

**WHITE PAPER**  
**CAWCD Staff Proposal for Wheeling**  
**Non-Project Water Supplies**

This staff white paper outlines a set of proposed agreements between CAWCD and the Bureau of Reclamation that establish the foundation for a wheeling program. The agreements create the framework to enable CAWCD to offer, and Reclamation to approve, wheeling agreements that provide for the long-term, reliable delivery of non-Project Water through the CAP system ("Proposal").

This Proposal is intended to serve as the initial basis for CAWCD's negotiations with Reclamation, water users and other stakeholders to implement the provisions of Article 8.18 of the Contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, dated December 1, 1988, (the "Master Repayment Contract").<sup>i</sup> As explained more fully below, this Proposal also serves as the basis for CAWCD's negotiations with Reclamation to address Reclamation's asserted rights to have water transported through the CAP system pursuant to Article 8.17 of the Master Repayment Contract.<sup>ii</sup>

The Proposal is comprised of this white paper plus several related draft agreements that are focused on resolving contractual issues between Reclamation (as owner), and CAWCD (as operator). The concepts they contain have been discussed with staff from Reclamation's Phoenix Area Office, but Reclamation has taken no position on them. CAWCD anticipates that the Proposal will undergo refinement as part of Reclamation's required public negotiation and input process, and that additional policies related to implementation will be developed with broad and extensive stakeholder involvement.

Article 8.18 of the Mater Repayment Contract contemplates a "standard form of wheeling agreement." The Proposal includes an initial draft agreement (Attachment 1), which includes many of the same provisions found in CAP water delivery contracts, including sections related to scheduling water deliveries, points of delivery and measurement, environmental clearances, water quality, losses, interruptions and rate structure. CAWCD proposes that all water users, including Tribes, will be eligible to obtain a wheeling agreement. However, an agreement must be tied to a specific physically and legally available non-Project water supply. Furthermore, CAWCD proposes that all regulatory approvals related to the transfer of the non-Project water supply, including environmental compliance, must be completed before a wheeling agreement will be offered. Finally, each individual wheeling agreement will require approval by the

CAWCD Board, approval by Reclamation, and payment of a System Improvement Fee (discussed below).

A standard form of wheeling agreement is necessary for a wheeling program, however additional agreements between CAWCD and Reclamation are required, largely to address Reclamation's asserted rights to have non-Project water transported through the CAP system pursuant to Article 8.17 of the Master Repayment Contract. CAWCD and Reclamation disagree on the scope and extent of the United States' rights under Article 8.17. However, in an effort to avoid a prolonged dispute and to reach a desirable outcome, CAWCD has identified processes that it believes provide certainty for wheeling under Article 8.18, while fully protecting the United States' rights under Article 8.17.

First, the Proposal contemplates that, over time, CAWCD will undertake infrastructure improvement projects to increase the delivery capacity of the CAP system. As those improvements are completed, deliveries of non-Project Water under Article 8.18, up to the quantified capacity increase, would no longer be subject to displacement by Reclamation under Article 8.17, and 8.18 delivery rights would be similar to those of existing CAP long-term contract holders. CAWCD has suggested that the system improvement quantification could be accomplished through an amendment to the Operating Agreement between the United States and CAWCD for Operation and Maintenance of the CAP, dated June 15, 2000 (the "Operating Agreement"), combined with a jointly developed standard technical procedure (Attachment 2, Section 12).

Second, CAWCD proposes a procedure based on the annual ordering process to determine whether capacity is available to wheel non-Project Water for Reclamation under Article 8.17. The delivery capacity potentially available to Reclamation varies from year-to-year, within the year, and within the CAP system, based on a variety of factors, including the amount of Colorado River water available for diversion, customer orders and maintenance schedules (Attachment 3). The Proposal contemplates that by October 10<sup>th</sup> of the prior year, Reclamation would be required to submit a proposed delivery schedule for Article 8.17 water. CAWCD would determine the extent to which Reclamation's request could be fulfilled only after all orders for Project Water (including Excess) and 8.18 non-Project Water (if system improvements are complete) had been finalized. CAWCD has suggested that this procedure can be memorialized in an amendment to the Operating Agreement (Attachment 2, Section 7), and a jointly developed standard technical procedure.

