for staff as needed; and

IT IS FURTHER ORDERED, that the Department of Water Resources shall do the following:

* The Department shall provide increased technical assistance and coordination to local water supply agencies on the development and implementation of water conservation measures.

* The Department shall develop a clearinghouse for facilitating water marketing transactions between willing sellers and buyers of water, consistent with the need to protect fish and wildlife resources.

* The Department shall review the effectiveness of water conservation measures ordered for all state agencies and departments pursuant to Executive Order D-85-90, and shall recommend any further actions necessary to effect the water savings directed in that Executive Order, together with such additional water savings as the Department believes to be reasonably attainable, in view of the severity of regional water shortages.

* The Department shall expand the Drought Center, which has been operating since 1986, as necessary to provide a focal point for drought activities, including providing information and assistance; and

IT IS FURTHER ORDERED, that the Department of Health Services shall evaluate and report to the Governor's Drought Administrator on the feasibility of temporary revisions of applicable water quality standards to make additional supplies of water available for beneficial uses, consistent with the protection of public health, including, but not limited to, expanded use of gray water, use of available ground water, and expanded use of reclaimed water; and

IT IS FURTHER ORDERED, that the State Water Resources Control Board is requested to hold further hearings on the drought, as appropriate, and coordinate its hearings with the Governor's Drought Admi

Pete Wilson

Governor of California

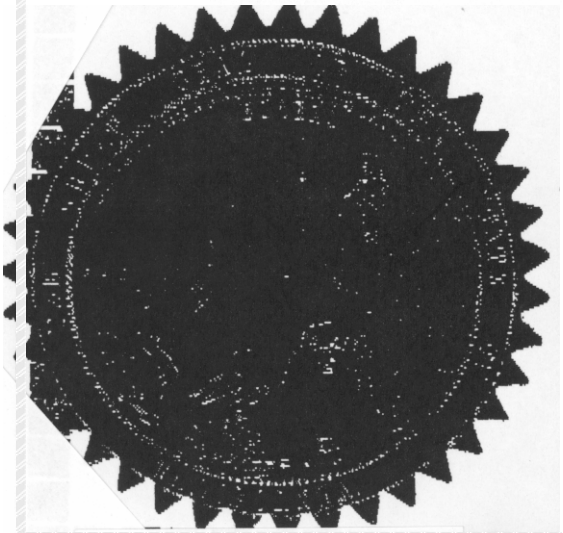
ATTEST:

March Fong Eu

Secretary of State

cies and departments shall fully cooperate with
the G e to the Executive Department of the State of
Calif matters pertaining to the drought and the
actio all future orders and directives that may be
issue

IN WITLESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 1st day of February 1991.



Pete Wilson

Governor of California

ATTEST:

March Fong Eu

Secretary of State

2002 Memorandum of Understanding

STATE OF CALIFORNIA

THE RESOURCES AGENCY

DEPARTMENT OF WATER RESOURCES

MEMORANDUM OF UNDERSTANDING
REGARDING
THE DEPARTMENT OF WATER RESOURCES
2002 DRY YEAR WATER PURCHASE PROGRAM

This MEMORANDUM OF UNDERSTANDING is made this _____day of_____ 2001, pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through the Department of Water Resources, herein referred to as the Department and _____ , a public agency in the State of California, herein referred to as Participant.

RECITALS:

A. Whereas, the federal Central Valley Project and the State Water Project may impose deficiencies to their agricultural, municipal and industrial water users in 2002, which when combined with diminished alternative water supplies may result in low water supplies for such contractors.
B. Whereas, the Department and U.S. Bureau of Reclamation continue to explore all reasonable means to improve water supply reliability for the SWP and CVP, in the interim the Participant, along with several other Participants, has expressed a desire to have the Department acquire additional water to augment its 2002 water supplies.
C. Whereas, the Department wishes to set forth its intentions in structuring procedures for a 2002 Dry Year Water Purchase Program and establish a process for prepayment of costs of water purchases.

MEMORANDUM OF UNDERSTANDING

The Department and the Participant agree as follows:

1. PURPOSE

(a) This Memorandum of Understanding is intended to set forth procedures for Participants' purchasing water obtained by the Department to augment the water supplies of those Participants that have executed this Memorandum of Understanding. The Department will enter into separate agreements with Sellers to purchase water for Participants pursuant to this Memorandum of Understanding. This Memorandum of Understanding is intended to help meet water shortages only and is not intended to allocate water under normal conditions.

(b) 2002 Dry Year Water Purchase Program activities shall be managed and accounted for separately from the SWP and CVP. Usage of SWP and CVP facilities for 2002 Dry Year Water Purchase Program purposes shall not, except as otherwise expressly provided for in the State Project Water Supply Contracts, increase unreimbursed costs to the SWP and CVP or adversely affect SWP and CVP operations necessary to provide service pursuant to State Project Water Supply Contracts or CVP water service or settlement contracts. All costs of implementing the 2002 Dry Year Water Purchase Program under this and similar agreements are to be paid by the Participants.

2. DEFINITIONS

When used in this Memorandum of Understanding the following definitions shall apply:

a. "CVP" means Central Valley Project.
b. "Option" shall mean an agreement between the Department and a water supplier under which the Department pays the Seller to hold open an offer to sell water to the Department in 2002 under an agreed price and terms.
c. "Option Request" means a request described in Article 3.
d. "Participant" means a participating water agency that has executed a 2002 Dry Year Water Purchase Program Memorandum of Understanding with the Department, and has fully complied with the provisions of Article 11 (Financial Participation).
e. "Pool" means the Department's designation of water or options made available through one or more Seller Agreements for allocation among one or more Participants.
f. Tool Member" means a Participant in a designated Pool.
g. Purchase Water" means water purchased by the Department on behalf of the Participants in calendar year 2002.
h. "Purchase Water Request" means the request described in Article 7.
i. "Reclamation" means the United States Bureau of Reclamation.
j. "Seller" means an individual, private company or public agency that contracts with the Department to sell or make available water or an option to purchase water from an established water right or entitlement.
k. "Seller Agreement" means an agreement between the Department and a Seller for supplying Purchase Water and/or an option to purchase water to meet Purchase Water Requests and Option requests.
l. "SWP" means the State Water Project.

3. OPTION REQUEST

The Participant will communicate to the Department its request to purchase options in writing, specifying the terms and conditions of such option. The terms shall include the amount of water, the maximum price the Participant is willing to pay, the desired schedule and delivery terms, and the conditions for exercising the option. Payment due pursuant to Article 11(b) shall accompany the request. If options are offered to the Department outside of the Participant's specified terms and conditions, the Department will notify the Participants by fax and will give Participants the opportunity to accept or reject revised option costs or commit to purchase additional options within two working days. The Department will allocate Options made available through such subsequent commitments pursuant to Article 4 (Option Acquisition and Initial Allocation).

4. OPTION ACQUISITION AND INITIAL ALLOCATION

a. The Department will form Option Pools to allocate options when the Department determines that there are enough options of similar cost and similar delivery terms available to form an Option Pool.
b. The Department shall allocate options among Pool Members. Each Pool Member's allocation shall be equal to the proportion of the individual Option Pool Member's option request to the total of all Option Pool Members' option requests to purchase option water. The Department may change allocations in order to meet minimum demands for domestic supply, fire protection, or sanitation during the year. Moreover, the Department retains the right to revise or add new allocation criteria, depending on changed circumstances or to meet critical water supply needs after notice to Participants and consultation with State Water Project Contractors.
c. Unmet Option Pool Members' requests in any Option Pool shall be reserved until the Department forms a new Option Pool with terms acceptable to the Option Pool Member. If the deposit exceeds the amount allocated and delivered to the Option Pool Member or changed by the Department pursuant to Article 4 (b), the Department shall refund the prorata deposit and administrative amounts to said Option Pool Member as provided in Article 11 (Financial Participation).

5. OPTION EXERCISE REQUEST

The Participant will communicate in writing to the Department by March 31, 2002 or the date as specified in the Seller Agreements its request to exercise options at the source, specifying the amount of options it wishes to exercise. Payment due pursuant to Article 11(c) shall accompany the exercise request.

6. OPTION REASSIGNMENT

a. The Department will allocate options to the Option Pool Members up to the amount of options that they have exercised. If there are any options available that had been allocated to the Participant, but the Participant has requested in writing that the allocation not be exercised, the Department may use that option to meet the requests of other members of that Option Pool. The Department's reassignment will be based on the proportion of the Participant's option request to the total of all Participants' option requests. The Department may change allocations in order to meet minimum demands for domestic supply, fire protection, or sanitation during the year. Moreover, the Department retains the right to revise or add new allocation criteria, depending on changed circumstances or to meet critical water supply needs after notice to Participants and consultation with State Water Project Contractors.
b. Unmet Option Pool Member's requests in any Pool shall be reserved until the Department forms a new Pool with terms acceptable to the Pool Member. If the deposit exceeds the amount allocated to the Pool Member or changed by the Department pursuant to Article 6(a), the Department shall refund the prorata deposit and administrative amounts to said Pool Member as provided in Article 11 (Financial Participation).

7. PURCHASE WATER REQUEST

The Participant will communicate in writing to the Department its request to purchase water at the source, specifying the amount of water it wishes to purchase, the maximum price it is willing to pay, and the desired schedule and delivery terms. Payment due pursuant to Article 11(c) shall accompany the request. If Purchase Water is offered to the Department outside of the Participant's specified terms and conditions, the Department will notify the Participants by fax of the available quantity and cost of additional Purchase Water, and will give Participants the opportunity to commit to purchase additional options within two working days. The Department will allocate Purchase Water made available through such subsequent commitments pursuant to Article 8 (Purchase Water Acquisition and Allocation).

8. PURCHASE WATER ACQUISITION AND ALLOCATION

a. The Department will form Purchase Water Pools to allocate Purchase Water when the Department determines that there is enough purchase water of similar cost and similar delivery timing available to form a Purchase Water Pool.
b. The Department shall allocate Purchase Water among Pool Members. Each Pool Member's allocation shall be equal to the proportion of the individual Purchase Pool Member's purchase water request to the total of all Purchase Pool Members' purchase water requests. The Department may change allocations in order to meet minimum demands for domestic supply, fire protection, or sanitation during the year. Moreover, the Department retains the right to revise or add new allocation criteria, depending on changed circumstances or to meet critical water supply needs after notice to Participants and consultation with State Water Project Contractors.
c. Unmet Pool Member's requests in any Pool shall be reserved until the Department forms a new Pool with terms acceptable to the Pool Member. If the deposit exceeds the amount allocated and delivered to the Pool Member or changed by the Department pursuant to Article 8(b), the Department shall refund the prorata deposit and administrative amounts to said Pool Member as provided in Article 11 (Financial Participation).

9. WATER DELIVERY

The Participant is responsible for arranging and paying the costs of conveyance and delivery of Purchase or exercised option water. Such arrangements shall be governed by a separate agreement. Conveyance for State Water Project Contractors shall be pursuant to the State Project Water Supply Contracts.

10. OVER-DELIVERY OR UNDER-DELIYERY OF PURCHASE WATER

a. The Department will make every effort to ensure that water purchased pursuant to this Memorandum of Understanding is made available from the Seller(s) before making it available to the Participant for delivery. However, because the accounting of the exact amount (*water made available by the

Seller(s) is often determined from records after the fact, the possibility exists that more water would be delivered to the Participant than was received from the Seller(s).

b. If the Department determines that an over-delivery of Purchase Water has occurred, the Department shall notify the Participant of the quantity of over-delivery that the Participant is responsible for repaying to the Department. Participant repayments of over-deliveries to the Department shall be made at a location and on a schedule approved by the Department, but not later than July 1, 2003. If the SWP Participant fails to make such repayment by July 1, 2003, the Department will reclassify the SWP Participant's Entitlement water. In the case of a CVP contractor, the Department will coordinate with the Bureau to recover through reclassification any over-delivery not repaid by a CVP Contractor by July 1, 2003. Non SWP and CVP participants shall reimburse the Department at a rate of $100 per acre-foot for each acre-foot of over-delivery. The Department may offset such amounts against any refund due such participants.

c. The Department will make every effort to assure that estimates of Losses are accurate and match the amounts subtracted from Purchase Water. However, because the exact amount of Losses is determined after the fact, the possibility exists that less water is delivered to the Participant than requested. The Department will determine the actual Losses and will attempt to make additional water available to the Participant to offset under-delivery, if any.

11. FINANCIAL PARTICIPATION

The Participant will make all applicable payments provided in this Article prior to the Department allocating any water to the Participant under this MOU.

(a) Agreement Preparation Payment. The Participant shall pay a non refundable Agreement Preparation Charge of two thousand five hundred dollars ($2,500.00) to pay a share of costs of developing this Memorandum of Understanding and any other Participant agreements associated with the 2002 Dry Year Water Purchase Program. The charge is due and payable immediately following execution of this Memorandum of Understanding by the Participant. This charge is not subject to re-determination or adjustment.

(b) Option Deposit On or before 4 p.m., November 30, 2001, the Participant shall submit its option request pursuant to Article 3 and pay a deposit of ten dollars ($10.00) for each acre -foot of water in its option request. The option payment will be applied to the following:

1) an Administrative Component, and

2) a Purchase Option Component

(c) Option Exercise Payment. At the time the Participant notifies the Department of its request to exercise all or a portion of its option pursuant to Article 5 (Option Exercise Request); it shall pay to the Department all remaining costs related to exercising its option consistent with the terms and conditions of the Sellers Agreement.

(d) Purchase Deposit. On or before 4 p.m., March 31, 2002, the Participant shall submit its purchase request pursuant to Article 7 (Purchase Water Request) and pay a deposit of twenty five dollars ($25.00) for each acre-foot of water to be applied to the following:

1) an Administrative Component,

2) a Purchase Component,

(e) Administrative Component. Each Participant will be responsible for a contract administrative charge related to its total Option Purchase and Purchase Requests. This charge covers all Department administrative costs related to negotiating, executing, and administering Option Agreements and Purchase Agreements, securing necessary permits, all costs incurred by the Department for evaluating the environmental impacts of obtaining and conveying Purchased Water and preparing any necessary environmental documentation and State Water Resources Control Board petitions for delivering all or a portion of the Purchase Water and any other costs related to acquiring Options and Purchase Water. Five dollars ($5.00) per acre-foot of the deposit shall be used to cover administrative costs. After completion of all activities pursuant to this Memorandum of Understanding the Department shall make a final determination of Administrative Component costs. If the Participant's share of the actual Administrative Component costs is less than $5.00/AF, the Department will refund the difference. If Participant's share of the actual Administrative Component costs is more than $5.00/AF, the Department will invoice the Participant and the Participant will pay the Department the difference within thirty (30) days of the invoice date.

(f) Purchase Component. The Purchase Component shall recover all non-administrative costs associated with the Department completing Seller Agreements on behalf of the Participant. These costs shall include, but not be limited to, payments to Sellers pursuant to Seller Agreement, any additional costs incurred by the Department for third - party impacts in the selling area and any other costs related to acquiring options and/or making Purchase Water available in the Delta. The Participant's share of the Purchase Component shall be computed by the Department in proportion to the Participant's allocation.

(g) Supplemental Payments. If at any time during the term of this Memorandum of Understanding, the Department determines that the Participant's share of Administrative, Purchase, or Environmental Review costs may be greater than the Participant has previously paid, the Department may invoice the Participant for an amount that the Department determines is required to cover such costs. Participant shall pay such invoice within thirty (30) days from the invoice date.

(h) Overpayments. If the Department is unable to acquire and allocate sufficient Purchase Water at terms acceptable to a Participant, the Department shall refund any unused deposit to said Participant less the administrative costs of the program.

12. CARRIAGE WATER AND DELTA OPERATIONAL REQUIREMENTS

Allocations of water to Participants shall include water for Delta carriage water losses, other Delta operational requirements, and other conveyance losses as determined by the Department. Participants agree that the quantities of water obtained under the Sellers Agreements pursuant to this Memorandum of Understanding are measured at the source, and that the water ultimately delivered to participants, if any, is reduced by such losses.

13. PAYMENT

If the amount of money required to be paid by a potential Participant pursuant to Article 11 (Financial Participation) remains unpaid after it becomes due and payable, the Department will exclude the potential Participant from any Pool and reallocate options or Purchase Water originally intended for the potential Participant to other Pool Members.

14. BENEFITS

Purchase Water is intended to provide direct benefit only to the Participant and may not be transferred or used outside the Participant's service area.

15. MODIFICATION

This Memorandum of Understanding shall be modified only upon mutual written consent of the parties.

16. NO PRECEDENT

This Memorandum of Understanding shall not be a precedent for future agreements, including amendments to the Water Supply Contract.

17. TERM OF MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding will terminate on March 31, 2003, unless extended by mutual agreement of the Parties. The acquisition of Purchase Water from Sellers must all be completed and such water delivered to Participant(s) by December 31, 2002, except as may be agreed to in a separate agreement.

18. NOTICES

Any notice, demand or request made in connection with this Memorandum of Understanding shall be in writing and shall be deemed properly served if delivered in person, faxed, or sent by United States mail or other carrier to the addresses specified below:

Department of Water Resources

State Water Project Analysis Office, Room 1620

Post Office Box 942836

Sacramento, California 94236-0001

Attention: Mr. Dan Flory

FAX: (916) 653-9628

Participant Name:

_____

Address:

_____

Address:

_____

Contact Name:

_____

FAX Number:

_____

19. MAINTENANCE AND INSPECTION OF BOOKS, RECORDS, AND REPORTS

During regular office hours duly authorized representatives of the Department shall have the right for a period of three (3) years from the date of execution of this Memorandum of Understanding to inspect and make copies of any books, records, or reports pertaining to this Memorandum of Understanding. The Department and the Participant shall maintain and make available for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Memorandum of Understanding. The participant may inspect and make copies of any such records after December 31, 2002.

20. LIABILITY

The Participant agrees, to the extent permitted by law, it will hold the Department harmless from any direct or indirect loss, liability, cause of action, or claim arising out of this Memorandum of Understanding, actions undertaken under this Memorandum of Understanding, or the 2002 Dry Year Water Purchase Program, and will indemnify the Department from any additional identifiable costs that the Department or SWP Contractors or CVP Contractors might incur as a result of the Department providing services under this Memorandum of Understanding.

21. EXECUTION IN COUNTERPART

This Memorandum of Understanding may be executed in counterpart

22. AUTHORIZATION

Participant shall provide proof of authorization from its governing board or other authorized officer to enter into this Memorandum of Understanding, and shall submit either a blanket authorization for all Purchase Requests, or an individual authorization for each Purchase Request submitted.

23. Standard Clauses

Standard Clauses listed herewith are required by the State of California for a contract between the Department and the Participant:

a. Workers' Compensation Clause. The Participant affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Participant affirms that it will comply with such provisions before commencing the performance of this Memorandum of Understanding.
b. Claims Dispute. Any claim that either the Department or the Participant may have regarding the performance of this Memorandum of Understanding shall be submitted to the other party no later than thirty (30) days after its accrual. The Department and the Participant shall then attempt to negotiate a resolution of the claim and if necessary process an amendment to this Memorandum of Understanding to implement the terms of any such resolution.
c. Audits. The contracting parties shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment under this Memorandum of Understanding. (Government Code Section 8546.7).
d. Nondiscrimination. During the performance of this Memorandum of Understanding, the Participant shall not deny the Memorandum of Understanding's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall it discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. The Participant shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The Participant shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.), the provisions of Government Code Sections 11135-11139.5, and the regulations or standards adopted by the Department to implement those sections. The Participant shall permit access by representatives of the Department and the Department of Fair Employment and Housing upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as either department shall require to ascertain compliance with this clause. The Participant shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement. The Participant shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Memorandum of Understanding.
e. Drug-Free Workplace Certification. The Participant certifies, under penalty of perjury, compliance with Government Code Section 8355 in matters relating to providing *a* drug-free workplace. The Participant will:
    1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
    2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
        i. The dangers of drug abuse in the workplace,

ii. The person's or organization's policy of maintaining a drug-free workplace,
iii. Any available counseling, rehabilitation and employee assistance programs; and
iv. Penalties that may be imposed upon employees for drug abuse violations.

3. Provide, as required by Government Code Section 8355(c), that every employee who works on this Memorandum of Understanding:
   i. Will receive a copy of the Participant's drug-free policy statement, and
   ii. Will agree to abide by the terms of the Participant's statement as a condition of employment on the contract.

f. American with Disabilities Act. By signing this contract, Contractor assures the State that it complies with the Americans With Disabilities Act (ADA) of 1990, 942 U.S.C.12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

g. Conflict of Interest. Current State Employees: a) No officer or employee shall engage in any employment activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment. b) No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

h. Former State Employees: a) For the two year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. b) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

i. Child Support Compliance Act. For any agreement in excess of $100,000, the Contractor acknowledges in accordance herewith, that:

   1. The Contractor recognizes the importance of child and family support obligations and shall full comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earning assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

   2. The Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

j. Air or Water Pollution Violation. Under the State laws, the Contractors shall not be: 1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; 2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) finally determined to be in violation of federal law relating to air or water pollution.

k. Union Organizing For all contracts, except fixed price contracts of $50,000 or less, the Contractor acknowledges that: By signing this Agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Agreement and agrees to the following:

(a) Contractor will not assist, promote or deter union organizing by employees performing work on a State *service* contract, including a public works contract.

(b) No State funds received under this Agreement will be used to assist, promote or deter union organizing.

(c) Contractor will not, for any business conducted under this Agreement, use any State property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the State property is equally available to the general public for holding meetings.

(d) Contractor incurs costs or makes expenditures to assist, promote or deter union or organizing, Contractor will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs, and that the Contractor shall provide those records to the Attorney General upon request.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding on the date first written above.

Approved as to legal form STATE OF CALIFORNIA

and sufficiency: DEPARTMENT OF WATER RESOURCES

_____

Chief Counsel Director

Department of Water Resources

PARTICIPANT

Signature

AB1 1584 — Chapter 725

BILL NUMBER: AB 1584 CHAPTERED 10/10/99

CHAPTER **725**
FILED WITH SECRETARY OF STATE OCTOBER 10, **1999**
APPROVED BY GOVERNOR OCTOBER 7, **1999**
PASSED THE ASSEMBLY SEPTEMBER 10, **1999**
PASSED THE SENATE SEPTEMBER 9, **1999**
AMENDED IN SENATE SEPTEMBER 9, **1999**
AMENDED IN SENATE SEPTEMBER 3, **1999**
AMENDED IN SENATE AUGUST 26, **1999**
AMENDED IN SENATE JULY 12, **1999**
AMENDED IN ASSEMBLY APRIL 27, **1999**

INTRODUCED BY Assembly Member Machado and Senator Costa
(Principal coauthors: Assembly Members Cardoza and Florez)
(Coauthors: Assembly Members Calderon, Kuehl, Strom-Martin, and Thomson)
(Coauthor: Senator Ortiz)

FEBRUARY 26, **1999**

An act to amend Sections 13480, 14058, and 78621 of, to add Division 26 (commencing with Section 79000) to, to add and repeal Section 1812.6 of, and to repeal and add Sections 78626, 78648.12, and 78675 of, the Water Code, relating to financing a safe drinking water, water quality, flood protection, and water reliability program, by providing the funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1584, Machado. Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act; water resources.

Under existing law, various bond acts have been approved by the voters to provide funds for water projects, facilities, and programs.

This bill would enact the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act which, if adopted, would authorize, for purposes of financing a safe drinking water, water quality, flood protection, and water reliability program, the issuance, pursuant to the State General Obligation Bond Law, of bonds in the amount of $1,970,000,000. The bill would also provide for the use of prescribed bond funds, and funds repaid to the state pursuant to certain loan contracts, for specified programs established by this act.

The bill would require the Secretary of State to submit the bond act to the voters at the March 7, 2000, statewide direct primary election.

The bill would amend a provision relating to the calculations of the interest rate to be applied to certain loans from the State Water Pollution Control Revolving Fund.

The bill would require the Imperial Irrigation District, the Coachella Valley Water District, and the Metropolitan Water District of Southern California to sign and adopt a prescribed quantification agreement on or before October 15, 1999, and, if the districts do not do so, would require the Governor or his sole designee to promulgate a quantification settlement by January 1, 2000, as specified. The bill would impose specified duties on the Governor with respect to the agreement or settlement.

The bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Division 26 (commencing with Section 79000) is added to the Water Code, to read:

DIVISION 26. SAFE DRINKING WATER, CLEAN WATER, WATERSHED PROTECTION, AND FLOOD PROTECTION ACT

CHAPTER 1. SHORT TITLE

79000. This division shall be known and may be cited as the Costa-Machado Water Act of 2000.

CHAPTER 2. DEFINITIONS

79005. Unless the context otherwise requires, the definitions set forth in this chapter govern the construction of this division.

79006. "Bay-delta" means the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

79007. "Board" means the State Water Resources Control Board.

79008. "CALFED" refers to the consortium of state and federal agencies with management and regulatory responsibilities in the bay-delta that are developing a long-term solution to water management, environmental, and other problems in the bay-delta watershed.

79009. "Clean Water Act" means the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and includes any amendments thereto.

79010. "Committee" means the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Finance Committee created by Section 79212.

79011. "Delta" means the Sacramento-San Joaquin Delta.

79012. "Department" means the Department of Water Resources.

79013. "Fund" means the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund created by Section 79019.

CHAPTER 3. SAFE DRINKING WATER, CLEAN WATER, WATERSHED PROTECTION, AND FLOOD PROTECTION BOND FUND

79019. The proceeds of bonds issued and sold pursuant to this division shall be deposited in the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund, which is hereby created.

CHAPTER 4. SAFE DRINKING WATER PROGRAM

Article 1. Definitions

79020. Unless the context otherwise requires, the following definitions govern the construction of this chapter.

(a) "Federal act" means the federal Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), and includes any amendments thereto.

(b) "State department" means the State Department of Health Services.

(c) "Supplier" means any person, partnership, corporation, association, public agency, or other entity, including any Indian tribe having a federally recognized governing body carrying out

substantial governmental duties in and powers over any area, that owns or operates a public water system.

Article 2. Safe Drinking Water State Revolving Fund

79021. The sum of seventy million dollars ($70,000,000) is hereby transferred from the fund to the Safe Drinking Water State Revolving Fund created by Section 116760.30 of the Health and Safety Code.

Article 3. Safe Drinking Water Program

79022. (a) The money transferred to the Safe Drinking Water State Revolving Fund pursuant to Section 79021, except as otherwise provided in Sections 79022.7 and 79025, shall be used by the state department for loans and grants to suppliers for the purposes of undertaking infrastructure improvements and related actions to meet safe drinking water standards, in accordance with the Safe Drinking Water State Revolving Fund Law of 1997 (Chapter 4.5 (commencing with Section 116760) of Part 12 of Division 104 of the Health and Safety Code).

(b) A supplier that is eligible for grants under Section 300j-12 (i) of the federal act (42 U.S.C. Sec. 1452(i)) may concurrently make application for funds annually appropriated under the federal act and for bond proceeds made available under this chapter. The state department shall not place a public water system on the priority list for project funding or enter into a contract and award a grant or loan if a supplier has previously received a grant for public water system expenditure for the same project under Section 300j-12(i) of the federal act (42 U.S.C. Sec. 1452(i)) or if the supplier does not have a public water system permit pursuant to Section 116525 of the Health and Safety Code. The state department may place a public water system on the priority list for funding if a supplier has not otherwise received a letter of commitment to make a grant from the Administrator of the Environmental Protection Agency after 180 days from the date of the original submission of an application for a grant under Section 300j-12(i) of the federal act (42 U.S.C. Sec. 1452(i)).

(c) The Legislature finds and declares that Indian tribes shall be encouraged to cooperate with an adjacent public water system to determine whether the delivery of water from the public water system to the Indian tribe would be feasible and cost-effective in comparison to the improvement of a public water system owned or operated by the Indian tribe. The determination of feasibility shall include an assessment of whether the tribal water supplier possesses adequate financial, managerial, and technical capability to ensure the delivery of pure, wholesome, potable water to consumers. The Legislature further finds and declares that public water suppliers shall be encouraged to investigate opportunities for Indian tribes to deliver water beyond trust land boundaries to consumers that may not be economically served by a public water system.

(d) The state department shall encourage loan or grant applicants, where feasible, to consider the consolidation of small public water systems and community water systems with other public water systems to reduce the cost of service and improve the level of protection for consumers.

(e) To the extent that loans under this chapter that are made to a public water system regulated by the Public Utilities Commission bear a lower interest rate than that supplier could receive from nongovernmental sources, the Public Utilities Commission shall ensure that the entire benefit of the interest rate differential shall benefit the rate payers of that system by including the lower interest rate when establishing the water system's weighted average cost of capital.

79022.5. Any repayment of loans made pursuant to this article, including interest payments, and all interest earnings on or accruing to, any money resulting from the implementation of this chapter in the Safe Drinking Water State Revolving Fund shall be deposited in that fund and

shall be available for the purposes of this chapter.

79022.7. Notwithstanding Item No. 4260-115-0001 of Section 2.00 of the Budget Act of **1999** (Chapter 50, Statutes of **1999**), no money transferred to the Safe Drinking Water State Revolving Fund pursuant to this article may be transferred to the General Fund.

79023. There is hereby created in the Safe Drinking Water State Revolving Fund the Technical Assistance Account.

79024. Of the funds transferred pursuant to Section 79021, the sum of two million dollars ($2,000,000) is hereby transferred from the Safe Drinking Water State Revolving Fund to the Technical Assistance Account.

79025. (a) Notwithstanding Section 13340 of the Government Code, the money in the Technical Assistance Account is hereby continuously appropriated, without regard to fiscal years, to the state department, to provide technical assistance to public water systems in the state in accordance with Section 300j-12(g)(2) of the federal act (42 U.S.C. Sec. 1452(g)(2)). For the purposes of this section, "technical assistance" includes assistance to disadvantaged communities, including Indian tribes.

(b) In carrying out its responsibilities under subdivision (a), the state department may do any of the following:

(1) Assess the technical, managerial, and financial capability of a disadvantaged community.

(2) Assist an applicant in the preparation of an application for funding under Chapter 4.5 (commencing with Section 116760) of Part 12 of Division 104 of the Health and Safety Code or Section 300j-12(i) of the federal act (42 U.S.C. Sec. 1452(i)).

(3) Conduct workshops in locations in or near disadvantaged communities to provide information regarding grants or loans for the design and construction of projects for public water systems.

79026. Not more than 3 percent of the total amount deposited in the account may be used to pay costs incurred in connection with the administration of this chapter.

CHAPTER 5. FLOOD PROTECTION PROGRAM

Article 1. Flood Protection Account

79030. For the purposes of this chapter, "account" means the Flood Protection Account created by Section 79031.

79031. The Flood Protection Account is hereby created in the fund. The sum of two hundred ninety-two million dollars ($292,000,000) is hereby transferred from the fund to the account.

Article 2. Floodplain Mapping Program

79033. (a) There is hereby created in the account the Floodplain Mapping Subaccount.

(b) The sum of two million five hundred thousand dollars ($2,500,000) is hereby transferred from the account to the Floodplain Mapping Subaccount for the purposes of implementing this article.

79033.2. (a) There is hereby created in the account the Agriculture and Open Space Mapping Subaccount.

(b) The sum of two million five hundred thousand dollars ($2,500,000) is hereby transferred from the account to the Agriculture and Open Space Mapping Subaccount.

79033.4. The money in the Floodplain Mapping Subaccount, upon appropriation by the Legislature to the department, may be used by the department for the purpose of assisting local land-use planning, and to avoid or reduce future flood risks and damages. The use of the funds in that subaccount by the department shall include, but is not limited to, all of the following:

(a) Mapping newly identified floodplains.

(b) Mapping rural areas with potential for urbanization.

(c) Mapping flood hazard areas with undefined 100-year flood elevations.

(d) Updating outdated floodplain maps.

(e) Accelerating mapping of riverine floodplains, alluvial fans, and coastal flood hazard areas.

(f) Collecting topographic and hydrographic survey data.

79033.6. (a) The money in the Agriculture and Open Space Mapping Subaccount, upon appropriation by the Legislature to the Department of Conservation, may be used by the Department of Conservation for the purposes of assisting local land-use planning by making available Important Farmland Series maps and Interim Farmland maps, as those terms are defined in Section 65570 of the Government Code. The information provided by the Department of Conservation is intended for local government use in conjunction with floodplain and flood hazard maps developed by the department to protect agricultural land resources coincident with avoidance or reduction of future flood risk and damage to residential or commercial land uses. The use of the funds in that subaccount by the Department of Conservation shall include, but is not limited to, all of the following:

(1) Accelerating production of Important Farmland Series maps and Interim Farmland maps.

(2) Increasing the coverage and availability of soil surveys conducted by the United States Natural Resource Conservation Service.

(3) Increasing topographic, soil, and agricultural crop data collection and enhancing data gathering capability.

(4) Developing integrated mapping that incorporates Important Farmland Series mapping and Interim Farmland mapping data with other relevant information, including, but not limited to, floodplain or flood hazard information, planning designation, and other land and natural resource data.

(b) For the purposes of this article, "maps" and "mapping" may include digital map files.

Article 2.5. Flood Protection Corridor Program

79035. (a) There is hereby created in the account the Flood Protection Corridor Subaccount.

(b) For the purposes of this article, "subaccount" means the Flood Protection Corridor Subaccount created by subdivision (a).

79036. The sum of seventy million dollars ($70,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79037. (a) The money in the subaccount, upon appropriation by the Legislature to the department, may be used by the department for flood control projects through direct expenditure for the acquisition, restoration, enhancement, and protection of real property for the purposes of flood control protection, agricultural land preservation, and wildlife habitat protection, and for grants to local public agencies or nonprofit organizations for these purposes, and for related administrative costs.

(b) The money in the subaccount, upon appropriation by the Legislature, shall be used for the protection, creation, and enhancement of flood protection corridors through all of the following actions:

(1) Acquiring easements and other interests in real property from willing sellers to protect or enhance flood protection corridors and floodplains while preserving or enhancing the agricultural use of the real property.

(2) Setting back existing flood control levees and, in conjunction with undertaking those setbacks, strengthening or modifying existing levees.

(3) Acquiring interests in real property from willing sellers located in a floodplain

that cannot reasonably be made safe from future flooding.

(4) Acquiring easements and other interests in real property from willing sellers to protect or enhance flood protection corridors while preserving or enhancing the wildlife value of the real property.

79038. (a) For the purposes of this article, the department shall give highest priority to projects that include either of the following:

(1) Projects that have been assigned high priority for completion by the department for flood protection purposes and by the Department of Conservation for purposes of preserving agricultural land in accordance with the Agricultural Land Stewardship Program Act of 1995 (Division 10.2 (commencing with Section 10200) of the Public Resources Code).

(2) Projects that have been assigned high priority for completion by the department for flood protection purposes and by the Department of Fish and Game for wildlife habitat protection or restoration purposes.

(b) For restoration, enhancement, and protection projects, the services of the California Conservation Corps or community conservation corps shall be used whenever feasible.

79039. (a) In order to ensure that property acquired under paragraph (1) of subdivision (b) of Section 79037 remains on the county tax rolls and in agricultural use to the greatest extent practicable, the acquisition of easements shall be the preferred method of acquiring property interests under that paragraph unless the acquisition of a fee interest is required for management purposes or the landowner will only consider the sale of a fee interest in the land. No acquisition of a fee interest shall be undertaken under paragraph (1) of subdivision (b) of Section 79037 until all practical alternatives have been considered by the department.

(b) Any proceeds received from the disposal of a fee interest acquired under this article shall be deposited into the subaccount.

79040. Any acquisition pursuant to this article shall be from a willing seller.

79041. Prior to acquiring an easement or other interest in land pursuant to this article, the project shall include a plan to minimize the impact on adjacent landowners. The plan shall include, but not be limited to, an evaluation of the impact on floodwaters, the structural integrity of affected levees, diversion facilities, customary agricultural husbandry practices, and timber extraction operations, and an evaluation with regard to the maintenance required of any facilities that are proposed to be constructed or altered.

79042. Prior to acquiring an easement or other interest in land pursuant to this article, a public hearing in the local community shall be held. Notification shall be given to the county board of supervisors of the affected county, adjacent landowners, affected water districts, local municipalities, and other interested parties, as determined by the department.

79043. Money in the subaccount may be used, upon appropriation by the Legislature, to repair breaches in the flood control system developed pursuant to this article or caused by the development of an easement program financed through this section and to repair water diversion facilities or flood control facilities damaged by a project developed pursuant to this section or financed pursuant to this section.

79044. (a) (1) In expending grant money pursuant to this article to acquire an interest in any particular parcel of land, a local public agency or nonprofit organization may use the money to establish a trust fund in the amount of not more than 20 percent of the amount of money paid for the acquisition. Interest from the trust fund shall be used only to maintain the lands that are acquired pursuant to this chapter.

(2) A local public agency or nonprofit organization that acquires land with money from the subaccount and transfers the land to another public agency or nonprofit organization shall also transfer the ownership of the trust fund that was established to maintain that land.

(b) If the local public agency or nonprofit organization does not establish a trust fund pursuant to subdivision (a), it shall certify to the department that it can maintain the land to be acquired from funds otherwise available to the agency or organization.

(c) This section does not apply to state agencies.

79044.5. (a) It is the intent of the Legislature to address the problem of soaring federal flood insurance rates by assisting local governments to meet technical requirements for participation in the National Flood Insurance Program and the National Flood Insurance Program's Community Rating System.

(b) Notwithstanding any other provision of this article, of the funds transferred pursuant to Section 79036, the sum of one million dollars ($1,000,000) is hereby continuously appropriated, without regard to fiscal years, to the department, as follows:

(1) Five hundred thousand dollars ($500,000) to educate and provide technical assistance to cities and counties regarding the National Flood Insurance Program and the enrollment process.

(2) Five hundred thousand dollars ($500,000) to educate and provide technical assistance to cities and counties currently enrolled in the National Flood Insurance Program with regard to the National Flood Insurance Program's Community Rating System and the implementation of activities creditable under that system.

79044.6. Notwithstanding any other provision of this article, the sum of five million dollars ($5,000,000), upon appropriation by the Legislature to the department, shall be allocated by the department to the City of Santee for the purposes of flood protection for streets and highways.

79044.7. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay costs incurred in connection with the administration of this article.

79044.9. The department may adopt regulations to carry out this article.

Article 3. Delta Levee Rehabilitation Program

79045. (a) There is hereby created in the account the Delta Levee Rehabilitation Subaccount.

(b) For the purposes of this article, "subaccount" means the Delta Levee Rehabilitation Subaccount created by subdivision (a).

79046. The sum of thirty million dollars ($30,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article pursuant to Section 12986.

79047. Notwithstanding Section 13340 of the Government Code, the money in the subaccount is hereby continuously appropriated, without regard to fiscal years, to the department, as follows:

(a) Fifteen million dollars ($15,000,000) for local assistance under the delta levee maintenance subventions program under Part 9 (commencing with Section 12980) of Division 6, and for the administration of that assistance.

(b) Fifteen million dollars ($15,000,000) for special flood protection projects under Chapter 2 (commencing with Section 12310) of Part 4.8 of Division 6, subsidence studies and monitoring, and for the administration of this subdivision. Allocation of these funds shall be for flood protection projects on Bethel, Bradford, Holland, Hotchkiss, Jersey, Sherman, Twitchell, and Webb Islands, and at other locations in the delta.

(c) Any funds that are made available under subdivision (a) may be used to reimburse local agencies for the state's share of costs for eligible projects completed on or after July 1, 1998.

79048. The expenditure of funds under this article is subject to Chapter 1.5 (commencing with Section 12306) of Part 4.8 of Division 6

79049. Of the funds appropriated pursuant to subdivision (a) or (b) of Section 79047, not more than 5 percent may be expended by the department to repair levee road pavement if the damage is attributable to flood control maintenance.

79050. No expenditure of funds may be made under this article unless the Department of Fish and Game makes a written determination as part of its review and approval of a plan or project pursuant to Section 12314 or 12987. The Department of Fish and Game shall make its determination in a reasonable and timely manner following the submission of the project or plan to that department. For the purposes of this article, expenditure may include more than one levee

project or plan.

79051. For the purposes of this article, a levee project includes levee improvements and related habitat improvements undertaken in the delta at a location other than the location of that levee improvement.

79052. Following the date on which a program for the bay-delta is adopted by CALFED, the remaining funds in the subaccount shall be used for levee rehabilitation improvement projects that, to the greatest extent possible, are consistent with the program adopted by CALFED.

Article 4. Flood Control Subventions Program

79055. (a) There is hereby created in the account the Flood Control Subventions Subaccount.

(b) For the purposes of this article, "subaccount" means the Flood Control Subventions Subaccount created by subdivision (a).

79056. The sum of forty-five million dollars ($45,000,000) is hereby transferred from the fund to the subaccount.

79057. (a) Notwithstanding Section 13340 of the Government Code, or any other provision of law, the money in the subaccount is hereby continuously appropriated, without regard to fiscal year, to the department to pay for the state's share of the nonfederal costs of flood control and flood prevention projects adopted and authorized as of January 1, **1999**, under The State Water Resources Law of 1945 (Chapter 1 (commencing with Section 12570) and Chapter 2 (commencing with Section 12639) of Part 6 of Division 6), The Flood Control Law of 1946 (Chapter 3 (commencing with Section 12800) of Part 6 of Division 6), and The California Watershed Protection and Flood Prevention Law (Chapter 4 (commencing with Section 12850) of Part 6 of Division 6), including the credits and loans to local agencies pursuant to Sections 12585.3 and 12585.4, subdivision (d) of Section 12585.5, and Sections 12866.3 and 12866.4, and to implement Chapter 3.5 (commencing with Section 12840) of Part 6 of Division 6.

(b) The money in the subaccount shall be allocated only to projects in the Counties of Contra Costa, Fresno, Kern, Los Angeles, Marin, Napa, Orange, Riverside, San Bernardino, San Diego, Santa Clara, Sonoma, and Ventura.

(c) It is the intent of the Legislature that the state's share of the nonfederal costs of projects for flood control and flood prevention adopted and authorized after January 1, 2001, shall not exceed that portion of the nonfederal costs authorized pursuant to Chapter 1 (commencing with Section 12570) of Part 6 or any amendments thereto.

Article 5. Urban Stream Restoration Program

79060. (a) There is hereby created in the account the Urban Stream Restoration Subaccount.

(b) For the purposes of this article, "subaccount" means the Urban Stream Restoration Subaccount created by subdivision (a).

79061. The sum of twenty-five million dollars ($25,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79062. The money in the subaccount, upon appropriation by the Legislature to the department, may be used by the department for both of the following:

(a) Grants to local agencies and nonprofit organizations for effective, low-cost flood control projects pursuant to Section 7048.

(b) Grants to local community conservation corps and other nonprofit corporations for local stream clearance, flood mitigation, and cleanup activities.

79062.5. Notwithstanding any other provision of law, regulations set forth in Chapter 2.4 (commencing with Section 451.1) of Division 2 of Title 23 of the California Code of Regulations that are in effect on March 8, 2000, may be used to carry out this article.

Article 6. Capital Area Flood Protection Program

79065. The Legislature hereby finds and declares all of the following:

(a) Since Sacramento, the state capital, was founded over 150 years ago, it has suffered from flood disasters because of inadequate flood protection. Each year, the State Capitol and more than 1,300 other government-owned buildings and infrastructure of the capital region are at risk because of their location in the worst protected urban area in the country.

(b) The State of California's investment of money and other resources in the state's seat of government is important to preserve and protect.

(c) It is in the best interest of this state to invest in a cost-shared program to protect life and property in the state capital from flooding, thus resulting in opportunities for sustainable economic development and continued protection of the state's natural resources.

(d) The Congress and the President of the United States have recognized the national importance of increasing the level of the state capital's flood protection by authorizing projects in the Water Resources Development Act of 1999.

79065.2. (a) There is hereby created in the account the State Capital Protection Subaccount.

(b) For purposes of this article, "subaccount" means the State Capital Protection Subaccount created by subdivision (a).

79065.4. The sum of twenty million dollars ($20,000,000) is hereby transferred from the account to the subaccount for the purposes of this article.

79065.6. The money in the subaccount, upon appropriation by the Legislature to the Sacramento Area Flood Control Agency, may be used by the Sacramento Area Flood Control Agency to pay the state's share of the costs of flood management projects authorized by the United States to improve the level of flood protection in the state capital region.

79065.8. No money deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

Article 7. San Lorenzo River Flood Control Program

79067. (a) There is hereby created in the account the San Lorenzo River Flood Control Subaccount.

(b) For purposes of this article, "subaccount" means the San Lorenzo River Flood Control Subaccount created by subdivision (a).

79067.2. The sum of two million dollars ($2,000,000) is hereby transferred from the account to the subaccount for the purposes of this article.

79067.4. The money in the subaccount, upon appropriation by the Legislature to the department, shall be allocated by the department to the City of Santa Cruz to pay for the state's share of the costs of flood management projects authorized by the United States to improve the level of flood protection in the Santa Cruz region.

Article 8. Yuba Feather Flood Protection Program

79068. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this article.

(a) "Nonstructural improvements" are projects that are intended to reduce or eliminate susceptibility to flooding by preserving or increasing the flood-carrying capacity of floodways, and include such measures as levees, setback levees, floodproofing structures, and zoning, designating, or acquiring flood prone areas.

(b) "Structural improvements" are projects that are intended to modify flood patterns and rely primarily on constructed components, and include such measures as levees, floodwalls, and

improved channels.

(c) "Subaccount" means the Yuba Feather Flood Protection Subaccount created by Section 79068.2.

79068.2. There is hereby created in the account the Yuba Feather Flood Protection Subaccount.

79068.4. The sum of ninety million dollars ($90,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79068.6. Seventy million dollars ($70,000,000) in the subaccount, upon appropriation by the Legislature to the department or Reclamation Board, shall be used by the department or Reclamation Board to fund one or more of the following flood protection projects to be implemented by a local public entity that has legal authority and jurisdiction to implement a flood control program along the Yuba and Feather Rivers and their tributaries:

(a) The construction or improvements of weirs, bypasses, and channels.

(b) The construction of levees or improving publicly maintained levees, including, but not limited to, setback levees, training walls, floodwalls, and streambank protection projects, which provide flood protection or flood damage reduction.

(c) The modification or reoperation of existing dams and waterworks, including spillways or other capital outlay facilities, for the purpose of increased efficiency in managing flood waters.

(d) The installation of tailwater suppression systems, detention basins, relief wells, test wells, flood warning systems, and telemetry devices.

(e) The relocation or floodproofing of structures within floodplains, which meet or exceed a community's floodplain regulations, pursuant to the National Flood Insurance Program.

(f) Implementation of watershed projects, which provide flood protection or flood damage reduction.

(g) The construction of, or improvement to, a state or interstate highway, county road, or a levee road, that is designated a flood emergency evacuation route, or that provides access to a levee for emergency vehicles, flood fights, or levee repair and maintenance, or a project that protects such a road or highway.

(h) The purchase of lands, easements, and rights-of-way.

(i) Capital costs of environmental mitigation.

79068.8. No expenditures of state funds may be made under this article until the department or the Reclamation Board determines that all of the following requirements have been met:

(a) There is a final environmental document prepared pursuant to the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code).

(b) The project is in compliance with the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as demonstrated by documentation such as comments received from the Department of Fish and Game, a permit obtained from the Department of Fish and Game or other appropriate evidence.

(c) The local project proponent agrees to pay at least that portion of the nonfederal capital costs of the project required by Section 12585.5.

(d) The local project proponent agrees to operate and maintain the completed project.

(e) The local project proponent enters into an agreement indemnifying and holding the state, its agencies, officers and employees free and harmless from any and all liability arising out of the design, construction, operation and maintenance of the project.

(f) The project is recommended for implementation by the department or the Reclamation Board.

79068.10. All of the following factors shall be considered by the department and the Reclamation Board for prioritizing projects:

(a) Potential loss of life from flooding.

(b) Increased flood protection or flood damage reduction for areas that have the greatest flood risk or have experienced repetitive flood loss.

(c) The local community is a small community with financial hardship.

(d) Projects that provide multiple benefits.

(e) Projects that are implemented in accordance with the Sacramento/San Joaquin River Basins Comprehensive Study.

(f) Projects that are implemented pursuant to the completion of feasibility studies conducted by the United States Army Corps of Engineers or local agencies.

(g) Projects along the Yuba and Feather Rivers and their tributaries.

(h) Projects that address regional flood problems.

(i) Projects along the Colusa Drain and its tributaries.

(j) Minimizing impacts to the environment.

79068.12. Of the fund appropriated pursuant to Section 79068.6, two million six hundred thousand dollars ($2,600,000) in the subaccount shall be used for the local share of levee repairs and enhancements in Sutter County.

79068.14. (a) Twenty million dollars ($20,000,000) in the subaccount, upon appropriation to the Department of Fish and Game, may be used by that department, if it determines that any flood control project undertaken pursuant to this article would result in a reduction of, or damage to, fish, wildlife, or riparian habitat, to protect, improve, restore, create, or enhance fish, wildlife, and riparian habitat of a comparable type to that which was reduced or damaged.

(b) Any land acquired pursuant to this section shall be acquired from willing sellers.

79068.16. If all of the funds appropriated pursuant to Section 79068.6 are encumbered, and any funds described in Section 79068.14 are not needed for the purposes of that section, as stated in writing by that department to the Legislature, the Legislature may appropriate the funds not needed for the purposes of Section 79068.14 for the purposes of Article 4 (commencing with Section 79055).

79068.18. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this chapter.

79068.20. The department and board may adopt regulations to carry out this article.

Article 9. Arroyo Pasajero Watershed Program

79069. The Legislature hereby finds and declares all of the following:

(a) The Arroyo Pasajero Watershed incurred unprecedented flooding in 1995 that resulted in a loss of lives due to a bridge failure on Interstate Highway Route 5 (I-5).

(b) Flooding in the watershed cause damage to important federal, state, and local public facilities, including the Lemoore Naval Air Station, Interstate Highway Route 5 (I-5), the California Aqueduct, and critical local roads and highways, as well as private property.

(c) It is of statewide importance to undertake projects to eliminate future flooding in the watershed in order to protect life and property and to protect the drinking water supply of southern California.

79069.2. Unless the context otherwise requires, the definitions set forth in this section govern construction of this article.

(a) "Subaccount" means the Arroyo Pasajero Watershed Subaccount created pursuant to Section 79069.4.

(b) "Watershed" means the Arroyo Pasajero Watershed.

79069.4. There is hereby created in the account the Arroyo Pasajero Watershed Subaccount. The sum of five million dollars ($5,000,000) is hereby transferred from the account to the subaccount for the purposes of this article.

79069.6. The money in the subaccount, upon appropriation by the Legislature to the department, shall be used by the department for projects that improve flood protection for State Highway Route 269 in the area north of the City of Huron or improve flood control for the

California Aqueduct in the area of the Arroyo Pasajero Crossing.

79069.8. For the purposes of carrying out projects pursuant to this article, the department is encouraged to utilize the services of the California Conservation Corps or community conservation corps or both.

79069.10. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay costs incurred in connection with the administration of this article.

79069.12. The department may adopt regulations to carry out this article.

CHAPTER 6. WATERSHED PROTECTION PROGRAM

Article 1. Watershed Protection Account

79070. For the purposes of this chapter, "account" means the Watershed Protection Account created by Section 79071.

79071. The Watershed Protection Account is hereby created in the fund. The sum of four hundred sixty-eight million dollars ($468,000,000) is hereby transferred from the fund to the account.

Article 2. Watershed Protection Program

79075. (a) There is hereby created in the account the Watershed Protection Subaccount.

(b) For the purposes of this article, "subaccount" means the Watershed Protection Subaccount created by subdivision (a).

79076. The sum of ninety million dollars ($90,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79077. The purposes of this article are to provide funds to assist in implementing watershed plans to reduce flooding, control erosion, improve water quality, and improve aquatic and terrestrial species habitats, to restore natural systems of groundwater recharge, native vegetation, water flows, and riparian zones, to restore the beneficial uses of waters of the state in watersheds, and to provide matching funds for federal grant programs.

79078. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Local agency" means any city, county, city and county, district, or other political subdivision of the state.

(b) "Local watershed group" means a group consisting of owners and managers of land within the watershed of interest, local, state, and federal government representatives, and interested persons, other than landowners, who reside or work within the watershed of interest, and may include other persons, organizations, nonprofit corporations, and businesses.

(c) "Local watershed management plan" means a document prepared by a local watershed group that sets forth a strategy to achieve an ecologically stable watershed, and that does all of the following:

(1) Defines the geographical boundaries of the watershed.

(2) Describes the natural resource conditions within the watershed.

(3) Describes measurable characteristics for water quality improvements.

(4) Describes methods for achieving and sustaining water quality improvements.

(5) Identifies any person, organization, or public agency that is responsible for implementing the methods described in paragraph (4).

(6) Provides milestones for implementing the methods described in paragraph (4).

(7) Describes a monitoring program designed to measure the effectiveness of the methods described in paragraph (4).

(d) "Municipality" has the same meaning as defined in the Clean Water Act and also includes

the state or any agency, department, or political subdivision thereof, and applicants eligible for technical assistance under Section 319 (33 U.S.C. Sec. 1329) or grants under Section 320 of the Clean Water Act (33 U.S_C. Sec. 1330).

(e) "Nonprofit organization" means any California corporation organized under Section 501(c)(3) or 501(c)(5) of the Internal Revenue Code.

(f) "Regional board" means a regional water quality control board.

79079. The money in the subaccount, upon appropriation by the Legislature to the board, may be used by the board for grants to municipalities, local agencies, or nonprofit organizations in accordance with this article. The grants shall be used to develop local watershed management plans or to implement projects that are consistent with local watershed management and regional water quality control plans. The board shall ensure that activities funded by these grants will be coordinated with activities undertaken by state and federal agencies, and with other appropriate watershed efforts.

79079.5. The funds used for the purposes described in Section 79079 shall be allocated as follows:

(a) Sixty percent to projects in the Counties of Los Angeles, Orange, Riverside, San Diego, San Bernardino, and Ventura.

(b) Forty percent to projects in counties not described in subdivision (a).

79080. (a) A municipality, local agency, or nonprofit organization may only receive a grant under this article if the board determines that both of the following apply:

(1) The municipality, local agency, or nonprofit organization has adequate legal authority to manage the grant money.

(2) The municipality, local agency, or nonprofit organization is a member of a local watershed group.

(b) Grants may be awarded for projects that implement methods for attaining watershed improvements or for a monitoring program described in a local watershed management plan in an amount not to exceed five million dollars ($5,000,000) per project. At least 85 percent of the total amount in the subaccount shall be used for capital outlay projects described in this subdivision.

(c) Eligible projects under this article may do any of the following:

(1) Reduce chronic flooding problems or control water velocity and volume using vegetation management or other nonstructural methods.

(2) Protect and enhance greenbelts and riparian and wetlands habitats.

(3) Restore or improve habitat for aquatic or terrestrial species.

(4) Monitor the water quality conditions and assess the environmental health of the watershed.

(5) Use geographic information systems to display and manage the environmental data describing the watershed.

(6) Prevent watershed soil erosion and sedimentation of surface waters.

(7) Support beneficial groundwater recharge capabilities.

(8) Otherwise reduce the discharge of pollutants to state waters from storm water or nonpoint sources.

(d) (1) Grants may be awarded to municipalities, local agencies, or nonprofit organizations for the development of local watershed management plans in amounts not to exceed two hundred thousand dollars ($200,000) per local watershed management plan.

(2) Funding under this subdivision may be used to develop components of local watershed management plans that contribute to the development or implementation of species recovery plans.

(e) Grants may be awarded to meet requirements for nonfederal matching funds set forth in Section 205(j) of the Clean Water Act (33 U.S.C. Sec. 1285(j)) or Section 319(h) of the Clean Water Act (33 U.S.C. Sec. 1329(h)).

(f) Projects funded under this article shall be designed to withstand substantial flooding and shall include a minimum 10-year maintenance program and shall demonstrate the potential to provide watershed benefits for 20 years.

(g) A proponent of a project funded from the subaccount, except a grant recipient pursuant to subdivision (d), shall be required to submit to the board a monitoring and reporting plan that does all of the following:

(1) Describes the baseline water quality of the waterbody impacted.

(2) Describes the manner in which the proposed watershed restoration activities are implemented.

(3) Determines the effectiveness of the watershed restoration activities in preventing or reducing pollution.

(4) Determines, to the extent feasible, the changes in the pattern of flow in affected streams, including reduction of flood flows and increases in spring, summer, and fall flows that result from the implementation of the project.

(5) Determines, to the extent feasible, the economic benefits resulting from changes determined pursuant to paragraph (3) or (4).

(h) (1) A grant applicant shall inform the board with regard to necessary public agency approvals, entitlements, and permits that may be necessary to implement the project. The municipality, local agency, or nonprofit organization shall certify to the board, at the appropriate time that those approvals, entitlements, and permits have been granted.

(2) A grant applicant shall notify, in writing, adjoining landowners of its request for funding under this article and the scope of the project for which the funding is requested. If this paragraph requires notification of more than 200 landowners, notification may be made by letter to the owners of record of the 200 largest parcels and by publication for at least 20 days in a local newspaper of general circulation. Upon completion of the notification required under this paragraph, the municipality, local agency, or nonprofit organization shall inform the board that the notification has occurred.

(i) The board may adopt regulations to carry out this article.

(j) In awarding grants under this article, the board shall consider the extent to which projects do the following:

(1) Consider the entire ecosystem to be protected or restored.

(2) Include definable targets and desired future conditions.

(3) Support local community institutional capacity to restore the watershed.

(4) Include community decision-making by affected stakeholders in project design and fund allocation.

(5) Help protect intact or nearly intact ecosystems and watersheds.

(6) Consider the economic benefits of the restoration project or program.

(7) Address the root causes of degradation, rather than the symptoms.

(8) Maximize the use of other restoration funds.

(9) Include an educational component, if appropriate.

(10) Improve the quality of drinking water and support other beneficial uses of waters of the state, including coastal waters.

79081. A grant recipient shall obtain written permission from the landowners of the parcel of land upon which the project is proposed to be carried out. The written permission shall expressly consent to the actions described in the grant application.

79082. Not more than 25 percent of a grant may be awarded in advance of actual expenditures.

79083. (a) A grant recipient shall submit to the board a report upon the completion of the project or activity funded under this article. The report shall summarize the completed project and identify additional steps necessary to achieve the purposes of the local watershed management plan. The board shall make the report available to interested federal, state, and local agencies and other interested parties.

(b) The board shall prepare and submit to the Governor a biennial report regarding the implementation of this article. The biennial report shall include, at a minimum, a discussion relating to the extent to which the purposes described in Section 79077 are being furthered by the implementation of this article.

79084. (a) Of the funds transferred pursuant to Section 79076, at least thirty-five million dollars ($35,000,000) shall be for grants to small communities.

(b) For the purposes of this article, "small community" means a municipality with a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined by the board.

(c) If the board determines that any of the funds made available for grants under this section will not be encumbered for that purpose on or before January 1, 2007, the board may use these funds for other purposes of this article.

79085. The board shall give added consideration to projects that utilize the services of the California Conservation Corps, community conservation corps, or other local nonprofit entities employing underprivileged youths.

79085.5. Notwithstanding any other provision of this article, the following amounts from the subaccount, upon appropriation by the Legislature, shall be allocated as follows:

(a) The sum of two million dollars ($2,000,000) to the board for allocation to the Pajaro River Watershed Flood Prevention Authority for a hydrologic study with regard to the Pajaro River Watershed.

(b) The sum of one million dollars ($1,000,000) to the board for allocation to the County of Sonoma to develop and implement community-based watershed management activities that will protect, restore, and enhance the environmental and economic value of the Russian River Watershed in the County of Sonoma.

(c) The sum of five million dollars ($5,000,000) to the board for the Clover Creek Flood Protection and Environmental Enhancement Project to provide for the acquisition, restoration, and conservation of low-flow stream channel, open water, seasonal wetlands, riparian habitat, oak woodland regeneration, and grassland meadow preservation.

(d) The sum of two million dollars ($2,000,000) to the board to rehabilitate and improve the Clear Lake Watershed by funding one or more of the following projects or activities: Clear Lake Basin 2000 Project, aeration, wetlands restoration, fishery enhancement, and wastewater treatment, or for grants awarded by the board to local public agencies for any of these purposes. The first priority for funding under this subdivision is for a grant award to fund eligible expenses of the Basin 2000 Project.

(e) To the maximum extent feasible, the watershed restoration and flood control projects described in this subdivision shall do one or more of the following:

(1) Preserve agricultural land.

(2) Protect and enhance wildlife habitat.

(3) Protect and enhance recreational and environmental education resources.

(4) Protect lake water quality.

79086. Notwithstanding any other provision of law, the board shall terminate any grant where it is determined that the project is not providing the proposed watershed benefits.

79087. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay costs incurred in connection with the administration of this article.

79088. Where recovery plans for coho salmon, steelhead trout, or other threatened or endangered aquatic species exist, projects funded under this article shall be consistent with those plans, and to the extent feasible, shall seek to implement actions specified in those plans.

Article 3. Water and Watershed Education Program

79090. (a) There is hereby created in the account the Water and Watershed Education

Subaccount.

(b) For the purposes of this article, "subaccount" means the Water and Watershed Education Subaccount created by subdivision (a).

79091. The sum of eight million dollars ($8,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79092. Three million dollars ($3,000,000) in the subaccount, upon appropriation by the Legislature to the department, may be used by the department for allocation to California State University, Fresno for the purposes of establishing and furthering the purposes of the San Joaquin Valley Water Institute at that campus.

79093. Two million dollars ($2,000,000) in the subaccount, upon appropriation by the Legislature to the department, shall be used by the department for the development of a Delta Science Center, including, but not limited to, all of the following components:

(a) Public educational opportunities.
(b) Wildlife and habitat enhancement.
(c) Preservation of agricultural lands.
(d) Enhanced levee protection and rehabilitation.
(e) Water quality improvements.
(f) Nonstructural flood protection.

79094. Three million dollars ($3,000,000) in the subaccount, upon appropriation by the Legislature to the University of California, may be used for the purpose of site acquisition, construction, and equipping of a Watershed Science Laboratory, for long-term monitoring and research with regard to the hydrology, geomorphology, water quality and aquatic and riparian ecology of the north delta and its tributary watersheds.

Article 4. River Protection Program

79100. (a) There is hereby created in the account the River Protection Subaccount.

(b) For the purposes of this article, "subaccount" means the River Protection Subaccount created by subdivision (a).

79101. The sum of ninety-five million dollars ($95,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79102. The money in the subaccount, upon appropriation by the Legislature, may be used to meet the requirements of Article 6 (commencing with Section 78682) of Chapter 6 of Division 24.

79103. At least 60 percent of the funds transferred pursuant to Section 79101 shall be used for projects that are located in, or in close proximity to, major metropolitan areas.

79103.2. Notwithstanding any other provision of this article, of the funds transferred pursuant to Section 79101, ten million dollars ($10,000,000) shall, upon appropriation to the department, be allocated to the San Joaquin River Parkway Conservancy for the purposes of the San Joaquin River Parkway.

79103.4. Notwithstanding any other provision of this article, of the funds transferred pursuant to Section 79101, two million five hundred thousand dollars ($2,500,000) in the subaccount shall be used by the department, upon appropriation, for the purpose of the Kern River Parkway Project between the mouth of Kern Canyon and Interstate Highway Route 5.

79104. Not more than 3 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

Article 5. Southern California Integrated Watershed Program

79104.20. The Legislature hereby finds and declares all of the following:

(a) The Santa Ana Watershed is experiencing increased water demands due to significant population growth that has caused undue infrastructure dependence and strain on imported

water supplies.

(b) Regional programs have been developed to address the problems facing the watershed. These programs have four main elements, as follows:

(1) Storage of more than one million acre-feet of water from wet years in groundwater storage basins.

(2) Conservation, including water use efficiency and reclamation, that results in the substantial development of new usable supplies.

(3) Desalting and treatment of brackish water to allow poor quality water to be reclaimed and used.

(4) Enhancement of native habitat along the river and its tributaries.

(c) The water supply programs proposed by the Santa Ana Watershed Project Authority will develop significant new water supply and storage capabilities, thereby reducing the imported water needs of urban southern California, especially during dry years.

79104.22. (a) There is hereby created in the account the Santa Ana River Watershed Subaccount.

(b) For purposes of this article, "subaccount" means the Santa Ana River Watershed Subaccount created by subdivision (a).

79104.24. The sum of two hundred thirty-five million dollars ($235,000,000) is hereby transferred from the account to the subaccount.

79104.26. The money in the subaccount, upon appropriation by the Legislature to the board, may be used by the board for allocation to the Santa Ana Watershed Project Authority for all of the following projects for the purposes of rehabilitating and improving the Santa Ana River Watershed:

(a) Basin water banking in one or more of the following basins: Chino, Colton, Orange County, Riverside, San Bernardino, and San Jacinto.

(b) Contaminant and salt removal through reclamation and desalting in Orange County, San Jacinto, or other basins in the watershed.

(c) Removal of nonnative plants, and the creation of new open space and wetlands.

(d) Programs for water conservation and efficiency and storm water capture and management.

(e) Planning and implementation of a flood control program to protect agricultural operations and adjacent property , to assist in abating the effects of waste discharges into waters of the state, consistent with the requirements of Section 13442.

79104.30. It is the intent of the Legislature to urge the federal government to allocate funds for projects to improve the Santa Ana River Watershed to match the state's financial commitment to the projects described in this article.

79104.32. It is the intent of the Legislature that the expenditure of the funds under this article be made through a broad-based watershed stakeholder process.

79104.34. Not more than 3 percent of the total amount deposited in the subaccount may be used to pay costs incurred by the board in connection with the administration of this article.

Article 6. Lake Elsinore and San Jacinto Watershed Program

79104.100. (a) There is hereby created in the account the Lake Elsinore and San Jacinto Watershed Subaccount.

