

FRAMEWORK AGREEMENT
AMONG
THE UNITED STATES, THE STATE OF ARIZONA, AND CAWCD
FOR AN ARIZONA ICS PROGRAM

RECITALS

A. On December 13, 2007, the Secretary of the Interior (Secretary) executed a Record of Decision that included Interim Guidelines for Lower Basin Shortages and Coordinated Operations of Lake Powell and Lake Mead (2007 Guidelines). These 2007 Guidelines include a mechanism to encourage and account for augmentation and conservation of water supplies, referred to as intentionally created surplus (ICS). The 2007 Guidelines outline four categories of ICS, one being Extraordinary Conservation ICS. The opportunity to create ICS is provided to an entity holding an entitlement to mainstream water under: the Consolidated Decree; a water delivery contract with the United States through the Secretary; or a reservation of water by the Secretary.

B. The primary purposes of ICS are to: (a) encourage the efficient use and management of Colorado River water; (b) increase the surface elevations of both Lake Mead and Lake Powell to higher levels than would have otherwise occurred; (c) help minimize or avoid shortage to water users in the Lower Basin; and (d) assure any Contractor that invests in conservation or augmentation to create ICS that no other Contractor will claim the ICS.

C. The 2007 Guidelines limit the annual amount of Extraordinary Conservation ICS that may be created by Arizona Contractors to 100,000 acre-feet during any Year. The 2007 Guidelines limit the total amount of Extraordinary Conservation ICS that can be delivered to Arizona in a Year to 300,000 acre-feet. Under the 2007 Guidelines, the maximum amount of Extraordinary Conservation ICS that may be accumulated by all Arizona Contractors at any time is limited to 300,000 acre-feet.

D. Recognizing the need to develop and test, on an interim basis, additional operational tools to address and reduce the likelihood of the continued decline of the elevation of Lake Mead, certain parties in the Lower Basin and the Secretary developed the Lower Basin Drought Contingency Operations Plan (LBOPs). Through [insert federal authorization] and the Lower Basin Drought Contingency Plan Agreement (LBDCP Agreement), the parties thereto agreed to the implementation of the LBOPs.

E. The LBOPs increase the maximum total amount of Extraordinary Conservation ICS, Binational ICS and DCP ICS that may be accumulated by all Arizona Contractors to 500,000 acre-feet and provides that additional ICS accumulation space may be made available from one or more Lower Division States pursuant to separate written agreements.

F. The Lower Division States have entered into one such separate agreement, the DCP Contributions and ICS Accumulation Limits Sharing Agreement (Sharing Agreement), which provides that the States of California and Nevada shall make up to an additional 50,000 acre-feet each of their respective ICS accumulation space (100,000 acre-feet total) available to Arizona for use by Arizona Contractors under certain terms set forth in the Sharing Agreement. The creation and delivery limits remain the same as in the 2007 Guidelines.

G. The United States of America, acting through [REDACTED], the State of Arizona, acting through the Director of the Arizona Department of Water Resources (ADWR), and the Central Arizona Water Conservation District (CAWCD) (collectively, the Parties) desire to develop a program for creation, accumulation and delivery of ICS by Arizona ICS Creators, as defined in Section 2(b) of this Framework Agreement, regardless of the effectiveness of the LBOps.

H. The Parties desire to establish a program for creation, accumulation and delivery of ICS by Arizona ICS Creators, pursuant to the 2007 Guidelines, the LBOps, and on the terms and conditions set forth in this Framework Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

AGREEMENT

1. Term

This Framework Agreement shall become effective when executed by all Parties. The provisions regarding the creation of ICS shall terminate on December 31, 2026. The remaining provisions shall terminate on the later of (a) December 31, 2026, or (b) the date on which all Arizona ICS Accounts and Arizona DCP ICS Accounts created pursuant to the 2007 Guidelines or this Framework Agreement are reduced to zero.

