

AGREEMENT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, THE
SALT RIVER AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT AND SALT RIVER VALLEY WATER USERS'
ASSOCIATION, THE ARIZONA CITIES OF CHANDLER,
GLENDALE, MESA, PHOENIX, SCOTTSDALE, AND TEMPE,
THE STATE OF ARIZONA, AND THE CITY OF TUCSON FOR
FUNDING OF PLAN SIX FACILITIES OF THE CENTRAL
ARIZONA PROJECT, ARIZONA, AND FOR OTHER PURPOSES

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04/01/8

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DISTRICT AND SALT RIVER VALLEY WATER USERS'
ASSOCIATION, THE ARIZONA CITIES OF CHANDLER,
GLENDALE, MESA, PHOENIX, SCOTTSDALE, AND TEMPE,
THE STATE OF ARIZONA, AND THE CITY OF TUCSON FOR
FUNDING OF PLAN SIX FACILITIES OF THE CENTRAL
ARIZONA PROJECT, ARIZONA, AND FOR OTHER PURPOSES

Preamble

1. THIS AGREEMENT, made this 15th day of April,
1986, pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388),
and acts amendatory thereof or supplementary thereto including, but not
limited to, the Contributed Funds Act of March 4, 1921 (41 Stat. 1404), the
Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), the
Reclamation Safety of Dams Act of 1978, (92 Stat. 2471, as amended by 98
Stat. 1481), the Hoover Power Plant Act of 1984 (August 17, 1984, 98 Stat.
1333), collectively known as Federal Reclamation law, among THE UNITED
STATES OF AMERICA, acting through the Secretary of the Interior; THE
CENTRAL ARIZONA WATER CONSERVATION DISTRICT; THE FLOOD CONTROL DISTRICT OF
MARICOPA COUNTY; THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT AND SALT RIVER VALLEY WATER USERS' ASSOCIATION; THE ARIZONA CITIES
OF CHANDLER, GLENDALE, MESA, PHOENIX, SCOTTSDALE, AND TEMPE; THE STATE OF
ARIZONA; AND THE CITY OF TUCSON, each represented by its respective duly
authorized representatives;

WITNESSETH, THAT:

1 Explanatory Recitals

2 2. WHEREAS, the United States, through the Bureau of Reclamation, is
3 constructing the Central Arizona Project pursuant to the Colorado River
4 Basin Project Act of September 30, 1968, and the December 15, 1972,
5 Repayment Contract between the United States and the Central Arizona Water
6 Conservation District for Delivery of Water and Repayment of Costs of the
7 Central Arizona Project ; and

8 WHEREAS, as a suitable alternative to Orme Dam, the United States,
9 in conjunction with representatives of the State of Arizona, the Central
10 Arizona Water Conservation District, and the Salt River Project has planned
11 and is constructing certain features of what is known as "Plan Six,"
12 including but not limited to, New Waddell Dam, Cliff Dam, and modifications
13 of the existing Roosevelt and Stewart Mountain Dams of the Salt River
14 Reclamation Project; and

15 WHEREAS, the parties to this Agreement have determined that it
16 would be in the best interests of the beneficiaries of the Central Arizona
17 Project and the United States for certain Arizona entities to contribute
18 funds to accelerate the construction of New Waddell Dam and Cliff Dam, and
19 the modification of the existing Roosevelt Dam and to assure the modifica-
20 tion of existing Stewart Mountain Dam; and

21 WHEREAS, the State of Arizona is willing to establish and contri-
22 bute to a fund for the protection and preservation of the Verde River
23 environment; and

24 WHEREAS, the City of Tucson and the Central Arizona Water Conserva-
25 tion District wish to cooperate and consult with the United States on the
26 development of Tucson Phase B Terminal Storage; and

1 i. "Quarter" shall mean the 3-month period beginning on the first day
2 of October, January, April, and July, respectively;

3 j. "Features of Plan Six" shall mean New Waddell Dam, Cliff Dam,
4 modifications of existing Roosevelt and Stewart Mountain Dams, and appur-
5 tenant works;

6 k. "Project Works" shall mean and include all authorized works and
7 facilities of the Central Arizona Project and those facilities of the Salt
8 River Reclamation Project which are Features of Plan Six;

9 l. "Repayment Contract" shall mean the December 15, 1972, Contract
10 between the United States and the Central Arizona Water Conservation
11 District for Delivery of Water and Repayment of Costs of the Central
12 Arizona Project;

13 m. "Non-Federal Parties" shall mean CAWCD, the Cities, the Flood
14 Control District and SRP;

15 n. "Principles and Guidelines" shall mean the "Economic and Environ-
16 mental Principles and Guidelines for Water and Related Land Resources
17 Implementation Studies" dated March 10, 1983, and signed by the President
18 of the United States on February 3, 1983;

19 o. "Uncontrollable Forces" shall mean any cause beyond the control of
20 the party affected including, but not limited to: failure of facilities;
21 flood; earthquake; storm; lightning; fire; epidemic; war; riot; civil
22 disturbance; labor disturbance; sabotage; bankruptcy of a major construc-
23 tion contractor; or restraint by a court or public authority; which by
24 exercise of due diligence and foresight, such party could not reasonably
25 have been expected to avoid. "Uncontrollable Forces" shall not mean the
26 actions or inactions of a legislative or governmental body of the party
27 affected;

1 p. "Terminal Storage" shall mean surface storage facilities or an
2 alternative to surface storage facilities, in the Tucson area, which, if
3 approved by the Secretary, will provide as reasonably reliable a supply of
4 municipal and industrial (M&I) water for the water users in the Tucson area
5 as is provided for other major Central Arizona Project M&I water subcon-
6 tractors;

7 q. "Substantially Complete" shall mean the completion of a facility to
8 the extent that it is capable of providing on a reliable basis all services
9 for which it is intended;

10 r. "Major Construction Contract" shall mean any contract which results
11 in the construction and/or demolition of a primary benefit-producing
12 feature. Relocation, site clearing, data collection, engineering/architec-
13 tural, supply, and construction contracts involving appurtenant features
14 are excluded.

15 Construction Advances

16 4. a. The Secretary agrees that each annual budget estimate submitted to
17 the Executive Office of the President of the United States by the Depart-
18 ment of the Interior shall include sufficient funding for the Project Works
19 to meet the construction schedule specified in Exhibit "A," which is
20 attached hereto and by this reference made a part hereof. The Non-Federal
21 Parties each agree that they shall, upon receipt of a quarterly statement
22 from the United States, within 30 days thereof deposit funds in the amounts
23 specified in Exhibit "A," into a special escrow fund, as described in
24 Exhibit "B," which also is attached hereto and by this reference made a
25 part hereof. Such deposits, including interest earned thereon, as provided
26 for in this Agreement, shall be used by the United States for construction
27 of New Waddell Dam and Cliff Dam, and the modifications of Stewart Mountain

1 and Roosevelt Dams. The non-Indian distribution system construction sche-
2 dule shown in Exhibit "A" is for illustrative purposes only and is not
3 binding upon the non-Indian distribution system beneficiaries, or the
4 United States.

5 b. In accordance with the escrow instructions specified in Exhibit "B,"
6 the United States shall have the right to withdraw funds from the escrow
7 accounts to meet funding obligations for construction of New Waddell Dam,
8 Cliff Dam, and modifications to Roosevelt and Stewart Mountain Dams. The
9 United States shall have the right to withdraw such funds at any time
10 during the Year up to the annual limits specified in Exhibit "A," plus any
11 funds from previous Years not withdrawn. If any funds, plus interest,
12 remain in the escrow accounts upon completion of construction, the entire
13 amount in each account shall be withdrawn by the United States and shall be
14 credited in a similar manner as specified in Article 5: Provided, however,
15 That all interest accruing to the CAWCD escrow account shall be available
16 to CAWCD at the end of each Year. Each Non-Federal Party's obligation to
17 fund construction costs shall be considered to have been met upon its depo-
18 sit into escrow of the funds available for withdrawal by the United States
19 from the escrow accounts.

20 c. Exhibit "A" shall be reevaluated annually and may be amended from
21 time to time, in accordance with Section E thereof, to change the funding
22 levels, escrow deposits, and/or escrow withdrawals specified therein.

23 Cost Allocation Procedures and Crediting of Contributions

24 5. Except as expressly modified herein, the procedures for allocation
25 of construction costs and the provisions for repayment of reimbursable
26 Federal costs shall be in accordance with Article 9 of the Repayment

1 Contract. Contributions by the separate Non-Federal Parties shall be as
2 follows:

3 a. The \$175 million of funds advanced by or for CAWCD for construction
4 of New Waddell Dam shall be recorded on the books of the United States, and
5 interest during construction which would otherwise have accrued on equiva-
6 lent expenditures by the United States had such funds not been advanced by
7 or for CAWCD shall also be accounted for and credited toward the total
8 CAWCD reimbursable repayment obligation. All costs shall be allocated as
9 specified in the Repayment Contract through the suballocation of water
10 supply costs among CAWCD, Indian Water Users, and the New Mexico water
11 users as though funds were not advanced by or for CAWCD, and then the water
12 supply costs shall be further suballocated to the interest-bearing and non-
13 interest-bearing portions of the CAWCD repayment obligation. At this point,
14 and at successive determinations of the CAWCD repayment obligation as
15 required in the Repayment Contract, the contributions made by or for CAWCD
16 and the interest during construction which would have accrued on an equiva-
17 lent amount of expenditures by the United States shall be subtracted from
18 the costs allocated to CAWCD. Seventy-five percent (75%) of the funds
19 advanced by or for CAWCD shall be credited against its interest-bearing
20 obligation; the remaining twenty-five percent (25%) shall be credited
21 against its noninterest-bearing obligation.

22 b. The contribution by the Flood Control District, including interest
23 earned in the escrow account, shall be credited against the nonreimbur-
24 sable costs of the Central Arizona Project allocated to flood control. The
25 contribution by the Flood Control District shall be determined pursuant to
26 the methodology specified in Exhibit "A," and is reflected in the schedule
27 of deposits to the escrow fund in Exhibit "A," as that exhibit may be
28 amended.

1 c. The contributions by the Cities, including interest earned in the
2 escrow account, shall be credited against the interest-bearing reimbursable
3 costs of the Central Arizona Project repayable by CAWCD for providing con-
4 servation storage in Cliff Dam and additional conservation storage in
5 modified Roosevelt Dam. The reimbursable costs of constructing Cliff Dam
6 and modified Roosevelt Dam which are allocable to Central Arizona Project
7 functions shall be included in the costs allocated to CAWCD in accordance
8 with the Repayment Contract. The contributions by the Cities, including
9 interest earned thereon in the escrow account, shall be recorded on the
10 books of the United States, and interest during construction which would
11 otherwise have accrued on equivalent expenditures by the United States
12 had such funds and interest earned thereon not been contributed by the
13 Cities shall also be accounted for and credited against the interest-
14 bearing portion of the CAWCD repayment obligation. For purposes of cre-
15 diting the Cities' contribution against the CAWCD's interest-bearing
16 repayment obligation, all costs shall be allocated as specified in the
17 Repayment Contract through the suballocation of water supply costs among
18 CAWCD, Indian Water Users, and the New Mexico water users as though funds
19 were not contributed by the Cities, and then the water supply costs shall
20 be further suballocated to the interest-bearing and noninterest-bearing
21 portions of the CAWCD repayment obligation. At this point, and at suc-
22 cessive determinations of the CAWCD repayment obligation as required in the
23 Repayment Contract, the contributions made by the Cities (including
24 interest earned thereon in the escrow account) and the interest during
25 construction which would have accrued on an equivalent amount of expen-
26 ditures by the United States shall be subtracted from the interest-bearing

1 costs allocated to CAWCD. The contributions by the Cities shall be deter-
2 mined pursuant to the methodology specified in Exhibit "A" and are
3 reflected in the schedule of deposits to the escrow fund in Exhibit "A," as
4 that exhibit may be amended. In return for their contributions, and for
5 other mutual consideration set forth herein, the Cities, the United States,
6 the SRP, the CAWCD and other necessary parties have entered an agreement,
7 identified as Exhibit "C", attached hereto and by this reference made a
8 part hereof. Notwithstanding the provisions of the Repayment Contract, the
9 agreement in Exhibit "C" entitles the Cities to the additional water conser-
10 vation yield from Cliff Dam (subject to appropriate accounting for future
11 sedimentation losses) and to the additional water conservation yield from
12 the modifications to Roosevelt Dam (subject to appropriate accounting for
13 future sedimentation losses) which result from the construction and opera-
14 tion of additional reservoir capacity at Cliff and Modified Roosevelt Dams,
15 for which appropriative rights are granted by the State of Arizona. Unless
16 otherwise specified in this Agreement, the United States retains no rights
17 to water developed in the additional reservoir capacity at Cliff and Modi-
18 fied Roosevelt Dams. The additional water conservation yield from Cliff and
19 Modified Roosevelt Dams shall be excluded from the total Central Arizona
20 Project water supply in the suballocation of water supply costs as provided
21 for in Subarticle 9.3(a)(ii) of the Repayment Contract.

22 d. SRP shall contribute an amount equal to its cost-sharing obligation
23 under the Reclamation Safety of Dams Act Amendments of 1984 (98 Stat. 1481)
24 for construction of Cliff Dam, and modifications of Roosevelt Dam and
25 Stewart Mountain Dam. This contribution, including interest earned in the
26 escrow account, shall be credited against any repayment obligation incurred
27 under the Reclamation Safety of Dams Act Amendments of 1984 and shall not

1 exceed such obligation taking into account contributions already made by
2 SRP and agreed upon by the United States and SRP to be applicable to the
3 obligation. Such obligation shall be determined using the separable cost-
4 remaining benefits cost allocation procedure and in accordance with the
5 requirements of 98 Stat. 1481.

6 e. In the event that construction of any Feature of Plan Six is suspended
7 or delayed by reason of Uncontrollable Forces, the obligation of the Non-
8 Federal Party or Parties to contribute funds that is related to such
9 feature shall be tolled during the period of delay.

10 Additional Contributions by CAWCD

11 6. In the event that Federal appropriations are insufficient to provide
12 for construction of facilities as scheduled in Exhibit "A", CAWCD has the
13 option to make up any portion of the deficiency from any available funds.
14 In the event such additional funds are advanced by CAWCD to fund additional
15 construction costs, the United States agrees that the initiation of
16 repayment of the first or next subsequent repayment block(s) under the
17 Repayment Contract will be delayed for the period of time necessary to per-
18 mit CAWCD to accumulate such funds to the level they would have reached
19 upon the initiation of repayment in the absence of the additional contribu-
20 tion having been made. Prior to such additional contribution being made,
21 the United States and CAWCD will agree on specific terms under which CAWCD
22 will recover the funds being contributed. Any additional advances made by
23 CAWCD for reasons other than to make up shortfalls in Federal appropriations
24 will be treated as credits against CAWCD's repayment obligation as specified
25 in Subarticle 5.a.

1 (v) The substantial completion dates stated in Exhibit "A" are sub-
2 ject to amendment, as provided in Subarticle 9.b., for delays caused by
3 Uncontrollable Forces or by the actions or inactions of the Non-Federal
4 Parties; consequently, any failure to meet the scheduled completion dates as
5 stated in Exhibit "A" (as these dates may be amended) shall be considered a
6 failure due to a lack of Federal funds or other causes within the control
7 of the United States.

8 (vi) The prepayment credit shall be applied against CAWCD's annual
9 payments next due on its interest-bearing annual obligation. Any unused
10 prepayment credit shall carry forward and accrue interest at the rate of
11 3.342% per annum until exhausted. Funds in the amount of the prepayment
12 credits shall be held by CAWCD as they accrue and shall be separately
13 accounted for by CAWCD. In the event construction delays are recovered, or
14 partially recovered, prior to completion of New Waddell Dam, the prepayment
15 credits, with interest which accrued on such credits at the rate of 3.342%
16 per annum, shall be remitted to the United States on the same basis as they
17 were accrued, beginning with the payment due the year next following the
18 Year of recovery.

