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20

21 IN THE UNITED STATES DISTRICT COURT

22 FOR THE DISTRICT OF ARIZONA

23 CENTRAL ARIZONA WATER)
CONSERVATION DISTRICT, a municipal)
24 corporation of the State of Arizona,)
Plaintiff,)

25)
26 v.)

27 UNITED STATES OF AMERICA, UNITED)
STATES DEPARTMENT OF THE INTERIOR,)

28

No. CIV 95-625-TUC-WDB(EHC)
No. CIV 95-1720-PHX-EHC
(Consolidated Action)

REVISED
STIPULATION REGARDING A
STAY OF LITIGATION,
RESOLUTION OF ISSUES
DURING THE STAY AND FOR

1 BUREAU OF RECLAMATION; GALE A.)
 2 NORTON, Secretary of the Interior; BENNETT)
 3 RALEY, Assistant Secretary of the Interior;)
 4 JOHN W. KEYS, Commissioner of)
 Reclamation; ROBERT JOHNSON,)
 5 Regional Director, Lower Colorado Region,)
 United States Bureau of Reclamation,)
 6 Defendants.)

6 UNITED STATES OF AMERICA)
 7 Counterclaimant,)
 8 v.)
 9 CENTRAL ARIZONA WATER)
 10 CONSERVATION DISTRICT, a municipal)
 corporation of the State of Arizona,)
 11 Counterdefendant.)

ULTIMATE JUDGMENT UPON
 THE SATISFACTION OF
 CONDITIONS

12
 13 Plaintiff and Counter Defendant Central Arizona Water Conservation District
 14 (“CAWCD”), and Defendants and Counterclaimants the United States of America, et al.
 15 (“United States”) (hereinafter, collectively referred to as “Parties”) previously entered into a
 16 Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate
 17 Judgment Upon the Satisfaction of Conditions. That document was filed on May 9, 2000 and
 18 will hereinafter be referred to as the “May 9, 2000 Stipulation.”

19 Paragraph 8(f) of the May 9, 2000 Stipulation provided that if various conditions
 20 subsequent were not or could not be satisfied by May 9, 2003, then either the May 9, 2000
 21 Stipulation would need to be extended, with or without modification, or it would be terminated and
 22 litigation would resume. The Parties determined that all such conditions cannot be satisfied
 23 before May 9, 2003, and met and conferred, pursuant to Paragraph 8(f) of the May 9, 2000
 24 Stipulation, and reached agreement on a Revised Stipulation Regarding a Stay of Litigation,
 25 Resolution of Issues During the Stay and for Ultimate Judgment Upon the Satisfaction of
 26 Conditions, hereinafter referred to as “Revised Stipulation.” Accordingly, the Parties agree that
 27 judgment may be entered in this action in accordance with the following Revised Stipulation:

- 28 1. This Court has jurisdiction over the Parties and the subject matter of this action.

1 2. The First Claim for Relief in CAWCD's Complaint for Declaratory and Injunctive
2 Relief ("Complaint") filed on or about July 10, 1995, in this action and the First Claim for Relief
3 in the United States First Amended Counterclaim ("Counterclaim") filed on or about August 19,
4 1998, shall be resolved as follows:

5 (a) Notwithstanding the disputed provisions of Contract No. 14-06-W-245
6 entitled "Contract between the United States and the Central Arizona Water Conservation District
7 for Delivery of Water and Repayment of Costs of the Central Arizona Project" dated
8 December 1, 1988 ("1988 Contract"), CAWCD's repayment obligation for the Water Supply
9 System and the New Waddell and Modified Roosevelt Dams ("Regulatory Storage") Stages of
10 the Central Arizona Project ("CAP") shall be fixed at \$1,646,462,500, with annual payments to
11 be made by CAWCD in conformance with the annual payment schedule set forth as Exhibit "A"
12 hereto which is incorporated by reference herein as if set forth in full. The repayment obligation
13 and Exhibit "A" are premised on a total allocation of 667,724 acre feet of Project Water for use
14 by Indian tribes in Arizona.

15 (b) To the extent Congress provides appropriations therefor, the United States
16 will bear the financial obligation of completing all remaining features of the Water Supply System
17 and Regulatory Storage Stages of the CAP, including any and all environmental mitigation
18 construction work necessary to comply with Biological Opinion Number 2-21-90-F-119, dated
19 April 15, 1994, dealing with the Transportation and Delivery of Central Arizona Project Water, to
20 the Gila River Basin (Hassayampa, Agua Fria, Salt, Verde, San Pedro, Middle and Upper Gila
21 Rivers, and Associated Tributaries) in Arizona and New Mexico ("Gila River Biological
22 Opinion"); and Biological Opinion Number 2-21-91-F-706, dated May 1999 (Draft), dealing
23 with the Impacts of the Central Arizona Project (CAP) to Gila Topminnow in the Santa Cruz
24 River Basin through Introduction and Spread of Nonnative Aquatic Species ("Santa Cruz
25 Biological Opinion"), without any expenses being charged CAWCD except for those accounted
26 for in Exhibit "A." Remaining features of the Water Supply System and Regulatory Storage
27 Stages of the CAP to be completed shall be limited to those features identified in Exhibit "B"
28 hereto which is incorporated by reference as if set forth in full. Exhibit "B" further identifies

1 which remaining features of the Water Supply and Regulatory Storage Stages of the CAP will be
2 completed by the United States and which will be completed, pursuant to subparagraph 6(c)(iii) of
3 this Revised Stipulation, by CAWCD. In the event that additional authorizations or
4 appropriations are needed to capitalize or complete the items identified in Exhibit "B," then
5 CAWCD agrees to support these authorizations and appropriations including any the Secretary
6 may request for the capitalization and payment of environmental mitigation work identified in
7 Exhibit "B." The \$1,646,462,500 repayment obligation will not be adjusted regardless of the
8 outcome of litigation dealing with either the Gila River Biological Opinion or the Santa Cruz
9 Biological Opinion.