2. Definitions

Terms defined in Section XI.F of the 2007 Guidelines or in the LBOps shall have the same meaning when used in this Framework Agreement. Additionally, for purposes of this Framework Agreement:

- a. 2007 ICS Agreement shall mean the Lower Basin Intentionally Created Surplus Forbearance Agreement, executed on December 13, 2007, as amended and supplemented.
- b. Arizona ICS Creators shall mean all CAP Settlement Tribes with an approved Exhibit to the 2007 ICS Agreement, CAWCD, which has approved Exhibits to the 2007 ICS Agreement, all On-River Contractors with an approved Exhibit to the 2007 ICS Agreement, and all On-River Tribes with an approved Exhibit to the 2007 ICS Agreement.
- c. Arizona ICS Program shall mean the program for the creation, accumulation and delivery of ICS by Arizona ICS Creators established by this Framework Agreement.
- d. CAP Settlement Tribe shall mean a Tribe located within Arizona holding a right to CAP water through a Congressionally approved water settlement agreement with the United States.
- e. Consumptive Use shall have the same meaning as that provided in the Consolidated Decree.
- f. On-River Contractor shall mean a non-Tribal entity, other than CAWCD, with an entitlement to Mainstream water for use within Arizona pursuant to the Consolidated Decree or a water delivery contract with the United States through the Secretary.

Commented [A1]: This definition is under review.

- g. On-River Tribe shall mean an Arizona Tribe with an entitlement to Mainstream water under the Consolidated Decree or pursuant to a water delivery contract with the United States through the Secretary.

3. Lake Mead Elevations

Unless otherwise specified, references to specific elevations in Lake Mead are to the projections in the United States Bureau of Reclamation's August 24-Month Study for the most probable inflows.

4. Authority to Create, Accumulate, and Receive Delivery of Extraordinary Conservation ICS

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CAWCD, On-River Contractors, and On-River Tribes qualify as a Contractors for purposes of creating, accumulating and receiving delivery of ICS in accordance with the 2007 Guidelines.

Although the Parties may have differences of opinion on certain issues, the Parties agree, for purposes of this Framework Agreement, that CAP Settlement Tribes may be treated as an entity authorized under the 2007 Guidelines to create, accumulate, and receive delivery of ICS in accordance with the 2007 Guidelines.

5. New Arizona Exhibits to the ICS Agreement

a. Requirements for New Exhibits

Each proposal for a New Arizona Exhibit shall contain at a minimum:

- i. The name of Contractor or CAP Settlement Tribe that would create the Extraordinary Conservation ICS;
- ii. A description of the proposed extraordinary conservation project and how the project will reduce Consumptive Use;
- iii. The term of the project;
- iv. The maximum annual volume of Extraordinary Conservation that could be created by the project; and
- v. The proposed method of verification.

b. Development of Proposals for New Exhibits

- i. Any On-River Contractor, or the United States in coordination with a CAP Settlement Tribe or On-River Tribe shall confer with ADWR and CAWCD regarding the development of a new exhibit.
- ii. CAWCD shall consult with ADWR regarding the development of a new exhibit by CAWCD.

c. Submission of Proposals for New Exhibits

- i. CAWCD may propose a new exhibit to the 2007 ICS Agreement to the non-Arizona parties to that agreement jointly with ADWR pursuant to the provisions of this Section 5.

- ii. An On-River Contractor may propose a new exhibit to the 2007 ICS Agreement to the non-Arizona parties to that agreement jointly with ADWR pursuant to the provisions of this Section 5.
- iii. An On-River Tribe, in coordination with the United States, may propose a new exhibit to the 2007 ICS Agreement to the non-Arizona parties to that agreement jointly with ADWR pursuant to the provisions of this Section 5.
- iv. A CAP Settlement Tribe, in coordination with the United States, may propose a new exhibit to the 2007 ICS Agreement to the non-Arizona parties to that agreement jointly with ADWR and CAWCD pursuant to the provisions of this Section 5.