19 (vii) Failure by the United States to apply any prepayment credit
20 in accordance with this Subarticle 7.a. shall result in the United States
21 paying to the CAWCD liquidated damages in the amount of \$48,000,000.
22 Failure by the CAWCD to remit recovered prepayment credits to the United
23 States in accordance with this Subarticle 7.a. shall result in the payment
24 by the CAWCD to the United States of liquidated damages in the amount of
25 \$48,000,000 plus accrued interest.

1 b. In the event the United States fails to meet the scheduled comple-
2 tion dates for Cliff Dam and Modified Roosevelt Dam as specified in Exhibit
3 "A" due to a lack of Federal appropriations or other factors within the
4 control of the United States, a prepayment credit for contributions made by
5 the Flood Control District will be provided against CAWCD's interest-
6 bearing reimbursable obligation in the same manner as provided for CAWCD in
7 Subarticle 7.a. with the balance of the contribution, if any, retained
8 against nonreimbursable flood control costs. A prepayment credit will also
9 be provided against CAWCD's interest-bearing obligation for contributions
10 made by the Cities in the same manner as specified for CAWCD in Subarticle
11 7.a. with the balance of the Cities' contributions, if any, retained as an
12 overall credit toward CAWCD's total interest-bearing reimbursable obliga-
13 tion. Such prepayment credits shall be held by CAWCD as they accrue and
14 shall be separately accounted for by CAWCD. In the event construction
15 delays are recovered, or partially recovered, prior to completion of Cliff
16 Dam, or Modified Roosevelt Dam, the prepayment credits, with interest which
17 accrued on such credits at the rate of 3.342% per annum, shall be remitted
18 to the United States on the same basis as they were accrued, beginning with
19 the payment due the year next following the Year of recovery. Failure by
20 the United States to apply any prepayment credit in the manner specified in
21 Subarticle 7.a. shall result in the United States paying to the Flood
22 Control District and the Cities liquidated damages in the amount of
23 \$31,000,000 in direct proportion to their respective contributions made
24 under this Agreement at that date. Failure by the CAWCD to remit recovered
25 prepayment credits to the United States in the manner specified in
26 Subarticle 7.a. shall result in the payment by the CAWCD of liquidated
27 damages in the amount of \$31,000,000 plus accrued interest.

1 c. In the event that any of the quarterly contributions from any of the
2 Non-Federal Parties are not made in total, the following late charges shall
3 be applied. When a full contribution is not made within 30 days of the due
4 date, the contributor shall pay an interest charge for each day the contri-
5 bution is delinquent beyond the due date. The interest charge rate shall
6 be the greater of the rate prescribed quarterly in the Federal Register by
7 the Department of the Treasury for application to overdue payments, or the
8 interest rate of 0.5 per cent per month prescribed by section 6 of the
9 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge
10 rate shall be determined by the Secretary as of the due date and shall
11 remain fixed for the duration of the delinquent period. The late charges
12 shall be considered as up-front funding to be credited against nonreimbur-
13 sable costs; Provided, That the contribution by the State towards the Verde
14 River Protection Fund shall be exempt from any late charges.

15 Priorities for Expenditures of Federal Appropriations

16 8. If, in any Year, Federal appropriations are not sufficient to fund all
17 items scheduled for construction with Federal funds in that Year as spe-
18 cified in Exhibit "A", the priorities for use of Federal funds shall be as
19 follows:

20 a. The first priority for available Federal funds shall be for con-
21 struction of the Aqueduct facilities through Tucson Phase 3, exclusive of
22 terminal storage. Terminal storage, if approved by the Secretary, shall be
23 constructed after completion of the Tucson Phase 3 Aqueduct and shall be
24 phased with construction of New Waddell Dam, Cliff Dam, and modification of
25 Stewart Mountain and Roosevelt Dams, as set forth in Exhibit "A"; Provided,
26 however, That in applying the Principles and Guidelines (or such successors

1 as may be applicable) to the planning for Terminal Storage, the United
2 States agrees to consider all factors relating to the reliability of the
3 Aqueduct south of the Phoenix area. Before concluding its analysis, the
4 United States shall consult with CAWCD and Tucson to determine the accep-
5 tability of the United States' plan to provide the reasonable reliability
6 (as defined in Subarticle 3.p).

7 b. The second priority for use of Federal funds shall be for construc-
8 tion of Indian and non-Indian distribution systems as shown in Exhibit "A";

9 c. The third priority for use of Federal funds shall be for construc-
10 tion of New Waddell Dam and Cliff Dam, modification of Roosevelt and
11 Stewart Mountain Dams, and, if approved by the Secretary, construction of
12 Terminal Storage as shown in Exhibit "A". A major construction contract
13 for New Waddell Dam shall be awarded not later than the end of the Year
14 1987. A major construction contract for the modification of Roosevelt
15 Dam shall be awarded not later than the end of the Year 1990. A major
16 construction contract for Cliff Dam shall be awarded not later than the
17 end of the Year 1991. A major construction contract for the modification
18 of Stewart Mountain Dam shall be awarded not later than the end of the Year
19 1988.

20 d. If the Secretary shall approve a plan for construction, the fourth
21 priority for use of Federal funds shall be for construction of Buttes Dam,
22 as shown in Exhibit "A". In the event that the Secretary does not con-
23 template approving the construction of Buttes Dam, the parties hereto agree
24 that the United States, the State, CAWCD and other local entities with a
25 direct interest in Buttes Dam shall confer in an attempt to develop an
26 acceptable plan.

e. In the event the Federal funding is not sufficient to meet the schedule for construction of New Waddell and Cliff Dams and modification of Roosevelt and Stewart Mountain Dams as contained in Exhibit "A", Federal funds shall be made available in a manner to provide an optimum completion of all facilities as indicated in Exhibit "A". The priorities delineated in Subarticles a. through d. of this Article 8 notwithstanding, to the extent that it is reasonable and prudent after consultation with the Non-Federal Parties hereto, any shortage of Federal funds for construction or modification of the dams shall be applied by the Secretary to each dam in inverse proportion to the contributions previously made by the Non-Federal Parties.

Consultation

13 9. a. The parties to this Agreement shall establish a Consultation
14 Committee with at least one representative from each of the parties hereto
15 and from the Maricopa County Municipal Water Conservation District No. 1 on
16 the Committee to provide input for and to review major features designs,
17 environmental compliance work, construction schedules, financing, and
18 other items or proposed decisions that will have a direct impact on the
19 construction of the features toward which the Non-Federal Parties are
20 advancing funds. The final decisions on all aspects of project development
21 shall rest with the United States. The parties recognize that the United
22 States cannot release any budget information contained in the President's
23 budget prior to the official release of the budget by the President.
24 Within 90 days after the end of each Year, the Secretary shall submit to
25 the Consultation Committee a report of funds expended for the construction
26 of Project Works.

1 b. Each substantial completion date established in Exhibit "A" shall
2 be amended by the Secretary to state a later date if and to the extent that
3 the Secretary determines that delay has been caused by Uncontrollable For-
4 ces or by the actions or inactions of the Non-Federal Parties. No such
5 amendment of a substantial completion date shall be made unless and until
6 the Secretary:

7 (1) Gives written notice to the Consultation Committee of the pro-
8 posed amendment, the particular Uncontrollable Force(s), or the particular
9 action(s) or inaction(s) of the Non-Federal Parties causing the delay, and
10 the specific effect upon the completion; and

11 (ii) Affords the Consultation Committee reasonable opportunity,
12 after such written notice, to be heard with regard to the proposed amend-
13 ment.

14 c. At least once each Year, the Secretary, in consultation with the
15 Consultation Committee, shall determine whether Federal appropriation
16 levels or other causes within the control of the United States may or may
17 not cause a delay in substantial completion of construction as specified in
18 Exhibit "A", as amended from time to time. If the Secretary makes a deter-
19 mination that such a delay may occur, the Secretary shall notify the Consul-
20 tation Committee of the duration of such delay. The determination of a
21 delay or its duration shall not alter the substantial completion dates con-
22 tained in Exhibit "A", as they may be amended from time to time as spe-
23 cified in Subarticle 9.b. herein. If the Secretary determines that such a
24 delay will not occur, the Secretary shall notify the Consultation Committee
25 of such determination and the reasons therefore.

d. At any time after making a determination that a Feature of Plan Six will be delayed due to lack of appropriations or other causes within the control of the United States, the Secretary, for good cause, may determine that the delay has been recovered, or partially recovered, prior to completion of such feature. No such determination shall be made unless and until the Secretary:

(i) Gives written notice to the Consultation Committee of the proposed determination and of the good cause therefor; and

(ii) Affords the Consultation Committee reasonable opportunity, after such written notice, to be heard with regard to the proposed determination.

e. Each determination of the Secretary made pursuant to this Article 9 is final and is considered an "order" subject to judicial review under the Administrative Procedure Act (5 U.S.C. §551 et seq.).

Impact of Contributions on Central Arizona Project and Safety-of-Dams Appropriation Ceilings

10. The cost of construction activity funded with contributions made by Non-Federal Parties pursuant to this Agreement, or otherwise, and interest earned in the escrow accounts and made available to the United States, shall not be included in the calculation of the Federal Central Arizona Project and Safety-of-Dams cost estimates for comparison with the congressionally authorized appropriation ceilings.

Repayment Contract and Reclamation Reform Act

11. Except as otherwise expressly modified herein, the provisions of the Repayment Contract shall remain in full force and effect. This Agreement is not a "contract " within the meaning of Section 202(1) of the

1 Reclamation Reform Act of 1982, 43 U.S.C. §390bb(1), and the regulations
2 attendant thereto. Accordingly, the execution of this Agreement shall not
3 subject any party to this Agreement to the provisions of the Reclamation
4 Reform Act, nor to regulations attendant thereto, to which such party
5 would not otherwise have been subjected.

6 Title to and Operation of Project Works

7 12. a. Title to all Project Works constructed with Federal and/or
8 non-Federal funds shall be and remain in the United States unless otherwise
9 provided by the Congress.

10 b. The care, operation, and maintenance of the facilities constructed
11 within the Salt and Verde Rivers shall be pursuant to the terms, covenants
12 and conditions of the "Contract Between United States of America and Salt
13 River Valley Water Users' Association" dated September 6, 1917, and con-
14 tracts amendatory thereof and supplementary thereto. The details of the
15 implementation of said care, operation and maintenance shall be the subject
16 of appropriate amendments and supplements to said September 6, 1917,
17 contract, as amended and supplemented, or other agreements between the
18 United States and SRP, and the United States and SRP agree to expeditiously
19 negotiate appropriate amendments, supplements and other agreements.

20 Failure to Complete Construction

21 13. a. If the United States fails to complete construction of the facil-
22 ities for which non-Federal contributions have been made, due to the lack
23 of appropriations or for other causes within its control, the Secretary,
24 after consultation with the parties hereto, may declare that no further
25 Federal work is possible on such facilities. The total cumulative contri-
26 butions from CAWCD, the Flood Control District, and the Cities for the

1 uncompleted facilities shall be credited as a prepayment in the same manner
2 as if there were a delay in construction of more than 2 years as provided
3 in Article 7. The total cumulative contributions of SRP shall be credited
4 to funding required pursuant to the Reclamation Safety of Dams Act
5 Amendments of 1984 (98 Stat. 1481). The parties hereto may complete the
6 Project Works with their own funds. In the event the parties determine
7 that they will complete the construction of any uncompleted facilities, the
8 parties shall consult with the Secretary and provide all designs, plans,
9 specifications, and construction contracts to the Secretary for review and
10 approval. Title to such facilities shall remain in the United States
11 unless otherwise provided by the Congress.

12 b. If the United States fails to complete construction of the Project
13 Works due to Uncontrollable Forces, the cumulative non-Federal contribu-
14 tions shall be credited as if the United States had met the agreed-upon
15 construction schedule. In the event of failure by the United States to
16 complete construction due to Uncontrollable Forces, the parties hereto may
17 elect to proceed with construction of Project Works subject to the con-
18 ditions specified above. Title to Project Works shall remain in the United
19 States unless otherwise provided by the Congress.

20 Contingent on Appropriation or Allotment of Funds

21 14. The expenditure or advance of any money by the United States or the
22 Non-Federal Parties in accordance with this Agreement (other than liquidated
23 damages) shall be contingent upon the appropriation or allotment of funds.
24 The absence of appropriation or allotment of funds shall not relieve any
25 party to this Agreement from any obligation established herein unless
26 expressly provided by the terms of this Agreement. No party shall have any

1 right or remedy against the United States in the event the Congress fails
2 to appropriate or allot the necessary funds other than those rights or
3 remedies specifically provided herein. The United States shall have no
4 rights or remedies against the Non-Federal Parties for failure to contri-
5 bute the funds required by the terms of this Agreement other than those
6 rights and remedies provided expressly herein.

7 Navajo Power Marketing Plan

8 15. a. The Secretary shall work with the Secretary of Energy through
9 the Western Area Power Administration to adopt a Navajo Power Marketing
10 Plan consistent with the Hoover Power Plant Act of 1984 that will provide
11 for contracting for Hoover Schedule 8 capacity and energy by CAWCD pursuant
12 to the Arizona Power Authority allocation dated June 7, 1985, and utiliza-
13 tion and assignment of revenues from the sales and exchange of Navajo
14 surplus power and energy as authorized by the Hoover Power Plant Act of
15 1984, sufficient to make repayment and establish reserves for repayment of
16 \$175,000,000 (or more) of funds advanced by or for CAWCD for construction
17 of authorized features of the Central Arizona Project.

18 b. In the event that a Navajo Power Marketing Plan sufficient to make
19 repayment and establish reserves for repayment of \$175,000,000 (or more) of
20 funds advanced by or for CAWCD is not adopted by the Secretary in time to
21 enable CAWCD to meet its scheduled contribution of funds for New Waddell
22 Dam, this Agreement is suspended pending development and approval of such
23 Plan. In the event such Plan is not developed and adopted by December 31,
24 1987, the Non-Federal Parties shall have the option to renegotiate or ter-
25 minate this Agreement without penalty to any party.

1 c. If funds are advanced by other entities for and on behalf of CAWCD
2 with CAWCD's agreement, and such agreement shall not be unreasonably with-
3 held, such funds will be treated as CAWCD funds otherwise advanced under
4 this Agreement.

5 Verde River Protection Fund

6 16. The State of Arizona shall establish a "Verde River Protection Fund"
7 to be used for the protection and preservation of the Verde River. The
8 Fund shall be administered by the State of Arizona and may be used for pro-
9 perty acquisition, habitat enhancement and/or habitat protection along the
10 entire reach of the Verde River. The State shall establish the Fund and
11 provide not less than \$2,000,000 for the Fund no later than August 31, 1986.

12 CAWCD Purchase of Headquarter's Complex

13 17. In accordance with the letter of intent signed by CAWCD on December 12,
14 1985, to provide for the purchase of land and improvements commonly known
15 as the Central Arizona Project Headquarters Complex, within the calendar
16 year 1986, CAWCD will negotiate a purchase agreement and lease agreement
17 with the United States for the Central Arizona Project Headquarters
18 Complex.

19 Non-Compliance Provision

20 18. Recognizing that the Non-Federal Parties intend that the aggregate
21 local contribution achieve the timely construction of the aggregate of
22 features described in this Agreement, the following is agreed to:

23 a. In the event that causes within the control of the United States
24 result in significant changes in: (1) construction of New Waddell Dam or

1 Cliff Dam, or the modification of Roosevelt Dam or Stewart Mountain Dam;
2 (2) project purposes; (3) levels of services; (4) appropriation authori-
3 ties; (5) or project authorizations from those upon which this Agreement is
4 based, the Non-Federal Parties and the United States may attempt to renegot-
5 tiate this Agreement based on the new circumstances. (With regard to
6 construction of Project Works, significant changes shall be deemed to have
7 taken place if construction on a feature has been halted for a period of 18
8 months or more.) If such negotiations do not result in a mutually accep-
9 table agreement, the Non-Federal Parties shall have the option of ter-
10 minating this Agreement with a minimum of 120-days written notice. In
11 the event of termination, all cumulative contributions made by CAWCD, the
12 Flood Control District, and the Cities shall be credited as a prepayment
13 against CAWCD's interest-bearing obligation. Should the United States fail
14 to credit all cumulative contributions made by CAWCD, the Flood Control
15 District, and the Cities as a prepayment against CAWCD's interest-bearing
16 obligation, the United States shall pay liquidated damages of \$79,000,000
17 to CAWCD, the Cities, and the Flood Control District in direct proportion
18 to their respective contributions made under this Agreement at that date.
19 Cumulative contributions made by SRP:

20 (i) will be credited against SRP's Safety-of-Dams obligation to the
21 extent such obligation exists or remains unsatisfied;

22 (ii) in the event such obligation is no longer outstanding, shall be
23 credited against any other outstanding obligation it has to the United
24 States under Reclamation law, as designated by SRP; or

25 (iii) in the absence of such a designation or obligation, shall be
26 refunded to SRP within a reasonable time.