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

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

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

21 3. The Second and Fifth Claims for Relief in the Complaint and the Second Claim for
22 Relief in the Counterclaim shall be resolved as follows:

23 (a) Notwithstanding the 1988 Contract (Articles 9.1, 9.2(e), 9.3(d) and 9.10), the
24 repayment schedule set forth in Exhibit "A" hereto shall constitute CAWCD's repayment
25 obligation and all prior billings shall be recalculated and adjusted to reflect the payments provided
26 for in Exhibit "A." These recalculations and adjustments, through the December 2002 bill, are
27 shown on Exhibit "A-1" which is incorporated by reference as if set forth in full. In this
28 recalculation and adjustment, bills have been calculated without penalties being assessed against

1 CAWCD but with any over- or under-payments bearing interest at the Arizona State Treasury
2 investment rates for relevant periods. Exhibit "A-1" also reflects appropriate recalculations and
3 adjustments to account for the credits provided for in paragraph 6 of this Revised Stipulation. To
4 the extent that Exhibit "A-1" reflects a net credit to CAWCD following the January 2003
5 payment, that credit shall be carried forward with interest at the Arizona State Treasury investment
6 rate and shall be applied to future Exhibit "A" payments due to the United States from CAWCD
7 as needed after application of all revenues and credits described in subparagraph 6(c).

8 (b) Notwithstanding Article 9.3(d) of the 1988 Contract, 73% of the repayment
9 obligation established in subparagraph 2(a) of this Revised Stipulation shall be interest bearing,
10 and 27% shall be non-interest bearing. This agreed-upon interest bearing split is reflected in the
11 payment schedule in Exhibit "A" and shall be in effect throughout the repayment period;
12 Provided, however, that if litigation resumes as provided for in subparagraph 8(f) of this Revised
13 Stipulation, CAWCD's repayment obligation will be deemed to be 73% interest bearing and 27%
14 non-interest bearing for the period October 1, 1993 until litigation resumes or May 9, 2012,
15 whichever occurs first, regardless of any interest-bearing split that is determined to be applicable
16 for the remainder of the repayment period.

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

19 (a) The provisions of this paragraph of this Revised Stipulation shall apply only
20 to how CAWCD determines charges for delivery of Project Water under long-term contracts,¹
21 specifically: Fixed OM&R Costs and Charges and Pumping Energy Costs and Charges for
22 providing Project Water service for any Indian Tribe or for any other Federal purpose. This
23 paragraph shall not govern, in any way, how either Fixed OM&R Costs and Charges or Pumping
24 Energy Costs and Charges are determined for any other purposes. If CAWCD uses an alternate
25 method of calculating either Fixed OM&R Costs and Charges or
26

27 ¹ As used in this Revised Stipulation, a long-term contract or subcontract means one having a term that
28 extends to 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 Pumping Energy Costs and Charges which results in a lesser cost or charge (exclusive of any
2 water service subcontract or water service capital charges) for Municipal and Industrial (“M&I”)
3 priority water or agricultural priority water under long-term subcontracts, then the lesser cost or
4 charge will be billed instead of the costs or charges that would otherwise be billed under the
5 provisions of this paragraph.

6 (b) For the purposes of this Revised Stipulation, “Fixed OM&R Costs” shall
7 mean: all expenses incurred by CAWCD for the care, operation, maintenance, and replacement of
8 “Transferred Works” as defined in Article 5.18 of the 1988 Contract and identified pursuant to
9 Article 6(a) of Contract No. 7-07-30-W0167, dated August 5, 1987 (“O&M Transfer Contract”)
10 (sometimes referred to as “OM&R-related activities”) and for the transmission of energy
11 necessary to deliver Project Water that are not otherwise included in Pumping Energy Costs. All
12 costs incurred by Reclamation and reimbursed by CAWCD pursuant to paragraph 8.2.1 of the
13 Operating Agreement attached to the May 9, 2000 Stipulation as Exhibit “C” thereto and hereby
14 fully incorporated herein by reference may be included in Fixed OM&R Costs as may the costs
15 in excess of the funds provided in subparagraph 6(e)(ii) of establishing a reserve to cover the
16 costs associated with major repair or replacement of CAP features. CAWCD shall use its
17 business judgment to allocate joint costs that support both OM&R-related activities and other
18 activities and may include in Fixed OM&R Costs only the portion of joint costs allocable to
19 OM&R-related activities. “Fixed OM&R Charge” shall mean the charge per acre-foot of
20 Project Water imposed by CAWCD each year for the recovery of the Fixed OM&R Costs of
21 water deliveries.

22 (c) “Pumping Energy Costs” shall mean all of CAWCD’s costs for the
23 generation or acquisition of energy necessary to deliver Project Water each year. “Pumping
24 Energy Charge” shall mean the charge per acre-foot of Project Water imposed by CAWCD each
25 year for the recovery of the Pumping Energy Costs of water deliveries.

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

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

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

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

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

26 (f) The United States shall, in advance of Project Water deliveries, pay, to the
27 extent Congress provides appropriations or other monies therefor, or provide for payment of all
28 Fixed OM&R Charges and Pumping Energy Charges associated with the delivery of Project

1 Water, whether directly or by exchange, for use by any Indian tribe or its lessees or for any other
2 Federal purpose. CAWCD shall bill the United States for such Charges monthly, based upon
3 CAWCD's annual estimates of these Charges and annual water delivery schedules. The United
4 States shall pay or provide for payment within 30 days of billing. The payment of such Charges
5 directly to CAWCD by lessees or other entities shall discharge, to the extent of the payments
6 made, the obligation of the United States. Within 30 days of the completion of audited financial
7 statements each year, but in no case later than May 30, CAWCD shall adjust Fixed OM&R
8 Charges and Pumping Energy Charges to reflect actual Fixed OM&R Costs and Pumping
9 Energy Costs, with overpayments refunded to or underpayments paid by the United States within
10 30 days of the recalculation. CAWCD will provide the United States an accounting of the
11 adjustment. The first adjustment shall be in 2001 for charges assessed in the year 2000.