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6. Cooperative Use of Arizona’s Annual Extraordinary Conservation ICS Creation Limit and Sharing

a. In each Year when Lake Mead’s January 1 elevation is projected to be above 1,025 feet, CAWCD and On-River Contractors may create up to 50,000 acre-feet of Extraordinary Conservation ICS in Lake Mead.

b. In each Year when Lake Mead’s January 1 elevation is projected to be above 1,025 feet, On-River Tribes and CAP Settlement Tribes may create up to 50,000 acre-feet of Extraordinary Conservation ICS in Lake Mead.

c. If any 24-Month Study for the minimum probable inflows projects that Lake Mead elevations will be at or below 1,030 feet within the succeeding two Years, the Parties and Arizona ICS Creators shall consult regarding the advisability of creating Extraordinary Conservation ICS when Lake Mead elevations are at or below 1,025 feet.

d. If CAWCD and On-River Contractors participating in the Arizona ICS Program desire to create amounts of Extraordinary Conservation ICS in excess of the annual Extraordinary Conservation ICS creation limit as set forth in Section 6.a, CAWCD and ADWR shall so inform the United States, not less than fifteen (15) days prior to the date required for submittal of ICS creation plans to the United States. If any additional annual creation capacity is available, such unused annual creation capacity shall be made available to CAWCD and On-River Contractors participating in the Arizona ICS Program.

e. If the Arizona On-River Tribes and CAP Settlement Tribes participating in the Arizona ICS Program desire to create amounts of Extraordinary Conservation ICS in excess of the annual Extraordinary Conservation ICS limit, as set forth in Section 6.b, the United States shall so inform CAWCD and ADWR not less than fifteen (15) days prior to the date required for submittal of ICS creation plans to the United States. If any additional annual creation capacity is available, such unused annual creation capacity shall be made available to the On-River Tribes and CAP Settlement Tribes participating in the Arizona ICS Program.

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f. In any Year when the annual Extraordinary Conservation creation limits set forth in Sections 6.a and 6.b of this Framework Agreement are reached, there remains a desire to create additional amounts of Extraordinary Conservation ICS, and the Secretary authorizes additional Extraordinary Conservation ICS creation for Arizona pursuant to Section IV.B of the LBOs, the Parties and Arizona ICS Creators shall

meet and confer on how such additional Extraordinary Conservation ICS creation capacity is to be shared among Arizona ICS Creators.

g. Nothing in this Section 6 shall be construed as limiting any Arizona ICS Creator's ability to create Binational ICS or System Efficiency ICS.

7. Cooperative Use of Arizona's Total ICS Accumulation Limit and Sharing

a. Pursuant to the LBOs, the maximum total amount of Extraordinary Conservation ICS, Binational ICS and DCP ICS that may be accumulated in Arizona's ICS Account, at any time, is limited to 500,000 acre-feet, with the possibility of additional accumulation space being made available by other Lower Division States, including 100,000 acre-feet under the terms set forth in the Accumulation Limits Sharing Agreement. The Parties agree that Arizona's total accumulation limit is allocated as follows:

- i. 250,000 acre-feet for CAWCD and On-River Contractors.
- ii. 250,000 acre-feet for On-River Tribes and CAP Settlement Tribes.
- iii. If Arizona's ICS Account contains 500,000 acre-feet and Arizona ICS Creators desire to create additional ICS pursuant to the Accumulation Limits Sharing Agreement, the amount of additional ICS capacity shall be shared equally between CAWCD and On-River Contractors on the one hand, and On-River Tribes and CAP Settlement Tribes on the other hand.

b. Notwithstanding the foregoing, CAWCD and On-River Contractors are permitted to occupy the accumulation space ascribed to On-River Tribes and CAP Settlement Tribes in Section 7.a.ii of this Framework Agreement, provided that, in any Year when On-River Tribes and CAP Settlement Tribes plan to create Extraordinary ICS, and there is insufficient Section 7.a.ii accumulation space available, CAWCD and On-River Contractors shall evacuate the amount of Section 7.a.ii accumulation space they occupy necessary to accommodate the creation plans of the On-River Tribes and CAP Settlement Tribes in that Year, subject to the following:

- i. Except for ICS created in 2019, the United States shall provide written notice to ADWR and CAWCD regarding the intention of one or more On-River Tribes and CAP Settlement Tribes participating in the Arizona ICS Program to use the space occupied by CAWCD and On-River Contractors no later than March 1 of the year in which an On-River Tribe or CAP Settlement Tribe submits a creation plan to the United States indicating it will occupy such space in the following year (Notice).
- ii. Any Notice shall indicate the amount of 7.a.ii accumulation space occupied by CAWCD and On-River Contractors that is needed to accommodate the creation or conversion plans of the On-River Tribes and CAP Settlement Tribes.
- iii. CAWCD shall not convert ICS that is occupying the accumulation space ascribed to On-River Tribes and CAP Settlement Tribes in Section 7.a.ii of this Framework Agreement to DCP ICS, without the consent of all On River Tribes and CAP Settlement Tribes.