1 In the event SRP's cumulative contributions, or appropriate portions
2 thereof, are not credited or refunded in accordance with (i), (ii), or
3 (iii) above, the United States shall pay liquidated damages in an amount
4 equal to: SRP's cumulative contributions to the date of the termination of
5 this Agreement, minus any amounts properly credited or refunded.

6 b. In the event that any Non-Federal Party, due to causes within its
7 control, fails to make a contribution in a year in which such contribution
8 is due in accordance with this Agreement, and no other Non-Federal Party
9 elects to make up the shortfall, the parties hereto shall attempt to rene-
10 gotiate this Agreement. For the purpose of this Subarticle 18.b., the
11 failure of a Non-Federal Party to make a scheduled contribution in any
12 amount, plus accrued late charges, for a period of 18 months (and which is
13 not made up by another entity) shall be sufficient justification for rene-
14 gotiation. If such negotiations do not result in a mutually acceptable
15 agreement, the United States shall have the option of terminating this
16 Agreement with a minimum of 120-day's written notice to all other parties.
17 In the event of termination by the United States, cumulative contributions
18 made to date by the Non-Federal Parties, not to exceed \$100,000,000, shall
19 be considered as up-front funding to be credited against nonreimbursable
20 costs and, in the case of SRP, credited to funding required pursuant to the
21 Reclamation Safety of Dams Act Amendments of 1984; Provided, That the
22 State's contribution to the Verde River Protection Fund shall not be sub-
23 ject to the provisions of this Subarticle 18.b.

24 Effect of Litigation

25 19. The United States, and any other party to this Agreement who inter-
26 venes, shall abide by the final judgment in the lawsuit entitled Maricopa

1 Audubon Society, et al. vs. Hodel, et al., No. CIV-85-2166-PHX-PGR, to the
2 extent such decision affects the abilities of said entities to fulfill
3 their respective obligations as established herein. The United States, the
4 Non-Federal Parties, and the State shall retain any rights they have to
5 appeal the decision of the District Court to final judgment, should they so
6 desire.

7 Additional Legislation

8 20. a. CAWCD's obligations under this Agreement shall be contingent upon
9 its obtaining such additional legislative authority as may be necessary or
10 appropriate to enable CAWCD to carry out the terms of this Agreement. Such
11 authority may provide that CAWCD shall have the authority to issue bonds
12 necessary to carry out the objectives and obligations of this Agreement.
13 Such authority may also include the authorization for CAWCD to accept
14 funding advanced by other entities in accordance with Subarticle 15.c.
15 hereof. It is understood and agreed that CAWCD shall have the option to
16 withdraw from this Agreement if either bonding authority is not obtained or
17 sufficient funds are not advanced by other entities as provided in
18 Subarticle 15.c. In the event the law embodying such authority is not
19 signed by the Governor of Arizona prior to August 1, 1986, any party shall
20 have the option to renegotiate or terminate this Agreement without penalty.

21 b. The obligation of the Cities, SRP, and the Flood Control
22 District under this Agreement shall be contingent upon their obtaining such
23 additional legislative authority as may be necessary or appropriate to
24 enable them to carry out the terms of this Agreement. In the event the
25 law(s) embodying such authority(ies) is (are) not signed by the Governor of
26 Arizona prior to August 1, 1986, any party shall have the option to renegot-
27 tiate or terminate this Agreement without penalty.

Relationship of Parties and Liabilities

21. Except as otherwise expressly provided herein, no party hereto is authorized to act as the agent for or otherwise on behalf of any other party in the performance of any obligations under this Agreement. Neither the Non-Federal Parties, the State nor Tucson shall assume any liability for any claims or actions arising out of the performance by the United States of any construction, design, or other work contemplated by this Agreement. Tort liability of the United States shall be governed by the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.).

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement the
2 day and year first above written.

3
4 THE UNITED STATES OF AMERICA

5 By: [Signature]
6 Commissioner of Reclamation

By: [Signature]
Secretary of the Interior

7
8 THE STATE OF ARIZONA

9 Attest: [Signature]
10 Secretary of State

By: [Signature]
Governor

11 CENTRAL ARIZONA WATER CONSERVATION
12 DISTRICT

13 Attest: [Signature]
14 Secretary

By: [Signature]
President

15 Approved as
16 to form:

[Signature]
General Counsel

17 FLOOD CONTROL DISTRICT OF
18 MARICOPA COUNTY

19 Attest: [Signature]
20 Clerk of the Board

By: [Signature]
Chairman, Board of Directors

21 Approved as
22 to form:

[Signature]
General Counsel

23 SALT RIVER VALLEY WATER USERS' ASSOCIATION

24 Attest and
25 Countersign

[Signature]
Secretary

By: [Signature]
President

26
27 Approved as
to Form:

[Signature]

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

Attest and
Countersign

Secretary

By:

President

Approved as
to form:

CITY OF CHANDLER

Attest:

Clerk

By:

Mayor

Approved as
to form:

City Attorney

CITY OF GLENDALE

Attest:

Clerk

By:

Mayor

Approved as
to form:

City Attorney

CITY OF MESA

Attest:

Clerk

By:

City Manager

Approved as
to form:

City Attorney

CITY OF PHOENIX, Marvin A. Andrews,
City Manager

Attest: *[Signature]*
Clerk

By: *[Signature]*

Approved as *[Signature]*
to form: City Attorney

[Signature]
Mayor, City of Phoenix

CITY OF SCOTTSDALE

Attest: Roy R. Pederson, City Clerk

By: *[Signature]*
Mayor

By: *[Signature]*
Deputy City Clerk

Approved as *[Signature]*
to form: City Attorney

CITY OF TEMPE

Attest: *[Signature]*
Clerk

By: *[Signature]*
Mayor

Approved as *[Signature]*
to form: City Attorney

CITY OF TUCSON

Attest: *[Signature]*
Clerk

By: *[Signature]*
Mayor

Approved as *[Signature]*
to form: City Attorney

EXHIBIT "A" TO AGREEMENT AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, THE
SALT RIVER AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT AND SALT RIVER VALLEY WATER USERS'
ASSOCIATION, THE ARIZONA CITIES OF CHANDLER,
GLENDALE, MESA, PHOENIX, SCOTTSDALE, AND TEMPE,
THE STATE OF ARIZONA, AND THE CITY OF TUCSON FOR
FUNDING OF PLAN SIX FACILITIES OF THE CENTRAL ARIZONA
ARIZONA PROJECT, ARIZONA, AND FOR OTHER PURPOSES (AGREEMENT)

A.1. Construction Schedule

	<u>First Major Construction Contract</u>	<u>Substantially Complete</u>
Aqueduct	Ongoing	1993
Terminal Storage	1994	1995
Non-Indian Distribution	Ongoing	Not determined
Indian Distribution	Ongoing	Not determined
New Waddell	1987	1995
Roosevelt	1990	1995
Cliff	1991	1997
Stewart Mountain	1988	1990
Buttes	1994	1999

A.2. Federal Appropriations

The parties contemplate that it will require spendable Federal funds in not less than the following amounts annually to meet the construction schedule as identified in Section A.1. above:

1987	\$212,000,000	1992	\$180,000,000
1988	\$221,000,000	1993	\$178,000,000
1989	\$227,000,000	1994	\$178,000,000
1990	\$187,000,000	1995	\$180,000,000
1991	\$180,000,000	1996-1999	As needed to maintain construction schedule

The projections for Federal funding requirements will be modified annually as part of the consultative process defined in Article 9 of this Agreement.

1 B. Determination of Total Non-Federal Contributions

2 1. CAWCD- The contribution is to sum to \$175,000,000. This amount is a
3 fixed value and is not adjustable due to changes in project construction
4 costs.

5 2. Flood Control District- The Flood Control District will contribute a
6 total amount equaling 20 percent of the costs allocated to the Flood
7 Control function of the Central Arizona Project (CAP), adjusted by the
8 relationship between the Flood Control benefits associated with Features of
9 Plan Six and the Flood Control benefits associated with CAP. The foun-
10 dation for this calculation is the CAP cost allocation. The calculation to
11 be used in determining and adjusting the total is as follows:

12 * Flood Control benefits associated with Features of Plan Six divided
13 by the Flood Control benefits associated with CAP; multiplied by 20%; multi-
14 plied by the total CAP costs allocated to Flood Control.

15 For example:

16 * $\$23,000,000 / \$25,000,000 = 0.92$ (92%)

17 * $0.92 \text{ times } 0.20 = 0.18$ (18%)

18 * $0.18 \text{ times } \$339,000,000 = \$61,020,000$

19 3. SRP- The Salt River Project will contribute an amount not to exceed
20 15 percent of the costs allocated to the Safety-of-Dams function and
21 authorized by the Reclamation Safety of Dams Act of 1978, and amendments
22 thereto, for the construction of Cliff Dam, and modifications to Roosevelt
23 Dam and Stewart Mountain Dams. The foundation for this calculation is the
24 CAP cost allocation. The calculation to be used in determining and
25 adjusting the total is as follows:

26 For example:

27 * Allocated Safety of Dams cost times 15%:

28 * $\$278,000,000 \text{ times } 0.15 = \$41,700,000$

1 4. Cities- The Cities will contribute an amount not to exceed 5.8% of
2 the total construction cost of Cliff Dam and 10.2% of the total construc-
3 tion cost of Modified Roosevelt Dam for the purpose of obtaining the use of
4 the additional reservoir capacity at each structure. These percentages are
5 to remain fixed throughout the term of this Agreement and were calculated
6 by multiplying the CAWCD's average annual water supply costs, at October
7 1986 price levels, times the average annual yield to the Cities from Cliff
8 and Modified Roosevelt Dams as computed by a CAPSIM* run dated December 3,
9 1985, and expressing the resulting total purchase costs as a percentage of
10 the October 1986 construction cost estimates for Cliff and Modified
11 Roosevelt Dams respectively. None of the assumptions that were made in
12 running CAPSIM should be deemed to dictate or otherwise determine the
13 operating principles to be set forth in Exhibit "C" hereto, including the
14 principles for the allocation of future sedimentation losses, unless other-
15 wise provided in Exhibit "C".

16 C. Determination of Withdrawals From the Escrow Accounts

17 1. CAWCD- The basic premise of the withdrawals is to provide sufficient
18 Federal and non-Federal funds to accomplish the construction as scheduled
19 herein. Given the estimated construction schedule as presented in Section
20 A and the level of Federal funds in Section A, the withdrawals should not
21 exceed the following amounts:

22	1986	\$ 8,200,000
23	1987	9,900,000
24	1988	21,000,000
25	1989	33,700,000
26	1990	11,500,000
27	1991	55,300,000
28	1992	<u>35,400,000</u>
		\$ 175,000,000

29
30 *Central Arizona Project Simulation Model

1 2. Flood Control District- The basic premise of the withdrawals is to
2 provide sufficient Federal and non-Federal funds to accomplish the construc-
3 tion as scheduled herein. Given the estimated construction schedule as pre-
4 sented in Section A and the level of Federal funds in Section A, the
5 withdrawals should not exceed the following amounts (subject to future
6 revisions per Section E):

7	1988	\$ 3,700,000
8	1989	3,700,000
9	1990	5,700,000
10	1991	11,400,000
11	1992	33,200,000
12	1993	7,000,000
13	1994	<u>16,100,000</u> -
14		\$ 80,800,000*

15 The Flood Control District will make contributions to the escrow account in
16 equal quarterly installments sufficient to meet the withdrawal schedule as
17 it may be revised pursuant to Section E.

18 3. SRP- The basic premise of the withdrawals is to provide sufficient
19 Federal and non-Federal funds to accomplish the construction as scheduled
20 herein. Given the estimated construction schedule as presented in Section
21 A, and the level of Federal funds in Section A, the withdrawals should not
22 exceed the following amounts (subject to future revisions per Section E):

23 *Assumes 5% annual inflation from 1988-1991 inclusive, and 6% inflation
thereafter.

1	1986	\$ 1,100,000
2	1987	1,400,000
3	1988	3,200,000
4	1989	4,000,000
5	1990	4,500,000
6	1991	6,500,000
7	1992	18,600,000
8	1993	4,000,000
9	1994	<u>9,000,000</u>
10		\$ 52,300,000*

11 SRP will make contributions to the escrow account in equal quarterly
 12 installments sufficient to meet the withdrawal schedule as it may be
 13 revised pursuant to Section E. Such contributions are subject to adjust-
 14 ment based on contributions otherwise made by SRP and agreed upon between
 15 SRP and the United States to be applicable to SRP's Safety-of-Dams obliga-
 16 tion. On or before October 1, 1986, the SRP and the United States shall
 17 reach mutual agreement on the applicability to SRP's Safety-of-Dams obliga-
 18 tion of contributions made prior to the date of this Agreement.

19 4. Cities- The basic premise of the withdrawals is to provide suf-
 20 ficient Federal and non-Federal funds to accomplish the construction as
 21 scheduled herein. Given the estimated construction schedule as presented in
 22 Section A, and the level of Federal funds in Section A, the withdrawals
 23 should not exceed the following amounts (subject to future revisions per
 24 Section E).

25 *Assumes 5% annual inflation from 1988-1991 inclusive, and 6% inflation thereafter.

1	1986	\$ 300,000
2	1987	400,000
3	1988	2,100,000
4	1989	2,750,000
5	1990	5,000,000
6	1991	8,900,000
7	1992	24,800,000
8	1993	6,030,000
9	1994	<u>12,180,000</u>
10		\$ 62,500,000*

11 In the event that the United States chooses not to withdraw the full amount
 12 of funds available for withdrawal in any one year, the amount not
 13 withdrawn, plus any interest accrued on that amount, shall remain available
 14 for expenditure in subsequent years. The determination not to fully expend
 15 monies available for withdrawal in any year will not, in and of itself,
 16 reduce the Cities' obligations under Section B.4. herein.

17 D. Determination of Contributions Into the Escrow Accounts

18 1. CAWCD - A first contribution of \$8,200,000 shall be made by August 1,
 19 1986. Thereafter, the following annual contributions* will be made in
 20 equal quarterly installments commencing October 1, 1986:

21	1987	\$ 9,900,000
22	1988	21,000,000
23	1989	33,700,000
24	1990	11,500,000
25	1991	55,300,000
26	1992	35,400,000

27 * Assumes 5% annual inflation from 1988-1991 inclusive, and 6% inflation thereafter.

1 2. Flood Control District - The following annual contributions will be
2 made in equal quarterly installments commencing October 1, 1987:

3	1988	\$ 3,700,000
4	1989	3,700,000
5	1990	5,700,000
6	1991	11,400,000
7	1992	33,200,000
8	1993	7,000,000
9	1994	16,100,000

10 3. SRP - SRP shall make a first contribution of \$1,100,000 by
11 September 30, 1986. Thereafter, subject to the adjustments contemplated in
12 Section C.3., the following annual contributions will be made in equal
13 quarterly installments commencing October 1, 1986:

14	1987	\$ 1,400,000
15	1988	3,200,000
16	1989	4,000,000
17	1990	4,500,000
18	1991	6,500,000
19	1992	18,600,000
20	1993	4,000,000
21	1994	9,000,000

22 4. Cities- Given that the contribution is a variable amount (see
23 Section B.4.) and that the anticipated withdrawals are variable over time
24 (see Section C.4.), it is desirable that the contributions into the escrow
25 account occur in a uniform manner sufficient to meet three goals: (1) as
26 uniform an amount per Year as possible; (2) sufficient contributions to
27 cover withdrawals; and (3) total contributions and withdrawals equaling
28 the agreed upon total contribution determined under Section B.4.

