

1 STUART L. SOMACH (Cal. Bar # 090959)
2 ROBERT B. HOFFMAN (# 004415)
3 SOMACH, SIMMONS & DUNN
4 A Professional Corporation
5 Hall of Justice Building
6 813 Sixth Street, Third Floor
7 Sacramento, CA 95814-2403
8 Telephone: (916) 446-7979

9 Attorneys for Central Arizona
10 Water Conservation District

11 PETER D. KEISLER
12 Assistant Attorney General
13 DAN G. KNAUSS
14 United States Attorney
15 RICHARD G. PATRICK
16 Assistant United States Attorney
17 Two Renaissance Square
18 40 North Central, Suite 1200
19 Phoenix, AZ 85004-4408
20 Telephone: (602) 514-7733

21 J. CHRISTOPHER KOHN
22 JOHN T. STEMPLEWICZ
23 Attorneys, Civil Division
24 U.S. Department of Justice
25 Box 875, Ben Franklin Station
26 Washington, D.C. 20044-0875
27 Telephone: (202) 307-1104

28 Attorneys for Defendants
and Counterclaimant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

25 CENTRAL ARIZONA WATER) No. CIV 95-625-TUC-WDB(EHC)
26 CONSERVATION DISTRICT, a municipal) No. CIV 95-1720-PHX-EHC
27 corporation of the State of Arizona,) (Consolidated Action)

28 Plaintiff,

[CAPTION CONTINUED ON FOLLOWING PAGE]

STIPULATION FOR JUDGMENT

1)
2 v.)
3)
4 UNITED STATES OF AMERICA, UNITED)
5 STATES DEPARTMENT OF THE)
6 INTERIOR, BUREAU OF)
7 RECLAMATION; DIRK KEMPTHORNE,)
8 Secretary of the Interior; KAMERON L.)
9 ONLEY, Acting Assistant Secretary of the)
10 Interior; ROBERT W. JOHNSON,)
11 Commissioner of Reclamation; LORRI)
12 GRAY, Regional Director, Lower Colorado)
13 Region, United States Bureau of)
14 Reclamation,)
15 Defendants.)

16 UNITED STATES OF AMERICA,)
17)
18 Counterclaimant,)
19)
20 v.)
21 CENTRAL ARIZONA WATER)
22 CONSERVATION DISTRICT, a municipal)
23 corporation of the State of Arizona,)
24)
25 Counterdefendant.)

26 The United States and the Central Arizona Water Conservation District
27 ("CAWCD") (hereinafter referred to collectively as "Parties" and individually as
28 "Party") hereby stipulate that judgment be entered in the above captioned consolidated
cases as follows:

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

2. The First Claim for Relief in CAWCD's Complaint for Declaratory and
Injunctive Relief ("Complaint") filed on or about July 10, 1995, in this action and the

1 First Claim for Relief in the United States First Amended Counterclaim

2 ("Counterclaim") filed on or about August 19, 1998, are resolved as follows:

3 (a) Notwithstanding the disputed provisions of Contract
4 No. 14-06-W-245 entitled "Contract between the United States and the Central Arizona
5 Water Conservation District for Delivery of Water and Repayment of Costs of the
6 Central Arizona Project" dated December 1, 1988 ("1988 Contract"), CAWCD's
7 repayment obligation for the Water Supply System and the New Waddell and Modified
8 Roosevelt Dams ("Regulatory Storage") Stages of the Central Arizona Project ("CAP")
9 is set at the time of this Judgment at \$1,646,462,500, with annual payments to be made
10 by CAWCD in conformance with the annual payment schedule set forth as Exhibit "A"
11 hereto which is incorporated by reference herein as if set forth in full. The repayment
12 obligation and Exhibit "A" are premised on a total allocation of 667,724 acre feet of
13 Project Water under contract to Arizona Indian tribes or available to the Secretary of
14 the Interior for allocation to Indian tribes in Arizona. In the event that this allocation
15 figure changes, the repayment obligation and Exhibit "A" shall be deemed modified by
16 placing a \$1,415 per acre-foot value on each acre foot of net increase or decrease in the
17 allocation figure. This agreed value shall not be binding on CAWCD or the United
18 States for any other purpose.