Finally, CAWCD proposes that all entities entering into wheeling agreements under Article 8.18 pay a "system improvement fee" to fund the projects necessary to increase the CAP delivery capacity. CAWCD's Proposal includes language (Attachment 2, Section 13) intended to ensure that revenues collected from this fee are used exclusively for improvement projects and are not

swept into the Development Fund. This is necessary to differentiate the system improvement fee from the wheeling charges referenced in Article 8.18 of the Master Repayment Contract.<sup>iii</sup>

CAWCD believes that this Proposal provides a practical framework for reliably wheeling non-Project Water supplies, while protecting Article 8.17 rights and not interfering with Project Water deliveries, and that it contains a sufficient degree of detail to initiate CAWCD's negotiations with Reclamation, water users and stakeholders.

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<sup>i</sup> The Master Repayment Contract contemplates that non-Project water may be transported through the CAP system pursuant to standard form wheeling agreements jointly developed by CAWCD and Reclamation. Article 8.18 provides in part:

"8.18 Wheeling of Non-Project Water. After taking into consideration the water delivery requirements of contracts for project water service and subject to the availability of project capacity, non-project water may be wheeled through project facilities pursuant to wheeling agreements between the Contractor and the entity desiring to use project facilities for wheeling purposes. All such agreements shall be subject to the approval of the Contracting Officer who shall consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water. The Contractor and the Contracting Officer shall jointly develop a standard form of wheeling agreement including the rate structure for wheeling non-project water. . ."

<sup>ii</sup> Article 8.17 of the Master Repayment Contract provides:

"8.17 Rights Reserved to the United States to have Water Carried by Project Facilities. As a condition to the construction of project facilities and the delivery of water hereunder, the Contractor agrees that all project facilities will be available for the diversion, transportation, and carriage of water for Indian and non-Indian uses pursuant to arrangements or contracts therefor entered into on their behalf with the Secretary. In the event the responsibility for the OM&R of project facilities is transferred to and assumed by the Operating Agency, such transfer shall be subject to the condition that the Operating Agency shall divert, transport, and carry such water for such uses pursuant to the provisions of the aforesaid arrangements or contracts; Provided, however, That the aforesaid arrangements or contracts will include provisions for the payment of applicable construction costs and OM&R costs in accordance with Articles 9.3 and 9.6 of this contract."

<sup>iii</sup> Article 8.18 of the Master Repayment Contract provides:

". . . All wheeling charges shall be paid to the Contractor by the entity contracting for the wheeling of non-project water. The Contractor shall be entitled to retain revenues from wheeling charges sufficient to cover all OM&R costs associated with wheeling such non-project water, plus an administrative charge to be jointly determined by the Contractor and the Contracting Officer. All revenues from wheeling charges in excess of the OM&R costs and administrative charges shall be remitted by the Contractor to the Contracting Officer and deposited into the Development Fund."

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**CAWCD Staff Proposed  
Standard Form of Wheeling Agreement  
(To become "Exhibit M" to the Master Repayment Contract)**



**WHEELING AGREEMENT  
BETWEEN  
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT AND  
[CONTRACTOR NAME]**

This Wheeling Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and \_\_\_\_\_.

**RECITALS**

- A.
- B.
- C.

**1. AGREEMENT:**

In consideration of the mutual covenants and agreements set forth below, and intending to be legally bound, the parties hereto agree as follows:

**2. DEFINITIONS:**

Definitions included in the Repayment Contract and the Stipulation are applicable to this Agreement. The first letters of terms so defined are capitalized herein. In addition, the following terms, when capitalized, have the meanings indicated:

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2.1 CAP System: (1) the Mark Wilmer Pumping Plant; (2) the Hayden-Rhodes Aqueduct; (3) the Fannin-McFarland Aqueduct; (4) the Tucson Aqueduct; (5) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are described in (1) through (4); and (6) any extensions of, additions to, or replacements for the features described in (1) through (5).

2.2 Contractor Water: Contractor's annual entitlement to \_\_\_\_\_ water (Comment: e.g., Colorado River water, groundwater, etc.) as provided in (Comment: i.e., insert name of existing contract, or other legal document recognizing the Contractor's water right) to be transported through the CAP System pursuant to this Agreement.