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

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

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

- 1 (a) For purposes of this Revised Stipulation, "Project Water" shall mean:
- 2 (1) all Colorado River water to which Arizona is entitled under the U.S.
- 3 Supreme Court decree in *Arizona v. California* that the CAP Water Supply System is capable of
- 4 delivering:
- 5 (i) after first providing for satisfaction of those rights described
- 6 in Article 8.7(b)(i) and (ii) of the 1988 Contract, and
- 7 (ii) subject to the provisions of Article 8.7(c) of the 1988
- 8 Contract;
- 9 (2) water available from Central Arizona Project dams and reservoirs;
- 10 (3) return flows captured by the Secretary for Project use;
- 11 (4) water delivered to water users in Arizona, through the Project Works,
- 12 in exchange for water delivered to users in New Mexico from or by means of the Project Works;
- 13 (5) Colorado River water acquired from the Yuma Mesa Division of the
- 14 Gila Project pursuant to the Ak-Chin Water Rights Settlement Act of 1978 (Public Law 95-328),
- 15 as amended on October 19, 1984 (Public Law 98-530);
- 16 (6) Colorado River water acquired from the Wellton-Mohawk Irrigation
- 17 District pursuant to the Salt River Pima-Maricopa Indian Community Water Rights Settlement
- 18 Act of 1988 (Public Law 100-512); and
- 19 (7) any additional water not included in (i) or (ii) above that is required
- 20 to be delivered by the Secretary through Project Works pursuant to the Southern Arizona Water
- 21 Rights Settlement Act of 1982 (Title III of Public Law 97-293) or pursuant to any subsequent act
- 22 of Congress.
- 23 (b) For purposes of this Revised Stipulation, the water supply associated with
- 24 modification of Roosevelt Dam shall not be counted as Project Water.
- 25 (c) CAWCD shall be entitled to divert all Project Water for the benefit of
- 26 Project Water users.
- 27 (d) Excess Water shall be dealt with as follows:

28 //

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

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

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

8 (4) Contracts for the sale or use of Excess Water under this paragraph
9 may be made pursuant to multi-year programs established by CAWCD. Such contracts shall not
10 exceed a term of one year, but may contain a provision for automatic renewal without further
11 action by the parties thereto. Such automatic renewal shall not give rise to a right in any
12 subsequent year to receive Excess Water, nor preclude future long-term contracts or subcontracts
13 nor limit the terms thereof, including in implementation of Indian water right settlements up to a
14 total for all long-term contracts and subcontracts of 1.415 million acre-feet. By its terms,
15 Subarticle 8.8(b) of the 1988 Contract does not apply to contracts for Excess Water service under
16 this paragraph; however, such contracts entered into after the filing of this Revised Stipulation
17 shall comply substantially with the provisions of Subarticles 8.8(b)(i), 8.8(b)(ii), 8.8(b)(iii),
18 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
19 conform to the provisions of this paragraph shall be deemed approved by the Secretary. The
20 Secretary must be a party to or must expressly approve all contracts for Project Water service
21 other than those which conform to the provisions of this paragraph.

22 (5) CAWCD may, at its discretion, establish programs for the sale of
23 Excess Water under this paragraph that provide for various categories and charges for Excess
24 Water. Through 2030, in any year in which Excess Water is offered for sale under this
25 paragraph, any Indian contractor of Project Water service or the United States shall have the right
26 to purchase Excess Water from any Excess Water category not established exclusively for the
27 use of non-Indian agriculture or the Arizona Water Banking Authority, at the same charge and
28 upon the same terms and conditions as for other users in that category. Any water available

1 within an exclusive category that is not fully used by eligible participants in that category shall be
2 made available to other Excess Water categories. After 2030, in any year in which Excess Water
3 is offered for sale under this paragraph, any Indian contractor of Project Water service or the
4 United States shall have the right to purchase Excess Water from any Excess Water category at
5 the same charge and upon the same terms and conditions as for other users in that category.

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

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

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

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

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

19 (i) Exhibit "A-1" reflects a credit of \$156,422,615 for all past
20 payments made by CAWCD pursuant to annual billings issued by the United States since 1993.

21 (ii) Exhibit "A-1" reflects a credit in the amount of \$31,703,022 for
22 CAWCD's advance of funds for the United States' purchase of the Harquahala Valley Irrigation
23 District's CAP allocation for use in Indian water rights settlements.

24 (iii) Exhibit "A-1" reflects credits totaling \$43,153,976 for
25 expenditures made through December 31, 2002 by CAWCD to correct CAP construction
26 deficiencies.

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

1 (v) Exhibit "A-1" reflects a credit in the amount of \$196,969,053 for
2 revenues credited to or deposited in the LBDF from the sale of Navajo Surplus Power through
3 December 31, 2002.

4 (vi) Exhibit "A-1" reflects credits totaling \$48,055,446 for revenues
5 credited to or deposited in the LBDF associated with the Hoover 4.5-mill surcharge through
6 December 31, 2002.

7 (vii) Exhibit "A-1" reflects credits totaling \$1,584,614 for net
8 miscellaneous revenues credited to or deposited in the LBDF through December 31, 2002.