19 (b) To the extent Congress provides appropriations or other monies
20 therefor, the United States will bear the financial obligation of completing any
21 remaining features of the Water Supply System and Regulatory Storage Stages of the
22 CAP.
23

1 (c) In addition to the provisions of Article 9.3(e) of the 1988 Contract,
2 CAWCD and the United States shall consult prior to the construction of any CAP
3 feature, facility or stage, of which costs may be allocable to CAWCD, other than the
4 Water Supply System Stage and the Regulatory Storage Stage, about such construction,
5 relevant costs and any cost allocation associated with that construction.
6

7 (d) Nothing herein is intended to preclude CAWCD from supporting or
8 the Secretary from seeking authorizations and appropriations to cover all or part of the
9 funds that may be necessary to pay for major replacements of CAP features or facilities.
10

11 (e) CAWCD, by agreement, will support appropriations the Secretary
12 may request for CAP Indian distribution systems authorized pursuant to Section
13 301(a)(9) of the Colorado River Basin Project Act, 43 U.S.C. § 1521(a)(9).
14

15 3. The Second and Fifth Claims for Relief in the Complaint and the Second
16 Claim for Relief in the Counterclaim are resolved as follows:

17 (a) Notwithstanding the 1988 Contract (Articles 9.1, 9.2(e), 9.3(d) and
18 9.10), the repayment schedule set forth in Exhibit "A" hereto, as Exhibit "A" may be
19 deemed modified in accordance with the provisions of subparagraph 2(a) above, shall
20 constitute CAWCD's repayment obligation and all prior billings shall be recalculated
21 and adjusted to reflect the payments provided for in Exhibit "A." These recalculations
22 and adjustments, through December 2006, are shown on Exhibit "A-1" which is
23 incorporated by reference as if set forth in full. In this recalculation and adjustment,
24 bills have been calculated without penalties being assessed against CAWCD but with
25 any over- or under-payments bearing interest at the Arizona State Treasury investment
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1 rates for relevant periods. Exhibit "A-1" also reflects appropriate recalculations and
2 adjustments to account for the credits provided for in paragraph 6 of this Judgment.

3 (b) Notwithstanding Article 9.3(d) of the 1988 Contract, 73% of the
4 repayment obligation established in subparagraph 2(a) of this Judgment shall be interest
5 bearing, and 27% shall be non-interest bearing. This agreed-upon interest bearing split
6 is reflected in the payment schedule in Exhibit "A" and shall be in effect throughout the
7 repayment period.
8
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10 4. The Third and Fourth Claims for Relief in the Complaint and the Third and
11 Fourth Claims for Relief in the Counterclaim are resolved as follows:

12 (a) The provisions of this paragraph of this Judgment shall apply only to
13 how CAWCD determines charges for delivery of Project Water under long-term
14 contracts,¹ specifically Fixed OM&R Costs and Charges and Pumping Energy Costs
15 and Charges for providing Project Water service for any Indian Tribe or for any other
16 Federal purpose. This paragraph shall not govern, in any way, how either Fixed
17 OM&R Costs and Charges or Pumping Energy Costs and Charges are determined for
18 any other purposes. If CAWCD uses an alternate method of calculating either Fixed
19 OM&R Costs and Charges or Pumping Energy Costs and Charges which results in a
20 lesser cost or charge (exclusive of any water service subcontract or water service capital
21 charges) for Municipal and Industrial ("M&I") priority water or agricultural priority
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25 ¹ As used in this Judgment, a long-term contract or subcontract means one having a term
26 that extends to 2043 or beyond and any contract or subcontract resulting from the transfer,
27 assignment or lease of such contract or subcontract, or part thereof, or of a Project Water
28 entitlement thereunder.

1 water under long-term subcontracts, then the lesser cost or charge will be billed for
2 providing Project Water service for any Indian tribe or for any other Federal purpose
3 instead of the costs or charges that would otherwise be billed under the provisions of
4 this paragraph.
5

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

3 "Pumping Energy Charge" means the charge per acre-foot of Project Water imposed by
4 CAWCD each year for the recovery of the Pumping Energy Costs of water deliveries.
5

6 (d) Pursuant to subparagraph 4(a) above, CAWCD shall annually in
7 advance of Project Water deliveries determine the Fixed OM&R Charge and Pumping
8 Energy Charge for Project Water service for the following year.
9

10 (i) CAWCD's Fixed OM&R Charge shall not be more than the
11 amount determined by dividing CAWCD's estimated Fixed OM&R Costs for the
12 following year by the total amount of Project Water that CAWCD estimates will
13 actually be delivered through Project Works in the following year.
14