(b) For the purposes of this article, "subaccount" means the Lake Elsinore and San Jacinto Watershed Subaccount created by subdivision (a)

79104.102. The sum of fifteen million dollars ($15,000,000) is hereby transferred from the account to the subaccount.

79104.104. The money in the subaccount, upon appropriation by the Legislature to the board, may be used by the board to rehabilitate and improve the Lake Elsinore Watershed and San Jacinto Watershed and the water quality of Lake Elsinore by funding one or more of the following

projects: watershed monitoring, storm channel modification, nutrient control, aeration, wetlands restoration and enhancement, wildlife habitat enhancement, fishery enhancement, calcium quicklime treatment, and sediment removal, or for grants awarded by the board to the Santa Ana Watershed Project Authority, other joint powers authorities, or local public agencies for any of these purposes, and for related planning and administrative costs.

79104.106. To the maximum extent feasible, the watershed management and flood control projects described in Section 79104.104 shall do one or more of the following:

(a) Preserve agricultural land.
(b) Protect wildlife habitat.
(c) Protect and enhance recreational resources.
(d) Improve lake water quality.

79104.108. It is the intent of the Legislature to urge the federal government to allocate funds for projects to improve the Lake Elsinore Watershed and San Jacinto Watershed, and lake water quality by matching the state's financial commitment to those projects.

79104.110. The funds appropriated pursuant to Section 79104.104 shall be allocated to a joint powers agency consisting of the City of Lake Elsinore, the Santa Ana Watershed Project Authority, the Elsinore Valley Municipal Water District and other agencies for implementation of programs to improve the water quality and habitat of Lake Elsinore, and its back basin consistent with the Lake Elsinore Management Plan.

79104.114. Not more than 3 percent of the total amount deposited in the subaccount may be used to pay costs incurred in connection with the administration of this article.

Article 7. Coastal Watershed Salmon Habitat Program

79104.200. (a) There is hereby created in the account the Coastal Watershed Salmon Habitat Subaccount.

(b) For the purpose of this article, "subaccount" means the Coastal Watershed Salmon Habitat Subaccount created by subdivision (a)

79104.202. The sum of twenty-five million dollars ($25,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79104.204. The money in the subaccount, upon appropriation by the Legislature to the Department of Fish and Game, shall be used by the Department of Fish and Game for direct expenditure and for grants to public agencies and nonprofit organizations to protect, restore, acquire, and enhance habitat for salmon. These funds may be used to match federal funding available for those purposes.

79104.206. Not more than 3 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

CHAPTER 7. CLEAN WATER AND WATER RECYCLING PROGRAM

Article 1. Clean Water and Water Recycling Account

79105. For the purposes of this chapter, "account" means the Clean Water and Water Recycling Account created by Section 79106.

79106. The Clean Water and Water Recycling Account is hereby created in the fund. The sum of three hundred fifty-five million dollars ($355,000,000) hereby transferred from the fund to the account.

Article 2. Nonpoint Source Pollution Control Program

79110. The purpose of this article is to provide grant funding for projects that protect the beneficial uses of water throughout the state through the control of nonpoint source pollution.

79111. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Best management practices" means those practices or set of practices determined by the board, a regional board, or the water quality planning agency for a designated area to be the most effective feasible means of preventing or reducing the generation of a specific type of nonpoint source pollution, given technological, institutional, environmental, and economic constraints.

(b) "Capital costs" has the same meaning as "cost," as defined in Section 32025 of the Public Resources Code.

(c) "Management measures" means economically achievable measures to prevent or control the addition of pollutants to state waters, which reflect the greatest degree of pollutant prevention achievable through the application of the best available nonpoint source pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(d) "Regional board" means a regional water quality control board.

(e) "Subaccount" means the Nonpoint Source Pollution Control Subaccount created by Section 79112.

79112. There is hereby created in the account the Nonpoint Source Pollution Control Subaccount.

79113. The sum of one hundred million dollars ($100,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79114. (a) The money in the subaccount, upon appropriation by the Legislature to the board, may be used by the board to award grants, not to exceed five million dollars ($5,000,000) per project, to local public agencies or nonprofit organizations formed by landowners to prepare and implement local nonpoint source plans. Grants shall only be awarded for any of the following projects:

(1) A project that is consistent with local watershed management plans that are developed under subdivision (d) of Section 79080 and with regional water quality control plans.

(2) A broad-based nonpoint source project, including a project identified in the board's "Initiatives in NPS Management," dated September 1995, and nonpoint source technical advisory committee reports.

(3) A project that is consistent with the "Integrated Plan for Implementation of the Watershed Management Initiative" prepared by the board and the regional boards.

(4) A project that implements management measures and practices or other needed projects identified by the board pursuant to its nonpoint source pollution control program's 15-year implementation strategy and five-year implementation plan that meets the requirements of Section 6217(g) of the federal Coastal Zone Act Reauthorization Amendments of 1990.

(b) The projects funded from the subaccount shall demonstrate a capability of sustaining water quality benefits for a period of 20 years. Categories of nonpoint source pollution addressed by projects may include, but are not limited to: silviculture, agriculture, urban runoff, mining, hydromodification, grazing, onsite disposal systems, boatyards and marinas, and animal feeding operations. Projects to address nonpoint source pollution may include, but are not limited to, wildfire management, installation of vegetative systems to filter or retard pollutant loading, incentive programs or large scale demonstration programs to reduce commercial reliance on polluting substances or to increase acceptance of alternative methods and materials, and engineered features to minimize impacts of nonpoint source pollution. Projects shall have defined water quality or beneficial use goals.

(c) Projects funded from the subaccount shall utilize best management practices, management measures, or both.

(d) If projects include capital costs, those costs shall be identified by the project applicant. The grant recipient shall provide a matching contribution for the portion of the project consisting of capital expenditures for construction, according to the following formula:

Project Capital Cost/Capital Cost Match by Recipient

$1,000,000 to $5,000,000, inclusive	20%
$125,000 to $999,999, inclusive	15%
$1 to $124,999, inclusive	10%

(e) Not more than 25 percent of a grant may be awarded in advance of actual expenditure.

(f) A proponent of a project funded from the subaccount shall be required to submit to the board a monitoring and reporting plan that does all of the following:

(1) Identifies one or more nonpoint sources of pollution.

(2) Describes the baseline water quality of the waterbody impacted.

(3) Describes the manner in which the proposed practices or measures are implemented.

(4) Determines the effectiveness of the proposed practices or measures in preventing or reducing pollution.

(g) Notwithstanding subdivision (b), the board may award up to 5 percent of the total amount deposited in the subaccount for demonstration projects that are intended to prevent, reduce, or treat nonpoint source pollution.

(h) A grant recipient shall submit a report to the board, upon completion of the project that summarizes completed activities and indicates whether the purposes of the project have been met. The report shall include information collected by the grant recipient in accordance with the project monitoring and reporting plan, including a determination of the effectiveness of the best management practices or management measures implemented as part of the project in preventing or reducing nonpoint source pollution. The board shall make the report available to watershed groups, and federal, state, and local agencies.

79114.2. Notwithstanding any other provision of this article, the sum of five million dollars ($5,000,000) is hereby appropriated from the subaccount, to the board to be used by the board, after consultation with the Department of Food and Agriculture, for loans, not to exceed five hundred thousand dollars ($500,000) per loan, to provide low interest loans to finance the construction of projects designed to manage animal nutrients from animal feeding operations. Grants may be made available to local public agencies to pay for the cost of developing ordinances, regulations, and elements for their General Plan or other planning devices to assist in providing uniform standards for the permitting and operation of animal feeding operations within their jurisdictions. These funds may also be used for the preparation of the related environmental reviews that may be necessary under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for approval of the devices.

79114.3. No project shall receive funds under this article if it receives funds pursuant to Article 5 (commencing with Section 79148).

79114.5. (a) Sixty percent of the money in the subaccount shall be allocated to projects in the Counties of Riverside, Ventura, Los Angeles, San Diego, Orange, or San Bernardino.

(b) Forty percent of the money in the subaccount shall be allocated to projects in counties not described in subdivision (a).

(c) This section does not apply to Section 79114.2 or Section 79117.

79115. The board may adopt regulations to implement this article.

79116. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

79117. (a) Notwithstanding any other provision of this article, of the funds transferred pursuant to Section 79113, the sum of ten million dollars ($10,000,000), upon appropriation by the Legislature to the board, may be used by the board, after consultation with the Department of Pesticide Regulation and the Office of Environmental Health Hazard Assessment, for grants as follows:

(1) Two million dollars ($2,000,000) for research and source identification.

(2) Eight million dollars ($8,000,000) for mitigation measures to protect water quality from potential adverse effects of pesticides, which measures have the ability to provide benefits for a period of 20 years, as determined by the board after consultation with the Department of Pesticide Regulation and the Office of Environmental Health Hazard Assessment.

(b) The board shall adopt regulations to carry out this section.

Article 3. Clean Water Program

79120. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Eligible project" means a project or activity described in paragraph (1), (2), (3), or (4) of subdivision (a) of Section 13480 that is all of the following:

(1) Necessary to prevent water pollution, reclaim water, or improve water quality.

(2) Eligible for funds from the State Revolving Fund Loan Subaccount or federal assistance.

(3) Certified by the board as entitled to priority over other eligible projects.

(4) Complies with applicable water quality standards, policies, and plans.

(b) "Federal assistance" means money provided to a municipality, either directly or through allocation by the state, from the federal government to construct eligible projects pursuant to the Clean Water Act.

(c) "Municipality" has the same meaning as defined in the Clean Water Act and also includes the state or any agency, department, or political subdivision thereof, and applicants eligible for technical assistance under Section 319 (33 U.S.C. Sec. 1329) or grants under Section 320 of the Clean Water Act (33 U.S.C. Sec. 1330).

(d) "Small community" means a municipality with a population of 10,000 persons or less, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 10,000 persons or less, with a financial hardship as determined by the board.

(e) "Treatment works" has the same meaning as defined in the Clean Water Act.

79121. There is hereby created in the account all of the following subaccounts:

(a) The State Revolving Fund Loan Subaccount.

(b) The Small Communities Grant Subaccount.

(c) The Wastewater Construction Grant Subaccount.

79122. (a) The following amounts are hereby transferred from the account to the following subaccounts and, notwithstanding Section 13340 of the Government Code, are hereby continuously appropriated, without regard to fiscal years, to the board, as follows:

(1) Thirty million five hundred thousand dollars ($30,500,000) to the State Revolving Fund Loan Subaccount for the purposes of providing loans pursuant to the Clean Water Act, to aid in the construction or implementation of eligible projects, and for the purposes described in Section 79124.

(2) Thirty-four million dollars ($34,000,000) to the Small Communities Grant Subaccount for grants by the board to small communities for construction of eligible treatment works, and for the purposes described in Section 79124.

79122.2. The sum of thirty-five million five hundred thousand dollars ($35,500,000) is hereby transferred from the account to the Wastewater Construction Grant Subaccount and, upon appropriation by the Legislature to the board, may be used by the board for the purposes of providing grants to aid in the construction of treatment works for the Cities of Manteca, Stockton, Tracy, and Orange Cove.

79122.4. The board may transfer unallocated funds from the State Revolving Fund Loan Subaccount to the State Water Pollution Control Revolving Fund created pursuant to Section 13477 for the purposes of meeting federal requirements for state matching funds to provide loans in accordance with the Clean Water Act.

(3) 79123. The board may adopt regulations to carry out this article.

79124. The board may, by contract or otherwise, undertake plans, surveys, research, development, and studies necessary or desirable to carry out this article, and may prepare recommendations with regard thereto, including the preparation of comprehensive statewide or areawide studies and reports on the collection, treatment, and disposal of waste, and wastewater recycling. For the purposes of this section, "research" may include the design, acquisition, installation, or construction of monitoring and testing equipment and related facilities.

79125. Not more than 3 percent of the total amount deposited in each subaccount created pursuant to this article may be used to pay the costs incurred in connection with the administration of this article.

79126. Not more than 2 percent of the total amount deposited in each subaccount under this article may be used for the purposes of Section 79124.

79127. For the purposes of implementing paragraph (1) of subdivision (a) of Section 79122, the board may make loans to municipalities, pursuant to contract, to aid in the construction or implementation of eligible projects.

79128. (a) For purposes of paragraph (2) of subdivision (a) of Section 79122, the board may make grants to small communities so that any state grant does not exceed 971/2 percent of the eligible cost of necessary studies, planning, design, and construction of the eligible project determined in accordance with applicable state law and regulations.

(b) The total amount of grants made pursuant to paragraph (2) of subdivision (a) of Section 79122, for any single project, may not exceed three million five hundred thousand dollars ($3,500,000).

79128.5. For the purposes of paragraph (3) of subdivision (a) of Section 79122, the board may make grants for the cost of planning, design, and construction of treatment works necessary to comply with waste discharge requirements.

79129. Any contract entered into pursuant to this article for a loan or grant may include provisions determined by the board, and shall include all of the following provisions:

(a) An estimate of the reasonable cost of the project.

(b) A description of the type of assistance being offered.

(c) An agreement by the board to pay to the municipality or small community, during the progress of the project or following completion, as agreed upon by the parties, the amount specified in the contract determined pursuant to applicable federal and state laws.

(d) An agreement by the municipality or small community to proceed expeditiously with, and complete, the project, commence operation of the project upon completion, properly operate and maintain the project in accordance with applicable provisions of law, and provide for payment of its share of the costs of the project.

79130. All contracts entered into pursuant to this article for loans or grants are subject to both of the following requirements:

(a) Municipalities seeking assistance shall demonstrate, to the satisfaction of the board, that an adequate opportunity for public participation regarding the project has been provided.

(b) Any election held with respect to the project shall include the voters of the entire municipality unless the municipality proposes to accept the assistance on behalf of a specified portion or portions of the municipality, in which case the election shall be held in that portion or portions of the municipality only.

79131. Any loan made pursuant to Section 79127 shall meet the requirements of paragraph (1) of subdivision (b) of Section 13480.

79132. All principal and interest payments received pursuant to loan contracts entered into pursuant to this article shall be deposited in the State Revolving Fund Loan Subaccount for the purposes of entering into additional loans under this article, and shall not be transferred to the General Fund.

(4) 79133. (a) Notwithstanding any other provision of this article, of the continuously appropriated funds described in paragraph (1) of subdivision (a) of Section 79122, the sum of

seven million dollars ($7,000,000) shall be used by the Department of Toxic Substances Control for allocation to local agencies for groundwater remediation projects.

(b) The Department of Toxic Substances Control shall adopt regulations to carry out this subdivision.

Article 4. Water Recycling Program

79135. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Municipality" has the same meaning as that set forth in subdivision (c) of Section 79120.

(b) "Subaccount" means the Water Recycling Subaccount created by Section 79136.

(c) "Water recycling project" means a water recycling project that meets applicable reclamation criteria and water reclamation requirements and that complies with applicable water quality standards, policies, and plans.

79136. There is hereby created in the account the Water Recycling Subaccount.

79137. (a) The sum of forty million dollars ($40,000,000) is hereby transferred from the account to the subaccount for the purposes of this article.

(b) (1) Sixty percent of the money in the subaccount shall be allocated to projects in the Counties of Riverside, Ventura, Los Angeles, San Diego, Orange, or San Bernardino.

(2) Forty percent of the money in the subaccount shall be allocated to projects in counties not described in paragraph (1).

79138. Unallocated funds remaining in the Water Recycling Subaccount in the Clean Water and Water Recycling Account in the Safe, Clean, Reliable Water Supply Fund on March 8, 2000, and any funds deposited into that subaccount after that date, shall be transferred to, and all money repaid to the state pursuant to any loan contract executed under Chapter 17 (commencing with Section 14050) of Division 7 or Article 3 (commencing with Section 78620) of Chapter 5 of Division 24 shall be deposited in, the subaccount for the purposes of this article.

79139. The board may enter into an agreement with the federal government for federal contributions to the subaccount if all of the following conditions have been met:

(a) The board has identified any required matching funds.

(b) The board is prepared to commit to the expenditure of any minimum amount in the subaccount in the manner required by the Clean Water Act.

(c) Any agreement between the board and the federal government is consistent with the purposes of this article.

79140. (a) Notwithstanding Section 13340 of the Government Code, 50 percent of the money in the subaccount is hereby continuously appropriated, without regard to fiscal years, to the board for loans to municipalities for the design and construction of water recycling projects in accordance with Section 79141, and for the purposes described in Sections 79143, 79144, and Section 79145.

(b) Fifty percent of the money in the subaccount, upon appropriation by the Legislature to the board, may be used by the board for grants to municipalities for the design and construction of water recycling projects in accordance with Section 79141.

79141. The board may enter into agreements with municipalities for loans and grants for projects to recycle water in accordance with this article. Criteria to be considered by the board in determining whether to enter into an agreement under this article may include, but are not limited to, whether the project is a cost-effective means to meet the state or local water supply needs, when compared to other sources of water supply that may be available to the municipality, whether the project is necessary to protect water quality, the readiness of the municipality to proceed with the design and construction of water recycling projects, the degree to which the recycled water improves water supply reliability, water quality, ecosystem restoration, and other environmental benefits, the net water savings benefit, the degree to which the recycled water would reduce water supply demands on the bay-delta system, the Colorado River, or other water systems critical to

regional or statewide water supply, the ability to encourage development of new water recycling projects, and the amount of funding that the municipality is requesting under this article. The cost effectiveness of a project when compared to other sources of state or local water supply shall not be the sole factor in determining whether to enter into an agreement.

79142. An agreement entered into pursuant to Section 79141 may include those provisions determined by the board to be necessary for the purposes of this article.

79142.2. (a) A contract for a loan made pursuant to this article may not provide for a moratorium on, or the deferment of, the payment of the principal of, or interest on, the loan.

(b) Any loan made pursuant to Section 79141 shall be for a period not to exceed 20 years.

(c) The board may enter into a contract for a loan that equals up to 100 percent of the total eligible cost of design and construction of an eligible recycling project.

79142.4. (a) The board may establish the interest rate for a loan made pursuant to this article at a rate equal to 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds, to be computed according to the true interest cost method.

(b) If the interest rate so determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the next higher multiple of one-tenth of 1 percent.

(c) The interest rate set for each contract shall be applied throughout the repayment period of the contract. There shall be a level annual repayment of principal and interest on the loans.

79142.6. All principal and interest payments received pursuant to loan contracts executed pursuant to this article shall be deposited in the subaccount for the purposes of this article, and shall not be transferred to the General Fund.

79142.8. All interest earned by assets in the subaccount shall be deposited in the subaccount.

79143. The board may make grants to municipalities for facility planning studies for water recycling projects. The amount of the grants may not exceed seventy-five thousand dollars ($75,000) per study.

79144. The board may, by contract or otherwise, undertake plans, surveys, research, development, and studies necessary or desirable to carry out this article, and may prepare recommendations with regard thereto, including the preparation of comprehensive statewide or areawide studies and reports on the collection, treatment, and disposal of waste and wastewater recycling. For the purposes of this section, "research" may include the design, acquisition, installation, or construction of monitoring and testing equipment and related facilities.

79145. (a) Not more than 3 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

(b) Not more than 3 percent of the total amount deposited in the subaccount may be used for the purposes of Section 79144.

79146. Notwithstanding any other provision of this article, the money in the subaccount may not be used to provide financial assistance to any water recycling project used to augment water supplies by discharging recycled water into a surface water reservoir that supplies water directly to a treatment facility for a water supply system that serves domestic uses.

79147. (a) The board may adopt regulations to carry out this article.

(b) The board is encouraged to expedite the review and processing of agreements to carry out the purposes of this article. The board shall report to the Legislature on the progress of implementing this article on or before June 30, 2001.

Article 5. Coastal Nonpoint Source Control Program

79148. The purpose of this article is to provide funding for projects that restore and protect the water quality and environment of coastal waters, estuaries, bays, and near share waters and groundwaters.

79148.2. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Educational institution" means community colleges, state colleges, and the University

of California.

(b) "Local public agency" means any city, county, city and county, district, or other political subdivision of the state.

(c) "Municipality" has the same meaning as defined in the Clean Water Act and also includes the state or any agency, department, or political subdivision thereof, and applicants eligible for technical assistance under Section 319 (33 U.S.C. Sec. 1329) or grants under Section 320 of the Clean Water Act (33 U.S.C. Sec. 1330).

(d) "Nonprofit organization" means any California corporation organized under Section 501(c)(3) or 501(c) (5) of the Internal Revenue Code.

(e) "Regional board" means a regional water quality control board.

(f) "Subaccount" means the Coastal Nonpoint Source Control Subaccount created by Section 79148.4.

79148.4. There is hereby created in the account the Coastal Nonpoint Source Control Subaccount.

79148.6. The sum of ninety million dollars ($90,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

7 9148.7. Notwithstanding any other provision of this article, the sum of four million dollars ($4,000,000), upon appropriation by the Legislature to the board, shall be allocated by the board to the City of Huntington Beach to fund multiagency studies to establish recommendations to address coastal nonpoint source pollution in the tidal marshes and coastal waters, and to implement those recommendations. Agencies authorized to conduct the studies and implement the recommendations may include, but need not be limited to, municipal and county governments, flood control districts, and sanitation districts.

79148.8. (a) The money in the subaccount, upon appropriation by the Legislature to the board, may be used by the board, in consultation with the California Coastal Commission, to award loans as provided in subdivision (b), and to award grants not to exceed five million dollars ($5,000,000) per project, to municipalities, local public agencies, educational institutions, or nonprofit organizations for the purposes of this article. Grants may be awarded for any of the following projects:

(1) A project designed to improve water quality at public beaches and to make improvements for the purpose of ensuring that coastal waters adjacent to public beaches meet the bacteriological standards set forth in Article 2 (commencing with Section 115880) of Chapter 5 of Part 10 of Division 104 of the Health and Safety Code.

(2) A project to provide comprehensive capability for monitoring, collecting, and analyzing ambient water quality, including monitoring technology that can be entered into a statewide information base with standardized protocols and sampling, collection, storage and retrieval procedures.

(3) A project to make improvements to existing sewer collection systems and septic systems for the restoration and protection of coastal water quality.

(4) A project designed to implement storm water and runoff pollution reduction and prevention programs for the restoration and protection of coastal water quality.

(5) A project that is consistent with the state's nonpoint source control program, as revised to meet the requirements of Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990, Section 319 of the federal Clean Water Act (33 U.S.C. Sec. 1329), and the requirements of Division 7 (commencing with Section 13000).

(b) In addition to the grants authorized pursuant to subdivision (a), the board may make loans not to exceed five million dollars ($5,000,000) per project to municipalities, local public agencies, educational institutions, or nonprofit organizations for the purposes set forth in paragraph (3) of subdivision (a).

(c) The projects funded from the subaccount shall demonstrate the capability of contributing to sustained, long-term water quality or environmental restoration or protection benefits for a period

of 20 years, shall address the causes of degradation, rather than the symptoms, and shall be consistent with water quality and resource protection plans prepared, implemented, or adopted by the board, the applicable regional water quality control board, and the California Coastal Commission.

(d) An applicant for funds from the subaccount shall be required to submit to the board a monitoring and reporting plan that does all of the following:

(1) Identifies the nonpoint source or sources of pollution to be prevented or reduced by the project.

(2) Describes the baseline water quality or quality of the environment to be addressed.

(3) Describes the manner in which the project will be effective in preventing or reducing pollution and in demonstrating the desired environmental results.

(e) Upon completion of the project, a recipient of funds from the subaccount shall submit a report to the board that summarizes the completed activities and indicates whether the purposes of the project have been met. The report shall include information collected by the recipient in accordance with the project monitoring and reporting plan, including a determination of the effectiveness of the project in preventing or reducing pollution. The board shall make the report available to the public, watershed groups, and federal, state, and local agencies.

(f) If projects include capital costs for construction, those costs shall be identified by the project applicant. The grant recipient shall provide a matching contribution for the portion of the project consisting of capital costs for construction, according to the following formula:

Capital Cost Project Cost	Capital Cost Match by Recipient
$1,000,000 to $5,000,000, inclusive	20%
$125,000 to $999,999, inclusive	15%
$1 to $124,999, inclusive	10%

For the purposes of this subdivision, "capital costs" has the same meaning as "cost" as defined in Section 32025 of the Public Resources Code.

(g) Not more than 25 percent of a grant may be awarded in advance of actual expenditure.

(h) An applicant for funds from the subaccount shall inform the board of any necessary public agency approvals, entitlements, and permits that may be necessary to implement the project. The application shall certify to the board, at the appropriate time that those approvals, entitlements, and permits have been granted.

(i) Where recovery plans for coho salmon, steelhead trout, or other threatened or endangered aquatic species exist, projects funded under this article shall be consistent with those plans, and to the extent feasible, shall seek to implement actions specified in those plans.

79148.10. (a) Sixty percent of the money in the subaccount shall be allocated to projects in the Counties of Riverside, Ventura, Los Angeles, San Diego, Orange, or San Bernardino.

(b) Forty percent of the money in the subaccount shall be allocated to projects in the counties not described in subdivision (a)

79148.12. The board shall provide opportunity for public review and comment in awarding funds pursuant to this article, and may, in consultation with the California Coastal Commission, adopt regulations to implement this article.

79148.14. No project shall receive funds under this article if it receives funds pursuant to Article 2 (commencing with Section 79110).

79148.15. Notwithstanding any other provision of this article, three million dollars ($3,000,000), upon appropriation by the Legislature to the board, shall be allocated by the board to the San Diego County Water Authority for environmental studies and engineering studies for the San Diego Regional Conveyance Facility.

79148.16. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

Article 6. Seawater Intrusion Control

79149. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) (1) "Eligible seawater intrusion control project" means a project that meets all of the following requirements:

(A) The project is necessary to protect groundwater and meets both of the following requirements:

(i) The project is within a basin that is subject to a local groundwater management plan for which a review is completed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(ii) The project is threatened by seawater intrusion in an area where restrictions on groundwater pumping, a physical solution, or both, are necessary to prevent the destruction of, or irreparable injury to, groundwater quality.

(B) In the case of a project that would provide a substitute water supply, the project is cost-effective when compared to the development of other new sources of water and includes requirements or measures adequate to ensure that the substitute supply will be used in lieu of previously established extractions or diversions of groundwater.

(C) The project complies with applicable water quality standards, policies, and plans.

(2) Eligible projects may include, but are not limited to, water conservation, freshwater well injection, and substitution of groundwater pumping from local surface supplies.

(b) "Local agency" means any city, county, district, joint powers authority, or other political subdivision of the state involved in water management.

(c) "Subaccount" means the Seawater Intrusion Control Subaccount created by Section 79149.2.

79149.2. (a) There is hereby created in the account the Seawater Intrusion Control Subaccount. The sum of twenty-five million dollars ($25,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

(b) Notwithstanding Section 13340 of the Government Code, the money in the subaccount is hereby continuously appropriated, without regard to fiscal years, to the board for loans to local agencies to carry out eligible seawater intrusion control projects and for the purposes described in this article and for the administration of this article.

79149.3. Unallocated funds remaining in the Seawater Intrusion Control Subaccount in the Clean Water and Water Recycling Account in the Safe, Clean, Reliable Water Supply Fund on March 8, 2000, and any funds deposited into that subaccount after that date, shall be transferred to, and all money repaid to the state pursuant to any loan contract executed under Article 6 (commencing with Section 78648) of Chapter 5 of Division 24 shall be deposited in, the subaccount for the purposes of this article.

79149.4. The board may enter into contracts to make loans to local agencies for the purposes set forth in this article.

79149.6. Any contract for a loan entered into pursuant to Section 79149.4 may include those provisions determined by the board to be necessary for the purposes of this article and shall include both of the following provisions:

(a) An estimate of the reasonable cost of the eligible seawater intrusion control project.

(b) An agreement by the local agency to proceed expeditiously with, and complete, the eligible seawater intrusion control project, commence operation of the project in accordance with applicable provisions of law, and provide for the payment of the local agency's share of the cost of the project, including the principal of, and interest on, the loan.

79149.8. (a) A contract for a loan may not provide for a moratorium on the payment of the principal of, or interest on, the loan.

(b) Any loan made pursuant to Section 79149.4 shall be for a period not to exceed 20 years.

(c) The board may enter into a contract for a loan amount that equals up to 100 percent of the total eligible cost of design and construction of an eligible seawater intrusion control project.

79149.10. (a) The board shall establish the interest rate for a loan made pursuant to this article at a rate equal to 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds, to be computed according to the true interest cost method.

(b) If the interest rate so determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the next higher multiple of one-tenth of 1 percent.

(c) The interest rate set for each contract shall be applied throughout the repayment period of the contract. There shall be a level annual repayment of principal and interest on the loans.

79149.12. All principal and interest payments received pursuant to loan contracts entered into pursuant to this article shall be deposited in the subaccount.

(d) 79149.14. The board may, by contract or otherwise, undertake plans, surveys, research, development, and studies necessary, convenient, or desirable to carry out the purposes of this article.

(e) 79149.16. Not more than 3 percent of the total amount deposited in the subaccount may be used to pay for both of the following:

(a) To pay the costs incurred in connection with the administration of this article.

(b) For the purposes of Section 79149.14.

CHAPTER 8. WATER CONSERVATION PROGRAM

Article 1. Findings and Declarations

79150. The Legislature finds and declares that:

(a) Voluntary, cost-effective capital outlay water conservation programs can help meet the growing demand for clean and abundant water supplies throughout the state.

(b) The participation of the state in the construction of local water conservation projects is desirable to further the effective management of the water resources of the state.

Article 2. General Provisions

79151. Unless the context otherwise requires, the following definitions govern the construction of this chapter:

(a) "Account" means the Water Conservation Account created by Section 79152.

(b) (1) "Water conservation program or project" means those feasible capital outlay measures undertaken to improve the efficiency of water use through projects, the benefits of which exceed the costs.

(2) The programs include, but are not limited to, all of the following:

(A) The lining or piping of ditches.

(B) Improvements in water distribution system controls such as automated canal control, construction of small reservoirs within distribution systems that conserve water that has already been captured for use, and related physical improvements.

(C) Tailwater pumpback recovery systems.

(D) Major improvements to, or replacement of, deteriorated distribution systems to reduce leakage and maximize conservation.

(E) Capital outlay features of agricultural water conservation programs identified in the "Memorandum of Understanding Regarding Efficient Agricultural Water Management Practices," dated July 16, 1997, and endorsed by the Agricultural Water Management Council, and any amendments thereto.

(c) "Economically disadvantaged area" means any area of the state for which both of the following statements apply:

(1) A median household income that is less than forty thousand dollars ($40,000) based on the most recent federal census.

(2) An annual average unemployment rate that is greater than 9 percent based on the most recent federal census.

(d) (1) "Groundwater recharge facilities" means lands and facilities for artificial groundwater recharge through methods that include, but are not limited to, percolation using basins, pits, ditches, and furrows, modified streambeds, flooding, and well injection. For the purposes of this chapter, expenditures for "groundwater recharge facilities" include capital outlay expenditures to expand, renovate, or restructure land and facilities used for the purposes of groundwater recharge and to acquire additional land for recharge basins.

(2) Groundwater recharge facilities may include any of the following:

(A) Instream facilities for regulation of water levels, but not regulation of streamflow to accomplish diversion from the waterway.

(B) Agency-owned facilities for extraction.

(C) Conveyance facilities to convey water to the recharge site, including devices for flow regulation and measurement of recharge waters.

(3) Any part or all of the project facilities, including the land under the facilities, may consist of separable features, or an appropriate share of multipurpose features, of a larger system, or both.

(e) "Infrastructure rehabilitation project" means a project located in an economically disadvantaged area for the repair, replacement, restoration, or rehabilitation of an existing water distribution system that delivers water for domestic, municipal, or industrial uses, including pipelines, pump stations, valves, meters, reservoirs, and all other appurtenant water delivery facilities that result in the reduction or elimination of significant distribution system water losses or replace a failing system component that threatens the health, safety, welfare, and economy of areas relying on the water distribution system.

(f) "Local agency" or "agency" means any city, county, city and county, district, joint powers authority, or other political subdivision of the state involved with water management. "Local agency" or "agency" also means a mutual water company. For purposes of this chapter, mutual water company means a nonprofit corporation organized for, or engaged in the business of, developing, distributing, supplying, or delivering water for irrigation or domestic use, or both, to its members or shareholders, at actual cost plus necessary expenses.

(g) "Project" may include any of the following:

(1) Water conservation project.

(2) Groundwater recharge facilities.

(3) Urban water conservation project.

(4) Infrastructure rehabilitation project.

(h) "Urban water conservation project" means capital outlay features of urban water conservation programs identified in the "Memorandum of Understanding Regarding Urban Water Conservation in California," as amended on April 8, 1998, by the California Urban Water Conservation Council, and any amendments thereto.

79152. The Water Conservation Account is hereby created in the fund.

79153. (a) The sum of one hundred fifty-five million dollars ($155,000,000) is hereby transferred from the fund to the account for the purposes of this chapter.

(b) Unallocated funds remaining in the Water Conservation and Groundwater Recharge Subaccount in the Water Supply Reliability Account in the Safe, Clean, Reliable Water Supply Fund on March 8, 2000, shall be transferred to, and all money repaid to the state pursuant to any loan contract executed under Article 3 (commencing with Section 78670) of Chapter 6 of Division 24 shall be deposited in, the account for the purposes of entering into additional loans under Article 3 (commencing with Section 79157) and Article 4 (commencing with Section 79161).

79154. (a) Any loan agreement entered into pursuant to this chapter may include provisions determined to be necessary by the department.

(b) Any loan agreement pursuant to this chapter shall include all of the following:

(1) A finding by the department that the agency has the ability to repay the loan, that the

project is cost-effective, and that the project is feasible from an engineering or hydrologic standpoint, or both.

(2) An agreement by the agency to proceed expeditiously with, and complete, the project in conformance with approved plans and specifications and to operate and maintain the project properly upon completion throughout the repayment period.

(3) A provision that there shall be no moratorium on, or deferment of, payments of principal or interest.

(4) (A) A loan period of not more than 20 years with an interest rate set at a rate equal to 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds, to be computed according to the true interest cost method.

(B) If the interest rate so determined is not a multiple of 1 percent, the interest rate shall be set at the next multiple of one-tenth of 1 percent.

(C) The interest rate for each loan agreement shall be applied throughout the repayment period of the contract. There shall be a level annual repayment of principal and interest on the loans.

79155. (a) Any grant agreement entered into pursuant to this chapter may include provisions determined to be necessary by the department.

(b) Any grant agreement pursuant to this chapter shall include both of the following:

(1) A determination by the department that the project is economically justified, and that the project is feasible.

(2) An estimate of the reasonable cost and benefit of the project, including a feasibility report that sets forth the engineering and financial feasibility of the project, and shall include a description of the proposed facilities and their relation to other water-related facilities in the system service area.

79155.5. Notwithstanding any other provision of law, regulations set forth in Chapter 2.3 (commencing with Section 450.1) of Division 2 of Title 23 of the California Code of Regulations that are in effect on March 8, 2000, may be used to carry out this chapter.

79156. Not more than 3 percent of the total amount deposited in the subaccount may be used by the department to pay the costs incurred in connection with the administration of this article.

Article 3. Agricultural Water Conservation Program

79157.(a) The sum of thirty-five million dollars ($35,000,000) in the account, upon appropriation by the Legislature to the department, shall be used by the department for loans to local agencies to aid in the acquisition and construction of agricultural water conservation projects, and for grants in accordance with Section 79158.

(b) For the purposes of approving a loan under this section, the department shall determine if there will be a net saving of water as a result of each proposed project and if the project is determined by the department to be cost-effective.

(c) A project under this article shall not receive any more than five million dollars ($5,000,000) in loan proceeds from the department.

(d) The department shall give preference to the agencies that propose the most cost-effective projects.

79158. (a) The department may make grants to local agencies, under any terms and conditions that may be determined necessary by the department, for the purpose of financing feasibility studies of projects potentially eligible for a loan under Section 79157.

(b) No single feasibility study shall be eligible to receive more than one hundred thousand dollars ($100,000), and not more than 5 percent of the total amount deposited in the account may be expended for the purposes of financing feasibility studies.

(c) A grant for a feasibility study shall not affect the maximum amount of any loan that may be made under this article.

Article 4. Groundwater Recharge Facilities Program

79161.(a) The sum of thirty million dollars ($30,000,000) in the account is hereby appropriated to the department, without regard to fiscal years, for use by the department for loans and grants to local agencies for the acquisition and construction of groundwater recharge facilities.

(b) A loan application pursuant to this article shall include the reasonable cost and benefit of the proposed project, including a feasibility report that shall set forth the economic justification for the project, and shall include explanations of the proposed facilities and their relation to other water supply related facilities in the basin or region.

(c) A project under this article shall not receive any more than five million dollars ($5,000,000) in loan proceeds from the department.

(d) The department shall give preference under this section to projects that are located in overdrafted groundwater basins, projects of critical need, projects whose feasibility studies demonstrate the greatest engineering and hydrogeologic feasibility as determined by the department, and projects located in areas that have groundwater management plans.

79161.5. (a) The department may make grants to local agencies, under any terms and conditions that may be determined necessary by the department, for the purpose of financing feasibility studies of projects potentially eligible for a loan under Section 79161.

(b) No single feasibility study shall be eligible to receive more than one hundred thousand dollars ($100,000), and not more than 5 percent of the total amount deposited in the account may be expended for the purposes of financing feasibility studies.

(c) A grant for a feasibility study shall not affect the maximum amount of any loan that may be made under this article.

Article 5. Infrastructure Rehabilitation Program

79162.(a) The sum of sixty million dollars ($60,000,000) in the account, upon appropriation by the Legislature to the department, shall be used by the department for grants awarded by the department to local agencies for the purposes of funding infrastructure rehabilitation projects.

(b) (1) For the purposes of making grants pursuant to subdivision (a), the factors to be considered by the department in determining whether to enter into an agreement shall include, but not be limited to, the need to implement projects that provide measurable conservation through the reduction of system water losses by rehabilitating water delivery systems.

(2) Grants awarded pursuant to subdivision (a) shall be available for public water systems owned and operated by local agencies in economically disadvantaged areas with service connections that exceed 200 but are not greater than 16,000 in number. The department shall give highest priority in awarding grants to those agencies with the highest retail water rates and service charges as of January 1, 1999.

(c) No single construction grant under this article shall exceed five million dollars ($5,000,000).

79162.2. (a) The department may make grants to local agencies, under any terms and conditions as may be determined necessary by the department, for the purpose of financing feasibility studies of projects potentially eligible for a grant under Section 79162.

(b) No single feasibility study shall be eligible to receive more than one hundred thousand dollars ($100,000), and not more than 5 percent of the total amount deposited in the account may be expended for the purposes of financing feasibility studies.

(c) A grant for a feasibility study shall not affect the maximum of any construction grant that may be made under this article.

79162.4. The department may adopt regulations to carry out this article.

Article 6. Urban Water Conservation Program

79163.(a) The sum of thirty million dollars ($30,000,000) in the account, upon appropriation by the Legislature to the department, shall be used by the department for grants and loans awarded by the department to local agencies for the purposes of funding urban water conservation projects.

(b) A project under this article shall not receive more than five million dollars ($5,000,000) in loan proceeds from the department.

79164. (a) The department may make grants to local agencies, under any terms and conditions that may be determined necessary by the department, for the purpose of financing feasibility studies of projects potentially eligible for a loan under Section 79163.

(b) No single feasibility study shall be eligible to receive more than one hundred thousand dollars ($100,000), and not more than 5 percent of the total amount deposited in the account may be expended for the purposes of financing feasibility studies.

(c) A grant for a feasibility study shall not affect the maximum amount of any loan that may be made under this article.

CHAPTER 9. WATER SUPPLY, RELIABILITY, AND INFRASTRUCTURE PROGRAM

Article 1. Water Supply, Reliability, and Infrastructure Account

79165. For the purposes of this chapter, "account" means the Water Supply, Reliability, and Infrastructure Account created by Section 79166.

79166. The Water Supply, Reliability, and Infrastructure Account is hereby created in the fund. The sum of six hundred thirty million dollars ($630,000,000) is hereby transferred from the fund to the account.

Article 2. Groundwater Storage Program

79170. The Legislature finds and declares that the conjunctive management of surface water and groundwater is an effective way to improve the reliability of water supply for all sectors in California.

79171. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "Conjunctive use" means the temporary storage of water in a groundwater aquifer through intentional recharge and subsequent extraction for later use. Storage is accomplished by either of the following methods:

(1) "Direct recharge" of an aquifer by conducting surface water into the ground by various means, including, without limitation, spreading ponds and injection wells for the purpose of making the water stored in the aquifer available for extraction and later use in drier years.

(2) "In-lieu recharge" means increasing the amount of groundwater available in an aquifer by substituting surface water supplies to a user who would otherwise pump groundwater.

(b) "Conjunctive use facilities" include land and appurtenant facilities for any phase of a conjunctive use operation. Appurtenant facilities may include subsurface storage, treatment, conveyance, recharge ponds, injection wells, spreading grounds, monitoring, measurements, subsidence detection, flow regulation, detention basins to facilitate recharge, diversion facilities, and extraction facilities.

(c) "Conjunctive use project" means a project that is intended to produce water supply benefits for the local agency or a project that is intended to produce water supply benefits for water users, including the environment, in addition to the local agency.

(d) "Local agency" means any city, county, city and county, district, joint powers authority,

mutual water company, or other political subdivision of the state.

(e) "Project participants" means any public agency participating in, and benefiting from, a conjunctive use project under this article.

(f) "Subaccount" means the Conjunctive Use Subaccount created by Section 79172.

79172. There is hereby created in the account the Conjunctive Use Subaccount.

79173. The sum of two hundred million dollars ($200,000,000) is hereby transferred from the account to the subaccount for the purposes of implementing this article.

79174. The money in the subaccount, upon appropriation by the Legislature to the department, may be used by the department for grants for feasibility studies, project design, or the construction of conjunctive use projects on a pilot or operational scale.

79175. Not more than 5 percent of the total amount deposited in the subaccount may be expended for purposes of financing feasibility studies.

79176. For the purpose of approving projects pursuant to this article, the department shall give priority to those projects for which there is available third-party funds from any source other than the Central Valley Project Restoration Fund authorized by the Central Valley Project Improvement Act. The department shall also take into consideration all of the following with regard to each proposed project:

(a) The magnitude of the actual increase in water supply yield and reliability compared to preexisting conditions.

(b) The consistency with the plans or recommendations proposed by CALFED.

(c) The distribution of the benefits to water supply and to the environment.

(d) The availability of the storage for conserved water.

(e) The technical and environmental suitability of the groundwater basin for conjunctive use.

(f) The potential to reduce critically overdrafted conditions in a groundwater basin.

(g) The need for the project.

(h) The potential to alleviate salt water intrusion into groundwater basins or other groundwater quality degradation.

(i) The economic, engineering, and hydrogeologic justification for the project.

(j) The availability of third-party or local matching funds from any source other than the Central Valley Project Restoration Fund authorized by the Central Valley Project Improvement Act.

(k) The involvement of one or more local agencies whose jurisdiction or water service area overlies or is adjacent to the aquifer utilized to store water.

(1) The potential to reduce dry year demand for surface water under existing contracts.

(m) The existence of a system for the recovery of the stored water or an agreement with the department or a local agency for the installation of that system.

(n) Whether the project is located in an area that is subject to a groundwater management program.

79177. To be eligible for funding for the construction of a conjunctive use project under this article, an applicant that is other than a local agency shall be required to carry out that project with the participation of a local agency. The department or a local agency may provide technical assistance, coordination, or any other assistance in implementing a project or study if requested by the participating local agency.

79178. No construction project may receive more than fifty million dollars ($50,000,000) from the subaccount.

79179. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

79180. Not less than 40 percent of the total amount deposited in the subaccount shall be expended for studies, projects, and facilities within watersheds of the central valley.

79181. (a) A project undertaken pursuant to this article shall fully protect and preserve the groundwater rights of the overlying landowners and shall fully protect and preserve the water rights of the project participants. The department shall not provide funding for a project unless it determines that the project will be designed and operated in a manner that ensures that other users of the same or a hydrologically related aquifer will not suffer any unreasonable diminution of the quantity or quality of their groundwater supplies or incur additional uncompensated expense as a result of the implementation of the project.

(b) For the purposes of receiving funding for a conjunctive use project pursuant to this article, the applicant shall be required to do both of the following:

(1) Provide for a continuing groundwater monitoring and mitigation program.

(2) Limit the extraction of the groundwater to not more than the amount of water that is stored or recharged by the project participants or the amount that complies with all laws and contract terms governing the extraction, appropriation, and use of groundwater by the project participants.

(c) Persons and agencies participating in the project may not assert a claim or file a cause of action against an overlying landowner who is not exceeding either of the following:

(1) The overlying landowner's historic rate of groundwater pumping.

(2) The full amount of groundwater to which the overlying landowner would be entitled to under state law regarding rights to groundwater and reasonable beneficial use on the landowner's land that overlies the groundwater.

(d) The overlying landowners may not assert a claim or file a cause of action against the persons or agencies participating in the project if the project is implemented in compliance with this section, except as provided by contract between the project participants.

(e) Nothing in this article modifies state law with regard to groundwater rights, regulation, or management.

79182. In carrying out this article and awarding grants, the department shall convene and consult with an advisory committee comprised of technically qualified representatives of local water agencies, project participants, environmental interests, agricultural laborer interests, and interests representing farmers who use groundwater. The advisory committee shall be geographically balanced to reflect the communities that use water in the Central Valley. If a member of the advisory committee, or a member of his or her immediate family, is employed by a grant applicant or the employer of a grant applicant, the committee members shall make that disclosure to the other members of the committee and shall not participate in the review of the grant application of that applicant.

79183. The department may adopt regulations to carry out this article.

Article 3. Bay-Delta Multipurpose Water Management Program

79190. Unless the context otherwise requires, the following definitions govern the construction of this article:

(a) "CALFED Bay-Delta Program" or "program" means the undertaking by CALFED pursuant to the Framework Agreement dated June 20, 1994, to develop a long-term solution to water management, environmental, and other problems in the bay-delta watershed by means of a programmatic environmental impact statement/environmental impact report.

(b) "CALFED EIS/EIR" means the final programmatic environmental impact statement/environmental impact report prepared by CALFED.

(c) "CALFED stage 1 action" means an action identified in the preferred alternative of the CALFED EIS/FIR as an action intended for implementation during stage 1 of Phase III of the CALFED Bay-Delta Program.

(d) (1) "Eligible project" means a demonstration project, subject to the CALFED adaptive management principle that requires an assessment of the performance of the demonstration projects in order to determine which projects are successful in achieving the goals of the program.

(2) "Eligible project" means a project that meets both of the following requirements.

(A) The project is identified in the CALFED EIS/EIR as a CALFED stage 1 action.

(B) The project does one or more of the following:

(i) Constructs treatment facilities or relocates discharge facilities for agricultural drainage generated within the delta to improve water quality in the delta or the quality of water that is transported from the delta.

(ii) Constructs facilities to control waste discharges that contribute to low dissolved oxygen and other water quality problems in the lower San Joaquin River and the south delta.

(iii) Constructs fish facilities for the State Water Project or the Central Valley Project intakes in the south delta, such as facilities for fish screens, fish handling, and fish passage, or modifications to intake structures or other facilities, to reduce losses of any life stages of fish to water diversions in the San Joaquin River and the delta in accordance with paragraph (1) of Section (C) of Chapter IV of the board's 1995 water quality control plan.

(iv) Constructs a permanent barrier at the head of Old River to improve fish migration and other permanent barriers in the south delta channels to improve water quality and water level for local diversions.

(v) Constructs facilities to control drainage from abandoned mines that adversely affect water quality in the bay-delta.

(vi) Constructs a permanent barrier at Grantline Canal to improve water quality and water levels for local diversion.

(e) "Subaccount" means the Bay-Delta Multipurpose Water Management Subaccount created by Section 79194.

79191. This article does not affect the authority of any agency pursuant to any other provision of law to expend funds for the purposes described in this article.

79192. The Legislature hereby finds and declares all of the following:

(a) CALFED is in the process of preparing a programmatic EIS/EIR for a long-term comprehensive plan that will resolve problems related to ecosystem restoration, including the recovery of endangered species such as chinook salmon, water quality, water supply, water management, and system integrity for the protection of beneficial uses of the bay-delta ecosystem.

(b) The CALFED Bay-Delta Program is of statewide and national importance. The state should participate in the funding of eligible projects as a part of its ongoing program to improve conditions in the bay-delta ecosystem.

(c) The programmatic EIS/EIR will include a schedule for funding and implementing all elements of the long-term comprehensive plan.

(d) The elements of the CALFED Bay-Delta Program will achieve balanced solutions in all identified problem areas, including the ecosystem, water quality, water supply, and system integrity.

79193. (a) This article does not authorize the implementation of the CALFED Bay-Delta Program or any element of that program. The implementation of the CALFED Bay-Delta Program, or any element of that program, shall only be undertaken pursuant to authority provided by law other than this division.

(b) Nothing in this article affects the obligation to comply with provisions of existing law in connection with the implementation of this article.

79194. There is hereby created in the account the Bay-Delta Multipurpose Water Management Subaccount.

79195. The sum of two hundred fifty million dollars ($250,000,000) is hereby transferred from the account to the subaccount.

79196. (a) The money in the subaccount, upon appropriation by the Legislature to the department, may be used by the department to carry out eligible projects and for the purposes of Section 79202.

(b) Money in the subaccount that is allocated to carry out eligible projects, as described in clauses (ii), (iv), and (vi) of subparagraph (B) of paragraph (2) of subdivision (d) of Section

79190, and is not expended for those purposes, may be reallocated by the department to carry out other eligible projects, as described in clauses (i) , (iii) , and (v) of subparagraph (B) of paragraph (2) of subdivision (d) of Section 79190.

(c) No funds in the subaccount shall be used by the department unless and until the department has consulted, on an annual basis, with the state and federal agencies that participate in CALFED, as well as representatives of the public convened as a duly authorized advisory committee, with regard to the specific projects proposed for funding under this article. Decisions regarding specific expenditures of funds provided under this article shall be jointly determined, to the maximum extent possible, by the recommendations of the state and federal CALFED agencies with the advice of the advisory committee.

79196.5. The funds appropriated pursuant to Section 79196 shall be allocated as following:

(a) Seventeen million dollars ($17,000,000) for the purposes of the project described in clause (i) of subparagraph (B) of paragraph (2) of subdivision (d) of Section 79190.

(b) Forty million dollars ($40,000,000) for the purposes of the project described in clause (ii) of subparagraph (B) of paragraph (2) of subdivision (d) of Section 79190.

(c) One hundred twenty million dollars ($120,000,000) for the purposes of the project described in clause (iii) of subparagraph (B) of paragraph (2) of subdivision (d) of Section 79190.

(d) Forty million dollars ($40,000,000) for the purposes of the project described in clause (iv) of subparagraph (B) of paragraph (2) of subdivision (d) of Section 79190.

(e) Seventeen million dollars ($17,000,000) for the purposes of the project to described in clause (v) of subparagraph (B) of paragraph (2) of subdivision (d) of Section 79190.

(f) Sixteen million dollars ($16,000,000) for the purposes of the project described in clause (vi) of subparagraph (B) of paragraph (2) of subdivision (d) of Section 79190.

79197. No funds in the subaccount may be expended until all of the following conditions have been met:

(a) The CALFED EIS/EIR has been certified by the state lead agency and a notice of determination has been issued as required by Division 13 (commencing with Section 21000) of the Public Resources Code.

(b) The CALFED EIS/EIR has been filed by the federal lead agencies with the United States Environmental Protection Agency, the required notice has been published in the Federal Register, and there has been federal approval of a program identical to the program approved by the state.

79198. The state, to the greatest extent possible, shall secure federal and nonfederal funds to implement this article.

79199. Due to the importance of issuing permits and otherwise expediting all elements of the CALFED Bay-Delta Program in a timely and balanced manner, the following procedures shall apply to the use of funds authorized by this article:

(a) After the requirements set forth in Section 79197 are met, funds in the subaccount shall become available for use in accordance with the schedule for eligible projects set forth in the final programmatic EIS/EIR, unless the Secretary of the Resources Agency determines that the schedule established in the final programmatic EIS/EIR has not been substantially adhered to.

(b) On or before November 15 of each year, the Secretary of the Resources Agency, in consultation with state and federal CALFED representatives and other interested persons and agencies, shall review adherence to the schedule.

(c) The absence of funding from nonfederal or nonstate sources shall not be a basis for a determination that the schedule has not been adhered to.

(d) If, at the conclusion of each annual review, the Secretary of the Resources Agency determines that the schedule established in the final programmatic EIS/EIR, or a revised schedule prepared pursuant to this subdivision, has not been substantially adhered to, the secretary, after notice to, and consultation with, state and federal CALFED representatives and other interested persons and agencies, shall prepare a revised schedule that ensures that balanced solutions in all identified problem areas, including ecosystem restoration, water supply, water quality, and system

integrity are achieved, consistent with the intent of the final programmatic EIS/EIR. Funds shall be available for expenditure unless a revised schedule has not been developed within six months from the date on which the secretary determines that the prior schedule has not been substantially adhered to. Upon the preparation of any revised schedule under this subdivision, funds shall be expended in accordance with that revised schedule.

(e) Funds in the subaccount shall become available in accordance with the cost-share agreement developed by the CALFED Bay-Delta Program, which shall describe the federal, state, and local share of funding for the programs, projects, and other CALFED stage 1 actions.

79200. On or before December 15 of each year, the Secretary of the Resources Agency shall submit an annual report to the Legislature that describes the status of the implementation of all elements of the CALFED Bay-Delta Program, any determinations made by the secretary pursuant to subdivisions (b) and (d) of Section 79199 and other significant scheduling issues. The report also shall include a detailed accounting of expenditures, descriptions of programs for which expenditures have been made, and a schedule of anticipated expenditures for the next year.

79201. The report prepared pursuant to Section 79200 shall include both of the following:

(a) A summary of the results achieved by the projects funded under this article.

(b) An identification of any necessary modifications that should be made to eligible projects or other CALFED bay-delta projects, to ensure that the goals and objectives of CALFED are met.

79201.5. Nothing in this article shall be construed to address the allocation of benefits from projects or programs funded by this article. It is anticipated that this issue will be settled in the CALFED process or by the Legislature by statute.

79202. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay the costs incurred in connection with the administration of this article.

79203. The department may adopt regulations to carry out this article.

Article 4. Interim Water Reliable Supply and Water Quality Infrastructure and Management Program

79205.2. (a) "Delta export service area," as used in this article, means both of the following:

(1) The counties included within the Association of Bay Area Governments.

(2) Those areas of the state outside the delta that receive water from the State Water Project or the Central Valley Project, either directly or by exchange, by means of diversions from the delta.

(b) "Local agency," as used in this article, means any city, county, city and county, district, or other political subdivision of the state.

79205.4. (a) There is hereby created the Interim Water Supply and Water Quality Infrastructure and Management Subaccount.

(b) For the purposes of this article, "subaccount" means the Interim Reliable Water Supply and Water Quality Infrastructure and Management Subaccount.

79205.6. The sum of one hundred eighty million dollars ($180,000,000) is hereby transferred from the account to the subaccount for the purposes of this article.

79205.8. (a) The money in the subaccount, upon appropriation by the Legislature to the department, may be used by the department to provide grants or loans, or any combination thereof, which are approved by the Governor, to local agencies located in the delta export service areas for programs or projects that can be completed and provide the intended benefits not later than March 8, 2009, and are designed to increase water supplies, enhance water supply reliability, or improve water quality.

(b) The department shall provide grants for programs or projects located outside the delta and which meet one of the following requirements:

(1) The project or program constructs new or expands existing groundwater storage and recovery projects or acquires rights to use storage in existing reservoirs.

(2) The project or program implements measures that facilitate improved water treatment, water transfers, or exchanges, including, but not limited to, a project that improves water quality by shifting reliance from lower quality to higher quality water supplies.

(3) The project or program implements state of the art agricultural water conservation programs, and programs that treat or manage agricultural drainage water for reuse or instream water quality benefits.

(c) The department shall list the projects that are proposed to be funded from the subaccount.

79205.10. For purposes of prioritizing eligible programs or projects for funding under this article, the department shall give priority to programs or projects that meet one or more of the following requirements:

(a) Can be completed expeditiously and thereby provide near term benefits and more immediate mitigation of urgent problems related to water supply and water quality.

(b) Implements actions to improve water quality and protect water level conditions in San Luis Reservoir.

(c) Includes public-private partnerships or cost sharing arrangements that maximize public benefits.

(d) Sponsored by a public agency with water supplies that are being or would be impacted to a greater degree by delta-related water supply shortages and water quality degradation.

79205.12. The state, to the greatest extent possible, shall seek matching federal funds to implement this article.

79205.14. Funds available from the subaccount shall be available for all phases of project development including, but not limited to, project administration, permitting and environmental compliance, feasibility studies, and construction.

79205.16. Not more than 5 percent of the total amount deposited in the subaccount may be used to pay costs incurred in connection with the administration of this article.

CHAPTER 10. FISCAL PROVISIONS

79210. Bonds in the total amount of one billion nine hundred seventy million dollars ($1,970,000,000), not including the amount of any refunding bonds issued in accordance with Section 79219, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this division and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable.

79211. (a) The bonds authorized by this division shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), except Section 16727, and all of the provisions of that law apply to the bonds and to this division and are hereby incorporated in this division as though set forth in full in this division.

(b) For purposes of the State General Obligation Bond Law, each state agency that administers an appropriation of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund is designated the "board."

79212. Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this division, the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Finance Committee is hereby created. For purposes of this division, the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Finance Committee is the "committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Controller, and the Director

of Finance, or their designated representatives. A majority of the committee may act for the committee.

79213. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this division in order to carry out the actions specified in this division and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

79214. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

79215. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this division, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this division, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 79216, appropriated without regard to fiscal years.

79216. For the purposes of carrying out this division, the Director of Finance may authorize the withdrawal from the General Fund of an amount not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this division. Any amount withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this division.

79217. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

79218. The agency that administers an appropriation of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purpose of carrying out this division. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this division. The requesting agency shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the requesting agency in accordance with this division.

79219. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this division includes the approval of the issuance of any other bonds issued to refund any bonds originally issued under this division or any previously issued refunding bonds.

79220. Notwithstanding any provision of this division or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this division that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and for the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of those bond

proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of that state.

79221. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this division are not "proceeds of taxes" as that term is used in Article XIIIB of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

SEC. 1.5. Section 1812.6 is added to the Water Code, to read:

1812.6. (a) On or before October 15, **1999**, the Imperial Irrigation District, the Coachella Valley Water District, and the Metropolitan Water District of Southern California shall sign and adopt a quantification agreement regarding their respective Colorado River entitlements. The quantification agreement shall secure the approval of the Metropolitan Water District of Southern California and the Coachella Valley Water District for a transfer for the benefit of the San Diego County Water Authority of up to 200,000 acre-feet of water under the exchange agreement between the San Diego County Water District and the Metropolitan Water District of Southern California dated November 10, 1998. The quantification agreement shall be consistent with federal and state law.

(b) If by October 15, **1999**, the quantification agreement described in subdivision (a) is not signed by all three districts listed in subdivision (a), the Governor or his sole designee shall promulgate a quantification settlement by January 1, 2000, and impose that settlement on the Imperial Irrigation District, the Coachella Valley Water District, and the Metropolitan Water District of Southern California. The quantification settlement shall meet the requirement of subdivision (a). The Governor, or his designee shall insure that any quantification agreement or settlement, whether imposed by the Governor pursuant to this subdivision or agreed to among the Imperial Irrigation District, the Coachella Valley Water District, the Metropolitan Water District of Southern California and any other parties, shall not limit the right or obligation of the State of California, or the right of any person, to enforce the provisions of the California Constitution and conforming state statutes and regulations.

(c) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Section 13480 of the Water Code is amended to read:

13480. (a) Moneys in the fund shall be used only for the permissible purposes allowed by the federal act, including providing financial assistance for the following purposes:

(1) The construction of publicly owned treatment works, as defined by Section 212 of the federal act (33 U.S.C.A. Sec. 1292), by any municipality.

(2) Implementation of a management program pursuant to Section 319 of the federal act (33 U.S.C.A. Sec. 1329).

(3) Development and implementation of a conservation and management plan under Section 320 of the federal act (33 U.S.C.A. Sec. 1330).

(4) Financial assistance, other than a loan, toward the nonfederal share of costs of any grant-funded treatment works project, but only if that assistance is necessary to permit the project to proceed.

(b) Consistent with expenditure for authorized purposes, moneys in the fund may be used for the following purposes:

(1) Loans that meet all of the following requirements:

(A) Are made at or below market interest rates.

(B) Require annual payments of principal and any interest, with repayment commencing not later than one year after completion of the project for which the loan is made and full amortization not later than 20 years after project completion.

(C) Require the loan recipient to establish an acceptable dedicated source of revenue for repayment of any loan.

(D) (i) Contain other terms and conditions required by the board or the federal act or

applicable rules, regulations, guidelines, and policies. To the extent permitted by federal law, the interest rate shall be set at a rate equal to 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds and the interest rate shall be computed according to the true interest cost method. If the interest rate so determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the multiple of one-tenth of 1 percent next above the interest rate so determined. Any loan from the fund used to finance costs of facilities planning, or the preparation of plans, specifications, or estimates for construction of publicly owned treatment works shall comply with Section 603(e) of the federal act (33 U.S.C.A. Sec. 1383 (e)) .

(ii) Notwithstanding clause (i), if the loan applicant is a municipality, an applicant for a loan for the implementation of a management program pursuant to Section 319 of the Clean Water Act (33 U.S.C. Sec. 1329), or an applicant for a loan for nonpoint source or estuary enhancement pursuant to Section 320 of the Clean Water Act (33 U.S.C. Sec. 1330), and the applicant provides matching funds, the interest rate on the loan shall be 0 percent. A loan recipient that returns to the fund an amount of money equal to 20 percent of the remaining unpaid federal balance of an existing loan shall have the remaining unpaid loan balance refinanced at a rate of 0 percent over the time remaining in the original loan contract.

(2) To buy or refinance the debt obligations of municipalities within the state at or below market rates if those debt obligations were incurred after March 7, 1985.

(3) To guarantee, or purchase insurance for, local obligations where that action would improve credit market access or reduce interest rates.

(4) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, if the proceeds of the sale of those bonds will be deposited in the fund.

(5) To establish loan guarantees for similar revolving funds established by municipalities.

(6) To earn interest.

(7) For payment of the reasonable costs of administering the fund and conducting activities under Subchapter VI (commencing with Section 601) of the federal act (33 U.S.C.A. Sec. 1381 et seq.). Those costs shall not exceed 4 percent of all federal contributions to the fund, except that if permitted by federal and state law, interest repayments into the fund and other moneys in the fund may be used to defray additional administrative and activity costs to the extent permitted by the federal government and approved by the Legislature in the Budget Act.

(8) For financial assistance toward the nonfederal share of the costs of grant-funded treatment works projects to the extent permitted by the federal act.

SEC. 3. Section 14058 of the Water Code is amended to read:

14058. (a) The sum of thirty million dollars ($30,000,000) of the money in the fund shall be deposited in the Water Reclamation Account and, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated to the board for the purposes of this section.

(b) The board may enter into contracts with local public agencies having authority to construct, operate, and maintain water reclamation projects, for loans to aid in the design and construction of eligible water reclamation projects. The board may loan up to 100 percent of the total eligible cost of design and construction of an eligible reclamation project.

(c) Any contract for an eligible water reclamation project entered into pursuant to this section may include such provisions as determined by the board and shall include both of the following provisions:

(1) An estimate of the reasonable cost of the eligible water reclamation project.

(2) An agreement by the local public agency to proceed expeditiously with, and complete, the eligible water reclamation project; commence operation of the project in accordance with applicable provisions of law, and provide for the payment of the local public agency's share of the cost of the project, including principal and interest on any state loan made pursuant to this section.

(d) Loan contracts may not provide for a moratorium on payments of principal or interest.

(e) Any loans made from the fund may be for a period of up to 20 years. The interest rate for the loans shall be set at a rate equal to 50 percent of the interest rate paid by the state on the most recent sale of state general obligation bonds, with that rate to be computed according to the true interest cost method. When the interest rate so determined is not a multiple of one-tenth of 1 percent, the interest rate shall be set at the next higher multiple of one-tenth of 1 percent.

(f) All money repaid to the state pursuant to any contract executed under this chapter shall be deposited in the Water Recycling Subaccount in the Clean Water and Water Recycling Account in the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund created by Section 79136, for the purposes set forth in Article 4 (commencing with Section 79135) of Chapter 7 of Division 26.

SEC. 4. Section 78621 of the Water Code is amended to read:

78621. (a) (1) There is hereby created in the account the Water Recycling Subaccount. The sum of sixty million dollars ($60,000,000) is hereby transferred from the account to the subaccount for the purpose of implementing this article.

(2) All money repaid to the state pursuant to any contract executed under the Clean Water and Water Reclamation Bond Law of 1988 (Chapter 17 (commencing with Section 14050) of Division 7) shall be deposited in the Water Recycling Subaccount in the Clean Water and Water Recycling Account in the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund created by Section 79136, for the purposes set forth in Article 4 (commencing with Section 79135) of Chapter 7 of Division 26.

(b) Notwithstanding Section 13340 of the Government Code, the money in the subaccount is hereby continuously appropriated, without regard to fiscal years, to the board for loans to public agencies to construct, operate, and maintain eligible recycling projects, for loans to aid in the design and construction of eligible recycling projects, for grants in accordance with Section 78628, and for the purposes described in Section 78629 and subdivision (a) of Section 78630.

SEC. 5. Section 78626 of the Water Code is repealed.

SEC. 6. Section 78626 is added to the Water Code, td read:

78626. Unallocated funds remaining in the subaccount on March 8, 2000, and any funds deposited into the subaccount after that date, shall be transferred to, and all money repaid to the state pursuant to any loan contract executed under this article shall be deposited in, the Water Recycling Subaccount in the Clean Water and Water Recycling Account in the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund for the purposes set forth in Section 79140.

SEC. 7. Section 78648.12 of the Water Code is repealed.

SEC. 8. Section 78648.12 is added to the Water Code, to read:

78648.12. Unallocated funds remaining in the subaccount on March 8, 2000 and any funds deposited into the subaccount after that date, shall be transferred to, and all money repaid to the state pursuant to any loan contract executed under this article shall be deposited in, the Seawater Intrusion Control Subaccount in the Clean Water and Water Recycling Account in the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund for the purposes set forth in Article 6 (commencing with Section 79149) of Chapter 7 of Division 26.

SEC. 9. Section 78675 of the Water Code is repealed.