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c. Notwithstanding the foregoing, On-River Tribes and CAP Settlement Tribes are permitted to occupy the accumulation space ascribed to CAWCD and On-River Contractors in Section 7.a.i of this Framework Agreement, provided that, in any Year when CAWCD and On-River Contractors plan to create Extraordinary ICS, and there is insufficient Section 7.a.i accumulation space available, On-River Tribes and CAP Settlement Tribes shall evacuate the amount of Section 7.a.i accumulation space they occupy necessary to accommodate the creation or conversion plans of the CAWCD and On-River Contractors in that Year, subject to the following:

- i. CAWCD and On-River Contractors shall provide written notice to ADWR and the United States regarding the intention of CAWCD or On-River Contractors participating in the Arizona ICS Program to use the space occupied by On-River Tribes and CAP Settlement Tribes no later than March 1 of the year in which CAWCD or an On-River Contractor submits a creation plan to the United States indicating it will occupy such space in the following year (Notice);
- ii. Any Notice shall indicate the amount of 7.a.i accumulation space occupied by On-River Tribes and CAP Settlement Tribes that is needed to accommodate the creation or conversion plans of CAWCD and On-River Contractors.
- iii. On-River Tribes and CAP Settlement Tribes shall not convert ICS that is occupying the accumulation space ascribed to CAWCD and On-River Contractors in Section 7.a.i of this Framework Agreement to DCP ICS, without the consent of CAWCD and On-River Contractors.

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8. Cooperative Use of Arizona's Annual ICS Delivery Limit and Sharing

a. Pursuant to the LBOps, in Years when Lake Mead's January 1 elevation is projected to be above elevation 1,045 feet and at or below elevation 1,075 feet, the combined total delivery of Extraordinary Conservation ICS, Binational ICS, System Efficiency ICS and DCP ICS in Arizona shall be limited to 300,000 acre-feet. The Parties agree that this annual delivery limit shall be cooperatively used as follows:

- i. 150,000 acre-feet for CAWCD and On-River Contractors; and
- ii. 150,000 acre-feet for On-River Tribes and CAP Settlement Tribes.

b. Pursuant to the LBOps, in Years when Lake Mead's January 1 elevation is projected to be above elevation 1,025 feet and at or below elevation 1,045 feet, the combined total delivery of Extraordinary Conservation ICS, Binational ICS, System Efficiency ICS, DCP ICS and the conversion of ICS to DCP ICS in Arizona shall be limited to 300,000 acre-feet. The Parties agree that this annual delivery limit shall be cooperatively used as follows:

- i. 150,000 acre-feet for CAWCD and On-River Contractors; and
- ii. 150,000 acre-feet for On-River Tribes and CAP Settlement Tribes.

c. Pursuant to the LBOps, in Years when Lake Mead's January 1 elevation is projected to be below 1,025 feet, delivery of Extraordinary Conservation ICS, Binational ICS, System Efficiency ICS and DCP ICS shall not be permitted.

d. Prior to submitting orders for delivery of ICS, the Parties and Arizona ICS Creators shall meet and confer to consider the impacts of ICS delivery and/or conversion of ICS to DCP ICS on Lake Mead elevations. This may be done in conjunction with the annual coordination pursuant to Section 15 (Coordination) of this Framework Agreement.