1 A first contribution of \$4,000,000 shall be made by September 1, 1986.
2 Thereafter, the following annual contributions* will be made in equal quar-
3 terly installments commencing October 1, 1986:

4	1987	\$ 5,000,000
5	1988	6,000,000
6	1989	7,000,000
7	1990	7,000,000
8	1991	7,000,000
9	1992	7,000,000
10	1993	7,000,000
11	1994	4,450,000

12 E. Determination of Changes to Total Contribution, Withdrawals From Escrow
13 Accounts, and Contributions Into Escrow Accounts --

14 1. CAWCD

15 a. Total Contributions -- The total contribution is a fixed amount.

16 2. Flood Control District

17 a. Total Contributions -- The yearly reevaluation could change the
18 total amount to be contributed. The process presented in Section 3.2 will
19 be used to determine the new total contribution.

20 b. Withdrawals from the escrow account -- If the total contribution
21 identified in Section E.2.a. changes, the future withdrawals would be based
22 on the following:

23 *The contribution schedule assumes 8% annual interest earned in escrow.

1 * new total contribution, less the net of (historic contributions
2 into the escrow account, plus accrued interest in the escrow account)
3 equals the remaining contributions to be made.

4 * This remaining contribution will be available for withdrawal
5 over the remaining construction period so that the total Federal and
6 non-Federal monies equal the anticipated costs.

7 c. Contributions into the escrow account-- If the new remaining
8 total contribution changes (identified in Section E.2.b.), yearly contribu-
9 tions into the escrow account will be sufficient to meet the adjusted
10 withdrawal schedule.

11 3. SRP

12 a. Total Contributions-- The yearly reevaluation could change the
13 total amount to be contributed. The process presented in Section B.3. will
14 be used to determine the new total contribution.

15 b. Withdrawals from the escrow account-- If the total contribution
16 identified in Section E.3.a. changes, the future withdrawals would be based
17 on the following:

18 * new total contribution, less the net of (historic contributions
19 into the escrow account, plus accrued interest in the escrow account)
20 equals the remaining contributions to be made.

21 * This remaining contribution will be available for withdrawal
22 over the remaining construction period so that the total Federal and
23 non-Federal monies equal the anticipated costs.

24 c. Contributions into the escrow account-- If the new remaining
25 total contribution changes (identified in Section E.3.b.), the yearly
26 contributions into the escrow account will be sufficient to meet the
27 adjusted withdrawal schedule.

1 4. Cities

2 a. Total Contributions-- The yearly reevaluation could change the
3 total amount to be contributed. The percentages of construction costs of
4 Cliff Dam and modified Roosevelt Dam presented in Section B.4. will be used
5 to determine the new total contribution.

6 b. Withdrawals from the escrow account-- If the total contribution
7 identified in Section E.4.a. changes, the future withdrawals would be based
8 on the following:

9 * new total contribution, less the net of (historic contributions
10 into the escrow account, plus accrued interest in the escrow account, less
11 the historic withdrawals) equals the remaining contributions to be made.

12 * This remaining contribution will be available for withdrawal
13 over the remaining construction period so that the total Federal and
14 non-Federal monies equal the anticipated costs.

15 c. Contributions into the escrow account-- If the new remaining
16 total contribution changes (identified in Section E.4.b.), the yearly
17 contributions into the escrow account will be determined based on the three
18 goals listed in Section D.4. except as adjusted in Section F of this
19 Exhibit "A".

20 F. Application of Interest Earned on Contributions Into the Escrow Accounts

21 The application of any interest earned on funds contributed into the escrow
22 accounts will be handled in the following manner.

23 1. CAWCD - All interest accruing to the escrow account shall be avail-
24 able to CAWCD at the end of each Year.

25 2. Flood Control District - Any and all interest earned in the escrow
26 account will be used to determine the remaining required annual contribu-
27 tions.

1 3. SRP - Any and all interest earned in the escrow account will be used
2 to determine the remaining required annual contributions.

3 4. Cities - Any and all interest earned in the escrow account will be
4 used to determine the remaining required annual contributions.

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1 4. The Trustee shall be instructed to disburse funds from the escrow
2 account(s) in accordance with Sections C and E of Exhibit "A" on written
3 demand by the Regional Director, Lower Colorado Region, Bureau of Reclama-
4 tion. Such funds shall be disbursed within five (5) working days of
5 receipt of such written demand. The Trustee shall not be liable for the
6 proper distribution of any part of the escrow account if distributions are
7 made in accordance with written directions from the Regional Director,
8 Lower Colorado Region, Bureau of Reclamation or his duly authorized repre-
9 sentative.

10 5. The Trustee's records and accounts of all investments, receipts and
11 disbursements shall be open to the inspection of the Secretary at all
12 reasonable times. Upon receipt of a deposit from a Non-Federal Party, the
13 Trustee shall provide the Regional Director with a confirmation statement
14 of such receipt. The Trustee shall, upon request, furnish a copy of the
15 Trustee's transactions to the United States for each account within sixty
16 days of the end of each Year.

17 6. The escrow account(s) and the trust agreement(s) shall be terminated
18 only upon (a) completion of withdrawals of all principal and interest (if
19 authorized by this Agreement) by the United States in accordance with
20 Exhibit "A"; (b) upon termination of this Agreement; or (c) upon mutual
21 agreement by all the Non-Federal Parties and the Secretary.

22 7. In the event of termination of this Agreement, the funds in the
23 escrow account(s) shall be withdrawn and distributed as follows: Any
24 funds, including accrued interest, deposited by CAWCD, the Flood Control
25 District, the Cities and SRP shall be returned to each of them, respec-
26 tively, within 30 days from the date the CAWCD, the Flood Control District,
27 the Cities, the SRP and the United States jointly notify the Trustee, in
28 writing, of the termination of this Agreement.

EXHIBIT C

AGREEMENT AMONG THE UNITED STATES OF AMERICA,
THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT
AND POWER DISTRICT AND SALT RIVER VALLEY
WATER USERS' ASSOCIATION,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY,
AND THE ARIZONA CITIES OF CHANDLER, GLENDALE,
MESA, PHOENIX, SCOTTSDALE AND TEMPE,
ESTABLISHING INTERESTS IN ACTIVE
CONSERVATION CAPACITY AT CLIFF AND MODIFIED ROOSEVELT
DAMS AND RESERVOIRS,
PRINCIPLES OF OPERATION OF SAID DAMS AND RESERVOIRS,
DIVISION OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS,
ALLOCATION OF LOSSES IN STORAGE CAPACITY DUE TO SEDIMENTATION
AND OTHER RESPONSIBILITIES RELATING TO SAID
DAMS AND RESERVOIRS AS PART OF PLAN SIX OF THE CENTRAL
ARIZONA PROJECT, ARIZONA, AND FOR OTHER PURPOSES

1. This Agreement is entered into this 15th day of
April, 1986, pursuant to the Reclamation Act of June 17,
1902 (32 Stat. 388), and Acts amendatory thereof or supplementary
thereto, including but not limited to, the Colorado River Basin
Project Act of September 30, 1968 (82 Stat. 885), the Reclamation
Safety of Dams Act of 1978 (92 Stat. 2471, as amended by 98 Stat.

1 1481), and the Hoover Power Plant Act of 1984 (98 Stat. 1333),
2 and pursuant to the Act of the Arizona Legislature authorizing
3 execution and performance of the Plan Six Agreement by the Arizona
4 entities which are parties thereto; among the UNITED STATES OF
5 AMERICA, acting through the Secretary of Interior, the SALT RIVER
6 PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT and SALT RIVER
7 VALLEY WATER USERS' ASSOCIATION, the CENTRAL ARIZONA WATER
8 CONSERVATION DISTRICT, the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY,
9 and the Arizona CITIES of PHOENIX, SCOTTSDALE, TEMPE, MESA, CHANDLER
10 and GLENDALE.

11
12 Recitals

13 2. WHEREAS, the parties hereto have executed or will execute
14 simultaneously with this Agreement an agreement to provide funding for
15 the acceleration of construction of Features of Plan Six, a part of
16 the Central Arizona Project (CAP), which agreement is herein referred
17 to as the Plan Six Agreement; and

18 WHEREAS, the parties hereto desire to prescribe principles to
19 govern the division among them of Active Conservation Capacity made
20 available at Cliff and Modified Roosevelt reservoirs by construction
21 contemplated under the Plan Six Agreement; and

22 WHEREAS, the parties hereto desire to prescribe principles to
23 govern the division among them of costs associated with operation,
24 maintenance, and replacement of Cliff and Modified Roosevelt Dams; and

25 WHEREAS, the parties hereto desire to prescribe principles of
26 operating procedures for Cliff and Modified Roosevelt Dams and

1 reservoirs; and

2 WHEREAS, the parties hereto desire to prescribe principles to
3 govern the allocation among them of responsibility for losses in
4 reservoir storage capacity due to sedimentation in Cliff and Modified
5 Roosevelt reservoirs; and

6 WHEREAS, the parties hereto desire that this Agreement be
7 designated "Exhibit C" as it is referred to in Subarticle 5.c. of the
8 Plan Six Agreement; and

9 WHEREAS, the parties hereto acknowledge that future agreements or
10 amendments to existing agreements between the Salt River Project and
11 the United States Bureau of Reclamation will provide among other
12 things the following:

- 13 - Designate the District as the operating agent for all dams
14 and reservoirs on the Salt and Verde Rivers which are part of
15 Plan Six and/or the Salt River Reclamation Project.
- 16 - Assign operation, maintenance, and replacement cost
17 responsibility to the District, taking into account any
18 responsibility of the United States resulting from the new
19 flood control function.
- 20 - Set forth reservoir operating criteria relating to flood
21 control and Safety of Dams (SOD) operations and minimum pool
22 requirements.

23 NOW, THEREFORE, in consideration of the mutual covenants herein,
24 the parties hereto agree as follows:
25
26

1 3. Nothing in this Agreement shall be construed so as to modify
2 those obligations, covenants, responsibilities or conditions set forth
3 in the Plan Six Agreement unless expressly provided otherwise herein.
4 Nothing in this Agreement, except paragraph 10, shall apply to the
5 operation of New Waddell Dam and reservoir or to the Agua Fria River
6 and source.

7
8 Definitions

9 4. The definitions contained in the Plan Six Agreement are
10 applicable to this Agreement unless expressly provided otherwise
11 herein. Additionally, unless otherwise expressed or manifestly
12 incompatible with the intent hereof, the following definitions apply
13 herein:

14 4.1 DEAD CAPACITY: The reservoir capacity from which stored
15 water cannot be evacuated by gravity.

16 4.2 INACTIVE CAPACITY: The reservoir capacity exclusive of and
17 above the Dead Capacity from which the stored water is
18 normally not available because of operating agreements or
19 other restrictions.

20 4.3 ACTIVE CONSERVATION CAPACITY: The reservoir capacity
21 assigned to regulate reservoir inflow for irrigation,
22 power, municipal and industrial use.

23 4.4 EXISTING ACTIVE CONSERVATION CAPACITY: The Active
24 Conservation Capacity in the reservoirs of the Salt River
25 Reclamation Project prior to Plan Six construction of Cliff
26 and Modified Roosevelt Dams and reservoirs.

- 1 4.5 ADDITIONAL ACTIVE CONSERVATION CAPACITY: The difference
2 between the Existing Active Conservation Capacity and the
3 Active Conservation Capacity after Plan Six construction of
4 Cliff and Modified Roosevelt Dams and reservoirs.
- 5 4.6 ADDITIONAL WATER CONSERVATION YIELD: That water which
6 results from the construction and operation of the
7 Additional Active Conservation Capacity in Cliff and
8 Modified Roosevelt reservoirs for which appropriative
9 rights are granted by the State of Arizona and which will
10 accrue to the Cities.
- 11 4.7 SURCHARGE CAPACITY: The reservoir capacity provided for
12 use in passing the inflow design flood through the
13 reservoirs.
- 14 4.8 USBR: The United States Bureau of Reclamation
- 15 4.9 COE: The United States Army Corps of Engineers.
- 16 4.10 EXISTING HYDROGENERATION: That hydroelectric energy
17 produced by virtue of existing water conservation yields
18 and existing hydraulic head through existing, new, or
19 uprated facilities.
- 20 4.11 ADDITIONAL HYDROGENERATION: That hydroelectric energy
21 produced by virtue of Additional Water Conservation Yield
22 and additional hydraulic head through generating facilities
23 at Modified Roosevelt Dam.
- 24 4.12 OM&R: Operations, maintenance, and replacement.
- 25 4.13 REPLACEMENT: Such work and expenditures as are required to
26 maintain Cliff and Modified Roosevelt Dams in a safe,

1 sound and operationally efficient condition under normal
2 operating circumstances. Replacement shall not include any
3 work or expenditures necessitated by unusual events or
4 Uncontrollable Forces which require capital additions to,
5 or replacement of, major components of said dams.

6 4.14 DISTRICT: The Salt River Project Agricultural Improvement
7 And Power District, a political subdivision of the State of
8 Arizona.

9
10 Principles

11 5. The following Principles shall govern the respective
12 interests, obligations and responsibilities of the parties hereto, and
13 shall constitute the basis for future agreements among said parties
14 relating to Cliff and Modified Roosevelt Dams and reservoirs and
15 certain other facilities of the Salt River Reclamation Project:

16
17 RESERVOIR ALLOCATION

18 5.1 Subject to any existing perfected rights, those parties entitled
19 to Existing Active Conservation Capacity in Horseshoe and
20 Roosevelt reservoirs will retain such entitlements in the Active
21 Conservation Capacity in Cliff and Modified Roosevelt
22 reservoirs.

23
24 5.2 The Cities shall be entitled to the Additional Water
25 Conservation Yield.
26

1 5.3 SRP has in the past developed a procedure regarding "flood flow"
2 releases at such time as the volume of water stored in the Salt
3 River reservoirs or in the Verde River reservoirs remains at or
4 above the combined volume of water equal to the rights to
5 Existing Active Conservation Capacity, and occurring when the
6 inflow is equal to or greater than the water ordered from the
7 lowest reservoir. To the extent SRP can establish or has
8 established appropriative rights to divert waters, in such
9 amounts equivalent to flood flows historically diverted into its
10 canal system from reservoirs on the Salt and Verde Rivers prior
11 to Plan Six construction, such appropriative rights shall be
12 recognized by the parties hereto. This provision shall not be
13 construed as a waiver of any party's rights to claim such flood
14 flows or protest the claims of others to such flood flows.
15 Future operations of the Salt River Reclamation Project will
16 allow for continued diversions in a manner similar to past
17 practices to the extent that the right to make such diversions
18 is established through the appropriative process; however, any
19 party to this Agreement having such diversion rights who also
20 has entitlements to Additional Active Conservation Capacity may
21 elect to store the water rather than exercise its diversion
22 rights.

23
24 5.4 Initial filling of Dead and Inactive Capacity at Cliff reservoir
25 shall be the responsibility of the USRR and the cost associated
26 with such filling shall be a construction cost to be allocated

1 in accordance with the USBR's normal cost allocation procedure.

2
3 5.5 Initial filling of Dead Capacity at Modified Roosevelt reservoir
4 shall be the responsibility of the USBR and the cost associated
5 with such filling shall be a construction cost to be allocated
6 in accordance with the USBR's normal cost allocation procedure.

7
8 5.6 There will be no Inactive Capacity at Modified Roosevelt Dam.

9
10 SEDIMENTATION

11 5.7 The reservoir capacities allocated to flood control and to
12 Surcharge Capacity shall remain constant throughout the life
13 of both Cliff and Modified Roosevelt Dams regardless of the
14 distribution of sediment which will accumulate during that
15 period of time.