15 (ii) CAWCD's Pumping Energy Charge shall not be more than
16 the amount determined by dividing CAWCD's estimated Pumping Energy Costs for the
17 following year by the total amount of Project Water that CAWCD estimates will
18 actually be delivered through Project Works in the following year.
19

20 (iii) Without regard to any prior year's adjustment as may be
21 provided in subparagraphs 4(e) and (f) below, charges for any delivery of Project Water
22 for Federal purposes shall be no more than the sum of the Fixed OM&R Charge and the
23 Pumping Energy Charge as defined in subparagraphs 4 (b) and (c) herein.
24

25 (e) All past fixed OM&R and pumping energy charges paid by the
26 United States on behalf of the Ak-Chin Indian Community, for Roosevelt Dam
27 construction water, and for San Carlos Apache Tribe/Phelps Dodge exchange water
28

1 have been reconciled with actual past fixed OM&R and pumping energy costs and do
2 not include the costs in paragraph 13 below nor do they include the costs of establishing
3 a reserve to cover the costs associated with the major repair or replacement of CAP
4 features referred to in subparagraph 4(b) above, with overpayments bearing interest at
5 the Arizona State Treasury investment rate for the relevant periods, having been
6 credited against future charges for deliveries for Federal purposes beginning with
7 amounts due in the year 2001 or refunded at United States option. The accounting
8 methodology used in performing the foregoing reconciliation was consistent with the
9 methodology used in the applicable years to assess the charge. CAWCD provided the
10 United States with an accounting of the adjustment. There is no dispute over the
11 reconciliation dealt with in this subparagraph.

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15 (f) The United States shall, in advance of Project Water deliveries, pay,
16 to the extent Congress provides appropriations or other monies therefor, or provide for
17 payment of all Fixed OM&R Charges and Pumping Energy Charges associated with the
18 delivery of Project Water, whether directly or by exchange, for use by any Indian tribe
19 or its lessees or for any other Federal purpose. CAWCD shall bill the United States for
20 such Charges monthly, based upon CAWCD's annual estimates of these Charges and
21 annual water delivery schedules. The United States shall pay or provide for payment
22 within 30 days of billing. The payment of such Charges directly to CAWCD by lessees
23 or other entities shall discharge, to the extent of the payments made, the obligation of
24 the United States. Within 30 days of the completion of audited financial statements
25 each year, but in no case later than May 30, CAWCD shall adjust Fixed OM&R
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1 Charges and Pumping Energy Charges to reflect actual Fixed OM&R Costs and
2 Pumping Energy Costs, with overpayments refunded to or underpayments paid by the
3 United States within 30 days of the recalculation. CAWCD will provide the United
4 States an accounting of the adjustment. The first such adjustment occurred in 2001 for
5 charges assessed in the year 2000.
6

7 (g) The United States annually shall have the right, upon 90 days
8 advance written notice, to audit CAWCD's administration of Fixed OM&R and
9 Pumping Energy Costs and Charges. In the case of a dispute over the type of charge or
10 the amount that is billed, the United States shall pay or provide for payment of the full
11 amount billed, but shall do so under protest and CAWCD and the United States shall
12 follow the ADR procedures set forth in paragraph 10 herein.
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14

15 (h) In those situations in which a lessee of Project Water under contract
16 to an Indian tribe has an obligation to pay Fixed OM&R Charges or Pumping Energy
17 Charges associated with the delivery of Project Water, whether directly or by exchange,
18 nothing herein shall relieve such lessee from the obligation to pay such charges. The
19 United States shall direct such lessee to pay all such charges directly to CAWCD.
20 Nothing herein addresses or waives any right of the United States to repayment of
21 Fixed OM&R Charges or Pumping Energy Charges from any Indian tribe where an
22 obligation exists for such tribe to pay its own Fixed OM&R Charges or Pumping
23 Energy Charges. Nothing herein creates an obligation on the part of the United States
24 to pay for a lessee where that obligation does not otherwise exist.
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1 5. The Fifth and Sixth Claims for Relief in the Counterclaim are resolved as
2 follows:

3 (a) For purposes of this Judgment, "Project Water" means:

4 (1) all Colorado River water to which Arizona is entitled under
5 the U.S. Supreme Court decree in *Arizona v. California* that the CAP Water Supply
6 System is capable of delivering:

7 (i) after first providing for satisfaction of those rights
8 described in Article 8.7(b)(i) and (ii) of the 1988 Contract, and
9

10 (ii) subject to the provisions of Article 8.7(c) of the 1988
11 Contract;
12

13 (2) water available from Central Arizona Project dams and
14 reservoirs;
15

16 (3) return flows captured by the Secretary for Project use;

17 (4) water delivered to water users in Arizona, through the Project
18 Works, in exchange for water delivered to users in New Mexico from or by means of
19 the Project Works;
20

21 (5) Colorado River water acquired from the Yuma Mesa Division
22 of the Gila Project pursuant to the Ak-Chin Water Rights Settlement Act of 1978
23 (Public Law 95-328), as amended on October 19, 1984 (Public Law 98-530);
24

25 (6) Colorado River water acquired from the Wellton-Mohawk
26 Irrigation District pursuant to the Salt River Pima-Maricopa Indian Community Water
27 Rights Settlement Act of 1988 (Public Law 100-512); and
28

1 (7) any additional water not included in (i) or (ii) above that is
2 required to be delivered by the Secretary through Project Works pursuant to the
3 Southern Arizona Water Rights Settlement Act of 1982 (Title III of Public Law 97-293)
4 or pursuant to any subsequent act of Congress.
5

6 (b) For purposes of this Judgment, the water supply associated with
7 modification of Roosevelt Dam shall not be counted as Project Water.
8

9 (c) CAWCD shall be entitled to divert all Project Water for the benefit
10 of Project Water users.

11 (d) Excess Water shall be dealt with as follows:

12 (1) "Excess Water" is all Project Water that is in excess of the
13 amounts used, resold, or exchanged pursuant to long-term contracts and subcontracts
14 for Project Water service.
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16 (2) CAWCD shall have the exclusive right in its discretion to sell
17 or use all Excess Water for any authorized purpose of the CAP.
18

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

21 (4) Contracts for the sale or use of Excess Water under this
22 paragraph may be made pursuant to multi-year programs established by CAWCD.
23 Such contracts shall not exceed a term of one year, but may contain a provision for
24 automatic renewal without further action by the parties thereto. Such automatic
25 renewal shall not give rise to a right in any subsequent year to receive Excess Water,
26 nor preclude future long-term contracts or subcontracts nor limit the terms thereof,
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1 including in implementation of Indian water right settlements up to a total for all long-
2 term contracts and subcontracts of 1.415 million acre-feet. By its terms, Subarticle
3 8.8(b) of the 1988 Contract does not apply to contracts for Excess Water service under
4 this paragraph; however, such contracts entered into after the filing of this Judgment
5 shall comply substantially with the provisions of Subarticles 8.8(b)(i), 8.8(b)(ii),
6 8.8(b)(iii), 8.8(b)(iv), 8.8(b)(viii) and 8.8(b)(x) of the 1988 Contract. Pursuant to 43
7 U.S.C. § 1524(b)(1), all contracts that conform to the provisions of this paragraph shall
8 be deemed approved by the Secretary. The Secretary must be a party to or must
9 expressly approve all contracts for Project Water service other than those which
10 conform to the provisions of this paragraph.
11

12
13 (5) CAWCD may, at its discretion, establish programs for the
14 sale of Excess Water under this paragraph that provide for various categories and
15 charges for Excess Water. Through 2030, in any year in which Excess Water is offered
16 for sale under this paragraph, any Indian contractor of Project Water service or the
17 United States shall have the right to purchase Excess Water from any Excess Water
18 category not established exclusively for the use of non-Indian agriculture or the Arizona
19 Water Banking Authority, at the same charge and upon the same terms and conditions
20 as for other users in that category. Any water available within an exclusive category
21 that is not fully used by eligible participants in that category shall be made available to
22 other Excess Water categories. After 2030, in any year in which Excess Water is
23 offered for sale under this paragraph, any Indian contractor of Project Water service or
24 the United States shall have the right to purchase Excess Water from any Excess Water
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1 category at the same charge and upon the same terms and conditions as for other users
2 in that category.

3
4 (6) Nothing in this paragraph precludes the United States or any
5 Indian tribe from entering into a contract with the Arizona Water Banking Authority.