2.3 Operating Agreement: The Operating Agreement Between the United States of America and the Central Arizona Water Conservation District for Operation and Maintenance of the Central Arizona Project, dated June 15, 2000; and any amendment to, or revision of, that agreement.

2.4 Point(s) of Receipt: The point(s) designated in Exhibit A, hereto, where Contractor Water is delivered to the CAP System.

2.5 Point(s) of Delivery: The point(s) designated in Exhibit B, hereto, at which Contractor Water is diverted from the CAP System for delivery to Contractor.

2.6 Repayment Contract: The contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), dated December 1, 1988; and any amendment to, or revision of, that contract.

2.7 Stipulation: The Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

### 3. **TERM:**

This Agreement shall become effective on the date first written above and shall remain in effect through \_\_\_\_\_, unless otherwise terminated in accordance with the provisions of this Agreement.

(Comment: The term of the wheeling agreement will be tied to the term of the Contractor's water entitlement.)

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**4. TRANSPORTATION OF CONTRACTOR WATER BY CAWCD:**

CAWCD will transport Contractor Water to the Contractor in an amount, and at a water transportation charge, to be determined in accordance with the terms of this Agreement. Provided, further, That transportation of Contractor Water under this Agreement shall be subject to the availability of Contractor Water at the Point of Receipt, as determined by CAWCD.

**5. CERTIFIED ADDITIONAL ANNUAL SYSTEM DELIVERY CAPACITY:**

5.1 This Agreement is entered into on the basis of the availability of Certified Additional Annual System Delivery Capacity as indicated in Exhibit C.

5.2 This Certified Additional Annual System Delivery Capacity shall be considered finalized upon Reclamation's determination that the associated System Improvement Projects have been satisfactorily completed.

**6. ENVIRONMENTAL CLEARANCE:**

Contractor Water shall only be transported for the Contractor in a manner consistent with the final environmental clearances from the United States as indicated in Exhibit D. Clearances shall include the system or systems through which Contractor Water is to be conveyed to the Point of Receipt, and the system or systems through which Contractor Water is to be conveyed to the Contractor from the Point of Delivery. Such system(s) shall include all pipelines, canals, distribution systems, treatment, storage, and other facilities through or in which Contractor Water is conveyed.

**7. POINT OF DELIVERY, POINT OF RECEIPT, MEASUREMENT AND RESPONSIBILITY:**

7.1 Contractor Water transported for the Contractor pursuant to this Agreement shall be transported from the Point of Receipt to the Point of Delivery.

7.2 Unless CAWCD and the Contractor agree by contract to the contrary, the Contractor shall construct and install, at its sole cost and expense, all connection facilities required to convey Contractor Water from the Point of Delivery to the Contractor's service area. The Contractor shall furnish, for written approval by CAWCD, drawings and specifications showing all connection facilities to be constructed or installed within the CAP System right-of-way by, and shall obtain such approval before commencing construction or installation of such facilities. All facilities constructed, installed, operated or

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maintained on the CAP System right-of-way by or for the Contractor shall be subject to such further agreements and to such restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by CAWCD. (Reference: Article 4.5(b) of CAP M&I Subcontract)

7.3 The Contractor shall construct, operate, and maintain its connection facilities and appurtenant works in a good and workmanlike manner and in full compliance with the laws of the State of Arizona and with all laws, regulations, and orders of the United States affecting such operations. In the event the Contractor fails to construct, operate, and maintain its connection facilities and appurtenant works in a good and workmanlike manner or to abide by any of the terms and conditions of any applicable laws, regulations, or orders, CAWCD shall have the right, without liability of any kind, to refuse to transport Contractor Water. The Contractor shall reimburse CAWCD within thirty (30) days of Contractor's receipt of a statement for the costs of repairing any damage to Project Facilities or the CAP System right-of-way caused by or arising out of the Contractor's activities under this Agreement. (Reference: Section 6(c) CAP Excess Water Contract)

