

STORAGE AND INTERSTATE RELEASE AGREEMENT

among

The United States of America, acting through the Secretary of the Interior; The Metropolitan Water District of Southern California; the Southern Nevada Water Authority; and the Colorado River Commission of Nevada (collectively referred to herein as the "Parties" or individually as "Party").

Recitals

- A. The Secretary of the Interior (Secretary) is authorized by the Boulder Canyon Project Act (43 U.S.C. § 617d) to contract for the storage and delivery of Colorado River water. The Secretary's authority over the storage and delivery of Colorado River water to the Lower Division States is further articulated in the Decree issued by the United States Supreme Court in *Arizona v. California*, 376 U.S. 340 (1964) (Decree).
- B. In accordance with the authority granted in 5 U.S.C. § 553, 43 U.S.C. §§ 391, 485, and 617, the Supreme Court's opinion in *Arizona v. California*, 373 U.S. 546 (1963), and Article II (B) (6) of the Decree, the Secretary adopted regulations providing for offstream storage of Colorado River water and development and release of Intentionally Created Unused Apportionment in the Lower Division States. (43 CFR Part 414). These regulations authorize the United States Bureau of Reclamation (Reclamation), Lower Colorado Region, acting through the Regional Director, to execute and administer this Storage and Interstate Release Agreement (Agreement) on behalf of the United States. (43 CFR § 414.3(c)) References to the Secretary in this Agreement include the United States Bureau of Reclamation, Lower Colorado Region.
- C. The Metropolitan Water District of Southern California (MWD) was incorporated on December 6, 1928 pursuant to the Metropolitan Water District Act of the State of California. In accordance with the provisions of that act, MWD is expressly authorized to exercise such powers as are necessary and proper to carry out the objects and purposes of the district, including the acquisition of water rights within and without the state, and the storage and transport of water. (West's California Water Code Appendix §§ 109-120 and 109-130) California law authorizes MWD to contract with any public or private corporation for the purpose of carrying out any of its powers. (California Public Contract Code § 21562)
- D. In accordance with the authority granted by California law, MWD can enter into Storage and Interstate Release Agreements and develop Intentionally Created

- 1 Unused Apportionment (ICUA) pursuant to the federal regulations. MWD has a
2 contract with the Secretary issued under Section 5 of the Boulder Canyon Project
3 Act for the storage and delivery of Colorado River water.
- 4 E. By virtue of the authorities specified in Recitals C and D, MWD is an “Authorized
5 Entity” within the meaning of 43 CFR § 414.2(1).
- 6 F. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency
7 and political subdivision of the State of Nevada, created by agreement dated
8 July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant
9 to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to
10 enter into this Agreement and, pursuant to its contract issued under Section 5 of
11 the Boulder Canyon Project Act, SNWA has the right to divert ICUA released by
12 the Secretary for use within the State of Nevada pursuant to Article II(B)(6) of the
13 Decree.
- 14 G. By virtue of the authorities specified in Recital F, SNWA is an “Authorized Entity”
15 within the meaning of 43 CFR § 414.2(2).
- 16 H. The Colorado River Commission of the State of Nevada (CRCN) is an agency of
17 the State of Nevada, authorized generally by N.R.S. §§ 538.041 through
18 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement.
19 CRCN, in furtherance of the State of Nevada’s responsibility to promote the
20 health and welfare of its people in Colorado River matters, enters into this
21 Agreement to facilitate the storage of Colorado River water, establishment and
22 maintenance of a SNWA Interstate Account for SNWA, and development and
23 release of ICUA for SNWA.
- 24 I. This Agreement is entered into to establish an enduring cooperative relationship
25 between MWD and SNWA under the Secretary’s Offstream Storage Regulations
26 that will benefit both MWD and SNWA in the management of their respective
27 water supplies and in the management of the Colorado River apportionments of
28 their respective states during an era of limited water supplies. To this end, this
29 Agreement provides a specific program for the storage by MWD of unused
30 Nevada apportionment of Colorado River water in California and the subsequent
31 recovery of such water by MWD and the development of ICUA for SNWA. This
32 Agreement also provides a structure whereby such cooperation and storage
33 program might continue beyond 2010.
- 34 J. Concurrently with execution of this Agreement, CRCN, SNWA and MWD have
35 entered into a separate agreement (Operational Agreement), consistent with this
36 Agreement, governing operational and financial matters as between MWD,
37 SNWA, and CRCN relating to the storage of Colorado River water and the
38 development of ICUA.
- 39 NOW THEREFORE, in consideration of the mutual covenants herein contained,
40 the United States, MWD, SNWA, and CRCN hereby agree as follows:

1 **Article 1**
2 **Definitions and Term**

3 1.1 **Definitions.** The following terms shall have the meaning defined here.
4 All defined terms shall be identified by initial letter capitalization.

5 1.1.1 "ICUA" means Intentionally Created Unused Apportionment as that
6 term is defined in 43 CFR Part 414.

7 1.1.2 "SNWA Interstate Account" means the storage account established
8 by MWD under the terms of this Agreement.

9 1.1.3 "Year" means calendar year.

10 1.2 **Term of the Agreement.** This Agreement shall be effective as of
11 October 27, 2004, upon its execution by all Parties, and shall continue in effect
12 until terminated by 90 days' written notice from either SNWA or MWD given after
13 Colorado River water has been stored for SNWA and credited to the SNWA Interstate
14 Account and thereafter the SNWA Interstate Account balance has been reduced to
15 zero.

16 **Article 2**
17 **Water Available for Storage; Facilities**

18 2.1 Water stored pursuant to this Agreement shall be from within the State of
19 Nevada's unused basic or surplus apportionment under Articles II(B)(1) or II(B)(2) of the
20 Decree and may be made available from Nevada by the Secretary to California only in
21 accordance with Article II(B)(6) of the Decree. If the Secretary determines unused
22 apportionment from Nevada is available, the Secretary will make unused Nevada
23 apportionment available to MWD to be stored under the Agreement in accordance with
24 the terms of this Agreement and will not make that water available to other entitlement
25 holders. Water stored pursuant to this Agreement shall not include the State of
26 California's unused basic or surplus apportionment.

27 2.2 The facilities which may be utilized by MWD to store water pursuant to this
28 Agreement are those facilities described in MWD's Integrated Resources Plan,
29 2003 Update, dated May 2004, and located within the State of California. With respect
30 to water stored pursuant to this Agreement, all facilities to be used to divert, convey to
31 storage, store, withdraw from storage, and subsequently convey and distribute such
32 water, are facilities that have been constructed and financed by MWD or facilities to
33 which the title has been transferred to MWD by the United States.

34 2.3 The quantity of Colorado River water to be stored pursuant to this
35 Agreement shall be as agreed by MWD and SNWA, subject to the limitations specified
36 in Article 7.

1 **Article 3**
2 **Storage**

3 3.1 As early as practicable in each Year in which there will be unused Nevada
4 basic or surplus apportionment available for storage pursuant to this Agreement, SNWA
5 shall notify the Secretary and MWD of the total quantity of such water and the quantity
6 within each of Nevada's basic apportionment and Nevada's surplus apportionment.

7 3.2 Within 60 days of receipt of SNWA's notice under Section 3.1, MWD shall
8 notify the Secretary and SNWA of (i) the total quantity of unused Nevada
9 apportionment, which MWD can store, and (ii) confirm that MWD will store such water.

10 3.3 As soon as practicable after receipt of MWD's notice under Section 3.2,
11 the Secretary will confirm the existence of such unused Nevada apportionment, decide
12 whether such unused Nevada apportionment shall be released for consumptive use in
13 California under Article II(B)(6) of the Decree, and release the specified quantity of
14 Colorado River water to MWD pursuant to Article II(B)(6) of the Decree in accordance
15 with the Secretary's decision. MWD shall divert and store the released water.