SEC. 10. Section 78675 is added to the Water Code, to read:

78675. Unallocated funds remaining in the subaccount on March 8, 2000, shall be transferred to, and all money repaid to the state pursuant to any loan contract executed under this article shall be deposited in, the Water Conservation Account in the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Fund for the purposes of entering into additional loans under Article 3 (commencing with Section 79157) and Article 4 (commencing with Section 79161) of Chapter 8 of Division 26.

SEC. 11. Sections 1, 3, 4, 5, 6, 7, 8, 9, and 10 of this act shall become effective upon the approval by the voters of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act, as set forth in Section 1 of this act.

SEC. 12. Sections 1, 3, 4, 5, 6, 7, 8, 9, and 10 of this act shall be submitted to the voters at the March 7, 2000, statewide direct primary election in accordance with provisions of the Government Code and the Elections Code governing the submission of statewide measures to the voters.

SEC. 13. (a) Notwithstanding any other provision of law, all ballots at the election shall have printed thereon and in a square thereof, the words: "Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act" and in the same square under those words, the following in 8-point type: "This act provides for a bond issue of one billion nine hundred seventy million dollars ($1,970,000,000) to provide funds for a safe drinking water, water quality, flood protection, and water reliability program." Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

(b) Notwithstanding Sections 13247 and 13281 of the Elections Code, the language in subdivision (a) shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

(c) Where voting in the election is done by means of voting machines used pursuant to law in a manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remedy critical drinking water, water quality, flood protection, and water supply problems, thereby protecting public health and safety, it is necessary that this act take effect immediately.

Appendix C: Colorado

Rules Governing the Arkansas River Water Bank Pilot Program

Rules Governing the Arkansas River Water Bank Pilot Program

RULES GOVERNING THE ARKANSAS RIVER WATER BANK PILOT PROGRAM

AUTHORIZATION

These rules are promulgated pursuant to the authority granted the State Engineer in sections 37-80.5-101 et seq., C.R.S. (2001) to implement a pilot water banking program in the Arkansas River Basin.

ORDER OF THE STATE ENGINEER

IT IS ORDERED that the following rules governing the Arkansas River Water Bank Pilot Program are adopted by the State Engineer.

Rule 1. Title.

The title of these rules is "The Rules Governing the Arkansas River Water Bank Pilot Program." The short title for these rules is "Water Bank Rules" and they may be referred to herein collectively as the "rules" or individually as a "rule."

Rule 2. **Scope and Purpose.**

A. These rules apply to the establishment and operation of a pilot water bank for owners of stored water in the Arkansas River Basin and its tributaries. These rules are effective through June 30, 2007.

B. The purpose of these rules is to implement a pilot water bank that simplifies and facilitates water leasing, loans and exchanges, including interruptible supply agreements, of stored water within the Arkansas River Basin; and to reduce the costs associated with such transactions. Further, it is also the purpose of these rules to increase the availability of water-related information and assist farmers and ranchers by developing a mechanism to realize the value of their water right assets without forcing the permanent severance of those water rights from the land.

C. These rules shall not permit any expansion of use of stored water deposited into and leased, loaned, optioned or exchanged through the water bank.

D. Nothing in these rules is intended to restrict the ability of the holder of a water right to sell, lease, option or exchange that water right in any other manner that is currently permitted under Colorado law. These rules shall not be implemented in a manner that would cause material injury to the owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

Rule 3. **Definitions.**

A. As used in these rules:

1. "Bankable water" means any legally stored water that meets the necessary criteria established by these rules. Direct flow water rights are not included in this definition.
2. "Article II water" means water stored within individual Water District 67 ditch accounts pursuant to Section II of the Resolution Concerning an Operating Plan for John Martin Reservoir adopted by the Arkansas River Compact Administration on April 24, 1980 (as amended) and accounted as "winter stored water" under "Agreement B" dated November 1984.
3. "Beneficial consumptive use" means the amount of water actually consumed in applying the water right to its legal use.
4. "Deposit account" means the amount of stored water a person or entity places in the water bank.
5. "Interruptible supply" means the temporary cessation of the historic use of stored water and the temporary use of such water at another location, and/or for a different use, and/or at a different time. Such temporary cessation/use may be during a full or partial season of historic use.
6. "Legally stored water" means water stored pursuant to a water court decree, statutory provision, Or an existing authorization of the Arkansas River Compact Administration.
7. "Option agreement" means an agreement by which a buyer pays a seller for the option to use a specified amount of stored water and pays for the right, but is not obligated, to purchase a defined amount of banked water at a specified price within a fixed time period. The buyer of the option may be required to pay a defined premium to the seller for this right. An option agreement may authorize the water bank operator to release deposited water for the seller's use at times when the water is available for use and the buyer is not exercising the option, or allow the seller to use the stored water until the option is exercised.
8. "Return flow(s)" means the amount of the water that is not consumed and returns to the stream following a legal use of a given amount of water.
9. "Transit loss" means the amount of water deducted by the Division Engineer in the delivery of water from one point to another due to stream and environmental conditions.
10. "Water bank" means the Pilot Arkansas River Water Bank, which is a program authorized by the Colorado General Assembly to receive and safeguard legally stored water for

exchange, lease, options or loans and to facilitate such transactions.

11. "Water banking" means temporarily placing legally stored water into an account within the Water Bank whereby that water is then leased, loaned, optioned or exchanged to another user.
12. "Water bank operator" means the State Engineer, a delegated public entity or a delegated public-private partnership who administers the water bank and is entitled to charge a transaction fee for deposits, withdrawals, or both, sufficient to cover the bank's administrative costs.
13. "Winter water" means water stored using the Winter Water Storage Program as described in Case No. 84CW179, Water Division 2.

B. Any term used in these Pilot Water Bank Rules that is defined in sections 37-90-103 or 37-92-103, C.R.S. (2001) shall have the same meaning given therein.

C. The terms "buyer" and "seller" are used generally in these rules and are intended to encompass lessors and lessees and any other type of party entering into a transaction through the water bank.

D. Any term used in these Pilot Water Bank Rules not defined herein that is defined in other Rules and Regulations of the State Engineer shall have the same meaning given therein.

Rule 4. **Limitations on the Pilot Water Bank.**

A. Nothing in these rules shall be construed to authorize any lease, exchange, option, or loan of water below John Martin Reservoir to points of diversion or storage above John Martin Reservoir without the approval of the Arkansas River Compact Administration.

B. No transfer of water from the bank to instream flow uses as provided in section 37-92-102(3), C.R.S. (2001) is allowed except where such transfer, lease, loan, option, exchange or sale is to the Colorado Water Conservation Board.

C. The water bank shall not be used to export water out of state.

O. The water bank shall not operate in a manner so as to increase water diverted from another water division as set forth in section 37-92-201, C.R.S. (2001).

E. "Winter water" stored in Pueblo Reservoir shall only be bankable if deposited before August 1 following the winter storage program

F. Article II "winter stored water" can be used in the water bank. No Article II "summer stored water" can be used in the bank.

G. Any deposit of water into the water bank and any leases, loans, options or exchanges through the water bank must comply with all state and/or federal:

1. statutory and regulatory requirements;
2. operating principles; and
3. contractual requirements governing the use of federally authorized projects in the Arkansas River basin to the extent such project facilities are utilized in banking operations.

Operations of the water bank shall not in any way harm or compromise the Fryingpan-Arkansas Project purposes as defined in the Fryingpan-Arkansas Project Act.

H. The bank shall operate within the existing requirements of Colorado water law, including the Arkansas River Compact, the Colorado Ground Water Management Act, (see sections 37-90-101, et seq. C.R.S. (2001)), and the Water Rights Determination and Administration Act (see sections 37-92-101, et seq., C.R.S. (2001)). However, upon approval by the State Engineer, adjudication of the temporary use of the water right is not required pursuant to section 37-80.5-104(a)(IV)(B) C.R.S. (2001). Ground water shall not be deemed bankable water for the Pilot Water Bank.

J. The Pilot Water Bank shall operate on a year-to-year basis, subject to available storage space and water supply.

K. Leases, loans, options or exchanges of water may be for more than one year, subject to appropriate terms and conditions to facilitate annual operation and administration by the State Engineer. No lease, loan, option or exchange can extend beyond date limitations set forth in any enabling legislation for the Water Bank.

Rule 5. **Procedures for Placing Water into the Water Bank.**

A. To apply to deposit water into the water bank, a prospective depositor must pay any application and/or posting fees required by the water bank and must provide the following information to the water bank operator:

1. Written agreement that the owner or operator of any non-federal reservoirs from which the water will be released for use in the Pilot Water Bank has approved such use of the water and will properly account for the water in the reservoir, and cooperate in regulating its delivery.
2. When the transaction of water in the water bank requires the use of federal facilities other than John Martin Reservoir, the water bank operator or one or both of the parties will be required to have a storage and/or exchange contract with the United States.
3. Proof of ownership, lease or contract that includes the right to use and control the disposition of the water.

4. The amount of legally stored water that will be deposited into the water bank.
5. A description of the point of diversion, place of storage and historic place of use of the water. Sufficient descriptions may include maps, legal descriptions, and/or aerial photographs.
6. If the subject water historically has been used for irrigation, a description of the proposed use of the historically irrigated land, including proposed sources of irrigation water and methods of irrigating the land, if any. Such description must establish that no expansion of water use shall result from the deposit of the subject water into the bank.
7. Unless utilizing the factors provided in Rule 8 herein, an estimate of the available historic consumptive use and return flows, and documentation of how that estimate was derived, prepared by a registered professional engineer with a minimum of five years of experience in the field of water resources engineering.
8. Anticipated terms that may apply to the lease, loan, option or exchange of the water, including, but not limited to:
   a. Applicable time frames, parameters and/or limitations for and on use of the water.
   b. The minimum price the depositor will accept for the water.
   c. The amount of stored water the depositor is willing to lease, loan, option or exchange.
9. Contact information, including name, address, phone number and email address (if available).
10. Any other relevant information requested by the water bank.

B. Based upon its review of the above information, the water bank, in consultation with the Division Engineer, shall determine whether the stored water is eligible for deposit in the bank. If the water bank determines that the water is not eligible, it shall notify the prospective depositor to address any impediments to the water's eligibility.

C. Upon determination that a prospective depositor's stored water is eligible for deposit into the water bank, the water bank and the depositor shall negotiate and enter into a deposit agreement. The terms of the deposit agreement shall include, but not be limited to:
   1. Authorization of the water bank by the depositor to advertise and market the water placed into the deposit account.
   2. The depositor's agreement that the water bank shall have the exclusive right to market, lease, loan, option or exchange the deposited water on behalf of the depositor for the term of the deposit agreement, and that the depositor shall not independently market, lease, loan, option or exchange the

deposited water during the time that the deposit agreement is in effect.

3. A provision that the depositor may remove the deposited water from the water bank for the depositor's own use or for permanent sale by the depositor at any time prior to an actual water bank transaction in which control of all or a portion of the deposited water is transferred pursuant to terms of the deposit agreement.
4. A provision addressing procedures to be followed upon a breach of the deposit agreement by either party.
5. Any other terms deemed necessary by the water bank and the depositor.

Rule 6. **Listing and Bidding Process.**

A. Upon finalization of the deposit agreement, the water bank shall list the availability of the water on the water bank's web site. Listings of availability shall also be available at any State or Division Engineer field office locations.

B. The listing shall include, at a minimum, the amount of water available, the stored location of the water, the source of water, the minimum acceptable price and the historic type of use.

C. In order to promote use within the Arkansas River basin, during the first ten (10) business days of publication, only in-basin use bids for use of the water may be submitted to the seller. The seller must accept the best offer available meeting at least the minimum acceptable price during this ten (10) day period. If this initial listing period expires without the minimum acceptable price being offered, all bids from potential purchasers, including out-of-basin users, may be considered.

D. If the minimum acceptable price is not offered, the seller may withdraw the water from the bank or leave the water in the bank for the bank to market.

E. The water bank operator shall establish a process for registration of qualified bidders who may participate in the bidding process.

F. The water bank operator shall establish and maintain a Water Bank Notification List. Within thirty (30) days after the effective date of these rules and annually thereafter, the water bank operator shall publish in the Division 2 water court resume and in a newspaper or newspapers as necessary to obtain general circulation once in every county affected, an invitation to be included on the Water Bank Notification List. Persons on the List shall receive notice of all proposed water bank transactions as set forth in Rule 7 herein, and may elect to receive such notice by first class mail or by electronic mail. Persons may be required to pay a fee, not to exceed twelve

dollars per year, to be placed on the Water Bank Notification List to cover administrative costs.

Rule 7. **Transactional Procedures.**

A. After the water bank operator negotiates a lease or option agreement between the seller and buyer of the deposited water, the water bank operator will provide the State and Division Engineer with a signed agreement describing the transaction, including but not limited to the amount of water, the place of use, and the proposed time of use. (If needed, the bank will provide a standard agreement form). If the proposed lease/option shall require delivery of water into a different distribution system, the seller or buyer shall provide written consent of the owner or operator of the receiving facility or system, including any terms or conditions related to the use of such facility or system. The lease or option agreement also shall include a provision addressing procedures to be followed upon a breach of the agreement by either party.

B. Within two (2) business days of sending the lease or option agreement to the State and Division Engineers, the water bank operator shall provide written notice of the proposed transaction by first class mail or electronic mail to all persons who have subscribed to the Water Bank Notification List, and shall provide proof of such notice to the State and Division Engineers. The notice shall include the names and addresses of the parties to the transaction, a description of the water right involved, and a description of the proposed transaction, including but not limited to the amount of water, the historic place of use, the proposed new place of use, the proposed time of use, and the proposed type of use. The water bank also shall post the notice on its website.

C. The State and Division Engineers shall allow persons or entities thirty (30) days after the date of mailing of the notice in Rule 7.B to file written comments on the transaction. Such comments shall include any claim of injury or any terms and conditions that should be imposed upon the transaction to prevent injury to a party's water rights, and any other information the person or entity wishes the State and Division Engineers to consider in reviewing the proposed transaction.

O. Within five (5) business days after the close of the comment period described in Rule 7.C, the State and Division Engineers, after consideration of the comments received on the transaction, will provide the seller and buyer, and any person or entity who has submitted written comments, with terms and conditions necessary for implementing the agreement. The terms and conditions shall include any necessary and/or desirable limitations upon the time, place or type of use of the water made available through the water

bank, or other terms and conditions as deemed necessary to prevent injury to vested water rights, including dry-up provisions where applicable. In making the determinations necessary to developing such terms and conditions, the State and Division Engineers shall not be required to hold or conduct any formal hearings or proceedings, but may hold or conduct a hearing or formal proceeding if the State and Division Engineers find it necessary to address the issues. Any such hearing shall be held pursuant to the Division of Water Resources Procedural Regulations, 2 CCR-402-5.

E. Upon acceptance by the buyer and seller of the State and Division Engineers' terms and conditions, the water bank operator may finalize the agreement between the seller and buyer. Once the agreement is finalized and all parties, including the water bank, have been properly compensated, the water bank will notify the Division Engineer of the completion of the transaction.

F. A seller of deposited water shall comply with all state and local laws and regulations regarding land use and vegetation (i.e. weed control).

G. The water bank shall establish and charge sufficient fees to cover administrative costs incurred during the operation of the bank.

Rule 8. **Quantification Procedures for Water to be Released from the Bank.**

A. Acceptable Factors. Table A of these rules sets forth acceptable values for stored water deposited in the water bank that was historically applied to lands within a ditch service area as "winter water," Article II water, and/or releases of water pursuant to appropriative storage rights from vessels outside of the ditch service area. These factors are applicable to gross quantities of stored water. To claim values differing from those listed below, parties must submit to the State and/or the Division Engineer(s) a historic consumptive use analysis for consideration.

Table A

Ditch	**Transit Loss**	Canal and Lateral Loss	+ Tail Water	+ Deep Pero.*	= **Total Return Flows**	**C.U. Factor****
Bessemer	0.0000	0.1348	0.0523	0.2212	0.4083	0.5816
Colorado	0.0280	0.1618	0.0477	0.1267	0.3363	0.6356
Highline	0.0300	0.2244	0.0414	01490	0.4148	0.5553
Oxford	0.0300	0.0889	0.0549	0.3535	0.4972	0.4728
Catlin	0.0580	0.1051	0.0516	0.3239	0.4800	0.4634
Holbrook	0.0020	0.1133	0.0504	0.1972	0.3808	0.5771
Fort Lyon (P***)	0.0790	0.2563	0.0350	0.1204	0.4117	0.5094
Consolidated (P)	0.0900	0.0874	0.0507	0.2305	0.3687	0.5353
Fort Lyon (J****)	0.0000	0.2783	0.0380	0.1307	0.4470	0.5530
Consolidated (J)	0.0000	0.0967	0.0501	0.2555	0.4079	0.5921
Keesee	0.0040	0.0650	0.0590	0.2214	0.3463	0.6497
Fort Bent	0.0040	0.1203	0.0535	0.2084	0.3832	0.6127
Amity	0.0110	0.2363	0.0414	0.1425	0.4203	0.5087
Lamar	0.0200	0.1047	0.0540	0.3390	0.4970	0.4823
Hyde	0.0220	0.0647	0.0579	0.1991	0.3218	0.6562
K4anve!	0.0200	0.1047	0.0540	0.3300	0.4976	0.4823
X-Y Grm	0.0350	0.0884	0.0546	0.1881	0.3311	0.6339
Buffalo	0.0410	0.0970	0.0533	0.2088	0.3597	0.5093
Sisn-Stbs	0.0480	0.0582	0.0580	0.1955	0.3105	0.6415

**Deep Perc. = Deep Percolation °*C.(/Factor = Consumptive Use Factor*
**** Pueblo Reservoir ****John Martin Reservoir*

D. The factors for waters stored within the Holbrook Reservoirs (Holbrook and Dye Reservoirs) pertain to units of banked water resident within those reservoirs. To claim values differing from those listed in Table B, users must submit to the State and Division Engineers a historic consumptive use analysis for consideration.

Table B

Reservoir	Canal and Lateral Loss	+	Tail Water	+	Deep Pero.*		**Total Return Flows**		**C.U. Factor****
Holbrook Reservoirs	0.1208		0.0537		0.2102		0.3848		0.6152
**Deep Perc. = Deep Percolation **C.U. Factor = Consumptive Use Factor*									

C. No factors are proposed for use in connection with waters associated with the Colorado Canal Reservoirs (Lake Henry or

Lake Meredith), for which quantification procedures have been established by decrees of the Water Court. Banked water derived from any of these Reservoirs shall be quantified in terms of "net loss water" as that term is used in Case Nos. 84CW62-64, Water Division 2.

D. For water other than those systems listed in paragraphs A, B, or C above, a historic consumptive use analysis must be submitted to the State and/or Division Engineer(s) for consideration. The State and/or Division Engineer shall review and apply the following criteria in considering the historic consumptive use analysis: (1) historic diversion/storage records (1970-present) analysis; (2) applicable decrees; (3) crop evapotranspiration and irrigation water requirements; (4) descriptive maps and diagrams; and (5) additional information and/or analysis deemed necessary by the Division Engineer.

E. The State and Division Engineers shall apply the factors/procedures described in paragraphs A, B, C, or D above in approving and developing terms and conditions for proposed leases, loans, options and exchanges of water as set forth in Rule 7 in the following manner:

1. Only that portion of each unit of deposited water determined to be consumable shall be deliverable less any amounts deducted by the Division Engineer for evaporation and transit loss.
2. That portion of each unit of deposited water determined as transit loss that historically would have occurred in the delivery of water to the ditch headgate, shall be released from the reservoir at the time that other waters of the same type (i.e. winter water stored by a particular ditch company, for a particular year) as that deposited in the water bank are released, except as provided for in Rule 8.E.4 and 8.E.5.
3. That portion identifiable as canal and lateral loss is to be dedicated to use of other water users within the ditch service area and shall be released from the reservoir at the time that other waters of the same type as that deposited in the water bank are released, except as provided for in Rule 8.E.4 and 8.E.5.
4. In the event that all of the waters of a given type have been deposited in the water bank, then the timing of release of the transit loss and canal/lateral loss components of the deposited water shall be the same as that determined for the tail-water and deep percolation components in Rule 8.E.5.
5. The remaining tail-water and deep percolation components shall be released to the river by the Division Engineer to maintain historic return flow patterns. These releases shall reflect the return flow response resulting from historic patterns of use and

shall be implemented starting at the time of completion of the transaction and continuing for a twelve (12) month period.

Rule 9. **Procedures for Delivering Water from Storage Facilities.**

A. The user of banked water must notify the Division Engineer at least 24 hours prior to a request for delivery of water from the bank. Such notification must include the account number, date, time and location of release. The Division Engineer will administer the delivery of water per the terms and conditions of approval for the account and the agreement being implemented.

B. In cooperation with the State and Division Engineers, the water bank shall develop credit and debit accounting for each reservoir used to store banked water.

C. The State Engineer will determine all transit losses pursuant to sections 37-87-102(4) and 37-83-104, C.R.S. (2001).

O. The State Engineer shall determine all evaporative losses pursuant to section 37-87-102(4), C.R.S. (2001).

E. Exchange operations necessary for the delivery of water made available through the water bank shall be evaluated and approved in accordance with 37-83-104.C.R.S. (2001).

Rule 10. **Reporting Requirements.**

A. The bank, cooperation with the State and/or Division Engineers, will publish monthly summaries of the bank's transactions on the water bank's and Colorado Division of Water Resource's web sites. Paper copies of such summaries will also be made available to the public at the State Engineer's Office main office in Denver as well as the Water Division 2 Field Office in Pueblo.

B. By November 1, 2005, the State Engineer shall file a report to the legislature and the Governor that discusses the effectiveness of the water banking pilot program. This report will include a discussion of any existing legal, institutional, compact and social or economic constraints on the use of water banking. The report will also include any recommended limitations upon the use of water banks within Colorado.

Rule 11. **Pilot Project Time Limitation.**

A. These rules effectuate the laws set forth in sections 37-80.5-101 et seq., C.R.S. (2001). In accordance with the nature of the pilot project set forth therein, that law and these rules are repealed automatically on July 1, 2007. Any water left in the bank at that time shall immediately revert back to the owner of record.

B. If, after reviewing the State Engineer's report on the effectiveness of the Pilot Arkansas River Water Bank, the legislature extends the pilot water banking program for three (3) years or more, or authorizes a permanent water bank, the State Engineer shall review and revise these Rules to address issues related to the continued operation of the water bank. If the legislature extends the pilot water banking program for less than three (3) years, the State Engineer may review and revise these Rules as necessary to address issues related to the continued operation of the water bank.

Rule 12. If any part of these rules is found to be invalid by a court of law, the remaining rules shall remain in full force and effect.

Rule 13. **Effective Dates.**

These rules shall take effect on July 1, 2002 and shall remain in effect until amended as provided by law, or until June 30, 2007, whichever date comes first.

IT IS FURTHER ORDERED that any person wishing to protest these rules may do so in the manner provided in sections 24-4-101 et seq., C.R.S. (2001), (the State Administrative Procedure Act); however, any protest of these Rules must be filed with the Water Court for Water Division No. 2 in Pueblo, Colorado.

Appendix D: Idaho

Water Supply Bank Rules: 37.02.03

Water District 1 Rental Pools Procedures

Water District #63 Rental Pool Procedures

Water District No. 65 Rental Pool Procedures

Water District No. 65-K, Lake Fork Creek Rental Pool Procedures

Lemhi River Basin Water Supply Bank Procedures

37.02.04 – Shoshone-Bannock Tribal Water Supply Bank Rules

Water Supply Bank Rules: 37.02.03

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IDAPA 37
TITLE 02
CHAPTER 03
37.02.03 - WATER SUPPLY BANK RULES

000. LEGAL AUTHORITY (Rule 0).
This chapter is adopted under the legal authority of Section 42-1762, Idaho Code. (6-27-03)T

001. TITLE AND SCOPE (Rule 1).

01. Title. The title of this chapter is IDAPA 37.02.03, "Water Supply Bank Rules". (6-27-03)T

02. Scope. These rules were first adopted by the Water Resource Board in October 1980 as mandated by Section 42-1762, Idaho Code enacted in 1979. The rules govern the Board's operation and management of a Water Supply Bank provided for in Sections 42-1761 to 42-1766, Idaho Code. The purposes of the Water Supply Bank, as defined by statute, are to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water uses; and provide a source of funding for improving water user facilities and efficiencies. These rules are to be used by the Water Resource Board in considering the purchase, sale, lease or rental of natural flow or stored water, the use of any funds generated therefrom, and the appointment of local committees to facilitate the lease and rental of stored water. The purchase, sale, lease or rental of water shall be in compliance with state and federal law. The adoption of these rules is not intended to prevent any person from directly selling or leasing water by transactions outside the purview of the Water Supply Bank Rules where such transactions are otherwise allowed by law. (6-27-03)T

002. WRITTEN INTERPRETATIONS (Rule 2).
There are no written interpretations of these rules. (6-27-03)T

003. (RESERVED).

004. INCORPORATION BY REFERENCE (Rule 4).
No documents have been incorporated by reference into these rules. (6-27-03)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (Rule 5).

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (6-27-03)T

02. Mailing Address. The mailing address for the state office is Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. (6-27-03)T

03. Street Address. The street address for the state office of the Department of Water Resources, the regional offices in Idaho Falls, Coeur d'Alene, Twin Falls, and Boise, and the satellite offices in Salmon, Soda Springs, and Lewiston may be obtained by calling the state office at (208) 327-7900, or by visiting the Department's website at http://www.idwr.state.id.us. (6-27-03)T

006. PUBLIC RECORDS ACT COMPLIANCE (Rule 6).
Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code.
(6-27-03)T

007. -- 009. (RESERVED).

010. DEFINITIONS (Rule 10).

01. Board. The Idaho Water Resource Board. (7-1-93)

02. Board's Water Supply Bank. The water exchange market operated directly by the Board to

facilitate marketing of water rights. (7-1-93)

03. **Director.** The Director of the Idaho Department of Water Resources. (7-1-93)

04. **Department.** The Idaho Department of Water Resources. (7-1-93)

05. **Lease.** To convey by contract a water right to the Board's water supply bank or stored water to a rental pool operated by a local committee. (7-1-93)

06. **Local Committee.** The committee which has been designated by action of the Board to facilitate marketing of stored water by operating a rental pool pursuant to Section 42-1765, Idaho Code. (7-1-93)

07. **Natural Flow.** Water or the right to use water that exists in a spring, stream, river, or aquifer at a certain time and which is not the result of the storage of water flowing at a previous time. (7-1-93)

08. **Rent.** To convey by contract a water right from the Board's water supply bank or stored water from a rental pool. (7-1-93)

09. **Rental Pool.** A market for exchange of stored water operated by a local committee. (7-1-93)

10. **Stored Water.** Water made available by detention in surface reservoirs or storage space in a surface reservoir. (7-1-93)

11. **Water Right.** The right to divert and beneficially use the public waters of the state of Idaho including any storage entitlement. (7-1-93)

12. **Water Supply Bank.** The water exchange market operated by the Water Resource Board pursuant to Section 42-1761 through 42-1766, Idaho Code, and these rules and is a general term which includes the Board's water supply bank and rental pools. (7-1-93)

13. **Year.** A time period of twelve (12) consecutive months. (7-1-93)

14. **Person.** Any company, corporation, association, firm, agency, individual, partnership, Indian tribe, government or other entity. (7-1-93)

011. -- 024. (RESERVED).

025. ACQUISITION OF WATER RIGHTS FOR TAE BOARD'S WATER SUPPLY BANK (Rule 25).

01. General. The Board may purchase, lease, accept as a gift or otherwise obtain rights to natural flow or stored water and credit them to the Board's water supply bank. These water rights may then be divided or combined into more marketable blocks provided that there is no injury to other right holders, or enlargement of use of the water rights, and the change is in the local public interest. Any person proposing to sell or lease water rights to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code, shall file a completed application with the Director on a forms or in a format provided by the Department and provide such additional information as the Board or Director may require in evaluating the proposed transaction. The completed application form shall state the period of time a water right is offered for lease, or the period of time that storage water will be released for fish migration purposes in accordance with Section 42-1763A, Idaho Code, and the payment terms, if any, requested by the applicant. (7-1-93)

02. Application. Submitted with the completed application shall be: (7-1-93)

a. Evidence that the water right has been recorded through court decree, permit or license issued by the Department. If the right is included in an ongoing adjudication, a copy of the claim is required; (7-1-93)

b. Proof of current ownership of the water right by the applicant; (7-1-93)

c. Information that the water right has not been lost through abandonment, or forfeiture as defined by Section 42-222(2), Idaho Code; (7-1-93)

d. Evidence to demonstrate the relative availability of water in the source to fill the water right; and (7-1-93)

e. The written consent of such company, corporation or irrigation district to the proposed sale or lease must accompany the application if the right to the use of the water, or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district. (7-1-93)

03. **Review.** Upon receipt of the completed application the Director will review it for completeness and make such further review as he deems necessary to adequately brief the Board on the proposed transaction. (7-1-93)

04. Inadequate Application. If an application is not complete, the Director will correspond with the applicant to obtain the needed information. If the requested information is not returned in thirty (30) days, the application will no longer be considered a valid request to place a water right into the Board's water supply bank. (7-1-93)

05. **Consideration.** The Board may consider an application at any regular or special meeting. (7-1-93)

06. **Criteria.** The Board will consider the following in determining whether to accept an offered water right into the Board's water supply bank: (7-1-93)

a. Whether the applicant is the current owner, title holder or contract water user of the water right proposed to be transferred to the Board's water supply bank or has authority to act on behalf of the owner; (7-1-93)

b. Whether all necessary consents have been filed with the Board; (7-1-93)

c. Whether the information available to the Board indicates that the water right has been abandoned or forfeited; (7-1-93)

d. Whether the offering price or requested rental rate is reasonable; (7-1-93)

e. Whether acquisition of the water right will be contrary to the State Water Plan; (7-1-93)

f. Whether the application is in the local public interest as defined in Section 42-1763, Idaho Code; (7-1-93)

g. The probability of selling or renting the water right from the Board's water supply bank. (7-1-93)

h. Whether there are sufficient funds on hand to acquire the water right for the Board's water supply bank, provided that, if there are insufficient funds, or if in the opinion of the Board, existing funds should not immediately be expended for such acquisition, the Board may find that the water right should be acquired on a contingency basis, with payment to be made to the seller or lessor only after water is subsequently sold or rented from the Board's water supply bank, and (7-1-93)

i. Such other factors as determined to be appropriate by the Board. (7-1-93)

07. **Resolution Of Board.** The Board may by resolution accept an application to sell or lease a water right to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code. An application to lease together with the resolution accepting it becomes a lease and the water right is placed into the Board's water supply bank upon adoption of the resolution. A resolution accepting an application to sell a right to the Board's water supply bank will provide authority for the chairman of the Board to enter an agreement to purchase the water right. The resolution may include conditions of approval, including but not limited to, the following: (7-1-93)

a. A condition providing the length of time the water right will be retained in the Board's water supply bank. (7-1-93)

b. A condition describing the terms for payment to the owner of the water right and the sale or rental price from the Board's water supply bank. (7-1-93)

c. Other conditions as the Board determines appropriate, including a condition recognizing that water is being made available through the water supply bank pursuant to the provisions of Section 42-1763A, Idaho Code, for purposes of fish migration. (7-1-93)

08. Placement Of Water Right. Effect of placement of a water right into the Board's water supply bank. (7-1-93)

a. Upon acceptance of a water right into the Board's water supply bank, the owner of the right may withdraw the right within thirty (30) days of acceptance into the bank if the owner does not agree with the conditions of acceptance. (7-1-93)

b. Upon acceptance of a water right into the Board's water supply bank, the owner of the water right is not authorized to continue the diversion and use of the right while it is in the Board's water supply bank, unless the water right is for hydropower and is placed in the Board's water supply bank to be released for salmon migration and power production purposes. (7-1-93)

c. A water right which has been accepted shall remain in the Board's water supply bank for the period designated by the Board unless removed by resolution of the Board. (7-1-93)

d. The owner of the water right shall remain responsible to take actions required to claim the water right in an adjudication or other legal action concerning the water right and to pay taxes, fees, or assessments related to the water right. (7-1-93)

e. The forfeiture provisions of Section 42-222(2), Idaho Code are tolled during the time period the water right is in the Board's water supply bank, pursuant to the provisions of Section 42-1764, Idaho Code. (7-1-93)

026. -- 029. (RESERVED).

030. SALE OR RENTAL OF WATER RIGHTS FROM THE BOARD'S WATER SUPPLY BANK (Rule 30).

01. General. The Board may in its discretion initiate the process to sell or rent water rights from the Board's water supply bank to achieve the purposes stated in Rule 1. The Board may from time to time, as water rights are available, authorize the Director to announce the availability of the rights from the Board's water supply bank, establishing a time and date for receiving applications in the office of the Director to purchase or rent the water rights. An application shall be on a form or in a format provided by the Director. The sale or rental price shall be the price, if any, as determined by the Board. The Director will evaluate applications with respect to the purposes of Rule 1, as to whether there will be injury to other water rights, whether the proposal would constitute an enlargement of the water right, whether the water will be put to a beneficial use, whether the water supply available from applicable rights in the Board's water supply bank is sufficient for the use intended, and whether the proposal is in the local public interest. For applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code, the Director will only make an evaluation as to whether the proposed use of water will cause injury to other water rights. The Director may defer the evaluation of potential injury to other water rights conditioned upon the right of any affected water right holder to petition the Director pursuant to Section 42-1766, Idaho Code, to revoke or modify the rental approval upon a showing of injury. (7-1-93)

02. Notice. The Director may give notice of an intended rental as he deems necessary, provided that prior to approving any application for purchase, or for rental for a period of more than five (5) years, he shall give notice as required in Section 42-222(1), Idaho Code. (7-1-93)

03. Approval. Sale or rental shall be approved only for use of water within the state of Idaho. The

Director shall consider in determining whether to approve a rental of water for use outside of the state of Idaho those factors enumerated in Section 42-401(3), Idaho Code, except that this evaluation shall not be required for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code. (7-1-93)

04. Consideration. All applications received on or prior to the announced date for receiving applications shall be considered as having been received at the same time. Applications received after the close of the application date may be considered only if sufficient available water remains in the Board's water supply bank after all acceptable, timely applications have been filed. (7-1-93)

05. Authorized To Rent. The Director is authorized to rent water rights offered by the Board from the Board's water supply bank for a period up to five (5) years, but shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06 whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code. (7-1-93)

06. Board Review. The Board will review applications for purchase or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions or may reject the applications as the Board determines to best meet the purposes of Rule 1 and promote the interest of the people of the state of Idaho. (7-1-93)

07. Order Of Consideration. When renting water from the bank, the Director and the Board shall consider rental of water rights in the order the rights were leased to the bank, with first consideration for the rights which have continuously been in the bank the longest period of time provided the rights are suitable for the purpose of the renter. (7-1-93)

031. -- 034. (RESERVED).

035. IIANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK (Rule 35). Payments received by the Department from the sale or rental of water rights from the Board's water supply bank shall be handled as follows: (7-1-93)

01. Credited Amount. Ten percent (10%) of the gross amount received from the sale or rental of a water right from the Board's water supply bank shall be credited to the Water Administration Account created by Section 42-238a, Idaho Code, or to the federal grant fund if the payment is received from a federal agency, for administrative costs of operating the Water Supply Bank. (5-3-03)

02. Excess Funds. Any funds in excess of the amount needed to compensate the owner of the water right in accordance with the resolution accepting the water right into the Board's water supply bank and the administrative charge of Rule Subsection 035.01 shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board for the purposes of Rule 1. (7-1-93)

036. -- 039. (RESERVED).

040. APPOINTMENT OF LOCAL RENTAL POOL COMMITTEES (Rule 40).

01. Board Meetings For Committee Appointments. The Board may at any regular or special meeting to consider appointing an entity to serve as a local committee to facilitate the lease and rental of stored water. At least ten (10) days prior to the meeting, the entity seeking appointment shall provide to the Director information concerning the organization of the entity, a listing of its officers, a copy of its bylaws and procedures, if applicable, a copy of the proposed local committee procedures, pursuant to which the local committee would facilitate the lease and rental of stored water, together with a copy of each general lease and rental form proposed to be used by the local committee. The local committee procedures must be approved by the Board and must provide for the following: (7-1-93)

a. Determination of priority among competing applicants to lease stored water to the rental pool and to rent stored water from the rental pool; (7-1-93)

b. Determination of the reimbursement schedule for those leasing stored water into the rental pool; (7-1-93)

c. Determination of the rental price charge to those renting stored water from the rental pool; (7-1-93)

d. Determination of the administrative charge to be assessed by the local committee; (7-1-93)

e. Allocation of stored water leased to the bank but not rented; (7-1-93)

f. Notification of the Department and the watermaster of any rentals where stored water will be moved from the place of use authorized by the permit, license, or decree establishing the stored water right; (7-1-93)

g. Submittal of applications to rent water from the rental pool for more than five (5) years to the Board for review and approval as a condition of approval by the local committee; (7-1-93)

h. Prevention of injury to other water rights; (7-1-93)

i. Protection of the local public interest, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; (7-1-93)

j. Consistency with the conservation of water resources within the state of Idaho, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; (7-1-93)

k. Management of rental pool funds as public funds pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code. (7-1-93)

02. Local Committee Procedures. The local committee procedures shall provide that a surcharge of ten percent (10%) of the rental fee charged per acre foot of stored water rented from the rental pool shall be assessed and credited to the revolving development account and the water management account established in Sections 42-1752 and 42-1760, Idaho Code, in such proportion as the Board in its discretion shall determine. Such moneys, together with moneys accruing to or earned thereon, shall be set aside, and made available until expended, to be used by the Board for the purposes of Rule 1 unless the surcharge is prohibited by statute, compact or inter-governmental agreement. (7-1-93)

03. Review By Director. The Director will review the local committee procedures and submit them along with the Director's recommendation to the Board. The lease and rental form must receive the Director's approval. The Board may designate the applying entity as the local committee for a period not to exceed five (5) years. A Certificate of Appointment will be issued by the Board. The Board may extend the appointment for additional periods up to five (5) years, upon written request of the local committee. The Board may revoke a designation upon request of the local committee, or after a hearing pursuant to the promulgated Rules of Practice and Procedure of the Board, if the Board determines that the local committee is no longer serving a necessary purpose or is not abiding by its own approved procedures, these rules or applicable statutes. (7-1-93)

04. Annual Report. The local committee shall report annually on the activity of the rental pool on forms provided by the Board. (7-1-93)

05. Submission Of Amendments To Procedures To Board. Amendments to the approved procedures of an appointed local committee which change the amount charged for the rental of stored water shall be submitted to the Board by April 1st of any year. The amendment will be considered approved by the Board unless specifically disapproved at the first regular Board meeting following the amendment action of the local committee. The Board may, upon good cause being determined by the Board, specifically approve of amendments submitted after April 1 of any year. (6-27-03)T

041. -- 999. (RESERVED).

Water District 1 Rental Pools Procedures

5/28/03

WATER DISTRICT 1

RENTAL POOL PROCEDURES

RULE 1. AUTHORITY AND STATEMENT OF PURPOSE.

1.1. These procedures have been adopted by the Committee of Nine pursuant to Section 42-1765, Idaho Code, to assure the orderly operation of the Water District 1 Rental Pool by the Committee of Nine of Water District 1. Under no circumstances shall these procedures be interpreted or construed to limit the authority of the director of the Department of Water Resources, the Water Resource Board, the Committee of Nine, or the Snake River Watermaster in discharging their duties as set forth in the statutes of the state of Idaho and rules and the regulations promulgated thereto.

1.2. It is the purpose of these procedures to provide:

A. The procedures by which the Committee of Nine, acting under the authority of their appointment by the Water Resource Board under Section 42-1765 Idaho Code, as a Local Operating Committee, will make stored water available for rent through the Rental Pool.

B. The process, consistent with the Idaho Code and the rules of the Idaho Water Resource Board, by which stored water supplies will be made available by storage space-holders to cover water rented by the Committee through the Water District I Rental Pool.

C. Incentives to storage space holders to participate in the after-the-fact process established by these procedures to cover storage rentals made prospectively by the Committee during the irrigation season.

D. Expanded opportunities for all space holders to participate in and benefit from the proceeds of the Rental Pool.

E. Funding to Water District 1 for services rendered in the operation of the rental pool; for making improvements in distribution facilities; for improving efficiency in the distribution of water within Water District 1; and in better managing water resources of the Snake River.

F. Controls, priorities and safeguards to insure that existing water rights are not injured and that an adequate supply of stored water can be obtained from available supplies for the irrigation of lands above Milner before such available storage is rented for other purposes.

G. To perpetuate the intent of the Rental Pool to provide priority to spaceholders for the rental of water for irrigation within Water District 01.

1.3. Any entity holding space in Snake River Water District 1 may participate in the Rental Pool by agreeing in writing before June 15 of 2003 and by June 1 in subsequent years to allow a portion of the unused storage remaining in its space on November 1 of the current year to be used to cover the stored water distributed under Rental Pool rental agreements during the irrigation season. Any entity participating in the Rental Pool may restrict the use of its space pursuant to Rules 3.5. All letters of participation shall be in effect for the remainder of that year and for future years unless rescinded prior to June 1 of any subsequent year.

1.4 Water from the Rental Pool may be rented for any beneficial purpose recognized by the laws of the State of Idaho, subject to the following: (1) the priorities identified in Rule 7; (2) other water rights are not injured; and (3) water supplies for the following year are not jeopardized by the distribution of storage through the Rental Pool.

RULE 2. DEFINITIONS.

2.1. **ACRE-FOOT -** a volume of water sufficient to cover one acre of land one foot deep and is equal to 43,560 cubic feet (A/F).

2.2. **APPLICANT –** means any entity that seeks to lease storage water from the Committee by submitting a request to lease storage water, accompanied by a required cash deposit.

2.3. **ASSIGN –** an agreement between the storage space holder and the Committee that authorizes the use of some portion of the storage remaining in that space-holder's space to cover storage leased by the committee during the irrigation year.

2.4. **ASSIGNOR –** an entity that owns space in a reservoir within Water District 1 who has agreed to participate in supplying water to the Rental Pool pursuant to these procedures.

2.5. **BOARD -** means the Idaho Water Resource Board (IWRB).

2.6. **BUREAU -** means the Bureau of Reclamation, Department of the Interior, United States of America (USER).

2.7. **COMMITTEE -** means the Committee of Nine, the advisory committee selected by Water District 1 at their annual meeting, and appointed as the local committee by the Board pursuant to I.C. § 42-1765.

2.8. **DEPARTMENT -** means the Idaho Department of Water Resources or IDWR.

2.9. **DIRECTOR -** means the director of the IDWR.

2.10. **DISTRICT -** means Water District 1 of the state of Idaho.

2.11. **ENTITY OR PERSON –** means any individual, corporation, partnership, irrigation district, canal company, or other political subdivision or governmental agency.

2.12. **IRRIGATION SEASON –** is defined for the purpose of these procedures to be April 1 to November 1 of any year.

2.13 **IRRIGATION YEAR –** is defined for the purposes as the period starting November 1 of any calendar year and ending October 31 the following year.

2.14. **LAST TO FILL -** Refers to the priority that is later in time than all other reservoirs in the system that is assigned to space evacuated to provided rental water for uses below Milner dam.

2.15. **LEASE -** a written contract by which storage is made available by the Committee (Lessor).

2.16. **LESSEE -** means any person who leases water from the Committee.

2.17. **LESSOR –** means the Committee that leases storage or space in the Rental Pool to a Lessee.

2.18. **MILNER -** means Milner Dam on Snake River.

2.19. **RENT or RENTAL —** act of leasing water from the Rental Pool.

2.20. **RENTAL POOL COMMITTEE -** A sub-committee composed of the Water District 1 Watermaster, a designated representative from the Bureau of Reclamation, and members or alternates of the Committee of Nine appointed by the Chairman of the Committee of Nine.

2.21. **RESTRICTED -** Means a condition of participation that limits a spaceholder's participation in the Rental Pool to uses that are not subject to the Last To Fill provisions of these rules that is to uses located above Milner Dam.

2.22. **SPACE** - means all or any portion of the active impoundment volume of a reservoir measured in acre-feet.

2.23. **RENTER –** means Lessee.

2.24. **STORAGE** – water stored in a USBR or private reservoirs in the Minidoka Project above Milner Dam.

2.25. **WATERMASTER** - means the watermaster of Water District 1.

2.26. **WATER SUPPLY BANK –** refers to the activities of the committee in operating the local rental pool pursuant to the rules and regulations adopted by the board and the procedures of the Committee that have been approved by the Board.

RULE 3. GENERAL PROCEDURES AND GUIDELINES.

3.1. All assignments to or leases from the rental pool shall be consistent with the statutes creating the Water Supply Bank, the rules and regulations of the board, and the provisions of the spaceholder's contracts with the United States.

3.2. The primary purpose in the operation of the rental pool will be to benefit the storage spaceholders within Water District 1. These procedures are designed to assure that storage space assigned to the Committee and included in the rental pool from federal and other private reservoirs within Water District 1 is rented, or otherwise allocated, in a manner that protects other water rights and assures that water is first made available to meet the irrigation requirements of irrigation water users within Water District 1 before other uses are considered.

3.3. Storage shall be accepted into the rental pool from the collective carryover of participating storage space-holders through the application of a formula designed to anticipate the future need each assignor might have for the storage carried over from one irrigation year to the next. Water accepted into the rental pool will be in proportion to each entities percentage of the total carryover of the assigned space of all of the assignors. All monies received for water used during the past irrigation season will be paid to the assignors in proportion to the amount of carryover storage used to cover the storage leased by the committee, minus one-dollar per acre foot which will be paid to Water District 1 and the Board on a 75% - 25% ratio respectively. Distribution of funds will occur following the Watermaster's final computation of carryover.

3.4. Water will be leased for uses below Milner only in years where the combination of carryover on November 1 and the April 1 forecasted runoff will result in a position on Table 1 located within columns A thru F, unless the Committee of Nine acts affirmatively to approve a lease request that would be described by a position on Table 1 within columns G thru J based upon improved water supply conditions that occurred after April 1. If water supply conditions improve sufficiently after April 1 to warrant such rentals, they shall only be approved if all of the space subject to the last to fill priority on April 1 has been filled.

3.5. Only storage or space assigned to the rental pool without restriction shall be made available for uses below Milner. No storage shall be made available for uses below Milner so long as space subject to the last-to-fill priority remains unfilled in the system.

3.6. Any space evacuated to supply water for uses located below Milner Dam shall be assigned a priority date in the Watermaster's Water Right Accounting program that is later in time than all other reservoir water rights. This priority shall remain in place until the assigned right has been filled. The last-to-fill status may be incrementally reduced from year to year until the space has filled. Once last-to-fill space has filled the priority of this space will revert back to the water right priority under which it accrued water prior to the lease.

3.7. Any assignor, applicant, or lessee, who is aggrieved by a decision of the Rental Pool Committee, or on matters related to the operations of the rental pool, may request a hearing before the Committee of Nine within fifteen (15) days of the date the watermaster first proposed his written resolution of the grieved matter. After hearing the grievance and after review by the Committee, a decision will be made in writing and signed by a majority of the Committee. Said decision shall set forth the reasons for the Committee's decision. The decision of the Committee of Nine may be appealed to the Board by filing a written notice of appeal with the Committee and Board within thirty (30) days of the date of the Committee's decision.

3.9. All leases of stored water within Water District 1, unless the associated change in point of diversion and place of use is being initiated through the statutory transfer process or an authorized exchange of water, shall be transacted through the Water District 1 Rental Pool, provided further that a transaction which is an internal rental within a distribution system of an entity (within the digital boundary of the entity) shall be exempted. An exception to this rule shall also apply for other rental pools created by the board within Water District 1, including the Water Bank of the Shoshone-Bannock Indian tribes established pursuant to the 1990 Fort Hall Agreement.

RULE 4. MANAGEMENT.

4.1. The Rental Pool shall be operated pursuant to Idaho Code, Section 42-1761 to 42-1766 in accordance, with all policies established by the Committee of Nine.

4.2. The Rental Pool Committee shall have the following general responsibilities:

A. To determine general polices regarding annual storage leases, which may not be covered by the adopted procedures of the Committee of Nine.

B. To assist the Watermaster in applying the formulas, procedures and rules when conflicts arise.

C. To advise the Committee on Rental Pool activities.

4.3. The Watermaster shall act as the manager of the Water Supply Bank. His authority shall include accepting assignments, executing lease agreements on behalf of the Committee, disbursing and investing funds generated through the lease of stored water, and distribution of water supplies from the rental pool. All funds invested shall be considered public funds for investment purposes pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code.

4.4. The Watermaster will use his best efforts to assure that unauthorized diversions of water do not occur. In the case unauthorized diversions do occur, and the wateruser was notified that he was exceeding his entitlements, such unauthorized water diversions within Water District 1 shall be charged for the storage used at a rate that is 2 times the current year price that was determined by multiplying the current base rental price by the appropriate factor found in Table 1. The additional funds generated from such penalties shall be used to replace and maintain the fund established by the Committee to allow payments to be made to suppliers before rental funds have been collected from those who have used storage in excess of their entitlement. The rate for illegal diversions does not include any applicable collection costs or civil penalties that might be charged by the watermaster or by the department through a Notice of Violation issued pursuant to Idaho Code 42-351 & 42-1701B.

4.5. Any applicant, or any person assigning water to, or renting water from the rental pool, who is aggrieved by a decision of the Rental Pool Committee, or on matters related to the operations of the Water Supply Bank, may request a hearing before the Committee of Nine within fifteen (15) days of the date the watermaster first proposed his written resolution of the grieved matter. After hearing the grievance and after review by the Committee, a decision will be made in writing and signed by a majority of the Committee. Said decision shall set forth the reasons for the Committee's decision. The decision of the Committee may be appealed to the Board by filing a written notice of appeal with the Committee and Board within thirty (30) days following the date of the Committee's decision.

RULE 5. SPACE ASSIGNMENTS.

5.1. Only entities who owns or controls space or storage in a reservoir located in Water District 1 may participate as a potential supplier of storage in the Rental Pool. Participation is dependent upon the person holding space in a reservoir in Water District 1 and the Watermaster being able to compute and allocate the storage used during the irrigation season, and the amount of water carried over on November 1.

5.2. Storage assigned for lease through the rental pool will be identified by reservoir. If no designation is made by a person holding space in more than one reservoir, it shall be understood that American Falls Reservoir space will be designated before Jackson Reservoir space and Jackson Reservoir space will be designated before Palisades Reservoir space. "Winter Water Savings" space in Palisades may be used first to cover irrigation rentals but will be the last space used to supply water used below Milner.

5.3. Reservoir space assigned to the rental pool may be rejected in whole, or in part, by the Rental Pool Committee or they may place special conditions on usage, allocation, and price, if, in the judgment of the Committee, accepting said water will not be in the best interest of the rental pool or the water users of Water District 1.

5.4. Assignments of storage to the rental pool shall be in writing and signed by an individual authorized to make such an assignment for the space holder. Assignment forms will be provided by the Watermaster. The Watermaster will acknowledge in writing the participation of each assignor.

5.5. Assignments of carryover storage in a spaceholder's reservoir space may be made for periods ranging from one to twenty (20) years.

5.6. Water carried over in assigned reservoir space shall be under the control of the Watermaster and Committee until the final carryover for the year has been computed by the Watermaster for publication in the annual Watermaster's Report.

5.7. Assignors are responsible for all applicable construction and annual operation and maintenance assessments for reservoir space.

5.8. Once the final carryover for the irrigation year has been computed by the Watermaster and a final allocation of space rented, no further claim to assignor's remaining storage in the Snake River Water District 1 system shall exist with the space-holder. The Committee and the Watermaster shall have no further claim or entitlement to an assignor's storage until November 1 of the following year.

5.9. No entity that has assigned water to the rental pool may void said assignment after one rental agreement has been received and approved by the Watermaster.

RULE 6. DETERMINING RENTAL POOL SUPPLIES.

6.1. At the end of the irrigation year the Watermaster will compute the carryover for all assignors. Those whose storage use is less than or equal to five (5) times the amount carried over in their assigned space shall be deemed to be suppliers for the rental pool for the past irrigation year. Each assignor's portion of the rental pool supply shall be computed by multiplying his November 1 carryover by the ratio of the storage rented to the total qualifying carryover. [Assume that 90,000 acre-feet of storage was rented from the rental pool between November 1 of one year and October 31 of the following year. Also assume that the November 1 carryover in the system owned by participating spaceholders was 465,000 acre-feet. Finally assume that one of the participating spaceholders has 25,000 acre-feet of qualifying carryover. His rental would be (90/465) X 25,000 = 4839 acre-feet]

Should the amount of water needed to cover rentals require a larger percentage of the carryover than is would be available by using the ratio computed in 6.1., the watermaster shall be authorized to increment the ratio until sufficient carryover has been isolated to match the rentals that were made in the previous irrigation year?

RULE 7. PRIORITIES FOR LEASING WATER ASSIGNED FOR USE ABOVE MILNER.

7.1 The first priority in renting water from the Committee shall be given to those lessees owning space in any of the Bureau's federal storage reservoirs in the district and renting said water for irrigation on lessees' lands in the district. The second priority in renting water shall be given to other irrigation uses above Milner within the district. The third priority in renting water shall be given to other beneficial uses recognized under state law for use within the district.

RULE 8. LEASE APPLICATIONS, PAYMENTS AND WATER COSTS.

8.1. The "base rate for the storage rented from the rental pool shall be:

A. $3.00 per acre-foot of water leased for uses above Milner Dam.

B. $10.50 per acre-foot for water leased for use below Milner Dam.

C. The applicable annual rate shall be computed by multiplying the appropriate factor found in Table 1 by the Base Rate.

D. These rates include a $1.00 per acre-foot to cover the Water District's administrative charge and the Board's surcharge. The administrative charges do not include the normal Water District delivery charges assessed by the watermaster pursuant to Idaho Code §42-612.

8.2. The rental price for any Irrigation Year shall be determined by multiplying the applicable base price by the appropriate annual factor. The factor is determined by choosing the row that most closely reflects the amount of storage carried over in the Water District 1 reservoir system. The column is selected by selecting the percentage that most closely represents the forecast for the Snake River for the coming irrigation season. Payments to the Assignors shall be considered due and payable once the Watermaster has calculated the actual water used within Water District 1 for the annual water master's report. In cases where the Watermaster determines that storage was used in excess of entitlements and no payment was received by the time payment is due, the Watermaster will include the payment of all monies collected, minus collection costs, in the payments to assignors the following year.

8.3. All lease monies held by the Watermaster will be held in a separate interest-bearing account with accrued interest being distributed on a pro-rata basis at the time that final payments are made. Water District 1 shall be entitled to use all rental funds on an as needed basis provided the principal and interest due Assignors is not affected.

8.4 Applications to lease storage shall be initiated upon forms provided by the Water raster and shall include the following information:

A. The legal description of the point of diversion and the place of use.

B. The amount of water being leased.

C. The common name of the point of diversion. (e.g. Milner Dam, Harrison Canal, Covington pump etc.)

D. The beneficial use to be achieved through the delivery of water from the rented space. (e.g. irrigation, power production, recreation)

8.5 Applications must be received with the appropriate rental fee determined as provided in Rule 8.1.

8.6 The Committee may limit storage rentals for any applicant to the amount of storage used in 2002.

Water District #63 Rental Pool Procedures

AMENDED 3/28/1997

WATER DISTRICT #63

RENTAL POOL PROCEDURES

RULE 1. AUHORITY AND STATEMENT OF PURPOSE

1.1 These procedures have been adopted pursuant to Idaho Code, Section 42-1765 to assure orderly operation of the Boise River Rental Pool by the Water District No. 63 Rental Pool Committee. Under no circumstances shall these procedures be construed to limit or restrict the authority of the Director of Water Resource Board, Water District No. 63 Advisory Board or the Boise River watermaster in discharging their duties as set fourth in the statutes of the state of Idaho. Anyone renting water from such space for irrigation shall be subject to all applicable water laws of the state of Idaho and the Bureau of Reclamation.

1.2 It is the purpose of these procedures to:

a. Provide a process, consistent with the Idaho Code, by which stored water supplies may be made available for a specified period of time to water users who needs additional water.

b. Provide incentives for those owning reservoir space and having stored water, which is surplus to their needs, to make such space/water available to other users, and which will serve to protect the local public interest.

c. Establish a recognized system through which water supplies can be located, identified and subsequently leased.

d. Provide a source of revenue for Water District # 63 to make improvements in distribution of water and aid in increasing the conservation of water on the Boise River.

e. Provide the available water supplies may be leased to the rental pool by the Lessor and rented from the rental pool for any beneficial purpose recognized by the laws of the state of Idaho, provided that other water rights are not injures, irrigators are not deprived of supplemental storage by renting water for users other than irrigation, and the use is consistent with the conservation of water resources within the state of Idaho.

RULE 2. DEFINITIONS

2.1 **Acre-foot** is a volume of water sufficient to cover on acre of land one foot deep.

2.2 **Year** refers to normal calendar year.

2.3 **Board** means the Idaho Water Resource Board.

2.4 **Bureau** means the federal Bureau of Reclamation or USBR.

2.5 **Committee** means the Advisory Board of Water District No. 63.

2.6 **Department** means the Idaho Department of Water Resources or IDWR.

2.7 **Director** means the Director of the Idaho Department of Water Resources.

2.8 **District** Means Boise Water District No. 63.

2.9 **Lease** or **Assignment** is the agreement through which a specific amount of space or/stored water is leased to the Rental Pool for use during a specified period of time.

2.10 **Lessor** is the entity providing space/water to the Rental Pool.

2.11 **Person** means any company, corporation, association, firm, agency, individual, partnership, government or other agency.

2.12 **Rental Pool** refers to the water leasing and rental activities administered by the local committee appointed by the Water Resource Board.

2.13 **Space** means all or any portion of the active capacity of a federal reservoir measured in acre-feet.

2.14 **Stored Water** is the water that accrues to reservoir space and is available for use.

2.15 **Watermaster** means the watermaster of Water District No. 63.

2.16 **Rent** or **rental** means a written contract for the exclusive use of stored water leased to the committee for a determinate period for a specified price.

2.16 **Renter** means the person renting water from the rental pool.

RULE 3. GENERAL

3.1 It is the policy of the Waterusers of District No. 63 and the Committee to operate the Rental Pool for the maximum beneficial use of available stored water.

3.2 Operation of the Rental Pool will be by and for the irrigators within the district through the Committee. These procedures are designed to assure that stored water is maintained and first made available for irrigation use.

3.3 The operation of the Rental Pool shall be consistent with the statutes creating the Water Supply Bank, the rules of the Board and the provisions of the contracts with the United States.

3.4 Space is accepted for the Rental Pool on a contingency basis. Payments to the lessor will be made only if stored water is subsequently rented from the Rental Pool.

3.5 The space of storage water leased to the Rental Pool that is rented for users outside the hydrologic basin of the Boise River or below the confluence of the Boise River and the Snake River shall be the last space to fill in the ensuing year.

RULE 4. MANAGEMENT

4.1 The Committee shall have the following responsibilities:

a. To provide direction to the watermaster in the operation if the Rental Pool within the overall framework of the adopted procedures.

b. To set policies for the investment and disbursement of funds generated by the Rental Pool in conformity with the Public Depository Law, Chapter 1, Title 57, Idaho Code.

c. To notify the Director and watermaster of rentals where stored water will be moved from the place of use authorized by the permit, license of decree establishing the stored water right.

4.2 The watermaster shall act as the manager of the Rental Pool. His authority shall include accepting space into the Rental Pool, executing leases on behalf of the Committee, accepting and disbursing funds generated through the rental of stored water, and distribution of rented water.

4.3 The Committee shall decide all issues by a majority vote.

RULE 5. ASSIGNMENTS

5.1 All assignments of space to the Rental Pool and rental of stored water shall be for a term of one year.

5.2 Any contracting entity which owns space in a reservoir located in the district may assign any portion of its space to the Rental Pool.

5.3 When a lesser has space in more than one reservoir the assignment designation shall be in the order: Lucky Peak Space, Anderson Ranch Space and Arrowrock/Lake Lowell Space.

5.4 Assignments of space are subject to the acceptance by the Committee. Space submitted for assignment may be rejected in whole or part by the Committee or it may place special conditions on uses, allocation, and price if, in the judgment of the Committee, accepting said space will not be in the best interest of the Rental Pool and Water District No. 63

5.5 Any lesser, renter, or applicant aggrieved by a decision of the Rental Pool Committee on matters related to the operations of the Rental Pool may request a hearing before the Committee within 15 days after receiving notice in writing of the decision. After hearing the grievance and after review by the Committee, a decision will be made by the Committee in writing, setting fourth the reasons for its decision, and said review decision must be signed by a majority of the Committee. The decision of the Committee may be appealed to the Board.

5.6 Assignments of space to the Rental Pool shall be on the priority basis as set fourth in paragraph 6 of these procedures.

5.7 Assignments of space shall be in writing and on forms provided by the watermaster and shall bear the date they were received in the watermaster's office in Boise, Idaho.

5.8 All space assigned to the Rental Pool, shall be under the control of the watermaster and Committee for the duration of the lease.

RULE 6. LESSOR PRIORITIES

6.1 When a lessor assigns space to the Rental Pool, the stored water attributable to such space shall be determined by the watermaster according to the percentage the reservoir fills.

6.2 All stored water attributable to space assigned to the Rental Pool before July 1 will be rented before any stored water from space assigned after July 1.

6.3 Lessor which assign space to the Rental Pool by July 1, shall share proportionally in the proceeds from rentals of stored water attributable to such space.

6.4 Lessors which assign space to the Rental Pool after July 1, shall receive proceeds from the rentals of stored water attributable to such space on a "first come" basis whereby the first lessor to assign space shall be the first paid.

6.5 All space/water that has not been rented by the end of the year, shall revert back to the lessor, unless extended by the lessor.

RULE 7. RENTER PRIORITIES

7.1 Any stored water available through the Rental Pool shall be provided on a priority basis. The first priority for each time category is defined below. The second priority for each category consists of all water users not defined in that time category. Water shall be rent to second priority renters only upon specific findings of the Committee, in cases when all first priority uses are anticipated to be satisfied.

7.2 Prior to June 1 of each year, priority in acquiring stored water from the Rental Pool shall given to those irrigation entities owning contracted space in the various storage reservoirs.

7.3 After June 1 until July 15th of each year, priority shall be given to water users defined in paragraph 7.2 and other irrigation water users within the district.

7.4 After July 15th of each year priority shall be given to water users defined in paragraphs 7.2 and 7.3, and all other users within the district who desire to rent water, for beneficial purpose.

7.5 Sub-priority among water users of each priority listed above shall be determined by the date on which the water user's signed rental and payment are received at the office of the watermaster in Boise. During periods of drought or special conditions, the Committee, with the Director's approval, may develop additional or alternative procedures.

7.6 Any water user having once initiated a rental for stored water may request stored water in subsequent years by confirming, in writing, that all of the information on the original rental form is true and correct, and by identifying the amount of water he wishes to purchase. The priority in this case will be the date on which payment is received by the watermaster.

7.7 Water must be used by the renter no later than March 1 of the year following the calendar year in which storage occurs, unless an extension is granted by the Committee.

RULE 8. LEASE PAYMENTS AND RENTAL FEES

8.1 The price of stored water (including the administrative fee of $0.32/acrefoot) assigned to the Rental Pool shall be set by and approved by the Committee each year.

8.2 The rental price shall be $6.50 in-basin and $6.93 out-of-basin per acre-foot, which includes an administrative fee and the 10% surcharge in compliance with Idaho Water Resource Board Water Bank Rule 6.2.

8.3 Payments to the lessors shall be made in accordance with paragraph 6 of these procedures and shall be based upon the data published in the annual report of the watermaster. Payments to the lessors shall be considered due and payable once the watermaster has calculated the actual water used within the district for the annual watermaster's report.

Water District No. 65 Rental Pool Procedures

Amended March 19, 1999

WATER DISTRICT NO. 65

RENTAL POOL PROCEDURES

RULE 1. AUTHORITY AND STATEMENT OF PURPOSE

1.1 These procedures have been adopted pursuant to Idaho Code, Section 42-1765 and Rule 6 of the Water Supply Bank Rules of the Idaho Water Resource Board to assure orderly operation of the Payette River Rental Pool. Under no circumstances shall these procedures be construed to limit or restrict the authority of the Director of the Department of Water Resources, the Water Resource Board, Water District No. 65 Advisory Board, or the Payette River Watermaster in discharging their duties as set leasing water to, or renting water from, such space shall be subject to all applicable water laws of the state of Idaho and the Bureau of Reclamation.

1.2 It is the purpose of these procedures to:

a. Provide a process, consistent with applicable statutes and administrative rules, by which stored water supplies may be made available for a specified period of time to water users who need additional water.

b. Provide incentives for those owning reservoir space and having stored water, which is surplus to their needs, to lease such space/water to the Rental Pool to be made available to other users, and which will serve to protect the local public interest.

c. Establish a recognized system through which water supplies can be located, identified and subsequently rented to a water user.

d. Provide a source of revenue for Water District No. 65 to make improvements in distribution of water and aid in increasing the conservation of water in the Payette River Drainage Basin.

e. Provide that available water supplies may be leased to the Rental Pool by the Lessor and rented from the Rental Pool for any

beneficial purpose recognized by the laws of the State of Idaho, provided that other water rights are not injured, irrigators are not deprived of supplemental storage by renting water for uses other than irrigation, and the use is consistent with the conservation of water resources within the state of Idaho.

RULE 2. DEFINITIONS:

2.1 **ACRE-FOOT** is a volume of water sufficient to cover one acre one foot deep.

2.2 **YEAR** refers to a normal calendar year.

2.3 **BOARD** means the Idaho Water Resource Board.

2.4 **BUREAU** means the federal Bureau of Reclamation or USBR

2.5 **COMMITTEE** or **LOCAL COMMITTEE** means the Advisory Board of Water District No. 65.

2.6 **DEPARTMENT** means the Idaho Department of Water Resources or IDWR.

2.7 **DIRECTOR** means the Director of the Idaho Department of Water Resources.

2.8 **DISTRICT** means Payette River Water District No. 65.

2.9 **LEASE** is the agreement through which a specific amount of storage space or / stored water is obtained by the Rental Pool for use during a year.