7.4 Upon termination of this Agreement, the Contractor shall promptly remove, at its sole cost and expense, all connection facilities constructed or installed on the CAP System right-of-way and restore said right-of-way and all Project Facilities affected to their condition immediately prior to the construction or installation of such connection facilities. If the Contractor fails to remove said connection facilities and restore said right-of-way and Project Facilities within thirty (30) days after receiving any written notice from CAWCD to do so, CAWCD may remove said connection facilities and restore said right-of-way and Project Facilities at the Contractor's cost and expense. Within thirty (30) days after receiving written demand from CAWCD to do so, the Contractor shall pay CAWCD, as specified in such written demand, for all costs and expenses incurred by CAWCD in removing said connection facilities and restoring said right-of-way and project Facilities. (Reference: Section 6(d) CAP Excess Water Contract)

7.5 If the Point of Delivery or the Point of Receipt is a Project turnout or Project turnouts constructed by the United States, all transported water shall be measured with equipment furnished and installed by the United States and operated and maintained by CAWCD. Upon the request of the Contractor, or CAWCD, the accuracy of such measurements shall be investigated by the Contractor, and any errors which are mutually determined to have occurred therein shall be adjusted; Provided, however, That in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive. (Reference: Article 4.5 (c) of CAP M&I subcontract; Section 6(g) CAP Excess Water Contract)

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7.6 If the Point of Delivery or Point of Receipt is a Project turnout or Project turnouts constructed by the United States, and if the Contractor intends to convey Contractor Water through connection facilities owned or operated by others, the use by the Contractor of such connection facilities shall be the subject of written agreement(s) between the Contractor and the owner(s) or operator(s) of such connection facilities, and all such agreements shall include such terms and conditions as may be required by CAWCD and shall be subject to the prior, written approval of CAWCD before becoming binding upon the parties thereto. (Reference: Section 6(e) CAP Excess Water Contract)

7.7 If the Point of Delivery or Point of Receipt is not a Project turnout or Project turnouts constructed by the United States, all transported water shall be measured with equipment furnished and installed by the Contractor and operated and maintained by the Contractor at the Contractor's sole cost and expense. The results of such measurements shall be reported to CAWCD in such manner and at such time(s) as CAWCD may prescribe. Upon the request of CAWCD, the accuracy of such measurements shall be investigated by the Contractor, and any errors which are determined to have occurred therein shall be adjusted; Provided, however, That in the event the parties cannot agree on the required adjustment, CAWCD's determination shall be conclusive. (Reference: Section 6(f) CAP Excess Water Contract)

7.8 Neither the United States nor CAWCD shall be responsible for the control, carriage, handling, use, disposal, or distribution of water up to the Point of Receipt, or beyond the Point of Delivery. The Contractor shall hold the United States and CAWCD harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water up to the Point of Receipt or beyond the Point of Delivery. (Reference: Article 4.5 (d) of CAP M&I subcontract; Section 6(h) CAP Excess Water Contract)

## **8. INTERRUPTIONS AND REDUCTIONS:**

CAWCD may discontinue or reduce the quantity of Contractor Water to be transported as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of any of the Project Facilities or any part thereof. CAWCD shall attempt to coordinate any such discontinuance or reduction with the Contractor and give the Contractor due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in transportation of Contractor Water occurs. If any such discontinuance or temporary reduction results in transportation



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for the Contractor of less water than what has been paid for in advance, the Contractor shall be entitled to be reimbursed for the appropriate proportion of such advance payments prior to the date of the Contractor's next payment of water transportation charges or the Contractor may be given credit toward the next payment of water transportation charges if the Contractor should so desire. (Reference: Article 4.6 of CAP M&I subcontract)

## **9. WATER QUALITY:**

9.1 CAWCD does not warrant the quality of water transported through the CAP System to the Contractor pursuant to this Agreement and is under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water transported through the CAP System. Contractor assumes all responsibility for purifying or otherwise treating Contractor Water received at the Point of Delivery to meet applicable water quality standards established by federal, state or local authorities. The Contractor waives its rights to make a claim against the United States, CAWCD or any other Project subcontractor or contractor on account of the quality of Contractor Water or any changes in water quality caused by the commingling of Contractor Water with Project Water and/or other water. (Reference: Article 4.10 of CAP M&I subcontract)

9.2 CAWCD shall not be obligated to transport Contractor Water if such water fails to meet water quality parameters established by CAWCD and the United States. Further, nothing in this Agreement shall be construed so as to require that CAWCD receive or transport Contractor Water from any source when such receipt or transportation is likely to result in a violation of then existing federal, state or local laws or regulations regarding water quality. (Reference: Section 11 of SRP Water Transportation Agreement)

9.3 Contractor shall indemnify CAWCD and the United States against all losses to third parties resulting from water quality degradation due to commingling of Contractor Water with Project Water in the CAP System, and shall defend CAWCD and the United States against all claims for such losses.