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

18 4.1 ICUA shall be developed under this Agreement only after 2006.

19 4.2 MWD shall develop ICUA for the benefit of SNWA in accordance with the
20 provisions of this Agreement and the Operational Agreement and consistent with the
21 laws of the State of California and the United States and MWD's Colorado River water
22 storage and delivery contract with the Secretary. MWD shall develop ICUA by
23 withdrawing water that has been previously stored for SNWA and delivering such water
24 for consumptive use within California in lieu of Colorado River water that MWD
25 otherwise would divert. Any other potential means of developing ICUA must first be
26 approved by the Secretary. MWD will withdraw stored water from the facilities identified
27 in Section 2.2 above which are under MWD's control such that the development of
28 ICUA is enforceable by MWD. Because MWD will recover stored water from facilities
29 under the control of MWD, notice will not be given to other entitlement holders of
30 Colorado River water to participate in development of this ICUA. In the event MWD
31 elects, subject to the approval of the Secretary, to use a means other than the recovery
32 and use of stored water, MWD shall give such notice to other entitlement holders to
33 participate in development of the ICUA as the Secretary deems appropriate in light of
34 the means.

35 4.3 The amount of ICUA to be developed and released to SNWA in any Year
36 shall not exceed the lesser of (i) 30,000 acre-feet, unless MWD agrees to a larger
37 amount in such Year, or (ii) the previous end-of-Year balance in the SNWA Interstate
38 Account.

39 4.4 For any Year in which ICUA is to be developed for SNWA by MWD and
40 released by the Secretary, SNWA shall, by June 1 of the previous Year, make a written

1 request to MWD for the development of ICUA in accordance with the terms of this
2 Agreement, specifying the quantity of ICUA to be developed.

3 4.5 By December 1 of each Year in which SNWA has made a request for
4 development of ICUA in the following Year, MWD shall prepare and deliver to the
5 Secretary an ICUA Certification. The ICUA Certification shall:

6 4.5.1 certify: (i) whether the SNWA Interstate Account balance is
7 sufficient to support the development of the requested ICUA; (ii) that ICUA will be
8 developed in the upcoming Year in an amount equal to the amount requested by
9 SNWA; and (iii) that such ICUA otherwise would not exist.

10 4.5.2 request that the Secretary release the ICUA in the requested
11 amount for use in Nevada pursuant to Article II (B) (6) of the Decree and this
12 Agreement.

13 4.5.3 set forth the means by which MWD intends to develop ICUA
14 utilizing stored water in the SNWA Interstate Account and the quantity of ICUA which
15 MWD intends to develop.

16 4.6 In each Year as to which MWD has certified under Section 4.5 that it will
17 develop ICUA, MWD shall take all actions necessary to ensure that ICUA is developed
18 in accordance with such certification. If MWD does not develop ICUA as required under
19 this Article, MWD shall develop ICUA in another Year to repay to Lake Mead storage
20 the amount of ICUA consumptively used by SNWA but not developed by MWD. The
21 Secretary, in addition to any other remedy available, may seek a court order requiring
22 MWD to do so. The Year of repayment shall be at the discretion of the Secretary, but
23 shall not be more than three years after the year in which the shortfall occurred.

24 **Article 5**
25 **Release of Intentionally Created Unused Apportionment**

26 5.1 For any Year as to which SNWA has made a request under Section 4.4
27 for the development of ICUA, SNWA shall also make a written request of the Secretary
28 for the release of ICUA for consumptive use in the State of Nevada. Such request shall
29 be made by September 15 of the previous Year, or such earlier date as reasonably
30 required in writing by the Secretary, for a release of ICUA in the following Year, and
31 shall be consistent with SNWA's request for the development of ICUA. The request
32 shall specify the quantity of ICUA to be released by the Secretary and shall certify that
33 SNWA has mailed, first class postage paid, a copy of the request to the States of
34 Nevada, Arizona, and California by providing copies to CRCN, the Arizona Department
35 of Water Resources and the Colorado River Board of California and MWD.