2.10 **RENTER** is the person renting water from the Rental Pool.

2.11 **LESSOR** is the person leasing space/water to the Rental Pool.

2.12 **PERSON** means any company, corporation, association, firm, agency, individual, partnership, government agency or other entity.

2.13 **RENTAL AGREEMENT** is the agreement through which a Renter obtains the right to a specific amount of storage space or stored water from the Rental Pool.

2.14 **RENTAL POOL** refers to the water leasing and renting activities administered by the Local Committee appointed by the Water Resource Board.

2.15 **SPACE** means all or any portion of the active capacity of a reservoir measured in acre-feet.

2.16 **STORED WATER** is the water that accrues to reservoir space and is available for use.

2.17 **WATERMASTER** means the Watermaster of Water District No. 65.

RULE 3. GENERAL

3.1 It is the policy of the local committee of Water District No. 65 to operate the Rental Pool for the maximum beneficial use of available stored water.

3.2 Operation of the Rental Pool will be by and for the irrigators within the district through the Committee. These procedures are designed to assure that stored water is maintained and first made available primarily for irrigation use.

3.3 The operation of the Rental Pool shall be consistent with the statutes creating the Water Supply Bank, the rules of the Board and the provisions of the contracts with the United States.

3.4 Space will be accepted by the Committee on a contingency basis.

3.5 Payments to the lessor will be made only if stored water is subsequently rented from the Rental Pool.

3.6 The space of storage water leased to the Rental Pool that is rented for uses below the mouth of the Payette River shall be the last space to fill in the ensuing year.

3.7 No storage water leased to the Rental Pool shall be rented for uses below the mouth of the Payette River without the express written consent of the lessor.

3.8 It is the policy of the Committee to facilitate annual leases and rentals, and to base all transactions on water stored (storage) rather than reservoir space.

RULE 4. MANAGEMENT:

4.1 The Committee shall have the following responsibilities:

a. To provide direction to the watermaster in the operation of the Rental Pool within the overall framework of these adopted procedures.

b. To notify the department and the watermaster of any rentals where water will be moved from the place of use authorized by the permit, license of decree authorizing the stored water right.

c. To set policies for the investment and disbursement of funds generated by the Rental Pool in conformity with Public Depository Law, Chapter 1, Title 57, Idaho Code.

4.2 The watermaster shall act as the manager of the Rental Pool. This authority shall include accepting space into the Rental Pool, executing rental agreements on behalf of the Committee, accepting and disbursing funds generated through the rental of stored water, and distribution of rental water.

4.3 The Committee shall decide all issues by a majority vote.

RULE 5. LEASES:

5.1 All leases of space to the Rental Pool and all rental of stored water from the Rental Pool shall be for a term of one year.

5.2 Any contracting entity which owns space in a reservoir located in the district may lease any portion of its space to the Rental Pool.

5.3 When a lessor has space in more than one reservoir the lease shall designate: Cascade Space, Deadwood Space, or Payette Lakes Space.

5.4 Leases accepted by the watermaster are subject to the review and approval of the Committee. Space submitted for lease may be rejected in whole or part by the Committee or it may place special conditions on uses, allocation, and price if, in the judgment of the Committee, accepting said space will not be in the best interest of the Rental Pool and Water District No. 65.

5.5 Any lessor, or renter, or applicant aggrieved by a decision of the rental pool committee on matters related to the operations of the Rental Pool may request a hearing before the Committee within 15 days after receiving notice in writing of the decision. After hearing the grievance and after review by the Committee, a decision will be

made by the Committee, in writing, setting forth the reasons for its decision, and said review decision must be signed by a majority of the Committee. The decision of the Committee may be appealed to the Board.

5.6 Leases of space to the rental pool shall be on a priority basis as set forth in paragraph 6 of these procedures.

5.7 Leases of space shall be in writing and on forms provided by the watermaster and shall bear the date they were received in the watermaster's office.

5.8 All space leased to the Rental Pool shall be under the control of the watermaster and Committee for the duration of the lease.

RULE 6. PRIORITIES AMONG LESSORS:

6.1 When a lessor leases space to the Rental Pool, the stored water attributable to such space shall be determined by the watermaster according to the percentage the reservoir fills.

6.2 All stored water attributable to such space leased to the Rental Pool before July 1 will be rented before any stored water from space leased after July 1.

6.3 Lessors who lease space to the Rental Pool by July 1, shall share proportionally in the proceeds from the rental of stored water attributable to such space.

6.4 Lessors who lease space to the Rental Pool after July 1, shall receive proceeds from the rental of stored water attributable to such space on a "first come" basis, whereby the first lessor to lease space will be the first paid.

6.5 All space/water that has not been rented by the end of the year, shall revert back to the lessor, unless extended by the lessor.

RULE 7. PRIORITIES AMONG RENTERS

7.1 Any stored water available through the Rental Pool for use shall be provided on a priority basis. The first priority for each time category is defined below. The second priority for each time category consists of all water users not defined in that time category. Water shall be rented to second priority renters only upon specific findings of the Committee, in cases when all first priority uses are anticipated to be satisfied.

7.2 Priority until July 1 of each year in acquiring stored water from the rental pool shall be given to renters for irrigation within the active portion of Water District No. 65.

7.3 After July 1 of each year all remaining unrented stored water in the Rental Pool shall be available to any water user who desires to rent the water for any beneficial use. (Amended 2-7-97)

7.4 Sub-priority among water users of each priority listed above shall be determined by the date on which the water user's signed rental agreement and payment is received at the office of the watermaster. During periods of drought or special conditions, with consideration to local public interest and with the Director's approval, the Committee may develop additional or alternative procedures.

7.5 Any water user having once entered into a rental agreement for stored water may request stored water in subsequent years by confirming, in writing, that all the information on the original agreement is true and correct, and by identifying the amount of water he wishes to purchase. The priority in this case will be the day on which payment is received by the watermaster.

7.6 Water must be used by the renter no later than March 1 of the year following the calendar year in which storage occurs, unless an extension is granted by the Committee.

RULE 8. RENTAL FEES AND PAYMENTS TO LESSORS:

8.1 The price of stored water rented from the Rental Pool for use upstream from the mouth of the Payette River is $3.20 per acre foot, with $2.00 per acre foot being paid to the Lessors, a $1.00 per acre administrative fee paid to the District and the $0.20 surcharge due the Board under the Idaho Water Bank rules. The price of stored water rented from the Rental Pool for use downstream from the mouth of the Payette River is $5.65 per acre foot, with $4.23 per acre foot being paid to the Lessors, $2.23 of which is intended to be used by the Lessor for improvements within the Lessor's delivery system, with emphasis given to improvements which would result in better water management, water quality and water use efficiencies, a $1.00 per acre foot administrative fee paid to the District and the $0.42 surcharge due the Board. In the case that

another rental pool or space holder should lease water for the purpose or arbitrage and consequently seek to secure replacement water from the Rental Pool, the price shall be the amount charged by that rental pool or space holder plus an additional $1.00 per acre foot administrative fee paid to the District.

Water District No. 65-K, Lake Fork Creek Rental Pool Procedures

WATER DISTRICT NO. 65-K, LAKE FORK CREEK

RENTAL POOL PROCEDURES

RULE 1. AUTHORITY AND STATEMENT OF PURPOSE

1.1 These procedures have been adopted pursuant to Idaho Code, Section 42-1765 and Rule 40 of the Water Supply Bank Rules of the Idaho Water Resource Board to assure orderly operation of the Lake Fork Creek Rental Pool. Under no circumstances shall these procedures be construed to limit or restrict the authority of the Director of the Department of Water Resources, the Water Resource Board, Water District No. 65-K Advisory Board, or the Watermaster of Water District 65-K (Lake Fork Creek) in discharging their duties as set forth in the statutes of the state of Idaho. Anyone leasing water to, or renting water from, such space shall be subject to all applicable water laws of the state of Idaho.

1.2 It is the purpose of these procedures to:

a. Provide a process, consistent with applicable statutes and administrative rules, by which stored water supplies may be made available for a specified period of time to water users who need additional water.

b. Provide incentives for those owning reservoir space and having stored water, which is surplus to their needs, to lease such space/water to the Rental Pool to be made available to other users, and which will serve to protect the local public interest.

c. Establish a recognized system through which water supplies can be located, identified and subsequently rented to a water user.

d. Provide a source of revenue for Water District No. 65-K to make improvements in distribution of water and aid in increasing the conservation of water in the Lake Fork Creek drainage basin.

e. Provide that available water supplies may be leased to the Rental Pool by the Lessor and rented from the Rental Pool for any beneficial purpose recognized by the laws of the State of Idaho, provided that other water rights are not injured, irrigators are not deprived of supplemental storage by renting water for uses other than irrigation, and the use is consistent with the conservation of water resources within the state of Idaho.

RULE 2. DEFINITIONS:

2.1 **ACRE-FOOT** is a volume of water sufficient to cover one acre one foot deep.

2.2 **YEAR** refers to a normal calendar year.

2.3 **BOARD** means the Idaho Water Resource Board.

2.4 **COMMITTEE** or **LOCAL COMMITTEE** means the Advisory Board of Water District No. 65-K.

2.5 **DEPARTMENT** means the Idaho Department of Water Resources or IDWR.

2.6 **DIRECTOR** means the Director of the Idaho Department of Water Resources.

2.7 **DISTRICT** means Lake Fork Creek Water District No. 65-K.

2.8 **LEASE** is the agreement through which a specific amount of storage space or/stored water is obtained by the Rental Pool for use during a year.

2.9 **RENTER** is the person renting water from the Rental Pool.

2.10 **LESSOR** is the person leasing space/water to the Rental Pool.

2.11 **PERSON** means any company, corporation, association, firm, agency, individual, partnership, government agency or other entity.

2.12 **RENTAL AGREEMENT** is the agreement through which a Renter obtains the right to a specific amount of storage space or stored water from the Rental Pool.

2.13 **RENTAL POOL** refers to the water leasing and renting activities administered by the Local Committee appointed by the Water Resource Board.

2.14 **SPACE** means all or any portion of the active capacity of a reservoir measured in acre-feet.

2.15 **STORED WATER** is the water that accrues to reservoir space and is available for use.

2.16 **WATERMASTER** means the Watermaster of Water District No. 65-K.

RULE 3. GENERAL:

3.1 It is the policy of the local committee of Water District

No. 65-K to operate the Rental Pool for the maximum beneficial use of available stored water.

3.2 Operation of the Rental Pool will be by and for the irrigators within the district through the Committee. These procedures are designed to assure that stored water is maintained and first made available primarily for irrigation use.

3.3 The operation of the Rental Pool shall be consistent with the statutes creating the water Supply Bank and the rules of the Board.

3.4 Space will be accepted by the Committee on a contingency basis.

3.5 Payments to the lessor will be made only if stored water is subsequently rented from the Rental Pool.

3.6 The space of storage water leased to the Rental Pool that is rented for uses below the mouth of Lake Fork Creek shall be the last space to fill in the ensuing year.

3.7 No storage water leased to the Rental Pool shall be rented for uses below the mouth of the Lake Fork Creek without the express written consent of the board of directors of the Payette River Water District 65 Rental Pool.

3.8 It is the policy of the Committee to facilitate annual leases and rentals, and to base all transactions on water stored (storage) rather than reservoir space.

RULE 4. MANAGEMENT;

4.1 The Committee shall have the following responsibilities:

a. To provide direction to the watermaster in the operation of the Rental Pool within the overall framework of these adopted procedures.

b. To notify the department and the watermaster of any rentals where water will be moved from the place of use authorized by the permit, license or decree authorizing the stored water right.

c. To set policies for the investment and disbursement of funds generated by the Rental Pool in conformity with Public Depository Law, Chapter 1, Title 57, Idaho Code.

4.2 The watermaster shall act as the manager of the Rental Pool. This authority shall include accepting space into

the Rental Pool, executing rental agreements on behalf of the Committee, accepting and transmitting funds to the district treasurer for deposit and disbursement.

4.3 The Committee shall decide all issues by a majority vote.

RULE 5. LEASES:

5.1 All leases of space to the Rental Pool and all rental of stored water from the Rental Pool shall be for the year in which the lease agreement is offered and accepted unless extended as provided in paragraph 6.5 below.

5.2 Any contracting entity which owns space in a reservoir located in the district may lease any portion of its space to the Rental Pool.

5.3 Leases accepted by the watermaster are subject to the review and approval of the Committee. Space submitted for lease may be rejected in whole or part by the committee or it may place special conditions on uses, allocation, and price if, in the judgment of the Committee, accepting said space will not be in the best interest of the Rental Pool and Water District No. 65-K.

5.4 Any lessor, or renter, or applicant aggrieved by a decision of the rental pool committee on matters related to the operations of the Rental Pool may request a hearing before the Committee within 15 days after receiving notice in writing of the decision. After hearing the grievance and after review by the Committee, a decision will be made by the Committee, in writing, setting forth the reasons for its decision, and said review decision must be signed by a majority of the Committee. The decision of the Committee may be appealed to the Board.

5.5 Leases of space to the rental pool shall be on a priority basis as set forth in paragraph 6 of these procedures.

5.6 Leases of space shall be in writing and on forms provided by the watermaster and shall bear the date they were received in the watermaster's office.

5.7 All space leased to the Rental Pool shall be under the control of the watermaster and Committee for the duration of the lease.

5.8 The Committee may allow a contracting entity which owns space in a reservoir located in the district to lease space directly to the Water District 65 rental pool. If such entity desires to lease space to the Water District 65 rental pool, it must obtain the written approval of the Water District 65-K committee.

RULE 6. PRIORITIES AMONG LESSORS:

6.1 When a lessor leases space to the Rental Pool, the stored water attributable to such space shall be determined by the watermaster according to the percentage the reservoir fills.

6.2 All stored water attributable to space leased to the Rental Pool before June 15 will be rented before any stored water from space leased after June 15.

6.3 Lessors who lease space to the Rental Pool by June 15, shall share proportionally in the proceeds from the rental of stored water attributable to such space.

6.4 Lessors who lease space to the Rental Pool after June 15, shall receive proceeds from the rental of stored water attributable to such space on a "first come" basis, whereby the first lessor to lease space will be the first paid,

6.5 All space/water that has not been rented by the end of the irrigation season, shall revert back to the lessor at the end of the irrigation season of the year leased.

RULE 7. **PRIORITIES AMONG RENTERS:**

7.1 Any stored water available through the Rental Pool for use shall be provided on a priority basis. The first priority for each time category is defined below. The second priority for each time category consists of all water users not defined in that time category. Water shall be rented to second priority renters only upon specific findings of the Committee, in cases when all first priority uses are anticipated to be satisfied.

7.2 Priority until June 15 of each year in acquiring stored water from the rental pool shall be given to renters for irrigation within Water District No. 65-K.

7.3 After June 15 of each year all remaining unrented stored water in the Rental Pool shall be available to any water user who desires to rent the water for any beneficial use.

7.4 Sub-priority among water users of each priority listed above shall be determined by the date on which the water user's signed rental agreement and payment is received at the office of the watermaster. During periods of drought or special conditions, with consideration to local public interest and with the Director's approval, the Committee may develop additional or alternative procedures.

7.5 Any water user having once entered into a rental agreement for stored water may request stored water in subsequent years by confirming, in writing, that all the information on the original agreement is true and correct, and by identifying the amount of water he wishes to purchase. The priority in this case will be the date on which payment is received by the watermaster.

7.6 Water must be used by the renter during the year of the rental, unless the Committee grants an extension.

RULE 8. RENTAL FEES AND PAYMENTS TO LESSORS:

8.1 The price of stored water (including the administrative fee of $0.50/acre-foot and the Board's 10% surcharge) rented from the rental pool for use upstream from the mouth of Lake Fork Creek is $2.70 per acre-foot.

8.2 Payments to the lessors shall be made in accordance with paragraph 6 and shall be based upon the data published in the annual report of the watermaster. Payments to the lessors shall be considered due and payable once the watermaster has calculated the actual water used within the district for the annual watermaster's report. Payments to the Lessors for water delivered after submittal of the annual watermaster's report shall be made when delivery of the water is completed.

8.3 Any administrative revenue in excess of actual costs shall be held in a contingency fund, and may be used for other purposes that the Committee deems to be of benefit to Water District No. 65-K, provided, however, that such uses do not conflict with Idaho Public Depository Law, Chapter 1, Title 57, Idaho Code.

8.4 All rental monies shall be maintained in a separate interest-bearing account with accrued interest being distributed on a pro-rata basis at the time payments to lessors are made.

Lemhi River Basin Water Supply Bank Procedures

LEMHI RIVER BASIN
WATER SUPPLY BANK PROCEDURES

PROCEDURE 1. AUTHORITY AND STATEMENT OF PURPOSE

1.1 These procedures have been adopted by the Local Rental Committee ("Committee") and approved by the Director of the Idaho Department of Water Resources ("Director") and the Idaho Water Resource Board ("Board"), in accordance with Section 42-1761 to Section 42-1766, Idaho Code, and the Board's Water Supply Bank Rules at IDAPA 37.02.03, in order to further implementation of the Board's Water Supply Bank is the Lemhi River Basin ("Bank"), in accordance with Section 42-1765A, Idaho Code.

1.2 It is the purpose of these procedures to assure the orderly operation of the Bank. Under no circumstances shall these procedures be construed to limit the authority of the Director, the Board, or the watermasters of Water District 74 and tributary streams, in discharging their duties as set forth in the statutes of the state of Idaho and the rules promulgated thereto.

PROCEDURE 2. DEFINITIONS

2.1 APPLICANT. Any person requesting, through the processes specified in these procedures, to lease a water right into or to rent a water right from the Bank.

2.2 BANK. The water exchange market operated by the Committee in the Lemhi River Basin to facilitate marketing of water rights.

2.3 BOARD. The Idaho Water Resource Board.

2.4 COMMITTEE. The Local Rental Committee provided by Section 42-1765A, Idaho Code, IDAPA 37.02.03, and these procedures.

2.5 CONSUMPTIVE USE. The volume of water depleted by diversion and use of the right as defined in Section 42-202B, Idaho Code. This volume is presumed to be 2.5 acre-feet per acre per growing season of any crop in the Lemhi River Basin, absent other information.

2.6 DIRECTOR. The Director of the Idaho Department of Water Resources.

2.7 LEASE. To convey by contract a water right, or a portion thereof, into the Bank.

2.8 LEMHI RIVER BASIN. The hydrologic unit designated by the Idaho Department of Water Resources as Basin 74, comprised of the Lemhi River and all its tributary water sources.

2.9 LESSOR. Any person who conveys by contract a water right, or a portion thereof, into the Bank.

2.10 MANAGER. The individual charged by the Committee to manage the Bank in accordance with these procedures.

2.11 PERSON. Any individual, company, corporation, association, firm, agency, partnership, Indian tribe, government or other entity.

2.12 RENT. To convey by contract a water right from the Bunk.

2.13 RENTAL RATE. The amount paid by the renter to the Committee and then disbursed from the Committee to the lessor, upon rental of a water right from the Bank. Such amount does not include administrative charges which are also paid by the renter to the Committee upon rental of a water right from the Bank.

2.14 RENTER. Any person who conveys by contract a water right from the Bank.

2.15 WATER RIGHT. The right to divert and beneficially use the public waters of the state of Idaho.

PROCEDURE 3. MANAGEMENT OF THE BANK

3.1 The members of the Water District 74 Advisory Board will comprise the Committee, if approved by the Director and the Board pursuant to Procedure 3.2 below. The Committee shall administer the Bank in accordance with Section 42-1761 to Section 42-1766, Idaho Code, IDAPA 37.02.03, and these procedures. The Committee may designate a subcommittee to carry out any part or all of these procedures.

3.2 The Director will review the Committee procedures and submit them, along with the Director's recommendation, to the Board. The Board may designate the applying entity as the Local Rental Committee for a period not to exceed five (5) years. A Certificate of Appointment will be issued by the Board. The Board may extend the appointment for additional periods of up to five (5) years, upon written request of the Committee. The Board may revoke a designation upon request of the local committee, or after a hearing pursuant to the promulgated Rules of Practice and Procedure of the Board, if the Board determines the Committee is no longer serving a necessary purpose or is not abiding by applicable statutes, IDAPA 37.02.03, or its own approved procedures.

3.3 General responsibilities of the Committee include the following:

A. Create application forms for the lease and rental of water rights into and from the Bank and have such forms approved by the Director;

B. Determine whether to accept, deny, or condition applications from potential lessors and renters of water rights into and from the Bank;

C. Collect rental payments and administrative charges;
D. Disburse funds to the Board for administrative charges and to lessors upon the renting of each lessor's water right from the Bank;
E. Invest funds generated through the Bank pursuant to resolutions adopted by Water
F. District 74 and pursuant to the conditions for use of such funds provided in
G. Section 42-613A, Idaho Code;
H. Manage funds generated through the Bank as public funds pursuant to the Public
I. Depository Law, Chapter 1, Title 57, Idaho Code;
J. Evaluate, and propose to the Board, changes to these procedures or other matters pertaining to the management of the Bank, as needed; and
K. Report to the Board annually on the activity of the Bank.

3.4 The watermaster of Water District 74 shall act as Manager of the Bank. General responsibilities of the Manager shall include the following:
A. Have available lease and rental application forms, once created by the Committee and approved by the Director;
B. Receive applications for leases and rentals and inform applicants if such applications are incomplete;
C. Make recommendations to the Committee regarding whether an application to lease a water right into the Bank satisfies the eligibility requirements of Procedure 4.2 and whether the Committee should accept such application to lease or rent water rights into or from the Bank; and
D. Receive and distribute funds, as directed by the Committee.

3.5 Any lessor, renter or applicant aggrieved by a decision of the Committee on matters related to the operations of the Bank may appeal that decision, in writing, to the Board within fifteen (15) days of receiving written notice of the Committee's decision, in accordance with IDAPA 37.01.01.

PROCEDURE 4. LEASING WATER RIGHTS INTO THE BANK

4.1 Any person who owns a water right in the Lemhi River Basin may apply to the Committee to lease, in whole or in part, his or her right into the Bank. A water right may be leased into the Bank for varying periods of time, including partial year, annual, or longer term. However, during any year a water right is leased into the Bank, the lessor is not authorized to resume diversion and use of the right beyond the date when acceptance of the right into the Bank becomes effective.

4.2 Any application to lease a water right into the Bank shall be submitted in writing to the Manager on the proper form obtained from the Manager and shall bear the date it is received by the Manager. The application must state the period of time a water right is offered for lease, the requested rental rate that would be paid to the lessor once the right is rented from the Bank, and an adequate description of the water right offered for lease. The application must he accompanied by the following:
A. Proof of existence and current ownership of the water right by the applicant;

B. Evidence demonstrating the relative availability of water to fill the water right; and

C. The written consent of such company, corporation, or irrigation district to the proposed lease, if the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation or if such works or system is owned or managed by an irrigation district.

4.3 If a lease application is not complete, the Manager will correspond with the applicant to obtain the needed information. If the needed information is not supplied within thirty (30) days, the application will no longer be considered a valid request to place a water right into the Bank.

4.4 The Manager will make a recommendation to the Committee regarding whether an application to lease a water right into the Bank satisfies the eligibility requirements of Procedure 4.2 and whether the Committee should accept such application to lease or rent water rights into or from the Bank. The Committee may reject in whole or in part, or place conditions upon, any application to lease water rights into the Bank. In determining whether to accept water rights into the Bank, the Committee will consider the following:

A. Whether the applicant has satisfied the eligibility requirements of Procedure 4.2;

B. Whether the requested rental rate, if any, is reasonable;

C. Whether the application is in the local public interest as defined in Section 42-1763, Idaho Code;

D. The probability of renting the water right from the Bank;

E. The particular attributes of the water right, such as the location, priority date, quantity, and the nature of use;

F. The designated use upon rental of the water right, if specified by the applicant; and

G. Other factors determined to be appropriate by the Committee.

4.5 A water right is leased into the bank as of the effective date for acceptance, if any, established by the Committee when considering whether to accept a lease application at a regularly scheduled or special meeting. Payment of the rental rate for any water right accepted for lease into the Bank is contingent upon the water right subsequently being rented out of the Bank.

4.6 Unless otherwise provided by the Committee, payment for the leased water right will be disbursed to the lessor, upon rental of the lessor's water right from the Bank. The Committee will not rent water for less than the amount requested by the lessor without written consent from the lessor.

4.7 Once the Committee accepts a lease application, placement of that water right into the Bank is governed as follows:

A. The lessor may withdraw the right any time prior to the effective date for acceptance established by the Committee if he or she does not agree with the terms of the Committee's acceptance;

B. The lessor is not authorized to continue the diversion and use of the right after the effective date of acceptance into the Bank during any year the lease of the water right into the Bank is accepted by the Committee;

C. A leased water right shall remain in the Bank for the period designated by the Committee unless removed by the Committee;
The lessor shall remain responsible to take actions required to claim the water right in an adjudication or other legal action concerning the water right and to pay taxes, fees, or assessments related to the water right; and

D. The forfeiture provisions of Section 42-222(2), Idaho Code, are tolled during the time period the water right is in the Bank, pursuant to Section 42-1764, Idaho Code.

PROCEDURE 5. RENTING WATER RIGHTS FROM THE BANK

5.1 Any person may apply to the Committee to rent a water right from the Bank for use within the Lemhi River Basin. Any rental lasting for a period of more than one (1) year requires approval by the Director. Any rental lasting for a period of more than five (5) years requires approval by the Board.

5.2 Any application to rent a water right from the Bank shall be submitted in writing to the Manager on the proper form obtained from the Manager and shall bear the date it was received by the Manager. Such application must identify which water right from the Bank is proposed for rental; the nature, location, and time period of the proposed use of such rented right; and the offered rental rate, if different from that requested by the lessor.

5.3 If a rental application is not complete, the Manager will correspond with the applicant to obtain the needed information. If the needed information is not supplied within thirty (30) days, the application will no longer be considered a valid request to rent a water right from the Bank. An application is not deemed received until it is submitted in the proper and complete format.

5.4 A person may only rent the consumptive use portion of a water right, as defined in these procedures, from the Batik. If the Committee feels that a greater portion of the water right could be rented from the Bank without causing injury to other water rights, the Committee may seek a determination from the Director as to how much of the water right could be rented.

5.5 The Committee may accept, deny, or condition an application to rent a water right from the Bank based upon consideration of the following factors:

A. Whether the rental would cause injury to other water rights;
B. Whether the rental would constitute an enlargement of the rented water right;
C. Whether the rented water would be put to a beneficial use;
D. Whether the water supply available from applicable rights in the Bank is sufficient for the use intended;
E. Whether the rental is in the local public interest; and

F. Other factors determined to be appropriate by the Committee.

5.6 In choosing among competing rental applications, the Committee shall give priority to applications to rent water to fill the minimum stream flow established by Section 42-1506, Idaho Code.

5.7 The rental rate for renting a water right from the Bank is the same rental rate requested by the lessor of that right, unless a different offer is made by a rental applicant and accepted in writing by the lessor. Once a rental application is accepted, the renter must pay to the Committee the agreed upon rental rate, plus all administrative charges, before water is delivered.

PROCEDURE 6. ADMINISTRATIVE CHARGES

6.1 Operation of the Bank will require substantial administrative oversight by the Idaho Department of Water Resources. To offset at least a portion of the costs incurred by the Idaho Department of Water Resources for administration, the Board shall be paid ten percent (10%) of the rental rate, as defined in these procedures, for each water rental transaction in accordance with IDAPA 37.02.03, Rule 40.02. The renter shall pay this fee for administrative services to the Committee in addition to the rental rate. The Committee shall remit this payment to the Board, which will then he conveyed to the Water Administration Account of the Idaho Department of Water Resources, created by Idaho Code § 42-238a, from the Board's Water Management Account established in Idaho Code § 42-1760. Payment to the Water Administration Account is made pursuant to IDAPA 37.02.03, Rule 35.01.

6.2 Water District 74 will incur significant administrative costs to operate the Bank because of increased work required of the water master for Water District 74, as well as other activities, to ensure delivery of the appropriate quantity of water rented from the Bank. To offset the costs incurred by Water District 74, the Committee may on an annual basis establish a fee not to exceed ten percent (10%) of the rental rate for each water rental transaction to cover these costs in addition to the fee paid to the Board. The renter shall pay any such fee for administrative services to the Committee in addition to the rental rate.

37.02.04 - Shoshone-Bannock Tribal Water Supply Bank Rules

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IDAPA 37
TITLE 02
CHAPTER 04

37.02.04 - SHOSHONE-BANNOCK TRIBAL WATER SUPPLY BANK RULES

000. LEGAL AUTHORITY (Rule 0).
These rules have been adopted pursuant to Sections 42-1761 to 42-1765, Idaho Code, Idaho Water Resources Board Water Supply Bank Rule 40 and The 1990 Fort Hall Indian Water Rights Agreement (Agreement) to assure orderly operation of the Shoshone-Bannock Tribal Water Supply Bank. (7-8-94)

001. TITLE AND SCOPE (Rule 1).

01. Purpose. The purpose of establishing this Shoshone-Bannock Water Supply Bank is to allow for rental for any beneficial use all or any part of the water accruing to the federal contract storage rights in the American Falls Reservoir and the Palisades Reservoir as described in Article 7.3.1 of the Agreement not used on Indian lands or otherwise required to fulfill the exchange established by Article 8 of the Michaud Contract. (7-8-94)

02. Intent. These rules are not **intended** to prohibit the Tribes from renting the storage contract water from Palisades and American Fall Reservoirs for any beneficial use within the exterior boundaries of the Reservation. (7-8-94)

03. Agreement. The Idaho Water Resources Board or its successors, pursuant to Section 7.3.6 of the Agreement, agrees not to take any action that will interfere with the nature, scope, spirit and purposes of the Shoshone-Bannock Water Supply Bank. (7-8-94)

002. -- 009. (RESERVED).

010. DEFINITIONS (Rule 10).
In addition to the definitions set forth below, the definitions in "The 1990 Fort Hall Indian Water Rights Agreement" are incorporated to the extent they are applicable. (7-8-94)

01. Acre Foot. The amount of water necessary to cover one (1) acre of land to a depth of one (1) foot and is equivalent to forty-three thousand five hundred sixty (43,560) cubic feet or three hundred twenty-five thousand eight hundred fifty-one (325,851) gallons of water. (7-8-94)

02. Agreement. "The 1990 Fort Hall Indian Water Rights Agreement" as ratified by the Shoshone-Bannock Tribes in June, 1991, and as approved by the United States in Public Law 101-602, 104 Stat. 3061 on November 16, 1990, and by the state of Idaho in 1991 Idaho Session Laws Chapter 228 at 547. (7-8-94)

03. Annual. The period starting on the day following the first Monday in March of each year and ending on the first Monday of March of the succeeding year. (7-8-94)

04. Bank. The "Shoshone-Bannock Tribal Water Supply Bank". (7-8-94)

05. Beneficial Use. Any use of water for DCMI, irrigation, hydropower generation, recreation, stock watering, fish propagation and instream flow uses as well as any other uses that provide a benefit to the user of the water. (7-8-94)

06. Bureau. The United States Department of Interior Bureau of Reclamation. (7-8-94)

07. Chairperson. The person selected by the Tribal Rental Pool Committee to be the head of the Committee. (7-8-94)

08. Committee. The Tribal Rental Pool Committee. (7-8-94)

09. Council. The Fort Hall Business Council. (7-8-94)

10. **IDWR.** The Idaho Department of Water Resources an executive agency of the state of Idaho created by Section 42-1701, Idaho Code, or any successor agency. (7-8-94)

11. **IWRB.** The Idaho Water Resource Board an agency constituted in accordance with Idaho Const. art. XV, Section 7, or any successor agency. (7-8-94)

12. **Rent.** A temporary legal conveyance by the Tribes of the right to use storage water pursuant to Section 42-1761, Idaho Code, for a fixed period of time during which ownership of the federal contract storage right is retained for the benefit of the Tribes. (7-8-94)

13. **Rental Pool.** The Tribal stored water assigned to the Bank. (7-8-94)

14. **Renter.** The person renting water from the rental pool. (7-8-94)

15. **Reservation.** The Fort Hall Indian Reservation. (7-8-94)

16. **Reservation Watermaster.** The Tribal Water Engineer or any successor designated by the Tribes to administer the Tribal water rights under the Tribal Water Code. (7-8-94)

17. **Snake River Watermaster.** The watermaster of Water District 01 or any successor. (7-8-94)

18. **Tribal Stored Water.** The storage water accruing to the federal contract storage space identified in Article 7.3.1 of the Agreement. (7-8-94)

19. **Tribal Water Engineer.** The Tribal officer or any successor designated to administer the Tribal Water Code. (7-8-94)

20. **Tribes.** The Shoshone-Bannock Tribes. (7-8-94)

011. -- 024.(RESERVED).

025. GENERAL (Rule 25).

01. **Priority Of Use.** Before stored water is assigned to the rental pool, Tribal stored water shall be maintained and made available for Tribal uses as determined by the Council and to meet the commitment of the Tribes under Article 8 of the Michaud Contract. The water is to be rented for beneficial use and may be rented outside the Reservation subject to the provisions of Rule 45 of these Water Supply Bank Rules. (7-8-94)

02. **Bank Operation.** The operation of the Bank shall be consistent with the Agreement. The Bank shall be for the exclusive purpose of rental of Tribal stored water. (7-8-94)

03. **Authority Of Bank.** The Shoshone-Bannock Water Supply Bank is created pursuant to the provisions of the following Sections 42-1761, 42-1762, 42-1763, 42-1764, and 42-1765, Idaho Code. (7-8-94)

04. **Incorporation Of Articles.** These rules incorporate by reference the provisions set forth in Article 7.3.5, 7.3.10 and 7.3.11 of the Agreement. (7-8-94)

05. **Consistency.** The operation of the Bank shall be consistent with provisions of the Tribes' spaceholder contracts with the United States. (7-8-94)

06. **Storage Water.** Tribal stored water rented from the pool shall be deemed storage water of the renter. (7-8-94)

07. **Evaporation Losses.** Evaporation losses associated with any Tribal stored water assigned to the Bank shall be charged to storage space from which the water is released. (7-8-94)

026. -- 029. (RESERVED).

030. MANAGEMENT (Rule 30).

01. Bank Operation. The Bank shall be operated by the Tribal Rental Pool Committee in conformity with these rules and the Agreement. (7-8-94)

02. Committee Composition. The Tribal Rental Pool Committee shall be composed of the following members: the Bureau Snake River Area Manager, the Snake River Watermaster, the Tribal Reservation Watermaster and three (3) individuals designated by the Council. The composition of this Committee shall only be changed as provided in the Agreement. (7-8-94)

03. Chairperson Selection. The Committee shall select its own Chairperson from the Committee as determined by a majority vote of the Committee. Each term of the Chairperson of the Committee shall not exceed four (4) years; however, nothing precludes the same person from being re-elected as Chairperson by the members for more than one (1) term. (7-8-94)

04. Committee Responsibilities. The Tribal Rental Pool Committee shall have the following responsibilities: (7-8-94)

a. The Committee shall ensure that the Bank is operated in compliance with these rules and the Agreement and shall establish such other polices for the operation of the Bank as are consistent with these rules and the Agreement. (7-8-94)

b. The Committee shall advise the Fort Hall Business Council on water banking activities upon request. (7-8-94)

05. Chairperson Duties. The Chairperson shall be responsible for such duties as are delegated by the Committee. (7-8-94)

031. -- 034. (RESERVED).

035. ASSIGNMENTS OF TRIBAL STORED WATER TO THE BANK (Rule 35).

01. Assignments Of Stored Water. Assignments of Tribal stored water to the Bank should identify the reservoir from which the assignment is being made. If no reservoir is identified, the Tribal stored water shall be deemed to come first from the Palisades Reservoir and secondly from American Falls Reservoir. (7-8-94)

02. Assignment Forms. Assignments of Tribal stored water to the Bank shall be in writing on forms provided by the Committee and shall bear the date received by the Chairperson. Copies of all assignments shall be provided to all the Committee members and a copy shall be provided to the Council. (7-8-94)

03. Term Of Assignment. Assignments of Tribal stored water may be made for any period of time. (7-8-94)

04. Control Of Assigned Water. All Tribal stored water assigned to the Bank by the Council shall be under the control of the Committee for the duration of the term of the assignment to be rented in accordance with these rules and the terms of the assignment. (7-8-94)

05. Space Assignment. Whenever Tribal stored water is made available for rental, it shall be deemed that it is the intention of the Tribes to assign sufficient space to yield the amount of water designated. (7-8-94)

06. Return Of Unrented Water. Any Tribal stored water assigned to the rental pool that is not rented shall be returned to the credit of the Tribes. (7-8-94)

036. -- 039. (RESERVED).

040. RENTAL OF WATER FROM THE RENTAL POOL (Rule 40).

01. Rental Priorities. Tribal stored water assigned to the Bank shall be made available for rental in accordance with the priorities established by the Committee, provided that the Fort Hall Indian Irrigation Project water users shall have a right of first refusal to rent any tribal stored water assigned to the rental pool. Notice shall be given in accordance with procedures established by agreement of the Tribes and the Fort Hall Indian Irrigation Project water users. (7-8-94)

02. Rental Application. A request to rent water shall be in writing on a form provided by the Committee. A copy of the request shall be provided to each member of the Committee and forwarded to the Council. (7-8-94)

03. Content Of Agreements. All rental agreements shall contain the following information: (7-8-94)

a. Name and address of the renter, (7-8-94)

b. Amount of tribal stored water obligated, (7-8-94)

c. The beneficial use, (7-8-94)

d. The rental price, (7-8-94)

e. The legal description of the point of diversion and place of use, (7-8-94)

f. The duration of the rental agreement, (7-8-94)

g. The understanding of responsibilities and exposures if reservoir space does not fill at some time during the term of the rental agreement. (7-8-94)

h. The understanding that transportation losses occurring between the reservoir and the place of use shall be deducted from water delivered under the rental agreement. (7-8-94)

041. -- 044. (RESERVED).

045. GEOGRAPHIC SCOPE OF RENTING (Rule 45).

01. Palisades Storage. Tribal stored water from the Palisades Reservoir may be rented for use within the Snake River Basin above Milner Dam. (7-8-94)

02. American Falls Storage. Tribal stored water from the American Falls Reservoir may be rented for use within the Snake River Basin within the state of Idaho. (7-8-94)

046. -- 049. (RESERVED).

050. RENTAL PAYMENTS. (Rule 50).

01. Rental Price. The price for rental Tribal stored water from the bank shall be set by the Council. (7-8-94)

02. Management Of Rental Income. Rental payments shall be made directly to the Council. The Council shall be responsible for the management of the rental income. The Council shall give written notice to the Committee that payment was properly received and that water may be released under the rental agreement. If payments are made over time, and payment is not received by the Council, the Council shall promptly notify the Committee to hold back on release of the water until payment is properly received. (7-8-94)

051. -- 054. (RESERVED).

055. TERM OF RENTALS (Rule 55).
The Committee may rent tribal stored water for a period of up to five (5) years. Any request to rent water for a period in excess of five (5) years shall be subject to negotiations between the Tribes and the IWRB. (7-8-94)

056-- 059. (RESERVED).

060 LIABILITY (Rule 60).
Nothing in these rules shall be construed as modifying or altering any provisions of the Agreement, including but not limited to Article 7.3.12. (7-8-94)

061-- 999. (RESERVED).

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Senate Bill No. 489 — Committee on Government Affairs

Senate Bill No. 489--Committee on Government Affairs

CHAPTER .....

AN ACT relating to water; empowering the boards of county commissioners of certain counties to plan for and manage the supply and quality of water, the collection and treatment of sewage, and the drainage and alleviation of excessive surface water; creating a planning commission for these purposes; repealing the regional water planning and advisory board of Washoe County and all amendments thereto; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 48 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 33, inclusive, of this act. Sec. 2. This chapter applies only to counties whose population is 100,000 or more but less than 400,000. Sec. 3. As used in this chapter, unless the context otherwise requires:

1. "Board" means the board of county commissioners.
2. "Commission" means the water planning commission created by section 10 of this act.
3. "Comprehensive plan" or "plan" means the plan developed pursuant to section 15 of this act.
4. "Division" means the division of environmental protection of the state department of conservation and natural resources.

Sec. 4. In each county to which this chapter applies, except as otherwise provided in section 5 of this act, the region within which water is to be managed, and with respect to which plans for its use are to be made, pursuant to this chapter is the entire county except:

1. Any land within the region defined by NRS 277.200, the Tahoe Regional Planning Compact; and
2. Lands located within any Indian reservation or Indian colony which are held in trust by the United States. Sec. 5. 1. The board may exclude from the region any land which it determines is unsuitable for inclusion because of its remoteness from the sources of supply managed pursuant to this chapter or because it lies within a separate hydrologic basin neither affecting nor affected by conditions within the remainder of the region.

2. The board may include within the region an area otherwise excluded if it finds that the land requires alleviation of the effect of flooding or drainage of storm waters or another benefit from planning or management performed in the region.

Sec. 6. An affirmative vote of two-thirds of the members elected to the board is required to take action with respect to any matter governed by this chapter.

Sec. 7. 1. To fund the planning and administration required by this chapter, the board may impose a fee at a rate of not to exceed 1.5 percent of the amount otherwise billed, to be collected by each supplier of water from its customers within the region. The fee must be imposed by ordinance adopted in a manner other than is provided for in a case of emergency.

2. A supplier or provider shall state separately on its billings to customers the amount charged because of any fee imposed pursuant to subsection 1.

Sec. 8. (Deleted by amendment.)

Sec. 9. The board may for the purposes of this chapter:

1. Accept grants of money.

2. Enter into contracts, including interlocal agreements, consistent with its authority under this chapter.

3. Employ and fix the compensation of employees and professional advisers.

4. Acquire, hold, lease and dispose of real and personal property inside and outside the region, without limitation, by requirements applicable to a board of county commissioners in its capacity as the governing body of a county.

Sec. 10. 1. A water planning commission is hereby created in each county. Each commission must consist of nine voting members who are residents of Nevada appointed as follows:

(a) One member appointed by the governing body of the largest city in the county;

(b) One member appointed by the governing body of the next largest city in the county;

(c) One member appointed by the board of county commissioners;

(d) One member appointed by the board to represent owners of domestic wells;

(e) One member appointed by the governing body of a general improvement district having the greatest number of customers for water and sewerage in the region;

(f) One member appointed by the supplier of water having the greatest number of customers for water in the region which is a public utility;

(g) One member appointed by the governing body of the Indian reservation which is largest in area in the county, if the county contains an Indian reservation or, if there is not an Indian reservation located within the county or the governing body of the reservation does not appoint a member, one member appointed by the other members of the commission to represent the public at large;

(h) One member of the public at large appointed by the governing bodies of the two largest cities in the county by mutual agreement to represent environmental, biological, conservation or public concerns; and

(i) One member appointed by the governing body of the irrigation district which has the largest number of members in the region.

The first members appointed in each county pursuant to paragraphs

(a), (b) and (c) shall serve initial terms of 4 years. The first members appointed pursuant to paragraphs (d), (f) and (h) shall serve initial terms of 3 years. The first members appointed pursuant to paragraphs (e), (g) and (i) shall serve initial terms of 2 years.

2. After the initial terms, the term of office of each member is 3 years. A member may be reappointed. A vacancy must be filled for the unexpired term by the appointing authority.

3. Each appointing authority shall designate an alternate, to serve when the appointed member is temporarily not available, for the same term.

Sec. 11. In addition to the voting members, the commission includes the following nonvoting members:

1. One member appointed by the public service commission of Nevada;

2. One member appointed by the advocate for customers of public utilities in the office of the attorney general;

3. One member appointed by the administrator of the division of environmental protection of the state department of conservation and natural resources;

4. One member appointed by the state engineer;

5. One member appointed by the administrator of the division of water planning of the state department of conservation and natural resources;

6. One member appointed by the board of directors of the water conservancy district which is largest in area which includes any part of the region;

7. One member appointed by the county or district board of health;

8. One member of the public at large appointed by the affirmative vote of a majority of the voting members; and

9. Additional members with expertise in an area that the majority of the voting members determine is necessary, appointed by the affirmative vote of a majority of the voting members.

Sec. 12. The commission shall establish a schedule for the selection of its chairman for a term of 1 year, in rotation, from among the members appointed by the governing bodies of the county and cities.

Sec. 13. The members of the commission appointed pursuant to sections 10 and 11 of this act may not hold any elective governmental office but may be engaged or employed in private enterprise or be employees of state or local government and each member must be qualified pursuant to at least one of the following subsections:

1. A professional engineer registered pursuant to the provisions of chapter 625 of NRS with experience related to comprehensive planning, natural resources or environmental protection;

2. A specialist in hydrology;

3. Experienced in law, management or planning related to water;

4. Experienced in municipal finance;

5. Experienced in construction, planning or operation of

facilities or systems for supplying or treating water, for collecting or treating sewage, for drainage of storm water, or for control of floods; or

6. Knowledgeable in the areas of water conservation, biology, natural systems, water quality and water management.

Sec. 14. 1. The commission shall meet at the call of the chairman or any three voting members. The commission shall establish a schedule of regular meetings and provide for the calling of a special meeting when action is required before a regular meeting would occur.

2. A quorum consists of a majority of the voting members. The affirmative vote of a majority of the voting members is required to take action, unless a larger proportion is required by this chapter for a particular action.

3. No member of the commission is entitled to compensation for his services as a member.

Sec. 15. 1. The commission shall develop, and as necessary recommend revisions to, a comprehensive plan for the region covering the supply of municipal and industrial water, quality of water, sanitary sewerage, treatment of sewage, drainage of storm waters and control of floods.

2. The proposed plan must consist of written text, appropriate maps and goals and policies to deal with current and future problems affecting the region as a whole with respect to the subjects of the plan.

3. The plan must:

(a) Describe the problems and needs of the region relating to the subjects of the plan;

(b) Except as otherwise provided in sections 32, 32.5 and 33 of this act, identify the providers of services relating to those subjects within the region and the area within which each provides service, including service areas for public utilities;

(c) Identify alternatives to reduce demand or increase supply;

(d) Identify existing and future sources of water needed to meet the present or future needs of the region;

(e) Define priorities and general location for additional major facilities needed to provide services relating to the subjects of the plan; and

(f) Describe programs to mitigate drought, achieve conservation of water, protect wellheads and otherwise manage water.

Sec. 16. The plan must include the following elements:

1. Quality of surface water, which must include:

(a) Compliance with standards of quality for bodies of water;

(b) Locations and capacities of plants to treat waste water;

(c) Intended quantity and quality of discharge from those plants and its reuse, service areas and interceptors; and

(d) Programs to attain protection from pollution by both concentrated and diffuse sources.

2. Quality of ground water, which must include:

(a) Compliance with standards of quality for hydrographic basins and septic tanks;

(b) Capacities for withdrawal of water from hydrographic basins;

(c) Programs to protect wellheads;

(d) Programs to clean up contaminated ground water for hydrographic basins; and

(e) Programs to attain protection from pollution by both concentrated and diffuse sources.

3. Supply of surface water, which must include:

(a) Existing and planned sources of surface water;

(b) Existing and planned uses for all surface water, including municipal and industrial uses, requirements for return flow, reserves for drought and future growth, uses to improve quality of water, uses to provide habitat and uses in conjunction with underground water;

(c) Major facilities to convey and store surface water;

(d) Standards, service areas, rates of flow and reserves for storage; and

(e) Facilities to treat surface water.

4. Supply of underground water, which must include:

(a) Existing and planned sources of underground water;

(b) Existing and planned uses for all underground water, including municipal and industrial uses, maintenance of minimum ground water level and need for recharge, reserves for drought and future growth, uses to improve quality of water, uses to provide habitat and uses in conjunction with surface water;

(c) Major facilities to extract and convey underground water;

(d) Compliance with standards for treated and nontreated water, services areas, rates of flow and reserves for storage; and

(e) Facilities to treat and store underground water.

5. Control of floods and drainage of storm water, as it relates to surface water, which must include:

(a) Minimum standards of design for controlling floods in the region;

(b) Nonstructural alternatives and standards for facilities to control floods in the region and single drainage basins;

(c) Regional facilities to control floods; and

(d) Generalized facilities and standards of design for single drainage basins.

6. Control of floods and drainage of storm water, as it relates to underground water, which must include:

(a) Ground water level and capacity for additional storage of water underground as a means of mitigating floods;

(b) Location and capacities of major facilities for controlling floods which utilize storage of water underground to mitigate floods; and

(c) Standards of design for devices to infiltrate storm water and other minor facilities for controlling floods which utilize storage of water underground to mitigate floods.

7. Cost and financing, which must include an estimate of the cost of each major facility, source of water or other requirement of the plan and an analysis of alternatives for financing and funding

the facility, source or other requirement, or alternatives thereto, as well as the effect of the funding alternatives on other facilities included in the plan. The estimate of cost must state the financial impact on persons within the region, including, without limitation, all direct and indirect costs of connecting to the system, if any.

Sec. 17. 1. The plan must be consistent with and carry out the provisions of the comprehensive regional plan adopted by the governing board for regional planning pursuant to NRS 278.0276 and the comprehensive plans, area plans and master plans for the use of land which are adopted by local governmental entities within the region.

2. The plan must be consistent with and carry out or support the carrying out of all aspects of Public Law 101-618, 104 Stat. 3324.

3. The plan must be consistent with the state water plan in effect at the time that the plan is adopted.

Sec. 18. In developing the proposed plan, the commission shall:

1. Receive and consider information from public utilities and other entities supplying municipal and industrial water within the region;

2. Receive and consider information from entities providing sanitary sewerage, treatment of sewage, drainage of storm water and control of floods within the region;

3. Receive and consider information from entities concerned with quality of water within the region;

4. Review and consider the state water plan, existing water conservation plans, each existing regional plan and master plan that has been adopted pursuant to the provisions of chapter 278 of NRS and applies to any area in the region, and any similar plan of a local government, and may seek and consider the advice of each local planning commission and any other affected entity;

5. Coordinate the elements of the proposed plan and make them consistent with each other;

6. Consider existing statutes and ordinances adopted by local governmental entities;

7. Recognize and coordinate the needs of the incorporated areas of the region with the unincorporated areas of the region; and

8. Receive and consider information from other interested persons.

Sec. 19. 1. Before submitting the proposed plan to the board, the commission shall hold at least one public hearing on the plan within the region.

2. Before acting on a proposed amendment to the adopted plan, the commission shall hold at least one public hearing on the proposed amendment at a location in the region relevant to the proposed amendment.

3. Notice of the time and place of each hearing must be given by publication in a newspaper of general circulation in the region at least 10 days before the day of the hearing. If there is more than one newspaper of general circulation in the region, notice must be given by publication in at least two such newspapers.

4. The decision to submit the proposed plan or any

amendment to the adopted plan to the board must be made by resolution of the commission carried by the affirmative votes of not fewer than two-thirds of the total voting members of the commission. The resolution must refer expressly to the text, maps and descriptive or other matter intended by the commission to constitute the plan or amendment.

Sec. 20. 1. An attested copy of the proposed plan or an amendment must be submitted to the board.

2. Before taking any action on the proposed plan or an amendment, the board shall convene a public hearing.

3. Notice of the hearing must be given at least 10 days before the date of beginning the hearing. The notice must include, without limitation:

(a) A statement of the time, place and nature of the hearing;

(b) A statement of the legal authority under which the hearing is to be held; and

(c) A reference to the particular sections of the statutes and regulations involved.

4. Not less than 30 days before the hearing the board shall place a copy of the proposed plan or amendment in the office of the county clerk and publish notice that the plan or amendment is available for public inspection. Notice of the time and place of the hearing must be published at least 10 days before the date of beginning the hearing. Each notice required by this subsection must be published in a newspaper of general circulation in the region. If there is more than one newspaper of general circulation in the region, notice must be given by publication in at least two such newspapers. The notice must be a display advertisement not less than 3 inches by 5 inches in size.

Sec. 21. 1. The board shall not change or add to the proposed plan or an amendment as submitted by the commission until it has submitted the substance of the proposed change or addition to the commission in writing with its reasons for the change or addition.

2. The commission shall, if it agrees to the change or addition, revise the submitted plan or amendment accordingly. If the commission does not agree, it shall report to the board in writing its reason for disagreeing and any alternative proposal.

3. In either case, the commission shall present its revision or report to the board within 40 days after the board's change or amendment is submitted to it.

4. If the commission does not agree with the proposed change or addition and the board refuses to rescind its proposal or to accept an alternative proposal of the commission, the commission shall revise the originally submitted plan or amendment to incorporate the change or addition proposed by the board.

Sec. 22. 1. After adoption by the board, the plan or an amendment must be submitted for review to the regional planning commission established by NRS 278.0262. The regional planning commission shall review the plan or amendment only for conformance with the comprehensive regional plan adopted pursuant to NRS 278.0276 and the comprehensive plans and master plans for the use of land which

are adopted by local governmental entities within the region. The regional planning commission shall review the plan or amendment at one or more public hearings. Notice of the time and place of a hearing must be given in accordance with NRS 278.0276.

2. If the regional planning commission fails to make a determination within 40 days after the submission of the plan or amendment, the plan or amendment shall be deemed to conform to the comprehensive regional plan.

3. If the regional planning commission determines that the plan or amendment does not conform to the comprehensive regional plan, it shall state its reasons why the plan or amendment does not conform. Unless an appeal is filed pursuant to section 23 of this act, the commission and the board shall respectively develop and adopt, in accordance with sections 18 to 21, inclusive, of this act, proposed revisions to the plan or amendment, and the board shall resubmit the revised plan or amendment to the regional planning commission.

Sec. 23. 1. An affected entity that disagrees with the reasons given by the regional planning commission for its determination of conformance or nonconformance may file an appeal with the governing board for regional planning not later than 10 days after the determination of conformance or nonconformance. As used in this subsection, "affected entity" means a city within the region or a governmental entity or public utility providing services related to the subject matter of the comprehensive plan within the region.

2. Within 45 days after its receipt of an appeal, the governing board shall consider the appeal and issue its decision. If the decision of the governing board is that the plan or amendment does not conform to the comprehensive regional plan, it shall state its reasons why the plan does not conform. The commission and the board shall then respectively develop and adopt, in accordance with sections 18 to 21, inclusive, of this act, proposed revisions to the plan, and the board shall resubmit the revised plan to the regional planning commission for review.

Sec. 24. The adopted plan must be reviewed by the commission on a schedule to be established by the board, which must at least provide for review of the initial plan within 5 years after its adoption and every 3 years thereafter. After each review, the commission shall submit any proposed amendment to the board or report that there are none.

Sec. 25. 1. Except as otherwise provided in subsection 2, on and after the date the plan is finally approved, no facility intended to provide a service relating to a subject of the comprehensive plan within the region may be constructed, if the facility is of such a kind or size as to affect the working of the comprehensive plan as distinct from providing normal service to customers, unless it is included in the plan or has been reviewed and approved as provided in subsection 3.

2. The plan may allow for the construction of facilities not included within it in order to meet an emergency as defined in the plan.

3. A proposal to construct a facility described in subsection 1 within the region must be submitted to the commission for review and recommendation to the board concerning its conformance with the adopted plan. If the commission fails to make such a recommendation within 30 days after the proposal is submitted to it, the commission shall be deemed to have made a recommendation that the proposal conforms to the adopted plan. The board shall consider the recommendation of the commission and approve or disapprove the proposal as conforming to the adopted plan. Any disapproval must be accompanied by recommended actions to be taken to make the proposal conform to the plan. The commission and the board shall limit their review to the substance and content of the adopted plan and shall not consider the merits or deficiencies of a proposal in a manner other than is necessary to enable them to make a determination concerning conformance with the adopted plan.

4. The board shall provide by ordinance for the commission or its staff to make final decisions concerning the conformance of classes of proposed facilities to the adopted plan. An ordinance adopted pursuant to this section must provide an opportunity for the applicant or a protestant to appeal from a decision of the staff or commission to the board.

Sec. 26. In addition to adopting and revising the comprehensive plan, the board shall, upon the recommendation of the commission:

1. Develop methods for conserving existing supplies of water which are consistent with statutorily required plans;

2. Develop methods of collecting and treating sewage in order to protect and conserve supplies of water;

3. Provide information to members of the public regarding present and potential uses of water; and

4. Make recommendations concerning the management and use of water within the region to:

(a) The governing body and the planning commission of each city in the region;

(b) The governing board for regional planning and the regional planning commission;

(c) The public service commission of Nevada and the state engineer; and

(d) The United States of America.

Sec. 27. The board may acquire water rights or other sources of water, within or outside the region, for future use in accordance with the adopted comprehensive plan. Any right or source of water belonging to a local government or governmental agency within the region must be used in accordance with the adopted comprehensive plan. The board may impose a reasonable charge upon a person seeking a commitment from a public utility to provide water, for making water from a source so acquired available for that use.

Sec. 28. (Deleted by amendment.)

Sec. 29. 1. The board of county commissioners shall create a district for remediation of the quality of water if the county or district health officer or the administrator of the division certifies in writing to the board that a condition exists in an area of the region which is affecting or will affect the quality of water that is available

for municipal, industrial or domestic use within the region.

2. Upon receipt of the certificate, the board shall proceed, in cooperation with the health officer and the division, to verify the existence and extent of the condition and establish the appropriate boundaries of the district. Money expended by the board for this purpose may be recovered, after the district is established, pursuant to a plan of assessment for the district.

3. The district created pursuant to this section must include, without limitation:

(a) The entire area where the condition which requires remediation is present;

(b) The entire area for which remediation is necessary; and

(c) Any other area which will benefit directly or indirectly from the protection of the quality or quantity of water which is available for municipal, industrial or domestic use.

Sec. 30. 1. Before creating a district for remediation pursuant to section 29 of this act, the board of county commissioners shall prepare a plan for remediation which must be approved by the division.

2. The plan for remediation may include, without limitation, any action which is reasonable and economically feasible in the event of the release or threat of release of any hazardous substance into the environment which may affect the water quality in this state. Such action may include, without limitation:

(a) Monitoring, assessing and evaluating the water which may be affected by the substance;

(b) Removing or disposing of the substance or remedying the condition of the water in any other manner; and

(c) Taking such actions as are necessary to prevent, minimize or mitigate damage to the affected water.

3. After the plan for remediation is approved by the division, the board shall determine:

(a) The basis upon which assessments may equitably and proportionally be imposed upon property within the district; and

(b) The amount of the assessment to be imposed upon each parcel of land within the district, identified by the parcel number assigned for the purpose of taxation ad valorem.

4. Any assessment imposed pursuant to this section must be imposed equitably and proportionately on the basis of the quantity of water delivered to or diverted on the property for municipal, industrial or domestic use during the calendar year immediately preceding the assessment, as determined from information available to the board, or on the special benefit accruing to the property from remedying the condition, or a combination thereof, but in no event may any assessment exceed the reasonable market value of the property as determined by the board. If water was delivered to or diverted on the property for less than a full calendar year preceding the assessment or not at all, the board shall consider any benefit to the property from the protection of the quality or quantity of water available for municipal, industrial or domestic uses in making the assessment, as well as the special benefit accruing

to the property from remedying the condition.

5. An owner or lessee of property within the district who did not cause or contribute to the condition which the district was created to remedy is not subject to criminal or civil liability, including, without limitation, any liability for the cost of remediation or any related damage or injury caused by the condition, except to the extent of any unpaid assessments levied against the property.

6. In preparing the plan, establishing the district, implementing the plan, establishing an assessment roll, hearing complaints, objections or protests to assessments, levying assessments, apportioning assessments based upon a division of a tract, refunding a surplus, paying deficiencies in assessments, pledging revenues, determining assessments, placing omitted property on the assessment roll, issuing bonds and collecting and enforcing delinquent assessments the board shall, to the extent practicable, comply with the provisions of chapter 271 of NRS and the owners of property must be granted the rights and remedies provided for owners of property in chapter 271 of NRS, except that the provisions of NRS 271.306 do not apply to this chapter.

7. Notwithstanding any other provision of law, no person, governmental agency or charitable organization, except the federal government, is exempt from an assessment levied pursuant to this section.

Sec. 31. The board of county commissioners may reimburse a person, governmental agency or public utility for any expenses incurred in identifying, studying and remedying, or attempting in good faith to remedy, the condition before the district is created.

Sec. 31.5. Any recovery from a person who has caused or contributed to the condition requiring remediation must be used to offset the cost of remediation and must be credited to the assessments.

Sec. 32. The board of county commissioners may sell or lease, to the largest supplier of water within the region which is a public utility, at a negotiated price, any property or facility used by the county to supply water within the region, or contract for the operation or management of the property or facility by the public utility.

Sec. 32.5. 1. The board of county commissioners and the largest supplier of water within the region which is a public utility shall enter into an agreement which defines the respective areas within the region where the public utility and all systems for the supply of water which are controlled or operated by the board will provide retail water services. The agreement must resolve all issues related to service territories of the public utility and all systems for the supply of water which are controlled or operated by the board. An agreement executed pursuant to this subsection does not become effective until the public service commission of Nevada approves the terms of the agreement.

2. The agreement entered into pursuant to subsection 1 governs the provision of retail water services by the public utility and the board, unless the agreement is amended by the mutual agreement of

the board and the public utility.

3. The public utility must comply with any applicable regulations of the public service commission of Nevada when providing water services within the region.

4. The public utility may withhold from the board at any time before an agreement is finalized pursuant to subsection 1 any information which is confidential, proprietary or which may cause a competitive disadvantage to the public utility if the *information* is disseminated.

Sec. 33. Before the effective date of the plan adopted pursuant to section 15 of this act:

1. The largest supplier of water within the region which is a public utility shall provide wholesale water services in a manner consistent with its water resource plan as approved by the public service commission of Nevada.

2. The largest supplier of water within the region which is a public utility shall provide all wholesale water services to any system of water supply operated or controlled by the board of county commissioners from water resources recognized in its water resource plan as approved by the public service commission of Nevada, except to the extent that:

(a) There is an existing system or a system under construction for the provision of wholesale water services;

(b) The public utility enters into an agreement with the board on or before June 15, 1995;

(c) A subdivision map has been approved on or before June 15, 1995, in an unincorporated area of the region; or

(d) The public utility and the board agree that it is more economical for the board to provide such services.

Sec. 33.5. [Before the effective date of the plan adopted pursuant to section 15 of this act:]

1. The largest supplier of water within the region which is a public utility shall provide wholesale water services in a *manner* consistent with its water resource plan as approved by the public service commission of Nevada.

2. The largest supplier of water within the region which is a public utility shall provide all wholesale water services to any system of water supply operated or controlled by the board of county commissioners from water resources recognized in its water resource plan as approved by the public service commission of Nevada, except to the extent that:

(a) There is an existing system or a system under construction for the provision of wholesale water services;

(b) The public utility enters into an agreement with the board on or before June 15, 1995;

(c) A subdivision map has been approved on or before June 15, 1995, in an unincorporated area of the region; or

(d) The public utility and the board agree that it is more economical for the board to provide such services.

Sec. 34. NRS 533.030 is hereby amended to read as follows:

533.030 1. Subject to existing rights, and except as otherwise provided in this section, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.

2. The use of water, from any stream system as provided in this chapter and from underground water as provided in NRS 534.080, for any recreational purpose, is hereby declared to be a beneficial use.

3. [Subject to the provisions of NRS 533.395, the appropriation of water or the acquisition or lease of appropriated water from any:

(a) Stream system as provided for in this chapter; or

(b) Underground water as provided for in NRS 534.080, by a political subdivision of this state or a public utility as defined in NRS 704.020 to serve the present or the reasonably anticipated future municipal, industrial or domestic needs of its customers for water, as determined in accordance with a master plan adopted pursuant to chapter 278 of NRS or a plan approved by the state engineer, is a beneficial use.

4.] Except as otherwise provided in subsection [5,] \4,\\ in any county whose population is 400,000 or more:

(a) The board of county commissioners may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any man-made lake or stream located within the unincorporated areas of the county.

(b) The governing body of a city may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any man-made lake or stream located within the boundaries of the city.

[5.] \4.\\ In any county whose population is 400,000 or more, the provisions of subsection 1 and of any ordinance adopted pursuant to subsection [4] \3\\ do not apply to:

(a) Water stored in a man-made reservoir for use in flood control, in meeting peak water demands or for purposes relating to the treatment of sewage;

(b) Water used in a mining reclamation project; or

(c) A body of water located in a recreational facility that is open to the public and owned or operated by the United States or the State of Nevada.

Sec. 34.5. NRS 533.395 is hereby amended to read as follows:

533.395 1. If, at any time in the judgment of the state engineer, the holder of any permit to appropriate the public water is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the state engineer shall require the submission of such proof and evidence as may be necessary to show a compliance with the law. If, in his judgment, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the state engineer shall cancel the permit, and advise the holder of its cancellation. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence

that the holder is not proceeding in good faith and with reasonable diligence to perfect the appropriation.

2. If any permit is canceled under the provisions of NRS 533.390, this section or 533.410, the holder of the permit may within 60 days of the cancellation of the permit file a written petition with the state engineer requesting a review of the cancellation by the state engineer at a public hearing. The state engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation.

3. If the decision of the state engineer modifies or rescinds the cancellation of a permit, the effective date of the appropriation under the permit is vacated and replaced by the date of the filing of the written petition with the state engineer.

4. The cancellation of a permit may not be reviewed or be the subject of any judicial proceedings unless a written petition for review has been filed and the cancellation has been affirmed, modified or rescinded pursuant to subsection 2

5. For the purposes of this section, the measure of reasonable diligence is the steady application of effort to perfect the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.\

6. The appropriation of water or the acquisition or lease of appropriated water from any:

(a) Stream system as provided for in this chapter; or

(b) Underground water as provided for in NRS 534.080, by a political subdivision of this state or a public utility as defined in NRS 704.020 to serve the present or the reasonably anticipated future municipal, industrial or domestic needs of its customers for water, as determined in accordance with a master plan adopted pursuant to chapter 278 of NRS, a plan adopted pursuant to section 15 of this act or a plan approved by the state engineer, must be considered when reviewing an extension of time.\\

Sec. 34.7. NRS 533.395 is hereby amended to read as follows:

533.395 1. If, at any time in the judgment of the state engineer, the holder of any permit to appropriate the public water is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the state engineer shall require the submission of such proof and evidence as may be necessary to show a compliance with the law. If, in his judgment, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the state engineer shall cancel the permit, and advise the holder of its cancellation. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence that the holder is not proceeding in good faith and with reasonable diligence to perfect the appropriation.