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

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

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

17 (i) All power revenues, net of generation and associated administrative
18 costs, including all revenues from Navajo Surplus Power sales (other than those pledged to the
19 payment of bonds issued by CAWCD and except as provided in subparagraph 6(e)(ii) hereof),
20 the Hoover 4.5-mill surcharge,² and, after June 1, 2005, the Parker Davis 4.5-mill surcharge, shall
21 be placed in the LBDF and credited, in the relevant years, against future Exhibit "A" payments
22 due to the United States from CAWCD prior to their utilization for any other purpose.

23 (ii) All miscellaneous CAP revenues shall be credited, in relevant years,
24 against future Exhibit "A" payments due to the United States from CAWCD, including, but not
25 limited to, all revenues from the use, rental, sale, exchange or inter-agency or inter-governmental
26 transfer of CAP lands or other property. In the case of exchanges or inter-agency or inter-

27
28 ² This subparagraph does not apply to the 2.5-mill surcharge to purchasers in California and Nevada.

1 governmental transfers of real property, credits for transactions which take place after May 9,
2 2000 shall equal the greater of cost or the fair market value of such land or property at the time of
3 the exchange. Fair market value will be determined by independent appraisal funded out of
4 proceeds of the sale or, if no sale takes place, funded as reimbursable oversight costs. Where
5 reimbursable costs are not associated with the acquisition of property, then the provisions of this
6 subparagraph shall not apply to the disposal of that property but, rather, the statutory provisions
7 associated with the acquisition and disposal of that property shall govern how the value of that
8 property shall be accounted for.

9 (iii) A credit against Exhibit "A" payments due to the United States
10 from CAWCD shall be made annually based upon the agreed-upon costs associated with the
11 agreed work undertaken by CAWCD, pursuant to Exhibit "B," to further correct CAP
12 construction deficiencies. Any recoveries on claims made by the United States against CAP
13 siphon construction related contractors shall be divided 35% to CAWCD and 65% to the United
14 States. CAWCD's share of such recoveries, if any, shall be applied as a credit against the Exhibit
15 "A" payments due to the United States from CAWCD. The United States share of such
16 recoveries, if any, shall not be available for credit against Exhibit "A" payments due to the United
17 States from CAWCD. Notwithstanding the foregoing, all decisions regarding claims including
18 litigation and settlement against CAP siphon construction contractors shall be within the sole
19 discretion of the United States and shall not be subject to challenge by CAWCD. However, the
20 United States shall consult with CAWCD regarding proposed settlement of such claims.

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

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

5 (e) (i) Nothing in this Revised Stipulation shall affect the establishment,
6 collection, payment and application of the Additional Rate Component charged for Navajo
7 Surplus Power and used for the payment of bonds issued by CAWCD before January 1, 2003
8 (hereinafter "Outstanding Bonds"). CAWCD and the United States acknowledge that the
9 amounts collected from such Additional Rate Component are properly held by the Trustee
10 designated by CAWCD and properly used to pay debt service, costs, and rebate obligations
11 associated with such Outstanding Bonds and to fund reserves therefor.

12 (ii) Except as expressly provided in this subparagraph (ii), nothing in
13 this Revised Stipulation shall affect the establishment, collection, payment and application of the
14 Capacity Charge (including the Additional Rate Component) charged for Navajo Surplus Power
15 (the "Capacity Charge") as provided in the following documents: (1) Reclamation Agreement
16 No. O-CS-30-P1076, as amended by the First Amendment thereto (as amended, the "Interagency
17 Agreement"); (2) Contracts Nos. 89-BCA-10287 and 91-PAO-10404 for Long Term Sale of
18 Navajo Surplus Power (collectively, the "Power Sales Contracts"); and (3) the Bond Indenture
19 dated as of May 1, 1990, by and between CAWCD and Citibank (Arizona) as trustee (together
20 with its successors, the "Bond Trustee"), as amended by the First Supplement to Bond Indenture
21 dated as of March 1, 1993, by and between CAWCD and the Bond Trustee and by the Second
22 Supplement to Bond Indenture dated as of September 1, 2001, by and between CAWCD and the
23 Bond Trustee; and the Bond Indenture dated as of August 1, 1991, by and between CAWCD and
24 the Bond Trustee, as supplemented by the First Supplement to Bond Indenture dated as of
25 February 1, 1994, by and between CAWCD and the Bond Trustee and by the Second
26 Supplement to Bond Indenture dated as of September 1, 2001, by and between CAWCD and the
27 Bond Trustee (collectively, the "Bond Indentures"). This Revised Stipulation does not impose
28 on the United States and the United States does not hereby assume any obligations under the

1 Bond Indentures. Notwithstanding the provisions of the Bond Indentures and the Interagency
2 Agreement, all revenues from the Capacity Charge and all monies held by the Bond Trustee under
3 the Bond Indentures, to the extent such revenues and monies are not necessary to pay debt
4 service, costs, or rebate obligations associated with Outstanding Bonds or to fund reserves
5 therefor, may be paid, at CAWCD's option and in lieu of payment to Reclamation for deposit in
6 the LBDF, to CAWCD to be used by CAWCD solely to establish a reserve to cover the costs
7 associated with major repair or replacement of CAP features. To accomplish this result, the Bond
8 Trustee may be directed by CAWCD to pay such amounts directly to CAWCD from time to time
9 and, whenever it is no longer necessary to have the Capacity Charge paid to the Bond Trustee
10 under the Bond Indentures, CAWCD may designate itself or any institutional trustee acting on
11 CAWCD's behalf, as trustee to receive the Capacity Charge. In consideration for this, CAWCD
12 shall pay the United States \$12,000,000 on or before December 31, 2011, which payment shall be
13 applied as a prepayment of the last \$12,000,000 due of the non-interest bearing portion of
14 CAWCD's Exhibit "A" Repayment Obligation. The foregoing applies only to revenues from
15 the sale of Navajo Surplus Power prior to October 1, 2011.