36 5.2 The request for the development of ICUA by SNWA shall be incorporated
37 into the Secretary's Annual Operating Plan for the Colorado River System Reservoirs.
38 The Annual Operating Plan shall state that, upon proper certification, the Secretary
39 intends to release that quantity of ICUA to SNWA under Article II (B) (6) of the Decree in
40 accordance with the terms of this Agreement.

1 5.3 Release of ICUA under this Agreement for diversion by SNWA shall
2 operate under 43 CFR § 414.3(f), Anticipatory Release of ICUA, as provided in this
3 article.

4 5.4 By December 20 of each Year in which the Secretary has received a
5 proper and timely request for release of ICUA, the Secretary shall determine whether
6 there is water stored under this Agreement in quantities sufficient to support the
7 development of the requested ICUA, whether MWD's certification under Section 4.5
8 meets the requirements of 43 CFR Part 414, and whether all necessary actions required
9 by 43 CFR Part 414 have been taken. Such request may be modified with the consent
10 of SNWA, MWD, and the Secretary. For purposes of this Agreement, all necessary
11 actions are those actions expressly enumerated in 43 CFR Part 414, as amplified by
12 this Agreement.

13 5.5 The Secretary shall, as he or she deems appropriate, review books and
14 records in accordance with Section 6.3 and take such other measures as appropriate to
15 verify the quantity of water stored and the quantity of ICUA developed under this
16 Agreement. In the event of a discrepancy in which there is a shortfall of ICUA
17 developed, the Secretary shall require MWD to repay to Lake Mead storage as set forth
18 in Section 4.6.

19 5.6 Pursuant to the provisions of 43 CFR §413.3(f) and only after determining
20 that MWD's certification under section 4 meets the requirements of 43 CFR Part 414,
21 the Secretary shall release ICUA to SNWA in the Year as to which, and to the extent
22 that, MWD has certified, pursuant to Section 4.5 of this Agreement, that ICUA will be
23 developed.

24 5.7 Once the Secretary has determined that ICUA will be released to SNWA,
25 such ICUA shall not be available for release to any entitlement holder in the States of
26 Arizona or California or any other entitlement holder in Nevada in that Year.

27 5.8 In any Year in which the Secretary has released ICUA to SNWA, MWD
28 shall debit the SNWA Interstate Account beginning-of-Year balance in an amount equal
29 to the amount of ICUA released by the Secretary to SNWA under this Agreement.

30 5.9 The amount of ICUA released for consumptive use in Nevada effective
31 January 1 of any Year shall not be subject to reduction unless:

32 5.9.1 SNWA requests that MWD cease development of ICUA, and

33 5.9.2 MWD certifies to the Secretary that a specific quantity of ICUA will
34 not be developed pursuant to the SNWA request.

35 5.10 The Secretary shall release ICUA in accordance with the request of
36 SNWA, the terms of this Agreement, in particular the determination of the Secretary, the
37 Boulder Canyon Project Act, Article II (B) (6) of the Decree and all other applicable
38 Federal laws and executive orders.

1 Banking among the Arizona Water Banking Authority, SNWA, and CRCN during such
2 Year is less than 200,000 acre-feet.

3 7.1.2 With respect to the development of ICUA, SNWA will not request
4 that more than an aggregate of 100,000 acre-feet of ICUA be developed pursuant to
5 this Agreement and the Storage and Interstate Release Agreement among the
6 United States, the Arizona Water Banking Authority, SNWA, and CRCN dated
7 December 18, 2002.

8 **Article 8**
9 **General Provisions**

10 8.1 Upon execution of this Agreement and annually thereafter, SNWA shall
11 pay an annual administration fee of two thousand dollars (\$2,000.00) to cover the
12 United States' costs to perform the routine tasks necessary to administer this
13 Agreement. The initial annual administration fee shall be pro-rated on the basis of one
14 hundred sixty six dollars and sixty-seven cents (\$166.67) per month for the first Year,
15 payable upon execution of this Agreement. Thereafter, the fee for each subsequent
16 year shall be due on January 1.