16
17 5.8 The capacity losses resulting from sedimentation at Cliff and
18 Modified Roosevelt reservoirs shall be allocated between
19 Existing and Additional Active Conservation Capacity immediately
20 following silt surveys as follows:

- 21 a. Those parties entitled to Existing Active Conservation
22 Capacity at Horseshoe and Roosevelt reservoirs shall
23 accept all actual capacity losses at Cliff and Modified
24 Roosevelt reservoirs up to the historic average annual
25 rate of sedimentation at Horseshoe and Roosevelt
26 reservoirs. The historic average annual rate of

1 sedimentation at Horseshoe reservoir is 414 acre-feet per
2 year and at Roosevelt reservoir is 2,680 acre-feet per
3 year.

4 b. Sedimentation losses exceeding the rates described in
5 Principle 5.8.a. shall be allocated among the interests in
6 the Active Conservation Capacity of the new reservoirs in
7 direct proportion to those interests.

8 c. When those parties entitled to Existing Active
9 Conservation Capacity in Horseshoe and Roosevelt
10 reservoirs have been allocated losses due to sedimentation
11 equal to 41,313 acre-feet in Cliff reservoir, and 268,000
12 acre-feet in Modified Roosevelt reservoir, all future
13 sedimentation losses shall be allocated among those
14 parties entitled to Additional Active Conservation
15 Capacity.

16 d. Any decrease in Additional Active Conservation Capacity
17 due to sedimentation shall be allocated among the Cities
18 in proportion to their respective entitlements.

19
20 OPERATIONS, MAINTENANCE AND REPLACEMENT (OM&R)

21 5.9 As operating agent for Cliff and Modified Roosevelt Dams, the
22 District will be assigned the following responsibilities:

23 a. Account for all annual OM&R costs to be allocated between
24 the District and the USBR. Allocable annual OM&R costs
25 shall include those costs identified in Principle 5.17
26 herein.

- 1 b. Bill the USBR for payment of its share of operations,
2 maintenance, and replacement costs.
- 3 c. Develop standing operating procedures that conform to
4 criteria and guidelines established by the COE and USBR.
- 5 d. Deliver any water in Active Conservation Capacity to the
6 Non-Federal Parties entitled to it pursuant to this
7 Agreement and in accordance with operating procedures and
8 criteria developed pursuant hereto.
- 9 e. Operate the system in accordance with flood control and
10 Surcharge Capacity operating criteria established by
11 COE and USBR.
- 12 f. Account for water in Active Conservation Capacity and for
13 that water diverted by upstream exchange users.
- 14 g. Procure operating insurance for Cliff and Modified
15 Roosevelt Dams, to the extent it is available at
16 reasonable cost, to cover property damage, personal injury
17 and third party liability, with policy limits and
18 deductibles then available for facilities similar to Cliff
19 and Modified Roosevelt Dams. Premium payments and
20 deductibles, if applicable, shall be treated as a part of
21 the allocable O&M costs.
- 22 h. Schedule periodic silt surveys at reasonable intervals not
23 to exceed every ten years following the initial silt
24 survey conducted by the USBR immediately prior to
25 completion of construction of each dam. Any party may
26 request additional surveys at its sole expense.

1 5.10. a. The USBR has the exclusive authority over development of
2 hydropower at Modified Roosevelt Dam. The USBR and the
3 Non-Federal Parties recognize that all benefits for
4 Additional Hydrogeneration will accrue to the Cities.
5 When Modified Roosevelt Dam is Substantially Complete, the
6 Cities shall pay to the United States an amount of money
7 equal to four-tenths of one percent (0.4%) of the total
8 construction cost of Modified Roosevelt Dam for the
9 purpose of obtaining the Additional Hydrogeneration. This
10 payment shall be credited by the United States against the
11 interest-bearing reimbursable costs of the Central Arizona
12 Project repayable by CAWCD. The four-tenths of one
13 percent (0.4%) used to calculate the amount of this
14 payment is to remain fixed throughout the term of this
15 Agreement and was calculated as follows:

16 Step 1. The Additional Hydrogeneration was computed based
17 on the CAPSIM run of March 10, 1986 and valued at
18 an energy value of 23 mills/kilowatt-hour.

19 Step 2. The ratio of the value computed in Step 1 to
20 the total value of the CAP commercial power
21 function, estimated at October, 1986 prices, was
22 multiplied by the construction cost allocated to
23 the CAP power function.

24 Step 3. The value computed in Step 2 was then expressed
25 as the percentage presented above, based upon the
26 October, 1986 construction cost estimate for

Modified Roosevelt Dam.

- b. Future computations of the CAP power allocation shall consider only the benefits provided by the United States' entitlement of the Navajo Generating Station, generation at New Waddell Dam, Additional Hydrogeneration (valued at 23 mills/kilowatt-hour), and any other authorized CAP power facilities.

5.11 The District has paid, or will pay, for the hydroelectric facilities located on the Salt River, including all hydroelectric facilities to be located at Modified Roosevelt Dam. Such facilities are and will continue to be operated and maintained by the District at its sole cost and expense. The Additional Active Conservation Capacity at Roosevelt reservoir, to be paid for by the Cities, creates an opportunity for benefits of Additional Hydrogeneration. The Cities will pay the United States for these incidental hydroelectric benefits as specified by Principle 5.10 herein. The District will make payments to the Cities for the Additional Hydrogeneration in the amount of eighty-five percent (85%) of the avoided cost which shall be determined by calculating the average cost per kilowatt-hour of the production expenses for the District's thermal electric generation and for purchased power for the accounting period. The Cities and the District will negotiate appropriate terms and conditions to implement this principle, including:

- 1 a. The number of kilowatt-hours per acre-foot of water that
- 2 is attributable to the Additional Water Conservation Yield
- 3 at Modified Roosevelt reservoir.
- 4 b. The time period when Additional Water Conservation Yield
- 5 is accounted for as falling water at the Roosevelt power
- 6 plant.
- 7 c. The accounting period(s) for determining avoided cost.
- 8
- 9 5.12. a. The District shall retain sole responsibility for
- 10 decisions relating to O&M practices in accordance with
- 11 agreements with the USBR including the scheduling and
- 12 selection of periods when such work will be done.
- 13 b. The Salt River Valley Water Users' Association and the
- 14 Cities, as parties with interest in the Active
- 15 Conservation Capacity, will enter into an operating
- 16 agreement with the District which establishes operating
- 17 procedures and criteria to be utilized by the District in
- 18 its operation of the Active Conservation Capacity. This
- 19 operating agreement will provide for establishing separate
- 20 accounts and for maintaining records of each City's
- 21 Additional Water Conservation Yield as well as defining
- 22 criteria for debiting and crediting each account. The
- 23 operating agreement will also define general operating
- 24 parameters for operation of the Additional Active
- 25 Conservation Capacity in order to ensure that the Cities
- 26 receive the Additional Water Conservation Yield consistent

1 with preserving existing perfected rights.

2 c. The operating agreement pursuant to Principle 5.12.b. will
3 provide a procedure for prior consultation and review of
4 the actions proposed to be taken by the District relating
5 to or affecting the rights of the Cities to the Additional
6 Water Conservation Yield. Such opportunity for prior
7 consultation and review shall include a right of the
8 Cities to provide comments to the District on the effect
9 such proposed actions may have on the rights and duties
10 established in the operating agreement. The operating
11 agreement will provide for adequate time for the Cities to
12 comment prior to the District taking action.

13 d. After completing the prior consultation and review
14 procedure, both the District and the Cities shall have the
15 right to submit disputes or disagreements concerning the
16 actions taken to implement the operating agreement to a
17 mutually agreeable binding arbitration process. The
18 authority of the arbitrators shall be limited to a
19 determination as to whether the proposed actions in
20 implementing the operating agreement are inconsistent with
21 or in violation of such operating agreement. The
22 foregoing procedure provides the Cities an opportunity for
23 prior consultation and review but does not grant them a
24 right of prior approval of the District's proposed actions
25 in implementing the operating agreement.
26

1 5.13 The District shall be responsible for an amount equal to the
2 greater of: (a) the actual annual OM&R costs at Modified
3 Roosevelt and Cliff Dams multiplied by the OM&R cost allocation
4 percentage associated with the existing water conservation yield
5 (including Existing Hydrogeneration) or; (b) the average annual
6 OM&R costs currently incurred at Roosevelt and Horseshoe Dams,
7 appropriately indexed for inflation. To the extent that this
8 amount is in excess of the actual annual OM&R costs allocated to
9 existing water conservation yield, the excess amount will be
10 first applied to the actual annual OM&R costs allocated to flood
11 control. Any remaining amount will then be applied to the
12 actual annual OM&R costs allocated to Additional Water
13 Conservation Yield (including Additional Hydrogeneration).
14 In no event shall the District be responsible for amounts in
15 excess of the actual annual OM&R costs.

16
17 5.14 The District shall be responsible for an amount equal to the
18 actual annual OM&R costs multiplied by the OM&R cost allocation
19 percentage associated with the Additional Water Conservation
20 Yield (including Additional Hydrogeneration).

21
22 5.15 The USBR shall be responsible for an amount equal to the actual
23 annual OM&R costs multiplied by the OM&R cost allocation
24 percentage associated with flood control, to the extent that
25 such costs are not funded by the District.
26

1 5.16 Cliff and Modified Roosevelt Dams may be periodically inspected
2 under the direction of the Secretary of Interior in order to
3 ascertain whether the District is fulfilling its obligations and
4 responsibilities as operating agent and whether the purposes for
5 which the facilities were originally constructed are being
6 fulfilled by the District.

7
8 5.17 Allocable annual OM&R costs shall include:

- 9 a. Those costs necessary for proper operation and maintenance
10 of Modified Roosevelt and Cliff Dams exclusive of
11 transmission features and facilities.
- 12 b. Billable overheads and administrative and general expenses
13 incurred by the operating agent exclusive of transmission
14 features and facilities. The percentage for billable
15 overheads and administrative and general expenses will be
16 determined in a manner similar to that used in the Navajo
17 Generating Station Operating Agreement executed July 23,
18 1979. The methods used to derive these overhead rates
19 will be established through negotiation between the USBR
20 and the District prior to initial operation of Modified
21 Roosevelt and Cliff Dams.
- 22 c. Costs associated with silt surveys and fish and wildlife
23 and other environmental mitigation work.
- 24 d. Costs of Replacement associated with Modified Roosevelt
25 and Cliff Dams.
- 26 e. Costs of operating insurance, including deductibles, if

1 applicable.

2
3 5.18 OM&R cost allocation percentages for existing water conservation
4 yield, including dam safety purposes, Additional Water
5 Conservation Yield, and flood control, shall be based on
6 estimates prepared by the USBR, using the separable
7 costs-remaining benefits method of cost allocation, following
8 completion of specification designs for Modified Roosevelt and
9 Cliff Dams but prior to completion of construction of these
10 features. Such estimates shall be subject to review and
11 consultation by the other parties. To the extent any
12 Non-Federal Party disagrees with the estimates made by the USBR,
13 the USBR will consider the issues in dispute and document in
14 writing the basis for the decision.

15
16 5.19 Liability resulting from design and construction deficiencies,
17 and correction of such deficiencies, which may be discovered at
18 any time throughout the life of Cliff and Modified Roosevelt
19 Dams, shall be provided for in agreements between the District
20 and USBR. No Non-Federal Party to this Agreement shall assume
21 any liability for any claims or actions arising out of the
22 performance by the United States of any design, construction, or
23 other work contemplated by this Agreement including the
24 operation of Roosevelt, Stewart Mountain, and Horseshoe Dams
25 during the period of construction activity at each. Tort
26 liability of the United States shall be governed by the Federal

1 Tort Claims Act (28 U.S.C. 2671 et seq.).

2
3 5.20 Unless otherwise specified by the USBR under its established
4 programs, i.e., safety evaluation of existing dams (SEED) and
5 review of maintenance (ROM) programs, the District shall
6 determine if Replacement is required and shall submit
7 recommendations, plans, specifications, and estimated costs to
8 the Secretary of Interior for review and approval prior to
9 commencing such work except when emergency replacement is
10 required. The Secretary of Interior shall have final authority
11 for determining the need and justification for the Replacement
12 in accordance with agreements between the District and the USBR.

13
14 5.21 In the event the District determines that emergency replacement
15 work is required to prevent significant damage to, or to ensure
16 the safe operation of, the facilities, the District may proceed
17 with emergency replacement upon notification to the USBR, but
18 without prior approval from the Secretary of Interior.

19
20 5.22 The District shall bill the USBR for its respective share of the
21 Replacement costs or the emergency replacement costs upon
22 completion of the work. To the extent the USBR disagrees with
23 the billing, the disputed amount shall be paid under protest
24 subject to a resolution process.

FLOOD CONTROL AND SAFETY OF DAMS CRITERIA

5.23 When reservoir water surface elevations in Cliff and Modified Roosevelt reservoirs exceed the top of Active Conservation Capacity, the District will operate the reservoir system in accordance with the then current operating criteria of the USBR and COE.

CAWCD REFUND

5.24 If and to the extent that a prepayment credit or credits are applied by the United States against CAWCD's interest-bearing reimbursable obligation under Subarticle 7.b. or Subarticle 18.a. of the Plan Six Agreement for contributions made by the Cities and the Flood Control District, CAWCD shall reimburse the Cities and the Flood Control District for such contributions to the extent that CAWCD is relieved of any portion of its annual payments due on its interest-bearing annual obligation and monies are available to CAWCD for disbursement as a result of such prepayment credits. Such reimbursement may be made in any reasonable manner including but not limited to direct cash payments by CAWCD to the Cities or to the Flood Control District or credits against any obligation of the Cities or the Flood Control District to CAWCD. Such reimbursement shall include interest at a rate of one percent (1 %) less than the weighted rate received by CAWCD on all investments during the period from the date or dates monies are retained by CAWCD by reason of prepayment credits applied by the United States against CAWCD's

1 interest-bearing reimbursable obligation to the date or dates
2 reimbursement is made. The terms and conditions of such
3 reimbursement may be further specified in such additional
4 agreements between CAWCD and the Cities or CAWCD and the Flood
5 Control District as CAWCD, the Cities and the Flood Control
6 District may hereafter deem necessary or appropriate.

7
8 FUTURE AGREEMENTS

- 9 5.25 The parties hereto acknowledge the need for future agreements
10 among them, to be based upon the Principles embodied herein, and
11 will enter into agreements which will more specifically define:
- 12 a. Reservoir storage rights of those parties currently
13 entitled to Existing Active Conservation Capacity as well
14 as future entitlements.
 - 15 b. Sedimentation responsibility of those parties currently
16 entitled to Existing Active Conservation Capacity and
17 responsibility of future entitlement holders.
 - 18 c. The District's responsibilities and authority as the
19 operating agent.
 - 20 d. OM&R cost responsibility of the District and the USBR.
 - 21 e. Reservoir operating procedures and criteria.
 - 22 f. Payment to the Cities by the District for the Additional
23 Hydrogeneration.

24
25 ISSUES REQUIRING FUTURE RESOLUTION

- 26 5.26 The parties hereto, to the extent they are affected by the

1 following issues, acknowledge that future negotiations after the
2 signing of this Agreement may be necessary to resolve the
3 following issues:

- 4 a. Delivery system losses.
- 5 b. Reservoir losses: evaporation, bank storage, operational
6 losses, losses resulting from responding to an emergency,
7 etc.
- 8 c. Delivery system in-stream minimum flow requirements, if
9 any.
- 10 d. Reservoir minimum pool requirements, if any.
- 11 e. Operating constraints resulting from new facility final
12 design and operating experience.
- 13 f. Upstream exchange agreements.
- 14 g. SRP canal system transportation agreements.
- 15 h. Construction and operation of the SRP/CAP interconnection.
- 16 i. Appropriation of water in the Additional Active
17 Conservation Capacity.
- 18 j. Lower Colorado River Basin Development Fund adjustment.
- 19 k. The extent of USBR responsibility for loss of water or
20 power supplies during construction of Modified Roosevelt,
21 Cliff and Stewart Mountain Dams.

22 It is acknowledged that this list of issues is not necessarily
23 exhaustive of unresolved issues related to this Agreement.