2. If any permit is canceled under the provisions of NRS 533.390, this section or 533.410, the holder of the permit may within 60 days of the cancellation of the permit file a written petition with the state engineer requesting a review of the cancellation by the state engineer at a public hearing. The state engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation.

3. If the decision of the state engineer modifies or rescinds the cancellation of a permit, the effective date of the appropriation under the permit is vacated and replaced by the date of the filing of the written petition with the state engineer.

4. The cancellation of a permit may not be reviewed or be the subject of any judicial proceedings unless a written petition for review has been filed and the cancellation has been affirmed, modified or rescinded pursuant to subsection 2

5. For the purposes of this section, the measure of reasonable diligence is the steady application of effort to perfect the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.

6. The appropriation of water or the acquisition or lease of appropriated water from any:

(a) Stream system as provided for in this chapter; or

(b) Underground water as provided for in NRS 534.080, by a political subdivision of this state or a public utility as defined in NRS 704.020 to serve the present or the reasonably anticipated future municipal, industrial or domestic needs of its customers for water, as determined in accordance with a master plan adopted pursuant to chapter 278 of NRS [, a plan adopted pursuant to section 15 of this act] or a plan approved by the state engineer, must be considered when reviewing an extension of time.

Secs. 35-37. (Deleted by amendment.)

Sec. 38. NRS 543.320 is hereby amended to read as follows:

543.320 1. Except as otherwise provided in subsection 2, the district is governed by a board of directors consisting of the members of the board of county commissioners of the county.

2. If the district coincides with a county in which a regional transportation commission has been created pursuant to chapter 373 of NRS, \unless the county has a population of 100,000 or more but less than 400,000,\\ the members of that commission constitute the board of directors of the district.

Sec. 39. NRS 278.026 is hereby amended to read as follows:

278.026 As used in NRS 278.026 to 278.029, inclusive, unless the context otherwise requires:

1. "Affected entity" means a public utility, franchise holder, local or regional agency, or any other entity having responsibility for planning or providing public facilities relating to transportation, [water or sewer services,] solid waste, energy generation and transmission, conventions and the promotion of tourism, air quality [, flood control] or public education. The term does not include:

(a) A state agency; or

(b) A public utility which is subject to regulation by the public service commission of Nevada.

2. "Facilities plan" means a plan for the development of public facilities which will have a regional impact or which will aid in accomplishing regional goals relating to transportation, [water or sewer services,] solid waste, energy generation and transmission, conventions and the promotion of tourism, air quality [, flood control] or public education. The term does not include a plan for the development of a specific site or regulations adopted by an affected entity to implement the comprehensive regional plan.

3. "Governing board" means the governing board for regional planning created pursuant to NRS 278.0264.

4. "Joint planning area" means an area that is the subject of common study and planning by the governing body of a county and one or more cities.

5. "Project of regional significance," with respect to a project proposed by any person other than a public utility, means a project which:

(a) Has been identified in the guidelines of the regional planning commission as a project which will result in the loss or significant degradation of a designated historic, archeological, cultural or scenic resource;

(b) Has been identified in the guidelines of the regional planning commission as a project which will result in the creation of significant new geothermal or mining operations;

(c) Has been identified in the guidelines of the regional planning commission as a project which will have a significant effect on the natural resources, public services, public facilities or the adopted regional form of the region; or

(d) Will require a change in zoning, a special use permit, an amendment to a master plan, a tentative map or other approval for the use of land which, if approved, will have an effect on the region of increasing:

(1) Employment by not less than 938 employees;

(2) Housing by not less than 625 units;

(3) Hotel accommodations by not less than 625 rooms;

(4) Sewage by not less than 187,500 gallons per day;

(5) Water usage by not less than 625 acre feet per year; or

(6) Traffic by not less than an average of 6,250 trips daily.

The term does not include any project for which a request for an amendment to a master plan, a change in zoning, a tentative map or a special use permit has been approved by the local planning commission before June 17, 1989.

6. "Project of regional significance," with respect to a

project proposed by a public utility, includes:

(a) An electric substation;

(b) A transmission line that carries 60 kilovolts or more;

(c) A facility that generates electricity greater than 5 megawatts;

(d) [A water treatment plant;

(e) A water storage tank that is larger than 500,000 gallons;

(f) A pump station that is rated over 3,000 gallons per minute;

(g) A water reservoir with a surface area larger than 2 acres;

(h)] Natural gas storage and peak shaving facilities; [(i)]

\and

(e) \\Gas regulator stations and mains that operate over 100 pounds per square inch \.\\ [; and

(j) Transmission water mains that are larger than 30 inches in diameter which are used primarily to transport water from a source of supply to an area of demand if the distance is greater than 5 miles.]

7. "Sphere of influence" means an area into which a city plans to expand as designated in the comprehensive regional plan within the time designated in the comprehensive regional plan.

Sec. 40. NRS 445.3845 is hereby amended to read as follows:

445.3845 A permit to operate a water system may not be issued pursuant to NRS 445.3841 unless all of the following conditions are met:

1. Neither water provided by a public utility nor water provided by a municipality or other public entity is available to the persons to be served by the water system.

2. The applicant fully complies with all of the conditions of NRS 445.3841 to 445.3853, inclusive.

3. The local governing body assumes:

(a) Responsibility in case of default by the builder or developer of the water system for its continued operation and maintenance in accordance with all of the terms and conditions of the permit.

(b) The duty of assessing the lands served as provided in subsection 5.

4. The applicant furnishes the local governing body sufficient surety in the form of a bond, certificate of deposit, investment certificate or any other form acceptable to the governing body, to ensure the continued maintenance and operation of the water system:

(a) For 5 years following the date the system is placed in operation; or

(b) Until 75 percent of the lots or parcels served by the system are sold, whichever is later.

5. The owners of the lands to be served by the water system record a declaration of covenants, conditions and restrictions, which is an equitable servitude running with the land and which must provide that each lot or parcel will be assessed by the local governing body for its proportionate share of the cost of continued

operation and maintenance of the water system if there is a default by the applicant or operator of the water system and a sufficient surety, as provided in subsection 4, is not available.

6. \If the water system uses or stores ozone, the portion of the system where ozone is used or stored must be constructed not less than 100 feet from any existing residence, unless the owner and occupant of each residence located closer than 100 feet consent to the construction of the system at a closer distance.

7. \\The declaration of covenants, conditions and restrictions recorded by the owners of the lands further provides that if the state board of health determines that:

(a) The water system is not satisfactorily serving the needs of its users; and

(b) Water provided by a public utility or a municipality or other public entity is reasonably available,

the local governing body may, pursuant to NRS 244.3655 or 268.4102, require all users of the water system to connect into the available water system provided by a public utility or a municipality or other public entity, and each lot or parcel will be assessed by the local governing body for its proportionate share of the costs associated with connecting into that water system. If the water system is being connected into a public utility, the public service commission of Nevada shall determine the amount of the assessments for the purposes of establishing a lien pursuant to NRS 445.3847.

[7.] \8.\\ Provision has been made for disposition of the water system and the land on which it is situated after the local governing body requires all users to connect into an available water system provided by a public utility or a municipality or other public entity.

Sec. 41. Sections 1 to 12, inclusive, of chapter 487, Statutes of Nevada 1983, at page 1309, chapter 529, Statutes of Nevada 1985, at page 1599, and chapter 548, Statutes of Nevada 1991, at page 1727, are hereby repealed.

Sec. 42. 1. After the comprehensive plan first adopted pursuant to the provisions of sections 15 to 23, inclusive, of this act is determined to be in conformance with the comprehensive regional plan, and before the plan becomes effective, the plan must be submitted to the governing bodies of the two largest cities in the region for review and approval. Any disapproval must be accompanied by a report and explanation therefore. Any revisions to the plan as a result of a disapproval must be developed, tentatively adopted and reviewed for conformance in accordance with sections 15 to 23, inclusive, of this act. The plan as revised does not become effective until neither city disapproves. The plan must be approved by the governing bodies of the two largest cities in the region not later than 21 months after the effective date of this act.

2. Failure of the governing body of either city to review and approve or report on the plan within 60 days shall be deemed to be approval thereof.

Sec. 43. A tax of not more than one-half cent on each $100 of assessed valuation levied pursuant to section 8.6 of chapter 529, Statutes of Nevada 1985, as amended by

chapter 548, Statutes of Nevada 1991, at page 1728, remains effective and may be collected during the fiscal years 1995-1996 and 1996-1997 despite the repeal of chapter 529, Statutes of Nevada 1985, as amended.

Sec. 44. 1. This section and sections 1 to 33, inclusive, 34, 34.5 and 35 to 43, inclusive, of this act become effective on July 1, 1995.

2. Sections 33.5 and 34.7 become effective on July 30, 1997.

3. Sections 2 to 27, inclusive, and 39 expire by limitation on July 30, 1997.

Department of Interior: 43 CFR Part 414

federal register

Monday
November 1, 1999

Part V

Department of the Interior

Bureau of Reclamation

43 CFR Part 414

Offstream Storage of Colorado River Water; Development and Release of Intentionally Created Unused Apportionment in the Lower Division States; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 414

RIN 1006—AA40

Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements among the States of Arizona, California, and Nevada (Lower Division States). The Storage and Interstate Release Agreements would permit State-authorized entities to store Colorado River water offstream, develop intentionally created unused apportionment (ICUA), and make ICUA available to the Secretary for release for use in another Lower Division State. This rule provides a framework only and does not authorize any specific activities. The rule does not affect any Colorado River water entitlement holder's right to use its full water entitlement, and does not deal with intrastate storage and distribution of water. The rule only facilitates voluntary interstate water transactions that can help satisfy regional water demands by increasing the efficiency, flexibility, and certainty in Colorado River management.

EFFECTIVE DATE: December 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Ensminger, (702) 293—8659 or Ms. Erica Petacchi (202) 208—3368.

SUPPLEMENTARY INFORMATION:

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I. Background

This final rule was preceded by a proposed rule that we published in the **Federal Register** on December 31, 1997 (62 FR 68491). The proposed rule provided for a public comment period that ran from December 31, 1997 through April 3, 1998. In addition to oral comments submitted at one public hearing and one public meeting, we received 47 letters during the comment period on the proposed rule. Two letters commented only on the draft programmatic environmental assessment (DPEA). The respondents included two irrigation districts, three water districts, two water authorities, two water user associations, three individuals, one municipal utility, one city, one farmer's organization, one safe drinking water organization, four environmental organizations, 11 State agencies, nine Indian tribes, and seven Federal agencies. We reviewed and analyzed all comments and revised the final rule based on these comments.

The DPEA provided for a comment period that ran from December 31, 1997 through April 3, 1998. Oral comments on the DPEA were submitted at the same public hearing and the same public meeting for the proposed rule. In addition to those oral comments, we received 25 letters from 26 respondents during the comment period. The respondents included one water district, one water authority, one individual, five environmental organizations, five State agencies, six Indian tribes, and seven Federal agencies. As with the rule, we reviewed and analyzed all comments and revised the final programmatic environmental assessment based on these comments.

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to comment on three specific questions. We received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all comments and revised the final rule based on these comments.

Following the apportionment of water between the Upper and Lower Basins in the Colorado River Compact, Congress, by passing the Boulder Canyon Project Act of December 21, 1928 (BCPA), made a permanent apportionment of Colorado River water among the Lower Division States for use within those States. Congress also authorized the Secretary to allocate and distribute Colorado River water within these apportionments to users in the Lower Division States through contracts. Congress put the Secretary in charge of managing and operating the Colorado River in the Lower Basin of the Colorado River system (Lower Basin). This rule establishes a framework under which the Secretary will implement the contractual distribution of Colorado River water in the Lower Division States on an interstate basis.

If water apportioned for use in a Lower Division State is not consumed in that State in any year, the Secretary may release the unused water for use in another Lower Division State. Offstream storage of Colorado River water and release of intentionally created unused apportionment (ICUA) can help the Lower Division States use available Colorado River water more effectively. This rule establishes a process for the Secretary to release ICUA. The Secretary's authority to issue this final rule stems from various Federal laws and executive orders, court decisions, and decrees, particularly the BCPA, the Supreme Court opinion (Opinion) rendered June 3, 1963 (373 U.S. 546) and the decree entered March 9, 1964 (376 U.S. 340) (Decree), in *Arizona v. California*, as supplemented and amended. A thorough description of these authorities may be found in the Background section of the proposed rule published December 31, 1997, at 62 FR 68493.

Several State agencies commented that the narrative should be changed. In response to these comments, we are correcting two statements that were contained in the first paragraph of the preamble to the proposed rule under II. Background.

First, the statement that: "The compact defined the Colorado River Basin and divided the seven States into two basins, an Upper Basin and a Lower Basin," was incorrect and should have read: "The compact defined the Colorado River Basin and divided it into two sub-basins, an Upper Basin and a Lower Basin. The compact further specified which States are Upper Division States and which States are Lower Division States."

Second, the proposed rule preamble cited the Colorado River Compact, approved August 19, 1921, as the source of the definition for "consumptive use." The correct source of this definition is the Decree.

Several respondents, particularly State agencies, expressed concern that some of the terms in the preamble and the proposed rule could be interpreted in ways that are contrary to existing law because of imprecise wording. These respondents stated the rule should facilitate more efficient use of unused apportionment and surpluses within the existing authority of the Secretary under the Law of the River. We agree that this rule only formalizes the procedures for the Secretary to follow in considering, participating in, and administering Storage and Interstate Release Agreements and does not expand or

create authority to do so. The Secretary has the authority, under the Law of the River, to allocate and distribute waters of the mainstream of the Colorado River in the Lower Basin consistent with the Decree.

II. Final Rule as Adopted

Changes Made in This Final Rule

We have concluded that a number of changes from the proposed rule are necessary and appropriate to respond to comments. These revisions clarify the basic intent of the proposed rule and are summarized in the following paragraphs.

- *Restatement of Title and Purpose of the Rule.* We have clarified the purpose of this rule in § 414.1. This rule establishes a procedural framework for the Secretary to follow in considering, participating in, and administering Storage and Interstate Release Agreements among the Lower Division States that would permit State-authorized entities to store Colorado River water offstream, develop ICUA, and make ICUA available to the Secretary for release and use in another Lower Division State utilizing Storage and Interstate Release Agreements. Colorado River water stored in order to develop ICUA will always be put to use in the Storing State.

Under this rule, the authorized entity in the Storing State (storing entity) will not redeem storage credits for delivery to the Consuming State. For this reason, the terms "storage credits" and "redemption" are not necessary and have been deleted. Instead, when the authorized entity in the Consuming State (consuming entity) requests water under a Storage and Interstate Release Agreement, the storing entity will reduce the Storing State's consumptive use of Colorado River water, thereby developing ICUA. The Secretary will release the ICUA to the consuming entity for use in the Consuming State.

- *Definitions.* We added several definitions from the Compact, including "Colorado River Basin," "Colorado River System," and "Upper Division States," and added, deleted, or modified several other definitions in this rule to clarify the intent where necessary. New definitions were also added for "BCPA," "consuming entity," "storing entity," and "water delivery contract." The following definitions were deleted: "Contractor," "Federal entitlement holder," "Present perfected right or PPR," "storage credit," and "unused entitlement." The definition for "Interstate Storage Agreement" was revised and the term used in the rule was renamed "Storage and Interstate Release Agreement."

We redefined "authorized entity" creating a two-part definition. As to a Storing State, for purposes of this rule, an authorized entity is defined as an entity in the Storing State that is expressly authorized by the laws of that state to enter into Storage and Interstate Release Agreements and to develop ICUA. As to a Consuming State, for purposes of this rule, an authorized entity is defined as an entity in the Consuming State that has authority under the laws of that State to enter into Storage and Interstate Release Agreements and to acquire the right to use ICUA.

- *Storage of Water.* In the proposed rule, we did not clearly describe the type of water that is eligible to be stored under a Storage and Interstate Release Agreement. This rule, in § 414.3(a)(2), explains that the water stored within a Storing State for future use under a Storage and Interstate Release Agreement is water that would otherwise be unused in the Storing State, but that is within the Storing State's basic or surplus apportionment. It is important, as a policy matter, that water be offered to all entitlement holders in a Storing State before it is stored for interstate purposes so that, as one commenting State noted, a State-authorized entity will not be put in a position of "competition with the legal right to deprive lower priority entitlement holders (in the Storing State) of their Colorado River water." Accordingly, in order to qualify as unused apportionment, the water within the Storing State's basic or unused apportionment that is stored for interstate transactions under this rule must be offered first to all entitlement holders within the Storing State.

The rule, in a new § 414.3(a) (3), explains that the Consuming State's unused basic or unused surplus apportionments may also be stored in the Storing State to support an interstate water transaction. We also clarified in this section that unused apportionment of the Consuming State may be made available for storage in the Storing State only in accordance with Article II (B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the rule provides that the Secretary will make unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement. This rule also has a new § 414.3(a)(6) that provides that a Storage and Interstate Release Agreement must identify a procedure for the Secretary to follow to verify and account for the quantity of water stored in accordance with the Storage and Interstate Release Agreement.

- *Development of ICUA.* We added a requirement in § 414.3(a)(9) that the Storage and Interstate Release Agreement must describe the notice given to entitlement holders, including Indian tribes, of opportunities to participate in the development of ICUA. We added a requirement in § 414.3(a)(10) that the storing entity must identify the quantity, the means, and the entity by which ICUA will be developed. We also added a paragraph in § 414.3(a) (II) to require the Storage and Interstate Release Agreement to specify the procedure for verification of the development of the ICUA. Both the means by which ICUA will be developed and the method of verification will be set forth in the Storage and Interstate Release Agreement and may vary according to the transaction. However, the means to develop ICUA must be consistent with the laws of the Storing State. Finally, under the final rule, nothing in the Storage and Interstate Release Agreement shall limit the Secretary's authority to use independent means to verify the existence of ICUA.

- *Release of ICUA.* We modified § 414.3(a) to reflect that the Secretary will be a party to Storage and Interstate Release Agreements. We added a new § 414.3(a)(12) that states that the Storage and Interstate Release Agreement will specify that the Secretary will only release ICUA to the consuming entity and will not release it to other entitlement holders. This section requires the release of ICUA be done in accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree, and all other applicable laws and executive orders. We added a requirement in § 414.3(a) (13) that the Storage and Interstate Release Agreement specify that ICUA will be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity. We added a requirement in § 414.3(a) (14) that the Secretary would only release ICUA after determining that all necessary actions have been taken under the rule. We added a requirement in § 414.3(a) (15) that the Secretary, before releasing ICUA, must first determine that the storing entity stored water in sufficient quantities to support the development of ICUA requested by the consuming entity and be satisfied that the storing entity either (i) has developed the quantity of ICUA requested by the consuming entity, or (ii) will develop the quantity of ICUA requested by the consuming entity under § 414.3(f). We

renumbered § 414.3 (a) (9) as § 414.3(a) (16) and changed the indemnification to relate to actions of the non-Federal parties to a Storage and Interstate Release Agreement. We renumbered § 414.3 (a) (10) as §414.3(a)(17).

This final rule also includes a new § 414.3(e) that addresses the need for a valid contract with the Secretary in accordance with Section 5 of the BCPA. The release or diversion of Colorado River water for storage under this part must be supported by a Section 5 water delivery contract, except for the storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part must also be supported by a Section 5 water delivery contract. This section states that the Section 5 water delivery contract requirement of the BCPA may be satisfied by direct contracts with the Secretary, or by valid subcontracts with entitlement holders authorized to enter into subcontracts, or in the case of a consuming entity, by the Storage and Interstate Release Agreement itself. When a valid contract is in place to support the release or diversion of Colorado River water for storage, no additional authority will be required by the Secretary to authorize the storage, through a Storage and Interstate Release Agreement or otherwise.

We also have added a new 5414.3(0 that allows anticipatory releases of ICUA before the actual development of ICUA by the storing entity. This addition was made based on comments received that the demand patterns for Colorado River water in the lower basin vary widely. The times when the storing entity and the consuming entity demand water will not necessarily be concurrent. Thus, the consuming entity may have a need for ICUA before the storing entity would decrease its diversions of Colorado River water in order to develop the ICUA. We added § 414.3(1) to the rule to allow the consuming entity to have the use of ICUA before its development by the storing entity. These anticipatory releases can only be made in the same year in which ICUA will be developed. Additionally, before an anticipatory release, the storing entity must certify to the Secretary that ICUA will be developed before the end of the year in order to support an early release.

- *Financial considerations.* We added a new § 414.3(b) which states that the Secretary will not execute a Storage and Interstate Release Agreement that has adverse impacts on the financial interests of the United States. This section also provides that financial arrangements between and among non-Federal parties relating to the Storage and Interstate Release Agreement need not be included in the Storage and Interstate Release Agreement. Those financial arrangements can be set forth in separate agreements to which the Secretary will not be a party, should the parties so desire.

- *Involvement of the Secretary.* As noted above, we modified § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. We modified § 414.3(c) to specify:

(1) That the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) has the authority to execute a Storage and Interstate Release Agreement on behalf of the Secretary;

(2) That the Secretary will notify the public of the Secretary's intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input;

(3) That the factors to be considered in reviewing a proposed Storage and Interstate Release Agreement include potential impacts on tribal interests, including trust resources, and potential impacts on the Upper Division States and comments from the State agency responsible for Colorado River matters; and

(4) That after consideration of the listed factors, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

- *Stored water.* We modified former § 414.3(c) to conform the wording to changes made in other parts of the rule and separated the concepts that now appear in § 414.3(a) (6) and § 414.3(a)(10).

Section-by-Section Analysis of the Rule

Section 414.1 Purpose

This section explains that part 414 contains the procedures for authorized entities in the Lower Division States to follow for entering into Storage and Interstate Release Agreements with the Secretary for offstream storage of Colorado River water and for the development and release of ICUA on an interstate basis in the Lower Division States. This rule is expected to be a first step toward improving the efficiency associated with management of the Colorado River in the Lower Basin. The rule is intended to be permissive in nature and facilitate voluntary water transactions.

Section 414.2 Definitions of Terms Used in This Part

This section defines terms that are used in part 414. The following terms are based on and are to be interpreted consistent with the Decree: basic apportionment, Colorado River water, consumptive use, Decree, mainstream, surplus apportionment, and unused apportionment. The terms Colorado River Basin, Colorado River System, Lower Division States, and Upper Division States are defined in the compact. Most of the other terms were defined for the purposes of this rule to establish a common understanding.

Section 414.3 Storage and Interstate Release Agreements

This section identifies the details that must be specified in a Storage and Interstate Release Agreement regarding the storage of Colorado River water off of the mainstream and the development and release of ICUA. This section provides for verification of the quantity of water stored under a Storage and Interstate Release Agreement and verification of the quantity of ICUA developed. It also commits the Secretary to release ICUA to the consuming entity after the storing entity has certified to the Secretary, and the Secretary has verified, that the quantity of ICUA requested by the consuming entity has been developed or will be developed in that year. The release must be in accordance with the terms of the agreement and as permitted by law.

This section also specifies the factors that the Secretary will consider in determining whether to execute a Storage and Interstate Release Agreement. This section allows the assignment of all or a portion of an authorized entity's interest in a Storage and Interstate Release Agreement to other authorized entities and provides for the satisfaction of the water delivery contract requirement of Section 5 of the BCPA.

This section prescribes the limited circumstances under which ICUA can be released to a consuming entity before the development of ICUA by the storing entity.

Section 414.4 Reporting Requirements and Accounting Under Storage and Interstate Release Agreements

This section specifies the reporting requirements that storing entities must follow and stipulates that this water will be accounted for in the records maintained under Article V of the Decree.

Section 414.5 Water Quality

This section states that the Secretary does not guarantee the quality of water released under Storage and Interstate Release Agreements and further states that the United States is not liable for damages that result from water quality problems. The section states that the United States is not responsible for maintaining or improving water quality unless Federal law provides otherwise. This section also states that any entity who diverts, uses, and returns Colorado River water must comply with all applicable water pollution laws and regulations of the United States and the Storing and Consuming States, and must obtain all applicable permits or licenses regarding water quality and water pollution matters.

Section 414.6 Environmental Compliance

This section states that the Secretary will ensure environmental compliance with the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and other applicable laws and executive orders. This section states that authorized entities must prepare and fund all necessary environmental compliance documents. This section also specifies that the authorized entities must fund the costs incurred by the United States in considering, participating in, and administering the proposed agreement.

III. Tribal Issues

As explained in more detail in the following section of the preamble (Responses to Comments), a number of Indian tribes have expressed reservations and/or opposition to this rule. In particular, the Colorado River Tribal Partnership, often referred to as the Ten Tribe Partnership, composed of ten Indian tribes (Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe, Jicarilla Indian Tribe, Navaho Nation, Quechan Tribe, Northern Ute Indian Tribe, Southern Ute Indian Tribe and Ute Mountain Indian Tribe) with decreed and/or claimed water rights in the Colorado River, has expressed opposition to this rule on the ground that it does not provide specific and express protection of the Tribes' interests both in making water transfers and developing tribal water on or off their reservations.

The Department believes that this rule should and will benefit Indian tribes, but it acknowledges that the rule has a limited scope. The final rule provides a framework under which State-authorized entities can request Secretarial approval to implement voluntary interstate water transactions. The rule does not address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities. With regard to the activities covered by this final rule, the Department encourages Lower Division States to enact measures and take actions that will allow Tribes to participate in opportunities covered by this rule. Also, the Secretary's approval of specific transactions under the rule will be based, in part, on an analysis of the impacts that such a transaction may have on the interests of Indian tribes. The Department provides a fuller discussion of these issues in the Responses to Comments section below.

IV. Responses to Comments

The following is a discussion of the comments received on the proposed rule and the DPEA, and our responses. First, we will address general comments and our responses. Second, we will address comments on specific provisions in the proposed rule. Third, we will address comments on the DPEA. Fourth, we will respond to specific comments received during the second comment period.

Public Comments on Proposed Rule and Responses on General Issues

The following section presents public comments on the proposed rule that are general in nature. This section includes comments on the scope of the rule,

Secretarial discretion, eligibility to be an "authorized entity," the method for development of ICUA, the timing for the completion of the rule, tribal water rights, ground water issues, subsidies, power issues, concerns of California entities, potential impacts on the Upper Division States, concerns over deliveries to Mexico, environmental concerns, and economic impacts of the rule.

Scope of the Rule

Comment: Reclamation did not hold public scoping meetings on the rule.

Response: We have conducted this rulemaking in accordance with the Administrative Procedure Act. The Department expanded the public comment period for the proposed rule from 61 to 93 days. In addition to oral comments submitted at one public hearing and one public meeting, we received 49 comment letters from 47 respondents. Of these letters, 24 commented only on the rule, 23 commented on both the proposed rule and the draft programmatic environmental assessment (DPEA), and 2 commented only on the DPEA.

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to provide comments on three specific questions. The Department received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all pertinent comments and revised the rule based on these comments. Thus, the public has influenced the scope and formulation of this rule.

Secretarial Discretion

Comment: Does the Secretary of the Interior have the authority to enter into an agreement that binds future Secretaries to commit unused apportionment to a specific user in a particular State over a multiple-year period?

Response: Yes. The Secretary's release of ICUA in any year will be under Article II(B)(6) of the Decree. The Decree does not preclude the Secretary from releasing unused apportionment to a specific user in a particular State. The Secretary will agree to release ICUA only during the year in which it is developed by the storing entity. Moreover, under § 414.3(a)(12) of the rule, the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA after the storing entity has certified to the Secretary, and the Secretary has verified in accordance with § 414.3(a)(15), that the quantity of ICUA requested by the consuming entity has been developed or will be developed in that year. Further, the ICUA released by the Secretary will be limited to the quantity developed by a storing entity during that year.

Eligibility To Be an Authorized Entity

Note: There is also a discussion on the contractual requirements necessary to qualify as an authorized entity in the section of this preamble addressing comments received during the reopened comment period.

Comment: The most frequently mentioned comment concerned the definition for the term "authorized entity." Some thought "authorized entity" should be defined broadly to enable the widest possible participation and others thought the term should be defined very narrowly to limit participation to State agencies. Indian tribes commented that the definition

should be expanded to include the tribes pursuant to the Secretary's authority under the BCPA. Tribes further commented that the proposed definition of "authorized entity" will give State government a virtual monopoly on water marketing.

Response: We agree with the general suggestion made by a State agency that "authorized entity" should be a two-part definition. This concept was supported by several other State agencies and water districts. As to a Storing State, for purposes of this rule, an authorized entity is defined as an entity that is expressly authorized by the laws of that State to: (i) Enter into Storage and Interstate Release Agreements; and (ii) develop ICUA. As to a Consuming State, for purposes of this rule, an authorized entity is defined as an entity that has authority under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) acquire the right to use ICUA. In this way the rule is intended to be permissive in nature but consistent with State law. We believe this two part definition captures comments from several State agencies that while express authority is needed to store water for use in interstate water transactions and make ICUA available, express authority is not necessary for a consuming State to receive and use ICUA. We reiterate that we fully expect the Lower Division States to enact measures that will allow the tribes to participate in opportunities covered by this rule. Moreover, this rule does not specifically address or preclude independent actions by the Secretary regarding tribal storage and water transfer activities under other authorities.

We have also expanded this rule to require that non-Federal parties to the Storage and Interstate Release Agreement provide at the Secretary's request any additional supporting data necessary to clearly set forth the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction.

Comment: It is important to acknowledge that the apportionments of Colorado River water are made specifically to the individual States. Therefore, it is important for the States to specifically designate the authorized entities who are entitled to enter into Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") to ensure use of Colorado River water remains within a State's apportionment during any year.

Response: Apportionments of Colorado River water are made for use within each specific Lower Division State. This rule requires that the authorized entity in the Storing State be an entity that is expressly authorized under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) develop ICUA. As to an authorized entity in a Consuming State, the rule requires that it be an entity that has authority under the laws of that State to: (i) enter into Storage and Interstate Release Agreements; and (ii) acquire the right to use ICUA.

Method for Development of ICUA (Forbearance)

Comment: Several respondents commented on whether the final definition of ICUA should specify what types of measures or actions the Secretary will approve for the development of ICUA.

Response: The measures that will be used to develop ICUA are to be specified in each Storage and Interstate Release Agreement and must be verifiable. The method used to develop ICUA and the appropriate method of verification may vary according to the transaction.

The Timing for the Completion of the rule

Comment: Several respondents asked for additional time to review the proposed rule and DPEA and questioned why the completion of the rulemaking process appeared to be on a "fast track."

Response: In developing this rule we have followed the mandates of the Administrative Procedure Act. In fact, we extended the time for public review and comment from 61 to 93 days despite the fact that this rule only formalizes the existing authority of the Secretary to enter into Storage and Interstate Release Agreements and does not expand or create this authority. Moreover, we reopened the comment period for an additional 30 days to obtain further comments. This extended review period has given the public numerous opportunities to review this rule. In addition, we reviewed and analyzed the comments submitted during the reopened comment period and revised the rule as needed. Finally, the Secretary will notify the public of the Secretary's intent to participate in negotiations to develop a Storage and Interstate Release Agreement and give the public further opportunity to comment before any specific transaction is implemented.

Tribal Water Rights

Comment: The rule should include an introductory section that recognizes Indian holders of present perfected rights are not required to beneficially use their water, are not subject to a loss or reduction in their water for non-use or non-beneficial use, and are not subject to State law or State regulatory control for the on-reservation use of their entitlements.

Response: We recognize the unique status of present perfected rights holders under the Decree and agree that tribal present perfected rights holders are not subject to a loss or reduction in their water rights for non-use. The 1979 supplemental decree entered March 9, 1979 (439 U.S. 419) by the Supreme Court in *Arizona v. California* quantifies and prioritizes tribal rights to the use of Colorado River water. The 1979 supplemental decree states that: "Any water right listed herein may be exercised only for beneficial uses." We do not believe it is necessary that the information be included in an introductory section for the rule. We agree that Indian holders of present perfected rights are not subject to State law or State regulatory control for the on-reservation use of their entitlements.

Comment: Indian tribes should be permitted to enter into intrastate or interstate agreements for offstream storage and marketing of their unused water off the reservation under the statutory and contractual authority vested in the Secretary.

Response: This rule does not apply to intrastate transactions. This rule applies only to interstate transactions. As explained in more detail below, we believe that Storage and Interstate Release Agreements under this rule can be implemented in a manner that will provide opportunities for tribes to benefit.

Comment: Several tribes commented that they have been unable to fully benefit from their water rights because of the Federal government's failure to provide the tribes with the necessary financial, technical, and political assistance to fully develop their water resources.

Response: We acknowledge this concern and recognize that a number of tribes have been unable to use their entitlement due to the lack of distribution and delivery systems. We are committed to making progress to help tribes make better use of their water rights. For example, a Central Arizona Project (CAP) distribution system has been built for the Ak-Chin Tribe. A distribution system for the Fort McDowell Tribe is under construction and we have entered into a repayment contract with the Gila River Indian Community for construction of a CAP distribution system. Five of the ten Indian tribes with contracts

for delivery of CAP water have utilized their statutory right to lease or transfer water. More specifically, the Ak Chin, Fort McDowell, Tohono O'odham, Salt River, and Yavapai Prescott tribes have leased or transferred CAP water.

Comment: Indian tribes should receive compensation for their unused or undeveloped tribal water resources because of the Federal government's failure to provide the tribes with the necessary assistance to fully develop their water resources.

Response: The issue of compensating the tribes in connection with the development of tribal water rights is beyond the scope of this rule.

Comment: The Department should permit tribal governments to market their Central Arizona Project allocations on the same basis as the State. Central Arizona Water Conservation District's (CAWCD) non-Indian subcontractors have the capability to take direct delivery of CAP water but have not taken delivery of substantial quantities, primarily for economic reasons. Tribes with CAP allocations, with the exception of the Ak-Chin Indian Community, are not able to take delivery or put to use any substantial quantity of CAP water because the distribution and delivery systems that are needed to allow the tribes to put this water to use have not been constructed.

Response: We reiterate that we are encouraging the Lower Division States to enact measures and take actions that will allow the tribes to participate in opportunities covered by this rule. One such example of tribal participation in a Storage and Interstate Release Agreement would be affording tribes the opportunity to develop underground storage facilities where Colorado River water could be stored. In addition, we note that the State of Arizona is exploring the use of facilities on tribal lands for storage of Colorado River water. Thus, tribes could participate by leasing the use of these facilities to the storing entity. Moreover, this rule does not specifically address or preclude independent actions by the Secretary regarding tribal storage and water transfer activities. As stated above, we feel that there has been progress in helping the tribes create irrigation infrastructure or otherwise put their CAP water to use and is committed to moving forward with this program. Only authorized entities can store water under this rule to support an interstate water transaction. No holders of CAP allocations have a right to store this water for an interstate transaction unless they can qualify as an authorized entity under this rule. Only unused water that is not requested by an entitlement holder (including tribes) can be stored to support a Storage and Interstate Release Agreement. With respect to the development of ICUA, the rule requires the Storage and Interstate Release Agreement to describe the notice given to entitlement holders, including Indian tribes, of opportunities to participate in the development of ICUA.

Ground Water Issues

Comment: Because banked water is fungible, the rule should address both intrastate and interstate water storage to preclude a Storing State from circumventing any restrictions that the Department might impose on the storage or recovery of water stored under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). Several respondents expressed concern that an authorized entity may store water in an aquifer that is hydraulically connected to an aquifer that holds tribal water.

Response: The rule specifies in § 414.3(c) that the Secretary will consider various factors in reviewing a proposed Storage and Interstate Release Agreement, including potential effects on trust resources, potential effects on entitlement holders, which includes Indian tribes, and environmental impacts. We reiterate that intrastate transactions are not covered under this rule.

Comment: One respondent stated that the rule should expressly address the legal status of banked CAP water. The respondent is concerned that the banked water will be considered CAP water under Federal law and non-Indian water users in Arizona will accrue millions of acre-feet of credits with the sanction of Reclamation. The subsequent recovery of the stored water will result in significant increases in ground water pumping over and above that currently authorized in accordance with State law and the tribes might be precluded from pumping the remaining ground water reserves because those reserves will increasingly take on the character of CAP water.

Response: As noted in § 414.3(c), the potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when reviewing the proposed Storage and Interstate Release Agreement.

Comment: Revise the rule to incorporate the acre-foot for acre-foot ground water pumping restrictions from the amended CAP master repayment contract and the CAP agricultural subcontracts. Reclamation has a trust responsibility to protect Indian ground water from continued ground water mining by non-Indian interests. Response: Nothing in this regulation modifies the ground water protections found in the CAP contracts or limits the Department's ability to protect trust resources. Also, as noted in § 414.3(c), the potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when reviewing a Storage and Interstate Release Agreement.

Subsidies

Comment: Several respondents stated that the Department should not allow extra non-reimbursable expenses to occur in storing water or delivering it to a new location. There were also suggestions that, with respect to Arizona, revenue from the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") should be collected to help repay CAWCD's debt to the United States for the CAP.

Response: We agree that a proposed Storage and Interstate Release Agreement cannot obligate the United States to incur extra non-reimbursable expenses to store water or deliver it to new locations. The Secretary will review the provisions of every proposed Storage and Interstate Release Agreement for its financial impacts on the United States and will not execute any agreements that may have adverse financial impacts on the United States. In addition, the United States is currently seeking to resolve the recovery of CAWCD's debt to the United States.

Power Issues

Comment: Several respondents stated that Reclamation should analyze the impacts of the rule on power customers in the State of Arizona. When water passes through the Hoover and Davis generators on the way to storage in Arizona, there will be additional power production but CAWCD will incur increased pumping costs to move the water to storage. When stored water is withdrawn by a Nevada entity in the future, less water will pass through the Hoover and Davis generators, resulting in less power production at those dams. When Arizona ground water pumpers who take CAP water through in-lieu storage are required to go back to ground water pumping, they may require more power during years when stored water is withdrawn from the bank and generation is reduced at Hoover and Davis Dams. The rule should provide for compensation of power customers to protect them from subsidizing water banking.

Response: Under this rule, the offstream storage of Colorado River water and the Secretary's release of ICUA may influence the timing of power generation at the Hoover, Parker, and Davis powerplants. Reclamation conducted an analysis to evaluate the potential impacts of this rule on Hoover and Parker-Davis power customers. The analysis reflects that under this rule the quantity of energy foregone in any one year between 1998 and 2017 will result in a loss of less than 0.5 percent. Between 1998 and 2017, the quantity of Colorado River water released from mainstream reservoirs will be equivalent to the quantity that otherwise would have been released without the implementation of this rule.

Section 6 of the BCPA notes "That the dam and reservoir provided for by section 1 hereof shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power." The Secretary manages and operates these reservoirs for multiple, often conflicting purposes, through powers vested by Congress. The principal source of the Secretary's power is the contract power under Section 5 of the BCPA to allocate and distribute mainstream water within the boundaries established by that Act. Each year, the Secretary develops and adopts an Annual Operating Plan (AOP) for the Colorado River reservoirs. During the AOP process, the Secretary consults with the Basin States and other interested parties, including the power users. The Secretary is mindful of the Federal contracts with power users for supply of electric service from hydroelectric powerplants on the Colorado River and will seek to minimize changes in power production that result from the Secretary's activities regarding river operations. However, because of Section 6 of the BCPA, power users are a junior priority for use of Colorado River water.

Concerns of California Entities

Comment: Several California entities expressed concern that the rule should acknowledge and be consistent with the comprehensive plan being developed by California water agencies to reduce California's future use of Colorado River water (California 4.4 Plan).

Response: The Department places great emphasis on the necessity for the implementation of a California 4.4 Plan. We do not, however, believe that this rule needs to address the California 4.4 Plan. This rule is intended to be of general application and to apply equally to each of the three Lower Division States.

Comment: Some respondents asked for assurance that the rule will provide for storage of conserved water, such as water that is anticipated to result from water conservation in the Imperial

Irrigation District (IID) that is proposed to be transferred to the San Diego County Water Authority (SDCWA).

Response: The proposed transfer of water from IID to SDCWA is an intrastate transaction that is not covered by the rule. For conserved water to be stored by an authorized entity for purposes of an interstate water transaction under this rule, it must first be offered to all entitlement holders in the State in which it was conserved.

Comment: In years when surplus water is needed to keep Metropolitan Water District's Colorado River Aqueduct full, a conflict will arise among entities who claim surplus water if the Secretary does not make a sufficient level of surplus water available to satisfy both Metropolitan Water District's demand and diversions for offstream storage under Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements").

Response: Surplus is divided among the Lower Division States under the Decree. Surplus apportioned to the State of California under the Decree, and thus available for use consistent with the priority system applicable to California, is not subject to storage under this rule by authorized entities in Nevada or Arizona unless entitlement holders in California choose not to exercise their rights to use surplus water.

Potential Impacts on the Upper Division *States*

Comment: The rule should not be allowed to impact the water supplies available to the Upper Basin and the Upper Basin should not lose any yield or take increased risks because of increased equalization that might occur as a result of interstate water storage agreements.

Response: We agree with this comment from a State agency and notes that this rule will not be used to justify more liberalized surplus determinations that will allow an increase in equalization releases from Lake Powell. Section 414.3(b) of this rule was modified to include potential impacts on the Upper Division States among the factors that the Secretary will consider in considering, participating in, and administering a Storage and Interstate Release Agreement.

Comment: The rule should be modified to include a statement that the rule does not change or expand the authorities under the Law of the River or the apportionments made to the individual States under the Law of the River. The rule should also state that its intent is to provide for efficient use of unused apportionment and surpluses but that each State should keep its consumptive use of Colorado River water within the apportionments made to it under the Law of the River.

Response: We agree with this comment from a State agency that this rule does not change or expand existing authorities under the Law of the River or change the apportionments for use of water within the individual States. We modified § 414.1 Purpose to state this. We also agree that each Lower Division State must operate within the limits of the apportionment of Colorado River water made for use within that State but do not believe it is necessary to include this statement in the rule.

Concerns over Deliveries to Mexico

Comment: The DPEA states that a minor reduction will occur in the quantity of surplus water available for delivery to Mexico over the long term without explaining what a minor reduction is or what studies have been done to quantify this.

Response: The quantity of water available for delivery to Mexico is expected to decrease by an average of 23 thousand acre-feet (kaf)/year from 1999-2015 when storage is occurring with the rule. This is about a one percent decrease annually in the total quantity of water projected to reach Mexico (2.487 million acre-feet (ma°) without this rule and 2.464 maf with this rule). In addition, this decrease would affect flood control releases only during this same time and would have only a very minimal effect on projected surplus flow in years beyond 2015.

These projections are based on analysis completed by Reclamation using the Colorado River Simulation Model, which is used to project long-term conditions relating to water supply on the Colorado River from Lake Mead to Mexico. The analysis used historical virgin runoff data from 1906-1995 and water use or demand schedules that have been provided by the Colorado River Basin States for the simulated future period 1999-2015. In addition the model includes requirements in the long-range operating criteria for the Colorado River.

Environmental Concerns

Comment: Efficiency improvements in river management and the storage of

Colorado River water in underground aquifers means less water is available for environmental purposes, such as the riparian and aquatic ecosystems of the river, including the river and delta region in Mexico.

Response: Offstream storage of Colorado River water under Storage and Interstate Release Agreements should not have a measurable effect on riparian and/or aquatic ecosystems of the river or the delta region of Mexico. During the next few years, releases from Hoover Dam are expected to continue to be about 10 maf/year for downstream use in the United States and Mexico. In addition, flood control releases are projected to average 788 kaf/year during the period 1999-2015. Offstream storage could decrease flood control releases reaching Mexico by an average of 23 kaf/year.

At present, Reclamation has no authority or discretion over the type of use or location of use of Colorado River water once it reaches Mexico. The Mexican Water Treaty of 1944 and the Opinion and Decree control and limit Reclamation's releases from Hoover Dam to amounts that meet the conditions within each. Water delivered to meet Treaty requirements is diverted at Morelos Dam where Mexican law governs how it is put to use. In times of flood control operations, Colorado River water entering Mexico in excess of treaty requirements is under Mexico's jurisdiction. Once flows reach the Republic of Mexico, any uses for environmental purposes would have to be authorized by Mexico.

It is possible that implementation of this rule may create additional flexibility to potentially make water available for fish and wildlife purposes as part of the ongoing Lower Colorado River Multi-Species Conservation Program (MSCP). Under this concept, water stored offstream one year could potentially be used to meet fish and wildlife purposes in a later year.

Comment: The level of environmental compliance proposed by Reclamation is inadequate and Reclamation should complete a full environmental impact statement (EIS) on the proposed rule as well as the entire operation of the Colorado River.

Response: The programmatic environmental assessment (PEA) was prepared to identify and clarify issues, describe the level of environmental impacts associated with implementation of the proposed rule, and to determine whether to prepare a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS). Compliance for each Storage and Interstate Release Agreement will reference and tier off from PEA for this rule. Based on the analysis in the PEA, consultation and coordination with the Fish and Wildlife Service, and public input and comments, we have concluded that implementation of the proposed rule will not have a significant effect on the human environment. As a result, a FONSI has been prepared to complete NEPA compliance for the rule.

As explained previously, this rule develops a framework that the Secretary will utilize in reviewing and evaluating whether to execute a specific transaction for offstream storage of Colorado River water under a Storage and Interstate Release Agreement. This rule does not increase nor abrogate the existing authority of the Secretary. When the storing and consuming entities enter into negotiations with the Secretary for the development of a Storage and Interstate Release Agreement, the Secretary will have the specific details needed to determine the potential impacts of the proposed action and can then determine the appropriate level of NEPA compliance required for that action.

In addition, the Department believes the preparation of an EIS on the entire operation of the Colorado River is not required. Movement of water will be through existing facilities on the Colorado River and is within the current and projected routine operations of the lower Colorado River. Thus, it is not necessary to complete a comprehensive EIS on river operations.

Comment: Implementation of the rule may potentially impact fish and wildlife resources along the Colorado River downstream from Lake Mead.

Response: The DPEA evaluated the potential impact to fish and wildlife resources for a proposed scenario in which 1.2 maf would be stored in Arizona under a Storage and Interstate Release Agreement to allow an authorized entity in Nevada to meet its future water needs. The effects of placing Colorado River water in offstream storage were evaluated at two incremental storage rates, 100 kaf/year and 200 kaf/year with future development of ICUA and the associated release of water from Lake Mead limited to a maximum of 100 kaf, in accordance with Arizona law, in any year.

No significant impacts were identified on fish and wildlife resources as a result of this analysis. Consultation with the Fish and Wildlife Service concluded that fluctuations in water surface elevations associated with the most likely case storage and retrieval scenarios are not likely to adversely affect listed species or their designated critical habitat.

Economic Impacts of the Rule

Comment: The Initial Regulatory Flexibility Analysis states that the future cost burden of obtaining alternative supplies for Southern California water users is not attributable to or the result of the proposed rule. The rule may reduce the quantity of Colorado River water available for diversion to Southern California that is apportioned for consumptive use in Arizona and/or Nevada but not consumed in those States, making California expend funds sooner than planned to obtain alternative water supplies.

Response: Absent the rule, each Lower Division State may store its unused basic apportionment and surplus apportionment offstream for future intrastate use. Arizona is currently taking all of the 2.8 maf basic apportionment of Colorado River water available for use in Arizona. Therefore, the only water that California may no longer be able to use is Nevada unused basic apportionment. Nevada's consumptive use was 245.3 kaf in 1998, resulting in 54.7 kaf of unused apportionment. Projections show Nevada utilizing its full basic apportionment by 2007. This rule may impact southern California in that it enables Nevada to store its declining quantity of unused apportionment in Arizona for the short period it may be available. To the extent surplus is available during this time, impacts on California are lessened. In the long run, the rule should have little net impact on the expenditure of funds by California water users to obtain alternative water supplies.

We reiterate that California must reduce its reliance on the Colorado River by conserving water or obtaining alternative water sources. California must continue moving forward in its efforts to implement a California 4.4 Plan to live within the 4.4 maf of Colorado River water apportioned for use in California and this rule will add flexibility that may be of help in implementing the California 4.4 Plan.

Comment: Some tribes asserted that the rule allocates to the States water that is reserved to the tribes and has a disproportionate, significant, and detrimental economic impact on the tribes in the Lower Basin.

Response: We do not agree with this view. Under the rule, only water within a State's apportionment that is not used by entitlement holders within that State may be stored offstrearn for interstate purposes. Nothing in this rule precludes any entitlement holder, including a Tribe, from using its Colorado River water entitlement.

The potential effects of the proposed measures on the environment, the economy, and trust resources are among the factors the Secretary will consider when evaluating the Storage and Interstate Release Agreement. This review process will help ensure that tribal rights will be protected under this regulation.

Comment: The Benefit-Cost Analysis shows that the overall impact of the proposed rule is not significant. Please explain how this was determined and what the threshold was or refer the reader to a specific page of the Benefit-Cost Analysis for the information.

Response: The threshold for whether a proposed rule is significant is defined in both the Small Business Regulatory Enforcement Fairness Act and the Unfunded Mandates Reform Act of 1995. The Benefit-Cost Analysis reflects that the proposed rule is not a major rule (impacts are not significant) because the economic impact upon the regional and United States economy in any one year does not exceed the threshold; i.e., it is never greater than or equal to $100 million. However, even though the rule does not have a significant annual economic effect on the economy, it is still considered a significant rule because it raises novel legal or policy issues. See pages 38-42 and 44-46 of the Benefit-Cost Analysis to see the findings that led to the determination of no significant economic impact.

Comment: The Executive Summary of the Benefit-Cost Analysis refers to two water supply models, "A70" and "P80." To better understand the potential effects of both A70 and P80 criteria, state the water supply benefits resulting from the P80 criterion and indicate the incremental quantity of additional surplus water made available under P80.

Response: The benefit-cost analysis shows that the benefits of AWBA's banking program are smaller under P80 (a more liberal surplus criterion that will tend to increase the risk of shortages) than A70 (a more conservative surplus criterion that will tend to reduce the risk of shortages). Under P80 surplus criteria, it is more likely that all valid water demands within the Lower Division States will be met from instream flows. Therefore, demand for ICUA by a Consuming State is lower than under A70. Total net economic benefits for the study period (1998-2017) at the regional level are shown at the bottom of page 2 of the executive summary for the Benefit-Cost Analysis. Because surplus conditions are likely to continue for several years, we did not further analyze that alternative in the Biological Assessment (BA) that we prepared for the proposed rule.

Comment: There were a number of editorial comments on the Benefit-Cost Analysis and the Initial Regulatory Flexibility Analysis.

Response: We have reviewed and considered the comments submitted by a water district and have adopted many of the suggestions into the text of the final Benefit-Cost Analysis and the final Regulatory Flexibility Analysis.

Comment: Some tribes commented that allowing States to use "unused tribal water" and imposing limitations on the tribes" ability to use their reserved water potentially interfere with the tribes' protected property rights.

Response: We do not agree with this statement. All Colorado River water available to the Lower Division States is apportioned for use in the individual States. Any water within a State's apportionment that is unused by tribes or non-Indian entitlement holders is available to junior entitlement holders in that State under the Secretary's priority system for the Colorado River. Only water that is not used by entitlement holders is eligible to be used for an interstate transaction under this rule. Thus, there is no interference with tribal property rights.

Comment: One tribe asserted that the tribes' lack of opportunity to participate in interstate transactions on the same basis as the States under the rule violates Title VI of the Civil Rights Act of 1964, which states that "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Response: We do not agree that the tribes will be denied an opportunity to participate under this rule or that this rule results in discrimination within the meaning of the Civil Rights Act. We will require that all entitlement holders, whether tribal or non-tribal, are treated equally under the rule. We will monitor efforts by the States and authorized entities to extend benefits to the tribes under this rule and will, in the future, assess whether we need to review or revise this rule to provide additional opportunities to the tribes.

Public Comments on Proposed Rule and Responses on Specific Provisions

The following section presents public comments on the proposed rule that apply to specific provisions in the rule.

Comments Concerning the Title of the Rule

Comment: The title of the rule should not mention the "redemption of storage credits" because this term lack clarity and is ambiguous. The rule should provide that Colorado River water stored offstream under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be used in the State in which the water is stored and that the Secretary will release ICUA rather than deliver storage credits.

Response: We agree with the concept suggested by several State agencies, a water district, and a water authority and have modified the title to read, "Offstream Storage of Colorado River Water and Development and Release of Intentionally Created Unused Apportionment in the Lower Division States."

Comments Concerning § 414.1-Purpose

Comment: The purpose section should not use terminology that is vague and implies that a Storing State will create and redeem storage credits because the Colorado River water that is stored offstream will always belong to the Storing State. Amend the language to establish the intent that Storage credits will be redeemed in the State in which water will be stored and the Secretary will release ICUA rather than deliver storage credits under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement").

Response: We have adopted the suggestions from several State agencies, a water district, and a water authority to describe the proposed transactions under this rule in terms that are clear and unambiguous. In lieu of developing and redeeming storage credits, we have changed this rule to reflect that the Secretary will release ICUA to consuming entities under Storage and Interstate Release Agreements.

Comment: Because the Secretary's approval of Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") could delay approvals, the Secretary's authority for the Department's responsibilities under the rule should be delegated to Reclamation, subject to the right to appeal the Regional Director's decisions through the Department.

Response: Under the rule, the Secretary will not approve the Storage and Interstate Release Agreement but will instead be a party to the agreement. The rule provides that the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) shall have the

authority to develop, negotiate, and execute a Storage and Interstate Release Agreement on behalf of the Secretary.

Comment: The rule should use precise terminology that cannot be interpreted in ways that are contrary to existing law. The rule should contain a narrative that states the actions contemplated under this rule are deemed within the authority of the Secretary under the Law of the River and that the rule does not change or expand the Secretary's authorities. This narrative should emphasize the intent of the rule is to provide for more efficient use of unused apportionment and surpluses within the "Law of the River."

Response: We revised this rule in several places to clarify the intent. In addition, we agree with the suggestion from several State agencies and clarified the rule to state that it does not change or expand the Secretary's authority under the Law of the River. This rule only formalizes the existing authority of the Secretary to develop, negotiate, and execute Storage and Interstate Release Agreements and does not expand or create this authority. As stated in the preamble to the proposed rule that was published on December 31, 1997, this rule will increase the efficiency, flexibility, and certainty in Colorado River management.

Comments Concerning § 414.2-Definitions

Comment: As addressed above in the discussion of general issues, the most frequently mentioned comment was regarding the definition for the term "authorized entity."

Response: As discussed previously under general issues, we have changed the definition of "authorized entity" to consist of two parts, with different definitions for Consuming States and Storing States. Please refer to that discussion. As a result of receiving differing comments on the definition of authorized entity and several other technical matters, we reopened the comment period for a 30-day period. We requested interested parties to provide comments on three specific questions. We received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all comments and revised the rule based on these comments. Please refer to that discussion.

Comment: Modify the rule to include the definitions for "Colorado River Basin" and "Colorado River System" as defined and used in the Colorado River Compact.

Response: We have adopted these suggestions from a State agency and included these definitions in this rule.

Comment: Modify the definition of "Consuming State" to clarify that this means the State where ICUA is or will be used.

Response: This suggestion from several entities, including State agencies, was adopted to clarify the actual way the proposed water transactions will work.

Comment: The narrative in the preamble for the proposed rule incorrectly attributed the definition of "consumptive use" to the Colorado River Compact of November 24, 1922.

Response: We agree with several State agencies, a water authority, and a water district that the definition was incorrectly attributed to the Compact. As the respondents explained, the term "consumptive use" is defined by Articles I(A) and I(C) of the Decree.

Comment: Modify the definition of "Interstate Storage Agreement" (now termed a "Storage and Interstate Release Agreement") to delete reference to "redemption of storage credits' ' and make other changes consistent with the incorporation of changes to other definitions.

*Response:*We agree with the suggestions from several entities, including State agencies, that the definition should emphasize that the Storage and Interstate Release Agreement provides terms for offstream storage of Colorado River water by a storing entity, the subsequent development of ICUA by the Storing State consistent with the laws of the Storing State, a request by the storing entity to the Secretary to release ICUA to the consuming entity, and the release of ICUA by the Secretary to the consuming entity.

Comment: The definition for "Interstate Storage Agreement" (now termed a "Storage and Interstate Release Agreement") in the proposed rule states that the agreement may include other entities determined to be appropriate to the performance and enforcement of the agreement without indicating who those entities might be or who makes the determination that their inclusion is appropriate.

Response: This rule has been revised to clarify that the decision to include other entities will be determined by the consuming and storing entities and the Secretary during the negotiation of a Storage and Interstate Release Agreement.

Comment: Delete the term "storage credit" from the proposed rule as it lacks clarity.

Response: We have adopted this change, suggested by several entities, including State agencies, a water authority, and a water district.

Comment: Modify the definition of "Storing State" to clarify that water stored offstream under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be used in the Storing State in place of water within the Storing State's apportionment that the Storing State otherwise would have diverted from the mainstream.

Response: We have modified the definition of Interstate Storage Agreement and renamed it "Storage and Interstate Release Agreement" in this rule. The modified definition reflects that water stored offstream under a Storage and Interstate Release Agreement will be used in the Storing State.

Comment: Delete the definition of "unused apportionment" and in its place, insert definitions for "unused basic apportionment" and "unused surplus apportionment." The intent of the suggestion is to clarify that, with the determination of a water supply condition by the Secretary, a State is receiving either a normal, surplus, or shortage apportionment. Also, revise the definition to clarify that to be unused, the water otherwise would not have been diverted and that water conserved or saved through an agreement between two entitlement holders is eligible for storage.

Response: The Department did not adopt these changes that were suggested by a water district. The AOP determines whether a State is receiving a normal, surplus, or shortage apportionment, and that decision is unaffected by this rule. Also, only water that is not used by entitlement holders in the applicable State's priority system for purposes other than storage for use in interstate transactions is eligible for storage for use in interstate transactions under this rule.

Comment: Delete the term "unused entitlement" from the proposed rule. Response: We have adopted this change, suggested by several entities, including State agencies and a water district.

Comments Concerning § 414.3-Storage and Interstate Release Agreements and Redemption of Storage Credits

*Comment:*As discussed earlier under Purpose, there should be a statement that the actions contemplated under this rule are within the Secretary's authority under the Law of the River and that it is not the intent of this rule to change or expand the Secretary’s authorities. This narrative should also emphasize an intent to provide for more efficient use of unused apportionment and surpluses within the

"Law of the River" but specify that water users in the Lower Division States must plan to live within the apportionments made to them under the "Law of the River."

Response: We agree with this suggestion from a State Agency to clarify that this rule is deemed to be within but does not expand the Secretary's authority. The preamble to this rule includes a section to provide further explanation of the purpose of this part. This rule is not intended to change or expand the Secretary's authorities under the "Law of the River." This rule is intended to facilitate more efficient use of unused apportionment and surpluses within the "Law of the River" in the Lower Division States.

We also believe that this rule, in conjunction with the implementation of the California 4.4 Plan and the development of surplus criteria, will provide a framework for the Lower Division States to hold consumption within the apportionments available for use within those States.

Comment: Conform this section of the rule with previous changes that delete the reference to the term, "redemption of storage credits."

Response: We have adopted this change, suggested by several entities, including State agencies, a water authority, and a water district. As discussed previously, this rule will provide for offstream storage of Colorado River water in a Storing State, the subsequent development of ICUA by the storing entity for release by the Secretary to a consuming entity, and the recovery of the stored water for use in the Storing State.

Comment: Delete the reference to Article I1(B)(6) of the Decree in the first sentence under § 414.3(a) because the Decree does not cite a legal authority for entering into Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements").

Response: We agree that "Storage and Interstate Release Agreements" are not referenced in the Decree and have modified § 414.3(a) of the rule. However, Article II(B)(6) of the Decree provides authority for the Secretary to make an annual determination under this rule of the availability of ICUA and release any such water in accordance with the terms of a Storage and Interstate Release Agreement.

Comment: Delete the last sentence of § 414.3(a), that reads, "An Interstate Storage Agreement (now termed an "Storage and Interstate Release Agreement") will allow a storing entity to store unused entitlement and/or unused apportionment for the credit of an authorized entity located in a Consuming State and will provide for the subsequent redemption of the credit."

Response: We agree with this comment from a State agency and have modified this rule to incorporate this change.

Comment: A senior priority holder in California should not be allowed to agree to make available unused apportionment for storage in another State without first obtaining the agreement of California's junior priority holders.

Response: Under this rule, only water that is unused by all entitlement holders in the applicable State's priority system is eligible for storage by an authorized entity for use in an interstate transaction.

Comment: One respondent noted that its contract with the Secretary allows it to request Reclamation to approve an exchange, lease, or transfer of its water entitlement. The respondent further stated its intent to pursue interstate marketing opportunities and position its Colorado River water supply as an unused apportionment that may be released annually for use in the other Lower Division States under the Decree.

Response: The Department recognizes that the entitlement holder's contract allows it to request approval of an exchange, lease, or transfer and notes that any change in the place of use or type of use of the entitlement is subject to the Secretary's approval. The development of ICUA under a Storage and Interstate Release Agreement may involve the exchange, lease, or transfer of Colorado River water under an individual entitlement holder's contract. Any such exchange, lease, or transfer would be subject to Secretarial approval unless the entitlement holder's contract specifies otherwise. Moreover, to participate under this rule as an authorized entity in a Storing State, that entity must be expressly authorized under State law.

Comment: The rule should be modified to allow authorized entities in California and Nevada to have equal access to store that portion of Arizona's Colorado River apportionment that is not otherwise put to use by entitlement holders within Arizona. Also, authorized entities in California and Nevada should have equal access to the quantity of ICUA that Arizona will make available to consuming entities when those entities request it.

Response: We recognize these concerns expressed by a State agency and a water district but do not believe it is appropriate to establish an allocation method in this rule. Storage and Interstate Release Agreements are voluntary interstate water transactions. The Secretary will not require authorized entities of one State to enter into Storage and Interstate Release Agreements with authorized entities in another State. We encourage each storing entity to consider the needs of all consuming entities under prospective Storage and Interstate Release Agreements.

Comment: Modify § 414.3(a) to allow a more general description of the entities by which Colorado River water will be stored and the storage facilities in which it will be stored.

Response: We did not accept this recommendation. It is necessary to clearly identify the actual entity that will store Colorado River water under the Storage and Interstate Release Agreement and the facility where it will be stored so that a thorough review of the impacts of the storage on environmental and trust resources can be performed.

Comment: Specify in § 414.3(a) that the water to be stored will be within the basic apportionment or the surplus apportionment of the Storing State or unused basic apportionment or unused surplus apportionment of the Consuming State. Any unused apportionment of the Consuming State may only be made available by the Secretary to the Storing State under Article II(B) (6).

Response: We agree with this suggestion from several State agencies and a water district, and have modified this rule to incorporate this change.

Comment: Specify in § 414.3(a) the maximum quantity of ICUA that will be available for release to the consuming entity under the agreement.

Response: We agree with this suggestion from several State agencies, a water authority, and a water district. We have modified this rule to incorporate this change.

Comment: Specify in § 414.3(a), by January 31, the maximum quantity of ICUA that will be available for release and delivery to the consuming entity under the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") in that current year.

Response: We did not accept this suggestion from a water district. The rule leaves the determination of this detail to the Storage and Interstate Release Agreement that will be negotiated among the parties to that agreement. Further, this subject involves accounting matters that are set

Forth in § 414.4.

Comment: Specify in § 414.3(a) that the consuming entity may not request ICUA in a quantity that exceeds the quantity of water then in storage under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") in the Storing State. Several respondents suggested deleting the statement from the proposed rule that water then in storage under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") may not be recovered within the same calendar year in which the water was stored offstream. Another respondent suggested retaining this statement.

Response: We agree with the suggestion from several State agencies, a water authority, and a water district that the Storage and Interstate Release Agreement must specify that the consuming entity may not request a quantity of ICUA in excess of the quantity of water then in storage under a Storage and Interstate Release Agreement. The quantity of water stored under a Storage and Interstate Release Agreement serves as the basis for the quantity of ICUA that may be developed under the Storage and Interstate Release Agreement. This rule allows Colorado River entitlement holders in the Storing State the option to use the water previously stored under a Storage and Interstate Release Agreement, under a direct contract with the Secretary, or under a valid subcontract with an entitlement holder authorized to enter into subcontracts. However, the rule also allows other means consistent with Storing State law to develop ICUA. We do not agree with the suggestion from a water district to retain the requirement that water stored under a Storage and Interstate Release Agreement may not be recovered within the same year the water is stored offstream. The parties may agree to permit the consuming entity to request and receive ICUA during the same year water is stored under a Storage and Interstate Release Agreement. However, the applicable law of the Storing State may not permit a consuming entity to request the delivery of a quantity of ICUA that exceeds the quantity of unused apportionment that was stored offstream for that consuming entity under a Storage and Interstate Release Agreement as of the end of the prior year.

Comment: Modify § 414.3(a) to specify that, by a date certain to be specified in the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"), the consuming entity will provide notice to the Lower Division States and to the Secretary of its request for a specific quantity of ICUA in the following calendar year.

Response: We agree with this suggestion from two State agencies and a water authority and have modified this rule to incorporate this intent. The revised provision is now renumbered § 414.3(a) (7). The rule will allow the parties and the Secretary to reach a mutually acceptable date for the notice in the Storage and Interstate Release Agreement.

Comment: Modify § 414.3(a) to specify that the date when the consuming entity will provide notice to the Lower Division States and to the Secretary will be the later of (i) November 30 or (ii) within 45 days after the AOP has been transmitted to the Governors of the Colorado River Basin States. This change will allow more flexibility in case the AOP is not transmitted by the Secretary to the Governors before November 30, as has occurred sometimes in the past.

Response: We did not incorporate this suggestion from a water district into this rule. It is possible that the processes for the Secretary to send the AOP to the Governors and the Colorado River entitlement holders to complete their annual water orders may not be completed until late in the year, beyond November 30. However, we agree with several respondents that the date when the authorized entity is to provide notice is better incorporated into the Storage and Interstate Release Agreement.

Comment: Modify § 414.3(a) to clarify that a storing entity, after receiving a notice of a request for a specific quantity of ICUA, will take actions to ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the requested quantity of ICUA to be released for use in the Consuming State.

Response: We agree with this suggestion from a State agency, a water authority, and a water district and have modified this rule to incorporate this change. The revised provision is now renumbered § 414.3(a) (8).