17 8.2 The Secretary reserves the right at intervals of five (5) years, beginning
18 five (5) years after the date of execution of this Agreement, to reexamine the annual
19 administration fee and to revise the fee after three (3) months' advance written notice
20 and after consultation with SNWA if the Secretary determines that a different charge is
21 necessary to cover the United States' costs to perform the tasks described in this
22 Agreement. Upon SNWA's written request, the Secretary shall provide SNWA with a
23 detailed cost analysis supporting the adjustment to the annual administration fee.

24 8.3 No agreement to which the Secretary is not a Party shall be construed as
25 altering the rights and obligations as between the Secretary and the other Parties to this
26 Agreement.

27 8.4 The records of any Party to this Agreement that relate to the SNWA
28 Interstate Account, including the development and verification of the account balance,
29 and the development, release and use of ICUA shall be open to inspection by any other
30 Party.

31 8.5 The provisions of this section shall govern enforcement of this Agreement.

32 8.5.1 Time is of the essence in the performance of this Agreement.

33 8.5.2 The Parties recognize and acknowledge that the availability of
34 ICUA as provided in this Agreement is a critical alternative municipal water supply for
35 SNWA while other longer-term sources of supply are being developed; that in planning
36 to meet the needs of the area it serves, SNWA will rely on ICUA being available to it as
37 provided in this Agreement; that accordingly the release of ICUA as provided in Section
38 5.6 is critical to the economy, health and safety of the area served by SNWA; that the
39 release of ICUA as provided in this Agreement presents a unique opportunity for SNWA

1 to obtain additional Colorado River water under the Decree; and that, for these reasons,
2 among others, the water resources to be released as ICUA for use in Nevada are
3 unique and not susceptible of replacement by SNWA.

4 8.6 The Parties to this Agreement shall indemnify the United States, its
5 employees, agents, subcontractors, successors, or assignees from loss or claims for
6 damages and from liability to persons or property, direct or indirect, and loss or claim of
7 any nature whatsoever arising by reason of actions taken by non-Federal Parties to this
8 Agreement.

9 8.7 The Parties to this Agreement recognize and acknowledge that this
10 Agreement is a contract executed pursuant to Federal Reclamation law, including the
11 provisions of 43 U.S.C. § 390uu.

12 8.8 This Agreement shall not constitute approval by the Secretary of any other
13 agreement or water delivery program.

14 8.9 Nothing in this Agreement is intended or shall be construed to affect the
15 rights of any other Colorado River entitlement holder.

16 8.10 No Party to this Agreement shall be considered to be in default in the
17 performance of any obligations under this Agreement when a failure of performance
18 shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any
19 cause beyond the control of the Party unable to perform such obligation, including but
20 not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire,
21 lightning, and other natural catastrophes, epidemic, war, civil disturbance or
22 disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by
23 order of a court or regulatory agency of competent jurisdiction, and action or non-action
24 by, or failure to obtain the necessary authorizations or approvals from, a Federal
25 governmental agency or authority, which by exercise of due diligence and foresight
26 such Party could not reasonably have been expected to overcome. Nothing contained
27 herein shall be construed to require any Party to settle any strike or labor dispute in
28 which it is involved.

29 8.11 Non-Federal Parties to this Agreement may assign their interest in this
30 Agreement, in whole or in part, to other authorized entities, as defined in 43 CFR
31 Part 414, subject to the approval of all other Parties to this Agreement.

32 8.12 The Secretary does not warrant the quality of water released or delivered
33 under this Agreement. The United States is not liable for damages of any kind resulting
34 from water quality problems and the United States has no obligation to construct or
35 furnish water treatment facilities to maintain or improve water quality except as may
36 otherwise be provided in relevant Federal law.