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

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

23 (ii) CAWCD will not dispute the categories of costs specified in
24 paragraph 8.3 of the Operating Agreement, but may dispute the amount of such costs billed by
25 the United States. CAWCD may dispute any cost billed that is not within the category of costs
26 specified in paragraph 8.3 of the Operating Agreement. If a bill is disputed, CAWCD shall, after
27 noting its protest, nonetheless pay the disputed bill, and CAWCD and the United States shall
28 follow the ADR procedures set forth in paragraph 11 below with respect to the disputed bill. If

1 CAWCD fails to pay the full amount billed, and the United States prevails, in whole or in part, in
2 the ADR process or in litigation, CAWCD shall pay or lose credit in the applicable amount with
3 interest and/or penalties provided for in Article 9.10 of the 1988 Contract. If CAWCD prevails,
4 in whole or in part, in the ADR process or in litigation, the United States shall repay or credit
5 CAWCD with the full amount awarded plus interest at the Arizona State Treasury investment rate
6 for relevant periods.

7 (h) Beginning January 1, 2000, net revenues in the LBDF that are available as a
8 credit toward CAWCD's repayment obligation shall be accounted for and quantified by
9 Reclamation on a monthly basis. Within 15 days after each month, Reclamation shall calculate an
10 offsetting credit calculated at 1/24 of 3.342% (simple interest) on the revenues collected during
11 that month plus 1/12 of 3.342% (simple interest) of the revenues collected during each previous
12 month of the current calendar year (the "Additional Offsetting Credit"). Reclamation shall
13 provide CAWCD a monthly report of LBDF revenues and credits calculated under this
14 paragraph. Each year the accumulated balance of the Additional Offsetting Credit, if any, shall be
15 applied against the annual payment due on the following January 15. For purposes of calculating
16 the annual payment due on the following January 15, December's Additional Offsetting Credit
17 shall be estimated and adjusted for actuals in the following year. The offsetting credits dealt with
18 in this subparagraph 6(h) are for the purpose of offsetting interest, if any, that would otherwise be
19 due from CAWCD. The offsetting credits shall have no effect on the principal payments that are
20 otherwise due from CAWCD.

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

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

1 8. (a) As a condition to the effectiveness of this Revised Stipulation, the following
2 shall have been addressed, in a manner satisfactory to the Secretary³ and the Arizona Department
3 of Water Resources, including any necessary actions by Congress:

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

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

9 (iii) a final San Carlos Apache Tribe water rights settlement fully
10 enforceable in accordance with the San Carlos Apache Tribe Water Rights Settlement Act of
11 1992, P.L. 102-575, 106 Stat. 4740, as amended in 1994, 1996 and 1997, and the enforceability
12 date provisions of such settlement;

13 (iv) the allocation of Project Water for use by Indian tribes in Arizona
14 such that the total amount allocated for Federal purposes shall be 667,724 acre feet; and

15 (v) 65,647 acre feet of M&I Project Water and approximately
16 96,295 acre feet of non-Indian agricultural Project Water shall be or shall have been allocated to
17 or for the benefit of various Arizona M&I or non-Indian agricultural water providers.

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

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28 ³ Any settlement referenced herein involving ongoing litigation shall also be subject to the Attorney
General's authority under 28 U.S.C. § 519.

1 (c) As a condition to the effectiveness of this Revised Stipulation, the United
2 States shall amend the Navajo Power Marketing Plan of December 1, 1987 ("Plan") to provide
3 for the establishment and collection of rates for the sale or exchange of Navajo Surplus Power
4 after September 30, 2011, which optimize the availability and use of revenues for the purposes of
5 subparagraphs 6(c) and 8(d), in a manner consistent with the Hoover Power Plant Act of 1984
6 (Pub. L. No. 98-381), and shall market and exchange Navajo Surplus Power after September 30,
7 2011, in accordance with such amended Plan.

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

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

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

17 (ii) Second, for costs authorized by Congress to be paid
18 to the Gila River Indian Community pursuant to the Gila River Indian Community water rights
19 settlement;

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

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

27 2) Costs associated with the construction of
28 distribution systems required to implement the provisions of § 3707(a)(1) of the San Carlos

1 Apache Tribe Water Rights Settlement Act of 1992 (Pub. L. No. 102-575, 106 Stat. 4740 as
2 amended);

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

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

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

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

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

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

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

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

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

13 (vi) Payment to the U.S. Treasury of the difference
14 between CAWCD's \$1,646,462,500 repayment obligation and the result of any CAP cost
15 allocation undertaken by the United States for the Water Supply System and Regulatory Storage
16 Stages of the CAP.

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

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

25 (e) From the date of this Revised Stipulation until litigation resumes or the
26 Expiration Date, whichever occurs first, CAWCD and the United States will operate and relevant
27 payments and credits will be adjusted and made pursuant to this Stipulation. Neither CAWCD
28 nor the United States shall have waived any of the conditions set forth in this paragraph by any

1 action or inaction pursuant to this Revised Stipulation prior to all of the conditions having
2 occurred. Until all of the conditions have occurred, any payment, credit or adjustment made or
3 accepted pursuant to this Revised Stipulation shall be without prejudice to any claim or cause of
4 action of CAWCD or the United States existing prior to the date of this Revised Stipulation. In
5 the event that these conditions are not satisfied and litigation resumes pursuant to subparagraph
6 8(f) of this Revised Stipulation, then the following shall apply:

7 (i) No penalties will be assessed against CAWCD for any
8 underpayments that might be determined to relate to the period from October 1, 1993, until
9 litigation resumes or the Expiration Date, whichever occurs first. The Arizona State Treasury
10 investment rate shall apply to any over or underpayments during such period.

