

X FILED _____ LODGED _____
____ RECEIVED _____ COPY _____
MAY 09 2000
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT, a
municipal corporation of the State of
Arizona,

Plaintiff,

v.

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT
OF THE INTERIOR, BUREAU OF
RECLAMATION; BRUCE BABBITT,
Secretary of the Interior; PATRICIA
J. BENEKE, Assistant Secretary of
the Interior; ELUID L. MARTINEZ,
Commissioner of Reclamation;
ROBERT JOHNSON, Regional
Director, Lower Colorado Region,
United States Bureau of
Reclamation,

Defendant.

No. CIV 95-625-TUC-WDB (EHC)

No. CIV 95-1720-PHX-EHC

(Consolidated Action)

ORDER

438

1 UNITED STATES OF AMERICA,
2 Counterclaimant,

3 v.

4
5 CENTRAL ARIZONA WATER
6 CONSERVATION DISTRICT, a
7 municipal corporation of the State of
8 Arizona,

9 Counterdefendant.

10 This matter having come before this Court on the Joint Motion of CAWCD
11 and the United States for Stay and Approval of Stipulation and having considered
12 all of the files and records in this matter along with the matters discussed during
13 the April 11, 2000 hearing on the motion and with counsel for the United States
14 and the Central Arizona Water Conservation District ("CAWCD") having executed
15 the Stipulation Regarding a Stay of Litigation, Resolution of Issues During Stay
16 and for Ultimate Judgment Upon the Satisfaction of Conditions ("Stipulation") on
17 May 2, 2000, and May 3, 2000, respectively, and with no party objecting and
18 good cause appearing, IT IS HEREBY ORDERED, as follows:

19 1. The original Stipulation is ordered to be filed.

20 2. The above captioned case is stayed for a period of three years from
21 the date of this Order, hereinafter "Expiration Date."

22 3. Pursuant to paragraph 8(e) of the Stipulation, during the period of
23 the litigation is stayed, the Stipulation shall be effective as between the United
24 States and CAWCD, and CAWCD and the United States shall operate and
25 relevant payments and credits will be adjusted and made pursuant to the
26 Stipulation. The parties' respective positions in the litigation will not be

1 prejudiced by CAWCD and the United States operating in accordance with the
2 Stipulation while the litigation is stayed, if a settlement ultimately is not achieved.
3 The Court shall, pursuant to the terms of the Stipulation, maintain jurisdiction
4 over the administration of the Stipulation.

5 4. Upon the occurrence of all conditions within the Stipulation, the
6 Parties shall notify the Court and move for the entry of final judgment consistent
7 with the Stipulation. Objections to the entry of final judgment, if any, can be
8 made in opposition to the motion.

9 5. If the conditions articulated within paragraph 8 of the Stipulation are
10 not satisfied by the Expiration Date, the Stipulation will automatically terminate
11 and litigation will resume as provided for in paragraph 8(f) of the Stipulation.

12 6. Pursuant to paragraph 8(f) of the Stipulation, either the United
13 States or CAWCD may petition the Court to terminate the stay prior to the
14 Expiration Date.

15 7. In the event that litigation resumes, no penalties will be assessed
16 against CAWCD for any underpayments that might be determined to relate to the
17 period from the date of this Order until litigation resumes or the Expiration Date,
18 whichever occurs first.

19 8. To the extent required by Rule 2.7(b) of the Local Rules of Practice,
20 during the period the litigation is stayed, all other relevant and operative
21 provisions of the Stipulation not specifically mentioned herein are hereby
22 approved and so ordered.

23 DONE IN OPEN COURT this 9 day of May, 2000.

24 

25 The Honorable Earl H. Carroll
26 United States District Court Judge

1 STUART L. SOMACH (Cal. Bar # 090950) FILED LODGED
2 JOHN A. MENDEZ (Cal. Bar # 095450) RECEIVED COPY
3 De CUIR & SOMACH
4 A Professional Corporation
5 400 Capitol Mall, Suite 1900
6 Sacramento, California 95814
7 Telephone: (916) 446-7979
8 and

MAY 03 2000
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

9 ROBERT B. HOFFMAN (# 004415)
10 SNELL & WILMER L.L.P.
11 One Arizona Center
12 Phoenix, Arizona 85004-0001
13 Telephone: (602) 382-6315

X
 FILED LODGED
 RECEIVED COPY
MAY 03 2000
CLERK U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

14 Attorneys for Central Arizona
15 Water Conservation District

16 DAVID W. OGDEN
17 Acting Assistant Attorney General
18 JOSE de JESUS RIVERA
19 United States Attorney
20 RICHARD G. PATRICK
21 Assistant United States Attorney
22 4000 U.S. Courthouse
23 230 North First Avenue
24 Phoenix, AZ 85025
25 Telephone: (602) 514-7500

26 and
27 J. CHRISTOPHER KOHN
28 JOHN T. STEMPLEWICZ
29 PHILLIP M. SELIGMAN
30 BETH E. COOK
31 Attorneys, Civil Division
32 U.S. Department of Justice
33 Box 875, Ben Franklin Station
34 Washington, D.C. 20044-0875
35 Telephone: (202) 307-1104

36 Attorneys for Defendants

37
38 IN THE UNITED STATES DISTRICT COURT
39 FOR THE DISTRICT OF ARIZONA

40 CENTRAL ARIZONA WATER)
41 CONSERVATION DISTRICT, a municipal) No. CIV 95-625-TUC-WDB(EHC)
42 corporation of the State of Arizona,) No. CIV 95-1720-PHX-EHC
43) (Consolidated Action)

44 Plaintiff,)

45 v.)

46 STIPULATION REGARDING A
47 STAY OF LITIGATION,

48 //

1 UNITED STATES OF AMERICA, UNITED)
 STATES DEPARTMENT OF THE INTERIOR,)
 2 BUREAU OF RECLAMATION; BRUCE)
 BABBITT, Secretary of the Interior; PATRICIA)
 3 J. BENEKE, Assistant Secretary of the)
 Interior; ELUID L. MARTINEZ, Commissioner of)
 4 Reclamation; ROBERT JOHNSON,)
 Regional Director, Lower Colorado Region,)
 5 United States Bureau of Reclamation,)
)
 6 Defendants.)
)
 7 UNITED STATES OF AMERICA)
)
 8 Counterclaimant,)
)
 9 v.)
)
 10 CENTRAL ARIZONA WATER)
 CONSERVATION DISTRICT, a municipal)
 11 corporation of the State of Arizona,)
)
 12 Counterdefendant.)
)
 13

RESOLUTION OF ISSUES
 DURING THE STAY AND FOR
 ULTIMATE JUDGMENT UPON
 THE SATISFACTION OF
CONDITIONS

14 Plaintiff and Counter Defendant Central Arizona Water Conservation District (“CAWCD”),
 15 Defendants and Counterclaimants the United States of America, et al. (“United States”), and
 16 Intervenor the Tohono O’odham Nation, Cities of Phoenix, Tucson, Tempe, Scottsdale, Mesa,
 17 Peoria, Glendale, Chandler and Goodyear, and the Central Arizona Irrigation and Drainage
 18 District (hereinafter, collectively referred to as “Parties”) agree that judgment may be entered in
 19 this action in accordance with the following Stipulation:

- 20 1. This Court has jurisdiction over the Parties and the subject matter of this action.
- 21 2. The First Claim for Relief in CAWCD’s Complaint for Declaratory and Injunctive
 22 Relief (“Complaint”) filed on or about July 10, 1995, in this action and the First Claim for Relief
 23 in the United States First Amended Counterclaim (“Counterclaim”) filed on or about August 19,
 24 1998, shall be resolved as follows:
 - 25 (a) Notwithstanding the disputed provisions of Contract No. 14-06-W-245
 26 entitled “Contract between the United States and the Central Arizona Water Conservation District
 27 for Delivery of Water and Repayment of Costs of the Central Arizona Project” dated
 28 December 1, 1988 (“1988 Contract”), CAWCD’s repayment obligation for the Water Supply

1 System and the New Waddell and Modified Roosevelt Dams (“Regulatory Storage”) Stages of
2 the Central Arizona Project (“CAP”) shall be fixed at \$1,650,000,000, with annual payments to
3 be made by CAWCD in conformance with the annual payment schedule set forth as Exhibit “A”
4 hereto which is incorporated by reference herein as if set forth in full. The repayment obligation
5 and Exhibit “A” are premised on a total allocation of 665,224 acre feet of Project Water for use
6 by Indian tribes in Arizona.

7 (b) To the extent Congress provides appropriations therefor, the United States
8 will bear the financial obligation of completing all remaining features of the Water Supply System
9 and Regulatory Storage Stages of the CAP, including any and all environmental mitigation
10 construction work necessary to comply with Biological Opinion Number 2-21-90-F-119, dated
11 April 15, 1994, dealing with the Transportation and Delivery of Central Arizona Project Water,
12 to the Gila River Basin (Hassayampa, Agua Fria, Salt, Verde, San Pedro, Middle and Upper
13 Gila Rivers, and Associated Tributaries) in Arizona and New Mexico (“Gila River Biological
14 Opinion”); and Biological Opinion Number 2-21-91-F-706, dated May 1999 (Draft), dealing
15 with the Impacts of the Central Arizona Project (CAP) to Gila Topminnow in the Santa Cruz
16 River Basin through Introduction and Spread of Nonnative Aquatic Species (“Santa Cruz
17 Biological Opinion”), without any expenses being charged CAWCD except for those accounted
18 for in Exhibit “A.” Remaining features of the Water Supply System and Regulatory Storage
19 Stages of the CAP to be completed shall be limited to those features identified in Exhibit “B”
20 hereto which is incorporated by reference as if set forth in full. Exhibit “B” further identifies
21 which remaining features of the Water Supply and Regulatory Storage Stages of the CAP will be
22 completed by the United States and which will be completed, pursuant to subparagraph 6(c)(iii)
23 of this Stipulation, by CAWCD. In the event that additional authorizations or appropriations are
24 needed to capitalize or complete the items identified in Exhibit “B,” then CAWCD agrees to
25 support these authorizations and appropriations including any the Secretary may request for the
26 capitalization and payment of environmental mitigation work identified in Exhibit “B.” The
27 \$1,650,000,000 repayment obligation will not be adjusted regardless of the outcome of litigation
28 dealing with either the Gila River Biological Opinion or the Santa Cruz Biological Opinion.

1 (c) In addition to the provisions of Article 9.3(e) of the 1988 Contract,
2 CAWCD and the United States shall consult prior to the construction of any CAP feature, facility
3 or stage, of which costs may be allocable to CAWCD, other than the Water Supply System Stage
4 and the Regulatory Storage Stage, and, except as provided in Exhibit "B" hereto, about such
5 construction, relevant costs and any cost allocation associated with that construction.

6 (d) Nothing herein is intended to preclude CAWCD from supporting or the
7 Secretary from seeking authorizations and appropriations to cover all or part of the funds that
8 may be necessary to pay for major replacements of CAP features or facilities.

9 (e) CAWCD agrees to support authorizations and appropriations the Secretary
10 may request for CAP Indian distribution systems authorized pursuant to Section 301(a)(9) of the
11 Colorado River Basin Project Act, 43 U.S.C. § 1521(a)(9).

12 3. The Second and Fifth Claim for Relief in the Complaint and the Second Claim for
13 Relief in the Counterclaim shall be resolved as follows:

14 (a) Notwithstanding the 1988 Contract (Articles 9.1, 9.2(e), 9.3(d) and 9.10),
15 the repayment schedule set forth in Exhibit "A" hereto shall constitute CAWCD's repayment
16 obligation and all prior billings shall be recalculated and adjusted to reflect the payments
17 provided for in Exhibit "A." These recalculations and adjustments, through the December 1999
18 bill, are shown on Exhibit "A-1" which is incorporated by reference as if set forth in full. In this
19 recalculation and adjustment, bills have been calculated without penalties being assessed against
20 CAWCD but with any over- or under-payments bearing interest at the Arizona State Treasury
21 investment rates for relevant periods. Exhibit "A-1" also reflects appropriate recalculations and
22 adjustments to account for the credits provided for in paragraph 6 of this Stipulation. To the
23 extent that Exhibit "A-1" reflects a net credit to CAWCD following the January 2000 payment,
24 that credit shall be carried forward with interest at the Arizona State Treasury investment rate and
25 shall be applied to future Exhibit "A" payments due to the United States from CAWCD as needed
26 after application of all revenues and credits described in subparagraph 6(c).