e. If CAWCD and On-River Contractors participating in the Arizona ICS Program reach the annual ICS delivery limits, as set forth in Section 8.a.i or 8.b.i, and if there remains a desire to deliver and/or convert additional amounts of ICS, ADWR and CAWCD shall consult with the United States, not less than forty-five (45) days prior to the date required for submittal of ICS recovery or conversion plans to the United States. After coordinating with the On-River Tribes and CAP Settlement Tribes participating in the Arizona ICS Program, the United States will advise ADWR and CAWCD if any additional annual delivery capacity is available, and may make such unused annual delivery capacity available to CAWCD and On-River Contractors, within thirty (30) days of receipt of CAWCD's and ADWR's notice.

f. If the On-River Tribes and CAP Settlement Tribes participating in the Arizona ICS Program reach the annual ICS delivery limits, as set forth in Section 8.a.ii or 8.b.ii of this Framework Agreement, and if there remains a desire to deliver and/or convert additional amounts of ICS, the United States shall consult with ADWR and CAWCD, not less than forty-five (45) days prior to the date required for submittal of ICS recovery or conversion plans to the United States. ADWR and CAWCD will advise the United States if any additional annual delivery capacity is available, and may make such unused annual delivery capacity available to the Arizona On-River tribes and CAP settlement tribes participating in the Arizona ICS Program, within thirty (30) days of receipt of the United States' notice.

9. Coordination with On-River Contractors

Beginning no later than [REDACTED], ADWR and CAWCD shall host one or more meetings with On-River Contractors with an interest in creating ICS to develop standards to facilitate On-River Contractors' participation in the Arizona ICS Program, including but not limited to standards for the sharing of ICS creation, accumulation, delivery limits and conversion of ICS to DCP ICS between On-River Contractors and CAWCD.

10. Determination of On-River Tribes and CAP Settlement Tribes' Annual Creation Limit, Delivery Limit and Total Accumulation Limit

The United States will consult with CAP Settlement Tribes and On-River Tribes participating in the Arizona ICS Program to determine how to share the annual Extraordinary Conservation ICS creation limit, the annual ICS delivery/conversion limit and the total ICS accumulation limit allocated to On-River Tribes and CAP Settlement Tribes in Sections 3, 4 and 5 of this Framework Agreement. Each CAP Settlement Tribe desiring to participate in the Arizona ICS Program will enter into an ICS Delivery Agreement with the United States, as provided in Section 13 of this Framework Agreement. Each On-River Tribe desiring to participate in the Arizona ICS Program will enter into a Delivery Agreement with the United States, as provided in Section 14 of this Framework Agreement.

11. CAWCD Forbearance

Although the Parties may have differences of opinion on certain issues, in order to provide greater certainty in the implementation of the Arizona ICS Program, CAWCD hereby forbears any right it may

Commented [A7]: NOTE FROM CAWCD:

This Agreement is contingent on the execution of letter agreements by all entities currently holding a CAP contract for NIA Priority Water, agreeing not to order any ICS delivered to or created by an Arizona On-River tribe, a CAP settlement tribe, a non-tribal Arizona On-River Contractor or CAWCD pursuant to this Agreement. This Agreement is also contingent on the development and implementation of an Ag mitigation program, forming the basis for CAWCD Board's agreement to forbear in this Section 11.

have to delivery of any ICS created by or delivered to any other Arizona ICS Creator, provided that such ICS is created and delivered in accordance with:

- a. This Framework Agreement;
- b. Any applicable ICS Delivery Agreement; and
- c. The 2007 ICS Agreement.

12. Delivery of Extraordinary Conservation ICS to CAP Settlement Tribes

Delivery of ICS to a CAP Settlement Tribe shall be pursuant to (1) a Delivery Agreement between the Tribe and the United States; (2) a wheeling contract or federal arrangement between the Tribe and the United States pursuant to the CAP System Use Agreement; and (3) applicable provisions of the Tribe's delivery contract with the United States, Section 3.C of the 2007 Interim Guidelines, Section xx of the LBOPs, the 2007 ICS Agreement, and CAWCD's Delivery Agreement. Extraordinary Conservation ICS created by a CAP Settlement Tribe shall be delivered to the CAP Settlement Tribe that created it pursuant to the applicable settlement.