9.4 CAWCD shall cooperate fully with the Contractor in the defense of all claims of third parties for losses under this Section 8 and shall provide the Contractor with all information and records necessary for the Contractor to defend against such claims. (Reference: Section 11 of SRP Water Transportation Agreement)

9.5 The Contractor's obligation to indemnify under this Section 8 shall encompass only:

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9.5.1 The payment of losses to third parties that have been determined by mutual agreement of the Contractor and CAWCD, arbitration or a court to have resulted from water quality degradation due to commingling of Contractor Water in the CAP System.

9.5.2 All costs of defending against claims by third parties for such losses and all costs incurred by CAWCD in cooperating with the Contractor under Section 8.4 above in the defense of such claims. (Reference: Section 11 of SRP Water Transportation Agreement)

## **10. LOSSES:**

The Contractor shall be assessed uniform Losses of 5% to all deliveries of Contractor Water. (Comment: this is consistent with existing CAP P3 River Water Exchange Contracts)

## **11. RIGHT TO CONTRACT:**

CAWCD retains the right to contract directly with other entities desiring to transport non-Project water in the CAP System. (Reference: Section 14 of SRP Water Transportation Agreement)

## **12. PROCEDURE FOR SCHEDULING TRANSPORTATION OF CONTRACTOR WATER:**

12.1 On or before October 1 of each Year, the Contractor shall submit in writing to CAWCD a water transportation schedule indicating the amounts of Contractor Water the Contractor desires to be transported from the Point of Receipt to the Point of Delivery during each month of the following Year. (Reference Article 4.4(b) of CAP M&I subcontract)

12.2 Upon receipt of the schedule, CAWCD shall review it together with all other water delivery schedules and water transportation schedules, and shall make such modifications to the Contractor's water transportation schedule as are necessary to ensure that the amounts, times, and rates of delivery to the Contractor are consistent with the delivery capability of the CAP System, considering, among other things, the water delivery schedules of all Excess Water contractors, long-term contractors and subcontractors, the water transportation schedules of other contractors holding water transportation agreements with CAWCD, and requests for transportation made by Reclamation pursuant to Article 8.17 of the Master Repayment Contract. (Reference Article 4.4(b) of CAP M&I subcontract)

12.3 CAWCD shall prioritize fulfillment of water delivery and transportation schedules in the following order:

12.3.1 Deliveries of Project Water, and transportation of non-Project Water pursuant to water transportation agreements with CAWCD in which the associated Certified Additional Annual System Delivery Capacity has been finalized in accordance with section 5.2 of this contract.

12.3.1.1 When making schedule modifications, CAWCD shall give equal consideration to water delivery and water transportation schedules under this priority, except that in any month in which a modification to delivery and transportation schedules is required, any scheduled transportation of non-Project Water in excess of 11% shall be reduced first.

12.3.2 Requests by Reclamation for water transportation pursuant to Article 8.17 of the Master Repayment Contract

12.3.3 Water transportation agreements with CAWCD associated with Certified Additional Annual System Delivery Capacity that is not yet finalized

12.3 On or before December 15 of each Year, CAWCD shall determine and furnish to the Contractor the water transportation schedule for the following Year, which shall show the amount of Contractor water to be transported from the Point of Receipt to the Point of Delivery during each month of that year. (Reference Article 4.4(b) of CAP M&I subcontract) (Comment: December date tied to proposed 8.17 schedule)