27 (b) Notwithstanding Article 9.3(d) of the 1988 Contract, 73% of the repayment
28 obligation established in subparagraph 2(a) of this Stipulation shall be interest bearing, and 27%

1 shall be non-interest bearing. This agreed-upon interest bearing split is reflected in the payment
2 schedule in Exhibit "A" and shall be in effect throughout the repayment period.

3 4. The Third and Fourth Claims for Relief in the Complaint and the Third and Fourth
4 Claims for Relief in the Counterclaim shall be resolved as follows:

5 (a) The provisions of this paragraph of the Stipulation shall apply only to how
6 CAWCD determines charges for delivery of Project Water under long-term contracts,¹
7 specifically: Fixed OM&R Costs and Charges and Pumping Energy Costs and Charges for
8 providing Project Water service for any Indian Tribe or for any other Federal purpose. This
9 paragraph shall not govern, in any way, how either Fixed OM&R Costs and Charges or
10 Pumping Energy Costs and Charges are determined for any other purposes. If CAWCD uses an
11 alternate method of calculating either Fixed OM&R Costs and Charges or Pumping Energy Costs
12 and Charges which results in a lesser cost or charge (exclusive of any water service subcontract
13 or water service capital charges) for Municipal and Industrial ("M&I") priority water or
14 agricultural priority water under long-term subcontracts, then the lesser cost or charge will be
15 billed instead of the costs or charges that would otherwise be billed under the provisions of this
16 paragraph.

17 (b) For the purposes of this Stipulation, "Fixed OM&R Costs" shall mean: all
18 expenses incurred by CAWCD for the care, operation, maintenance, and replacement of
19 "Transferred Works" as defined in Article 5.18 of the 1988 Contract and identified pursuant to
20 Article 6(a) of Contract No. 7-07-30-W0167, dated August 5, 1987 ("O&M Transfer
21 Contract") (sometimes referred to as "OM&R-related activities") and for the transmission of
22 energy necessary to deliver Project Water that are not otherwise included in Pumping Energy
23 Costs. All costs incurred by Reclamation and reimbursed by CAWCD pursuant to
24 paragraph 8.2.1 of the Operating Agreement attached hereto as Exhibit "C" and hereby fully
25
26

27 ¹ As used in this Stipulation, a long-term contract or subcontract means one having a term that extends to
28 2043 or beyond and any contract or subcontract resulting from the transfer, assignment or lease of such contract
or subcontract, or part thereof, or of a Project Water entitlement thereunder.

1 incorporated herein by reference² may be included in Fixed OM&R Costs as may the costs in
2 excess of the funds provided in subparagraph 6(e)(ii) of establishing a reserve to cover the costs
3 associated with major repair or replacement of CAP features. CAWCD shall use its business
4 judgment to allocate joint costs that support both OM&R-related activities and other activities and
5 may include in Fixed OM&R Costs only the portion of joint costs allocable to OM&R-related
6 activities. "Fixed OM&R Charge" shall mean the charge per acre-foot of Project Water imposed
7 by CAWCD each year for the recovery of the Fixed OM&R Costs of water deliveries.

8 (c) "Pumping Energy Costs" shall mean all of CAWCD's costs for the
9 generation or acquisition of energy necessary to deliver Project Water each year. "Pumping
10 Energy Charge" shall mean the charge per acre-foot of Project Water imposed by CAWCD each
11 year for the recovery of the Pumping Energy Costs of water deliveries.

12 (d) Pursuant to subparagraph 4(a) above, CAWCD shall annually in advance of
13 Project Water deliveries determine the Fixed OM&R Charge and Pumping Energy Charge for
14 Project Water service for the following year.

15 (i) CAWCD's Fixed OM&R Charge shall not be more than the amount
16 determined by dividing CAWCD's estimated Fixed OM&R Costs for the following year by the
17 total amount of Project Water that CAWCD estimates will actually be delivered through Project
18 Works in the following year.

19 (ii) CAWCD's Pumping Energy Charge shall not be more than the
20 amount determined by dividing CAWCD's estimated Pumping Energy Costs for the following
21 year by the total amount of Project Water that CAWCD estimates will actually be delivered
22 through Project Works in the following year.

23 (iii) Without regard to any prior year's adjustment as may be provided
24 in subparagraphs 4(e) and (f) below, charges for any delivery of Project Water for Federal
25 purposes shall be no more than the sum of the Fixed OM&R Charge and the Pumping Energy
26 Charge as defined in subparagraphs 4 (b) and (c) herein.

27 _____
28 ² The exhibits and attachments to the original Exhibit C, as executed by the United States and
CAWCD are not appended to Exhibit C hereto.

1 (e) All past fixed OM&R and pumping energy charges paid by the United
2 States on behalf of the Ak-Chin Indian Community, for Roosevelt Dam construction, and for
3 San Carlos Apache Tribe/Phelps Dodge exchange water shall be fairly reconciled with actual
4 past fixed OM&R and pumping energy costs and shall not include the costs in paragraph 14
5 below nor shall it include the costs of establishing a reserve to cover the costs associated with the
6 major repair or replacement of CAP features referred to in subparagraph 4(b) above, with
7 overpayments bearing interest at the Arizona State Treasury investment rate for the relevant
8 periods, being credited against future charges for deliveries for Federal purposes beginning with
9 amounts due in the year 2001 or refunded at United States option. The accounting methodology
10 used in performing the foregoing reconciliation will be consistent with the methodology used in
11 the applicable years to assess the charge. CAWCD will provide the United States an accounting
12 of the adjustment. Any disputes over the reconciliation dealt with in this subparagraph shall be
13 dealt with pursuant to the ADR procedures set forth in paragraph 11 herein.

14 (f) To the extent Congress provides appropriations therefor, the United States
15 shall, in advance of Project Water deliveries, pay or provide for payment of all Fixed OM&R
16 Charges and Pumping Energy Charges associated with the delivery of Project Water, whether
17 directly or by exchange, for use by any Indian tribe or its lessees or for any other Federal
18 purpose. CAWCD shall bill the United States for such Charges monthly, based upon CAWCD's
19 annual estimates of these Charges and annual water delivery schedules. The United States shall
20 pay or provide for payment within 30 days of billing. The payment of such Charges directly to
21 CAWCD by lessees or other entities shall discharge, to the extent of the payments made, the
22 obligation of the United States. Within 30 days of the completion of audited financial statements
23 each year, but in no case later than May 30, CAWCD shall adjust Fixed OM&R Charges and
24 Pumping Energy Charges to reflect actual Fixed OM&R Costs and Pumping Energy Costs, with
25 overpayments refunded to or underpayments paid by the United States within 30 days of the
26 recalculation. CAWCD will provide the United States an accounting of the adjustment. The first
27 adjustment shall be in 2001 for charges assessed in the year 2000.

28 //

1 (g) The United States annually shall have the right, upon 90 days advance
2 written notice, to audit CAWCD's administration of Fixed OM&R and Pumping Energy Costs
3 and Charges. In the case of a dispute over the type of charge or the amount that is billed, the
4 United States shall pay or provide for payment of the full amount billed, but shall do so under
5 protest and CAWCD and the United States shall follow the ADR procedures set forth in
6 paragraph 11 herein.

7 (h) In those situations in which a lessee of Project Water under contract to an
8 Indian tribe has an obligation to pay Fixed OM&R Charges or Pumping Energy Charges
9 associated with the delivery of Project Water, whether directly or by exchange, nothing herein
10 shall relieve such lessee from the obligation to pay such charges. The United States shall direct
11 such lessee to pay all such charges directly to CAWCD. Nothing herein shall waive any right of
12 the United States to repayment of Fixed OM&R Charges or Pumping Energy Charges from any
13 Indian tribe where an obligation exists for such tribe to pay its own Fixed OM&R Charges or
14 Pumping Energy Charges. Nothing herein is intended to create an obligation on the part of the
15 United States to pay for a lessee where that obligation does not otherwise exist.

16 5. The Fifth and Sixth Claims for Relief in the Counterclaim shall be resolved as
17 follows:

18 (a) For purposes of this Stipulation, "Project Water" shall mean:

19 (1) all Colorado River water to which Arizona is entitled under the U.S.
20 Supreme Court decree in *Arizona v. California* that the CAP Water Supply System is capable of
21 delivering:

22 (i) after first providing for satisfaction of those rights described
23 in Article 8.7(b)(i) and (ii) of the 1988 Contract, and

24 (ii) subject to the provisions of Article 8.7(c) of the 1988
25 Contract;

26 (2) water available from Central Arizona Project dams and reservoirs;

27 (3) return flows captured by the Secretary for Project use;

28 //

1 (4) water delivered to water users in Arizona, through the Project
2 Works, in exchange for water delivered to users in New Mexico from or by means of the Project
3 Works;

4 (5) Colorado River water acquired from the Yuma Mesa Division of the
5 Gila Project pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328),
6 as amended on October 19, 1984 (Public Law 98-530);

7 (6) Colorado River water acquired from the Wellton-Mohawk Irrigation
8 District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement
9 Act of 1988 (Public Law 100-512); and

10 (7) any additional water not included in (i) or (ii) above that is required
11 to be delivered by the Secretary through Project Works pursuant to the Southern Arizona Water
12 Rights Settlement Act of 1982 (Title III of Public Law 97-293) or pursuant to any subsequent act
13 of Congress.

14 (b) For purposes of this Stipulation, the water supply associated with
15 modification of Roosevelt Dam shall not be counted as Project Water.

16 (c) CAWCD shall be entitled to divert all Project Water for the benefit of Project
17 Water users.

18 (d) Excess Water shall be dealt with as follows:

19 (1) "Excess Water" is all Project Water that is in excess of the amounts
20 used, resold, or exchanged pursuant to long-term contracts and subcontracts for Project Water
21 service.

22 (2) CAWCD shall have the exclusive right in its discretion to sell or use
23 all Excess Water for any authorized purpose of the CAP.

24 (3) Excess Water shall be delivered through Project Works for use on
25 Indian lands or non-Indian lands directly or by exchange as permitted by law.

26 (4) Contracts for the sale or use of Excess Water under this paragraph
27 may be made pursuant to multi-year programs established by CAWCD. Such contracts shall not
28 exceed a term of one year, but may contain a provision for automatic renewal without further

1 action by the parties thereto. Such automatic renewal shall not give rise to a right in any
2 subsequent year to receive Excess Water, nor preclude future long-term contracts or subcontracts
3 nor limit the terms thereof, including in implementation of Indian water right settlements up to a
4 total for all long-term contracts and subcontracts of 1.415 million acre-feet. By its terms,
5 Subarticle 8.8(b) of the 1988 Contract does not apply to contracts for Excess Water service under
6 this paragraph; however, such contracts entered into after the filing of this Stipulation shall
7 comply substantially with the provisions of Subarticles 8.8(b)(i), 8.8(b)(ii), 8.8(b)(iii),
8 8.8(b)(iv), 8.8(b)(viii) and 8.8(b)(x). Pursuant to 43 U.S.C. § 1524(b)(1), all contracts that
9 conform to the provisions of this paragraph shall be deemed approved by the Secretary. The
10 Secretary must be a party to or must expressly approve all contracts for Project Water service
11 other than those which conform to the provisions of this paragraph.

12 (5) CAWCD may, at its discretion, establish programs for the sale of
13 Excess Water under this paragraph that provide for various categories and charges for Excess
14 Water. Through 2030, in any year in which Excess Water is offered for sale under this
15 paragraph, any Indian contractor of Project Water service or the United States shall have the right
16 to purchase Excess Water from any Excess Water category not established exclusively for the use
17 of non-Indian agriculture or the Arizona Water Banking Authority, at the same charge and upon
18 the same terms and conditions as for other users in that category. Any water available within an
19 exclusive category that is not fully used by eligible participants in that category shall be made
20 available to other Excess Water categories. After 2030, in any year in which Excess Water is
21 offered for sale under this paragraph, any Indian contractor of Project Water service or the
22 United States shall have the right to purchase Excess Water from any Excess Water category at
23 the same charge and upon the same terms and conditions as for other users in that category.