- a. The United States will consult with ADWR and CAWCD before entering into a Delivery Agreement with a CAP Settlement Tribe.
- b. In consideration of the mutual agreements set forth in this Agreement, the Parties have agreed that EC ICS delivered to CAP Settlement Tribes will be transported through the CAP System and delivered pursuant to a Reclamation Wheeling Contract or federal arrangement, consistent with and pursuant to, the CAP System Use Agreement.

13. Delivery of Extraordinary Conservation ICS to On-River Tribes and On-River Contractors

- a. Extraordinary Conservation ICS created by an On-River Tribe or an On-River Contractor shall be delivered pursuant to a Delivery Agreement between the appropriate On-River Tribe and/or On-River Contractor and the United States. Extraordinary Conservation ICS shall be delivered to the Arizona On-River Tribe or On-River Contractor that created it.
- b. The United States shall consult with ADWR and CAWCD before entering into a Delivery Agreement with an On-River Tribe or an On-River Contractor.

14. CAP Cost Recovery

- a. Unless CAWCD, the United States and the CAP Settlement Tribe agree otherwise, CAP Settlement Tribes shall pay to CAWCD the CAP Fixed OM&R Charge on the volume of water conserved to create ICS in the year in which the ICS is created.
- b. CAP Settlement Tribes shall pay to CAWCD the CAP Pumping Energy Charge for EC ICS delivered to, or on behalf of, a CAP Settlement Tribe in the year in which the EC ICS is delivered.

15. Coordination

On or before [July 1] of each year during the term of this Agreement, the United States, CAWCD, ADWR and any On-River Tribe, CAP Settlement Tribe or On-River Contractor participating in the creation, accumulation and delivery of ICS pursuant to this Framework Agreement, shall meet and coordinate on planned ICS creation, accumulation and delivery for the upcoming year.

Additionally, when the United States is notified during any year that an On-River Tribe or a CAP Settlement Tribe intends to participate in the Arizona ICS Program, the United States and the Tribe shall meet and confer with ADWR and CAWCD on proposed ICS exhibits and creation plans.

16. Reservation of Rights

The Parties acknowledge that they have differing opinions on legal issues that are the subject of this Framework Agreement. Notwithstanding the terms of this Framework Agreement, each of the Parties expressly reserves, and shall not be deemed to have waived, any and all rights they may have as of the date hereof or as may accrue after the term hereof, under the Consolidated Decree, any federal or state law or administrative rule, regulation, guideline, or any contract. Nothing in this Framework Agreement is intended to contravene, delegate, or diminish the Parties' respective rights under the Consolidated Decree, any federal or state law or administrative rule, regulation, guideline, or any contract.

17. Amendment, Modification, and/or Supplement:

This Agreement may be amended, modified, or supplemented only by the written agreement of the Parties. The Parties shall not amend, modify, or supplement this Agreement unless it has provided at least sixty (60) days written notice to all Arizona ICS Creators. No amendment modification, or supplement shall be binding unless it is in writing and signed by all Parties.

18. Notices

All notices and requests required or allowed under the terms of this Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

[To be added]

A Party may change its address by giving the other Parties notice of the change in writing.

19. Governing Law.

This Agreement shall be interpreted, governed by, and construed under applicable Federal law and any relevant provisions of Arizona state law. In case of conflict between Federal law and Arizona state law, Federal law controls. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Agreement shall be in an appropriate Federal court.

20. Judicial Remedies Not Foreclosed

Nothing in this Agreement shall be construed: (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the

provisions hereof, or of any other remedy which it would otherwise have; or (ii) as depriving any Party of any defense thereto which would otherwise be available.

21. Equal Opportunity/Nondiscrimination

The Parties agree to comply with all applicable federal or Arizona laws relating to equal opportunity and non-discrimination.

22. Officials Not to Benefit

No Member of or Delegate to the Congress, Resident Commissioner, or official of the [Contracting entity for United States] shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

23. Cancellation of Contract

This agreement is subject to cancellation by the State of Arizona under A.R.S. § 38-511.

24. Contingent on Appropriation or Allotment of Funds

The expenditure or advance of any money or the performance of any obligation of the United States under this contract shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

[Signature Blocks to be added]