37 8.13 The expenditure or advance of any money or the performance of any
38 obligation of the United States under this Agreement shall be contingent on
39 appropriation or allotment of funds. No liability shall accrue to the United States in case

1 funds are not appropriated or allotted. Absence of appropriation or allotment of funds
2 shall not relieve MWD, SNWA, or CRCN from any obligation under this Agreement

3 8.14 No member of or Delegate to Congress, Resident Commissioner, or
4 official of MWD, SNWA, or CRCN shall benefit from this Agreement other than as a
5 water user or landowner in the same manner as other water users or landowners.

6 **Article 9**
7 **Notices**

8 9.1 Notices and Requests.

9 9.1.1 All notices, requests, and other communications required or
10 provided by this Agreement shall be in writing and addressed to the affected Party, with
11 a copy sent to all other Parties to this Agreement and, unless sent by facsimile pursuant
12 to Section 9.2, shall be mailed first class postage paid addressed as follows:

13 MWD:

14 The Metropolitan Water District of Southern California
15 P.O. Box 54153
16 Los Angeles, California 90054-0153
17 Attn: Chief Executive Officer

18 SNWA:

19 Southern Nevada Water Authority
20 1001 S. Valley View Boulevard
21 Las Vegas, Nevada 89153
22 Attn: General Manager

23 CRCN:

24 Colorado River Commission of Nevada
25 555 E. Washington Avenue, Suite 3100
26 Las Vegas, Nevada 89101
27 Attn: Director

28 Secretary:

29 U.S. Department of the Interior
30 Bureau of Reclamation
31 Lower Colorado Regional Office
32 P.O. Box 61470
33 Boulder City, Nevada 89006
34 Attn: Regional Director

35 The State of Arizona:

36 Arizona Department of Water Resources
37 500 North 3rd Street
38 Phoenix, Arizona 85004
39 Attn: Director

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

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

11 9.1.2 Any Party may, at any time, change its mailing address by notice to
12 the other Parties.

13 9.2 Notices and Requests by Facsimile.

14 9.2.1 Notices and requests may be given by facsimile among MWD,
15 SNWA, CRCN and the Secretary in lieu of first class mail as provided in sub-article 9.1.
16 Such facsimiles shall be deemed complete upon a receipt from sender's facsimile
17 machine indicating that the transmission was satisfactorily completed and after phone
18 communication with administrative offices of the recipient notifying the recipient that a
19 facsimile has been sent.

20 MWD Facsimile Number 213-217-5704

21 SNWA Facsimile Number 702-258-3951

22 CRCN Facsimile Number 702-486-2695

23 Secretary Facsimile Number 702-293-8042

24 9.2.2 Any Party may, at any time, change its facsimile number by notice
25 to the other Parties.

26 In Witness of this Agreement, the Parties affix their official signatures below,
27 acknowledging execution of this document on the 27 day of October, 2004.

28 Legal Review and Approval: **THE UNITED STATES OF AMERICA**

29 By: 
30 Katherine Ott Verburg
31 Field Solicitor
32 Phoenix, Arizona

By: 
Assistant Secretary
for Water and Science
Department of the Interior

33

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

**STATE OF NEVADA, acting through its
COLORADO RIVER COMMISSION**

Attest:

By: *L. De Can*
Executive Director

By: *J. W. Bunker*
Chair

Approved as to form:

By: *J. D. Davenport*

Title: *Sp. Dep. Atty. Gen.*

SOUTHERN NEVADA WATER AUTHORITY

Attest:

By: *P. L. Roy*
General Manager

By: *Amanda M. Cyphas*
Chair

Approved as to form:

By: *John J. Entwistle*

Title: *Deputy Counsel*

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

Attest:

By: *Dawn Plin*
Executive Secretary

By: *Robert J. ...*
Chief Executive Officer

Approved as to form:

By: *Jeff K. ...*

Title: *GENERAL COUNSEL*