11 (ii) CAWCD's repayment obligation will be deemed to be 73% interest-
12 bearing and 27% non-interest bearing for the period from October 1, 1993, until litigation
13 resumes or the Expiration Date, whichever occurs first, regardless of any interest-bearing split that
14 is determined to be applicable for the remainder of the repayment period.

15 (iii) Any over- or underpayment that is determined to exist for the period
16 from October 1, 1993, until litigation resumes or the Expiration Date, whichever occurs first,
17 including interest on the over- or underpayment, shall be capitalized and amortized over the
18 remainder of the repayment period, as shown in Exhibit "D" hereto, which is incorporated by
19 reference as if set forth in full.

20 (f) As noted above, the provisions of this paragraph are a condition to the
21 effectiveness of this Revised Stipulation. They are, however, not intended to, in any way, control
22 the actions of the Secretary or any other Party. The Court shall maintain jurisdiction over the
23 administration of this Revised Stipulation until such time as these conditions are met. Upon the
24 occurrence of all conditions within this Revised Stipulation, the Parties shall notify the Court and
25 move for entry of a final judgment consistent with this Revised Stipulation. This Revised
26 Stipulation shall be effective on the entry of such final judgment ("Effective Date"). If all
27 conditions within the Revised Stipulation are not met prior to May 9, 2012 ("Expiration Date"),
28 this Revised Stipulation shall terminate automatically, and except for subparagraphs 6(e) and 8(e)

1 above , no party shall be bound by any of its terms. If, at any time it appears that all conditions
2 within this Revised Stipulation cannot be met before the Expiration Date, the Parties shall meet
3 and confer about amending this Revised Stipulation. However, absent agreement on an
4 amendment to this Revised Stipulation, either CAWCD or the United States may petition the
5 Court to terminate the Revised Stipulation prior to the Expiration Date, and, upon the granting of
6 that petition, the litigation shall resume. Matters resolved through decision of this Court at the
7 time this Revised Stipulation is filed shall be considered "law of the case" and shall not be
8 relitigated. All appeal rights are reserved, including the United States appeal in *Central Arizona*
9 *Water Conservation District v. United States*, No. 99-15124 (9th Cir.).

10 (g) As noted in subparagraph 2(a) and elsewhere herein, the Exhibit "A"
11 repayment obligation is predicated upon the premise that a total of 667,724 acre feet of Project
12 Water has been allocated for Federal purposes. In the event there is a change in the amount of
13 Project Water allocated for Federal purposes from that assumed herein, CAWCD and the United
14 States will meet and confer with respect to any appropriate adjustment to Exhibit "A." In the
15 event that there is a dispute between the parties or over the amount of any such adjustment, then
16 CAWCD and the United States will follow the ADR procedures set forth in paragraph 11 below.

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

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

24 (b) Upon the Effective Date, for and in consideration of CAWCD performing
25 its obligations under this Revised Stipulation, the fact and sufficiency of which are hereby
26 acknowledged, the United States releases and forever discharges CAWCD, its present and former
27 officers, directors, employees, agents, attorneys, advisors, representatives, and their respective
28 successors and assigns from any and all claims, demands, rights, and causes of action of

1 whatsoever kind and nature, whether known or unknown, which the Department of the Interior
2 may have against CAWCD on account of the claims for relief in the Complaint and Counterclaim.
3 This release does not apply to claims arising under criminal or tax law, claims sounding in fraud,
4 or the claims of any United States Government agency other than the Department of the Interior.

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

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

21 (e) CAWCD agrees to reimburse, indemnify and hold harmless the United
22 States, its agents, servants, and employees from and against any and all causes of action, claims,
23 liens, rights, or subrogated or contribution interests incident to or resulting from any act,
24 omission, neglect, or misconduct of CAWCD or its employees in the manner or method of
25 performing any construction, care, operation, maintenance, supervision, examination, inspection, or
26 other duties of CAWCD in order to undertake activities set forth in Exhibit "B."

27 (f) Notwithstanding subparagraphs 10(b), (c) and (d) above, and except as
28 provided in subparagraph 10(e) above, the releases contained in this Revised Stipulation shall not

1 apply to third party claims that have been made or that may be made in the future against
2 CAWCD or the United States alleging personal injury, death or property damage caused by the
3 design, construction or operation of the CAP. CAWCD and the United States reserve all rights
4 and defenses with regard to such third party claims. It is further agreed that the releases
5 contained in this Revised Stipulation do not modify or affect the provisions of Article 6(f) of the
6 O&M Transfer Contract or section 8 of Exhibit A to the O&M Transfer Contract.

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

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

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

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

23 (b) Arbitrators appointed to the arbitration panel shall be skilled and experienced
24 in the field or fields pertaining to the dispute. The two selected arbitrators shall meet within
25 30 days of their appointment, and at their first meeting they shall appoint a third neutral arbitrator
26 to complete the arbitration panel. The third arbitrator shall act as chairperson of the arbitration
27 panel and shall direct the arbitration proceedings.

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

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

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

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

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

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

1 by the arbitration panel who may allow the testimony or exclude it. All expert witnesses must be
2 available for cross-examination at the time of the arbitration hearing. Factual witnesses for which
3 a declaration is prepared shall be made available for cross-examination at the time of the
4 arbitration hearing only if requested by the other party.

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

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

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

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

16 (g) The panel of arbitrators shall render its final decision in the dispute within
17 60 days after the date of naming the third arbitrator. If the arbitrators disagree as to the
18 determination, any two of the three arbitrators may join to form a majority and the decision of
19 those two arbitrators will be final for the panel. The panel will issue a written decision for
20 CAWCD and the United States.