Comment: Modify § 414.3(a) to provide that the Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement will specify which types of actions may be taken in the Storing State to develop ICUA.

Response: We agree with this suggestion from a State agency, a water authority, and a water district and have modified this rule to incorporate this change. The modified rule also requires the storing entity to specify the means by which the development of the ICUA will be enforceable by the storing entity. The revised provision is now renumbered § 414.3(a) (9).

Comment: The rule should be modified to specify that an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will require the storing entity to certify that ICUA is developed that otherwise would not exist and to specify the quantity, the means, and the entity by which the unused apportionment will be developed.

Response: We agree with this suggestion by a State agency, a water authority, and a water district and have modified and renumbered this provision § 414.3(a)(10) to incorporate this change into this rule. We do not agree with the comment from a State agency that it is necessary to specify the procedure by which certification is provided to the Secretary. However, the Secretary and the authorized entities may specify the certification procedure in the Storage and Interstate Release Agreement if they so choose.

Comment: The rule should provide guidance as to how the development of ICUA will be verified.

Response: We agree with the suggestion from a State agency and a water authority that this rule should require a Storage and Interstate Release Agreement to specify a procedure for verification of the ICUA appropriate to the manner in which it is developed. This rule has been modified to incorporate this requirement into a new § 41 4.3(a) (11). In addition, a new § 414.3(a)(6) was included in this rule to require the Storage and Interstate Release Agreement to specify a procedure for verification of the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement. Further, § 414.3(a)(10) specifies that the storing entity must certify to the Secretary that ICUA has been or will be developed that would not otherwise exist. The Secretary may use independent means to verify the existence of ICUA.

Comment: The Secretary should review the water orders and release the AOP before actions are taken to develop or release ICUA.

Response: We do not agree with this suggestion from a State agency. The respondent raised a concern that this rule might allow a storing entity to increase its water order to include the quantity of requested ICUA. The authorized entity could then decrease its order, pump ground water or release surface water that it otherwise would have used anyway, claim credit for developing ICUA, and receive payment for actions it would not have taken. We do not believe it is necessary for the consuming entity to postpone its request for ICUA until after the annual water

orders and the AOP are completed. We believe that information on water orders should be shared openly and up front in the interest of better regional cooperation. The open nature of these water schedules will help ensure that an initial water order is legitimate and that it is not intentionally increased in order that a Storing entity could get credit for ICUA without taking the actions necessary to develop that ICUA.

Comment: Modify § 414.3(a) to include a requirement for the storing entity to provide evidence that the stored water has not migrated out of the State, out of the United States, to a saline sink, or returned to the mainstream.

Response: We do not agree with the comment from a water district that this provision is necessary in this rule. We will require full environmental compliance on all Storage and Interstate Release Agreements and will consider the potential migration of ground water storage when evaluating the effects of storage on the environment and trust resources.

Comment: Modify § 414.3(a) to clarify that the parties to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") other than the United States will indemnify the United States from actions taken by parties to the agreement other than the United States, not for the broader actions of the United States.

Response: We agree that the United States is covered by the Federal Tort Claims Act and other laws and have revised this paragraph, now designated §414.3(a)(16), to incorporate this comment by a water district and an irrigation district.

Comment: The Department should protect the water in Indian tribes' ground water basins by not allowing the storage or *recovery* of water from ground water basins that are hydraulically connected to the tribes' ground water basins.

Response: The Department acknowledges its obligation to protect tribal resources. Section 414.3(b) provides that the Secretary will consider potential effects on trust resources and entitlement holders, which include Indian tribes with rights to the use of Colorado River water, in considering, participating in, and administering a Storage and Interstate Release Agreement.

Comment: Modify the following elements of § 414.3(b), now renumbered § 414.3(c), to require the Secretary to notify the public of a request to approve an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"), provide a more definitive time for the Secretary to respond to the request, provide for execution of necessary contracts to authorize the diversion and use of Colorado River water, and provide an appeals process.

Response: We have modified the rule to provide in § 414.3(a) that the Secretary will be a party to a Storage and Interstate Release Agreement. We modified § 414.3(c) to specify that the Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) shall have the authority to negotiate, execute, and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The rule does not provide for an appeal of the Regional Director's decision whether to execute a particular Storage and Interstate Release Agreement. The necessity of contracts to authorize the diversion of water under a Storage and Interstate Release Agreement, except for storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders, is addressed in § 414.3(e) of the rule. The rule allows for the storage of Colorado River water either through a direct contract with the Secretary or through a valid subcontract with an entitlement holder authorized by the Secretary to enter into such subcontracts. The Storage and Interstate Release Agreement to which the Secretary will be a party satisfies the Section 5 requirement for the release or diversion of ICUA to the consuming entity in the Consuming State.

Comment: Amend § 414.3 (c) to conform the wording to other changes made that delete use of the term "redemption of storage credits."

Response: We agree with the suggestions from several State agencies, a water authority, and a water district, and have modified this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The revised wording specifies that, after receiving a notice of a request for release of ICUA, the storing entity will certify to the Secretary that sufficient water has been stored for the Storing State to support the development of the requested quantity of ICUA_ The revised paragraph is designated §414.3(a)(10).

Comment: Amend § 414.3(d) to conform the wording to other changes that delete use of the term redemption of storage credits. Also, specify that ICUA is available only for use by the consuming entity.

Response: We agree with the suggestions from several State agencies, a water authority, and a water district and has modified this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The revised wording substitutes the term "intentionally *created* unused apportionment" ("ICUA") for the less definitive term "redemption of storage credits." In addition, the revised rule clarifies that ICUA will be released only for use by the consuming entity.

Comment: The rule should provide for a contractual commitment by the Secretary to release to a consuming entity ICUA that exists as a consequence of implementation of the Interstate Storage Agreement.

Response: We modified the rule in § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. Sections 414.3(a) (12) through 414.3(a) (15) provide, among other things, that the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA but only if all necessary actions are taken under the rule, if all laws and executive orders have been complied with, and if the Secretary has first determined that ICUA has been developed or will be developed by a storing entity.

Comment: A Federal agency has commented as to whether actual storage of Colorado River water must take place in those instances where both storage and recovery take place in the same year.

Response: The rule does allow for the release and delivery of ICUA in the same year in which it is developed. Consistent with the laws of the storing state, if recovery and development occur in the same year, and section 414.3(0 (Anticipatory Release of ICUA) is invoked, the Secretary will not require actual storage of water subsequent to the release of ICUA.

Comments Concerning § 414.4-Reporting Requirements and Accounting Under Storage and Interstate Release Agreements

Comment: Amend 5414.4 to provide more flexibility in the reporting date and to clarify the intent that water stored under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") will be recovered and used in the State in which water will be stored and it will be ICUA water rather than credits that the Secretary will release under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). The language should reference the Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") that establish the basis for the accounting for the water to be released by the Secretary for use in the Consuming State.

Response: We agree with this suggestion from several State agencies, a water authority, and a water district, and have revised this rule to more clearly describe the intent of the Storage and Interstate Release Agreements. The reporting date was made more flexible by allowing the date to be agreed upon by the parties to the Storage and Interstate Release Agreement and specified in the Storage and Interstate Release Agreement. To be consistent with other changes made in this rule, this provision refers to the water stored under a Storage and Interstate Release Agreement as water that is available to the storing entity. The Secretary will account for water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The Secretary will release ICUA for use by a consuming entity when the provisions of this rule and the Storage and Interstate Release Agreement have been satisfied.

Comment: It is not clear how the "cut to the aquifer" or losses from storage or transportation are determined or if they are arbitrary or based on actual data. It is not clear whether this detail is specific to a State's regulation or the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement").

Response: A storing entity will determine how much stored water must remain in an aquifer based on the Storing State's applicable law and/or the policy of the authorized entity. In Arizona, that decision is based on State law which requires that 5 percent of water placed in offstream storage remain in the ground to replenish the aquifer. The authorized entity will determine, consistent with applicable State law, how much stored water can be recovered when that authorized entity decreases its diversions and consumptive use of Colorado River water in the future to develop ICUA that the Secretary will release for use by a consuming entity.

Comments Concerning ,§ 414.5-Water Quality

Comment: Modify § 414.5(a) to clarify that the interstate agreements referred to are Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements"). Clarify which water is being referred to and recognize the Secretary's responsibilities under the Colorado River Basin Salinity Control Act.

Response: We agree with these suggestions from several State agencies, a water authority, and a water district, and have modified § 414.5(a), This rule clarifies that the referenced agreements are Storage and Interstate Release Agreements. In addition, the last sentence of § 414.5(a) was modified to qualify that the United States has no obligation to construct or furnish water treatment facilities to maintain or improve water quality except as otherwise provided in relevant Federal law. Implementation of this rule will not modify the Secretary's responsibilities under the Colorado River Basin Salinity Control Act of June 24, 1974 (88 Stat. 266).

Comments Concerning § 414.6-Environmental Compliance and Funding of Federal Costs

Comment: Modify § 414.6(b) to clarify that the interstate agreements referred to are Interstate Storage Agreements (now termed "Storage and Interstate Release Agreements") and that the costs incurred by the United States in evaluating, processing, and approving an Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement") will be funded by the parties to that agreement.

Response: We agree with these suggestions from several State agencies, a water authority, and a water district, and have modified § 414.6(b) to require that the authorized entities that are parties to a Storage and Interstate Release Agreement must fund the United States costs of considering, participating in, and administering that agreement.

Public Comments on DPEA and Responses

The following is a discussion of the comments received on the DPEA and our responses. This section includes comments on the scope of the DPEA, Secretarial discretion, adequacy of the environmental assessment, potential effects on plants and wildlife, water available for instream flows and habitat enhancement, concerns over deliveries to Mexico, efficiency improvements, storage alternatives, consultations, sunset clause, economic impacts of the rule, effects on ground water storage, and general comments.

Scope of the DPEA

Comment: The description of proposed interstate transactions in the draft programmatic environmental assessment is overly broad and the draft environmental assessment is therefore unnecessarily broad in its scope.

Response: We recognize, from comments on the proposed rule and DPEA, that prospective transactions are not described the way prospective authorized entities will intend them to work. Colorado River water stored offstream under a Storage and Interstate Release Agreement will be available for use in the Storing State. When a consuming entity requests water stored under a Storage and Interstate Release Agreement, it will receive ICUA, not storage credits. The storing entity will take actions to reduce its State's consumptive use of Colorado River water, thereby developing ICUA. When the Secretary is satisfied that ICUA has been or will be developed, an equivalent quantity of ICUA will be released by the Secretary for use by the consuming entity. Based on a reformulation of the prospective transactions that may take place under the rule, we believe that the final programmatic environmental assessment (FPEA) is appropriate.

Secretarial Discretion

Comment: Several respondents commented that the rule should not be finalized or surplus water stored offstream before the Department clarifies exactly what discretion the Secretary has in providing water for habitat enhancement and how the proposed rule would affect that discretion.

Response: In the Lower Colorado River area (LCR), the Decree apportions surplus among the Lower Division States as follows: 50 percent to California, 46 percent to Arizona, and 4 percent to Nevada. Entities with surplus contracts are currently using surplus and may store it offstream for intrastate use without the proposed Rule. We recognize that the Secretary's management of the LCR to accommodate endangered and sensitive species and their critical habitat is being reviewed as part of the MSCP. FWS developed a Reasonable and Prudent Alternative (RPA) in the Biological and Conference Opinion (BCO) for the current and projected routine operations and maintenance of the LCR. The RPA contains a number of provisions, one of which, 13(a), addresses the type and extent of the Secretary's discretionary action flexibility for all operations and maintenance activities on the Colorado River. Reclamation has provided a summary of its discretion to FWS. Reclamation complied with RPA provision 13(b) by providing a report to FWS on December 30, 1998, that identifies opportunities to increase the Secretary's discretion in Colorado River operations in order to provide water for fish and wildlife purposes. We believe that this rule can be implemented without compromising the MSCP process.

Adequacy of the Environmental Assessment

Comment: The level of environmental compliance proposed by Reclamation is inadequate and Reclamation should complete a programmatic EIS on the proposed rule and the entire operation of the Colorado River.

Response: Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses on General Issues.

Potential Effects on Plants and Wildlife

Comment: Compliance with the ESA for the proposed rule was not accomplished through the biological opinions for Central Arizona Project (CAP) or Lower Colorado River Operations and Maintenance Activity and Reclamation cannot defer them until a later date.

Response: We do not agree with this view expressed by several environmental groups. Reclamation has prepared a biological assessment (BA) for the proposed rule and entered into informal consultation with FWS. Please refer to the response to the following comment for more details about those consultations. Reclamation has incorporated by reference into its BA for the proposed rule the 1996 Biological Assessment for Description and Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River (LCRBA). The LCRBA analyzed the potential effects to listed species and designated critical habitat from current and projected routine LCR operations and maintenance where Reclamation has discretionary involvement or control. Reclamation also incorporated by reference FWS's 1997 BCO based on the LCRBA. These documents provide the baseline for current and projected routine LCR operations. More information on the BA prepared for this rule is contained in the next few responses.

The BCO and prior consultations with FWS for physical facilities and water delivery contracts with the Central Arizona Water Conservation District and Southern Nevada Water Authority cover the effects of both mainstream and offstream areas that would be involved in the scope of proposed actions under the rule.

Comment: The offstream storage and retrieval of water under the proposed rule is likely to have adverse direct, indirect, and cumulative effects on wildlife and critical habitat, particularly for threatened and endangered species. *Response:* We do not agree with the view by several environmental groups that proposed actions under the proposed rule will adversely affect threatened and endangered species and critical habitat. Reclamation has met with FWS and engaged in informal consultations under the ESA. In the course of those consultations, Reclamation prepared a BA that analyzed the potential effects of operations under the proposed rule on listed species and designated habitat in the LCR action area. This analysis was based upon the most likely storage and retrieval scenarios of water from Lakes Mead or Havasu and associated river reaches to obtain ICUA under the proposed rule. At the request of FWS, several worst case scenarios were formulated by Reclamation for purposes of comparison with Colorado River operations that are most likely to occur under the proposed rule. These worst case scenarios were given detailed analysis and discussed with FWS but were later eliminated because they are not realistic and will not be allowed under proposed Storage and Interstate Release Agreements.

The BA analyzed several scenarios, one of which was a proposed action in which 1.2 maf would be stored in Arizona under a Storage and Interstate Release Agreement to allow an authorized entity in Nevada to meet its future water needs. Maximum conveyance capacity expected to be made available on the CAP to store water for interstate water transactions is 200 kaf/year. An authorized entity in Nevada will make future diversions of water from Lake Mead, in addition to Nevada's normal basic and surplus apportionments, to use ICUA released by the Secretary. This additional diversion of ICUA will be limited, under Arizona law, to a maximum of 100 kaf in any year. The BA analyzed the effects of this and other scenarios for storage of Colorado River water and future release of ICUA on listed species and their designated habitat. Effects to each species were determined for the most likely and low probability case scenarios. Habitat requirements for breeding, nesting, and foraging of some species are not dependent on the LCR. Fluctuations in water surface elevations associated with most likely and low probability storage and retrieval scenarios on reservoirs and riverine reaches on the LCR are very small and are not likely to adversely affect bonytail chub, razorback sucker, Yuma clapper rail, or southwestern willow flycatcher. Based upon the available information regarding the critical habitats for the razorback sucker and bonytail chub, storage and release of ICUA under this rule will not adversely modify critical habitat for these fish species. Other listed and sensitive species will not be affected by implementation of the rule. Reclamation did not consult with FWS on species in Mexico because the United States has no authority or discretion regarding Mexico's use of its treaty water or flood control releases.

Reclamation has notified the National Marine Fisheries Service that a section 7 consultation for Mexican species under its administration is not required.

Water Available for Instream Flows and Habitat Enhancement

Comment: Concern was expressed that Colorado River stream flows downstream from Lake Mead would first increase when water is put into storage in Arizona and then decrease in the future as more water is diverted from Lake Mead when Nevada recovers stored water.

Response: No significant changes are expected in stream flows downstream from Lake Mead as a result of implementation of a Storage and Interstate Release Agreement between Arizona and Nevada under the rule. The Biological Assessment for this rule evaluated the effects of storage of 100 and 200 kaf/year of Colorado River water in Arizona and subsequent diversion in a later year of up to 100 kaf by Nevada from Lake Mead. Very small changes in water surface elevations would occur in the riverine and reservoir areas below Lake Mead. The largest increase or decrease in average monthly water surface elevation when storing or using water was 0.12 feet. These changes fall within the range of increases and decreases in water surface elevations below Lake Mead and Hoover Dam under current river operations.

Concerns over Deliveries to Mexico

Comment: The DPEA states that a minor reduction will occur in the quantity of surplus water available for delivery to Mexico over the long term without explaining what a minor reduction is or what studies have been done to quantify this.

Response: Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses on General Issues.

Comment: Offstream storage of surplus water will decrease the likelihood that water from flood control releases will reach the Gulf of California, thereby reducing the quantity of water that otherwise would be available for environmental restoration in the delta.

Response: Flood control releases are projected to average 788 kaf/year during the period 1999-2015. Offstream storage could decrease flood control releases reaching Mexico by an average of 23 kaf/year during this time. The probability of occurrence of flood control releases could decrease by 0.83 percent. These decreases fall within the range of flood control projections previously consulted on in the 1996 Biological Assessment of Operations, Maintenance, and Sensitive Species of the Lower Colorado River.

Please refer to the previous discussion of adequacy of the environmental assessment under the Environmental Concerns section of the Public Comments on Proposed Rule and Responses to General Issues.

Efficiency Improvements

Comment: Efficiency improvements in river management and the storage of Colorado River water in underground aquifers mean less water is available for environmental purposes, such as the riparian and aquatic ecosystems of the river, including the river and delta region in Mexico.

Response: Please refer to the previous discussion of efficiency improvements under Public Comments on Proposed Rule and Responses on General Issues.

Storage Alternatives

Comment: It is not clear what storage options are available under the rule, or how the rule would apply if there are changes in Arizona's laws or if California or Nevada enact conflicting laws.

Response: We have modified this rule in response to comments from several State agencies, a water district, and a water authority. This rule now provides in § 414.3(a) (2) and § 414.6(a) (3), respectively, for the storage of basic or surplus apportionment of the Storing State, not otherwise put to use by entitlement holders within the Storing State, or storage of the unused basic or surplus apportionment of the Consuming State. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the rule provides that the Secretary will make that water available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders. The rule has been drafted to apply uniformly to all three Lower Division States and the Department will not speculate about potential changes in Arizona's laws or whether California or Nevada may enact conflicting laws.

Comment: Banking in Lake Mead is illegal and it should not be listed as an alternative to the rule.

Response: We do not agree with the comment from a State agency that banking in Lake Mead is illegal. Moreover, under NEPA, Reclamation is charged with the responsibility to analyze reasonable alternatives, and the Department believes that it has appropriately complied with NEPA in this regard.

Comment: The DPEA misstates Arizona law with regard to the ability to create ICUA during a shortage year. Response: We agree with the comment from a State agency that the statement in the DPEA that "Interstate recovery of storage credits in Arizona for California and Nevada will not be allowed in a shortage year" is not accurate. The FPEA has been revised to clarify that AWBA has discretion to decide whether it is in Arizona's best interests to enter into a Storage and Interstate Release Agreement that would require decreased diversions of mainstream water by Arizona during years when the Secretary has declared a shortage on the Colorado River.

Consultations

Comment: The requirement for consultation under the Fish and Wildlife Coordination Act is broader than described and consultation is required with the State wildlife agencies on an equal footing with FWS.

Response: We do not agree with this comment from a State agency that Reclamation is required to consult with State wildlife agencies. Reclamation's responsibility under the Fish and Wildlife Coordination Act is to coordinate with FWS who in turn is expected to interface and represent fish and wildlife concerns based on, among other things, coordination with State game and fish agencies. In addition, the Fish and Wildlife Coordination Act requirements will be met through both ESA and NEPA consultations. The Fish and Wildlife Coordination Act requires Reclamation to consider fish and wildlife resource needs in operation and management of water projects.

Sunset Clause

Comment: The need for a permanent rule was questioned and it was suggested that the rule should have a termination date, such as the end of the time that storage is anticipated. It was suggested that a sunset date will allow the Department an opportunity to do a programmatic reevaluation of how the rule is being used.

Response: We do not agree with the suggestion from a Federal agency that there should be a sunset date. Under this rule, a consuming entity will be able to enter into Storage and Interstate Release Agreements and pay for storage of water that the Storing State will use in the future when the consuming entity calls for ICUA. However, there is no way to accurately predict the future and unanticipated changes in the rate of population growth or the occurrence of droughts or surplus conditions will affect how much water can be stored or when ICUA will be needed. The parties to a Storage and Interstate Release Agreement would not agree to subject any water already in storage to new terms and conditions under new rules. A consuming entity that invests significant sums of money into funding water storage in a Storing State is not likely to agree to subject itself to limited term storage or revised terms and conditions for the right to receive ICUA under an already signed Storage and Interstate Release Agreement. The storage and retrieval period between Arizona and Nevada is projected to run from years 1999 to 2030 and may run longer if both California and Nevada enter into Storage and Interstate Release Agreements with Arizona. Under Arizona law no more than a total of 100 kaf of water stored in Arizona may be retrieved by California and Nevada in any given year. If Nevada is limited to retrieving a maximum of 50 kaf of ICUA from Arizona because California is also retrieving ICUA, the water stored under a Storage and Interstate Release Agreement could be retrieved at this rate beyond the year 2030.

Economic Impacts of the Rule

Comment: Some respondents commented that the proposed rule may impact the southern California water rates if less water that is apportioned to but unused by Arizona and Nevada is made available to California.

Response: Please refer to the previous discussion of potential economic impacts of the rule on southern California water rates that is included in the discussion of economic impacts of this rule under Public Comments on Proposed Rule and Responses on General Issues.

Comment: The DPEA provides little information regarding potential environmental justice concerns regarding minority and low-income communities, such as Indian tribes, communities along the Mexican border, and communities near the Gulf of California.

Response: We have reevaluated the section of the DPEA on environmental justice and has included additional analysis. Based on this additional analysis, we do not find that this rule will have an effect on minority or low-income communities. As discussed in previous responses, this rule is not intended as a mechanism to compensate tribes.

Because Mexico is a sovereign nation, we have no control over how Colorado River water is used once it reaches the international border. Thus while we have determined that there may be minimal effects of this rule on flood control deliveries to the international border, we cannot determine the potential effects that any potential reduction in the deliveries of flood control water may have within the Republic of Mexico.

Effects on Ground Water Storage

Comment: Some respondents, including Indian tribes, commented that the rule would result in a net loss in ground water over time to "indirect storage" and that this is a significant indirect effect of the rule but the DPEA shows no analysis of this effect.

Response: We do not agree that actions under this rule will result in a loss of ground water to indirect storage. The method by which Colorado River water is stored by indirect storage allows water to remain in the ground in lieu of being pumped. When Arizona is the Storing State, the development of ICUA is limited to only 95 percent of the water previously stored under a Storage and Interstate Release Agreement. Therefore, the ground water will gain by 5 percent of the water that would have been pumped anyway if it were left in the ground through in lieu storage actions. Further, although Arizona law currently does not allow the development of ICUA by *any* means other than pumping water that was stored under a Storage and Interstate Release Agreement, this rule allows additional flexibility. If Arizona changes its laws or policy in the future to allow other means of developing ICUA, it is possible that the alternative means could help preserve Arizona's ground water. Finally, as stated previously, this rule allows Colorado River entitlement holders in the Storing State the option to use the water previously stored under a Storage and Interstate Release Agreement or other means consistent with Storing State law to develop ICUA.

Comment.' Reclamation should clarify how the rule fits within the regulatory framework for ground water protection in each State, as well as the federal role in ground water protection. The preamble to the proposed rule contains a statement that, "Water quality will be monitored by the Environmental Protection Agency . . ." It is not clear to what extent Reclamation expects the Environmental Protection Agency (EPA) to be involved in offstream storage authorized under the rule.

Response: We do not anticipate a need for EPA to evaluate data collected through any offstream storage of Colorado River water. The purpose of the statement was to declare that the Department, and more specifically Reclamation, does not have the responsibility to regulate ground water quality.

General Comments

Comment: There were a number of editorial comments on the DPEA that suggested clarification or additional explanation on various points.

Response: We have reviewed and considered the comments and has adopted many of the suggestions into the text of the FPEA. In addition, the previously mentioned informal consultations between Reclamation and FWS resulted in Reclamation's incorporation of numerous suggestions made by FWS into the BA and FPEA.

Public Comments on Definition of Authorized Entity and Several Other Technical Matters and Responses

As a result of receiving differing comments on the definition of authorized entity and several other technical matters, the Department reopened the comment period on September 21, 1998 (63 FR 50183) for a 30-day period ending October 21, 1998. We asked interested parties to provide comments on three specific questions:

Question 1: Should the definition of "authorized entity" be revised to clarify that an authorized entity, including a water bank, must hold an entitlement to Colorado River water in order to ensure consistency with the Law of the River, including specifically Section 5 of the BCPA as interpreted by the Decree?

Question 2: Should an approved Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement) and a contract under Section 5 of the BCPA be combined into one document, thus making the parties entitlement holders upon execution of the agreement?

Question 3: If not combined, should the Interstate Storage Agreement (now termed a Storage and Interstate Release Agreement) and any separate Section 5 contract (or amendments to an existing contract) be processed and approved simultaneously to eliminate duplication of any administrative and compliance procedures?

The Department received 10 letters from 11 respondents during the reopened comment period. The respondents included three State agencies, three water districts, one water authority, one water users association, and three environmental organizations. We reviewed and analyzed all pertinent comments and revised the rule based on these comments. Four respondents, including one water users association and three environmental organizations, did not address the issues on which comments were solicited during the reopened comment period. One water users association resubmitted its comments from the original comment period. Three environmental organizations reiterated the same environmental concerns addressed in their respective responses in the original comment period. Two respondents jointly submitted a report that addresses potential effects of water flows from the United States on the riparian and marine ecosystems of the Colorado River delta in Mexico.

The remaining seven respondents provided comments on issues pertinent to the reopened comment period, although one State agency and one water district also resubmitted their respective comments from the original comment period.

The following is a discussion of the comments received on the issues pertinent to the reopened comment period and our responses.

Comments on Question 1

Comment: One State agency and two water districts cite the BCPA and the Decree to support their view that an authorized entity must have a contract with the Secretary. Two State agencies, one water district, and one water authority commented that an authorized entity need not be an entitlement holder to store water and make it available to a Consuming State under an Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). The latter group recognizes that the BCPA and the Decree require all diversions of Colorado River water from the mainstream to be based on an entitlement. However, these respondents believe there is no statutory requirement for the authorized entity to have a direct contract with the Secretary in order to fulfill its responsibilities to store its own State's unused apportionment. Under their reasoning, the authorized entity can arrange for storage and ensure the availability of unused apportionment in the future through existing contractual arrangements with

other parties that have entitlements through contracts with the Secretary.

Response: With the exception of Federal and tribal rights identified in Article II(D) of the Decree, all diversions of water from the Colorado River for use within the Lower Division States require a contract with the Secretary. This is specified in Section 5 of the BCPA and confirmed by the Decree in *Arizona v. California.* Under this rule diversions of Colorado River water will occur in two circumstances. The first is when water is taken from the river and stored off-stream by the storing entity and the second is when ICUA has been developed and that water is released by the Secretary for use by the consuming entity.

For authorized entities that do not hold a Federal or tribal entitlement recognized in Article II(D) of the Decree, the rule allows for the storage of Colorado River water either through a direct contract with the Secretary or through a valid subcontract with an entitlement holder. For the release or diversion of ICUA to the consuming entity, the Storage and Interstate Release Agreement, to which the Secretary will be a party, satisfies the Section 5 requirement.

Comments on Question 2

Comment: One State agency and one water district believe that sufficient statutory and contractual authorities exist to allow the authorized entity to take water for banking purposes that otherwise would be unused in that State. These parties believe the authorized entity does not need to hold its own entitlement because sufficient legal authority already exists under applicable laws and contracts. The State agency states that not all end users of Colorado River water are required to have entitlements or contracts with the Secretary. The State agency further contends that the Colorado River Basin Project Act (43 U.S.C. 1524(b)] makes a direct contract between the Secretary and end-users of Colorado River water in Arizona discretionary.

Response: The Department recognizes in new 5414.3(e) that storage of Article II(D) water by Federal or tribal entitlement holders or existing contracts may allow for the delivery of water under this rule. These include direct contracts between authorized entities and the Secretary. These also include subcontracts between authorized entities and an entitlement holder that has been authorized by the Secretary to enter into subcontracts for the delivery of Colorado River water. Authorized entities that are Federal or tribal entitlement holders identified in Article II(D) of the Decree are not subject to the Section 5 contract requirement in the Decree. Section 414.3(e) also provides that the Storage and Interstate Release Agreement, to which the Secretary is a party, can be a water delivery contract. We agree that when existing contracts or valid subcontracts provide for delivery of Colorado River water under this rule, there is no need to combine these contracts with the Storage and Interstate Release Agreement.

Comment: Another State agency and one water authority, in a joint response, believe an additional contract, beyond the contract necessary to fulfill the requirements of Section 5 of the BCPA, is necessary with the Secretary for the release of water based on the development of ICUA by a storing entity. However, those parties do not see a need for new and additional Section 5 contracts beyond those that now exist.

Response: The Department modified the rule in § 414.3(a) to provide that the Secretary will be a party to Storage and Interstate Release Agreements. Sections 414.3(a)(12) through 414.3(a) (15) provide, among other things, that the Secretary will commit in the Storage and Interstate Release Agreement to release ICUA but only if all necessary actions are taken under the rule, if all laws and executive orders have been complied with, and if the Secretary has first determined that ICUA has been developed or will be developed by a storing entity.

Comment: One State agency and two water districts commented that whether or not the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") and Section 5 contract are combined is discretionary and that this should be determined by the particular situation.

Response: We have modified § 414.3(a) to provide that the Secretary will be a party to the Storage and Interstate Release Agreement. The Storage and Interstate Release Agreement can serve as a water delivery contract within the meaning of Section 5 of the BCPA. We recognize in § 414.3(e) that, in certain circumstances, existing contracts or subcontracts can satisfy the requirements of Section 5 for the delivery of water under a Storage and Interstate Release Agreement. In such circumstances, the rule does not anticipate the need for the execution of any further Section 5 contracts in order to implement a Storage and Interstate Release Agreement. Storage of water by authorized entities that hold Article II(D) of the Decree entitlements will not be subject to a Section 5 contract requirement.

Comment: One water district suggested that while there is no legal requirement for the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") and Section 5 contract to be combined, it was suggested that such an action would have the effect of making the Secretary a party to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement"). It was asserted that making the Secretary party to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") may give the authorized entities a greater sense of security that future obligations will be performed.

Response: The Department recognizes in new § 414.3(e) that existing contracts may allow for the delivery of water under this rule. These include direct contracts between authorized entities and the Secretary. These also include subcontracts between authorized entities and an entitlement holder that has been authorized by the Secretary to enter into subcontracts for the delivery of Colorado River water. Section 414.3(e) also provides that the Storage and Interstate Release Agreement, to which the Secretary is a party, can serve as a water delivery contract. We agree that when existing contracts or valid subcontracts provide for delivery of Colorado River water under this rule, there is no need to combine these contracts with the Storage and Interstate Release Agreement.

Comment: Another water district stated that if one of the parties to the Interstate Storage Agreement (now termed a "Storage and Interstate Release Agreement") already holds an entitlement for delivery of Colorado River water under a BCPA Section 5 contract, a new or amended water delivery contract may not be necessary.

Response: The Department recognizes in the new § 414.3(e) that in certain circumstances existing contracts may satisfy the Section 5 requirement of the BCPA so that additional Section 5 authority would be unnecessary to perform activities under a Storage and Interstate Release Agreement. Section 5 authority is also unnecessary for the storage of Article II(D) of the Decree water by Federal or tribal entitlement holders. In circumstances where additional Section 5 authority is unnecessary, the Storage and Interstate Release Agreement would only cover the specific details of a transaction between the Secretary and the other parties to the Storage and Interstate Release Agreement.

Comments on Question 3

Comment: One State agency and one water district stated that sufficient statutory and contractual authorities already exist under applicable laws and contracts to allow the authorized entity to take water for banking purposes. Therefore there would be no need for a new or amended contract. Another State agency and one water authority believe that an additional contract is necessary with the Secretary to ensure the Secretary's commitment to release water based on the development of ICUA by a storing entity. That contract could be executed concurrently with an Interstate Storage Agreement. However, as noted under comments on Question 2, those parties do not see a need for new and additional Section 5 contracts beyond those that now exist. One State agency responded that if there are two separate agreements, they should be processed, reviewed, and approved simultaneously. The two water districts commented that any necessary Section 5 contract, whether or not combined with an Interstate Storage Agreement, should be processed and approved simultaneously with the Interstate Storage Agreement.

Response: Question 3 asked whether Storage and Interstate Release Agreements and Section 5 contracts, if not combined, should be processed simultaneously. We have modified the rule in § 414.3(a) to provide that the Secretary will be a party to a Storage and Interstate Release Agreement. The Department also recognizes in § 414.3(e) that, in certain circumstances, existing contracts or subcontracts satisfy the requirements of Section 5 for the delivery of water under a Storage and Interstate Release Agreement. The rule does not anticipate the need for the execution of any further Section 5 contracts in order to implement a Storage and Interstate Release Agreement. Question 3 is moot in light of these modifications to the rule. Comments by the parties in response to Question 3 primarily address issues raised by Questions 1 and 2 and are responded to above.

V. **Procedural Matters**

- Environmental Compliance
- Paperwork Reduction Act
- Regulatory Flexibility Act
- Small Business Regulatory Enforcement Fairness Act (SBREFA)
- Unfunded Mandates Reform Act of 1995
- Executive Order 12612, Federalism Assessment
- Executive Order 12630, Takings Implications Analysis
- Executive Order 12866, Regulatory Planning and Review
- Executive Order 12988, Civil Justice Reform

Environmental Compliance

We prepared a DPEA and placed it on file in the Reclamation Administrative Record. We received comments on the DPEA (discussed above in III. Responses to Comments), and carefully considered those comments in preparing the final programmatic environmental assessment (FPEA). We have accepted many of these comments and incorporated them into the FPEA, which is on file in the Reclamation Administrative Record. Based on the FPEA, we have determined that a Finding of No Significant Impact is warranted.

We have also, under the ESA, consulted with FWS on potential impacts of this rule on listed species and designated habitat. Based on the analysis contained in the BA that we prepared for the rule, we have determined that operations under this rule are not likely to adversely affect listed species or designated habitat in the action area. FWS has concurred with this finding. We have also determined that we have no Section 7 obligations for species within Mexico due to our inability to control the use of water once it reaches Mexico.

Compliance with NEPA, the ESA, and other relevant statutes, laws, and executive orders will be completed for future Federal actions taken under this rule to ensure that any action authorized or carried out by the Secretary does not jeopardize the continued existence of any threatened or endangered species, does not adversely modify or destroy critical habitat, and is analyzed by an appropriate environmental document. Consultation and coordination between Reclamation, FWS, other agencies, and interested parties will be completed on a case-by-case basis.

Paperwork Reduction Act

This rule is geographically limited to the States of Arizona, California, and Nevada. The collection of information contained in the rule covers storing entities that would store Colorado River water off the mainstream of the Colorado River. The information we would collect would be compiled by these storing entities in the course of their normal business, and the annual reports to the Secretary will not impose any significant time or cost burden. We will submit the information collection requirements in this rule to the Office of Management and Budget for approval as required by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. We will not require collection of this information until the Office of Management and Budget has given its approval.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).* This rule will not impose any direct cost on small entities. Financial costs associated with the development and release of intentionally created unused apportionment will be borne by the parties who voluntarily enter into offstream storage and release agreements. A benefit-cost analysis was completed and concludes that this rule does not impose significant or unique impact upon small governments (including Indian communities), small entities such as water purveyors, water districts, or associations, or individual entitlement holders. From a financial perspective, since the rule may provide an opportunity for authorized entities in the Lower Division States to secure additional supplies of Colorado River water, Colorado River water users may experience a cost savings. The rule will not affect any Colorado River entitlement holder's right to use its full water entitlement. Further, in times of shortage on the Colorado River, numerous small water users with senior water rights, which are determined by an earlier priority date, will retain their seniority and will be served before less senior users regardless of size.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(1) Does not have an annual effect on the economy of $100 million or more. The Department prepared a benefit-cost analysis, which estimated that this rule would cause net economic benefits on a State and regional level using different water supply models and discount rates. Under a conservative water supply scenario characterized by 19 years of normal conditions on the Colorado River and one surplus year, discounted net economic benefits at the regional level ranged from $12.8 to $61.2 million at 5.75 per cent and $9.5 to $47.7 million at 8.27 per cent. Under a water supply scenario characterized by 10 years of surplus conditions on the Colorado River, the net economic benefits range from $550,255 to $4.8 million at 5.75 per cent and $350,789 to $3.1 million at 8.27 per cent. Under the scenario characterized by 10 surplus

years, demand for banked water is relatively low because water users in the Lower Division States can meet most of their water needs with diversions from the mainstream within the basic and surplus apportionments for use within those States.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

This rule facilitates the creation of an additional alternative for water agencies to secure water supplies. However, entering into Storage and Interstate Release Agreements for the offstream storage of Colorado River water and the release of ICUA provided for in this rule is voluntary. Should the costs of the procedures to facilitate these transactions, provided for in the rule, be greater than the cost of other alternative water supplies, the States would probably select the cheaper alternatives.

This rule may create an opportunity for the total cost of alternative water supplies to decrease, thereby reducing the cost burden on all water users in southern California.

Water users in southern Nevada are just now approaching use of the entire 300 kaf basic annual apportionment of Colorado River for use in Nevada. Like California, Nevada will also need alternative water supplies to satisfy the increasing demands of economic development and population growth. The cost of securing alternative supplies will be greater than the cost of obtaining Colorado River water under the State's basic or surplus apportionment. This rule may provide an opportunity for Colorado River water users in Nevada to experience a cost savings in securing additional supplies of Colorado River water.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is facilitating voluntary water transactions that may confer benefits on a national basis in many economic sectors.

(i) Voluntary water transactions can promote economic efficiency gains. These gains accrue to the parties in a given transaction and to the wider regional and national economy. The gains result due to greater flexibility in how and where water is used.

(ii) Voluntary water transactions offer a cost effective way to increase water supplies without constructing new mainstream facilities such as dams.

(iii) Voluntary water transactions may stimulate investment and development in conservation technology that is currently economically infeasible given the returns to water in its present use.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The range of benefits and costs associated with the rule are constrained because the amount of water that can be released under an offstream storage agreement in any one year is constrained by State law and immediate demand. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule provides a framework under which authorized entities could voluntarily store Colorado River water offstream for future interstate use. The publication of this rule does not authorize specific activities, and will not impose costs on any State, local, or tribal government, or the private sector. A statement (benefit-cost analysis) containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.)* has been prepared and is summarized below in the section relating to Executive Order 12866.

We received comments on the benefit-cost analysis that were editorial in nature or asked for clarification or revision of information in the analysis. We accepted approximately 85 percent of the comments and revised the text or footnotes as necessary to include those changes where requested.

The benefit-cost analysis concluded that this rule does not impose significant or unique impact upon small governments (including Indian communities), small entities such as water districts, or individual entitlement holders. The rule will not affect the priority of water use on the Colorado River. Therefore benefits received by water users, regardless of size, associated with the right to divert Colorado River water will remain. Costs of storage and release of unused apportionment water will be borne by authorized entities in the Storing State and the Consuming State who voluntarily enter into storage and release agreements. All Colorado River water users may experience a decrease in water costs since the rule will enable authorized entities in the Lower Division States to secure additional water supplies. The adoption of 43 CFR part 414 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612, Federalism Assessment

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required. This rule does not alter the relationship between the Federal Government and the States under the Decree nor does it alter the distribution of power and responsibilities among the various levels of government.

Executive Order 12630, Takings Implications Analysis

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. This rule does not represent a government action capable of interfering with constitutionally protected property rights. This rule does not impose additional fiscal burdens on the public and would not result in physical invasion or occupancy of private property or substantially affect its value or use. This rule would not result in any Federal action that would place a restriction on a use of private property and does not affect a Colorado River water entitlement holder's right to use its full water entitlement. Under this rule, an authorized entity may store unused Colorado River water available from an entitlement holder's water rights only if the water right holder does not use or store that water on its own behalf. When the Storing State must reduce its diversions to develop ICUA, an entity that reduces its consumptive use of Colorado River water to develop that unused apportionment will do so voluntarily under an appropriate agreement. Therefore, the Department of the Interior has determined that this rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866, Regulatory Planning and Review

This rule is a significant regulatory action under section 3(1)(4) of Executive Order 12866 because it raises novel legal or policy issues. Executive Order 12866 requires an assessment of potential costs and benefits under section 6(a)(3). The Department's benefit-cost analysis determines that this rule does not impose significant or unique impacts upon small governments (including Indian communities), small entities such as water purveyors or associations, or even individual water entitlement holders.

California and Nevada are looking for alternative water supplies to satisfy the increasing demands of economic development and population growth. This rule may provide an opportunity for Colorado River water users in Nevada to experience a marginal cost savings in securing alternative supplies. Offstream storage of Colorado River water and making available ICUA are voluntary actions. Should the costs of the procedures in this rule to facilitate these transactions be greater than the costs of other alternative water supplies, California and Nevada would probably select the lower cost alternatives.

The benefit-cost analysis estimated net economic benefits of this rule on a State and regional level using different water supply models and discount rates. The different water supply models represent potential water supply conditions on the Colorado River that affect interstate demand for water from an Arizona water bank and the magnitude of economic benefits obtained from that water. The discount rates used in the analysis were 5.75 per cent (the average rate on municipal bonds in 1996, which is a rate faced by major water purveyors in California and Nevada) and 8.27 per cent (the prime rate in 1996, which more accurately represents the cost of money).

Under a conservative water supply scenario characterized by 19 years of normal conditions on the Colorado River and one surplus year, discounted net economic benefits at the regional level ranged from $12.8 to $61.2 million at 5.75 per cent and $9.5 to $47.7 million at 8.27 per cent. Under a water supply scenario characterized by 10 years of surplus conditions on the Colorado River, the net economic benefits range from $550,255 to $4.8 million at 5.75 per cent and $350,789 to $3.1 million at 8.27 per cent. Under the scenario characterized by 10 surplus years, demand for banked water is relatively low because water users in the Lower Division States can meet most of their water needs with diversions from the mainstream within the basic and surplus apportionments for use within those States.

We have placed the full analysis on file in the Reclamation Administrative Record at Bureau of Reclamation, Administrative Record, Lower Colorado Regional Office, P.O. Box 61470, Boulder City, NV 89006-1470, Attention: B000-4451.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

List of Subjects in 43 CFR Part 414

Environmental compliance, Public lands, Water bank program, Water resources, Water storage, Water supply, and Water quality.

Dated: October 26, 1999. Patricia J. Beneke, *Assistant Secretary—Water and Science.*

For the reasons stated in the preamble, the Bureau of Reclamation adds a new part 414 to title 43 of the Code of Federal Regulations as follows:

PART 414—OFFSTREAM STORAGE OF COLORADO RIVER WATER AND DEVELOPMENT AND RELEASE OF INTENTIONALLY CREATED UNUSED APPORTIONMENT IN THE LOWER DIVISION STATES

Sec.
Subpart A—Purposes and Definitions 414.1 Purpose.
414.2 Definitions of terms used in this part.
Subpart B—Storage and Literstate Release Agreements
414.3 Storage and Interstate Release Agreements.
414.4 Reporting Requirements and accounting under storage and interstate release agreements.
Subpart C—Water Quality and Environmental compliance
414.5 Water Quality.
414.6 Environmental Compliance and funding of Federal costs.

Authority: 5 U.S.C. 553; 43 U.S.C. 391, 485 and 617; 373 U.S. 546; 376 U.S. 340.

Subpart A—Purposes and Definitions

§414.1 Purpose.

(a) What this part does. This part establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements in the Lower Division States (Arizona, California, and Nevada) that would:

(1) Permit State-authorized entities to store Colorado River water offstream;

(2) Permit State-authorized entities to develop intentionally created unused apportionment (ICUA);

(3) Permit State-authorized entities to make ICUA available to the Secretary for release for use in another Lower Division State. This release may only take place in accordance with the Secretary's obligations under Federal law and may occur in either the year of storage or in years subsequent to storage; and

(4) Allow only voluntary interstate water transactions. These water transactions can help to satisfy regional water demands by increasing the efficiency, flexibility, and certainty in Colorado River management in accordance with the Secretary's authority under Article II (B) (6) of the Decree entered March 9, 1964 (376 U.S. 340) in the case of *Arizona v. California,* (373 U.S. 546) (1963), as supplemented and amended.

(b) *What this part does not do.* This part does not:

(1) Affect any Colorado River water entitlement holder's right to use its full water entitlement;

(2) Address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities;

(3) Change or expand existing authorities under the body of law known as the 'Taw of the River';

(4) Change the apportionments made for use within individual States;

(5) Address intrastate storage or intrastate distribution of water;

(6) Preclude a Storing State from storing some of its unused apportionment in another Lower Division State if consistent with applicable State law; or

(7) Authorize any specific activities; the rule provides a framework only.

§ 414.2 Definitions of terms used in this part.

Authorized entity means:

(1) An entity in a Storing State which is expressly authorized pursuant to the laws of that State to enter into Storage and Interstate Release Agreements and develop ICUA ("storing entity"); or

(2) An entity in a Consuming State which has authority under the laws of that State to enter into Storage and Interstate Release Agreements and acquire the right to use ICUA ("consuming entity").

Basic apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary of the Interior, to satisfy 7.5 million acre-feet (mat) of annual consumptive use in the Lower Division States. The United States Supreme Court, in *Arizona v. California,* confirmed that the annual basic apportionment for the Lower Division States is 2.8 maf of consumptive use in the State of Arizona, 4.4 maf of consumptive use in the State of California, and 0.3 maf of consumptive use in the State of Nevada.

BCPA means the Boulder Canyon Project Act, authorized by the Act of Congress of December 21, 1928 (45 Stat. 1057).

Colorado River Basin means all of the drainage area of the Colorado River System and all other territory within the United States to which the waters of the Colorado River System shall be beneficially applied.

Colorado River System means that portion of the Colorado River and its tributaries within the United States.

Colorado River water means water in or withdrawn from the mainstream.

Consuming entity means an authorized entity in a Consuming State.

Consuming State means a Lower Division State where ICUA will be used.

Consumptive use means diversions from the Colorado River less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation.

(1) Consumptive use from the mainstream within the Lower Division States includes water drawn from the mainstream by underground pumping.

(2) The Mexican treaty obligation is set forth in the February 3, 1944, Water Treaty between Mexico and the United States, including supplements and associated Minutes of the International Boundary and Water Commission.

Decree means the decree entered March 9, 1964, by the Supreme Court in *Arizona v. California,* 373 U.S. 546 (1963), as supplemented or amended.

Entitlement means an authorization to beneficially use Colorado River water pursuant to:

(1) The Decree;

(2) A water delivery contract with the United States through the Secretary; or

(3) A reservation of water from the Secretary.

Intentionally created unused apportionment or ICUA means unused apportionment that is developed:

((1) Consistent with the laws of the Storing State;

(2) Solely as a result of, and would not exist except for, implementing a Storage and Interstate Release Agreement.

Lower Division States means the States of Arizona, California, and Nevada.

Mainstream means the main channel of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs behind dams on the main channel, and Senator Wash Reservoir off the main channel.

Offstream storage means storage in a surface reservoir off of the mainstream or in a ground water aquifer. Offstream storage includes indirect recharge when Colorado River water is exchanged for ground water that otherwise would have been pumped and consumed.

Secretary means the Secretary of the Interior or an authorized representative.

Storage and Interstate Release Agreement means an agreement, consistent with this part, between the Secretary and authorized entities in two or more Lower Division States that addresses the details of:

(1) Offstream storage of Colorado River water by a storing entity for future use within the Storing State;

(2) Subsequent development of ICUA by the storing entity, consistent with the laws of the Storing State;

(3) A request by the storing entity to the Secretary to release ICUA to the consuming entity;

(4) Release of ICUA by the Secretary to the consuming entity; and

(5) The inclusion of other entities that are determined by the Secretary and the storing entity and the consuming entity to be appropriate to the performance and enforcement of the agreement.

Storing entity means an authorized entity in a Storing State.

Storing State means a Lower Division State in which water is stored off the mainstream in accordance with a Storage and Interstate Release Agreement for future use in that State.

Surplus apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary, to satisfy in excess of 7.5 maf of annual consumptive use in the Lower Division States.

Unused apportionment means Colorado River water within a Lower Division State's basic or surplus apportionment, or both, which is not otherwise put to beneficial consumptive use during that year within that State.

Upper Division States means the States of Colorado, New Mexico, Utah, and Wyoming.

Water delivery contract means a contract between the Secretary and an entity for the delivery of Colorado River water in accordance with section 5 of the BCPA.

Subpart B—Storage and Interstate Release Agreements

§414.3 Storage and Interstate Release Agreements.

(a) Basic requirements for Storage and Interstate Release Agreements. Two or more authorized entities may enter into Storage and Interstate Release Agreements with the Secretary in accordance with paragraph (c) of this section. Each agreement must meet all of the requirements of this section.

(1) The agreement must specify the quantity of Colorado River water to be stored, the Lower Division State in which it is to be stored, the entity(ies) that will store the water, and the facility(ies) in which it will be stored.

(2) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Storing State. For water from the Storing State's apportionment to qualify as unused apportionment available for storage under this part, the water must first be offered to all entitlement holders within the Storing State for purposes other than interstate transactions under proposed Storage and Interstate Release Agreements.

(3) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Consuming State. If the water to be stored will be unused apportionment of the Consuming State, the agreement must acknowledge that any unused apportionment of the Consuming State may be made available from the Consuming State by the Secretary to the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the Secretary will make the unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders.

(4) The agreement must specify the maximum quantity of ICUA that will be developed and made available for release to the consuming entity.

(5) The agreement must specify that ICUA may not be requested by the consuming entity in a quantity that exceeds the quantity of water that had been stored under a Storage and Interstate Release Agreement in the Storing State.

(6) The agreement must specify a procedure to verify and account for the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement.

(7) The agreement must specify that, by a date certain, the consuming entity will:

(i) Notify the storing entity to develop a specific quantity of ICUA in the following calendar year;

(ii) Ask the Secretary to release that ICUA; and

(iii) Provide a copy of the notice or request to each Lower Division State.

(8) The agreement must specify that when the storing entity receives a request to develop a specific quantity of ICUA:

(i) It will ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the re quested quantity of ICUA; and

(ii) Any actions that the storing entity takes will be consistent with its State's laws.

(9) The agreement must include a description of:

(i) The actions the authorized entity will take to develop ICUA;

(ii) Potential actions to decrease the authorized entity's consumptive use of Colorado River water;

(iii) The means by which the development of the ICUA will be enforceable by the storing entity; and

(iv) The notice given to entitlement holders, including Indian tribes, of opportunities to participate in development of this ICUA.

(10) The agreement must specify that the storing entity will certify to the Secretary that ICUA has been or will be developed that otherwise would not have existed. The certification must:

(i) Identify the quantity, the means, and the entity by which ICUA has been or will be developed; and

(ii) Ask the Secretary to make the ICUA available to the consuming entity under Article II(B)(6) of the Decree and the Storage and Interstate Release Agreement.

(11) The agreement must specify a procedure for verifying development of the ICUA appropriate to the manner in which it is developed.

(12) The agreement must specify that the Secretary will release ICUA developed by the storing entity:

(i) In accordance with a request of the consuming entity;

(ii) In accordance with the terms of the Storage and Interstate Release Agreement;

(iii) Only for use by the consuming entity and not for use by other entitlement holders; and

(iv) In accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree and all other applicable laws and executive orders.

(13) The agreement must specify that ICUA shall be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity by reducing Colorado River water use within the Storing State.

(14) The agreement must specify that the Secretary will release ICUA only after the Secretary has determined that all necessary actions have been taken under this part.

(15) The agreement must specify that before releasing ICUA the Secretary must first determine that the storing entity:

(i) r Stored water in accordance with the Storage and Interstate Release Agreement in quantities sufficient to support the development of the ICUA e rested by the consuming entity; and

(ii) Stored water in accordance with the Storage and Interstate Release Agreement in quantities sufficient to support the development of the ICUA e rested by the consuming entity; and

(iii) Certified to the satisfaction of the Secretary that the quantity of ICUA requested by the consuming entity has been developed in that year or will be developed in that year under §' 414.3(f).

(16) The agreement must specify that the non-Federal parties to the Storage and Interstate Release Agreement will indemnify the United States, its employees, agents, subcontractors, successors, or assigns from loss or claim for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of the actions taken by the non-federal parties to the Storage and Interstate Release Agreement under this part.

(17) The agreement must specify the extent to which facilities constructed or financed by the United States will be used to store, convey, or distribute water associated with a Storage and Interstate Release Agreement.

(18) The agreement must include any other provisions that the parties deem ap ropriate.

((b) *How to address financial considerations.* The Secretary will not execute an agreement that has adverse impacts on the financial interests of the United States. Financial details between and among the non-Federal parties need not be included in the Storage and Interstate Release Agreement but instead can be the subject of separate agreements. The Secretary need not be a party to the separate agreements.

(c) How the Secretary will execute *storage and interstate release agreements.* The Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) may execute and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The Secretary will notify the public of his/her intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input. In considering whether to execute a Storage and Interstate Release Agreement, the Secretary may request, and the non-Federal parties must provide, any additional supporting data necessary to clearly set forth both the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction. The Secretary will also consider: applicable law and executive orders; applicable contracts; potential effects on trust resources; potential effects on entitlement holders, including Indian tribes; potential impacts on the Upper Division States; potential effects on third parties; potential environmental impacts and potential effects on threatened and endangered species; comments from interested parties, particularly parties who may be affected by the proposed action; comments from the State agencies responsible for consulting with the Secretary on matters related to the Colorado River; and other relevant factors, including the direct or indirect consequences of the proposed Storage and Interstate Release Agreement on the financial interests of the United States. Based on the consideration of the factors in this section, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

(d) *Assigning interests to* an *authorized entity.* Non-Federal parties to a Storage and Interstate Release Agreement may assign their interests in the Agreement to authorized entities. The assignment can be in whole or in part. The assignment can only be made if all parties to the agreement approve.

(e) *Requirement for contracts under the Boulder Canyon Project Act.* Release or diversion of Colorado River water for storage under this part must be supported by a water delivery contract with the Secretary in accordance with Section 5 of the BCPA. The only exception to this requirement is storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part also must be supported by a Section 5 water delivery contract.

(1) An authorized entity may satisfy the requirement of this section through a direct contract with the Secretary. An authorized entity also may satisfy the Section 5 requirement of the BCPA, for purposes of this part, through a valid subcontract with an entitlement holder that is authorized by the Secretary to subcontract for the delivery of all or a portion of its entitlement.

(2) For storing entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be stored, the Storage and Interstate Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.

(3) For consuming entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be released by the Secretary as ICUA, the Storage and Interstate Release Agreement will serve as the vehicle for satisfying

the Section 5 requirement for the release or diversion of that water.

(0 Anticipatory release of ICUA. The Secretary may release ICUA to a consuming entity before the actual development of ICUA by the storing entity if the storing entity certifies to the Secretary that ICUA will be developed during that same year that otherwise would not have existed.

(1) These anticipatory releases will only be made in the same year that the ICUA is developed.

(2) Before an anticipatory release, the Secretary must be satisfied that the storing entity will develop the necessary ICUA in the same year that the ICUA is to be released.

(g) Treaty obligations. Prior to executing any specific Storage and Interstate Release Agreements, the United States will consult with Mexico through the International Boundary and Water Commission under the boundary water treaties and other applicable international agreements in force between the two countries.

§414.4 Reporting requirements and accounting under Storage and Interstate Release Agreements.

(a) Annual report to the Secretary. Each storing entity will submit an annual report to the Secretary containing the material required by this section. The report will be due on a date to be agreed upon by the parties to the Storage and Interstate Release Agreement. The report must include:

(1) The quantity of water diverted and stored during the prior year under all Storage and Interstate Release Agreements; and

(2) The total quantity of stored water available to support the development of ICUA under each Storage and Interstate Release Agreement to which the storing entity is a party as of December 31 of the prior calendar year.

(b) *How the Secretary accounts for diverted and stored water.* The Secretary will account for water diverted and stored under Storage and Interstate Release Agreements in the records maintained under Article V of the Decree.

(1) The Secretary will account for the water that is diverted and stored by a storing entity as a consumptive use in the Storing State for the year in which it is stored.

(2) The Secretary will account for the diversion and consumptive use of ICUA by a consuming entity as a consumptive use in the Consuming State of unused apportionment under Article II(B)(6) of the Decree in the year the water is released in the same manner as any other unused apportionment taken by that State.

(3) The Secretary will maintain individual balances of the quantities of water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The appropriate balances will be reduced when ICUA is developed by the storing entity and released by the Secretary for use by a consuming entity.

Subpart C—Water Quality and Environmental Compliance

§ 414.5 Water quality.

(a) Water Quality is not guaranteed. The Secretary does not warrant the quality of water released or delivered under Storage and Interstate Release Agreements, and the United States will not be liable for damages of any kind resulting from water quality problems. The United States is not under any obligation to construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

(b) *Required water quality standards.* All entities, in diverting, using, and returning Colorado River water, must:

(1) Comply with all applicable water pollution laws and regulations of the United States, the Storing State, and the Consuming State; and

(2) Obtain all applicable permits or licenses from the appropriate Federal, State, or local authorities regarding water quality and water pollution matters.

§ 414.6 Environmental compliance and funding of Federal costs.

(a) *Ensuring environmental compliance.* The Secretary will complete environmental compliance documentation, compliance with the National Environmental Policy Act of 1969, as amended, and the Endangered Species Act of 1973, as amended; and will integrate the requirements of other statutes, laws, and executive orders as required for Federal actions to be taken under this part.

(b) *Responsibility for environmental compliance work.* Authorized entities seeking to enter into a Storage and Interstate Release Agreement under this part may prepare the appropriate documentation and compliance document for a proposed Federal action, such as execution of a proposed Storage and Interstate Release Agreement. The compliance documents must meet the standards set forth in Reclamation's national environmental policy guidance before they can be adopted.

(c) *Responsibility for funding of Federal* costs. All costs incurred by the United States in evaluating, processing, and/or executing a Storage and Interstate Release Agreement under this part must be funded in advance by the authorized entities that are party to that agreement.

[FR Doc. 99-28417 Filed 10-29 -99; 8:45 am]

BILLING CODE 4310-94-P

Agreement for Interstate Water Banking

AGREEMENT FOR INTERSTATE WATER BANKING

among

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

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

Recitals

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

B. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994 and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant to its contract issued under section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert Intentionally Created Unused Apportionment released by the Secretary for use within the State of Nevada pursuant to Art. II(B)(6) of the Decree in *Arizona v. California*, 376 U.S. 340, 343 (1964).

C. The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this Agreement to facilitate the banking of Colorado River water, the creation of Long-term Storage Credits and the establishment and maintenance of a long-term Storage Account for SNWA.

Article 1
Definitions, Fundamental Principles and Term

1.1. Definitions. For purposes of this Agreement for Interstate Water Banking, terms that are defined in Article I of the Decree in *Arizona v. California, 376* U.S. *340* (1964), terms that are defined in Arizona Revised Statutes (A.R.S.) Title 45, Chapter 3.1, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

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

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

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

1.1.4. "AWBA Plan of Operation" shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.

1.1.5. "Bureau of Reclamation" shall mean the United States Bureau of Reclamation, Lower Colorado Region.

1.1.6. "CAP" shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. *§* 1501 *at seq.,* and as operated under that certain Master Repayment Contract dated December 1, 1988, Contract No. 14-06-W-245 between CAWCD and the United States Bureau of Reclamation, as amended.

1.1.7. "CAWCD" shall mean the Central Arizona Water Conservation District.

1.1.8. "CRCN" shall mean the Colorado River Commission of Nevada.

1.1.9. "Decree" shall mean the Decree entered by the United States Supreme Court in the matter of *Arizona v. California,* 376 U.S. 340 (1964), as supplemented or amended.

1.1.10. "Excess CAP Water" shall mean CAP water that is available for distribution by CAWCD in accordance with ¶ 8.7(e) of the Master Repayment Contract or ¶ 5(d)(2) of the Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and Ultimate Judgement upon Satisfaction of Conditions, filed with the United States District Court on May 3, 2000, in *Central Arizona Water Conservation District v. United States, et al.,* No. CIV 95-625-TUC-WDB(EHC) and CIV 95-1720-PHX-EHC (consolidated), and in accordance with policies established by the CAWCD Board.

1.1.11. "ICUA" shall mean Intentionally Created Unused Apportionment as that term is defined in 43 C.F.R. § 414.2.

1.1.12. "Interstate Recovery Schedule" shall have the meaning defined in the Agreement for Development of Intentionally Created Unused Apportionment.

1.1.13. "Long-term Storage Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01(11).

1.1.14. "Master Repayment Contract" shall mean that Contract No. 14-06-W-245 dated December 1, 1988 between CAWCD and the United States Bureau of Reclamation, as amended.

1.1.15. "Secretary" shall mean the Secretary of the Interior for the United States, Department of the Interior.

1.1.16. "SNWA" shall mean the Southern Nevada Water Authority.

1.1.17. "SNWAICRCN" shall mean the Southern Nevada Water Authority and the Colorado River Commission of Nevada acting together in accordance with Subarticle 1.2.5 of this agreement.

1.1.18. "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR pursuant to subarticle 2.2.4 of this Agreement.

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

1.1.20. "Year" shall mean any calendar year after the execution of this agreement.

1.2. Fundamental Principles of this Agreement

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

1.2.2. Under the terms of this agreement, AWBA shall acquire and store mainstream Colorado River water in Arizona and thereby create Long-term Storage Credits to be held in the SNWA Interstate Account. AWBA shall recover the Long-term Storage Credits at a later date and exchange the recovered water with other Colorado River water users in Arizona to develop ICUA. The Secretary is required to release this ICUA for consumptive use within the State of Nevada pursuant to the Storage and Interstate Release Agreement entered into by the Secretary under the regulations adopted by the Secretary in 43 CFR Part 414. This Agreement is one part of a three part contractual relationship which also includes the Storage and Interstate Release Agreement and an Agreement for the Development of Intentionally Created Unused Apportionment. This Agreement is also dependent upon an Intergovernmental Agreement among AWBA, CAWCD, and ADWR, as amended, and a series of water storage agreements between AWBA and Storage Facility operators in the State of Arizona.

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

1.2.4. Water supply projections have indicated SNWA may require in excess of 1,200,000 acre feet of ICUA to assist in meeting future demands. SNWA desires the ability to build and draw upon a maximum balance of 1,200,000 acre feet of Long-term Storage Credits in the SNWA Interstate Account over the course of this Agreement.

1.2.4.1 Realization of this goal may be limited by the amount of Colorado River water available for interstate banking and the availability of Storage Facilities after the primary goals of Arizona water users and Arizona water management have been met.

1.2.4.2 To assist SNWA, AWBA agrees to use its best efforts to store an initial volume of 1,200,000 acre feet of water for SNWA under the terms of this Agreement if Arizona water needs and water management goals have been addressed. Nothing herein shall require AWBA to (i) seek a change in law; (ii) execute new contracts for Storage Facilities; or (iii) contract for the construction of new Storage Facilities, unless mutually agreed in the future consistent with the terms of this Agreement.

1.2.4.3 Nothing in this Agreement shall require AWBA to store any water for the benefit of SNWA unless the Storage and Interstate Release Agreement and the Agreement for the Development of Intentionally Created Unused Apportionment have been executed and are in full effect.

1.2.4.4 AWBA shall recognize priorities or preferences for the storage and recovery of water in Arizona established by written agreement between SNWA and Metropolitan Water District of Southern California.

1.2.4.5 AWBA recognizes that once Long-term Storage Credits have accrued to the benefit of SNWA in the SNWA Interstate Account that SNWA shall have the right to withdraw those Long-term Storage Credits, by exchange through Lake Mead, pursuant to the requirements of this Agreement and the Storage and Interstate Release Agreement.

12.5. For purposes of this Agreement, SNWA and CRCN may be required to act together to insure performance of their mutual obligations under this Agreement. In such circumstances, the defined term "SNWA/CRCN" shall be used. Whenever performance by SNWA/CRCN is required, SNWA and CRCN shall confer among themselves and determine a unified course of action. In the event that SNWA and CRCN cannot agree on a unified course of action, AWBA shall not be required to perform any obligation under this Agreement affected by SNWA and CRCN's disagreement until SNWA and CRCN have adopted a unified course of action.

1.2.6. AWBA is an agency of the State of Arizona and is required to operate in accordance with its authorizing statutes, A.R.S. § 45-2401 et seq. and in compliance with all laws of the State of Arizona which govern AWBA activities. SNWA/CRCN shall be entitled to rely upon AWBA's compliance with all statutory requirements, but SNWA/CRCN recognize that such statutes may be duly amended in the course of this Agreement and, subject to the last two sentences of this Subarticle, SNWA/CRCN recognize that AWBA will be required as a matter of Arizona law to comply with any such amendment. Any reference to a statute in this Agreement shall mean that statute, as it may be amended in the future, or its duly authorized successor statute. Nothing in this Subarticle is intended to, or shall be construed as, an agreement by SNWA or CRCN that any enactment of law by the Arizona legislature after the effective date of this Agreement shall have any effect on SNWA's rights or remedies under this Agreement with respect to water that has been placed into storage for SNWA pursuant to this Agreement as of the effective date of such enactment, on any Long-term Storage Credits in the SNWA Interstate Account as of such date, or on SNWA's rights to the development of ICUA

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

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

1.3. Term of Agreement

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

Article 2
Delivery and Storage

2.1. Request for Water Storage by SNWA

2.1.1. Annually, AWBA shall develop a draft AWBA Plan of Operation. The draft AWBA Plan of Operation shall not initially include an interstate component but shall contain the information necessary to initiate discussion between AWBA and SNWA/CRCN regarding interstate banking for the following Year.