24
25 6. In accordance with the Act of the Arizona Legislature
26 authorizing execution and performance of the Plan Six Agreement by the

1 Arizona entities which are parties thereto, the sources of revenue
2 from which any of the Cities may make any payments required of it
3 under this Agreement and under the Plan Six Agreement shall be limited
4 to any source which does not cause the creation of a debt pursuant to
5 Article IX, Section 8, Constitution of the State of Arizona. Payments
6 made under this Agreement and under the Plan Six Agreement may be made
7 by any of the Cities from any source authorized in Section 7 of the
8 Act of the Arizona Legislature authorizing execution and performance
9 of the Plan Six Agreement by the Arizona entities which are parties
10 thereto.

11
12 7. Nothing in this Agreement shall be construed to modify the
13 Agreement of September 6, 1917, between the UNITED STATES OF AMERICA
14 and the SALT RIVER VALLEY WATER USERS' ASSOCIATION, and the Agreement
15 of March 22, 1937, between the SALT RIVER VALLEY WATER USERS'
16 ASSOCIATION and the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND
17 POWER DISTRICT, and amendments thereto, except as such modifications
18 are expressly and specifically provided herein.

19
20 8. This Agreement shall not be amended except by mutual
21 agreement by the parties hereto, evidenced in writing.

22
23 9. Performance of or failure to perform any obligation under
24 this Agreement by any Non-Federal Party, shall not subject such
25 Non-Federal Party, its directors, officers or employees, to any
26 liability to any other Non-Federal Party for direct or consequential

1 loss associated with property damage caused to such other Non-Federal
2 Party by flooding or flood waters resulting from the operation of the
3 dams on the Salt and Verde Rivers, unless such performance or failure
4 to perform is the result of a grossly negligent act or omission.

5 "Operation of the dams", as used in this paragraph, shall not include
6 any diversion of water into, or operation of, canal systems. The
7 provisions of this paragraph shall extend to direct or consequential
8 property damage caused to any Non-Federal Party by flooding or flood
9 waters resulting from the operation of existing facilities on the Salt
10 and Verde Rivers during the construction of Stewart Mountain, Cliff
11 and Modified Roosevelt Dams, where such damage is directly related to
12 Plan Six construction.

13
14 10. To the extent allowed by Arizona law, any party hereto may
15 purchase and maintain insurance and/or share loss through a joint risk
16 retention pool, on any property, for perils arising from flooding or
17 flood waters on the Salt, Verde and/or Agua Fria Rivers. Such
18 insurance shall be excess and non-contributing to other insurance
19 maintained by such party. Any party may consult with and use the
20 Arizona Department of Administration to purchase insurance and/or to
21 maintain and administer a joint risk retention pool.

22
23 11. No party shall be considered in default in the performance
24 of any of its obligations under this Agreement when a failure of
25 performance shall be due to Uncontrollable Forces. For purposes of
26 this provision, Uncontrollable Forces shall include any emergency

1 necessitating the release of any water for the purpose of responding
2 to such emergency. Any party's action in responding to such an
3 emergency shall conform with a test of reasonableness, taking into
4 account the facts available to such party at the time of such
5 response. Any party rendered unable to fulfill any of its obligations
6 under this Agreement by reason of Uncontrollable Forces shall give
7 written notice of such fact to the other parties within a period of
8 time that is reasonable under the circumstances and shall exercise due
9 diligence to remove such inability.

10
11 12. The parties hereto do not intend to create rights in, or
12 grant remedies to, any third party as a beneficiary of this Agreement
13 or of any duty, covenant, obligation or undertaking established in
14 this Agreement.

15
16 13. The covenants, obligations, and liabilities of the parties
17 hereto are individual and not joint or collective, and nothing herein
18 shall be construed to create an association, joint venture, trust or
19 partnership among the parties.

20
21 14. This Agreement is not a "contract" within the meaning of
22 Section 202 (1) of the Reclamation Reform Act of 1982, 43 U.S.C.
23 § 390bb (1), and the regulations attendant thereto. Accordingly, the
24 execution of this Agreement shall not subject any party hereto to the
25 provisions of the Reclamation Reform Act nor to regulations attendant
26 thereto, to which such party would not otherwise have been subjected.

1 15. It is recognized by the parties hereto that by reason of
2 the novelty of this Agreement between the parties, unanticipated
3 problems and disputes may arise in the future with reference to
4 matters hereunder. In the event such problems and disputes do arise,
5 it is the desire and intention of the parties to resolve such problems
6 and disputes by mutual agreement to assure the lawful, economical and
7 continuous operation of the basic principles and terms of this
8 Agreement.

9
10 IN WITNESS WHEREOF, the parties hereto have executed this
11 Agreement this 15th day of April, 1986.

12
13 THE UNITED STATES OF AMERICA

14
15 By Donald Paul Hodel
16 Secretary of the Interior

17 SALT RIVER VALLEY WATER USERS'
18 ASSOCIATION

19 By John R. Lassen
20 President

21 ATTEST & COUNTERSIGN

22 By Paul Hise
23 Secretary

24 Approved as to form

25 By Paul Hise
26

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

By John L. Lasser
President

ATTEST & COUNTERSIGN:

BY

Paul H. Hise
Secretary

Approved as to form

By

[Signature]

FLOOD CONTROL DISTRICT OF
MARICOPA COUNTY

By Berry [Signature]
Chairman Board of Directors

ATTEST:

By

Ed [Signature]
Clerk of the Board

Approved as to form

By

[Signature]
General Counsel

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

By [Signature]
President

ATTEST:

By

Lynne H. Sharp
Secretary

Approved as to form

By

[Signature]
General Counsel

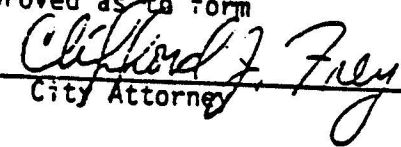
CITY OF CHANDLER

By 
Mayor

ATTEST:

By 
Clerk

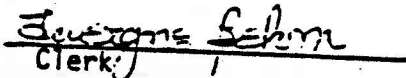
Approved as to form

By 
City Attorney

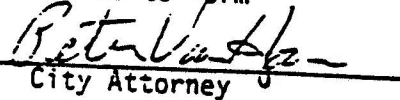
CITY OF GLENDALE

By 
Mayor

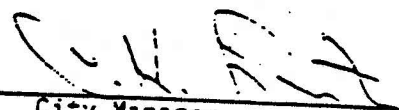
ATTEST:

By 
Clerk

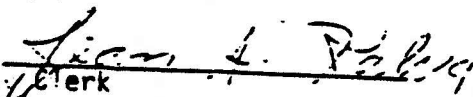
Approved as to form

By 
City Attorney

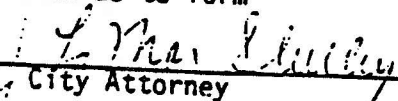
CITY OF MESA

By 
City Manager

ATTEST:

By 
Clerk

Approved as to form

By 
City Attorney

CITY OF PHOENIX, Marvin A.
Andrews, City Manager

By Marvin A. Andrews

ATTEST:

By [Signature]
Clerk

Approved as to form

By [Signature]
City Attorney

CITY OF SCOTTSDALE

By [Signature]
Mayor

ATTEST:

Roy R. Pederson, City Clerk

By [Signature]
Deputy City Clerk

Approved as to form

By [Signature]
City Attorney

CITY OF TEMPE

By [Signature]
Mayor

ATTEST:

By [Signature]
Clerk

Approved as to form

By [Signature]
City Attorney

1 EXHIBIT D TO THE AGREEMENT AMONG THE UNITED STATES,
2 THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
3 THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, THE
4 SALT RIVER AGRICULTURAL IMPROVEMENT AND POWER
5 DISTRICT AND SALT RIVER VALLEY WATER USERS'
6 ASSOCIATION, THE ARIZONA CITIES OF CHANDLER,
7 GLENDALE, MESA, PHOENIX, SCOTTSDALE, AND TEMPE, THE
8 STATE OF ARIZONA, AND THE CITY OF TUCSON FOR FUNDING
9 OF PLAN SIX FACILITIES OF THE CENTRAL ARIZONA
10 PROJECT, ARIZONA, AND FOR OTHER PURPOSES (AGREEMENT)

11 Example of Prepayment
12 Credits Under Subarticle 7.a.

13 Assumptions:

14 1. Contributions by CAWCD:

15	Federal		Federal	
16	<u>Fiscal Year</u>	<u>Contributions</u>	<u>Fiscal Year</u>	<u>Contributions</u>
17	1986	\$ 8,200,000	1990	\$ 11,500,000
18	1987	9,900,000	1991	55,300,000
19	1988	21,000,000	1992	35,400,000
20	1989	33,700,000	Total	\$175,000,000

21 2. The substantially complete date for New Waddell Dam remains at 1995.

22 3. CAWCD's repayment obligation starts in 1992.

23 4. In Fiscal Year 1986, Event A results in a (controllable) delay in
24 substantial completion of New Waddell of 1 year.

25 5. In Fiscal Year 1988, Event B results in a (controllable) delay in
26 substantial completion of New Waddell of 1 year.

27 6. In Fiscal Year 1994, Event C results in a (controllable) delay in
substantial completion of New Waddell of 1 year.

28 Calculations:

29 Event A

30 * Prepayment credit equals: \$8,200,000 times 20% = \$1,640,000

31 * To be applied to first repayment year's obligation (1992)

32 * Cumulative prepayment credit:

33 Event A in 1986 - Credit against 1992 repayment obligation = \$1,640,000

1 Event B

2 • Prepayment credit equals: \$ 8,200,000
3 9,900,000
4 21,000,000
5 \$39,100,000 times 50% = \$ 19,550,000
6 Less previous pre-
7 payment credit from
8 Event A 1,640,000
9 Net Credit \$17,910,000

10 • To be applied to first repayment year's obligation (1992)

11 • Cumulative prepayment credit:

12 Event A in 1986 - Credit against 1992 repayment obligation = \$1,640,000
13 Event B in 1988 - Credit against 1992 repayment obligation = \$17,910,000
14 Total cumulative credit \$19,550,000

15 Event C

16 • Prepayment credit equals: \$175,000,000 times 100% = \$175,000,000
17 Less previous pre-
18 payment credit from
19 Event A \$ 1,640,000
20 Less previous pre-
21 payment credit from
22 Event B 17,910,000
23 Net credit \$155,450,000

24 • To be applied to 1995 repayment obligation

25 • Cumulative prepayment credit:

26 Event A in 1986 - Credit against 1992 repayment obligation = \$ 1,640,000
27 Event B in 1988 - Credit against 1992 repayment obligation = \$ 17,910,000
28 Event C in 1994 - Credit against 1995 repayment obligation = \$155,450,000
29 Total cumulative credit \$175,000,000



United States Department of the Interior

BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240

IN REPLY
REFER TO: 440

APR 11 1986

Memorandum

To: Secretary of the Interior

Through: **ACTING** Assistant Secretary - Water and Science *Thayne D. Waddell 4/11/86*

From: Commissioner *C. H. Smith*

Subject: Proposed Agreement Among the United States, the Central Arizona Water Conservation District, the Flood Control District of Maricopa County, the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association, the Arizona Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, the State of Arizona, and the City of Tucson for Funding of Plan 6 Facilities of the Central Arizona Project, Arizona, and for Other Purposes

1. Introduction: Attached for your approval as to form is the subject agreement which will provide non-Federal financing for facilities of Plan 6 of the Central Arizona Project (CAP). Under the proposed agreement, the Arizona entities would advance funds for construction of New Waddell and Cliff Dams of the CAP, and modification of the existing Roosevelt and Stewart Mountain Dams of the Salt River Reclamation Project (the Plan 6 works/facilities).

Also attached for your information is a more detailed background statement on the specifics of the agreement.

The Central Arizona Project (CAP) was authorized on September 30, 1963, by Public Law 90-537. Total cost is estimated at \$3.2 billion (1985 price level). Because of environmental controversy and potential inundation of a portion of the Fort McDowell Indian Reservation, the Central Arizona Water Control Study (CAWCS) was initiated in July 1978 to find a suitable alternative to Orme Dam. On April 3, 1984, the Secretary selected Plan 6, which has an estimated cost of \$1.143 billion (1985 price level), as follows: New Waddell Dam - \$460 million; modified Roosevelt Dam - \$254 million; Cliff Dam - \$385 million; and modified Stewart Mountain Dam - \$44 million.

In January 1985, the Arizona Department of Water Resources presented an option paper on Funding for Plan 6. The official Proposal of Arizona's Executive Committee on Up-Front Financing of Plan 6 Features, dated September 3, 1985, was officially provided to the Secretary of the Interior by letter dated October 8, 1985. That letter was signed by Governor Babbitt and the Arizona congressional delegation.

Technical discussions between the Arizona interests and the Bureau of Reclamation to clarify the intent and substance of the offer were held on October 8 and 18, 1985. The negotiations based on the offer were initiated on October 25, 1985, and the latest session was held on December 19, 1985.

2. Agreement Terms and Conditions: The negotiated proposal presents a package incorporating a non-Federal contribution as follows:

<u>Contributor</u>	<u>Amount(Millions)</u>		<u>Purpose</u>
	<u>Constant \$</u>	<u>Inflated \$</u>	
Central Arizona W.C.D.	\$175.0	\$175.0	New Waddell Dam
F.C.D. of Maricopa County	63.1	80.8	Cliff & Modified Roosevelt
Cities(6)	48.85	62.5	Cliff & Modified Roosevelt
Salt River Project	41.8	52.3	Cliff, Roosevelt & Stewart Mt.
Total Contribution	\$328.75	\$370.6	
CAWCD Headquarters Purchase	\$ 20.0	\$ 20.0	
Total Value of Agreement	\$348.75	\$390.6	

Specifically:

(1) CAWCD offered a firm \$175 million towards the construction costs of New Waddell, 75% to be used as a reduction in interest-bearing, reimbursable cost and 25% to be used as a reduction in noninterest-bearing reimbursable costs. CAWCD also has offered to purchase the CAP headquarters complex for an estimated amount of \$20 million.

(2) Maricopa County offered \$63.1 million (constant \$'s), \$80.8 million (inflated \$'s, adjustable depending on final costs) towards the construction of Cliff and Roosevelt to be used as a reduction of nonreimbursable flood control costs.

(3) The cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe offered (adjustable depending on final costs) \$48.85 million (constant \$'s), \$62.5 million (inflated \$'s) toward the construction of Cliff and Roosevelt Dams, to be used as a reduction of interest-bearing reimbursable costs.

(4) The Salt River Project offered \$41.8 million (constant \$'s), \$52.3 million (inflated \$'s, adjustable depending on final costs) toward the construction of Cliff, Roosevelt and Stewart Mountain Dams, to be used as a reduction of reimbursable Safety-of-Dams costs.

If, due to controllable forces (e.g., lack of Federal appropriations), construction of Plan 6 facilities is delayed, the Arizona entities will receive the following credits against CAP costs:

- 1 year delay - 20% of contributions to date (each event)
- 2 year delay - 50% of contributions to date (each event)
- 3 year delay - 100% of contributions to date (each event)

All credits will be applied against CAWCD's interest-bearing, reimbursable repayment obligation (including the FCD of Maricopa County) as a prepayment except for the Salt River Project's contribution which will be applied against its SOD (or other) obligation. Treating the credit as a prepayment significantly reduces the present value of the contribution to the United States.

If, due to controllable forces, the contributors fail to make their scheduled contributions, they will be charged interest in accordance with Treasury interest rates applicable to late payments.

Since the United States has retained its sovereign immunity regarding performance under the Agreement, provisions have been included for liquidated damages in the event that any party breaches the Agreement.

The contributions are based on the following construction schedule:

	First Major Construction Contract	Substantially Complete
Aqueduct.....	Ongoing	1993
Terminal Storage *	1994	1995
Non-Indian Distribution.....	Ongoing	Not determined
Indian Distribution.....	Ongoing	Not determined
New Waddell.....	1987	1995
Roosevelt.....	1990	1995
Cliff.....	1991	1997
Stewart Mountain.....	1988	1990
Buttes *	1994	1999

* Both features are still subject to Secretary of the Interior's decision.

The parties contemplate that it will require spendable funds in not less than the following amounts annually to meet the construction schedule: (Note: these amounts include costs for the entire Central Arizona Project, not just Plan 6 features. As such, the local contributions include approximately \$57.7 million for the non-Indian distribution system which is beyond the scope of this negotiated proposal). All values are in inflated dollars.