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

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

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

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

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EXHIBIT A

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT
 FEDERAL REPAYMENT OBLIGATION
 PURSUANT TO THE STIPULATION AND ORDER FOR JUDGEMENT DATED _____**

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	915,777,096		338,712,077		12,544,892	8,928,537
1995	903,253,776		338,690,505		12,544,892	30,186,741	42,731,633
1996	891,712,185		337,687,205		12,544,892	29,801,021	42,345,913
1997	880,231,495	286,140,529	336,623,003	105,832,798	16,464,625	32,206,491	48,671,116
1998	868,884,835	282,220,796	335,424,771	105,832,798	16,464,625	38,469,950	54,934,575
1999	857,507,127	278,301,062	334,257,587	105,832,798	16,464,625	37,958,710	54,423,335
2000	845,889,604	274,381,329	333,330,219	105,832,798	16,464,625	37,439,455	53,904,080
2001	834,463,848	270,461,596	332,211,083	105,832,798	20,228,093	36,926,608	57,154,701
2002	819,255,489	266,541,863	331,111,083	105,832,798	20,228,093	36,287,347	56,515,440
2003	804,047,129	262,822,129	330,011,083	105,832,798	20,228,093	35,648,087	55,876,179
2004	788,838,770	258,702,396	328,911,083	105,832,798	21,404,013	35,008,826	56,412,838
2005	773,630,411	253,606,743	327,811,083	105,832,798	21,404,013	34,330,266	55,734,278
2006	758,122,052	248,511,090	327,011,083	105,832,798	21,404,013	33,641,680	55,045,692
2007	742,613,692	243,415,436	326,211,083	105,832,798	21,404,013	32,953,093	54,357,106
2008	727,105,333	238,319,783	325,411,083	105,832,798	25,167,480	32,264,507	57,431,987
2009	707,833,506	233,224,130	324,611,083	105,832,798	25,167,480	31,450,146	56,617,626
2010	688,561,680	228,128,477	323,811,083	105,832,798	25,167,480	30,635,785	55,803,265
2011	669,289,853	223,032,823	323,011,083	105,832,798	26,343,400	29,821,424	56,164,824
2012	650,018,026	216,761,250	322,211,083	105,832,798	26,343,400	28,967,763	55,311,163
2013	630,746,199	210,489,677	321,411,083	105,832,798	26,343,400	28,114,103	54,457,503
2014	611,474,373	204,218,104	320,611,083	105,832,798	26,343,400	27,260,443	53,603,843
2015	592,202,546	197,946,530	319,811,083	105,832,798	31,361,357	26,406,782	57,768,139
2016	567,912,762	191,674,957	319,011,083	105,832,798	31,361,357	25,385,422	56,746,778
2017	543,622,979	185,403,384	318,211,083	105,832,798	31,361,357	24,364,061	55,725,418
2018	519,333,196	179,131,811	317,411,083	105,832,798	32,929,250	23,342,701	56,271,951
2019	494,843,412	171,292,344	316,611,083	105,832,798	32,929,250	22,262,257	55,191,507
2020	470,353,629	163,452,878	316,211,083	105,832,798	32,929,250	21,181,813	54,111,063
2021	445,863,845	155,613,411	315,611,083	105,832,798	32,929,250	20,101,370	53,030,620
2022	421,374,062	147,773,944	315,011,083	105,832,798	40,456,185	19,020,926	59,477,111
2023	389,357,343	139,934,478	314,411,083	105,832,798	40,456,185	17,688,933	58,145,118
2024	357,340,625	132,095,011	313,811,083	105,832,798	40,456,185	16,356,939	56,813,124
2025	325,323,906	124,255,545	313,211,083	105,832,798	42,808,025	15,024,945	57,832,970
2026	293,157,188	114,064,238	312,761,083	105,832,798	42,808,025	13,609,340	56,417,365
2027	260,990,469	103,872,932	312,311,083	105,832,798	42,808,025	12,193,735	55,001,760
2028	228,823,751	93,681,625	311,861,083	105,832,798	42,808,025	10,778,130	53,586,155
2029	196,657,032	83,490,319	311,411,083	105,832,798	44,062,514	9,362,524	53,425,039
2030	163,235,825	73,299,012	310,961,083	105,832,798	44,062,514	7,904,994	51,967,508
2031	129,814,617	63,107,706	310,511,083	105,832,798	44,062,514	6,447,464	50,509,978
2032	96,393,409	52,916,399	310,061,083	105,832,798	44,454,488	4,989,934	49,444,421
2033	62,951,402	42,333,119	309,631,883	105,832,798	44,454,488	3,518,609	47,973,096
2034	29,488,594	31,749,840	309,223,483	105,832,798	44,454,488	2,046,588	46,501,076
2035	-	21,166,560	304,840,869	105,832,798	44,454,488	707,386	45,161,874
2036	-	10,583,280	270,969,661	105,832,798	44,454,488	353,893	44,808,181
2037	-	-	237,098,454	105,832,798	44,454,488	-	44,454,488
2038	-	-	203,227,246	95,249,519	44,454,488	-	44,454,488
2039	-	-	189,356,038	84,686,239	44,454,488	-	44,454,488
2040	-	-	135,484,831	74,082,959	44,454,488	-	44,454,488
2041	-	-	101,613,623	63,499,679	44,454,488	-	44,454,488
2042	-	-	67,742,415	52,916,399	44,454,488	-	44,454,488
2043	-	-	33,871,208	42,333,119	44,454,488	-	44,454,488
2044	-	-	-	31,749,840	10,583,280	-	10,583,280
2045	-	-	-	21,166,560	10,583,280	-	10,583,280
2046	-	-	-	10,583,280	10,583,280	-	10,583,280
					1,846,462,500	971,347,531	2,617,810,031