12.4 The monthly water transportation schedules may be amended upon the Contractor's written request to CAWCD. Proposed amendments shall be submitted by the Contractor to CAWCD no later than fifteen (15) days before the desired change is to become effective, and shall be subject to review and modification in like manner as the water transportation schedule. CAWCD shall notify the Contractor of its action on the Contractor's requested schedule modification within ten (10) days of CAWCD's receipt of such request. (Reference Article 4.4(b) of CAP M&I subcontract)

12.5 In any one month during the Year, Contractor shall not be entitled to the transportation of greater than eleven percent (11%) of Contractor Water. (Reference Article 4.4(e) of CAP M&I subcontract; SEC NQ1.2) If requested by the Contractor, CAWCD may, at its sole discretion, transport more than 11% of the Contractor Water in a month only after satisfying all water deliveries scheduled pursuant to contracts for Excess Water service, long-term contracts and subcontracts for Project Water service, as those terms are used in the Stipulation.

12.6 The Contractor shall hold CAWCD, its officers, agents and employees, harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the

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actions of CAWCD regarding water transportation schedules furnished by or to the Contractor.  
(Reference Article 4.4(b) of CAP M&I subcontract)

### 13. WATER TRANSPORTATION CHARGES:

13.1 Fixed OM&R Charge: The Contractor shall pay in advance the Fixed OM&R Charge established annually by CAWCD. On or before the date of execution of this Agreement, or as soon thereafter as is practicable, CAWCD shall notify the Contractor of the Fixed OM&R Charge for the initial Year of water transportation ("initial Year"). Within a reasonable time of receipt of such notice, but prior to the transportation of water, the Contractor shall advance to CAWCD, in monthly installments payable on or before the first day of each month of the initial Year, as determined by CAWCD, the Fixed OM&R Charge due for transportation of Contractor Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Fixed OM&R Charge and shall notify the Contractor of the Fixed OM&R Charge for such subsequent Year on or before December 15 preceding each subsequent Year. The Contractor shall advance to CAWCD, in monthly installments payable on or before the first day of each month of said subsequent Year, as determined by CAWCD, the Fixed OM&R Charge due for transportation of Contractor Water scheduled for transportation in said subsequent Year. (Reference Article 5.1 of CAP M&I subcontract; SEC Q22.1)

13.2 Variable OM&R Charge (Pumping Energy): Contractor shall be assessed a variable OM&R charge based upon the calculated amount of energy required to transport the Contractor Water and an energy rate for water transportation established by CAWCD. Contractor shall be relieved of the pumping energy portion of the water service charges associated with any Contractor Water scheduled for transportation that is not transported to the Contractor.

13.3 System Improvement Fee: The Contractor shall pay in advance the System Improvement Fee established by CAWCD pursuant to [the proposed] Section 13 of the Operating Agreement. (Comment: additional discussion among stakeholders is required regarding the method and timing of the System Improvement Fee). (Reference: SEC Q19 and Q20)

13.4 The payment of all water transportation charges when due as stipulated in Sections 13.1, 13.2, and 13.3 of this Agreement is a condition precedent to the transportation of Contractor Water. (Reference Section 10.b CAP Excess Water Contract)

13.5 The obligation of the Contractor to pay CAWCD as provided in this Agreement is a general obligation of the Contractor notwithstanding the manner in which the obligation may be

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distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor. (Reference Section 10(c) CAP Excess Water Contract)

#### **14. CHARGES FOR DELINQUENT PAYMENTS AND REMEDIES FOR FAILURE TO PAY:**

14.1 The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. The Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, the contractor shall pay any fees incurred for debt collection services associated with a delinquent payment. (Reference: Section 12(a) CAP Excess Water Contract)

14.2 The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period. (Reference: Section 12(b) CAP Excess Water Contract)

14.3 In the event any portion of any bill is disputed, the disputed amount shall be paid under protest when due and shall be accompanied by a written statement indicating the basis for the protest. If the protest is found to valid, the Contractor shall be refunded any overpayment. (Reference: Section 12(c) CAP Excess Water Contract)

14.4 In the event any delinquent amount is not paid by the Contractor within thirty (30) days after receipt by the Contractor of written notice by CAWCD to the Contractor of the delinquency, CAWCD shall have the right, without liability of any kind, to refuse to transport Contractor Water so long as the said amount remains unpaid and may terminate this Agreement. Nothing herein shall limit the rights of CAWCD to use any other available legal remedy to effect collection of said amounts.