24 (6) Nothing in this paragraph shall preclude the United States or any
25 Indian tribe from entering into a contract with the Arizona Water Banking Authority.

26 (7) Excess Water purchased under this paragraph may not be resold or
27 transferred, except that a purchaser may enter into an arrangement with a groundwater savings
28 facility allowed under state law to store Excess Water.

1 (8) This paragraph does not constitute or require approval by the
2 Secretary of any particular Excess Water program.

3 6. The Fifth Claim for Relief in the Complaint is further dealt with and the Seventh,
4 Eighth, Ninth, Tenth, Eleventh, and Twelfth Claims for Relief in the Counterclaim are resolved
5 as follows:

6 (a) The Lower Colorado River Basin Development Fund ("LBDF"),
7 established pursuant to Section 403 of the Colorado River Basin Project Act, 43 U.S.C.
8 § 1543, shall be administered, and past accountings adjusted as follows:

9 (i) Exhibit "A-1" reflects a credit of \$127,772,946 for all past
10 payments made by CAWCD pursuant to annual billings issued by the United States since 1993.

11 (ii) Exhibit "A-1" reflects a credit in the amount of \$31,678,364 for
12 CAWCD's advance of funds for the United States' purchase of the Harquahala Valley Irrigation
13 District's CAP allocation for use in Indian water rights settlements.

14 (iii) Exhibit "A-1" reflects credits totaling \$35,942.266 for expenditures
15 made through December 31, 1999 by CAWCD to correct CAP construction deficiencies.

16 (iv) Exhibit "A-1" reflects a credit in the amount of \$2,969,251 for the
17 value of CAWCD's unreimbursed employee-related costs accrued prior to 1994.

18 (v) Exhibit "A-1" reflects a credit in the amount of \$112,999,485 for
19 revenues credited to or deposited in the LBDF from the sale of Navajo Surplus Power through
20 December 31, 1999.

21 (vi) Exhibit "A-1" reflects credits totaling \$32,193,263 for revenues
22 credited to or deposited in the LBDF associated with the Hoover 4.5-mill surcharge through
23 December 31, 1999.

24 (vii) Exhibit "A-1" reflects credits totaling \$599,000 for net
25 miscellaneous revenues credited to or deposited in the LBDF through December 31, 1999.

26 (viii) Exhibit "A-1" reflects offsets totaling \$1,238,600 for Reclamation
27 oversight costs except for those described in paragraph 14 below.

28 //

1 (b) The amounts set forth in subparagraph 6(a) above shall remain subject to
2 verification and audit for a period of one year from the date of this Stipulation, and CAWCD and
3 the United States shall work diligently with each other to complete this verification within this
4 period of time. In the event of a dispute associated with these verifications and audits, the parties
5 shall follow the ADR procedures set forth in paragraph 11.

6 (c) The LBDF shall be further administered as follows:

7 (i) All power revenues, net of generation and associated administrative
8 costs, including all revenues from Navajo Surplus Power sales (other than those pledged to the
9 payment of bonds issued by CAWCD and except as provided in subparagraph 6(e)(ii) hereof),
10 the Hoover 4.5-mill surcharge,³ and, after June 1, 2005, the Parker Davis 4.5-mill surcharge,
11 shall be placed in the LBDF and credited, in the relevant years, against future Exhibit "A"
12 payments due to the United States from CAWCD prior to their utilization for any other purpose.

13 (ii) All miscellaneous CAP revenues shall be credited, in relevant years,
14 against future Exhibit "A" payments due to the United States from CAWCD, including, but not
15 limited to, all revenues from the use, rental, sale, exchange or inter-agency or inter-governmental
16 transfer of CAP lands or other property. In the case of exchanges or inter-agency or inter-
17 governmental transfers of real property, credits for transactions which take place after the date of
18 the execution of this Stipulation shall equal the greater of cost or the fair market value of such
19 land or property at the time of the exchange. Fair market value will be determined by
20 independent appraisal funded out of proceeds of the sale or, if no sale takes place, funded as
21 reimbursable oversight costs. Where reimbursable costs are not associated with the acquisition
22 of property, then the provisions of this subparagraph shall not apply to the disposal of that
23 property but, rather, the statutory provisions associated with the acquisition and disposal of that
24 property shall govern how the value of that property shall be accounted for.

25 (iii) A credit against Exhibit "A" payments due to the United States from
26 CAWCD shall be made annually based upon the agreed-upon costs associated with the agreed
27

28 ³ This subparagraph does not apply to the 2.5-mill surcharge to purchasers in California and Nevada.

1 work undertaken by CAWCD, pursuant to Exhibit "B," to further correct CAP construction
2 deficiencies. Any recoveries on claims made by the United States against CAP siphon
3 construction related contractors shall be divided 35% to CAWCD and 65% to the United States.
4 CAWCD's share of such recoveries, if any, shall be applied as a credit against the Exhibit "A"
5 payments due to the United States from CAWCD. The United States share of such recoveries, if
6 any, shall not be available for credit against Exhibit "A" payments due to the United States from
7 CAWCD. Notwithstanding the foregoing, all decisions regarding claims including litigation and
8 settlement against CAP siphon construction contractors shall be within the sole discretion of the
9 United States and shall not be subject to challenge by CAWCD. However, the United States
10 shall consult with CAWCD regarding proposed settlement of such claims.

11 (iv) The United States shall apply all revenues described in
12 paragraphs 6(c)(i) and 6(c)(ii) against the current Exhibit "A" payment due to the United States
13 from CAWCD before applying any of the credits described in paragraph 6(c)(iii). To the extent
14 that any of the credits described in paragraph 6(c)(iii) are not needed to satisfy the current year's
15 Exhibit "A" payment due to the United States from CAWCD, those excess credits shall be carried
16 forward for application against future Exhibit "A" payments due to the United States from
17 CAWCD until exhausted, with such excess credits bearing interest at the Arizona State Treasury
18 investment rate.

19 (d) Costs associated with the miscellaneous revenues addressed in
20 subparagraph 6(c)(ii) shall be billed as part of the work plan referred to in Exhibit "C." In the
21 event of a dispute with respect to the billing provided for herein, CAWCD and the United States
22 shall follow the ADR procedures set forth in paragraph 11.

23 (e) (i) Nothing in this Stipulation shall affect the establishment, collection,
24 payment and application of the Additional Rate Component charged for Navajo Surplus Power
25 and used for the payment of bonds previously issued by CAWCD (hereinafter "Outstanding
26 Bonds"). CAWCD and the United States acknowledge that the amounts collected from such
27 Additional Rate Component are properly held by the Trustee designated by CAWCD and

28 //

1 properly used to pay debt service, costs, and rebate obligations associated with such Outstanding
2 Bonds and to fund reserves therefor.

3 (ii) Except as expressly provided in this subparagraph (ii), nothing in
4 this Stipulation shall affect the establishment, collection, payment and application of the Capacity
5 Charge (including the Additional Rate Component) charged for Navajo Surplus Power (the
6 "Capacity Charge") as provided in the following documents: Reclamation Agreement No. O-
7 CS-30-P1076, as amended by the First Amendment thereto (as amended, the "Interagency
8 Agreement"); Contracts Nos. 89-BCA-10287 and 91-PAO-10404 for Long Term Sale of Navajo
9 Surplus Power (collectively, the "Power Sales Contracts"), the Bond Indenture dated as of
10 May 1, 1990, by and between CAWCD and Citibank (Arizona) as trustee (together with its
11 successors, the "Bond Trustee"), as amended by the First Supplement to Bond Indenture dated
12 as of March 1, 1993, by and between CAWCD and the Bond Trustee, and the Bond Indenture
13 dated as of August 1, 1991, by and between CAWCD and the Bond Trustee, as supplemented
14 by the First Supplement to Bond Indenture dated as of February 1, 1994, by and between
15 CAWCD and the Bond Trustee (collectively, the "Bond Indentures"). This Stipulation does not
16 impose on the United States and the United States does not hereby assume any obligations under
17 the Bond Indentures. Notwithstanding the provisions of the Bond Indentures and the
18 Interagency Agreement, all revenues from the Capacity Charge and all monies held by the Bond
19 Trustee under the Bond Indentures, to the extent such revenues and monies are not necessary to
20 pay debt service, costs, or rebate obligations associated with Outstanding Bonds or to fund
21 reserves therefor, may be paid, at CAWCD's option and in lieu of payment to Reclamation for
22 deposit in the LBDF, to CAWCD to be used by CAWCD solely to establish a reserve to cover
23 the costs associated with major repair or replacement of CAP features. To accomplish this result,
24 the Bond Trustee may be directed by CAWCD to pay such amounts directly to CAWCD from
25 time to time and, whenever it is no longer necessary to have the Capacity Charge paid to the
26 Bond Trustee under the Bond Indentures, CAWCD may designate itself or any institutional
27 trustee acting on CAWCD's behalf, as trustee to receive the Capacity Charge. In consideration
28 for this, CAWCD shall pay the United States \$12,000,000 on or before December 31, 2011,

1 which payment shall be applied as a prepayment of the last \$12,000,000 due of the non-interest
2 bearing portion of CAWCD's Exhibit "A" Repayment Obligation. The foregoing applies only to
3 revenues from the sale of Navajo Surplus Power prior to October 1, 2011.

4 (f) CAWCD shall annually have the right, upon 90 days advance written
5 notice, to audit the United States administration of the LBDF. To the extent that a dispute arises
6 over how the United States administers the LBDF, and no mutually agreeable resolution can be
7 achieved, CAWCD and the United States shall follow the ADR procedures set forth in
8 paragraph 11 herein.

9 (g) (i) CAWCD will pay administration, oversight and OM&R costs billed
10 by the United States as provided in the Operating Agreement (Exhibit "C").

11 (ii) CAWCD will not dispute the categories of costs specified in
12 paragraph 8.3 of the Operating Agreement, but may dispute the amount of such costs billed by
13 the United States. CAWCD may dispute any cost billed that is not within the category of costs
14 specified in paragraph 8.3 of the Operating Agreement. If a bill is disputed, CAWCD shall,
15 after noting its protest, nonetheless pay the disputed bill, and CAWCD and the United States
16 shall follow the ADR procedures set forth in paragraph 11 below with respect to the disputed
17 bill. If CAWCD fails to pay the full amount billed, and the United States prevails, in whole or in
18 part, in the ADR process or in litigation, CAWCD shall pay or lose credit in the applicable
19 amount with interest and/or penalties provided for in Article 9.10 of the 1988 Contract. If
20 CAWCD prevails, in whole or in part, in the ADR process or in litigation, the United States shall
21 repay or credit CAWCD with the full amount awarded plus interest at the Arizona State Treasury
22 investment rate for relevant periods.

23 (h) Beginning January 1, 2000, net revenues in the LBDF that are available as
24 a credit toward CAWCD's repayment obligation shall be accounted for and quantified by
25 Reclamation on a quarterly basis. On the first day of each quarter following the receipt of the
26 revenues, Reclamation shall calculate an offsetting credit calculated at 1/4 of 3.342% (simple
27 interest) on the prior quarter's collected revenues. The additional offsetting credit shall be
28 recorded at the end of each quarter. Reclamation shall provide CAWCD a quarterly report of

1 LBDF revenues and credits calculated under this paragraph. Each year the accumulated balance
2 of the additional offsetting credit, if any, shall be applied against the annual payment due on the
3 following January 15. The offsetting credits dealt with in this subparagraph 6(h) are for the
4 purpose of offsetting interest, if any, that would otherwise be due from CAWCD. The offsetting
5 credits shall have no effect on the principal payments that are otherwise due from CAWCD.