2.1.2. AWBA staff shall meet and confer with SNWA/CRCN staff concerning the proposed location, manner and cost by which the interstate banking could be accomplished in the following Year.

2.1.3. On or before November 1, AWBA shall determine and advise SNWA and CRCN as to the quantity of water and storage capacity available for interstate banking under the terms of this Agreement for the following Year. AWBA shall also provide an estimate of the costs calculated pursuant to Subarticle 2.3 associated with the delivery and storage of water available for interstate banking. AWBA shall also provide the data upon which the determinations and estimates in this Subarticle were based.

2.1.4. Within 7 business days of the notice provide in Subarticle 2.1.3, SNWA shall specify in writing to AWBA its decision to accept all or any portion of the water and storage capacity available at the estimated cost.

2.1.5. The schedule dates and periods contained in Subarticles 2.1.1 through 2.1.4 can be waived upon written agreement of all parties.

2.1.6. After consultation with SNWA, the final decision on the quantity of water to be stored and the location of the storage under the terms of this Agreement shall be at the discretion of AWBA.

2.1.7. The quantity of water to be stored in accordance with the terms of this Agreement shall be identified in the final AWBA Plan of Operation by January 1 of each Year. Unless the AWBA Plan of Operation is modified, this quantity of water shall be stored.

2.1.8. At any time after approval of the AWBA Plan of Operation, SNWA may request a decrease in the quantity of SNWA storage for the current Year. Such request for decrease shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA and the amount of water scheduled to be stored for the benefit of SNWA. AWBA may, at its discretion and after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect such a decrease.

2.1.9. AWBA may modify the AWBA Plan of Operation for reasons other than a request from SNWA. If the modification results in an increase in the amount of storage available for interstate banking, AWBA shall notify SNWA and CRCN in writing of the estimated cost for delivery and storage of the increase. SNWA shall have 15 days after receipt of such notice to specify in writing to AWBA its decision to decline any or all of the increase. If SNWA fails to notify AWBA, SNWA shall be obligated to accept such increase in accordance with the terms of the modified AWBA Plan of Operation and the terms of this Agreement. If the modification results in a decrease in storage capacity available for interstate banking purposes, AWBA will notify SNWA and CRCN in writing of such a modification, the reasons for the decrease in storage, the data upon which such determination was based, and the revised amount of water that AWBA will store for SNWA during the Year.

2.2. Delivery and Storage of Water by AWBA for SNWA. Delivery and storage of water under the terms of this Agreement are conditioned on the following:

2.2.1. The delivery of water shall be pursuant to the Intergovernmental Agreement among AWBA, CAWCD and ADWR, as amended, whereby

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

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

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

2.2.4. AWBA shall establish with ADWR a long-term storage sub-account entitled "SNWA Interstate Account".

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

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

2.3. Charges for Delivery and Storage

2.3.1. SNWA agrees that all costs of the delivery and storage of water as described in Subarticle 2.1 shall be borne by SNWA. Such costs shall be calculated and charged to SNWA in accordance with this Subarticle 2.3, and billed to and paid by SNWA as provided in Subarticle 2.4.

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

2.3.2.1. the fixed operation, maintenance and replacement (OM&R) rate, set annually for CAP customers by the CAWCD Board and calculated by dividing the total fixed OM&R costs for the CAP by the estimated total delivery volume in acre feet;

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

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

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

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

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

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

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

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

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

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

2.4. Billing of and Payment for Delivery and Storage

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

2.4.2. AWBA shall provide SNWA monthly invoices equaling one-twelfth the total annual charge on or before the first of each month, starting with December for January of the following Year. SNWA shall pay one-twelfth of the total annual charge on or before December 10, followed by equal payments on *or before the 10th of each month* following. *If such day is not a* business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's intergovernmental agreement with CAWCD.

2.4.3. The total annual charge for water delivery may be subject to a mid-year correction if the charges described in Subarticle 2.3.2 are changed by CAWCD. In the event of a correction, AWBA shall recompute the remaining equal monthly payments and invoice SNWA the corrected amount in the first monthly invoice following the correction. SNWA may refuse further delivery within the Year based on the adjusted monthly invoice. Refusal of further delivery by SNWA shall be in writing to AWBA and shall not be greater than the difference between the amount of water already stored for the benefit of SNWA in that Year and the amount of water scheduled to be stored for the benefit of SNWA. AWBA shall, after discussion at an open public meeting, modify the AWBA Plan of Operation to reflect the decrease in storage. If the recomputed payments are acceptable then the first corrected payment shall be paid on or before the *10th of the month* following *receipt of the* corrected *invoice.* If *such day is* not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to CAWCD in accordance with AWBA's intergovernmental agreement with CAWCD.

2.4.4. No later than March 15 of the Year following a Year in which water was delivered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The payment account of SNWA shall be adjusted first to reflect the amount of water actually delivered by AWBA, and second to reflect any change in the OM&R and pumping energy rates applicable to the water delivered. If additional funds are owed to AWBA, SNWA shall remit those funds within 10 business days of the date the notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year water delivery charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried and used to offset the water delivery charge for the Year in which storage resumes. If Storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.

2.4.5. Charges for administrative services as described in Subarticle 2.3.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge for the fiscal year. AWBA shall provide an invoice for one quarter *of the* annual administration *charge to* SNWA *on or* before *the 15th day of* June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.

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

2.4.7. AWBA shall provide an estimate of the Storage Facility charge as described in Subarticle 2.3.4 to SNWA on or before the fifteenth of each month prior to the actual occurrence of the storage. Such estimates may include adjustments or corrections to estimates previously provided by AWBA to SNWA.

2.4.8. SNWA shall pay the estimate of the Storage Facility charges on or before the tenth day of the month following notice of the charge. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate Storage Facility operators in accordance with AWBA's contractual agreements with the Storage Facility operators.

2.4.9. No later than March 15 of the Year following the Year in which water was stored under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation. The reconciliation shall show the actual amount of water stored and whether charges for the amount stored exceed the payments made or the payments exceed the amount owed. If additional funds are owed to AWBA, they shall be paid within 10 business days of the date an invoice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year water storage charge and used to offset current payments in an amount equal to the excess payment. If no storage under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the water storage charge for the Year in which storage resumes. If storage has not resumed within three years, AWBA shall remit all remaining funds to SNWA.

2.4.10. The schedule dates and periods contained in this Subarticle 2.4 can be waived upon written agreement of all parties.

Article 3
Development of Intentionally Created Unused Apportionment

3.1. Request for Development of ICUA by SNWA

3.1.1. Three years prior to the initial request by SNWA for the development of ICUA under the Storage and Interstate Release Agreement, SNWA/CRCN shall meet and confer with AWBA to determine the opportunities available to commence the development of ICUA. This three year period is intended to allow for the development of a reasonable plan for development of ICUA by the recovery of Long-term Storage Credits, and may be waived by agreement of all parties if unforeseen circumstances arise.

3.1.2. By June 1 of the Year preceding any Year for which SNWA will request the release of ICUA from the Secretary under the terms of the Storage and Interstate Release Agreement, SNWA shall provide in writing to AWBA a preliminary request for the development of ICUA in the next upcoming Year and an estimate of any requests for the development of ICUA in the next two succeeding Years.

3.1.2.1. Requests for the release of ICUA by SNWA to the Secretary shall not exceed 100,000 acre feet in any Year unless A.R.S. § 45-2471 has been amended to allow an increase.

3.1.3. During a Year that the Secretary has determined to be a shortage Year under Article ll(B)(3) of the Decree, requests for release of ICUA by SNWA to the Secretary shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet consumptive use and the quantity made available to Nevada under the shortage determination. This quantity may be greater if, after SNWA confers with AWBA, it is mutually agreed that a greater quantity of ICUA can be created.

3.1.4. SNWA plans to use ICUA as an alternative water supply while other longer-term sources of supply are being developed. SNWA agrees to annually provide AWBA a water resources plan projecting SNWA's demands and available supplies. SNWA agrees that when the Long-term Storage Credits in the SNWA Interstate Account have declined to or below 400,000 acre feet, SNWA shall not request the release of more than 60,000 acre feet of ICUA from the Secretary in any Year. SNWA agrees that when the Long-term Storage Credits in the SNWA Interstate Account have declined to or below 200,000 acre feet, SNWA shall not request the release of more than 40,000 acre feet of ICUA from the Secretary in any Year.

3.1.5. Between June 1 and September 15 of any Year in which a preliminary request for the development of ICUA is provided, AWBA staff shall meet and confer with SNWA/CRCN concerning the proposed location, manner and estimated cost by which the ICUA will be developed in the succeeding Year.

3.1.6. On or before September 15 of the Year in which a final request for the release of ICUA will be made to the Secretary under the terms of the Storage and Interstate Release Agreement, SNWA shall provide in writing a final request for development of ICUA for the upcoming Year to AWBA.

3.2. Development of ICUA

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

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

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

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

3.2.1.3.1. Arizona water management goals,

3.2.1.3.2. CAP operational requirements,

3.2.1.3.3. Water quality requirements,

3.2.1.3.4. Opportunities for shared or joint facilities, and

3.2.1.3.5. Opportunities to reduce recovery costs.

3.2.2. Upon receipt of a final request to develop ICUA in the upcoming Year under Subarticle 3.1.6, AWBA shall prepare the following certifications, in accordance with the Agreement for the Development of Intentionally Created Unused Apportionment: (1) an Upcoming Year Delivery Certification; (2) an Interstate Recovery Schedule Certification; and, (3) a Development of ICUA Certification. These three certifications shall be prepared and delivered to the Bureau of Reclamation no later than December 1 of the Year in which the final request to develop ICUA is received. AWBA shall identify the quantity of ICUA to be created in the AWBA Plan of Operation for the following Year. Recovery shall not commence until a written determination is made by the Secretary that ICUA will be released to SNWA under the terms of the Storage and Interstate Release Agreement.

3.2.3. During a Year that the Secretary has determined to be a shortage Year under Article II(B)(3) of the Decree, the recovery of Long-term Storage Credits by AWBA for the development of ICUA shall not exceed a quantity sufficient to meet the difference between 300,000 acre feet of consumptive use and the quantity made available to Nevada under the shortage determination. This quantity can be greater if, after SNWA and CRCN confer with AWBA, it is determined that a greater quantity of ICUA can be created.

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

3.2.5. After the quantity of Long-term Storage Credits to be recovered to create ICUA has been included in the final AWBA Plan of Operation in accordance with the terms of this Agreement, and the availability of ICUA has been determined by the Secretary, AWBA shall recover the Long-term Storage Credits and SNWA shall be responsible for all costs of developing the requested ICUA.

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

3.2.7. AWBA shall notify ADWR of the actual amount of credits recovered in accordance with the terms of this Agreement and shall request that ADWR debit the SNWA Interstate Account by the quantity of credits recovered when AWBA submits its annual report to ADWR. AWBA and

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

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

3.3. Charges for Developing ICUA

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

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

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

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

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

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

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

3.4. Billing and Payment for Developing ICUA

3.4.1. AWBA shall notify SNWA of any charges for the development of recovery facilities as described in Subarticle 3.3.2.1(i) after agreement between AWBA and SNWA that additional recovery facilities are required for the development of the certified ICUA.

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

3.4.3. AWBA shall provide an estimate of the charges for the capital component described in Subarticle 3.3.2.1(ii) and the recovery facility O&M described in Subarticle 3.3.2.2 to SNWA on or before the fifteenth of each month prior to the actual recovery. Such estimates may include adjustments or corrections to previous estimates.

3.4.4. SNWA shall pay the estimate of the capital component described in Subarticle 3.3.2.1(ii) and the recovery facility O&M charge described in Subarticle 3.3.2.2 on or before the tenth day of the month following receipt of the estimate. If such day is not a business day, the payment shall be made on the next succeeding business day. Following receipt of the SNWA payment, AWBA shall remit the appropriate payment to the appropriate recovery facility operators in accordance with AWBA's contractual agreements with those operators.

3.4.5. No later than March 15 of the Year following the Year in which ICUA was recovered under the terms of this Agreement, AWBA shall provide SNWA and CRCN a Year end account reconciliation showing the actual Long-term Storage Credits recovered and whether charges for recovering the credits exceed payments made or payments exceed the amount owed. If additional funds are owed to AWBA by SNWA, they shall be paid within 10 business days of the date notice is provided by AWBA. If funds are due to SNWA, they shall be applied to SNWA's current Year recovery facility O&M charge and used to offset current payments in an amount equal to the excess payment. If no recovery under the terms of this Agreement is included in the AWBA Plan of Operation for the current Year, the funds shall be carried over and used to offset the recovery facility O&M charge

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

3.4.6. Charges for administrative services as described in Subarticle 3.3.2.3 shall be paid on a quarterly basis. Unless otherwise agreed in advance, each quarterly payment shall be an equal one-fourth of the administrative charge agreed upon for the fiscal year. AWBA shall provide an invoice for one quarter of the annual administration charge to SNWA on or before the 15th day of June, September, December and March for the quarter immediately following. If such day is not a business day, the invoice shall be made on the next succeeding business day.

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

3.4.8. The schedule dates and periods established by this Subarticle 3.4 may be waived upon written agreement of all parties.

Article 4
Delinquent Charges and Surety of Performance

4.1. Delinquency Charges under the terms of this Agreement

4.1.1. All payments due under this Agreement shall be paid promptly on the date required and, if not paid, shall be delinquent. Interest on delinquent payments may be assessed from the business day of the month on which the charge was due and shall accrue at the prime rate of interest as established by the Bank of America, plus 6% per annum, prorated by days of the unpaid principal, computed daily until payment is received. Any payment received shall first be applied to any interest owed, and then to any charges owed.

4.1.2. In the event any portion of the charges are disputed, the disputed amount shall be paid when due, but may be accompanied by a written statement indicating the basis for any dispute. If the dispute is found to be valid, SNWA shall be refunded any overpayment plus interest, accrued at the rate set forth in Subarticle 4.1.1, prorated by days from the date payment was credited to SNWA to the date the refund check is issued.

4.1.3. In the event any delinquent amount is not paid by SNWA within thirty (30) days after receipt by SNWA of written notice from AWBA of the delinquency, AWBA shall have the right, without liability of any kind, to suspend delivery, storage, or recovery of any water under the terms of this Agreement so long as the delinquent amount remains unpaid. Such

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

4.2. Surety of Performance under the terms of this Agreement

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

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

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

Article 5
Other Provisions

5.1. Consultation on the AWBA Annual Report

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

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

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

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

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

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

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

5.4. Uncontrollable Forces

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

or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any federal governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

5.5. Notices, Requests and Payments

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

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

AWBA: Arizona Water Banking Authority
500 North Third Street
Phoenix, Arizona 85004
Attn: Manager

SNWA: Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153
Attn: General Manager

CRCN: Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Attn: Director

5.5.1.2. Notices and requests may be given by facsimile and shall be deemed complete upon receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

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

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

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

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

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

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

In Witness of this Agreement, the Parties affix their official signature below, acknowledging execution of this document on the _3rd __ day of July, 2001.

Southern Nevada Water Authority

Attest:

Patricia Mulroy, General Manager

Mary Kincaid-Chauncey, Chair

Approved as to form:

Charles K. Hauser, General Counsel

Colorado River Commission of Nevada

Attest:

George M. Caan, Executive Director

Richard Bunker, Chair

Approved as to form:

Sara A. Price, Dep. Attorney General

Arizona Water Banking Authority

Attest:

William Chase, Secretary

Joseph C. Smith, Chair

Agreement for the Development of Intentionally Created Unused Apportionment

Attest:

William Chase, Secretary

Joseph C. Smith, Chair

AGREEMENT FOR THE DEVELOPMENT OF INTENTIONALLY CREATED UNUSED APPORTIONMENT

between

The Arizona Water Banking Authority
and
The Central Arizona Water Conservation District

This Agreement for the Development of Intentionally Created Unused Apportionment is made this 18th day of December, 2002, between the Arizona Water Banking Authority and the Central Arizona Water Conservation District.

RECITALS

A. The Arizona Water Banking Authority ("AWBA") is an agency of the State of Arizona expressly authorized by A.R.S. § 45-2423 to store Colorado River water in Arizona on behalf of appropriately authorized agencies in California and Nevada and to cause a decrease in Arizona diversions from the Colorado River, ensuring that Arizona will use less than its full entitlement to Colorado River water in Years in which California and Nevada agencies are contractually authorized to call on the water stored on their behalf by AWBA.

B. On July 3, 2001, AWBA entered into the Agreement for Interstate Water Banking with the Southern Nevada Water Authority and the Colorado River Commission of Nevada for the purpose of creating an interstate water banking program as authorized by A.R.S. §§ 45-2471 *et seq.*

C. Contemporaneously with entering into this Agreement, AWBA will enter into a Storage and Interstate Release Agreement with the United States of America, acting through the Secretary of the Interior, the Southern Nevada Water Authority, and the Colorado River Commission of Nevada. The Storage and Interstate Release Agreement ensures that Intentionally Created Unused Apportionment developed by AWBA for the benefit of the Southern Nevada Water Authority under the terms of the Agreement for Interstate Water Banking and the Storage and Interstate Release Agreement will be released by the Secretary to the Southern Nevada Water Authority under Article II(B)(6) of the Decree in *Arizona v. California,* 376 U.S. 340 (1964).

D. The Central Arizona Water Conservation District ("CAWCD") is a multi-county water conservation district established under A.R.S. §§ 48-3701 *et* seq., that operates and maintains the Central Arizona Project. CAWCD has entered into a contract with the Secretary of the Interior for the delivery to CAWCD of all Colorado River water to which Arizona is entitled under the Decree in *Arizona v. California,* 376 U.S. 340 (1964), that is not needed to satisfy the water orders of those water users in Arizona with an equal or higher priority to Colorado River water. Therefore, CAWCD can develop Intentionally Created Unused Apportionment in furtherance of the policy of the State of Arizona to assist Nevada and California in meeting future water needs through an interstate water banking program.

E. This Agreement provides the means by which Intentionally Created Unused Apportionment will be developed using Long-term Storage Credits created in accordance with the Agreement for Interstate Water Banking and the Storage and Interstate Release Agreement.

Article 1
Definitions and Term

1.1 For the purposes of this Agreement, terms that are defined in Article 1 of the Decree in *Arizona v. California,* 376 U.S. 340 (1964), in Arizona Revised Statutes (A.R.S.) Title 45, Chapter 3.1, and in 43 CFR Part 414 shall have the meaning there stated. The first letters of terms so defined are capitalized when used in this Agreement. In addition, the following definitions shall apply in this Agreement:

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

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

1.1.3 "Agreement" shall mean this Agreement for Development of Intentionally Created Unused Apportionment.

1.1.4 "CAP" shall mean the Central Arizona Project, as authorized by the Colorado *River* Basin Project *Act, 43* U.S.C. *§§* 1501 *et seq.*

1.1.5 "CAP Water Deliveries" shall mean in any Year all CAP water delivered by CAWCD, all Long-term Storage Credits exchanged by CAWCD in lieu of diverting water from the Colorado River, all CAP system losses, and any net change in CAP water storage at Lake Pleasant.

1.1.6 "CAWCD" shall mean the Central Arizona Water Conservation District.

1.1.7 "Consumptive Use" shall mean Consumptive Use as that term is defined in the Decree in *Arizona. v. California,* 376 U.S. 340 (1964).

1.1.8 "CRCN" shall mean the Colorado River Commission of Nevada.

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

1.1.10 "Interstate Recovery Schedule" shall mean the plan and schedule by which AWBA and CAWCD shall develop the quantity of ICUA needed in any Year as described by Article 3 of this Agreement.

1.1.11 "IWBA" shall mean the Agreement for Interstate Water Banking entered into on July 3, 2001 by AWBA, SNWA, and CRCN.

1.1.12 "Long-term Storage Credit" or "Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01.

1.1.13 "Parties" shall mean the parties to this Agreement.

1.1.14 "Secretary" shall mean the United States of America, acting through the Secretary of the Interior or his or her designated representative.

1.1.15 "SIRA" shall mean the Storage and Interstate Release Agreement entered into contemporaneously with this Agreement by AWBA, SNWA, CRCN, and the Secretary.

1.1.16 "SNWA" shall mean the Southern Nevada Water Authority.

1.1.17 "SNWA Interstate Account" shall have the meaning defined in the IWBA and SIRA.

1.1.18 "Year" shall mean any calendar year after the execution of this Agreement.

1.2 This Agreement shall commence on the date of execution by both Parties and shall continue until June 1, 2050, or until the IWBA has terminated, whichever is sooner.

Article 2
Fundamental Principles

2.1 The Parties shall work cooperatively to develop ICUA to satisfy the requirements of the IWBA and the SIRA in furtherance of the State of Arizona's policy of assisting Nevada and California in meeting future water needs through an interstate water banking program.

2.2 Pursuant to A.R.S. § 45-2471(C), the California or Nevada agency participating in Arizona's interstate water banking program is required to agree to pay all costs associated with the program. Therefore, CAWCD shall bear no costs for its participation in the program, except as specifically identified in Articles 5.6 and 7 of this Agreement. As provided by the IWBA, AWBA shall seek reimbursement from SNWA for costs incurred by AWBA under this Agreement while acting in accordance with the IWBA.

2.3 CAWCD shall accept Long-term Storage Credits assigned by AWBA from the SNWA Interstate Account in exchange for Colorado River water that would have otherwise been diverted into the CAP by CAWCD. CAWCD will reduce its Consumptive Use of Colorado River water in accordance with that exchange. CAWCD will meet all scheduled deliveries to Indian contractors, CAWCD subcontractors, and other CAP water users using a combination of Colorado River water and Long-term Storage Credits.

2.4 CAWCD shall account for any Long-term Storage Credits assigned by AWBA to CAWCD from the SNWA Interstate Account as water diverted from the Colorado River for purposes of determining the amount of water that CAWCD may lawfully divert from the Colorado River in the Year of development of ICUA, unless CAWCD reassigns the Long-term Storage Credits to AWBA pursuant to Article 5.3.

2.5 CAWCD shall not be required to reduce its Consumptive Use of Colorado River water pursuant to this Agreement in any Year by more than 100,000 acre feet.

2.6 In any Year in which SNWA has made a request for development of ICUA in the following Year, AWBA is required by the SIRA to prepare an Interstate Recovery Schedule for the following Year that sets forth the means by which ICUA will be developed and the quantity of ICUA that will be developed. AWBA and CAWCD shall cooperatively develop, finalize, and implement the Interstate Recovery Schedule for any such Year in accordance with this Agreement.

Article 3
Interstate Recovery Schedule

3.1 An Interstate Recovery Schedule shall set forth the means by which CAWCD plans to create ICUA on behalf of AWBA in any Year. Except as provided in Article 3.2, an Interstate Recovery Schedule shall use the recovery and exchange method, the credit exchange method, or both of these two methods to develop ICUA.

3.2 An Interstate Recovery Schedule may use a method other than the recovery and exchange method and the credit exchange method if that method complies with 43 CFR Part 414 and if the Secretary has approved its use.

3.3 The recovery and exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be recovered and the recovered water exchanged for Colorado River water that would otherwise have been delivered through the CAP in that Year.

3.3.1 An Interstate Recovery Schedule may provide that CAWCD recover Long-term Storage Credits assigned by AWBA and deliver the recovered water in place of CAP water that would have been delivered by CAWCD in that Year.

3.3.2 An Interstate Recovery Schedule may provide that Long-term Storage Credits assigned by AWBA to CAWCD be assigned by CAWCD to an entity scheduled to receive CAP water from CAWCD in that Year for recovery and use by that entity in place of CAP water that would have been delivered by CAWCD in that Year.

3.3.3 If the recovery and exchange method will be used to develop ICUA in a Year, an Interstate Recovery Schedule shall demonstrate that there is sufficient recovery capacity to recover the necessary Long-term Storage Credits from the SNWA Interstate Account and shall describe how the Credits will be recovered and delivered through the CAP or how the Credits will be recovered by individual CAP customers in lieu of their scheduled CAP deliveries.

3.4 The credit exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be exchanged for Colorado River water that would otherwise have been delivered through the CAP for underground storage in that Year. The recipient of the Credits shall be an entity scheduled to receive water from CAWCD for purposes of underground storage in that Year.

3.4.1 The entity receiving Long-term Storage Credits under the credit exchange method shall be required to pay CAWCD the same fees and charges that it would have paid had CAP water been delivered to it for underground storage.

3.4.2 If the credit exchange method will be used to develop ICUA in a Year, an Interstate Recovery Schedule shall demonstrate that CAWCD has received sufficient orders for the delivery of Colorado River water for underground storage and shall identify the entity or

entities accepting the transfer of Long-term Storage Credits in lieu of the delivery of Colorado River water.

3.5 If a method other than the recovery and exchange method or credit exchange method is used to develop ICUA, an Interstate Recovery Schedule shall include such information as required by the Secretary for that method.

3.6 An Interstate Recovery Schedule shall identify the total quantity of Long-term Storage Credits to be assigned to CAWCD by AWBA from the SNWA Interstate Account to develop the quantity of ICUA needed for the following Year. The Long-term Storage Credits shall be assigned in accordance with Article 5.1.

Article 4
Development of Interstate Recovery Schedule

4.1 By June 15 of the Year preceding any Year for which SNWA will request the release of ICUA from the Secretary under the terms of the SIRA, AWBA shall provide a copy to CAWCD of SNWA's written preliminary request for the development of ICUA in the next upcoming Year and SNWA's estimate of any requests for the development of ICUA in the next two succeeding Years.

4.2 By October 15 of the Year in which a final request for the release of ICUA will be made for the upcoming Year to the Secretary under the terms of the SIRA, AWBA shall provide a copy to CAWCD of SNWA's final request for development of ICUA for the upcoming Year.

4.3 By November 15 of the Year preceding any Year for which SNWA will request the release of ICUA from the Secretary under the terms of the SIRA, AWBA and CAWCD shall jointly and cooperatively develop a final Interstate Recovery Schedule for the next upcoming Year. Any agreements and permits necessary to effectuate the final Interstate Recovery Schedule shall be effective no later than November 15 of the Year preceding any Year for which SNWA will request the release of ICUA.

4.4 The development of an Interstate Recovery Schedule shall take into account the location, manner, and cost of recovery of all water stored by AWBA in the State of Arizona, and the selection of recovery facilities included in an Interstate Recovery Schedule shall not be made in a manner that unreasonably allocates higher recovery costs to the recovery of water for the development of ICUA.

4.5 The development of an Interstate Recovery Schedule shall take into account, but not be limited to, the following factors:

4.5.1 Arizona water management goals.

4.5.2 CAP operational requirements.

4.5.3 Water quality requirements.

4.5.4 Opportunities for shared or joint facilities.

4.5.5 Opportunities to reduce recovery costs.

4.6 While developing an Interstate Recovery Schedule, AWBA and CAWCD shall jointly consult and confer with all of the following:

4.6.1 SNWA and CRCN.

4.6.2 United States Bureau of Reclamation.

4.6.3 ADWR.

4.7 Under the terms of the IWBA, SNWA is required to meet with AWBA to discuss the development of ICUA three Years prior to the initial request for the development of ICUA by SNWA. AWBA shall notify CAWCD within ten days of the initiation of discussions of the development of ICUA with SNWA. CAWCD recognizes that the three-Year period may be waived by the parties to the IWBA. AWBA shall not waive the three-Year period without first consulting with CAWCD. After AWBA notifies CAWCD of the initiation of discussions of the development of ICUA, AWBA and CAWCD shall meet and confer regarding opportunities for developing ICUA.

Article 5
Implementation of Interstate Recovery Schedule

5.1 Within five days of AWBA receiving the Secretary's notice of determination under Article 5.4 of the SIRA, AWBA shall assign the quantity of Long-term Storage Credits from the SNWA Interstate Account to CAWCD necessary to create the quantity of ICUA released by the Secretary.

5.2 In any Year in which the Secretary releases ICUA to SNWA, the Parties shall implement the Interstate Recovery Schedule for that Year.

5.3 In accordance with the IWBA, SNWA may submit a written request to AWBA during any Year in which ICUA is being developed to cease development of ICUA by the amount of the request or by the amount of

ICUA not yet developed, whichever is less. AWBA shall consult with CAWCD regarding the SNWA request before certifying to the Secretary the amount of ICUA previously requested that will not be developed and shall not provide the certification unless CAWCD is authorized to increase its Consumptive Use of Colorado River water to replace the Long-term Storage Credits that were to have been used to create ICUA. CAWCD shall reassign to AWBA the quantity of Long-term Storage Credits that would have been used to develop the previously requested ICUA that will not be developed in that Year.

5.4 By March 1 of any Year following the Year in which ICUA was developed, CAWCD shall provide AWBA a report confirming that its Consumptive Use of Colorado River water in that Year was equal to its CAP Water Deliveries less the ICUA it was required to develop in that Year.

5.5 By March 31 of any Year following the Year in which ICUA was developed, CAWCD and AWBA shall jointly prepare and file with ADWR an annual report of the recovery of Long-term Storage Credits in accordance with A.R.S. § 45-875.01. In accordance with the terms of the IWBA, SNWA and CRCN shall cooperate in the preparation of the report and shall agree upon the accuracy of the data to be filed. AWBA shall bear the cost of any Long-term Storage Credit withdrawal fee associated with a Long-term Storage Credit recovered by CAWCD in accordance with an Interstate Recovery Plan.

5.6 If ICUA developed in any Year is less than the amount that was needed to fulfill AWBA's contractual obligations under the IWBA and the SIRA, AWBA shall assign to CAWCD sufficient Long-term Storage Credits, and CAWCD shall develop ICUA using those Credits, to make up the shortfall to Lake Mead. The shortfall shall be made up in a Year to be determined by the Secretary but shall not be more than three Years after the Year in which the shortfall occurred. AWBA shall bear the cost of developing such ICUA except in the following circumstances:

5.6.1 If CAWCD was previously provided funds to develop ICUA that was not developed, thus resulting in the shortfall, CAWCD shall bear the expense of developing the ICUA to offset the shortfall up to the amount of the funds previously provided by AWBA.

5.6.2 If the shortfall occurred due to circumstances within CAWCD's control and responsibility, CAWCD shall bear the expense of developing the ICUA to offset the shortfall.

5.7 AWBA and CAWCD's records relating to the development of ICUA shall be open to reasonable inspection by any party to the SIRA.

5.8 The specific methods and facilities used to create lCUA in any Year shall be at the discretion of CAWCD, after consultation with AWBA, so long as the methods and facilities selected are consistent with those included in the Interstate Recovery Schedule.

5.9 Nothing in this Agreement shall prohibit CAWCD from taking delivery of Colorado River water that was scheduled by an Arizona water user with a higher priority than CAP but not used by that entity.

Article 6
Charges and Payments

6.1 Except as provided by Articles 5.6 and 7, all costs incurred by CAWCD in developing ICUA and complying with this Agreement shall be determined by CAWCD, in consultation with AWBA, and borne by AWBA. Development of ICUA shall not cause an increase in the water delivery rates charged to other CAP customers.

6.2 CAWCD shall provide AWBA an estimate of the monthly charges for developing ICUA on or before the 10th day of the month preceding the development of the ICUA.

6.3 AWBA shall pay the estimated charges no later than the 15th day of the month following receipt of the estimate.

6.4 By May 30 of any Year following a Year in which ICUA was developed, CAWCD shall provide AWBA a reconciliation of the estimated charges for developing ICUA that were paid by AWBA against the actual costs of d8Ve!oping!CUA. AWBA shall pay any additional funds owed within 30 days. Any credit due AWBA shall be applied against current charges payable by AWBA or refunded to AWBA within 30 days, as determined by AWBA.

6.5 All costs incurred by CAWCD because of SNWA's request to cease development of ICUA shall be determined by CAWCD and borne by AWBA.

Article 7
Transfer of Long-term Storage Credits

7. Within 15 days of the execution of the SIRA, CAWCD shall assign to AWBA the 50,000 acre-feet of Long-term Storage Credits currently held by CAWCD for the benefit 0fSK!VVA. Within 5 days of notice from ADWR that the assignment from CAWCD to AWBA has been completed, AWBA shall assign the 50,000 acre-feet of Long-term Storage Credits to the SNWA Interstate Account. Costs associated with recovering water and

creating ICUA with the Long-term Storage Credits assigned pursuant to this Article shall be as provided in the agreement under which those Credits were accrued and shall not be borne by AWBA.

Article 8
Default and Remedies

8.1 The Parties agree that monetary damages will be ineffective in remedying any breach of this Agreement and that a court may order specific performance of its terms.

8.2 CAWCD and AWBA 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 AWBA in the covenants and obligations to be kept and performed shall be an act of default under this Agreement.

8.3 In the event of a default by CAWCD or AWBA, 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.

Article 9
Uncontrollable Forces

9. Neither Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than the obligation of AWBA to make payment for service under this Agreement) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, terrorism, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from any 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 either Party to settle any strike or labor dispute in which it is involved.

Article 10
Governing Law

10. This Agreement shall be governed by the laws of the State of Arizona.

Article 11
Notices

Notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by mail, postage prepaid, to the persons specified below:

Central Arizona Water Conservation District
General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020
Facsimile Number: (623) 869-2332

Arizona Water Banking Authority
Manager
500 North Third Street
Phoenix, AZ 85004-3903
Facsimile Number: (602) 417-2401

11.2 Notices, demands and requests provided for in this Agreement may be given by facsimile between AWBA and CAWCD in lieu of delivery in person or first class mail. A facsimile shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after telephone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

11.3 A Party may, at any time, by notice to the other Party, designate different or additional persons or different addresses for the giving of notices.

Article 12 Waiver

12. 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 or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

Article 13
Headings

13. Title and paragraph headings are for reference only and are not part of this Agreement.

Article 14
Entire Agreement

14. The terms, covenants and conditions of this Agreement constitute the entire agreement between the Parties relative to the development of ICUA, and no understandings or agreements not herein expressly set forth shall be binding upon them. The Parties, however, recognize that this Agreement is intended to fulfill the contractual obligations required of AWBA by the IWBA and the SIRA and that this Agreement is intended, and shall be interpreted whenever possible, to be consistent with those agreements. This Agreement may not be modified or amended in any manner unless in writing and signed by both Parties.

Article 15
Cancellation

15. The Parties to this Agreement are hereby notified of A.R.S. § 38-511.

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

Attest:

Secretary

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By:
George R. Renner, President

Attest:

Secretary

ARIZONA WATER BANKING AUTHORITY

By:
Joseph C. Smith, Chairman

Storage and Interstate Release Agreement

Contract No. 02-XX-30-W0406

STORAGE AND INTERSTATE RELEASE AGREEMENT

among

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

WITNESSETH, THAT:

Recitals

A. The Secretary of the United States Department of the Interior (Secretary) in 43 CFR 414.3(c) authorized the United States Bureau of Reclamation, Lower Colorado Region, to execute and administer this Storage and Interstate Release Agreement (Agreement) on behalf of the United States. References to the Secretary in this Agreement include the United States Bureau of Reclamation, Lower Colorado Region.

B. The Arizona Water Banking Authority (AWBA) is expressly authorized by A.R.S. § 45-2401 *et seq.* to enter into Storage and Interstate Release Agreements and develop Intentionally Created Unused Apportionment (ICUA). 43 CFR 414.2(1).

C. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant to its contract issued under section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICUA released by the Secretary for use within the State of Nevada pursuant to Article ll(B)(6) of the Decree in Arizona v. California, 376 U.S. 340, 343 (1964).

D. The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 through 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, enters into this Agreement to facilitate the banking of Colorado River water, the creation of Long-term Storage Credits and the establishment and maintenance of a Long-term Storage Account for SNWA.

E. On July 3, 2001, AWBA, SNWA, and CRCN entered into an Agreement for Interstate Water Banking for the purpose of creating a program of interstate banking of Colorado River water in Arizona for the benefit of SNWA. Under this program,

AWBA will acquire and store mainstream Colorado River water in Arizona, creating Long-term Storage Credits to be held for SNWA in an account established with ADWR, and at a later date recover the Long-term Storage Credits and exchange the recovered water with Colorado River water users in Arizona to develop ICUA.

F. The Boulder Canyon Project Act and Article II(B)(6) of the Decree, taken together, authorize the Secretary to release unused Arizona apportionment for use in Nevada. Pursuant to such authority and for the purpose of increasing the efficiency, flexibility, and certainty of Colorado River management and thereby helping satisfy the regional water demands that exist in the area served by SNWA, the Secretary promulgated regulations (43 CFR Part 414) to establish a procedural framework for facilitating interstate off-stream banking transactions, including a commitment by the Secretary to release ICUA as a part of such transactions, consistent with those regulations.

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

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

Article 1
Definitions and Term

1.1 Definitions. The following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.

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

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

1.1.3 "Agreement for Development of Intentionally Created Unused Apportionment" shall mean that agreement between AWBA and the Central Arizona Water Conservation District dated December 18, 2002.

1.1.4 "Agreement for Interstate Water Banking" shall mean that agreement among AWBA, SNWA and CRCN dated July 3, 2001.

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

1.1.6 "AWBA Plan of Operation" shall mean the plan by which AWBA shall operate during the Year as defined in A.R.S. § 45-2456.

1.1.7 "Basin States" shall mean the Colorado River Basin States of Arizona, California, Colorado, Nevada, New Mexico, Wyoming, and Utah.

1.1.8 "CAP" shall mean the Central Arizona Project, as authorized by the Colorado River Basin Project Act, 43 U.S.C. § 1501 *et seq.*

1.1.9 "CAWCD" shall mean the Central Arizona Water Conservation District.

1.1.10 "CRCN" shall mean the Colorado River Commission of Nevada.

1.1.11 "Decree" shall mean the Decree entered by the United States Supreme Court in *Arizona v. California,* 376 U.S. 340 (1964), as supplemented or amended.

1.1.12 "Entitlement Holder" shall mean a holder of an authorization to beneficially use Colorado River water pursuant to (i) the Decree; (ii) a water delivery contract with the United States through the Secretary; or (iii) a reservation of water from the Secretary.

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

1.1.14 "Long-term Storage Credit" shall mean Long-term Storage Credit as defined in A.R.S. § 45-802.01.

1 1.15 "SNWA" shall mean the Southern Nevada Water Authority.

1.1.16 "SNWA Interstate Account" shall mean the Long-term Storage Credit Sub-account established by AWBA with ADWR under the terms of this Agreement and the Agreement for Interstate Water Banking.

1.1.17 "Storage Facility" or "Storage Facilities" shall mean an Underground Storage Facility or a Groundwater Savings Facility as those terms are defined in A.R.S. § 45-802.01. "Storage facilities" do not presently include facilities constructed or financed by the United States.

1 1.18 "Water Stored " means the amount of Long-term Storage Credits properly credited to the SNWA Interstate Account under applicable Arizona law and the Agreement for Interstate Water Banking. The amount of "Water Stored" under this agreement will always be less than the amount of water diverted for storage.

1.1.19 "Year" shall mean calendar year.

1.2 Term of the Agreement

This Agreement shall commence on the date of execution by all parties and shall continue until June 1, 2050, or until termination of the Agreement for Interstate Water Banking, whichever is sooner.

Article 2
Water Available for Storage

2.1 Colorado River water available for storage for purposes of this Agreement shall be within either (i) the State of Arizona's basic or surplus apportionment, apportioned to the State of Arizona under Articles II(B)(1) or II(B)(2) of the Decree; or (ii) the State of Nevada's unused basic or surplus apportionment, apportioned to the State of Nevada under Articles 11(B)(1) and II(B)(2) of the Decree and released to the State of Arizona under Article II(B)(6) of the Decree.

2.2 Colorado River water apportioned to the State of Nevada under Articles II(B)(1) and II(B)(2) of the Decree may be used for storage in the State of Arizona under this Agreement in accordance with 43 CFR 414.3(a)(3) only if the following conditions are met:

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

2.2.2 The AWBA has agreed that it will accept delivery of such water and store it for the benefit of SNWA in accordance with the terms of the Agreement for Interstate Water Banking.

2.3 Before any water is diverted from the Colorado River for storage under this Agreement, it shall first be offered to all Entitlement Holders within Arizona for diversion within their entitlements for purposes other than interstate transactions as provided in 43 CFR 414.3(a)(2).

2.4 The water available for storage shall be diverted from the Colorado River and delivered to Storage Facilities by CAWCD, utilizing CAP facilities constructed by the United States.

Article 3
Storage Facilities and Accrual of Long-term Storage Credits

3.1 AWBA shall store water for the benefit of SNWA pursuant to the Agreement for Interstate Water Banking. All water shall be stored within the State of Arizona in the Storage Facilities for which AWBA has or then has storage agreements. 43 CFR 414.3(a)(1). A listing of the potential Storage Facilities to be utilized is

provided in the AWBA storage facilities inventory dated March 1, 1997. Additional storage facilities may be needed for Arizona use. If such facilities are permitted by ADWR and developed by Arizona entities, and if AWBA chooses to use those Storage Facilities for interstate banking, AWBA shall update the 1997 Facility Inventory to include those additional facilities. If the 1997 Facility Inventory is updated, unused storage capacity at those additional facilities may be used for interstate water banking.

3.2 The Storage Facilities utilized in each Year shall be identified in the AWBA Plan of Operation.

3.2.1 The AWBA Plan of Operation may be modified in accordance with A.R.S. § 45-2456 subject to the provisions of the Agreement for Interstate Water Banking.

3.2.2 AWBA shall notify the Secretary in writing of any change in the AWBA Plan of Operation that may affect the amount or location of water to be stored under the Agreement for Interstate Water Banking.

3.3 AWBA shall establish a Long-term Storage Sub-Account with ADWR entitled the "SNWA Interstate Account." AWBA shall manage the SNWA Interstate Account so as to accommodate the storage and recovery of water for the benefit of SNWA in the manner provided in this Agreement and the Agreement for Interstate Water Banking. AWBA shall ensure that ADWR timely and properly credits or debits the SNWA Interstate Account with the correct number of Long-term Storage Credits under applicable Arizona law for each Year. AWBA shall ensure that the Year-end balance of Long-term Storage Credits in the SNWA Interstate Account is correct.

3.3.1 Except as provided in sub-articles 3.3.2 and 3.3.3, SNWA shall not be entitled to the storage of water under this Agreement or the assignment of existing Long-term Storage Credits pursuant to sub-article 3.3.4 to the extent such storage or assignment would result in Long-term Storage Credits credited to the SNWA Interstate Account in excess of 200,000 acre-feet in any Year, or in excess of 1,200,000 acre-feet over the entire period of this Agreement.

3.3.2 SNWA shall be entitled to all Long-term Storage Credits held by CAWCD for SNWA on the effective date of this Agreement that were developed pursuant to a demonstration project developed by CAWCD in 1992 and modified in 1994 to test the feasibility of underground storage of Colorado River water supplies and subsequently transferred to AWBA for credit to the SNWA Interstate Account. The 50,000 acre-feet of Long-term Storage Credits transferred to AWBA under this sub-article shall not be counted for purposes of determining whether either of the limitations specified in sub-article 3.3.1 has been exceeded.

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

3.3.4 During the term of this Agreement, Long-term Storage Credits may be assigned to AW8A for credit to the SNWA Interstate Account for purposes of increasing the number of Long-term Storage Credits available to SNWA. Any such assignment must have the consent of AWBA. If Long-term Storage Credits are assigned to AWBA for credit to the SNWA Interstate Account under this sub-article, those credits shall be counted for purposes of determining compliance with both of the limitations specified in sub-article 3.3.1.

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

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

3.4.2 AWBA shall prepare and submit to the Secretary and the States of Arizona, California, and Nevada by September 1 of each Year a final verified accounting for the prior Year of: 0\ the beginning balance of Long-term Storage Credits in the SNWA Interstate Account; (ii) the amount of Colorado River water diverted from the mainstream for the purpose of interstate water banking in that year, and the amount of Water Stored resulting from that diversion; (iii) any Long-term Storage Credits properly assigned and transferred to or from the SNWA Interstate Account under sub-articles 3.3.2, 3.3.3, or 3.3.4; (iv) any Long-term Storage Credits assigned from the SNWA Interstate Account during that Year under sub-article 5.8; (v) the net Long-term Storage Credits in the SNWA Interstate Account at the end of the Year; and (vi) the cumulative amount of Long-term Storage Credits properly credited to the SNWA Interstate Account for purposes of determining compliance with the 1,200,000 maximum credit accrual specified in sub-article 3.3.1.

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

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

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

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

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

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

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

Article 4
Development of Intentionally Created Unused Apportionment

4.1 AWBA shall develop ICUA for the benefit of SNWA in accordance with the provisions of this Agreement, the Agreement for Interstate Water Banking, and the

Agreement for Development of Intentionally Created Unused Apportionment. All actions that AWBA takes to develop ICUA shall be consistent with the laws of the State of Arizona.

4.2 AWBA shall only use means to develop ICUA under this Agreement that have been approved by the Secretary. Two such approved means are the recovery and exchange method and the credit exchange method. AWBA may also use any other means of developing ICUA during the term of this Agreement provided such means comply with CFR Part 414 and are first approved by the Secretary.

4.2.1 The recovery and exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be recovered and the recovered water exchanged for Colorado River water that would otherwise have been delivered through the CAP in that Year. The Long-term Storage credits may be recovered by CAWCD or by another entity scheduled to receive water from CAWCD in the Year of recovery.

4.2.2 The credit exchange method requires that Long-term Storage Credits in the SNWA Interstate Account be exchanged for Colorado River water that would otherwise have been delivered through the CAP for underground storage in that Year. The recipient of the credits shall be an entity scheduled to receive water from CAWCD for purposes of underground storage in the Year of recovery.

4.3. AWBA shall prepare an Interstate Recovery Schedule in accordance with the terms of the Agreement for the Development of Intentionally Created Unused Apportionment and the Agreement for Interstate Water Banking. AWBA shall meet and confer with the Bureau of Reclamation in the preparation of the Interstate Recovery Schedule. ICUA shall not exceed 100,000 acre-feet in any Year under this Agreement.

4.4 The Interstate Recovery Schedule shall set forth the means by which AWBA intends to create ICUA.

4.4.1 If AWBA intends to create ICUA using the recovery and exchange method, then the Interstate Recovery Schedule shall demonstrate that there is sufficient recovery capacity to recover the necessary Long-term Storage Credits from the SNWA Interstate Account and shall describe how the credits will be recovered and delivered through the CAP or how the credits will be recovered by individual CAP customers in lieu of their scheduled CAP deliveries.

4.4.2 If AWBA intends to create ICUA using the credit exchange method, then the Interstate Recovery Schedule shall demonstrate that CAWCD has received sufficient orders for the delivery of Colorado River water for

underground storage and shall identify the entity or entities accepting the transfer of Long-term Storage Credits in lieu of the delivery of Colorado River water.

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

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

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

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

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

4.8.1 The Development of ICUA Certification shall certify: (i) that sufficient Long-term Storage Credits exist in the SNWA Interstate Account to support the development of the requested ICUA; (ii) that ICUA will be developed in the upcoming Year in an amount equal to the request using an approved means; (iii) that such ICUA otherwise would not exist; and (iv) that the

notice under sub-Article 4.11 has been given. The Development of ICUA Certification shall request that the Secretary release the ICUA for use in Nevada pursuant to Article II(B)(6) of the Decree and this Agreement.

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

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

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

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

4.11 AWBA shall give notice to Entitlement Holders in Arizona, including Indian Tribes, that SNWA has requested the development of ICUA. The notice shall state which means permitted under this Article will be used to develop ICUA. Whether and what opportunities exist for Entitlement Holders in Arizona, including Indian Tribes, to develop ICUA will depend upon the means selected. The notice shall identify any opportunities for Entitlement Holders in Arizona, including Indian Tribes, to participate in the development of ICUA associated with the particular means selected. AWBA shall provide this notice by first class mail to Entitlement Holders in Arizona, or by such other means as are acceptable to the Secretary.

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

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

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

Article 5
Release of Intentionally Created Unused Apportionment

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

5.2 The request for the development of ICUA by SNWA shall be incorporated into the Secretary's Annual Operating Plan for the Colorado River. The Annual Operating Plan shall state that, upon proper certification, the Secretary intends to release that quantity of ICUA to SNWA under Article 11(8)/6\ofthe Decree in accordance with the terms of this Agreement.

5.3 Release of ICUA under this Agreement for diversion by SNWA shall operate under 43 CFR Part 414.38l.Anticipatory Release of ICUA, as provided in this article. The Secretary shall not release ICUA in excess of 100,000 acre-feet in any Year or in excess of the 1.250·000 acre-feet over the entire period of this Agreement. The amount of 1,250,000 acre-feet consists of the 1.2OO.000acre-feet maximum credit accrual developed under the Agreement for Interstate Water Banking and the

50,000 acre-feet credit accrual developed pursuant to the demonstration underground storage project referenced in sub-article 3.3.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 6
General Provisions

6.1 Upon execution of this Agreement and annually thereafter, SNWA shall pay an annual administration fee of two thousand dollars ($2,000.00) to cover the United States' costs to perform the routine tasks necessary to administer this Agreement. The initial annual administration fee shall be pro-rated on the basis of one hundred sixty six dollars and sixty seven cents ($166.67) per month for the first year, payable upon execution of this Agreement. Thereafter, the fee for each subsequent year shall be due on January 1.

6.2 The Secretary reserves the right at intervals of five (5) years, beginning five (5) years after the date of execution of this Agreement, to reexamine the annual administration fee and to revise the fee after three (3) months' advance written

notice and after consultation with SNWA if the Secretary determines that a different charge is necessary to cover the United States' costs to perform the tasks described in this Agreement. Upon SNWA's written request, the Secretary shall provide SNWA with a detailed cost analysis supporting the adjustment to the annual administration fee.

6.3 8 The annual administration fee shall cover, but is not limited to, the costs for the following tasks routinely performed by the Secretary:

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

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

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

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

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

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

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

6.5 In the event any inconsistency is found between this Agreement and the Agreement for Interstate Water Banking, as initially executed and as it may be amended, regarding the rights and obligations as between AWBA and SNWA, the provisions of this Agreement shall control. No agreement to which the Secretary is not a party shall be construed as altering the rights and obligations as between the Secretary and the other parties to this Agreement.

6.6 The records of any party to this Agreement that relate to the storage and recovery of water, including the development and verification of Long-term Storage Credits, and the creation, release and use of ICUA shall be open to inspection by any other party. AWBA shall require that any Agreement for Development of Intentionally Created Unused Apportionment with CAWCD provide that the records of CAWCD relating to the development of ICUA shall be open to reasonable inspection by any party to this Agreement.

6.7 The provisions of this sub-article shall govern enforcement of this Agreement.

6.7.1 Time is of the essence in the performance of this Agreement.

6.72 The parties recognize and acknowledge that the availability of ICUA as provided in this Agreement is a critical alternative municipal water supply for SNWA while other longer-term sources of supply are being developed; that in planning to meet the needs of the area it serves, SNWA will rely on ICUA being available to it as provided in this Agreement; that accordingly the release of ICUA as provided in Article 5 is critical to the economy, health and safety of the area served by SNWA; that the release of ICUA as provided in this Agreement presents a unique opportunity for SNWA to obtain additional Colorado River water under the Decree; ' and that, for these reasons, among others, the water resources to be released as ICUA for use in Nevada are unique and not susceptible to replacement by SNWA.

6.8 The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent on appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted. Absence of appropriation or allotment of funds shall not relieve AW0A. SNWA, or CRCN from any obligation under this Agreement.

6.9 No member of or Delegate to Congress, Resident Commissioner, or official of AWBA, SNWA, or CRCN shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

6.10 The parties to this Agreement shall indemnify the United States, its employees, agents, subcontractors, successors, or assignees from loss or claims for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of actions taken by non-Federal parties to this Agreement.

6.11 The parties to this Agreement are hereby notified of Arizona Revised Statues section 38-511.

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

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

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

6.15 No party to this Agreement shall be considered to be in default in the performance of any obligations under this Agreement 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, a Federal governmental agency or authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require any party to settle any strike or labor dispute in which it is involved.

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

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

Article 7
Notices

7.1 Notices and Requests

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

AWBA:

Arizona Water Banking Authority
500 North Third Street
Phoenix, Arizona 85004
Attn: Manager

SNWA:

Southern Nevada Water Authority
1001 S. Valley View Boulevard Las
Vegas, Nevada 89153
Attn: General Manager

CRCN:

Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Attn: Director

Secretary:

U.S. Department of the Interior
Bureau of Reclamation
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, Nevada 89006
Attn: Regional Director

The State of Arizona:

Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004
Attn: Director

The State of California:

Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1035
Attn: Executive Director

The State of Nevada:

Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Attn: Director

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

7.2 Notices and Requests by Facsimile

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

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

7.2.2 Any party may, at any time, change its facsimile number by notice to the other parties.

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

Legal Review and Approval:

THE UNITED STATES OF AMERICA

By: Katherine Ott Verburg
Field Solicitor
Phoenix, Arizona

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

STATE OF NEVADA, acting through its COLORADO RIVER COMMISSION

Attest:

By: _____
Executive Director

By: _____
Chair

Approved as to form:

By: _____

Title: Sr Deputy AG

THE SOUTHERN NEVADA WATER AUTHORITY

Attest:

By: _____
General Manager

By: Amanda Cyphers
Chair

Approved as to form:

By: John J. Entsminger

Title: Deputy Counsel

ARIZONA WATER BANKING AUTHORITY

Attest:

By: William L. Chasel

Title: Secretary

By: Joseph C. Smith
Chair

Groundwater Banking Order Truckee Meadows Groundwater Basin

IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

GROUNDWATER BANKING ORDER

TRUCKEE MEADOWS GROUNDWATER BASIN

WHEREAS, under the provisions of Chapter 534 of the Nevada Revised Statutes (NRS) the State Engineer issued Order No. 708 in 1978, which designated the Truckee Meadows Groundwater Basin as a basin in need of additional administration (Hydrographic Basin 87).

WHEREAS, the State Engineer issued sixteen certificates for municipal use of groundwater within the Truckee Meadows Groundwater Basin to Sierra Pacific Power Company ("Sierra") in years prior to 1981 and recognized one claim of vested right (Attachment A). The total diversion rate of these rights is 66.8 cubic feet per second; and in 1986 the State Engineer imposed a pumping limit of 12,000 acre-feet per year on these pre-1981 groundwater certificates and one claim of vested right as being the limit and extent of the beneficial use. Sierra also holds other permits and certificates for groundwater and surface water issued by the State Engineer for municipal purposes.

WHEREAS, under the provisions of Chapter 534 of the Nevada Revised Statues (NRS) the State Engineer may issue Orders to manage certain groundwater as a "Bank", in which more water is extracted in some years than the stated duty of a groundwater permit, based on reduced extractions in other years,

WHEREAS, the Truckee River, which provides, on average, over 80% of the municipal water supply for customers in Sierra's service area, produces highly variable flows from year to year and endured the most severe drought on record between 1986 and 1994. During and immediately following this drought, Sierra implemented a preliminary conjunctive use operation, with the approval of the State Engineer, in which up to 15,728 acre-feet of groundwater was pumped during a severe drought year (1994), and as little as 7,744 acre-feet was pumped during a post-drought year (1998). The Truckee Meadows groundwater aquifer recovered fully after the drought.

WHEREAS, the total population in Washoe County is projected to grow from 312,000 in 1998 to 418,000 in 2015. Future water demand projections indicate Sierra's water demand will increase from 68,000 acre-feet in 1998 to 85,000 acre-feet in 2015. Sierra's Water Resource Plan approved by the Regional Water Planning Commission and the Public Utilities Commission directs continued reliance on the Truckee River as the primary water supply for Sierra's service area, but recognizes that the River requires supplemental water from other sources during droughts.

WHEREAS, Sierra has implemented management practices that reduce its use of groundwater during non-drought periods. Including the construction of a year-sound surface water treatment plant at Chalk Bluff to increase the use of Truckee River water during winter months; the execution of a contract for storage of water in Stampede Reservoir with the United States; and continued efforts to complete the Truckee River Operating Agreement, which will triple Sierra's drought reserves.

WHEREAS, the State Engineer supports the conjunctive use of groundwater and surface water which allows for optimal use of surface water rights during years when surface water is available thereby allowing the Truckee Meadows Groundwater Basin to rest, in return for pumping additional groundwater during drought years when surface water availability is at a minimum.

NOW THEREFORE, the State Engineer orders and allows as follows:

1. Commencing on January 1, 2000, Sierra shall manage its Truckee Meadows Groundwater Basin rights as a banked resource under rules set forth in this Order, The management provisions of this Order shall apply to all Truckee Meadows Groundwater Basin rights held by Sierra, whether from its Vested water rights and certificates listed in Attachment A or by subsequent acquisition or appropriation of ground water rights or domestic well credits. Pumping from other water systems which Sierra may acquire and rights located in other hydrographic basins are not included in this Order.

2. The baseline, or long-term average amount of groundwater Sierra may pump shall be 15,950 acre-feet per year, based on Sierra's 12,000 acre-foot administrative cap, an additional 1,105 acre-feet found by the State Engineer to have been beneficially used by Sierra under its pre-1981 certificates, 200 acre-feet allowance for domestic well credits owned by the Airport Authority, and 2,645 acre-feet of groundwater rights acquired prior to the date of this Order. Any year in which Sierra pumps less than 15,950 acre-foot in the Truckee Meadows Groundwater Basin shall result in a credit to the Bank balance; pumping in excess of 15,950 acre-feet shall result in a debit against the Bank balance. Any amounts of water artificially recharged shall be credited to the Bank balance in accordance with the terms of the recharge permit. A hypothetical illustration of this accounting procedure is found in Attachment B.

3. The Bank set forth in Paragraph 2 shall be administered on a calendar year basis. The beginning balance on January 1, 2000, shall be 1,799 acre-feet, representing the quantity of water Sierra had artificially

recharged into the Truckee Meadows Groundwater Basin under Permit No. 010 prior to that date.

4. Notwithstanding that the Bank balance may be larger than 22,000 acre feet in a future year, Sierra may pump a maximum of 22,000 acre-feet from the Truckee Meadows Groundwater Basin during any calendar year from the bank balance. Such volume of pumping shall not continue for more than three years in succession.

5. To the extent that year-round pumping is required for permitted environmental remediation or dewatering projects, and these projects discharge water into Sierra's system, pumping during the months of June through September shall be counted against Sierra's bank balance. During the remaining months of the year only ground water pumped in excess of that required for permitted environmental remediation or dewatering projects shall also be counted against Sierra's bank balance.

6. Based on 1,105 acre-feet of groundwater rights held by Sierra not previously allowed for pumping and a 200 acre-feet well credit for the Airport Authority, Sierra may issue will-serve commitments up to 1,305 acre-feet against its Truckee Meadows Groundwater Basin rights, pursuant to this Order.

7. The Truckee Meadows Groundwater Basin rights of Sierra Pacific Power Company shall not be subject to forefeiture under NRS 534.090 when operated in accordance with this Order. In the Truckee Meadows Groundwater Basin cumulation and rotation procedures using all Sierra's groundwater rights may be utilized to allow a maximum flow rate greater than the diversion rate for any single water right provided that the total combined diversion rate authorized under all rights is not exceeded.

8. Sierra shall continue to abide by the "Groundwater Management Agreement" dated September 5, 1991 with Truckee-Carson Irrigation District unless it terminates by its terms.

9. Sierra shall continue to monitor water levels and water quality and report to the State Engineer at the end of the calendar year with their results.

10. Sierra may petition the State Engineer to increase the baseline amount under Paragraph 2 and may petition to adjust the 22,000 acre-foot limit in Paragraph 4.

11. The State Engineer retains the authority to limit Sierra's pumpage at any given location in the event that unreasonable drawdown or water quality degradation as a result of Sierra's pumping occurs.

R. MICHAEL TURNIPSEED, P.E.
State Engineer

Dated at Carson City, Nevada, this
16th day of May, 2000.

ATTACHMENT A

Sierra Pacific Power Company Pre-1981 Groundwater Rights

At Original Point of Diversion[1]

Permit	Certificate	Diversion Rate (cfs)	(Well)
V-05533		4.5[2]	Fourth Street
17585	5678	4.0	Stanford Way
17838	5365	4.0	Mill Street
18414	5292	6.0	Popular #1
19185	5677	3.3	Terminal
19909	5802	6.7	High Street
20207	5489	2.5	Mill Street
20371	6116	6.2	Morrill
20372	6573	4.7	Peckham
23847	7627	2.9	Poplar #2
23848	7623	2.9	Greg Street
24758	8274	2.2	S. Virginia
24869	8044	5.6	View Street
25997	8811	1.1	Delucchi Lane
26193	8939	53	Kietzke Lane
26310	8767	1.6	Sparks Ave.
28055	10641	3.1	Pezzi
TOTAL		**66.8 cubic feet per second**	

[1] Many rights have been changed to new locations since certified-

[2] Based on 2,000 gpm pump capacity.

ATTACHMENT B

BANK ACCOUNTING ILLUSTRATION

Year a	Baseline Pumping b	Annual Pumpage c	Recharge d	Credit / Debit (b-c+d) e	Ending Balance f
Beginning Balance					1799
1 Non-Drought	15950	11000	1000	5950	7749
2 Non-Drought	15950	10500	1500	6950	14699
3 Non-Drought	15950	11000	1700	6650	21349
4 Non-Drought	15950	9000	1500	8450	29799
5 Drought	15950	22000	500	-5550	24249
6 Drought	15960	22000	750	-5300	18949
7 Drought	15950	22000	500	-5550	13399
8 Non-Drought	15950	12000	1700	5650	19049
9 Non-Drought	15950	8000	1000	8950	27999
10 Non-Drought	15950	10000	1200	7150	35149

Appendix F: New Mexico

Rules for the Lower Pecos River Basin Water Bank

Senate Bill 271

House Bill 417

Rules for the Lower Pecos River Basin Water Bank

Lower Pecos River Proposed Water Banking Rules

FINAL RULES

Lower Pecos River Basin Water Banking Regulations

RULE 1 ISSUING AGENCY: Office of the State Engineer

RULE 2 PREFACE: These regulations are adopted by the State Engineer upon the recommendation of the Interstate Stream Commission, pursuant to the authorities in NMSA §72-1-2.3 (Supp. 2002) and other authorities for the administration of water. These regulations are adopted in furtherance of the efforts of the State of New Mexico to achieve long-term compliance with its obligations under the Pecos River Compact, NMSA §§72-15-19 *et. seq.,* and the Decree and Amended Decree in *Texas v. New Mexico,* 485 U.S. 388 (1987, 1988). These regulations are adopted in order to facilitate water right transactions between water users for the purposes of Replacement of Stream Depletions which transactions will enhance the ability of the State of New Mexico to comply with the Compact and Decree.

RULE 3 SCOPE: These regulations shall apply to the establishment and operation of water banks established for purposes of compliance with the Pecos River Compact by irrigation districts, conservancy districts, artesian conservancy districts, community ditches, acequias, or water users' associations located in the Lower Pecos river basin below Fort Sumner Dam. These regulations are adopted solely for the purpose of facilitating temporary sources of water (Replacement Water) to be obtained to address Stream Depletions caused by the temporary continued use of water rights junior to the Compact Administration Date determined by the State Engineer in the accompanying Priority Administration regulations. These regulations shall not apply to water banks established by acequias or community ditches pursuant to NMSA § _____

RULE 4 STATUTORY AUTHORITY: These regulations are established pursuant to the authorities set forth in N.M.S.A. §§ ____(H.B. 421); 72-1-2; 72-2-8; 72-2-9; 72-4-20; 72-5-3 through 5; 72-5-23; 72-5-24; 72-5-28(G) and (H); 72-6-1 through 7; 72-12-1; 72-12-2; 72-12-7; 72-12-8(D); 72-12-24; 72-13-2; 72-13-4; 72-15-19 *et. seq.;* and *Texas v. New Mexico,* 485 U.S. 388 (1987, 1988).

RULE 5 DURATION: These regulations are effective through December 31, 2005.

RULE 6 EFFECTIVE DATE: These regulations are effective as of

RULE 7 CONSTRUCTION: These regulations shall be construed consistent with and subject to the authorities of the State Engineer for the administration of water in the State of New Mexico, the Pecos River Compact, and the Decree and Amended Decree of the United States Supreme Court in *Texas v. New Mexico.* These regulations shall not be construed as imposing any limitation on the authority of the State Engineer to administer priorities of water rights, to approve changes of water rights, to permit water rights, or to order the curtailment in whole or in part of the use of water under any water right.

RULE 8 OBJECTIVE: The objective of these regulations is to establish a framework for the temporary accrual, pooling, exchange, assignment or lease of water rights for the purpose of Replacement of Stream Depletions, without the necessity of formal and time-consuming proceedings before the State Engineer. In furtherance of this objective, these regulations are designed to assure other water rights will not be impaired, water in the Basin will not be depleted above that level that would have occurred in the absence of the particular transaction, transactions occur in compliance with state law, and transactions occur within the same stream system or underground water source. The State Engineer finds that achieving this objective will facilitate compliance by the State of New Mexico with the Pecos River Compact by furthering the application of the principle of prior appropriation within the Basin.

RULE 9 AREA OF APPLICABILITY:

A. These regulations do not apply outside the Lower Pecos river basin below Fort Sumner Dam.

B. These regulations apply to Pecos River Basin surface and groundwater tributary to the Pecos River below Sumner Dam to the state line, including specifically the Roswell-Artesia and Carlsbad groundwater basins.

C. These regulations do not apply to transfers of water for use outside the state of New Mexico.

RULE 10 DEFINITIONS: Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meanings.

A. **Augmentation of River** Flow: Bankable Water delivered to the Pecos River in order to increase the flow thereof.

B. **Bankable Water:** Historic Consumptive Use Credits, water stored in reservoirs, or stored water under Article 5A of Chapter 72 NMSA 1978, held by a Water Right Holder, which a Water Bank determines is eligible for Deposit.

C. **Basin:** The hydrologically connected surface and groundwater area bounded by Fort Sumner Dam in the north and the New Mexico-Texas state line in the south, including specifically the Roswell-Artesia and Carlsbad Basins.

D. **Compact Administration Date:** A date determined by the State Engineer pursuant to the Administrative Regulations for the Pecos River Basin. All use of water rights in the Basin junior to the Compact Administration Date shall be curtailed pursuant to said regulations.

E. **Charter:** The evidence of recognition by the Interstate Stream Commission of a Water Bank pursuant to NMSA 72-1-2.3 (Supp. 2002).