**CENTRAL ARIZONA WATER CONSERVATION DISTRICT
CREDITS TO FEDERAL REPAYMENT OBLIGATION**

Repayment Obligation \$1,848,462,500

	Exhibit A Pmt. Due Next Jan. 15	CAWCD Cash Payments	HVTD Advance	Siphons & Deficiencies	Employee Credit	LDF Navajo	LDF Hoover	Net Misc. Revenues	B.O.R. Oversight	Interest on Revenues	Interest on Credit Bal.	Total Credits	(Over) Under Payment	Credit Balance	AZ Interest
1993	21,471,429	-	22,743,047	-	2,969,251	(5,288,453)	858,461	193,802	(4,579)	-	-	21,471,429	-	-	-
1994	42,731,633	34,331,706	8,959,975	168,368	-	10,777,530	3,732,431	(11,479)	(48,267)	-	-	57,910,263	(15,178,630)	(15,178,630)	6.26%
1995	42,345,913	-	-	352,075	-	32,708,643	3,519,477	(22,526)	(126,870)	-	353,218	37,384,017	4,981,896	(10,218,735)	6.28%
1996	48,671,116	10,850,478	-	22,439,706	-	14,486,194	4,281,017	(12,851)	(222,623)	-	587,462	52,409,382	(3,738,266)	(13,955,001)	5.75%
1997	54,934,575	18,248,989	-	6,861,720	-	23,260,373	7,143,485	68,073	(240,888)	-	828,136	56,165,690	(1,231,315)	(15,186,315)	5.82%
1998	54,423,335	38,443,395	-	2,172,381	-	21,961,922	6,731,690	(15,786)	(189,904)	-	929,402	70,033,099	(15,609,764)	(30,796,080)	6.12%
1999	53,904,080	25,898,378	-	3,969,909	-	21,982,687	5,926,676	316,697	(405,370)	-	1,807,730	59,488,708	(5,882,626)	(36,378,706)	5.87%
2000	57,154,701	-	-	5,930,057	-	20,570,062	5,568,040	204,768	-	460,581	2,346,427	35,069,945	22,084,755	(14,293,950)	6.45%
2001	56,515,440	8,096,875	-	367,300	-	27,764,809	5,342,166	532,688	-	551,633	714,687	43,370,168	(3,145,272)	(1,148,678)	5.00%
2002	56,876,179	20,552,794	-	802,461	-	28,745,297	4,962,006	333,207	-	499,642	40,089	56,035,696	(159,517)	(1,308,195)	3.40%
Total	488,028,401	156,422,615	31,703,022	43,153,976	2,969,251	196,969,053	48,055,446	1,584,814	(1,238,559)	1,512,056	8,205,182	489,336,596	(1,308,195)		

* Credit as of 1-16-03

EXHIBIT A-1

EXHIBIT B

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
Arayaipa 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 D

Exhibit D

Procedure to Follow After the Stipulation Expires ("Expiration Date")

- Step 1:** Prepare a New Repayment Schedule based on the repayment obligation in effect after the Expiration Date.
- A. Calculate the principal payment due for each year of the repayment period in accordance with the schedule in Article 9.3(f) of the 1988 Contract.
 - B. Calculate the interest due for each year of the repayment period in accordance with Article 9.4(b)(ii) of the 1988 Contract.
 - a. In determining the interest due each year from October 1993 through the Expiration Date, 73 percent of the repayment obligation will be deemed to be interest bearing.
 - b. In determining the interest due each year after the Expiration Date, the interest bearing percentage shall be determined as provided in the 1988 Contract.
- Step 2:** Compare the payments due each year under the New Repayment Schedule to the payments credited against the repayment schedule in Exhibit A for each year prior to the Expiration Date.
- Step 3:** Calculate interest on the amount of over- or underpayment at the Arizona state treasury rate from the date of the over or under payment until the Expiration Date.
- Step 4:** The cumulative amount of the over- or underpayment including interest (the "Repayment Principal Adjustment") will be capitalized at the Expiration Date and amortized over the remainder of the repayment period in accordance with the schedule set forth in Article 9.3(f) of the 1988 Contract, as described below:
- A. First, the Repayment Principal Adjustment will be divided between Stage 1 (water supply system) and Stage 2 (regulatory storage) and between interest bearing and non-interest bearing components in the same proportions as the repayment obligation is divided in the New Repayment Schedule.
 - B. Second, a Repayment Principal Adjustment Multiplier will be calculated to apportion the Repayment Principal Adjustment over the remainder of the repayment period. The Repayment Principal

Adjustment Multiplier is calculated by dividing 100 by the percentage of the repayment obligation remaining to be paid at the Expiration Date.

- For example, if the Expiration Date occurred in 2012, the next repayment installment due in January 2013 would represent repayment year 20 for Stage 1 of the CAP. At that point—i.e., after 19 years of repayment—24.1 percent of the repayment obligation for Stage 1 will have been repaid and 75.9 percent will remain to be repaid under the schedule in Article 9.3(f). Thus, the Repayment Principal Adjustment Multiplier would be 100 divided by 75.9, or 1.32.

C. Third, the portion of the Repayment Principal Adjustment to be repaid in each remaining year of the repayment period is determined by multiplying the applicable percentage in Article 9.3(f) of the 1988 Contract by the Repayment Principal Adjustment Multiplier.

- For example, in 2013 (repayment year 20 for Stage 1), Article 9.3(f) provides that 1.6 percent of the repayment obligation for Stage 1 is to be repaid. Thus, 2.1 percent ($1.6\% \times 1.32$) of the Repayment Principal Adjustment allocated to Stage 1 will be added to the amount due in that year under the New Repayment Schedule.