6 (i) Article 10.3 of the 1988 Contract requires the establishment of certain
7 reserve funds. Article 10.3(a) provides for the establishment of a \$4,000,000 emergency
8 OM&R reserve fund. Article 10.3(b) provides for the establishment of a \$40,000,000
9 repayment reserve fund. Notwithstanding the limitations on the utilization of the reserve funds
10 that may otherwise exist in the 1988 Contract, CAWCD may, at its reasonable discretion, utilize
11 monies in either fund for the purpose of meeting the purposes identified in Article 10.3(a)(iv) of
12 the 1988 Contract.

13 7. CAWCD and the United States have executed an Operating Agreement
14 (Exhibit "C") setting forth the terms and conditions for performing OM&R-related activities.

15 8. (a) As a condition to the effectiveness of this Stipulation, the following shall
16 have been addressed, in a manner satisfactory to the Secretary⁴ and the Arizona Department of
17 Water Resources, including any necessary actions by Congress:

18 (i) a final Gila River Indian Community water rights settlement fully
19 enforceable in accordance with the enforceability date provisions of such settlement;

20 (ii) an amendment to the Southern Arizona Water Rights Settlement Act
21 of 1982 fully enforceable in accordance with the enforceability date provisions of such
22 amendment;

23 //

24 //

25 //

26

27

28 ⁴ Any settlement referenced herein involving ongoing litigation shall also be subject to the Attorney General's authority under 28 U.S.C. § 519.

1 (iii) a final San Carlos Apache Tribe water rights settlement fully
2 enforceable in accordance with the San Carlos Apache Tribe Water Rights Settlement Act of
3 1992, P.L. 102-575, 106 Stat. 4740, as amended in 1994, 1996 and 1997, and the
4 enforceability date provisions of such settlement;

5 (iv) the allocation of Project Water for use by Indian tribes in Arizona
6 such that the total amount allocated for Federal purposes shall be 665,224 acre feet; and

7 (v) 65,647 acre feet of M&I Project Water and approximately
8 100,000 acre feet of non-Indian agricultural Project Water shall be or shall have been allocated to
9 or for the benefit of various Arizona M&I or non-Indian agricultural water providers.

10 (b) As a condition to the effectiveness of this Stipulation, any authorizations or
11 appropriations necessary to fund construction work as set forth in Exhibit "B" to comply with the
12 Gila River Biological Opinion and the Santa Cruz Biological Opinion have been obtained from
13 Congress. Nothing in this Stipulation is intended to prejudice the positions of CAWCD or the
14 United States in any litigation associated with these biological opinions.

15 (c) As a condition to the effectiveness of this Stipulation, the United States shall
16 amend the Navajo Power Marketing Plan of December 1, 1987 ("Plan") to provide for the
17 establishment and collection of rates for the sale or exchange of Navajo Surplus Power after
18 September 30, 2011, which optimize the availability and use of revenues for the purposes of
19 subparagraphs 6(c) and 8(d), in a manner consistent with the Hoover Power Plant Act of 1984
20 (Pub. L. No. 98-381), and shall market and exchange Navajo Surplus Power after
21 September 30, 2011, in accordance with such amended Plan.

22 (d) (i) As a condition to the effectiveness of this Stipulation, Congress
23 shall have provided in a manner satisfactory to the Secretary, the Attorney General and CAWCD
24 a means by which:

25 (1) A firm funding stream not to exceed the annual amount of
26 LBDF revenues previously credited against CAWCD's annual Exhibit "A" repayment obligation
27 is available for, in order of priority:

28 //

1 (i) First, for Fixed OM&R Charges under long-term
2 contracts payable by the United States pursuant to subparagraph 4(f) and subject to
3 subparagraph 4(h);

4 (ii) Second, for costs authorized by Congress to be paid
5 to the Gila River Indian Community pursuant to the Gila River Indian Community water rights
6 settlement;

7 (iii) Third, in addition to funds made available through
8 annual appropriations, for any of the following, without regard to any particular priority:

9 1) After enactment of the Gila River Indian
10 Community Settlement Act, costs associated with the construction of distribution systems
11 associated with the Gila River Indian Community's Master Contract with the United States for
12 Repayment of Construction Costs and Operation, Maintenance and Replacement of A Water
13 Distribution System (#6-07-30-W0345) dated July 20, 1998;

14 2) Costs associated with the construction of
15 distribution systems required to implement the provisions of § 3707(a)(1) of the San Carlos
16 Apache Tribe Water Rights Settlement Act of 1992 (Pub. L. No. 102-575, 106 Stat. 4740 as
17 amended);

18 3) Costs associated with construction of
19 distribution systems required to implement the provisions of §§ 303(a)(1) and (2) of the
20 Southern Arizona Water Rights Settlement Act of 1982 (Pub. L. No. 97-293, 96 Stat. 1279);
21 and

22 4) Other costs authorized by Congress
23 (including any costs to construct distribution systems but not including costs otherwise payable
24 by non-Federal, non-Indian parties) pursuant to any Arizona Indian water rights settlement act
25 enacted after the date of this Stipulation. It is understood, however, that the actual terms of any
26 such settlement will need to be negotiated by the current or a future Administration and
27 subsequently enacted or amended by Congress on a case-by-case basis.

28 //

1 (iv) Fourth, in addition to funds made available through
2 annual appropriations, for costs associated with the construction of on-reservation facilities
3 enabling the following tribes to use the CAP water for which they have contracted: Yavapai
4 Apache (Camp Verde), Tohono O'odham Nation (Chuichu), Pascua Yaqui, and Tonto Apache;
5 *Provided*, that in the event of a water rights settlement act authorizing such construction in the
6 case of any of the foregoing tribes, the provisions of subparagraph 8(d)(i)(1)(iii) above shall
7 apply to such tribe or tribes; *Provided further* that, after 2030 and through 2046, any of the
8 foregoing tribes not having facilities enabling them to use the CAP water for which they have
9 contracted or a final water rights settlement act may elect, in lieu of any construction funding by
10 the United States, annual cash payments equal to the average price of any Excess Water sold
11 annually under paragraph 5 above multiplied by the total amount of such Excess Water sold or
12 the unused CAP water contract entitlement of such tribe or tribes, whichever is less.

13 (2) Any annual revenues within the LBDF, except for revenues
14 derived from the Capacity Charge described in subparagraph 6(e)(ii), that are in excess of what is
15 needed to satisfy CAWCD's annual Exhibit "A" repayment obligation may be used to pay, in
16 order of priority:

17 (i) Fixed OM&R Costs associated with delivery of CAP
18 water in the current year to Indian tribes under long-term contracts;

19 (ii) One year of "tail end" prepayment, starting with
20 repayment of non-interest bearing debt, of CAWCD's Exhibit "A" repayment obligation;

21 (iii) Repayment to the U.S. Treasury of Indian Fixed
22 OM&R Costs previously paid using LBDF revenues that had already been credited against
23 CAWCD's Exhibit "A" repayment obligation;

24 (iv) Repayment to the U.S. Treasury of costs associated
25 with any Indian water rights settlement previously paid using LBDF revenues that had already
26 been credited against CAWCD's Exhibit "A" repayment obligation;

27 (v) Payment of any annual installment on any CAP-
28 related 9(d) debt (43 U.S.C. § 485(d)) assumed by the United States; and

1 (vi) Payment to the U.S. Treasury of the difference
2 between CAWCD's \$1,650,000,000 repayment obligation and the result of any CAP cost
3 allocation undertaken by the United States for the Water Supply System and Regulatory Storage
4 Stages of the CAP.

5 (ii) Reclamation will provide CAWCD an annual accounting of its uses
6 of LBDF revenues under this subparagraph 8(d).

7 (iii) If for whatever reason a final judgment is not entered into in
8 accordance with this Stipulation then the provisions of this subparagraph shall have no effect and
9 shall not govern the utilization of LBDF revenues. To satisfy this condition, any legislation
10 enacted by Congress must provide that the authority to use LBDF revenues as described herein
11 shall not be effective if a final judgment is not entered in accordance with this Stipulation.

12 (e) From the date of this Stipulation until litigation resumes or the Expiration
13 Date, whichever occurs first, CAWCD and the United States will operate and relevant payments
14 and credits will be adjusted and made pursuant to this Stipulation. Neither CAWCD nor the
15 United States shall have waived any of the conditions set forth in this paragraph by any action or
16 inaction pursuant to this Stipulation prior to all of the conditions having occurred. Until all of the
17 conditions have occurred, any payment, credit or adjustment made or accepted pursuant to this
18 Stipulation shall be without prejudice to any claim or cause of action of CAWCD or the United
19 States existing prior to the date of this Stipulation. In the event that these conditions are not
20 satisfied and litigation resumes pursuant to subparagraph 8(f) of this Stipulation, then no
21 penalties will be assessed against CAWCD for any underpayments that might be determined to
22 relate to the period from the date of this Stipulation until litigation resumes or the Expiration Date,
23 whichever occurs first. The Arizona State Treasury investment rate shall apply to any over or
24 underpayments during such period.

25 (f) As noted above, the provisions of this paragraph are a condition to the
26 effectiveness of this Stipulation. They are, however, not intended to, in any way, control the
27 actions of the Secretary or any other Party. The Court shall maintain jurisdiction over the
28 administration of this Stipulation until such time as these conditions are met. Upon the

1 occurrence of all conditions within this Stipulation, the Parties shall notify the Court and move
2 for entry of a final judgment consistent with this Stipulation. This Stipulation shall be effective
3 on the entry of such final judgment (“Effective Date”). If all conditions within the Stipulation are
4 not met prior to the date that is three years from the date of this Stipulation (“Expiration Date”),
5 this Stipulation shall terminate automatically, and except for the last two sentences of
6 subparagraph 8(e) above regarding non-assessment of penalties, no party shall be bound by any
7 of its terms. If, at any time it appears that all conditions within this Stipulation cannot be met
8 before the Expiration Date, the Parties shall meet and confer about amending this Stipulation.
9 However, absent agreement on an amendment to this Stipulation, either CAWCD or the United
10 States may petition the Court to terminate the Stipulation prior to the Expiration Date, and, upon
11 the granting of that petition, the litigation shall resume. Matters resolved through decision of this
12 Court at the time this Stipulation is filed shall be considered “law of the case” and shall not be
13 relitigated. All appeal rights are reserved, including the United States appeal in *Central Arizona*
14 *Water Conservation District v. United States*, No. 99-15124 (9th Cir.).

15 (g) As noted in subparagraph 2(a) and elsewhere herein, the Exhibit “A”
16 repayment obligation is predicated upon the premise that a total of 665,224 acre feet of Project
17 Water has been allocated for Federal purposes. In the event there is a change in the amount of
18 Project Water allocated for Federal purposes from that assumed herein, CAWCD and the United
19 States will meet and confer with respect to any appropriate adjustment to Exhibit “A.” In the
20 event that there is a dispute between the parties or over the amount of any such adjustment, then
21 CAWCD and the United States will follow the ADR procedures set forth in paragraph 11 below.

22 9. Upon the Effective Date, all claims for relief raised by Intervenor in this case are
23 deemed to be fully resolved in accordance with the provisions of this Stipulation. Subject to
24 paragraph 8 of this Stipulation, the United States withdraws its objections filed in the
25 bankruptcy action involving Intervenor Central Arizona Irrigation and Drainage District.

26 10. (a) Upon the Effective Date, all matters within the Complaint and Counterclaim
27 not specifically mentioned herein are dismissed with prejudice, and the final judgment entered
28 pursuant to subparagraph 8(f) is binding upon all Parties.

1 (b) Upon the Effective Date, for and in consideration of CAWCD performing
2 its obligations under this Stipulation, the fact and sufficiency of which are hereby acknowledged,
3 the United States releases and forever discharges CAWCD, its present and former officers,
4 directors, employees, agents, attorneys, advisors, representatives, and their respective
5 successors and assigns from any and all claims, demands, rights, and causes of action of
6 whatsoever kind and nature, whether known or unknown, which the Department of the Interior
7 may have against CAWCD on account of the claims for relief in the Complaint and Counterclaim.
8 This release does not apply to claims arising under criminal or tax law, claims sounding in fraud,
9 or the claims of any United States Government agency other than the Department of the Interior.