F. **Deposit:** A written agreement between a Water Bank and a Depositor, by which the Depositor makes available Bankable Water to the Water Bank for accrual and pooling for lease, assignment, or transfer to Purchasers.

G. **Depositor:** The owner, lessee or contractee of Bankable Water located within the geographic boundaries of a Water Bank who has entered into a Deposit with a Water Bank. A Water Bank may be a Depositor.

H. **Deposit Account:** The amount of Bankable Water (in acre-feet) a Depositor places in a Water Bank.

I. **Historic Consumptive Use Credit:** The amount of water actually consumed on an average annual basis for the previous five years pursuant to a Valid Existing Surface or Groundwater Right with a Priority Date senior to the Compact Administration Date, made available on an annual basis as a result of fallowing the land irrigated under such right for an entire irrigation season.

J. **Measuring Devices:** Accurate and continuous gauging devices, as required by the State Engineer. Measuring devices will normally be required at the point of diversion, at all downstream diversions throughout an applicable section of stream channel, at appropriate groundwater locations and at the terminus of the water use.

K. **Priority Date:** The date reflected on State Engineer permits or licenses, or on accepted offers of judgment within the pending adjudication in State ex rel Reynolds v. Lewis, No. 20294, 22600 (Chavez County 1956) (consolidated), as the date at which a water right came into being, either by application, in the case of post-1907 rights, or by beneficial use in the case of pre-1907 rights.

L. **Priority Administration Regulations:** Regulations promulgated by the State Engineer pursuant to which water right holders with priority dates junior to a Compact Administration Date will be cut off, unless they obtain Replacement Water.

M. **Purchaser:** A holder of a water right which is junior to the Compact Administration Date determined pursuant to the Priority Administration Regulations who seeks Replacement Water to allow continued use of the water right, or an entity who seeks to augment the flows of a surface water body for purposes of compliance with Interstate Compacts or State or Federal law, and who enters into a Transaction with a Depositor through a Water Bank. A Water Bank may be a Purchaser.

N. **Replacement Water:** Water under a Valid Existing Surface or Groundwater Right required by the State Engineer to be provided as a condition of use of any water right with a priority date junior to the Compact Administration Date. The amount of Replacement Water shall be equal to Stream Depletions. Replacement Water may be provided through a Water Bank.

O. **Stream Depletions:** Total depletions, regardless of the time of such depletion in relation to the time of the diversion, to the Pecos River at the New Mexico-Texas state line caused by diversions of tributary ground or surface water in the Pecos River Basin in New Mexico under a Valid Existing Surface or Groundwater Right. For purposes of these regulations, Stream Depletions shall be deemed to occur, and shall be offset, in the same year in which the diversion is made. The State Engineer will calculate Stream Depletions on an average annual basis, gearing these calculations to the Texas-New Mexico State Line.

P. **Transaction Agreement:** A lease, assignment or option agreement between a Depositor and a Purchaser pursuant to which the Depositor shall forgo the use of and/or make available to the Purchaser water rights for a time certain for the purposes of Replacement of Stream Depletions or the

Augmentation of River Flow.

Q. **Valid Existing Surface or Groundwater Right:** A surface or groundwater water right diverting water from the Pecos River Basin recognized by permit or license issued from the State Engineer Office, or by accepted offers of judgment within the pending adjudication in State ex rel Reynolds v. Lewis, No. 20294, 22600 (Chavez County 1956) (consolidated).

R. **Water Bank:** A plan chartered by the Interstate Stream Commission pursuant to these regulations to accept for deposit, accrual and pooling Deposited Water for lease, assignment, or transfer to persons, entities or other Water Banks for the purpose of Replacement of Stream Depletions or the Augmentation of River Flow.

S. **Water Right Holder:** The holder of any Valid Existing Surface or Groundwater Right.

RULE 11. CHARTER:

A. *Application for Charter.*

(1) Any irrigation district, conservancy district, artesian conservancy district, community ditch, acequia, or water users' association located in whole or in part in the Basin may apply to the Interstate Stream Commission for a charter to operate a Water Bank.

(2) All applications for a charter shall be made on a form provided by the Interstate Stream Commission, and shall be sufficiently complete so as to allow the Interstate Stream Commission to determine whether the proposed Water Bank is eligible to operate pursuant to these regulations, and whether the operations of the Water Bank may reasonably be anticipated to conform to these regulations. Any such application shall certify that the application and proposed charter have been duly adopted by the applicable entity pursuant to the regulations of governance of such entity.

(3) All applications for a charter shall include a description of the proposed geographic boundaries of the Water Bank.

(4) All applications for a charter shall set forth procedures by which the proposed Water Bank will provide notice

and an opportunity for hearing to any Water Right Holder whose Valid Existing Surface or Groundwater Right may be impaired by any proposed Transaction Agreement.

B. *Procedure for Review of Application.*

(1) The Interstate Stream Commission shall establish an application fee.

(2) Upon receipt of a complete application, the Interstate Stream Commission shall refer the application to the Office of the State Engineer for review and comment. The Office of the State Engineer may recommend presumptive factors, limitations on operations or other terms and conditions that will facilitate banking transactions in compliance with these regulations.

(3) Within ___days from the receipt of a complete application, the Interstate Stream Commission shall approve, deny, or approve on terms and conditions an application for a Water Bank charter. The decision of the Interstate Stream Commission shall be the final agency action, and shall be in writing.

(4) Upon issuance of a charter, a Water Bank may conduct banking transactions consistent with these Regulations.

(5) No charter shall be approved which allows for water to be transferred by means of the Water Bank for any purposes other than obtaining Replacement Water to address Stream Depletions caused by temporarily continuing to use water rights that are junior to the Compact Administration Date, or Augmentation of River Flow.

C. Termination. The charter for any Water Bank shall terminate on December 31, 2005.

RULE 1.2 BANKING TRANSACTIONS:

A. Deposit. A Deposit shall provide or be based upon, at a minimum, the following:

(1) The payment by the Depositor to the Water Bank of any application and/or posting fees that may be required by the Bank.

(2) Authorization by the Depositor for the Water Bank to advertise and market the Bankable Water placed into the Deposit Account.

(3) The Depositor's agreement that the Water Bank shall have the exclusive right to market, accrue, pool, exchange, assign or lease deposited water on behalf of the Depositor for Offset of Stream Depletions or Augmentation of River Flow purposes for the term of the Deposit, and that the Depositor shall not independently market, accrue, pool, exchange, assign or lease the deposited water during the time the Deposit is in effect.

(4) The written agreement that the owner or operator of any facility from which water will be released or delivered to a Purchaser has approved such use of water and will properly account for the water in the facility and cooperate in regulating its delivery.

(5) If the Deposit is of water requiring the use of federal facilities, a contract with the United States for such use, if necessary.

(6) An affidavit by the Depositor, containing a description of the Bankable Water, including without limitation the following:

i. Proof of ownership, lease or contract that includes the right to use and control the disposition of the water.

ii. The amount and type of water that will be deposited.

iii. A description of the point of diversion, place of storage and historic place of use of the water for the previous five years, with meter readings where they exist. Sufficient descriptions may include maps, legal descriptions, and/or aerial photographs.

iv. A quantification of the Historic Consumptive Use Credits that will be deposited.

(7) In the case of Historic Consumptive Use Credits, deposit of all Valid Existing Surface or Groundwater

Rights used upon or appurtenant to the land being fallowed, and certification by the Depositor that land fallowed in order to make Historic Consumptive Use Credits available will not be re-irrigated in the same irrigation season, from any source.

(8) Certification that Measuring Devices are or will be installed.

(9) Anticipated terms that may apply to the temporary accrual, pooling, exchange, assignment or lease of the Bankable Water, include, but are not limited to:

i. Applicable time frames, parameters and/or limitations for and on the use of the water.

ii. Where applicable, the minimum bid price the Depositor will accept for the water.

iii. The minimum amount of stored water or Historic Consumptive Use Credits the Depositor is willing to allow the Water Bank to accrue, pool, exchange, assign or lease.

iv. Contact information, including name, address, phone number and e-mail address (if available).

v. Any other relevant terms or documentation requested or deemed necessary by the Water Bank and the Depositor.

B. *Publication.*

(1) Upon finalization of a Deposit, the Water Bank shall list or market the availability of the Bankable Water. Listings of availability may also be available at the offices of the Interstate Stream Commission within the Basin, and on or linked to the Interstate Stream Commission's web site.

(2) The listing shall include, at a minimum, the minimum bid price, procedures for bid acceptance, the amount of water available, the stored location of the water, the point of diversion and place of use, and the historic type of use.

C. *Accrual, Pooling, Exchange.* A Water Bank may, if appropriate and practicable, accrue, pool or exchange Deposits for purposes of making water available to Purchasers; provided, however, that Historic Consumptive Use Credits shall not be carried over from year-to-year.

D. *Transaction Agreement.* Upon acceptance of a bid by a Depositor, the Depositor and Purchaser shall enter into a Transaction Agreement. No Transaction Agreement shall extend or be effective beyond December 31, 2005. Transaction Agreements shall only be for the purposes of Offset of Stream Depletions. All Transaction Agreements shall not impair other water rights; not deplete water in the system above the level that would have occurred in the absence of the transaction; comply with state law; and be within the same stream system or underground water source. Transaction agreements for the purpose of Offset of Stream Depletions may not allow an increase in water use or diversion above the Purchaser's Historical Use, or a change in the Purchaser's Place of Use, Point of Diversion or Purpose of Use. The Transaction Agreement shall describe the transaction in such terms as may be established by the Water Bank, but shall include, at a minimum, the following:

(1) The amount of water;

(2) The type of use;

(3) The point of diversion;

(4) The place of use and, if applicable, the number of acres to be irrigated;

(5) The proposed time of use;

(6) Provision for adequate Measuring Devices;

([7]) Certification that any land fallowed for providing Historic Consumptive Use Credits shall not be re-irrigated in the same irrigation season;

(8) Certification that the Purchaser is using the water for replacement of water rights cut off by priority administration;

(9) A statement that the Purchaser is aware that replacement of water through water banking is a temporary expedient, and that the Purchaser intends to seek

actively a permanent resolution of water supply concerns;

(10) If the Transaction Agreement requires delivery of water into a different distribution system, the consent of the owner or operator of the receiving facility or system, including any terms or conditions related to the use of such facility or system.

E. *Approval of Infra- Water Bank Transaction Agreement.* For a transaction in which the Depositor and the Purchaser are both located within the geographic boundaries of a Water Bank, the proposed Transaction Agreement shall be reviewed and approved by the Water Bank. The Water Bank may condition its approval upon terms and conditions necessary for implementing the Transaction Agreement. Such terms and conditions shall be consistent with the terms and conditions of the Water Bank's Charter, and shall include any necessary and/or desirable limitations upon the time, place or type of use of the water made available through the Water Bank, or other terms and conditions as deemed necessary, including dry-up provisions where applicable.

F. *Approval of Transactions Where the Purchaser is Outside the Geographic Boundaries of the Water Bank.* For a transaction in which the Purchaser is located outside the geographic boundaries of a Water Bank, the proposed Transaction Agreement shall be reviewed and approved by the Interstate Stream Commission. The ISC may condition its approval upon terms and conditions necessary for implementing the Transaction Agreement. Such terms and conditions shall be consistent with the Water Bank's Charter, and shall include any necessary and/or desirable limitations upon the time, place or type of use of the water made available through the Water Bank, or other terms and conditions as deemed necessary, including dry-up provisions where applicable. The ISC shall not approve a Transaction where the Purchaser is outside the geographic boundaries of the Water Bank unless the ISC finds that it is not feasible for the Purchaser to obtain water from a more local Water Bank.

G. *Implementation of Transaction Agreement.*

(1) Upon approval of a Transaction Agreement, including relevant terms and conditions, the Water Bank may finalize the Transaction Agreement between Depositor and Purchaser.

(2) A Depositor shall comply with all state and local laws and regulations, and terms and conditions imposed by the Water Bank, regarding land use and vegetation (e.g. weed control).

(3) A Water Bank may establish and charge sufficient fees to cover administrative costs incurred during the operation of the Transaction Agreement.

(4) Upon commencement of operations pursuant to a Transaction Agreement, the State Engineer will administer water as set forth under the Transaction Agreement.

RULE 13 QUANTIFICATION PROCEDURES: The Interstate Stream Commission may establish by policy presumptive factors that may be included in any Charter and that will be applied by Water Banks and/or the Interstate Stream Commission in approving and developing terms and conditions for the operation of proposed Transaction Agreements. To claim values differing from those established, or with respect to water outside the systems or factors addressed in the policy document, parties to a Transaction Agreement must submit to the approving authority with the proposed Transaction Agreement an adequate historic use analysis or other engineering information sufficient to allow the approving authority to evaluate whether different values may be used with respect to the proposed transaction. Such information shall be submitted to the Interstate Stream Commission for review and approval.

RULE 14 REPORTING: A Water Bank shall submit to the State Engineer and the Interstate Stream Commission monthly summaries of the Bank's transactions, including a summary of Deposits and Transaction Agreements.

RULE 15 ACEQUTA OR COMMUNITY DITCH WATER. BANKS:

A. An acequia or community ditch may establish a water bank for the purpose of temporarily reallocating water without change of purpose of use or point of diversion to augment the water supplies available for the places of use served by the acequia or community ditch. The acequia or community ditch water bank may make temporary transfers of place of use without formal proceedings before the State Engineer, and water rights placed in the acequia or community ditch water bank shall not be subject to loss for non-use during the period the rights are placed in the water bank. Acequia or community ditch water banks established pursuant to this rule are not subject to recognition or approval by the Interstate Stream Commission.

B. The acequia or community ditch shall provide as requested to the State Engineer records of all such transfers, at least annually.

C. Any transfer undertaken pursuant to the authority of NMSA §72-1-2.3 shall not result in an increase in the rate or volume of diversion, or the actual average historic beneficial use of the water made over the five years immediately prior to the transfer, within the boundaries of the acequia or community ditch.

D. If any acequia or community ditch water bank desires to approve or enter into transactions with any Purchaser located outside the geographic boundaries of the places of use served by the acequia or community ditch, the acequia or community ditch water bank will become subject to, and must comply with, the full range of these regulations.

RULE 16 FORFEITURE: The four-year forfeiture period established by 72-5-28 or 72-12-8 NMSA 1978, shall be tolled for the period of time during which a water right or underground water right is deposited with a Water Bank or an acequia or community ditch water bank.

RULE 17 ENFORCEMENT:

A. The Interstate Stream Commission may enforce the terms of any Water Bank charter or the terms and conditions of any approval of a Transaction Agreement by appropriate order and injunctive relief.

B. A Water Bank charter and the approval of a Transaction Agreement will be conditioned to allow the Interstate Stream Commission to revoke the charter or cancel the Transaction Agreement if the terms and conditions of the charter or Transaction Agreement are not met or if the actions of the Water Bank, Depositor or Purchaser are not in accordance with such terms and conditions.

RULE 18 LIBERAL CONSTRUCTION: These regulations shall be liberally construed to carry out their purpose.

RULE 19 KNOWLEDGE OF AND COMPLIANCE WITH RELEVANT STATUTES, RULES, REGULATIONS, AND CODES: It shall be the responsibility of all applicants and permittees to know of and comply with all applicable statutes, rules, regulations, and codes.

RULE 20 STATE ENGINEER OPTION TO REVISE REGULATIONS: The State Engineer may modify these regulations as needed to assist in administering 72 NMSA 1978. Any major revision to these regulations shall be duly published and presented for public comment. Removal of a regulation or a section of these regulations, whether by a court or by the State Engineer, shall not affect the validity of the remaining regulations.

Senate Bill 271

SENATE BILL 271

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,

2002 INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO WATER; PROVIDING FOR THE PURCHASE OF WATER RIGHTS ALONG THE PECOS RIVER BASIN FOR COMPLIANCE WITH THE PECOS RIVER COMPACT; PROVIDING FOR THE PURPOSE AND EXTENDING THE EXPENDITURE PERIOD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. PECOS RIVER WATER RIGHTS--PROVIDING FOR THE PURPOSE AND EXTENDING THE EXPENDITURE PERIOD.--

A. The period of time in which the New Mexico irrigation works construction fund appropriation, made pursuant to Laws 1998, Chapter 81, Section 3 for the purchase of water rights along the Pecos river basin, and Laws 1998, Chapter 81, Section 4 for the purpose of preparing a long-term strategy for the state's permanent compliance with the Pecos River Compact and other matters, and Laws 1999 (1st S.S.),

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[bracketed material] = delete

Chapter 2, Section 84 for the purchase of water rights along the Pecos river basin, may be expended shall be extended through fiscal year 2004 for the purpose of retiring water rights along the Pecos river basin and taking other appropriate actions that would effectively aid New Mexico in compliance with the United States supreme court amended decree in Texas v. *New Mexico*, No. 65 original. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the New Mexico irrigation works construction fund.

B. The interstate stream commission shall, before any purchase of water rights are made using the money appropriated, obtain professionally prepared market or economic valuations or appraisals. The valuations or appraisals along with other relevant considerations shall be the basis for any purchase.

underscored material = new
[bracketed material] = delete

House Bill 417

HOUSE BILL 417

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY Joe

M. Steil

AN ACT

RELATING TO WATER; REAUTHORIZING, CHANGING THE PURPOSE OF AND EXTENDING THE EXPENDITURE PERIOD FOR CERTAIN APPROPRIATIONS FROM THE NEW MEXICO IRRIGATION WORKS CONSTRUCTION FUND TO PURCHASE WATER RIGHTS IN THE PECOS RIVER BASIN FOR COMPLIANCE WITH THE PECOS RIVER COMPACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. PECOS RIVER WATER RIGHTS--REAUTHORIZATION--PURPOSE AND EXPENDITURE PERIOD.--

A. The reauthorization and extension of the period of time for expending the appropriations in this section are contingent upon the following conditions:

(1) water rights shall be purchased from willing sellers in an equal percentage, within a two-point range, of the total irrigated acreage in each of the following

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areas of the Pecos river:

(a) from Santa Rosa to Macho draw;

(b) from Macho draw to McMillan delta; and

(c) from McMillan delta to the Texas state line;

(2) the state's offer for settlement of the Carlsbad irrigation district water rights adjudication shall be based upon the full project water or assessment rolls of twenty-five thousand fifty-five acres; and

(3) purchases of water rights shall include the appurtenant land.

B. The period of time for expending the following appropriations from the New Mexico irrigation works construction fund to the interstate stream commission may be extended through fiscal year 2005 for the purpose of retiring water rights along the Pecos river basin and taking other appropriate actions that would effectively aid New Mexico in compliance with the United States supreme court amended decree in Texas v. New Mexico, 96 L. Ed. 2nd 105 (1987):

(1) Laws 1998, Chapter 81, Section 2 for retiring water rights along the Pecos river basin and taking other appropriate actions that would effectively aid New Mexico in compliance with the United States supreme court amended decree in Texas v. New Mexico, 96 L. Ed. 2nd 105

underscored material = new
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(1987);

(2) Laws 1998, Chapter 81, Section 3 for the purchase of water rights along the Pecos river basin;

(3) Laws 1999 (1st S.S.), Chapter 2, Section 84 for the purchase of water rights along the Pecos river;

(4) Laws 1998, Chapter 81, Section 4 for preparing a long-term strategy for the state's compliance with the Pecos River Compact and other matters; and

(5) Laws 2000 (2nd S.S.), Chapter 23, Section 95.

C. Any unexpended or unencumbered balance remaining at the end of fiscal year 2005 shall revert to the New Mexico irrigation works construction fund.

D. The interstate stream commission shall, before any purchase of water rights is made using the money appropriated, obtain professionally prepared market or economic valuations or appraisals. The valuations or appraisals along with other relevant considerations shall be the basis for any purchase.

underscored material = new
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Appendix G: Texas

Senate Bill 1639

Senate Bill 1030 – Chapter 647

Senate Bill 1 – Legislative Session: 75 (R)

Water Code – Subchapter K. Texas Water Bank

Texas Water Bank Statues – Chapter 359

Texas Water Bank – Application for Deposit

Texas Water Bank Participant Responsibilities

Senate Bill 1639

AN ACT

relating to regulating the waters of the state, including the spacing and production of groundwater and the control of instream flows.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.116, Water Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) For better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, the district may adopt different rules for:

(1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the district; or

(2) each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the boundaries of the district.

(e) In regulating the production of groundwater under Subsection (a)(2), a district:

(1) shall select a method that is appropriate based on the hydroqeological conditions of the aquifer or aquifers in the district; and

(2) may limit the amount of water produced based on

contiguous surface acreage.

SECTION 2. Subchapter B, Chapter 11, Water Code, is amended by adding Sections 11.0235, 11.0236, and 11.0237 to read as follows:

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE. (a) The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

(b) Maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being.

(c) The legislature has expressly required the commission while balancing all other interests to consider and provide for the freshwater inflows necessary to maintain the viability of the state's bay and estuary systems in the commission's regular granting of permits for the use of state waters.

(d) The legislature has not expressly authorized granting water rights exclusively for:

(1) instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems; or

(2) other similar beneficial uses.

(e) The fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to reexamine the process for ensuring that these important priorities are effectively addressed in clear delegations of authority to the commission.

Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL

FLOWS. (a) In recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the Study Commission on Water for Environmental Flows.

(b) The study commission is composed of 15 members as follows:

(1) two members appointed by the governor;

(2) five members appointed by the lieutenant governor;

(3) five members appointed by the speaker of the house of representatives;

(4) the presiding officer of the commission or the presiding officer's designee;

(5) the chairman of the board or the chairman's designee; and

(6) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee.

(c) Of the members appointed under Subsection (b)(2):

(1) one member must represent a river authority or municipal water supply agency or authority;

(2) one member must represent an entity that is distinguished by its efforts in resource protection; and

(3) three members must be members of the senate.

(d) Of the members appointed under Subsection (b)(3):

(1) one member must represent a river authority or municipal water supply agency or authority;

(2) one member must represent an entity that is distinguished by its efforts in resource protection; and

(3) three members must be members of the house of representatives.

(e)Each appointed member of the study commission serves at the will of the person who appointed the member.

(f) The appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the study commission.

(q) A member of the study commission is not entitled to receive compensation for service on the study commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the study commission, as provided by the General Appropriations Act.

(h) The study commission may accept gifts and grants from any source _____ to be used to carry out a function of the study commission.

(i)The commission shall provide staff support for the study commission.

(j) The study commission shall conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including __ granting _permits for_ instream __flows dedicated _to environmental needs or bay and estuary inflows, use of the Texas Water Trust, __ and _any other issues_ that the__ study commission determines have importance and relevance to the protection of environmental flows. In evaluating the options for providing adequate environmental flows, ____ the study commission shall take

notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our parks, game preserves, and bay and estuary systems and are high priorities in the permitting process. The study commission shall specifically address ways that the ecological soundness of these systems will be ensured in the water allocation process.

(k) The study commission:

(1) shall appoint an advisory scientific committee that will:

(A) serve as impartial scientific advisors and reviewers for the study commission; and

(B)have a membership of no fewer than five and no more than nine total members chosen by the study commission to represent a variety of areas of relevant technical expertise;

(2) may appoint additional advisory committees to assist the study commission; and

(3) may draft proposed legislation to modify existing water rights permitting statutes.

(1) Not later than December 1, 2004, the study commission shall issue a report summarizing:

(1) any hearings conducted by the study commission;

(2) any studies conducted by the study commission;

(3) any legislation proposed by the study commission; and

(4) any other findings and recommendations of the study commission.

(m) The study commission shall promptly deliver copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(n) The study commission shall adopt rules to administer this section.

(o) The study commission is abolished and this section expires September 1, 2005.

Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS. (a) The commission may not issue a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. This section does not prohibit the commission from issuing an amendment to an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) This section does not alter the commission's obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

(c) This section expires September 1, 2005.

SECTION 3. Subsections (d) and (e), Section 11.147, Water Code, are amended to read as follows:

(d) In its consideration of an application to store, take, or divert water, the commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain ~~[considerthe effect, if any, of the issuance of the permit on]~~ existing instream uses and water quality of the stream or river to

which the application applies.

(e) The commission shall include in the permit, to the extent practicable when considering all public interests, those conditions considered by the commission necessary to maintain [a4-s4 ~~considerthe effect, if any, of the issuance of the permit on~~] fish and wildlife habitats.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1639 passed the Senate on May 1, 2003, by the following vote: Yeas 31, Nays 0; May 29, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; Play 30, 2003, House granted request of the Senate; June 1, 2003, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays O.

Secretary of the Senate

I hereby certify that S.B. No. 1639 passed the House, with amendments, on May 23, 2003, by the following vote: Yeas 145, Nays 0, two present not voting; May 30, 2003, House granted request of the Senate for appointment of Conference Committee; June 1, 2003, House adopted Conference Committee Report by the following vote: Yeas 131, Nays 8, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

Senate Bill 1030 — Chapter 647

TEXAS BILL TEXT

VERSION: Introduced

March 7, 2003
Shapleigh

A BILL TO BE ENTITLED
AN ACT
relating to the application of the franchise tax to certain entities.

TEXT:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 171.001(b)(3), Tax Code, is amended to read as follows:

(3) "Corporation" includes:

(A) a limited liability company, as defined under the Texas Limited Liability Company Act;

(B) a savings and loan association; ~~and~~

(C) a banking corporation **; and**

(D) any other entity:

(E) that is operated for profit;

(i) that is operating, organized, or registered under the laws of this state in a manner that provides liability limitations for a person who holds an ownership interest in the entity, including a partner's interest in a partnership; and

(iii) in which any ownership interest is held by an entity other than a natural person, without regard to whether the person that is not a natural person is located in this state or is in any other manner doing business in this state

SECTION 2. Subchapter C, Chapter 171, Tax Code, is amended by adding Sections 171.114 and 171.115 to read as follows:

Sec. 171.114. TREATMENT OF CERTAIN ENTITIES. (a) This section applies only to a corporation that is an entity described by Section 171.001(b)(3)(D).

(b) The net taxable capital of the entity is computed by:

(1) adding the entity's capital accounts, undistributed profits, and surplus to determine the entity's taxable capital;

(2) apportioning the entity's taxable capital to this state as provided by Section 171.106 to determine the entity's apportioned taxable capital; and

(3) subtracting from the amount computed under Subdivision (2) any other allowable deductions to determine the entity's net taxable capital.

(c) For purposes of Subsection (b)(1), an amount that belongs to or is included in the entity's capital accounts, undistributed profits, or surplus is excluded if the amount has been added once under that subsection in determining the entity's taxable capital.

(d) The net taxable earned surplus of the entity is determined as provided by Section 171.110 if the entity is not a partnership. If the entity is a partnership, the net taxable earned surplus of the entity is computed by:

(1) determining the partnership's reportable federal taxable income and making the following adjustments:

(A) subtracting any taxable income of a partner who is a natural person;

(B) subtracting dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States; and

(C) adding any compensation of each officer or director who owns 0.1 percent or

more of the partnership, to the extent excluded in determining reportable federal taxable income;

(2) apportioning the partnership's taxable earned surplus to this state as provided by Section 171.106 to determine the partnership's apportioned taxable earned surplus;

(3) adding the partnership's taxable earned surplus allocated to this state as provided by **Section 171.1061; and**

(4) subtracting from that amount any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (f).

(e) For purposes of Subsection (d)(1):

(1) an amount may not be subtracted from reportable federal taxable income more than once; and

(2) an amount may not be added to reportable federal taxable income more than once.

(f) For purposes of this section, a business loss is any negative amount after apportionment and allocation. The business loss shall be carried forward to the year succeeding the loss year as a deduction to net taxable earned surplus, then successively to the succeeding four taxable years after the loss year or until the loss is exhausted, whichever occurs first, but for not more than five taxable years after the loss year. Notwithstanding the preceding sentence, a business loss incurred before January 1, 2003, may not be used to reduce net taxable earned surplus.

Sec. 171.115. INCOME OF NATURAL PERSONS EXCLUDED. Notwithstanding any other provision of this chapter, to the extent that the net income of natural persons, including a person's share of partnership and unincorporated association income, may not be taxed as provided by Section 24, Article VIII, Texas Constitution, the income is not included in net taxable earned surplus and is not subject to the tax imposed under this chapter.

SECTION 3. (a) Subject to other provisions of this section, this Act takes effect for initial, annual, or final reports originally due on or after January 1, 2004.

(b) For an entity becoming subject to the franchise tax under this Act:

(1) income or losses occurring before January 1, 2003, may not be considered for purposes of the earned surplus component;

(2) for entities in existence on January 1, 2003, that would have been subject to the franchise tax had this Act been in effect on January 1, 2003, the first report due under this Act will be either a final report, if applicable, or an annual report due May 15, 2004; and

(3) for entities that would have become subject to the franchise tax after January 1, 2003, had this Act been in effect on January 1, 2003, the first report due under this Act will be an initial report or a final report, if applicable.

SECTION 4. This Act takes effect January 1, 2004.

2003 TX **S.B. 1030** (SN)

END OF DOCUMENT

Senate Bill 1- Legislative Session: 75 (R) (excerpt)

Bill: SB 1 - Legislative Session: 75(R)
Enrolled 06/19/1997 E Effective on 9/1/97
Relating to the development and management of the water resources of the state; providing penalties.

Author: Brown

Coauthor: Lucio | Wentworth

Sponsor: Lewis, Ron

Subjects: Environment—Water
State Finances—Management & Control
Special Districts & Authorities—Soil & Water Conservation
State Agencies, Boards & Commissions—Newly Proposed
Water—Rights
Water—General
GROUNDWATER DISTRICT LOAN ASSISTANCE FUND
DROUGHT PLANNING AND MONITORING COMMITTEE

Remarks: Enabling legislation for SJR 16 and SJR 17. SCR 116 allows for technical corrections. Sections 2.03, 2.09, 2.10, 2.18 & 3.03 take effect immediately. Section 4.40 takes effect 7/1/97. Sections 5.03, 5.05-5.08, 5.11 take effect on adoption of the constitutional amendment.

Senate Committee: Natural Resources

Status: Out of committee

Vote: Ayes=11 Nays=O Present Not Voting =0 Absent=0

House Committee: Natural Resources

Status: Out of committee

Vote: Ayes=7 Nays=O Present Not Voting=0 Absent=2

Senate Conferees: Brown, Chair | Armbrister | Lucio | Truan | Wentworth

House Conferees: Lewis, Ron Chair | Cook | Counts | Puente | Walker

State Water Plan – S.B. 1

by Senator Brown, et al.
House Sponsor: Representative Lewis

§ Addresses Texas water policy in six general areas: drought response management; water management, marketing, and transfers; surface water and groundwater supplies; financial assistance to local governments; small communities assistance; and water data collection and dissemination.

Article 1 - Water Planning: Drought, Conservation, Development, and Management

§ Requires the Texas Water Development Board (TWDB) to adopt a comprehensive state water plan every five years beginning September 1, 2001, to

provide for the orderly development, management, and conservation of water resources, and the preparation for and response to drought conditions.

§ Requires TWDB to adopt guidance principles for the state water plan which reflect the public interest of the entire state.

§ Requires TWDB to designate regional water planning areas by September 1, 1998.

§ Authorizes the legislature to designate certain river or stream segments or sites for conducting a reservoir as being of unique value and prohibits a state agency or political subdivision from obtaining a fee title or easement that would negatively impact this unique value.

§ Requires regional water planning groups to submit regional water plans by September 1, 2000, that include specific provisions for water management strategies to be used during times of drought, and legislative recommendations to facilitate voluntary water transfers.

§ Requires TWDB to provide technical and financial assistance to regional water planning groups for the development of plans, and to simplify planning requirements in regions with abundant water resources.

§ Authorizes the development of a local management plan or project to be submitted to the regional water planning group.

§ Requires the Texas Natural Resource Conservation Commission (TNRCC), and TPWD to provide, where appropriate, technical and financial assistance for water resource management, conservation, and drought planning.

§ Requires certain water right holders, groundwater districts, special districts, irrigation districts, and other water users to ensure that their individual plans are not in conflict with applicable approved regional plans for their regions.

§ Requires the Division of Emergency Management of the Office of the Governor to coordinate the drought response portion of the state water plan, and creates a drought response and monitoring committee.

§ Authorizes TWDB to take all necessary action to qualify for federal assistance in financing development and improvement of regional water plans.

§ Requires surface water right holders having an annual appropriation of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses, to develop, submit, and implement a water conservation plan, and all public water suppliers and irrigation districts to develop drought contingency plans.

§ Authorizes TWDB to provide money to Texas political subdivisions for

conservation, management, and development of water resources outside the state if is beneficial to the state.

§ Authorizes TWDB to provide financial assistance to political subdivisions that are representatives of regional water planning groups, to pay for all or part of regional water management planning.

Article 2 - Water Management, Marketing, and Transfers

§ Authorizes water supply and wastewater treatment facility contracts to require the purchaser to develop alternative or replacement supplies prior to the expiration of the contract. Clarifies that if a water supply contract provides express expiration provisions, no continuation of the service obligation is implied.

§ Authorizes TNRCC to appropriate a single amount or volume of water for multiple uses.

§ Requires a person who wishes to discharge and then subsequently divert and reuse the person's existing return flows from privately owned ground water to obtain TNRCC authorization.

§ Provides that water discharged in a state watercourse or stream may not cause a stream segment's water quality classification to be lowered.

§ Requires a person who wishes to convey and subsequently divert water in a watercourse or stream to first obtain a "bed and banks" authorization from TNRCC.

§ Authorizes TNRCC to provide for the use of surplus water and for the use and reuse of water by water rights holders prior to its return to a watercourse or stream.

§ Requires TNRCC to use defined criteria in determining whether an application for an interbasin transfer should be granted.

§ Requires TNRCC to consider defined criteria in determining what constitutes reasonable diligence or a justified nonuse for water rights holders.

§ Requires TWDB to establish the Texas Water Trust to hold water rights dedicated to environmental needs.

Article 3 - Emergency Authorizations; Enforcement

§ Authorizes TNRCC to assess administrative penalties for violations of certain laws, rules, or orders, not to exceed $5,000 per day.

§ Authorizes TNRCC, under emergency conditions, to transfer surface water from a

permittee holding a permit for other than those for domestic or municipal use, to a retail or wholesale water supplier for public health and safety purposes.

§ Requires TNRCC to establish and enforce rules and orders to provide for the safe construction, maintenance, repair, and removal of levees.

Article 4 - Surface Water and Groundwater Supplies

§ Requires TNRCC to consider the hydrological connection between surface water and groundwater, and consistency with the state water plan or an approved regional water plan before approving a water right permit.

§ Authorizes TNRCC to issue permits or permit amendments authorizing the storage of water in aquifers only where completed pilot projects or historically demonstrated projects have been shown to be feasible.

§ Authorizes TWDB to make loans to groundwater conservation districts and irrigation districts for brush control activities, precipitation enhancement, and buying and installing irrigation water-flow meters on public or private property.

§ Sets forth procedures for identifying, designating, and delineating priority groundwater management areas (PGMA). Requires TNRCC and TWDB to report to the state leadership every odd-numbered year, on the designation of PGMAs, and the creation and operation of districts.

§ Sets forth procedures for the water management plan to be developed by districts. Requires a district, in coordination with surface water management entities on a regional basis, to develop a comprehensive management plan.

§ Authorizes a district to promulgate rules requiring a person to obtain a permit from the district for the transfer of groundwater out of the district.

§ Creates the groundwater district loan assistance fund, to be funded by direct appropriation and by the TWDB from the water assistance fund. Authorizes the fund to be used by TWDB to provide loans to newly confirmed districts and certain legislatively created districts.

§ Expands the current sales tax exemption for the purchase of pollution control equipment to include water conservation and reuse equipment.

Article 5 - Financial Assistance for Water Needs and Conservation

§ Authorizes TWDB to use money maintained as principal in the agricultural trust fund to provide loans to certain districts for agricultural water conservation purposes.

§ Authorizes TWDB to issue water financial assistance general obligation bonds of the

state in an aggregate principal amount not to exceed $250,000,000. Sets forth conditions for issuance, administration, and repayment of water financial assistance bonds.

§ Creates the Texas Water Development Fund II (fund) to consolidate existing TWDB bond authorizations and to give the fund flexibility.

§ States the fund consists of a state participation account, an economically distressed areas program account, and a financial assistance account.

§ Requires all state agencies to give preference to Texas vegetation native to the region for landscaping purposes, if cost is not greater and quality is not inferior.

§ Requires a wholesale water supplier for a retail public utility to provide TNRCC with a contract within 30 days of execution.

Article 6 - Small Communities Assistance

§ Allows a regulatory authority to develop methodologies for water or sewer rates which will ensure improved quality or service, encourage regionalization, or maintain financially stable and technically sound utilities.

§ Requires the regulatory authority to assure that rates, operations, and services are just and reasonable to consumers and to utilities.

§ Requires TNRCC to use certain guidelines in granting or amending a certificate of public convenience and necessity (CCN).

§ Allows TNRCC to revoke or amend an existing CCN without the CCN holder's consent.

§ Allows TNRCC to require retail public utilities, with their consent, to serve an area that is decertified.

§ Expands TWDB's authorization relating to financial assistance for public water systems, and enacts special provisions at the state level to comply with the 1996 Amendments to the federal Safe Drinking Water Act.

§ Requires TNRCC to encourage regional and area-wide drinking water supply systems, ensure such systems are financially stable and technically sound, and consider compliance history in determining issuance of any authorization under the Texas Water Assistance Program.

§ Requires a person who wants to build a new public drinking water supply system to submit a business plan to TNRCC for review and approval before beginning construction. Allows TNRCC to require financial assurance of the ability to operate the system in accordance with applicable rules.

§ Allows TNRCC to require business plans and financial assurance from existing public drinking water supply systems that were constructed illegally, have a history of non-compliance, or are under a TNRCC enforcement action.

D Allows TNRCC to order a public water supply system to stop operations if it presents an imminent health hazard to its customers.

§ Requires a municipality that makes a wholesale sale of water to a constitutionally created special district to determine the rates for that sale on the same basis as for other similarly situated wholesale purchaser of the municipality's water.

§ Creates the water utility improvement account to be used for capital improvement to water or sewer systems or for capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager.

§ Allows certain home rule municipalities to construct and extend a water system that can be used for fire fighting purposes.

Article 7 - Water Data Collection and Dissemination

§ Requires TWDB to lead a statewide effort, in coordination with other state and federal agencies and interested parties, to collect and disseminate water resource-related information.

§ Requires TWDB to determine suitable, cost-effective, water supply alternatives on a regional basis; monitor instream flows and the effects of freshwater inflows into bays and estuaries; develop a network for collecting and disseminating water resource-related information; and consider advice from TPWD.

§ Requires TNRCC to provide water data to water rights holders and water suppliers so the holders and suppliers can make informed decisions in the management and conservation of water resources.

§ Creates the Texas Geographical Information Council to provide strategic planning and coordination in the acquisition and use of geo-spatial data and related technologies.

Article 8 - Interim Committee on Water Resources Development and Management

§ Creates the Interim Committee on Water Resources Development and Management (committee) and sets forth the composition of the committee. Requires the committee to review water-related issues in Texas and develop recommendations.

Article 9 - Repealer; Effective Date; Saving; Emergency

§ Repeals the Wagstaff Act, which allows a city or town to take any appropriation of water granted after May 17, 1931, for other than municipal or domestic use, without compensation.

Note: The constitutional amendment for this bill is S.J.R. 17.

State Water Plan Funding - S.J.R. 17

by Senator Brown
House Sponsor: Representative Lewis

§ Creates the Texas Water Development Fund II and authorizes TWDB to administer the fund and issue general obligation bonds for the purposes of the fund. **Ballot Date: November 4, 1997.**

§ Allows TWDB to utilize loan repayments which enter the fund after the end of the fiscal year to make bond debt service payments.

Note: The enabling legislation for this constitutional amendment is S.B. 1.

Disclosure of Environmental Rules - S.B. 633

Water Code — Subchapter K. Texas Water Bank

Water Code
Chapter 15,Texas Water Assistance Program

SUBCHAPTER K. TEXAS WATER BANK

§ 15.701. Definitions

In this subchapter:

(1) "Deposit" means the placement of a water right or the right to use water in the water bank for transfer.

(2) "Depositor" means a person who deposits or has on deposit a water right in the water bank or trust.

(3) "Person" includes but is not limited to any individual, corporation, organization, government, or governmental subdivision or agency, including the board, business trust, estate, trust, partnership, association, and any other legal entity.

(4) "Transfer" means the conveyance of a water right or the right to use water under a water right in any of the following manners:

(A) the conveyance of legal title to a water right; or

(B) a contract or option contract to allow use of a water right.

(5) "Trust" means the Texas Water Trust.

(6) "Water bank" or "bank" means the Texas Water Bank.

(7) "Water right" means a right acquired or authorized under the laws of this state to impound, divert, or use state water, underground water, or water from any source to the extent authorized by law.

Added by Acts 1993, 73rd Leg., ch. 647, 5 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, § 2.13, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 966, § 2.14, eff. Sept. 1, 2001.

§ 15.702. Creation of Bank

The Texas Water Development Board shall establish the Texas Water Bank. The board shall administer the water bank to facilitate water transactions to provide sources of adequate water supplies for use within the State of Texas.

Added by Acts 1993, 73rd Leg., ch. 647, § 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. eff. Sept. 1, 1997. 1010, § 2.14,

§ 15.703. Operation of the Bank; Rules

(a) The board may take all actions necessary to operate the water bank and to facilitate the transfer of water rights from the water bank for future beneficial use including but not limited to:

(1) negotiating a sale price and terms acceptable to the depositor and purchaser;

(2) maintaining a registry of water bank deposits and those water users in need of additional supplies;

(3) informing water users in need of additional supply of water rights available in the bank;

(4) encouraging water right holders to implement water conservation practices and deposit the right to use the conserved water into the bank;

(5) establishing requirements for deposit of a water right into the water bank including minimum terms for deposit;

(6) purchasing, holding, and transferring water or water rights in its own name;

(7) establishing regional water banks;

(8) acting as a clearinghouse for water marketing information including water availability, pricing of water transactions, environmental considerations, and potential buyers and sellers of water rights;

(9) preparing and publishing a manual on structuring water transactions;

(10) accepting and holding donations of water rights to meet instream, water quality, fish and wildlife habitat, or bay and estuary inflow needs;

(11) entering into contracts with persons to pay for feasibility studies or the preparation of plans and specifications relating to water conservation efforts or to estimate the amount of water that would be saved through conservation efforts; and

(12) other actions to facilitate water transactions.

(b) The board may adopt rules necessary for implementation of the Texas Water Bank.

(c) The board may contract with any person to achieve the purposes of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 647, § 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, § 2.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 61, § 1, eff. May 10, 1999.

§ 15.7031. Texas Water Trust

(a) The Texas Water Trust is established within the water bank to hold water rights dedicated to environmental needs, including instream flows, water quality, fish and wildlife habitat, or bay and estuary inflows.

(b) The board, in consultation with the Parks and Wildlife Department and the commission, shall adopt rules governing the process for holding and transferring water rights.

(c) The dedication of any water rights placed in trust must be reviewed and approved by the commission, in consultation with the board and the Parks and Wildlife Department. In addition, the Department of Agriculture may provide input to the commission, as appropriate, during the review and approval process for dedication of water rights.

(d) Water rights may be held in the trust for a term specified by contractual agreement or in perpetuity.

Added by Acts 1997, 75th Leg., ch. 1010, § 2.16, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 456, § 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 979, § 2, eff. June 18, 1999.

§ 15.704. Transfers and Conditions

(a) A water right may be deposited in the water bank for an initial term of up to 10 years, unless otherwise held in the Texas Water Trust as established under Section 15.7031 of this code, during which time the water right is exempt from cancellation by the commission under the terms of Subchapter E of Chapter 11 of this code. A water right is exempt from cancellation under this subsection only once even if it has been transferred or redeposited.

(b) The commission may not bring a cancellation action under Subchapter E of Chapter 11 of this code for a 10-year period following commission approval of any necessary actions relating to a water right which has been transferred while on deposit in the water bank.

(c) A contract or option contract to allow use of a water right under this subchapter:

(1) may include a requirement that the purchaser show diligence in pursuing feasible and practicable alternative water supplies; and

(2) does not vest any right in the purchaser beyond the stated terms and conditions of the contract or option contract.

Added by Acts 1993, 73rd Leg., ch. 647, § 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, § 2.17, eff. Sept. 1, 1997.

§ 15.705. Fees

(a) The board may charge a transaction fee per transfer not to exceed one percent of the value of the water or water right received into or transferred from the water bank to cover expenses of the board in operating the water bank.

(b) The board shall place the fees in the water bank account of the water assistance fund where they shall be separately accounted for and used, with interest, only for the administration and operation of the water bank by the board.

Added by Acts 1993, 73rd Leg., ch. 647, § 1, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 61, § 2, eff. May 10, 1999.

§ 15.706. Reports

The commission and the board shall provide ready access by the other agency through manual or computer capabilities to all water rights permits, final water rights decisions, applications, amendments, contracts, computerized files, computer programs, and other information related to water rights and to the operation of the water bank. The commission shall provide the board with all notices of proposed water rights actions.

Added by Acts 1993, 73rd Leg., ch. 647, § 1, eff. Aug. 30, 1993.

§ 15.707. Water Bank Account

(a) The water bank account is created as a special account in the water assistance fund and is composed of:

(1) money appropriated to the board for the program;

(2) fees collected by the board under this subchapter;

(3) money transferred to the account from the water assistance fund in Section 15.011(c) of this code;

(4) grants, contracts, gifts, or other such funds that the board may receive relating to this subchapter;

(5) money received from the transfer of water or water rights held in the board's name in the bank; and

(6) interest earned on the investment of money in the account.

(b) The money in the account may be used only for the administration and operation of the water bank by the board under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 647, § 1, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 61, § 3, eff. May 10, 1999.

§ 15.708. **Other Transfers**

Nothing in this subchapter shall prevent the sale or purchase of water or water rights by or through persons or entities outside of the water bank or the creation and operation of water banks by other persons to the extent allowed by law.

Added by Acts 1993, 73rd Leg., ch. 647, § 1, eff. Aug. 30, 1993.

Texas Water Bank Statues—Chapter 359

Appendix Texas Water Bank Statutes

CHAPTER 359
WATER BANKING

§359.1 Purpose
§359.2 Definitions.
§359.3 Board Acquisition of Water Rights
§359.4 Other Applicable Law
§359.5 Procedures for Deposit
§359.6 Bank Review
§359.7 Appeal of Findings
§359.8 Deposits, Transfers, Cancellation Protection, and Withdrawals
§359.9 Registry of Buyers
§359.10 Registry of Sellers
§359.11 Information
§359.12 Negotiation of Terms
§359.13 Regional Banks
§359.14 Fees
§359.15. Texas Water Trust.

WATER BANKING
Texas Administrative Code §§359.1-359.15

§359.1. Purpose. These sections are proposed to establish and administer the Texas Water Bank in accordance with the Texas Water Code, Chapter 15, Subchapter K. The board shall administer the water bank to facilitate water transactions to provide sources of adequate water supplies for use within the State of Texas. The adoption of these rules is not intended to prevent any person from selling or leasing water or water rights by transactions outside the purview of the water bank or duly-established regional water banks, where such transactions are otherwise allowed by law.

§359.2. Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Administrator - The Executive Administrator of the Texas Water Development Board or designated representative(s).

(2) Board - The Texas Water Development Board.

(3) Bank - The Texas Water Bank, including regional banks established pursuant to this Subchapter.

(4) Commission - The Texas Natural Resource Conservation Commission.

(5) Conserved water - That amount of water saved by a holder of an existing permit, certified filing, or certificate of adjudication through practices, techniques, and technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from storage, transportation, distribution, or application. Additionally, that amount of ground water made available for alternative or future uses through practices, techniques, and technologies that reduce the consumption of ground water, reduce the loss or waste of ground water, improve the efficiency in use of ground water, or increase the availability of ground water through recycling or reuse.

(6) Department - the Texas Parks and Wildlife Department.

(7) Deposit - the authorized placement of a water right or the right to use water in the bank for transfer.

(8) Depositor - a person who deposits or has on deposit a water right in the bank.

(9) Lease - to convey by contract the right to use water for a specified time period in accordance with the authorized right and other applicable law.

(10) Person - includes, but is not limited to, any individual, corporation, organization, government, or governmental subdivision or agency, including the board, business trust, estate, trust, partnership, association, and any other legal entity.

(11) Political subdivision - a state agency, a county, city, or other body politic or corporate of the state, including any district or authority created under the Texas Constitution, Article III, Section 52 or Article XVI, Section 59, and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Acts of the 43rd Legislature, Chapter 76, 1st Called Session, 1933 (Texas Civil Statutes, Article 1434a).

(12) Transfer - the conveyance of a water right or the right to use water under a water right in any of the following manners:

(A) the conveyance of legal title to a water right; or

(B) a contract or option contract to allow use of a water right.

(13) Water right - a right acquired or authorized under the laws of this state to impound, divert, or use state water, underground water, or water from any source to the extent authorized by law.

§359.3. Board Acquisition Of Water and Water Rights. The board may purchase, lease, hold, accept as a gift, and transfer water, water rights or the right to use water as necessary to operate the bank and facilitate the transfer of water, water rights or the right to use water from the bank for future beneficial use in Texas, including accepting and holding donations of water rights to meet instream, water quality, fish and wildlife habitat, or bay and estuary inflow needs in accordance with state law.

§359.4. Other Applicable Law. Unless otherwise specified by Texas Water Code, Chapter 15, Subchapter K, transfers through the bank do not eliminate the requirement to comply with the provisions of Texas Water Code, Chapter 11 and other applicable law.

§359.5. Procedures for Deposit. A potential depositor shall file a completed application for deposit with the administrator on forms or in a format provided by the administrator and provide such information as the administrator may require to evaluate the proposed application for deposit. The administrator shall notify the potential depositor within 30 calendar days of receipt of the application for deposit if additional information is needed to complete the application. The date of deposit is the date of receipt of a completed application for deposit. Within 30 calendar days following the receipt of a completed application for deposit, the administrator shall notify the executive director of the commission and depositor of the acceptance or refusal of the deposit.

§359.6. Bank Review. The administrator may withdraw a deposit where the administrator finds the deposit to be:

(1) representative of a water right, or portion thereof, that is not quantifiable;

(2) representative of a water right, or portion thereof, where a petition or other formal action has been filed with the commission for the cancellation or forfeiture of the water right before the date of deposit; or,

(3) contrary, for any reason, to the purposes of the Texas Water Code, Chapter 15, Subchapter K, or these rules, or other provisions of the Water Code or applicable law.

§359.7. Appeal of Findings. Decisions of the administrator under §§359.5, 359.6, and 359.8 of this title (relating to Procedures for Deposit, Bank Review, and Deposits, Transfers, Cancellation Protection, and Withdrawals) may be appealed to the board by filing notice with the administrator. The administrator shall bring such appeals before the board at the earliest practicable board meeting for consideration, and notify the appellant, not less than 14 calendar days before the meeting, of the date, time, and place of the board meeting. Appeals under this section shall not be considered contested hearings under the Texas Administrative Procedures and Texas Register Act. The appellant and administrator may present written material to the board, in advance of the date of board consideration, with copies of such written material provided to the other party at least three days prior to the board meeting. The appellant and administrator may present brief oral remarks to the board after which the board shall decide on disposition of the appeal.

§359.8. Deposits, Studies, Transfers, Cancellation Protection, and Withdrawals.

(a) A water right or portion thereof may be deposited in the bank for an initial term of up to 10 years, unless otherwise held in the Texas Water Trust described in §359.15 of this title (relating to Texas Water Trust), during which time the water right or portion of the water right deposited is exempt from cancellation by the commission under the terms of Texas Water Code, Chapter 11, Subchapter E, as provided by Texas Water Code, § 15.704. The water right or that portion of the water right deposited is exempt from cancellation under this subsection only once, even if it has been transferred or redeposited. The water right or that portion of the water right which is on deposit remains on deposit until it is withdrawn.

(b) The administrator may accept deposits of water rights, including conserved water, into the bank. The administrator, acting within the purposes of the Texas Water Code, Chapter 15, Subchapter K, may also take any appropriate action to facilitate water transactions both within and external to the operations of the water bank.

(c) The water right or that portion of a water right that has been transferred while on deposit in the bank is exempt from cancellation by the commission under the terms of the Texas Water Code, Chapter 11, Subchapter E, for a period of 10 years following commission approval of any necessary actions relating to the transfer of that water right.

(d) The depositor must notify the administrator within 30 calendar days of the date a contract to transfer a water right or portion thereof is signed.

  (1) For transfers requiring regulatory approval, transfers are not complete until all necessary regulatory approvals are obtained. The depositor must notify the administrator in writing within 30 calendar days of the date of receipt of final regulatory approvals. The date of final regulatory approvals is the effective date of transfer.

  (2) For transfers not requiring regulatory approval, transfers are not complete until the terms and conditions of the contract have been fulfilled. In these cases, the depositor must notify the administrator in writing within 30 calendar days of the contract closure. The date the contract is closed is the effective date of transfer.

(e) That portion of a water right or the right to use water that has been deposited in the bank may be withdrawn upon the depositor's completion of a withdrawal form, or acceptable substitute, and its submission to the administrator. A copy of this form, or acceptable substitute, must be submitted by the withdrawing depositor to the executive director of the commission at the same time it is submitted to the administrator. The withdrawal is effective upon the date of signature by the administrator on the withdrawal form or 30 days after the submission of the withdrawal form, or acceptable substitute, whichever

occurs earlier. A water right may be withdrawn by the administrator under §359.6 of this title (relating to Bank Review).

(f) A water right may be used as authorized by law while on deposit in the bank. The depositor must notify the administrator of any actions or conditions that would affect the transferability of the deposited right.

(g) A water right transferred while on deposit in the bank may remain in the bank.

(h) With the approval of the board, the administrator may enter into contracts with persons to pay for water conservation feasibility studies, or the preparation of plans and specifications relating to water conservation efforts, or studies to estimate the amount of water that would be saved through the implementation of water conservation efforts.

§359.9. Registry of Buyers. Persons who are potential buyers of water rights or the right to use water may request to be listed by the administrator in a registry at the bank. The request for registry listing shall be in a form or format provided by the administrator, and shall include all information the administrator deems necessary to prepare the registry of buyers.

§359.10. Registry of Sellers. Persons who wish to disclose the availability of a water right or the right to use water or portion thereof for transfer, but do not wish to deposit the right in the bank, may request to be listed by the administrator in a registry at the bank. The request shall be in the format of a request for deposit and shall include all information the administrator deems necessary to prepare the registry of sellers. Any person who has listed a water right or the right to use water for sale in the registry shall notify the administrator within 30 calendar days of the date a contract to transfer a water right or the right to use water or portion thereof is signed.

§359.11. Information. In response to requests, the administrator shall provide information available from the bank, unless such information is required to be withheld under the Texas Open Records Act. The bank may act as a clearinghouse for water marketing information, including water availability, pricing of water transactions, environmental considerations, and potential buyers and sellers of water rights. The administrator may provide technical assistance as possible, to potential depositors, depositors, or potential buyers, concerning water conservation and may prepare and publish a manual on structuring water transactions.

§359.12. Negotiation of Terms. At the request of both the prospective buyer and depositor, the administrator may assist in the negotiation of terms associated with a proposed transfer.

§359.13. Regional Banks.

(a) The board may establish regional water banks, as necessary, to fulfill the requirements of the Texas Water Code, Chapter 15, Subchapter K. The board, by contract or agreement, may designate state agencies, political subdivisions, or other entities or persons it may deem appropriate to act as regional banks. Regional banks shall utilize the same procedures and meet the same requirements that are specified by this chapter, unless otherwise specifically authorized by the board. Regional banks shall report all activities to the administrator in a manner and frequency specified by the administrator. Fees specified in §359.14 of this title (relating to Fees) shall be collected by the regional bank, in accordance with the contract or agreement executed with the board. In evaluating the designation of and necessity for regional banks, the board may consider the regional bank's proposed rules and procedures for the following:

(1) determining the method of allocation among competing buyers to lease or purchase water rights;
(2) determining the method of allocation among the depositors for reimbursement; determining the fees and their allotment under the Texas Water Code, § 15.705;
(3) method of notification of the board, commission, and department of regional bank activities; and
(4) such other factors as are deemed appropriate by the board.

(b) Deposits into a duly authorized regional bank shall enjoy the same protection and limitations as deposits made into the bank established by these rules. The administrator may periodically review a regional bank for its performance and continuing necessity. The board may dissolve any regional bank which it has established under this section.

§359.14. Fees.

(a) The executive administrator shall develop and implement, with board approval, a fee to be paid either upon deposit of a water right or right to use water into the bank, upon transfer of the water right or right to use water or portion thereof while on deposit in the bank, or upon both such occurrences. Such fee shall not exceed 1.0% of the value placed upon the water right or right to use water by the depositor upon deposit into the bank, and 1.0% of the value of the water right or right to use water transferred while on deposit in the water bank. Fees shall be due within 60 days of deposit of the water right or right to use water into the bank, and within 60 days of transfer of such rights. The value of the water right or right to use water shall be calculated upon deposit into the bank as the value placed on the water right or right to use water by the depositor. The value of the water right or right to use water shall be calculated upon transfer as the value of the water right sale or total value of any contract or contracts to use the water.

(b) Fees associated with deposits to or transfer from the Texas Water Trust of water rights or rights to use water are waived.

(c) At least once every two years, the executive administrator shall obtain board approval of the fee schedule. The executive administrator shall provide notice in the Texas Register 30 days before board action considering approval of such fee schedule, and shall provide copies of the proposed fee schedule upon request. In approving such fee schedule, the board shall consider the expenses of operating the bank.

§359.15. Texas Water Trust.

(a) The Texas Water Trust is established within the water bank to hold water rights dedicated to environmental needs, including instream flows, water quality, fish and wildlife habitat, or bay and estuary inflows.

(b) No water right shall be placed into the Texas Water Trust without the review and approval of the commission after appropriate consultation with the department and board.

(c) A water right shall be held in trust under this section for the term specified by the commission in its approval under subsection (b) of this section or, if the commission does not specify a term, for the term agreed upon between the administrator and the depositor.

Groundwater Trust Information Sheet

The Edwards Aquifer Authority (the Authority) is establishing a Groundwater Trust (Trust) for interim authorization withdrawal rights*. The Trust will facilitate the transfer of interim authorization withdrawal rights by providing a list of potential sellers and lessors of interim authorization withdrawal rights.

If you are interested in selling or leasing all or a portion of your Edwards Aquifer interim authorization withdrawal rights, please complete and return this form. The information provided will be compiled in a database and made available to the public. Providing the information is strictly voluntary. *Defined as the right to withdraw water from the Edwards Aquifer in the amount of the historical, maximum, beneficial use claimed under Section 4B of the Application for Initial Regular Permit and Declaration of Historical Use. However, this amount is subject to change pursuant to Section 1.17(b) of the Edwards Aquifer Authority Act when the Authority adopts final rules governing interim authorization.

BACKGROUND *(PLEASE PRINT)*

Name on Application: _____Date: _____

EAA Application Number: _____

Contact Name:_____

Daytime Contact Phone No.:_____Contact Fax No.: _____

INTEREST IN SELLING APPLICATION FOR INITIAL REGULAR PERMIT

Are you willing to **permanently sell** all or part of your Application for Initial Regular Permit (with associated interim authorization status)? (Circle one) Yes/No

What is the **minimum** amount of water you are willing to sell **per transaction?** acre-feet

INTEREST IN LEASING INTERIM AUTHORIZATION WITHDRAWAL RIGHTS

Are you willing to **lease** all or part of your interim authorization withdrawal rights? (Circle one) Yes/No

What is the **minimum** amount of water you are willing to lease **per transaction?** acre-feet

Preferred term of lease: ___ 1 year ___ 2-5 years __ 6-10 years_____ more than 10 years

Please fax or mail your completed questionnaire to:

Edwards Aquifer Authority
Attn: Groundwater Trust
P.O. Box 15830
San Antonio, TX 78212
Fax (210) 222-9869

If you have questions about the Groundwater Trust or need to update the above information, please contact Mr. Javier Hernandez at (210) 222-2204 or (800) 292-1047.

Thank you for your participation in the Edwards Aquifer Authority's Groundwater Trust.

Texas Water Bank — Application for Deposit

Texas Water Dev. Board
issued: May 13, 1994

TEXAS WATER BANK

APPLICATION FOR DEPOSIT

This form is an application to deposit water or a water right into the Texas Water Bank as administered by the Texas Water Development Board (Section §359.5, Water Bank Rules). A water right is defined as a right acquired or authorized under the laws of this state to impound, divert, or use state water, underground water, or water from any source to the extent authorized by law.

Name(s) _____ Contact or Representative, if different from above _____ Mailing Address _____

Telephone No. Day _____Night

I (we) desire to market water in the amount of _____ to _____ac-ft/yr

- ❑ Bysale, through conveyance of legal title to my/our water right or a portion of that right
- ❑ By lease, through entering into a contract to allow someone else to use water under my/our water right - contract length _____ years
- ❑ Through either of the above methods

IF THE WATER OFFERED FOR SALE IS SURFACE WATER: 123

Give water right number (permit no., adjudication certificate no., certified filing claim no.) _____ The value of the surface water diversion authorization that is to be marketed is _____($ per acre-ft.(per year, if lease)).

Describe the location of the authorized diversion point (attach a page for descriptions of any additional diversion points)

River Basin _____County

[123] A depositor holding a surface water right will enjoy protection from cancellation as specified in Section §359.8 (a) of the Water Bank Rules.

Stream name_____ , tributary of _____tributary of , tributary of

Water Quality Stream Segment, if known

Latitude/Longitude (in decimal degrees) ___ Lat ___ Long

In lieu of fat/long, attach County Highway Map, USGS 7.5' topo map, or other map with the diversion point(s) marked

Attach a xerox copy of the certified filing, permit, or certificate of adjudication issued by the Texas Water Commission (now known as the Texas Natural Resource Conservation Commission).

TEXAS WATER BANK
APPLICATION FOR DEPOSIT

IF THE WATER OFFERED FOR SALE IS **GROUND WATER:**

Describe the location of the authorized purnpage point or general place of use (attach a page for descriptions of any additional locations)

Aquifer _____ County

Latitude/Longitude (in decimal degrees)____Lat___ Long

In lieu of lat/long, attach County Highway Map, USGS 7.5' topo map, or other map with pumpage point(s) or general place(s) of use marked

Name of Underground Water Conservation District or Authority with jurisdiction (if applicable) _____ attach a xerox copy of groundwater withdrawal authorization or permit and give permit number here _____

The value of the groundwater withdrawal authorization that is to be marketed is _____ ($ per acre-ft.(per year, if lease)).

For surface water:

Indicate the Type of Use:

- ❑ Municipal/Domestic
- ❑ Irrigation
- ❑ Industrial
- ❑ Other
- ❑ Mining

A person who submits a completed application for deposit is considered a depositor. The Water Bank will notify a potential depositor if his application for deposit is incomplete. The date of deposit is the date of receipt of a completed application for deposit. Within 30 calendar days following receipt of a completed application for deposit, the Water Bank will notify the depositor of the acceptance or refusal of deposit (see Sections §359.5 and §359.6 of the Water Bank Rules). Depositors are participants in the Water Bank, with responsibilities as outlined in the handout, "Texas Water Bank Participant Responsibilities". Please indicate understanding and acceptance of these responsibilities and of Water Bank Rules by your signature below. Co-owners of the water right should be in agreement and should sign as co-depositors. If signing for depositor(s), so indicate on the signature line and attach documentation showing authorization to represent depositor(s). Thank you.

Uwe, the undersigned, attest to the truth, accuracy and completeness of the information I/we have provided on this form to the best of my/our knowledge, understand Water Bank Rules and my/our role as a participant in the Texas Water Bank.

Signature _____ Date

Additional signatures for co-depositors, if applicable

_____**Notary Public signature and seal:**

Name: _____ Date: _____ DEXP: _____

Texas Water Bank Participant Responsibilities

Appendix _
Texas Water Bank Participant Responsibilities

TEXAS WATER BANK PARTICIPANT RESPONSIBILITIES

The Texas Water Bank is an administrative entity created to provide a means by which potential buyers and sellers of water can locate one another. Authorized in June of 1993 by the passage of Senate Bill 1030, it is administered by the Texas Water Development Board according to Water Bank Rules passed by the Board. The Water Bank is not an actual physical storage location for water, but can be likened to a "bulletin board", matching buyers with sellers so as to encourage marketing of water and/or water rights.

The Water Bank does not usurp regulatory authority held by the Texas Natural Resource Conservation Commission (TNRCC, formerly Texas Water Commission), underground water conservation districts or authorities, or any other state or federal regulatory agency. Transfers through the Water Bank must comply with all applicable law (Section §359.4 of the Water Bank Rules) and with regulatory requirements imposed by such law.

Participants in the Water Bank are: 1) buyers who request to be listed in the Registry and are interested in buying a water right or temporarily obtaining the use of water under a water right and 2) depositors or sellers interested in selling their water right or a portion of that right or temporarily leasing the use of water under that right, who must submit either an "Application for Deposit" form or a request to be listed in the Registry as a seller. All potential depositors must provide evidence of holding a valid surface water right, or a valid groundwater withdrawal authorization if within the jurisdiction of an underground water district or authority.

A buyer and depositor/seller should note that their particular contemplated sale or lease is unique and a surface water right amendment or groundwater withdrawal authorization amendment may be necessary. The Water Bank recommends that, while negotiating a contract to sell or lease water or a water right, a buyer and/or depositor/seller should contact the appropriate regulatory agency(iesse) to initially determine what amendment procedures may be necessary. The buyer and depositor/seller should monitor the progress of the amendment procedure. The transfer of water or the water right is not complete until all necessary regulatory approvals have been obtained (Section §359.8(d)(1) of the Water Bank Rules).

The Water Bank may serve as a broker or negotiator between a buyer and **depositor** only if both parties request such service (Section §359.12 of the Water Bank Rules). **Registration as a seller** does not entitle the seller to protection from cancellation by the Texas Natural Resource Conservation Commission, since registered sellers are not depositors in the Texas Water Bank. **Depositors are protected** pursuant to §15.704(a) and (b) of the Texas Water Code.

WATER BANK RULES ARE AVAILABLE ON REQUEST