Year	Federal	Local	Year	Federal	Local
1986	\$197,500,000	\$ 19,100,000	1992	\$180,000,000	\$112,000,000
1987	\$212,000,000	\$ 26,900,000	1993	\$178,000,000	\$ 17,030,000
1988	\$221,000,000	\$ 43,000,000	1994	\$178,000,000	\$ 37,280,000
1989	\$227,000,000	\$ 47,750,000	1995	\$180,000,000	0
1990	\$187,000,000	\$ 29,300,000	1996-	as needed to	
1991	\$180,000,000	\$ 83,300,000	1999	maintain schedule	

3. Findings and Recommendations: We believe the proposed agreement is in the best interests of the United States and the other parties. The agreement will provide an estimated \$328.8 million of non-Federal funds towards completion of Plan 6 and provide an estimated \$20 million of additional revenue when the CAP Headquarters Complex is sold to the CAWCD. We recommend you approve the form of the agreement. We anticipate a formal signing ceremony will be established to execute the agreement with the understanding that minor changes can be made in the form of the agreement prior to execution so long as those changes are in conformance with the overall intent of the agreement. Following execution, the Regional Director, Lower Colorado Region, will act as contracting officer in its subsequent administration.

4. Urgency for Approval: Funds have been appropriated and are scheduled for expenditure for Fiscal Year 1986. In addition, the Arizona Legislature will be considering the necessary legislation and appropriations associated with the agreement early in 1986. Your expeditious approval of the proposed agreement would provide significant support for our Fiscal Year 1987 budget and to the Arizona contributors who are securing legislation to carry out this agreement.

Attachments

Approved:

Ronald Paul Hodel
Secretary

10/15/85
Date

Disapproved:

Secretary

Date

ATTACHMENT

DETAILED STATEMENT OF THE PLAN 6 COST SHARING AGREEMENT

1. Introduction: Pursuant to this proposed agreement, the Arizona entities will advance an estimated \$328.8 million (1986 dollars) for construction of Plan 6 works. Most of the entities' contributions are based on a percentage of construction costs; therefore, the actual amounts advanced will depend on the cost of construction of the various works. The non-Federal funds, which are to be advanced during the period 1986 through 1994, are to supplement the United States' appropriations and are being provided to expedite construction of the Plan 6 works. In return, the Secretary will be committed contractually to submit budget estimates to the Office of Management and Budget to fund construction at the levels specified in Section A.2. of Exhibit A of the proposed agreement.

In addition, the proposed agreement calls for the Central Arizona Water Conservation District (CAWCD) to purchase all or part of the CAP Headquarters Complex. We estimate that this proposed acquisition will bring in about \$20 million to the United States. Also, the State of Arizona is committed to establish a \$2 million "Verde River Protection Fund" under the agreement.-.

The proposed agreement was drafted pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto including, but not limited to, the Contributed Funds Act of March 4, 1921 (41 Stat. 1404), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), the Reclamation Safety of Dams Act of 1978 (92 Stat. 2471, as amended by 98 Stat. 1481), and the Hoover Power Plant Act of 1984 (98 Stat. 1333).

2. Contracting Entities and Legal and Policy Considerations: Item No. 10 of Section VII of the Secretarial Issue Document "Central Arizona Project Regulatory Storage Division, March 1984", which was approved by the Secretary on April 3, 1984, requires the negotiation of a cost sharing plan with local beneficiaries as directed in the President's cost sharing policy. The proposed agreement was negotiated in fulfillment of that requirement.

The Central Arizona Water Conservation District is the master contracting entity for the Central Arizona Project. The CAWCD and the United States entered into a contract for delivery of water and repayment of the costs of the CAP (Repayment Contract) on December 15, 1972. The CAWCD is a public entity which has been formed pursuant to Arizona State law with all necessary authorities, with the exception discussed later, to enter into contracts with the United States.

The Flood Control District of Maricopa County (Flood Control District) is an existing flood control entity created pursuant to Arizona State law. The Flood Control District has or will have the necessary authority to enter into the proposed agreement and to provide the funds specified therein.

The Salt River Project Agricultural Improvement and Power District is a public entity of the State of Arizona, which was formed to operate and maintain, among other things, the facilities of the Salt River Reclamation Project. The Salt River Valley Water Users' Association is the original contracting entity for the Federal Salt River Reclamation Project. The two entities jointly oversee the current operations of the Salt River Reclamation Project and are collectively referred to herein as "Salt River Project" or "SRP". The entities have or will have the authority to enter into contracts with the United States and to provide the funds specified in the proposed agreement.

The Arizona cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe (Cities) are all municipalities formed under Arizona State law and each is seeking and will have the requisite authority to contract with the United States to provide the funding specified in the proposed agreement.

The city of Tucson (Tucson) is a consultative party to the proposed agreement. Tucson will not provide funding for construction of Plan 6 facilities. Tucson's involvement is in a consultative role for the potential design and construction of terminal storage. Tucson is a party to the agreement pursuant to its request and with the support of the other Arizona entities.

The State of Arizona is a party to the proposed agreement primarily with relationship to the establishment of the Verde River Protection Fund and for consultation purposes for other CAP features. The State has all requisite authorities necessary to fulfill the obligations specified for it in the proposed agreement. After legislative action has created the Verde River Protection Fund, the Governor will have signing authority.

In compliance with the National Environmental Policy Act of 1969, on February 10 1984, the final Environmental Impact Statement (EIS) associated with the Central Arizona Water Supply and Safety of Dams Studies (No. INT FES 84-4) was filed with the Environmental Protection Agency. It displayed Plan 5 as the proposed action along with five other alternatives and a "No Action Plan." The 30-day public review period for the final environmental statement terminated March 26, 1984. Because of complications associated with the proposed Cliff Dam, the Secretary, in his Secretarial Issue Document, determined that the initiation of preconstruction activities leading to the design and specifications for Cliff Dam would be delayed until a study to review and evaluate the issues concerning potential impact caused by its construction are submitted to the Secretary. A Supplemental Record of Decision discussing the results of these evaluations is being prepared. It is our intent to initiate the design and specifications for Cliff Dam upon Secretarial approval of this Supplemental Record of Decision. Several environmental organizations have filed suit to delay or to prohibit construction of Cliff Dam. The Department has filed an answer to this lawsuit. A motion for summary judgement will be appropriate if the Secretary signs the Supplemental Record of Decision.

All negotiating sessions have been held in accordance with the Arizona Open Meeting Law. Access to the meetings by the public has been available and most of the sessions have been attended by reporters of various local newspapers.

The proposed agreement conforms with Federal and State laws. The Office of the Solicitor, Washington, D.C., finds the proposed agreement legally sufficient. The proposed agreement has been approved by the Governor of Arizona's "Executive Committee on Up-Front Financing of Plan 6 Features." At this time, the proposed

agreement is being formally reviewed and approved by the governing boards and councils of the various Arizona entities. Execution of the proposed agreement will not take place until all approvals are secured.

3. Background: The Colorado River Basin Project Act of September 30, 1968, authorized, as part of the CAP, the construction of Orme Dam or a suitable alternative. A draft EIS was prepared for Orme Dam in 1976. Public response to the statement indicated substantial environmental, economic, and social concerns regarding the inundation of riparian habitat and a major portion of the Fort McDowell Indian Reservation, and impact upon habitat of the endangered Bald Eagle and other species. These, and other concerns, including flooding in the Phoenix metropolitan area, caused us to reassess the viability of Orme Dam. An interagency task force was established in March 1977 to review alternative methods of achieving the flood control for metropolitan Phoenix and the regulatory storage of CAP water which Orme Dam was to provide.

In July 1978, following the task force findings, we initiated the Central Arizona Water Control Study (CAWCS) to develop plans for regulatory storage of CAP water and to find a solution to flood problems along the Salt and Gila Rivers. Concurrent with CAWCS, Safety of Dams (SOD) studies were initiated on the Salt/Verde River system under authority of the Reclamation Safety of Dams Act of 1978. The SOD studies indicated that six Salt River Project dams had inadequate spillway capacities to safely control the new and greatly increased inflow design flood and that certain modifications were necessary to safely withstand the maximum creditable earthquake. Six plans for accomplishing the combined goals of the CAWCS and SOD studies were identified and included in a Secretarial Issue Document which was approved by the Secretary on April 3, 1984. That document also included a "No Action" alternative. The Secretary selected Plan 6 as the preferred alternative and issued a news release announcing the conclusion of the study process and a formal selection of the Plan 6 alternative.

In April 1984, Governor Babbitt of Arizona formed a committee to reach a consensus among the water and power interests in Arizona on how the State should approach the Federal Government on financing of Plan 6. After extensive discussions within the State, Governor Babbitt and the Arizona congressional delegation formally transmitted the Arizona offer to the Secretary of the Interior by letter of October 8, 1985. Subsequently, with the support of the Solicitor's Office, we and the various Arizona interests initiated a series of technical and negotiating sessions which culminated in the attached draft agreement.

4. Agreement Negotiations, Terms, and Conditions: The proposed agreement specifies that the Secretary shall, in each annual budget estimate submitted to the executive office of the President, include sufficient funding for the CAP to meet the construction schedule included in Section A of Exhibit A of the proposed agreement. The non-Federal parties will deposit funds in the amounts specified in Exhibit A into special escrow accounts. The funds shall be withdrawn by the United States as specified in Exhibit A for construction of New Waddell Dam and Cliff Dam, and the modifications of Stewart Mountain and Roosevelt Dams. Instructions for maintenance of the escrow accounts are contained in Exhibit B of the proposed agreement. Any amounts remaining in the escrow accounts upon completion of construction shall be withdrawn by the United States and credited

toward the CAWCD repayment obligation. Parts of Exhibit A will be reevaluated annually and may be amended from time to time to change the funding levels, escrow deposits and/or escrow withdrawals specified therein.

The contributions by the Arizona entities shall be allocated in the following manner:

a. CAWCD - The procedures for allocation of costs and the provisions for repayment of the reimbursable Federal obligation shall be in accordance with Article 9 of the repayment contract. The \$175 million of funds advanced by CAWCD for construction of New Waddell Dam shall be credited toward the total CAWCD reimbursable repayment obligation. Seventy-five (75) percent of the funds advanced by CAWCD shall be credited against its interest-bearing obligation and the remaining 25 percent shall be credited against its noninterest-bearing obligation. Following the reduction in the repayment obligation to account for the contributed funds, the remaining obligation will be repaid in accordance with the provisions of the Repayment Contract. The CAWCD contribution is a fixed amount and will not be affected by changes in construction costs.

b. The Flood Control District - The Flood Control District's contribution shall be credited against nonreimbursable CAP costs allocated to flood control. The Flood Control District's contribution will be equal to 20 percent of the costs allocated to the flood control function of CAP, adjusted by the relationship between the flood control benefits associated with Plan 6 features and those associated with the CAP. Section B.2. of Exhibit A demonstrates how the Flood Control District's contribution will be determined. It is presently estimated that the Flood Control District contribution will be equal to approximately \$80.3 million (about \$63.1 million in 1986 dollars). The entire Flood Control District contribution will be applied against nonreimbursable costs allocable to flood control and will not have an impact on the CAWCD repayment obligation.

c. SRP - The Salt River Project will contribute an amount not to exceed 15 percent of the costs allocated to Safety-of-Dams work as authorized by the Reclamation Safety of Dams Act of 1978 and amendments thereto. Section B.3. of Exhibit A demonstrates how the funds to be contributed by SRP will be computed. The amount to be contributed by SRP for Safety-of-Dams purposes is presently estimated to be \$52.3 million (\$41.8 million in 1986 dollars). This contribution will fulfill SRP's obligation under the Safety of Dams Act to repay 15 percent of the total cost associated with Safety-of-Dams work. This contribution will have no impact on the repayment obligation of the CAWCD.

d. Cities - The Cities will contribute an amount not to exceed 5.8 percent of the total construction costs of Cliff Dam and 10.2 percent of the total construction costs of modified Roosevelt Dam for the purpose of obtaining the right to the water yield of the new conservation storage space in each structure. The percentages are to remain fixed throughout the term of the proposed agreement. The actual amount to be contributed will change as the costs of constructing Cliff Dam and modifying Roosevelt Dam change over time. The amount contributed by the Cities is presently estimated to be \$62.5 million (\$48.9 million in 1986 dollars). This amount will be applied toward the interest-bearing portion of the CAWCD repayment obligation as an overall credit against the district's obligation. Exhibit C (presently being negotiated) will establish each city's

storage rights in the reservoirs at Cliff Dam and modified Roosevelt Dam and will specify the operating criteria for those facilities. As Exhibit C basically is an operations agreement, and does not directly impact the terms of the proposed financing agreement, it has been omitted from the attached agreement. It will be negotiated and approved by the Regional Director, Lower Colorado Region, and incorporated as an exhibit to the proposed agreement before execution.

The estimated total contribution of all the entities (excluding the State) as scheduled in Section D of Exhibit A is \$370.6 million (\$328.8 million in 1986 dollars).

In addition to the contributions to be made by CAWCD as scheduled in Exhibit A, CAWCD may, in the event of a shortfall in Federal appropriations, make up any portion of the deficiency from available funds which CAWCD may have on hand at the time. If such additional funds are advanced by CAWCD, the United States will delay the initiation of repayment obligation (under the repayment contract) on the first or next subsequent block for the period of time necessary to allow CAWCD to restore such funds to the level they would have reached upon the initiation of repayment in the absence the additional contribution having been made by CAWCD. The agreement specifies that prior to such additional contribution being made, the United States and CAWCD will agree on specific terms under which CAWCD will recover the funds being contributed. --

In the event the United States fails to meet the construction schedule for New Waddell Dam, as specified in Exhibit A, for reasons within the control of the United States (e.g., lack of appropriations), the CAWCD will be given a prepayment credit against its annual interest-bearing repayment obligation to the United States. If construction is delayed up to 1 year beyond the scheduled completion date, CAWCD will be given a prepayment credit which shall be equal to 20 percent of the total contribution made to date by CAWCD for the construction of New Waddell Dam. The prepayment credit will be applied against the first and subsequent regularly scheduled payments until the credit has been fully utilized. The repayment schedule for CAWCD would be computed as though the funds were not advanced by CAWCD. If substantial completion is delayed more than 1 year, but less than 2 full years beyond the scheduled completion date, the prepayment credit shall be equal to 50 percent of the total contribution to date by CAWCD for construction of New Waddell Dam, net of previous prepayment credits. In the event the delay is for more than 2 years beyond the scheduled completion date, the prepayment credit shall be equal to 100 percent of the total contribution to date made by CAWCD for construction on New Waddell Dam, net of previous prepayment credits.

At least once each year, the Secretary, in consultation with a consultation committee which will be comprised of one representative from each of the parties to the agreement, shall determine if Federal appropriation levels or other causes within the control of the United States may cause a delay in substantial completion of construction as specified in Exhibit A. If the Secretary makes such a determination, the Secretary shall notify the consultation committee of the duration of such delay. The determination of such a delay shall not alter the substantial completion date for New Waddell Dam contained in Exhibit A. If delays are determined to be for reasons beyond the control of the United States, then the substantial completion date may be modified by the Secretary as he may determine appropriate, after consultation with the consultation committee.

Failure by the United States to apply any prepayment credit in accordance with the provisions of the agreement shall result in the United States paying to the CAWCD liquidated damages in the amount of \$48 million.^{1/} If construction delays are recovered or partially recovered prior to completion of New Waddell Dam, prepayment credits, with accrued interest on such credits at the rate of 3.342 percent per year, shall be remitted to the United States on the same basis as they were accrued beginning with the payment due the year next following the year of recovery. Failure by the CAWCD to remit recovered prepayment credits to the United States in accordance with the agreement shall result in the payment by CAWCD to the United States of liquidated damages in the amount of \$48 million plus interest.