10 (c) Upon the Effective Date, for and in consideration of the United States
11 performing its obligations under this Stipulation, the fact and sufficiency of which are hereby
12 acknowledged, CAWCD releases and forever discharges the United States and all Federal
13 Defendants, their present and former officers, employees, agents, attorneys, advisors,
14 representatives, and their respective successors and assigns from any and all claims, demands,
15 rights, and causes of action of whatsoever kind and nature, whether known or unknown, which
16 CAWCD may have against the United States and all Federal Defendants on account of the claims
17 for relief in the Complaint and Counterclaim.

18 (d) Upon the Effective Date, in accordance with 28 U.S.C. § 2672, this
19 Stipulation is final and conclusive upon CAWCD and constitutes a complete release of any
20 claim by CAWCD against the United States and any employee of the United States whose act or
21 omission gave rise to CAWCD's Federal Tort Claims Act claim, dated January 24, 1992, by
22 reason of the same subject matter. It is further agreed that, as of the Effective Date, this
23 Stipulation constitutes a complete and final settlement of all claims for relief asserted by CAWCD
24 in *Central Arizona Water Conservation District v. United States*, Case Number 92-51C, in the
25 United States Court of Federal Claims.

26 (e) CAWCD agrees to reimburse, indemnify and hold harmless the United
27 States, its agents, servants, and employees from and against any and all causes of action, claims,
28 liens, rights, or subrogated or contribution interests incident to or resulting from any act,

1 omission, neglect, or misconduct of CAWCD or its employees in the manner or method of
2 performing any construction, care, operation, maintenance, supervision, examination,
3 inspection, or other duties of CAWCD in order to undertake activities set forth in Exhibit "B."

4 (f) Notwithstanding subparagraphs 10(b), (c) and (d) above, and except as
5 provided in subparagraph 10(e) above, the releases contained in this Stipulation shall not apply to
6 third party claims that have been made or that may be made in the future against CAWCD or the
7 United States alleging personal injury, death or property damage caused by the design,
8 construction or operation of the CAP. CAWCD and the United States reserve all rights and
9 defenses with regard to such third party claims. It is further agreed that the releases contained in
10 this Stipulation do not modify or affect the provisions of Article 6(f) of the O&M Transfer
11 Contract or section 8 of Exhibit A to the O&M Transfer Contract.

12 (g) This Stipulation is not intended to be, and should not be construed as, an
13 admission of liability or fault on the part of CAWCD or the United States, their agents, servants,
14 officers, directors, or employees, and they specifically deny that they are liable to one another
15 except as provided herein. This Stipulation is entered into by all Parties for the purpose of
16 compromising disputed claims and avoiding the expenses and risks of further litigation.

17 (h) The persons signing this Stipulation warrant and represent that they possess
18 full authority to bind the Parties on whose behalf they are signing to the terms of the settlement.

19 11. The following non-binding ADR process shall be followed for any dispute arising
20 under subparagraphs 4(e), 4(g), 6(b), 6(f), 6(g) and 8(g) of this Stipulation:

21 (a) CAWCD and the United States shall meet and confer about the issue or
22 issues in an attempt to resolve the dispute. If there are issues that cannot be resolved by
23 CAWCD and the United States, each shall appoint one arbitrator to a panel of arbitrators which
24 will decide the dispute. The appointment of the two arbitrators will occur within 30 days of the
25 meeting referred to above.

26 (b) Arbitrators appointed to the arbitration panel shall be skilled and experienced
27 in the field or fields pertaining to the dispute. The two selected arbitrators shall meet within
28 30 days of their appointment, and at their first meeting they shall appoint a third neutral arbitrator

1 to complete the arbitration panel. The third arbitrator shall act as chairperson of the arbitration
2 panel and shall direct the arbitration proceedings.

3 (c) The arbitration process shall be limited to the issue or issues submitted by
4 CAWCD or the United States. The arbitration panel shall not rewrite, amend, or modify this
5 Stipulation, the 1988 Contract, the Operating Agreement, or any other agreement or contract
6 between the Parties.

7 (d) There shall be no discovery beyond the information and documents made
8 available during the informal meet and confer process provided for in subparagraph 11(a) and
9 the general exchange or availability of records provided for within the 1988 Contract.

10 (e) No formal evidentiary hearing shall be provided unless one is requested by
11 either CAWCD or the United States in writing, at the same meeting that the neutral arbitrator is
12 appointed. Assuming that no hearing has been requested, the arbitration panel will meet as
13 deemed necessary by the panel and shall, in a manner it deems appropriate, receive evidence,
14 receive argument or written briefs from CAWCD and the United States, and otherwise gather
15 whatever information is deemed helpful by the panel. The arbitration process to be followed
16 shall be informal in nature, and CAWCD and the United States shall not be entitled to trial-type
17 proceedings under, for example, formal rules of evidence.

18 (f) In the event that either CAWCD or the United States requests a hearing, the
19 arbitration panel shall meet to receive evidence, receive argument and written briefs from
20 CAWCD and the United States as follows:

21 (i) The arbitration panel shall, within 5 days of the appointment of the
22 neutral arbitrator, schedule a date for a hearing which shall be held within 20 days of the
23 appointment of the neutral arbitrator.

24 (ii) Within 10 days of the appointment of the neutral arbitrator, CAWCD
25 and the United States shall each submit a brief of no longer than 15 pages setting forth its case.
26 The brief shall include discussion of all issues relevant to the party's case. Each party shall, as
27 an attachment to its brief, include declarations of not more than two experts and any relevant
28 factual witness. Declarations of expert witnesses must include all opinions to be elicited upon

1 direct testimony and a complete explanation of the basis of these opinions. Disputes with respect
2 to the sufficiency of declarations or the appropriateness of the testimony shall be resolved by the
3 arbitration panel who may allow the testimony or exclude it. All expert witnesses must be
4 available for cross-examination at the time of the arbitration hearing. Factual witnesses for
5 which a declaration is prepared shall be made available for cross-examination at the time of the
6 arbitration hearing only if requested by the other party.

7 (iii) Each party shall have the opportunity, within 5 days of the close of
8 hearing, to submit a closing brief not to exceed 10 pages. The closing brief shall be argument
9 with no additional factual evidence to be submitted.

10 (iv) There shall be no testifying witness on direct except for expert
11 witnesses, if any.

12 (v) Each party shall have a maximum of four hours to present its case in
13 total. This time shall include opening and closing statements, direct presentation and any cross-
14 examination of the other party's witnesses. Each party shall have the right to reserve part of its
15 time to present up to one hour of rebuttal testimony.

16 (vi) The matter shall be deemed submitted at the submission of closing
17 briefs.

18 (g) The panel of arbitrators shall render its final decision in the dispute within
19 60 days after the date of naming the third arbitrator. If the arbitrators disagree as to the
20 determination, any two of the three arbitrators may join to form a majority and the decision of
21 those two arbitrators will be final for the panel. The panel will issue a written decision for
22 CAWCD and the United States.

23 (h) If either CAWCD or the United States declines to accept the decision of the
24 arbitration panel, it may initiate an action in the appropriate Federal court within 60 days of the
25 issuance of the panel's written decision to obtain a judicial determination of the underlying
26 dispute. If an action is not filed within 60 days of the panel's decision, the decision of the panel
27 shall be deemed to be final and not subject to judicial review. The decision of the panel and

28 //

1 record of the arbitration shall not be privileged and may be submitted as part of the record by
2 either side in support of its case.

3 (i) All costs incurred by the arbitration panel shall be shared equally by
4 CAWCD and the United States, and the expenses of the arbitration panel shall be paid
5 expeditiously. These costs shall not be included as Fixed OM&R Costs, nor are they to be made
6 reimbursable or a cost billable to CAWCD.

7 (j) During the period of time in which a disagreement is being addressed in the
8 ADR process or appropriate judicial proceeding, CAWCD and the United States agree that no
9 default or breach of any agreement being addressed in the process will have occurred and that
10 there will be no basis for the termination of water deliveries or other similar punitive actions by
11 either party. The foregoing does not waive any claims for monetary penalties under
12 Article 9.10(a) of the 1988 Contract.

13 12. Except as provided for herein, the 1988 Contract remains in full force and effect,
14 including but not limited to the provisions of Articles 9.6(e) and 9.9. Article 10.9 of the 1988
15 Contract shall govern all obligations of the United States under this Stipulation. Except as
16 otherwise provided for herein, terms defined within the 1988 Contract that are used in this
17 Stipulation have been capitalized and shall have the meaning ascribed to them in the 1988
18 Contract. Notwithstanding the foregoing, to the extent that the 1988 Contract is inconsistent
19 with the provisions of this Stipulation, the provisions of this Stipulation shall govern. Nothing
20 in this Stipulation is intended to affect the rights of long-term contractors and subcontractors of
21 Project Water service or any Colorado River water right holders. Nothing in this Stipulation is
22 intended to preclude CAWCD and the United States from entering into additional agreements or
23 amendments to existing agreements regarding the subjects addressed in this Stipulation. This
24 Stipulation and all actions authorized hereunder are subject to Federal law, including but not
25 limited to the Reclamation Reform Act of 1982 and any exceptions thereto, State of Arizona law,
26 and such rules and regulations as the Secretary may deem appropriate, as those laws and rules
27 and regulations may be amended, and, except as provided herein, the 1988 Contract. Nothing in

28 //

1 this Stipulation may be used in any way to control the CAP water allocation process or affect its
2 interpretation.

3 13. The Parties shall cooperate in carrying out the provisions and intent of this
4 Stipulation.

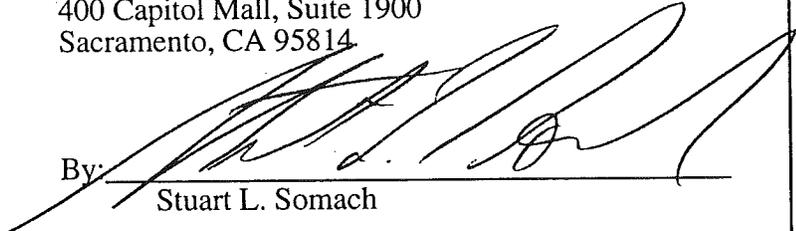
5 14. Each Party shall pay for its own costs, including attorney fees and expert fees in
6 this litigation. These costs shall not be included as Fixed OM&R Costs; nor are they to be made
7 reimbursable or made part of costs billable to CAWCD.

8 15. This Stipulation may be executed by the Parties in counterparts.

9 16. As between CAWCD and the United States, this Stipulation shall be effective upon
10 and the "date of this Stipulation" for the purposes herein shall be the date of entry of an Order of
11 this Court approving the Stipulation in accordance with the Joint Motion of CAWCD and the
12 United States for Stay and Approval of Stipulation to which this Stipulation is appended.