#### **15. RULES, REGULATIONS AND DETERMINATIONS:**

The Parties agree that the transportation of Contractor Water pursuant to this Agreement is subject to Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Reclamation law. (Reference: Section 13(a) CAP Excess Water Contract)

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**16. COMPLIANCE WITH ENVIRONMENTAL LAWS:**

The Contractor, in carrying out this Agreement, shall comply with all applicable environmental laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State or local authorities. (Reference: Section 14 CAP Excess Water Contract; Article 4.9 of CAP M&I subcontract)

**17. UNCONTROLLABLE FORCES:**

Neither Party shall be considered to be in default in the performance of any of its obligations hereunder (other than the obligations of the Contractor to make payment for service hereunder) when a failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities and restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome.

**18. NOTICES:**

Any notice, demand, or request authorized or required by this Agreement shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

CAWCD:

Central Arizona Water Conservation District  
General Manager  
P.O. Box 43020  
Phoenix, Arizona 85090-3020

CONTRACTOR:

**19. WAIVER:**

The waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.

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**20. GOVERNING LAW:**

This Agreement is made under, and shall be governed by, the laws of the State of Arizona.

**21. ASSIGNMENT:**

The Contractor may not assign or transfer this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Wheeling Agreement effective the day and year first above-written.

**EXHIBITS** (not attached)

- Exhibit A: Location of Point(s) of Receipt
- Exhibit B: Location of Point(s) of Delivery
- Exhibit C: Reclamation's determination of Certified Additional Annual System Delivery Capacity
- Exhibit D: Environmental clearances from the United States

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## **CAWCD Staff Proposed Wheeling-Related Revisions to the Operating Agreement Between Reclamation and CAWCD**

**NEW DEFINITIONS** (numbering will need to be adjusted when the definitions are incorporated into the amended Operating Agreement):

1.1 "Annual Operating Plan" shall mean the final water delivery and transportation schedule prepared annually by the District, showing the volumes of Project Water and non-Project water to be delivered and transported during the following Year.

1.2 "CAP System Delivery Capacity" shall mean the maximum reasonable volume of water that can be delivered using CAP Facilities after taking into consideration physical and operational constraints, the likely projected location and timing of deliveries, and appropriate maintenance factors.

1.3 "Certified Additional Annual System Delivery Capacity" shall mean the technical estimate of the increase in CAP System Delivery Capacity that is attributable to a proposed material physical change to the Transferred Works.

1.4 "System Improvement Fee" shall mean a charge collected and expended by CAWCD exclusively for physical material changes to the Transferred Works that will increase CAP System Delivery Capacity.

1.5 "Wheeling Agreement" shall mean an agreement for the delivery of non-Project water, the form of which has been jointly developed by Reclamation and CAWCD and is attached as Exhibit M.

**AMENDMENT TO SECTION 12 REGARDING *SYSTEM IMPROVEMENT QUANTIFICATION***  
(adding new Section 12.2):

12.2 Reclamation and the District shall jointly develop a standard technical procedure for quantification of additional annual system delivery capacity attributable to any proposed physical material change to the Transferred Works that will increase CAP System Delivery Capacity. If a material physical change to the Transferred Works proposed by the District will increase the CAP System Delivery Capacity, Reclamation and the District shall calculate (quantify) the additional annual system delivery capacity attributable to such proposed material change pursuant to the standard technical procedure referred to in this Section 12.2. The additional annual system delivery capacity quantified pursuant to such standard technical procedure shall become non-revocable Certified Additional Annual System Delivery Capacity upon project completion. CAWCD shall be entitled to use Project Facilities to make Non-project water deliveries, up to the volume of Certified Additional Annual System Delivery Capacity, and pursuant to Wheeling Agreements executed by CAWCD, and approved by Reclamation, which will



DRAFT: For concept illustration and discussion purposes only.

not be displaced by Project Water deliveries or by claims by the United States' pursuant to Article 8.17 of the 1988 Contract.