In the event the United States fails to meet the scheduled completion dates for Cliff Dam and modified Roosevelt Dam due to factors within the control of the United States, a prepayment credit for contributions made by the Flood Control District will be provided against CAWCD's interest-bearing reimbursable obligation in the same manner as provided for CAWCD with regard to prepayment credit for delays in construction of New Waddell Dam. A prepayment credit will also be provided against CAWCD's interest-bearing obligation for contributions made by the Cities. In a similar manner, such credits will be subject to refund, plus accrued interest at the CAP project interest rate of 3.342 percent, on the same basis as provided for recoveries under the New Waddell Dam discussion. In the event the United States fails to apply the prepayment credits, as specified in the agreement, the United States shall pay the Flood Control District and the Cities liquidated damages in the amount of \$31 million in direct proportion to their respective contributions made under the agreement to that date. Failure by CAWCD to remit recovered prepayment credits to the United States, as specified in the agreement, will result in a payment by CAWCD of liquidated damages in the amount of \$31 million plus interest.

If quarterly contributions are not made as scheduled in Exhibit A, a late charge will be applied which shall be due if the contribution is not made in full within 30 days of the due date. 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 a rate of .5 percent per month as prescribed by Section 6 of the Reclamation Project Act of 1939.

The agreement provides that if Federal appropriations are not sufficient to fund all items scheduled for construction with Federal funds in that year, as specified in Exhibit A, priorities for the use Federal funds shall be as follows:

- a. The first priority shall be for construction of the aqueduct facilities through Tucson Phase B, exclusive of terminal storage;
- b. The second priority shall be for construction of Indian and non-Indian distribution systems;
- c. The third priority shall be for construction of New Waddell Dam and Cliff Dam, modification of Roosevelt and Stewart Mountain Dams, and if approved by the Secretary, construction of terminal storage;

^{1/} The prepayment credit amounts to a present worth value of \$79 million, the liquidated damages for each group is calculated on the relative contributions of CAWCD (62%), and the Flood Control District and the Cities (38%).

d. If approved for construction by the Secretary, the fourth priority shall be for construction of Buttes Dam;

e. In the event Federal funding is not sufficient to meet the scheduled construction of New Waddell and Cliff Dams and modification of Roosevelt and Stewart Mountain Dams, Federal funds shall be made available in a manner to provide an optimum completion of all facilities as indicated in Exhibit A. The schedule provides for the awarding of a major construction contract for New Waddell Dam by not later than the end of the year 1987, a major construction contract for modification of Roosevelt Dam not later than the end of the year 1990, a major construction contract for Cliff Dam not later than the end of the year 1991, and a major construction contract for the modification of Stewart Mountain Dam not later than the end of the year 1988. The delineated priorities notwithstanding, to the extent that it is reasonable and prudent, after consultation with the non-Federal parties to the agreement, the Secretary may apply any shortage of Federal funds for construction or modification of dams to each dam in inverse proportion to the contributions previously made by the non-Federal parties.

The agreement specifies that the cost of construction activity funded with contributions made by the non-Federal parties shall not be included in the calculation of the Federal project cost for comparison with the Congressionally authorized appropriation ceiling for CAP. It also specifies that, except as otherwise expressly modified by the agreement, provisions of the Repayment Contract shall remain in full force and effect. The agreement is not a contract within the meaning of Section 202(1) of the Reclamation Reform Act of 1982. Accordingly, the execution of the agreement shall not subject the parties to the provisions of the Reclamation Reform Act. Title to all project works constructed with Federal and/or non-Federal funds shall be and remain in the United States unless otherwise provided by the Congress.

The care, operation, and maintenance of the facilities constructed within the Salt and Verde Rivers shall be pursuant to the terms, covenants, and conditions of the "Contract Between the United States of America and Salt River Valley Water Users' Association" dated September 6, 1917, and contracts amendatory thereof and/or supplementary thereto. The details of the implementation of said care, operation, and maintenance shall be subject to said agreements and/or other agreements to be identified by the United States and SRP. The agreement provides that the United States and SRP will expeditiously negotiate appropriate amendments, supplements, and other agreements.

In return for the Cities' contributions to the Plan 6 construction, the United States relinquishes all claims to the water supply developed in the conservation space created by the Cliff Dam and the additional conservation space created in the modified Roosevelt Dam.

The agreement provides that if the United States fails to complete construction of the Plan 6 facilities, the prepayment credits will be provided as specified in the agreement and the non-Federal parties to the agreement may complete the project works with their own funds subject to consultation with the Secretary and review of all designs, plans, specifications, and construction contracts by the Secretary. Title to all such facilities shall remain in the United States.

If the United States fails to complete construction due to forces beyond its control, the contributions shall be credited as if the United States had met the agreed-upon construction schedules. The non-Federal parties shall have the option of completing the facilities subject to the same specifications indicated above.

The expenditure or advance of any money by the United States or the non-Federal parties shall be contingent upon the appropriation or allotment of funds. The agreement stipulates that in the absence of such appropriation or allotment of funds, the parties shall not be relieved of any obligations under the agreement unless expressly provided in the agreement, and that no party shall have a right to any remedy except as expressly provided therein.

The agreement requires the Secretary to work with the Secretary of Energy through the Western Area Power Administration to adopt a Navajo Power Marketing Plan that will provide for contracting for Hoover Schedule B capacity and energy by CAWCD pursuant to the Arizona Power Authority allocation. Utilization and assignment of revenues to CAWCD from the sales and exchange of Navajo surplus power and energy, as authorized by the Hoover Power Plant Act of 1984, must be accomplished in amounts sufficient to make repayment and establish reserves for repayment of the \$175 million to be advanced by CAWCD. In the event the Navajo Marketing Plan is not adopted by the Secretary in time to enable the CAWCD to meet its commitments, the agreement is suspended pending development and approval of such plan. In the event such a plan is not developed and adopted by December 31, 1987, the non-Federal parties shall have the option to renegotiate or terminate the agreement without penalty to any party.

The State of Arizona is required to establish a "Verde River Protection Fund" to be used for the protection and preservation of the Verde River. The fund will be administered by the State of Arizona and will be established in the amount of not less than \$2 million by August 31, 1986.

On December 12, 1985, CAWCD signed a letter of intent to provide for the purchase of land and improvements commonly known as the CAP Headquarters Complex. CAWCD will negotiate a purchase agreement and lease agreement with the United States for the CAP Headquarters Complex in calendar year 1986. It is presently estimated that the purchase price of the property will be approximately \$20 million.

In the event causes within the control of the United States result in significant changes in the construction schedules, project purposes, levels of services, appropriation authorities, or project authorization from those upon which the agreement is based, the non-Federal parties and the United States shall attempt to renegotiate the agreement based on the new circumstances. If the negotiations do not result in a mutually acceptable agreement, the non-Federal parties shall have the option of terminating the agreement with a minimum of 120-days notice. In the event of termination, all cumulative contributions, except those of SRP, shall be credited as a prepayment against CAWCD's interest-bearing obligation. Cumulative contributions by SRP will be credited against the SRP Safety-of-Dams obligation to the extent such obligation exists or remains unsatisfied. In the event that obligation is no longer outstanding, it shall be credited against other outstanding obligations SRP has to the United States under Reclamation law or, if no other obligation exists, the

contribution shall be refunded to SRP within a reasonable time. In the event the United States fails to give the credit called for in the contract in this situation, the United States shall pay damages of \$79 million to CAWCD, the Cities, the Flood Control District, and the SRP in direct proportion to their respective contributions under the agreement made by that date. A similar provision in the event of failure of a non-Federal party to make contributions shall apply with the United States having the option of terminating this agreement with a minimum of 120-days notice. In the event of termination by the United States, cumulative contributions made to date by the non-Federal parties, in an amount not to exceed \$100 million, shall be considered as up-front funding to be credited against nonreimbursable costs and, in the case of SRP, credited to funding required pursuant to the Reclamation Safety of Dams Act Amendments of 1984. The State's contribution to the Verde River Protection Fund shall not be subject to that provision.

The non-Federal parties' obligations under the agreement are contingent upon their obtaining such additional legislative authority as may be necessary or appropriate to enable them to provide the up-front funding and carry out the terms of the agreement. It is understood and agreed that the non-Federal parties shall have the option to withdraw from the agreement if such authority is not obtained. In the event laws embodying such authority are not signed by the Governor of Arizona prior to August 1, 1986, any party shall have the option to renegotiate or terminate the agreement without penalty.

The agreement provides that tort liability of the United States for claims for failure to perform any construction work or other work contemplated by the agreement shall be governed by the Federal Tort Claims Act.

Total construction costs for CAP (Federal expenditures and non-Federal contributions) will be accounted for by the Bureau of Reclamation and allocated among project purposes and to the CAWCD repayment obligation as specified in the master repayment contract. Interest during construction will be computed for this total construction cost at the project rate. When the project is completed, the non-federal contributions will be subtracted from the CAWCD repayment obligation. Furthermore, interest during construction that has been calculated on the non-Federal contributions will also be subtracted from the CAWCD obligation. This has the effect of including all Federal construction expenditures plus Federal interest during construction, for reimbursible purposes. Failure to subtract this interest during construction would result in charging the non-Federal entities with interest on money that they contributed.

Under this agreement, the Cities would contribute toward the cost of construction of both Modified Roosevelt and Cliff Dams. In return, the Cities would receive any yield accrued in the new, active conservation capacity of Cliff or Roosevelt reservoirs. Reclamation studies show the yield of these Plan 6 features to average approximately 40,000 to 70,000 acre-feet per year, less than 5 percent of the project's 1.5 million acre-feet average annual water supplies.

The incremental waters generated by new conservation storage in Cliff and Roosevelt reservoirs would be erratic and highly variable, available only as a result of seasonal runoff which would exceed the storage capability of the smaller, existing reservoirs. During CAP shortage conditions on the Colorado River it is probable that this incremental supply will not be available. However, CAP water studies do show some years when local runoff conditions are such that this water is available. The yield from such supplies would be limited by the CAP users ability to take water directly from the reservoir system, and is projected to be 30,000 to 50,000 acre-feet.

While these new water yields can be of significant importance to the several Cities, this same water resource is of far less significance if spread across the numerous CAP water service subcontractors. Also, most CAP subcontractors have access to other water resources, notably ground water, so that a small reduction in anticipated CAP supplies can be readily made up by an equal increase in ground water use. Therefore, adverse impacts on CAP subcontractors would not have a substantial consequence.

It may be argued that the Agreement changes the terms of existing subcontracts, in that the additional conservation yield from Cliff and Modified Roosevelt Dams is no longer to be included in the overall CAP allocation. However, the impact on any subcontractor would be insignificant at best, and therefore would not constitute a modification of a material term of the Subcontract.

The CAP legislative history and authorizing language are not constraining, either. Orme Dam, the authorized predecessor of Plan 6, was not an integrated part of CAP operational studies until after authorization, so that Congress based its deliberations only on CAP water resources from the Colorado River, and not the Salt-Verde River system. The legislative record is also quite clear on the Secretary's discretionary authority to decide CAP water allocations and water use priorities.

Attached is a detailed analysis of the financial aspects of the proposed Agreement. It analyzes the differences between the original State entities' proposal and the final terms. The analysis is done in terms of constant dollars while the contribution amounts described in this memorandum are in amounts sufficient to cover anticipated cost escalation.

ATTACHMENT

QUANTITATIVE ANALYSIS OF THE
PLAN 6 COST SHARING AGREEMENT

This attachment provides an analysis of the Plan 6 cost sharing agreement which has been negotiated with various Arizona entities. This attachment analyzes the original offer for up-front funding as proposed by the State and the final agreement which reflects changes made during the negotiation process. The analysis presented is based on a constant 1986 price level and reflects the net discounted value of the local up-front contribution.

The following provides a brief numerical comparison of Arizona's original offer for up-front funding and the final negotiated agreement:

	No Local Funding (\$Million)	With Arizona's Original Offer (\$Million)	With Final Negotiated Agreement (\$Million)
Federal Cost	\$1,023	\$ 861.8	\$ 811.4
CAP Revenues	- 250	- 192.6	- 220.4
Net Federal Cost	\$ 773	\$-669.2	\$ 591.0
Value of Local Contribution	\$ -0-	\$ 103.8	\$ 182.0

This summary shows the total discounted Federal cost of completing the main features of the CAP (including the SOD component of Plan 6), the discounted repayment revenues for the main CAP features, and the resulting net discounted Federal cost of completing the project. As shown, the net Federal cost of completing the CAP changes from \$773 million with no local funding, to \$669 million with local up-front contributions as proposed in Arizona's original offer, to \$591 million in the final negotiated agreement. Comparison of these estimates results in the conclusion that the net discounted value of the local contribution changed from approximately \$104 million in the original offer to \$182 million in the final negotiated agreement. In percentage terms, the original offer had a present value equal to approximately 17 percent of the costs of Plan 6, while the final agreement represents approximately 29 percent of the Plan 6 costs.

There are a number of factors which account for the significant difference in the value of the original offer and the final negotiated agreement. A brief summary of each of the major changes is enumerated in the following, which is based on constant 1986 price levels:

1. Amount of Contribution - During negotiations, the Arizona entities increased the amount of their proposed contribution from \$281.9 million to \$348.75 million. This increase is composed of an estimated \$20 million from the CAWCD for the purchase of the CAP Headquarters Complex; \$6.4 million from the Salt River Project for SOD modifications to Stewart Mountain Dam; \$20.8 million from the Flood Control District for negotiated changes in the method used in determining its contribution; and \$19.65 million from Phoenix area cities for negotiated changes in the allocation of costs used in determining their contributions.

2. Timing of Local Contribution - In addition to increasing the amount of the local contribution, the negotiation process resulted in a change in the timing of the local contributions. In the original offer, significant up-front contributions did not occur until 1988, and the largest contributions were delayed until the later stages of project construction. In the final agreement, significant local contributions begin in 1986 and a somewhat more uniform schedule is maintained throughout the construction period. The earlier contributions have a tendency to significantly enhance the present value of the local funding.

3. Treatment of Local Funding During CAP Repayment - The final major change brought about by the negotiation process is the treatment of local funding in determining the future stream of CAP repayment revenues. The original offer provided that the contribution provided by CAWCD be credited entirely to the interest-bearing repayment obligation and that the contribution by Phoenix area cities be treated as a prepayment toward the noninterest-bearing obligation. The final agreement provided that 25 percent of the CAWCD contribution be credited toward the noninterest-bearing irrigation obligation and that the contribution from the cities be credited toward the interest-bearing repayment obligation rather than treated as a prepayment. This change results in an increase in the present value of future repayment revenues of approximately \$28 million.

An item worth noting is the provision in the final agreement that conditions the repayment arrangements in 3 above upon meeting the project construction schedule. If the construction schedule for all features of Plan 6 were to slip by more than 2 years, all local contributions provided by CAWCD, the Cities, and the Flood Control District would be treated as a prepayment rather than credited as described above. In such case, the present value of future CAP repayment revenues would be reduced from the \$220.4 million shown above to approximately \$141 million. This would reduce the present value of the local contribution by about \$79 million, making it worth approximately \$103 million. In essence, this represents a penalty imposed if the United States is, for reasons within its control, unable to maintain the established construction schedule.

A more detailed analysis is presented in the attached table. The table shows total yearly construction expenditures required to complete the main features of the CAP and SOD components of Plan 6 (column 2); construction expenditures for Plan 6 by itself (column 3); a schedule of local funding contributions under Arizona's original offer (column 4) and as reflected in the final agreement (column 5); and the remaining Federal appropriations that will be required to complete the main features of CAP for both the original offer and final agreement (columns 6 and 7, respectively). The table also shows four alternative repayment schedules: (1) column 8 shows future repayment with no up-front funding; (2) column 9 shows future repayment as proposed by the State contributors in their original funding offer; (3) column 10 shows future repayment with local funding as reflected in the final negotiated agreement; and (4) column 11 shows future repayment under the worst case assumption that Plan 6 construction schedules are slipped by more than 2 years and prepayment mechanisms provided for in the final agreement are implemented. Columns 12 through 19 simply show the present value of the construction and repayment schedules presented in the first half of the table.

Graphs A and B provide a visual portrayal of the Federal and local funding. Graph A shows the remaining total Central Arizona Project costs and the relative relationship between Federal and local funding. Graph B presents the remaining Federal costs associated with the Central Arizona Project.