13 De CUIR & SOMACH
14 A Professional Corporation
15 400 Capitol Mall, Suite 1900
16 Sacramento, CA 95814

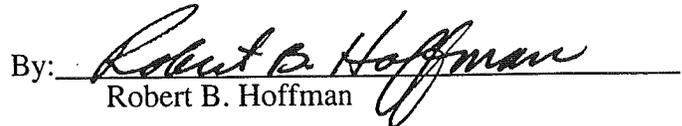
17 Dated: May 3, 2000

18 By: 
19 Stuart L. Somach

20 and

21 SNELL & WILMER
22 One Arizona Center
23 400 East Van Buren
24 Phoenix, AZ 85004-0001

25 Dated: May 3, 2000

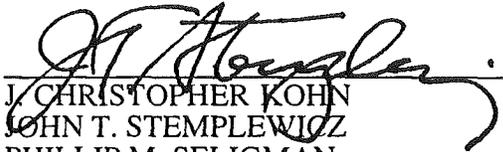
26 By: 
27 Robert B. Hoffman

28 Attorneys for Central Arizona Water
Conservation District

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DAVID W. OGDEN
Acting Assistant Attorney General
JOSE de JESUS RIVERA
United States Attorney
RICHARD G. PATRICK
Assistant United States Attorney
4000 U.S. Courthouse
230 North First Avenue
Phoenix, AZ 85025

Dated: May 2, 2000



J. CHRISTOPHER KOHN
JOHN T. STEMPLEWICZ
PHILLIP M. SELIGMAN
BETH E. COOK
Attorneys, Civil Division
United States Department of Justice
Box 875
Ben Franklin Station
Washington, D.C. 20044

Attorneys for Defendants

CENTRAL ARIZONA WATER CONSERVATION DISTRICT
 FEDERAL REPAYMENT OBLIGATION

EXHIBIT A

	Beginning Balance Interest Bearing		Beginning Balance Non-Interest Bearing		Payment Due		
	Stage I	Stage II	Stage I	Stage II	Principal	Interest	Total
	1994	917,744,685		339,439,815		12,571,845	8,945,716
1995	905,194,412		339,418,243		12,571,845	30,251,597	42,323,442
1996	893,625,867		338,414,943		12,571,845	29,864,976	42,436,821
1997	882,118,224	286,755,315	337,350,741	106,060,185	16,500,000	32,275,538	48,775,538
1998	870,744,611	282,827,160	336,152,509	106,060,185	16,500,000	38,552,369	55,052,369
1999	859,339,950	278,899,005	334,985,325	106,060,185	16,500,000	38,039,946	54,539,946
2000	847,695,473	274,970,850	334,057,957	106,060,185	16,500,000	37,519,509	54,019,509
2001	836,242,764	271,042,695	332,938,821	106,060,185	20,271,554	37,005,480	57,277,034
2002	820,999,366	267,114,540	331,838,821	106,060,185	20,271,554	36,364,767	56,636,320
2003	805,755,967	263,186,385	330,738,821	106,060,185	20,271,554	35,724,053	55,995,607
2004	790,512,569	259,258,230	329,638,821	106,060,185	21,450,000	35,083,340	56,533,340
2005	775,269,170	254,151,629	328,538,821	106,060,185	21,450,000	34,403,243	55,853,243
2006	759,725,772	249,045,027	327,438,821	106,060,185	21,450,000	33,713,120	55,163,120
2007	744,182,373	243,938,426	326,338,821	106,060,185	21,450,000	33,022,997	54,472,997
2008	728,638,975	238,831,824	325,238,821	106,060,185	25,221,554	32,332,874	57,554,428
2009	709,324,023	233,725,223	324,138,821	106,060,185	25,221,554	31,516,706	56,738,259
2010	690,009,071	228,618,621	323,038,821	106,060,185	25,221,554	30,700,537	55,922,091
2011	670,694,119	223,512,020	321,938,821	106,060,185	26,400,000	29,884,369	56,284,369
2012	651,379,167	217,226,972	320,838,821	106,060,185	26,400,000	29,028,817	55,428,817
2013	632,064,215	210,941,924	319,738,821	106,060,185	26,400,000	28,173,265	54,573,265
2014	612,749,263	204,656,876	318,638,821	106,060,185	26,400,000	27,317,713	53,717,713
2015	593,434,311	198,371,828	317,538,821	106,060,185	31,428,738	26,462,161	57,890,899
2016	569,090,621	192,086,780	316,438,821	106,060,185	31,428,738	25,438,549	56,867,287
2017	544,746,931	185,801,732	315,338,821	106,060,185	31,428,738	24,414,938	55,843,674
2018	520,403,241	179,516,684	314,238,821	106,060,185	33,000,000	23,391,324	56,391,324
2019	495,859,551	171,660,374	313,138,821	106,060,185	33,000,000	22,308,516	55,308,516
2020	471,315,861	163,804,064	312,038,821	106,060,185	33,000,000	21,225,708	54,225,708
2021	446,772,171	155,947,754	310,938,821	106,060,185	33,000,000	20,142,900	53,142,900
2022	422,228,481	148,091,444	309,838,821	106,060,185	40,543,107	19,060,092	59,603,199
2023	390,141,684	140,235,134	308,738,821	106,060,185	40,543,107	17,725,193	58,268,300
2024	358,054,887	132,378,824	307,638,821	106,060,185	40,543,107	16,390,295	56,933,402
2025	325,968,090	124,522,514	306,538,821	106,060,185	42,900,000	15,055,396	57,955,396
2026	293,731,293	114,309,311	305,438,821	106,060,185	42,900,000	13,836,717	56,536,717
2027	261,494,496	104,096,108	304,338,821	106,060,185	42,900,000	12,218,038	55,118,038
2028	229,257,699	93,882,905	303,238,821	106,060,185	42,900,000	10,799,359	53,699,359
2029	197,020,902	83,669,702	302,138,821	106,060,185	44,157,185	9,380,680	53,537,864
2030	163,526,920	73,456,499	301,038,821	106,060,185	44,157,185	7,919,986	52,077,170
2031	130,032,939	63,243,296	300,938,821	106,060,185	44,157,185	6,459,292	50,616,476
2032	96,538,957	53,030,093	300,838,821	106,060,185	44,550,000	4,998,598	49,548,598
2033	63,024,176	42,424,074	300,738,821	106,060,185	44,550,000	3,524,080	48,074,080
2034	29,488,594	31,818,056	300,638,821	106,060,185	44,550,000	2,048,868	46,598,868
2035	-	21,212,037	300,538,821	106,060,185	44,550,000	708,908	45,258,908
2036	-	10,606,019	300,438,821	106,060,185	44,550,000	354,453	44,904,453
2037	-	-	300,338,821	106,060,185	44,550,000	-	44,550,000
2038	-	-	300,238,821	95,454,167	44,550,000	-	44,550,000
2039	-	-	300,138,821	84,848,148	44,550,000	-	44,550,000
2040	-	-	300,038,821	74,242,130	44,550,000	-	44,550,000
2041	-	-	299,938,821	63,636,111	44,550,000	-	44,550,000
2042	-	-	299,838,821	53,030,093	44,550,000	-	44,550,000
2043	-	-	299,738,821	42,424,074	44,550,000	-	44,550,000
2044	-	-	299,638,821	31,818,056	10,606,019	-	10,606,019
2045	-	-	299,538,821	21,212,037	10,606,019	-	10,606,019
2046	-	-	299,438,821	10,606,019	10,606,019	-	10,606,019
					1,650,000,000	973,384,980	2,623,384,980

CENTRAL ARIZONA WATER CONSERVATION DISTRICT
CREDITS TO FEDERAL REPAYMENT OBLIGATION

	Exhibit A Prnt Due Next Jan. 15	Cash Payments	HVID Advance	Deficiencies	Employee Related	LBDF Navajo	LBDF Hoover	Net Misc. Revenues	B.O.R. Over Sight	Interest on Credit Bal.	Total Credits	(Over) Under Payment	Credit Balance	AZ Interest
1893	21,517,561	-	17,412,089	-	2,969,251	-	858,460	282,440	(4,679)	-	21,517,561	-	-	-
1994	42,823,442	34,331,706	14,266,275	168,368	-	5,993,263	3,732,431	9,731	(48,287)	-	58,453,507	(15,630,065)	(15,630,065)	6.26%
1995	42,438,821	-	-	352,076	-	26,319,132	3,519,477	(33,134)	(126,871)	981,568	31,012,247	11,424,574	(4,205,491)	6.28%
1996	48,775,538	10,850,478	-	22,438,705	-	18,591,720	4,281,017	(41,170)	(222,623)	241,816	56,140,943	(7,365,405)	(11,570,896)	5.75%
1997	55,652,369	18,248,989	-	6,861,720	-	23,166,203	7,143,485	57,748	(240,886)	684,997	55,922,256	(869,887)	(12,440,783)	5.92%
1998	64,539,948	38,443,395	-	2,172,381	-	21,895,221	6,731,690	20,808	(189,904)	761,376	69,834,967	(15,295,021)	(27,735,804)	8.12%
1999	54,019,509	25,898,378	-	3,948,017	-	17,033,948	5,926,676	302,577	(406,370)	1,628,092	54,332,318	(312,807)	(28,048,611)	5.87%
Total		127,772,946	31,678,384	35,942,286	2,969,251	112,999,485	32,193,238	599,000	(1,238,600)	4,297,849	347,213,797	(28,048,611)		← Credit as of 1-16-00

EXHIBIT A-1

Exhibit B
 Project Construction Completion List
 Central Arizona Project
 January 28, 2000

CAWCD will complete to receive Repayment Credit the following items:

<u>Item Description</u>	<u>Last Year Credit Allowed</u> (Calendar Year)	<u>Total Credit Not to Exceed</u> (\$ in Thousands)
Siphon Tendon Repair Hassayampa/Centennial/Jackrabbit	2005	\$3,400
Hassayampa River Erosion Protection	2002	1,650
Mark Wilmer Pumping Plant Impellers	2003	3,900
Completion of Standing Operating Procedures	2002	906
ADA Modifications at Project Headquarters	2002	100
Cathodic Protection Phases II	2001	3,000
Cathodic Protection Phases III	2002	2,300

United States will complete the following items as budget allows:

Hayden-Rhodes Aqueduct

- Complete Litigation on Siphon Defects
- Activities necessary to close out all open construction contracts

New Waddell Dam

- Misc. Lands and Rights Activities
- North Entry Road
- MWD Conference Center
- FWL Coordination Act
- Fish Liminology Follow-up
- Cook's Lake
- Archaeology Survey Report
- Electronic Archaeology Database
- Archaeological Road Barrier at site 99
- Activities necessary to close out all open construction contracts
- Complete final reports and achieving

Modified Roosevelt Dam

- First Fill
- Stream Gaging
- Stewart Wash Bridge Slope Protection
- Marina Store Removal-Intersection for Ranger Station
- Platform Mound Archaeological Study
- Design F/I Museum Exhibits
- NAGPRA Burial of Remains
- Heritage Education Program
- FWL Coordination Act
- Bald Eagle Nest Watch
- Allotment Management Plan/Wildlife Mitigation
- Tonto Creek Riparian Monitoring
- SWF Banding/Genetics
- SWF GIS Database/Update
- SWF Aerial Photography
- SWF Habitat Monitoring

SWF San Pedro Preserve Management
SWF Cowbird Management
SWF Nest Monitor/Dispersal Count
SWF Management Fund
Activities necessary to close out all open construction contracts
Complete final reports and achieving

Tucson Aqueduct

Lands and Rights for Del Bac Transmission Line
Complete Del Bac Transmission Line
Activities necessary to close out all open construction contracts

Other Project Costs

Canal Vegetation Study
CAP Repository Design/Construction
CAP Repository Curation/O&M
Lands and Rights for Native Fish Protection
Nonnative Fish Eradication Funding Transfers
Native Fish Conservation Funding Transfers
Aravaipa Fish Barriers
Native Fish Public Information and Education Program
San Pedro Fish Barriers
Section 7 Santa Cruz Fish Opinion Activities
Archiving of records as necessary
Financial closeout of construction

Navajo Project Participation

Installation of Scrubbers at Navajo Generating Station

Recreation Development

Grant with City of Phoenix
Hayden-Rhodes Canal Trails – Federal/Nonfederal
Tucson Recreation – Federal/Nonfederal
Tucson Canal Trails – Federal/Nonfederal

EXHIBIT C

1 Revised 2/16/2000

2 UNITED STATES
3 DEPARTMENT OF THE INTERIOR
4 BUREAU OF RECLAMATION

5 OPERATING AGREEMENT BETWEEN
6 THE UNITED STATES OF AMERICA AND
7 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT
8 FOR OPERATION AND MAINTENANCE
9 OF THE CENTRAL ARIZONA PROJECT

10 1. Preamble

11 THIS OPERATING AGREEMENT, hereinafter referred to as "Agreement," made as of this ____
12 day of _____, 2000, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and
13 acts amendatory thereof or supplementary thereto, particularly the Reclamation Extension Act of August
14 13, 1914 (38 Stat. 686), the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the
15 Movable Property Transfer Act of July 29, 1954 (68 Stat. 580), as amended, and the Colorado River Basin
16 Project Act of September 30, 1968 (82 Stat. 885), as amended, all collectively hereinafter referred to as
17 the "Federal Reclamation Laws," between the UNITED STATES OF AMERICA, hereinafter referred to as
18 the "United States," acting through the Department of the Interior, Bureau of Reclamation, hereinafter
19 referred to as "Reclamation," and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a
20 district created, organized, and existing under and by virtue of the laws of the State of Arizona, hereinafter
21 referred to as the "District";