**AMENDMENT TO SECTION 7 REGARDING *SCHEDULING ARTICLE 8.17 NON-PROJECT WATER*** (adding new Section 7.3.4):

7.3.4 By October 10 each year, Reclamation shall provide the District with annual water delivery schedules for any proposed wheeling of non-Project Water pursuant to Article 8.17 of the Master Repayment Contract. The schedules shall include the proposed sources of non-Project Water, points of receipt, points of delivery, and volumes by month. By December 15 each year, the District shall determine and provide written notice to Reclamation of the extent to which the Article 8.17 transportation schedules can be met. The District's determination shall be made only after completion of a final Annual Delivery Plan for Project Water, and non-Project Water relying on completed Certified Additional Annual System Delivery Capacity, and shall follow established technical procedures that include projected available supply, scheduled maintenance activities, and a reasonable reservation of delivery capacity, not to exceed 50,000 acre-feet, for operational efficiency.

**NEW SECTION 13 REGARDING APPROVED STANDARD FORM OF WHEELING AGREEMENT:**

13. Standard Form of Wheeling Agreement

13.1 Reclamation and the District have jointly developed a standard form of wheeling agreement pursuant to Article 8.18 of the 1988 Contract. A copy of the Wheeling Agreement is attached hereto as Exhibit M [*Attachment 1*], and is incorporated into this Agreement.

13.2 Notwithstanding Article 8.18 of the 1988 Contract, CAWCD shall be entitled to retain any revenues from the System Improvement Fee collected pursuant to Section \_\_ of the Wheeling Agreement. Such revenues shall be used exclusively for projects that will increase the CAP System Delivery Capacity.

DRAFT 3-19-13

**WHITE PAPER**  
**General Process for the Development of**  
**CAP's Annual Operating Plan (AOP)**

Determination of CAP's delivery capacity is centered on our process for developing an annual operating plan (AOP). Creation of an AOP begins with the submission of water orders (received in monthly acre-foot volumes) from all entities that desire to take water in a given year. Water is allocated by contract priority until the available water in a given year is allocated. Water schedules are reviewed and revised if needed, according to canal capacity, Underground Storage Facility capacity, energy programs, Lake Pleasant operations, and maintenance outages.

Maintenance planning occurs in several phases, all of which need to be considered in the AOP. Some maintenance activities are consistent from year-to-year, which typically includes planned maintenance in the West Aqueduct system during the summer and the Tucson Aqueduct system in the fall. Other types of outages are usually developed on a multi-year planning horizon. Siphon or Tunnel outages, for instance, are planned and communicated well in advance to customers. These are complete system outages that require specific customers to use alternative supplies for the duration of the outage or continue deliveries relying on the relatively small amount of canal storage. All of the maintenance work that impacts system capacity is included in the AOP process for that year. The result is a plan that projects the monthly acre-feet that will be pumped at each of CAP's pumping plants, and a daily average flow (cubic feet per second, cfs) that will result in each section of the aqueduct.

The AOP monthly interval is adequate for planning the above described activities for system operation. However, real-time operation is executed on a daily basis where customers call in water orders to the CAP Control Center. The daily water orders received are by flow in cfs and changes are tied to a specific hour of operation. Water ordering in real-time is directly dependent on customers' immediate needs. Given that daily water orders will vary as compared to the submitted monthly averages, close attention is paid to the average daily flow values when creating the AOP. System features that frequently represent constraints during real-time operations are evaluated for having sufficient peaking capacity available for real-time operations. Examples would be the capacity of the New River Siphon and Salt Gila pumping plant in the summer months, and capacity of the West Aqueduct in the winter months during

Lake Pleasant fill . CAP Operations carefully evaluates the relationship of the average monthly flows to potential daily peaks that may occur.

The final step in the AOP process—after the customer water schedules, recharge program, and maintenance schedules are finalized—focuses on defining what energy will be needed to execute the plan. Total system energy needs are determined along with available resources for meeting the pumping requirements. These data are used to reserve the needed energy from Reclamation's portion of the Navajo Generating Station. The reservation takes the form an hourly mega-watt schedule shown over a typical day for each month of the year. The water and energy plan are then provided to WAPA and Reclamation (Region). This plan represents CAP's energy reservation of Navajo for the subject calendar year.