22 WITNESSETH THAT:

23 2. Explanatory Recitals

24 2.1 WHEREAS, the District and the United States entered into Contract No. 14-06-W-245,
25 Amendment No. 1, dated December 1, 1988, hereinafter referred to as the "1988 Contract," which
26 provides, among other things, for the United States to construct the Central Arizona Project, hereinafter

1 referred to as "CAP," and for the District to repay to the United States the construction costs of the CAP
2 allocated to reimbursable functions; and

3 2.2 WHEREAS, the United States and the District entered into Contract No. 7-07-30-W0167,
4 dated August 5, 1987, for the transfer of OM&R of CAP facilities, hereinafter referred to as the "O&M
5 Transfer Contract"; and

6 2.3 WHEREAS, Article 5 of the O&M Transfer Contract provides that the District and the United
7 States shall enter into an operating agreement to cover details of Project operations, maintenance, OM&R
8 funding, and environmental compliance and commitments applicable to the Transferred Works; and

9 2.4 WHEREAS, the United States has constructed the CAP for storage, diversion, carriage,
10 and distribution of Project Waters for agricultural, municipal, industrial, domestic, and other purposes; and

11 2.5 WHEREAS, the United States, Reclamation, and the District, hereinafter "the Parties,"
12 desire to define and prescribe their respective responsibilities for OM&R of the Transferred Works; and

13 2.6 WHEREAS, paragraph 7 of the Stipulation and Order for Judgment, executed by the
14 District, the United States, and intervenors in Central Arizona Water Conservation District v. United States
15 of America, Consolidated Action No. CIV. 95-625 (EHC) & No. CIV. 95-1720-PHX-EHC (D. Ariz.),
16 hereinafter referred to as the "Stipulation," provides that the District and the United States shall enter into
17 an Operating Agreement setting forth the terms and conditions for the OM&R of the Transferred Works.

18 2.7 NOW THEREFORE, the Parties agree as follows:

19 3. Purpose of Agreement

20 3.1 The purpose of this Agreement is to define and prescribe, pursuant to Article 5 of the O&M
21 Transfer Contract, and paragraph 7 of the Stipulation, the District's and Reclamation's responsibilities for
22 CAP OM&R and administration of associated Federal land interests.

1 3.2 All provisions of the Stipulation, as presently constituted or amended, shall apply to this
2 Agreement and shall be controlling in the event of conflict between the Stipulation and this Agreement
3 unless otherwise expressly provided herein.

4 3.3 All provisions of the O&M Transfer Contract shall apply to this Agreement and shall be
5 controlling in the event of conflict between the O&M Transfer Contract and this Agreement unless
6 otherwise expressly provided.

7 3.4 The Stipulation has superseded the Article 7 funding provisions of the O&M Transfer
8 Contract.

9 4. Definitions

10 4.1 Definitions included in the Stipulation and the 1988 Contract are applicable to this
11 Agreement, with the following exceptions:

12 4.1.1 All references to the designation "Granite Reef Aqueduct" in the 1988 Contract shall
13 be replaced by the designation "Hayden-Rhodes Aqueduct."

14 4.1.2 All references to the designation "Salt Gila Aqueduct" in the 1988 Contract shall be
15 replaced by the designation "Fannin-McFarland Aqueduct."

16 4.2 For the purposes of this Agreement and when used herein, unless otherwise distinctly
17 expressed or manifestly incompatible with the intent hereof, the terms:

18 4.2.1 "Contracting Officer" means the Regional Director of the Lower Colorado Region,
19 Bureau of Reclamation, or the duly authorized representative.

20 4.2.2 "OM&R" means the care, operation, maintenance and replacement of Transferred
21 Works.

22 4.2.3 "Project Lands" means lands or land interests acquired or withdrawn by the United
23 States for the construction, operation, and maintenance of the features of the CAP.

1 4.2.4 "Project Waters" means all Project Water as defined in Paragraph 5 of the
2 Stipulation plus the grandfathered water rights assigned to the District in connection with the Transferred
3 Works.

4 4.2.5 "Standing Operating Procedures" or "SOPs" means the primary controlling
5 documents (with associated supporting documents) which are the complete, accurate, current and
6 structure-oriented operating instructions for the CAP control center, CAP aqueduct and each CAP
7 pumping plant or dam and reservoir and their related structures. The SOPs contain information and
8 instructions necessary for personnel to perform their duties.

9 4.2.6 "Substantial Change" means modifications which would significantly alter the
10 operational capabilities or performance of the Transferred Works. This definition supersedes the definition
11 of substantial change in the O&M Transfer Contract.

12 4.2.7 "Transferred Works" means those project works as transferred under the
13 sequentially numbered transfer notices issued pursuant to the O&M Transfer Contract and the 1988
14 Contract and included in Exhibit A hereto.

15 5. Modifications to this Agreement

16 5.1 This Agreement shall be reviewed by the Parties in the light of actual operating experience.
17 Modifications to this Agreement shall be evidenced by amendment of this Agreement.

18 6. District's Failure to Comply with Terms of this Agreement

19 6.1 If the Contracting Officer finds the District is operating the Transferred Works or any part
20 thereof in violation of this Agreement, the United States shall notify the District of the violation and provide
21 the District a reasonable opportunity of not less than 60 days to cure the violation or provide an agreed
22 upon plan to cure the violation.

1 6.2 If the violation is not cured as provided in 6.1, the United States may take over from the
2 District the OM&R responsibility of the Transferred Works as provided in Article 6(h) of the O&M Transfer
3 Contract, in which case the provisions of Article 6(h) shall apply.

4 7. OM&R Responsibilities for the Transferred Works

5 7.1 By letters dated April 29, 1993, September 1, 1993, September 10, 1993, October 7, 1993,
6 March 25, 1994, and June 29, 1994, Reclamation transferred OM&R responsibility for certain features of
7 the CAP to the District. In the future, OM&R responsibility for other Transferred Works and Project Lands
8 may be transferred by a subsequent letter(s). Such transfers shall include such right of possession as
9 shall be necessary or convenient for the OM&R of the Transferred Works by the District as hereinafter
10 provided.

11 7.2 District Responsibilities:

12 The District is the operating agent for the Transferred Works and shall perform the following
13 activities:

14 7.2.1 Perform the OM&R of the Transferred Works, as provided for in Article 6(b) of the
15 O&M Transfer Contract. Submit quarterly reports to Reclamation similar to reports provided to the
16 District's Board listing OM&R expenses and comparing those actual expenses to budgeted expenses.

17 7.2.2 Ensure the OM&R program will include all features and activities necessitated by
18 the commitments made by the United States for the protection of the environment as listed in Exhibit B,
19 attached hereto.

20 7.2.3 Ensure the OM&R program will include all environmental assessments, mitigations
21 and remediations regarding hazardous materials including, but not limited to: solid waste assessments,
22 hazardous materials/waste storage, transportation and disposal, waste minimization, recycling, pollution
23 prevention, aboveground and underground tank management, spill/release reporting, emergency
24 contingencies, employee training, facility discharges, pesticide management, facility design, facility

1 auditing, site assessments, mitigations, and remediations/cleanups, in accordance with Federal, State,
2 and local laws, rules and regulations. The District will make the required notifications in accordance with
3 Federal, State, and local laws, rules and regulations, of any hazardous materials or solid waste spills or
4 releases on Project Lands and will provide a copy of any written notification to Reclamation.

5 7.2.4 Make deliveries of Project Waters and collect payments therefor. For the purpose
6 of Reclamation's administration of the Reclamation Reform Act of 1982, other Federal Reclamation laws,
7 and agency regulatory requirements, the District shall coordinate and consult in advance with Reclamation
8 regarding such contracting and delivery of Project Waters for agricultural purposes.

9 7.2.5 In accordance with article 6(c) of the O&M Transfer Contract, make promptly any
10 and all repairs to the Transferred Works, which, in the opinion of the Contracting Officer, are deemed
11 necessary for the proper OM&R of the same. As-built drawings will be maintained by the District to reflect
12 the current status of the Transferred Works and copies will be made available to Reclamation upon
13 request.

14 7.2.6 For Project Waters delivered through use of the Transferred Works, perform
15 storage, delivery and reporting obligations of the United States under existing CAP delivery contracts
16 including any extensions thereof, and with respect to future CAP delivery contracts as to which the District
17 is not a party, perform said obligations of the United States not inconsistent with (a) existing CAP delivery
18 contracts as to which the District is not a party, (b) the Stipulation, (c) the 1988 Contract and (d) priorities
19 of Project Water. Reclamation shall consult with and seek the concurrence of the District prior to
20 executing any such contract. If after such consultation the District fails to concur and Reclamation
21 executes such contract, the District shall have the right to arbitrate (i) whether or not the additional
22 obligation is consistent with "a" through "d" above or (ii) the reasonableness of the additional cost pursuant
23 to the arbitration provisions of Paragraph 11 of the Stipulation.

1 7.2.7 Administer groundwater rights associated with Project Waters as identified in Exhibit
2 C, which is attached hereto and by reference made a part hereof. Any filing fees or penalties levied for
3 noncompliance with the groundwater rights shall be the responsibility of the District.

4 7.2.8 Issue rights-of-entry, permits and licenses for periods of 25 years or less for the use
5 of Project Lands in accordance with Article 6(e) of the O&M Transfer Contract and Exhibit D hereto. This
6 Agreement constitutes Reclamation's written consent as required under Article 6(e) of the O&M Transfer
7 Contract under the terms, limitations and conditions set forth in Exhibit D. The District shall forward to the
8 Area Manager, Phoenix Area Office, a copy of all documents evidencing such rights-of-entry, permits or
9 licenses at the time issued. The District shall not execute renewable rights-of-entry, permits or licenses for
10 use of federally-owned land that, by exercising a right to renew, will provide options to use land for
11 cumulative periods greater than twenty-five years. The District shall also submit to the Area Manager an
12 annual accounting of revenues it collected from rights-of-entry, permits or licenses during the fiscal year.

13 7.2.9 Provide for an OM&R budget process that permits meaningful participation of
14 Reclamation and water users in the budget process prior to adoption of the budget. This process includes
15 an open meeting with an opportunity to comment sufficiently in advance of adoption of the budget to allow
16 the District to consider comments submitted. The District shall make information relating to the budget
17 and OM&R costs available to Reclamation and water users prior to the open meeting. Provide to
18 Reclamation a copy of the budget as adopted.

19 7.3 Reclamation Responsibilities

20 7.3.1 If the District neglects, fails, or is unable to make repairs or replacements or correct
21 noted deficiencies, the United States may cause the repairs or replacements to be made, in accordance
22 with Article 6(c) of the O&M Transfer Contract.

23 7.3.2 Reclamation shall administer recreation programs serving the CAP purposes of
24 conservation and development of fish and wildlife resources and enhancement of recreation opportunities.

1 In furtherance of such purposes, Reclamation will negotiate and administer land use agreements with
2 local entities. Reclamation shall consult with and seek the concurrence of, the District prior to executing
3 any such agreements that might impose additional OM&R obligations on CAP water users. If after such
4 consultation the District fails to concur and Reclamation executes such contract, the District shall have the
5 right to arbitrate the reasonableness of the additional obligation pursuant to the arbitration provisions of
6 Paragraph 11 of the Stipulation.

7 7.3.3 By October 10 each year, Reclamation shall provide the District with annual water
8 delivery schedules for the Indian contractors. By November 15 each year, the District shall provide written
9 confirmation of the Indian water delivery schedules. If the District cannot confirm that all scheduled Indian
10 water can be delivered, it shall meet and confer with Reclamation to determine the water deliveries. If
11 mutually agreed, a direct scheduling relationship with the ultimate user may be worked out by Reclamation
12 and the District provided that such relationship gives notice to Reclamation of scheduled deliveries.

13 8. Funding/Costs and Accounting

14 8.1 The District shall perform the following activities:

15 8.1.1 Advance funds to Reclamation on a quarterly basis pursuant to paragraph 6(g) of
16 the Stipulation to cover the projected costs on the basis of the annual work plan which will be developed in
17 accordance with Article 8.2.1 herein.

18 8.1.2 Fund all OM&R costs for the Transferred Works.

19 8.1.3 The District shall submit to Reclamation all fees, net of expenses, collected from
20 rights-of-entry, permits, licenses and other miscellaneous revenues from the Transferred Works, and
21 Reclamation shall deposit those funds into the Lower Colorado River Basin Development Fund.

22 8.2 Reclamation shall perform the following activities:

23 8.2.1 Based upon a five year forecast, develop an annual work plan which estimates the
24 annual funding anticipated to be necessary for the administration of the 1988 Contract, the O&M Transfer

1 Contract, all long-term water delivery contracts and subcontracts, all work related to the general oversight
2 of the District's OM&R program for the Transferred Works, and any OM&R activities and oversight
3 performed by or on behalf of Reclamation. A draft work plan will be submitted to the District by August 1
4 of each year. The final work plan will be submitted to the District by October 1 of each year. Reclamation
5 will bill the District quarterly for the projected costs of the annual work plan. Bills will be submitted 30 days
6 in advance of the required payment date.

7 8.2.2 Reclamation will use all funds obtained from the recreation partners/sponsors to
8 provide oversight of the recreation program. To the extent covered by these funds, the costs of
9 Reclamation's oversight of the recreation program will not be chargeable to the District. Reclamation will
10 use its best efforts, through future contractors and other means, to recover the costs from the recreation
11 partners/sponsors.

12 8.3 Categories of expenses that may be included in the work plan and shall not be disputed by
13 the District as provided in 6(g)(ii) of the Stipulation provided the scope and character of charges allocated
14 thereto do not go beyond the scope and character of charges included in such category through 1999,
15 include the following:

16 8.3.1 All categories of expenses previously paid by the District without dispute.

17 8.3.2 Colorado River Operations as defined in Exhibit E. (Note: Exhibit E is a version of
18 a Reclamation document.)

19 8.3.3 Administration, oversight, and OM&R Costs of recreation contracts, lands, facilities,
20 or programs that are not specifically covered in agreements with entities other than the District.

21 8.3.4 OM&R and monitoring costs related to Endangered Species Act or Biological
22 Opinion that have not been overturned by court. Reclamation shall use its best efforts to consult with the
23 District prior to incurring costs associated with general environmental, Endangered Species Act ("ESA") or
24 National Environmental Policy Act ("NEPA") compliance. In any event, the United States will consult with

1 the District regarding all costs associated with general environmental, ESA or NEPA compliance. For the
2 purposes of any "consultation" pursuant to Section 7(a)(2) of the ESA, with respect to "actions associated
3 with the CAP, the District shall be treated as if it were an "applicant" under the ESA, 16 U.S.C. § 1532(12),
4 50 C.F.R. § 402.02.

5 8.3.5 Field and related work associated with administration, oversight and OM&R costs of
6 archeological and historical resources located on the Transferred Works.

7 8.3.6 Environmental assessment work for exchange contracts. Reclamation shall use its
8 best efforts to consult with the District prior to incurring costs associated with such environmental
9 assessments and in any event will use its best efforts to recover in advance its costs from the entity
10 seeking to achieve the exchange.

11 8.4 In the future, other categories of costs not specifically identified in Article 8.3 may be
12 included in the work plan. Reclamation and the District will discuss the reasonableness of those
13 categories and costs in the work plan process and, if not resolved in that process, may be disputed as
14 provided in 6(g)(ii) of the Stipulation.

15 8.5 Reclamation will not include in the work plan costs associated with administration,
16 oversight, or O&M of Indian or non-Indian distribution systems or related contracts or for which any other
17 entity is liable under a construction, repayment, water service, or other third party contract.

18 9. Standing Operating Procedures

19 9.1 The District shall review Standing Operating Procedures at least annually. Procedure
20 changes or deviations shall be reported to Reclamation before implementation. The District shall send
21 notice of such proposed and implemented deviations to the Area Manager, Phoenix Area Office, who will
22 approve, disapprove, or comment. The District shall obtain Reclamation's advanced written approval of
23 any procedure change which could affect the safety of the Transferred Works. During emergencies or
24 critical operating conditions, the District may obtain oral approval from the Area Manager, Phoenix Area

1 Office. Any modifications made during emergency operations that are intended to be permanent shall
2 follow the written approval process described above after the emergency is over.

3 10. Examination and Inspection of Transferred Works

4 10.1 Reclamation may, from time to time, examine the District's books, records, and reports and
5 the Transferred Works being operated by the District to determine the condition of the Transferred Works,
6 and the adequacy of the OM&R and dam safety programs, and any water conservation program as
7 provided for in Articles 6(g) and 8(a) of the O&M Transfer Contract. Further, Reclamation may examine
8 any or all of the Transferred Works or CAP facilities which were constructed by the District with funds
9 advanced or reimbursed by the United States as provided for in Article 8(a) of the O&M Transfer Contract.
10 Whenever reasonably possible, any such examinations shall be coordinated and conducted during the
11 District's regular maintenance activities.

12 10.2 Reclamation may, or the District may request Reclamation to, conduct special inspections
13 of any Project Works being operated by the District and special audits of the District's books and records
14 to ascertain the extent of any OM&R deficiencies, to determine the remedial measures required for their
15 correction, and to assist the District in solving specific problems, as provided for in Article 8(b) of the O&M
16 Transfer Contract. Except in an emergency, any special inspection or audit shall be made only after
17 written notice thereof has been delivered to the District by Reclamation, as provided for in Article 8(b) of
18 the O&M Transfer Contract. The District shall provide access to the Transferred Works and the District's
19 books and records, operate any equipment, and be reasonably available to assist in an examination,
20 inspection, or audit as provided for in Article 8(c) of the O&M Transfer Contract.

21 10.3 Reclamation shall prepare reports based on the examinations, inspections, or audits, and
22 furnish copies of such reports and any recommendations to the District as provided for in Article 8(d) of
23 the O&M Transfer Contract. Within 30 days of receipt of the request for a schedule, the District shall
24 provide a written schedule for completing the recommendations.

1 10.4 Reclamation may, at any time, with advance notice to the District, examine the Transferred
2 Works and associated project rights of way, specifically to determine the adequacy of the District's OM&R
3 program related to environmental commitments. The District will be given the opportunity to participate in
4 these examinations. Reclamation will notify the District in writing of the results of these examinations
5 including any recommendations or requirements for correcting deficiencies found. Reclamation will include
6 an estimate of the cost of such examinations in its annual work plan provided in Article 8.2. Within 30
7 days of the request for a schedule, the District shall provide a written schedule for completing the
8 recommendations.

9 10.5 Reclamation shall coordinate and consult with the District in advance regarding the
10 anticipated costs to perform any examinations as part of the Reclamation work plan referred to in Article
11 8.2.1. Reclamation's costs for the activities in 10.1 through 10.4 shall be included in the work plan except
12 for unanticipated special or emergency inspections or audits.

13 10.6 Reclamation may provide the State of Arizona an opportunity to observe and participate, at
14 the State of Arizona's expense, in the examinations and inspections of Transferred Works which are
15 covered under the Reclamation's dam safety program as provided for in Article 8(f) of the O&M Transfer
16 Contract. The State of Arizona may be provided copies of reports and any recommendations relating to
17 such examinations and inspections.

18 10.7 The District will make facilities available to the United States for public relations activities.
19 Reclamation will consult and coordinate with the District prior to scheduling such activities.

20 11. Agreements Affecting Project Operations

21 11.1 The operation of New Waddell Dam will be in accordance with any future agreement with
22 respect to the OM&R of New Waddell Dam, Reservoir and related facilities.

23 11.2 The operation of the Snyder Hill/Black Mountain Pumping Plant will be in accordance with
24 the agreement titled "Agreement among the United States of America, the City of Tucson, and the Central

1 Arizona Water Conservation District Providing for the Operation, Maintenance, and Replacement of the
2 Snyder Hill and Black Mountain Pumping Plants and the Tucson Walter Treatment Plant," Agreement No.
3 2-MOA32-00040, which is attached hereto as Exhibit F.

4 11.3 The administration of the right-of-way for the Salt River siphon, which is located on the Salt
5 River Indian Reservation, shall be in accordance with Resolution No. SR-1574-93, between Reclamation
6 and the Salt River Pima-Maricopa Indian Community, which is attached hereto as Exhibit G.

7 11.4 The performance of the obligations of the United States with respect to maintaining a
8 diversion drainage channel as stipulated in the agreement titled *Junker v. United States*, (Cl. Ct. No. 251-
9 86), which is attached hereto as Exhibit H.

10 11.5 The operation of the right-of-way for recreation purposes will be in accordance with the
11 recreation agreements listed in Exhibit I, as that list may be supplemented or amended pursuant to 11.9.

12 11.6 The performance of the obligations of the United States and the District in accordance with
13 the Memorandum of Agreement Between Bureau of Reclamation and Fish and Wildlife Service, dated July
14 29, 1993, which is attached hereto as Exhibit J.

15 11.7 The performance of the obligations of the Arizona Projects Office, Bureau of Reclamation,
16 set forth in the Memorandum of Understanding Between the Soil Conservation Service and the Bureau of
17 Reclamation, dated September 9, 1993, which is attached hereto as Exhibit K.

18 11.8 The performance of the obligations of the United States under the Contract with the
19 Atchison, Topeka and Santa Fe Railway Company for Crossing Its Tracks and Right-of-Way Near
20 Vicksburg, Arizona, dated December 28, 1977, which is attached hereto as Exhibit L.

21 11.9 The agreements listed in 11.2 through 11.8 may not be all inclusive. Other agreements
22 that Reclamation has entered into, or may enter into, under which the District may perform OM&R
23 obligations will be provided to the District and the District may assume those obligations in accordance
24 with this Agreement.

1 11.10 Reclamation will notify the District of its intent to enter into or renegotiate existing OM&R
2 contracts of non-Transferred Works. Reclamation will provide the District an opportunity to comment on
3 such contracts prior to their finalization.

4 12. Modifications to Transferred Works

5 12.1 The District shall notify Reclamation of its intent to make any material physical change to
6 the Transferred Works, such as adding turnouts, crossings, or relocations. No later than 60 days after
7 receiving such notice, Reclamation shall determine whether the proposed change is a Substantial
8 Change. If the Contracting Officer determines that the proposed change is a Substantial Change, the
9 District may make the change only after receiving the Contracting Officer's written consent as provided in
10 Article 6(d) of the O&M Transfer Contract.

11 13. Meet and Confer

12 The parties hereto agree to meet and confer as necessary to resolve interagency differences with
13 respect to the implementation of this Agreement.

14 14. Release and Indemnity of the United States

15 As provided for in Article 6(f) of the O&M Transfer Contract, the District shall indemnify the United
16 States for, and hold the United States and all of its representatives harmless from, all damages resulting
17 from suits, actions, or claims of any character brought on account of any injury to any person or property
18 arising out of any act, omission, neglect, or misconduct of the District or its employees, in the manner or
19 method of performing any construction, care, operation, maintenance, supervision, examination,
20 inspection, or other duties of the District required under this Agreement.

21 15. Exhibits Made Part of this Agreement

22 Inasmuch as the Project Works transferred, environmental commitments, groundwater rights, and
23 administration of federal rights-of-way, may change during the term of this Agreement, they will be set
24 forth in the Exhibits as formulated or modified from time to time. The initial Exhibits A through L are

1 attached hereto, and each is incorporated into this Agreement in accordance with its respective provisions
2 until superseded by a subsequent exhibit.

3 16. Term

4 This Agreement shall become effective on _____, 2000, and shall remain in effect
5 until modified by mutual consent of the Parties hereto or until OM&R responsibility of the District for the
6 Transferred Works is terminated pursuant to the provisions hereof.

7 APPROVED:

8 BUREAU OF RECLAMATION:

9 By: _____
10 Regional Director

11 CENTRAL ARIZONA WATER CONSERVATION DISTRICT:

12 By: _____
13 General Manager

14 HOFFMAB\PHX\697567.10