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

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

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

16 (a) The Lower Colorado River Basin Development Fund ("LBDF"),
17 established pursuant to Section 403 of the Colorado River Basin Project Act, 43 U.S.C.
18 § 1543, shall be administered, and past accountings adjusted as follows:
19

20 (i) Exhibit "A-1" reflects a credit of \$215,091,981 for all past
21 payments made by CAWCD pursuant to annual billings issued by the United States
22 since 1993.
23

24 (ii) Exhibit "A-1" reflects a credit in the amount of \$31,703,022
25 for CAWCD's advance of funds for the United States' purchase of the Harquahala
26 Valley Irrigation District's CAP allocation for use in Indian water rights settlements.
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1 (iii) Exhibit "A-1" reflects credits totaling \$45,587,903 for
2 expenditures made through December 31, 2006 by CAWCD to correct CAP
3 construction deficiencies.
4

5 (iv) Exhibit "A-1" reflects a credit in the amount of \$2,969,251
6 for the value of CAWCD's unreimbursed employee-related costs accrued prior to 1994.
7

8 (v) Exhibit "A-1" reflects a credit in the amount of \$283,515,712
9 for revenues credited to or deposited in the LBDF from the sale of Navajo Surplus
10 Power through December 31, 2006.

11 (vi) Exhibit "A-1" reflects credits totaling \$65,792,128 for
12 revenues credited to or deposited in the LBDF associated with the Hoover 4.5-mill
13 surcharge and the Parker Davis 4.5-mill surcharge through December 31, 2006.
14

15 (vii) Exhibit "A-1" reflects credits totaling \$38,381,978 for net
16 miscellaneous revenues credited to or deposited in the LBDF through December 31,
17 2006.
18

19 (viii) Exhibit "A-1" reflects offsets totaling \$1,238,600 for
20 Reclamation oversight costs except for those described in paragraph 13 below.

21 (b) The LBDF shall be further administered as follows:

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

6 (ii) All miscellaneous CAP revenues shall be credited, in relevant
7 years, against future Exhibit "A" payments due to the United States from CAWCD,
8 including, but not limited to, all revenues from the use, rental, sale, exchange or inter-
9 agency or inter-governmental transfer of CAP lands or other property. In the case of
10 exchanges or inter-agency or inter-governmental transfers of real property, credits for
11 transactions which take place after May 9, 2000 shall equal the greater of cost or the
12 fair market value of such land or property at the time of the exchange. Fair market
13 value will be determined by independent appraisal funded out of proceeds of the sale or,
14 if no sale takes place, funded as reimbursable oversight costs. Where reimbursable
15 costs are not associated with the acquisition of property, then the provisions of this
16 subparagraph shall not apply to the disposal of that property but, rather, the statutory
17 provisions associated with the acquisition and disposal of that property shall govern
18 how the value of that property shall be accounted for.

22 (iii) A credit against Exhibit "A" payments due to the United
23 States from CAWCD has been made based upon the agreed-upon costs associated with
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27 ² This subparagraph does not apply to the 2.5-mill surcharge to purchasers in California
28 and Nevada.

1 work undertaken by CAWCD to correct CAP construction deficiencies. Recoveries on
2 claims made by the United States against CAP siphon construction related contractors
3 were divided 35% to CAWCD and 65% to the United States. CAWCD's share of such
4 recoveries was applied as a credit against the Exhibit "A" payments due to the United
5 States from CAWCD.
6

7 (c) Costs associated with the miscellaneous revenues addressed in
8 subparagraph 6(b)(ii) shall be billed as part of a work plan developed for that purpose.
9 In the event of a dispute with respect to the billing provided for herein, CAWCD and
10 the United States shall follow the ADR procedures set forth in paragraph 10.
11

12 (d) (i) Nothing in this Judgment shall affect the establishment,
13 collection, payment and application of the Additional Rate Component charged for
14 Navajo Surplus Power and used for the payment of bonds issued by CAWCD before
15 January 1, 2003 (hereinafter "Outstanding Bonds"). CAWCD and the United States
16 acknowledge that the amounts collected from such Additional Rate Component are
17 properly held by the Trustee designated by CAWCD and properly used to pay debt
18 service, costs, and rebate obligations associated with such Outstanding Bonds and to
19 fund reserves therefor.
20

21 (ii) Except as expressly provided in this subparagraph (ii),
22 nothing in this Judgment shall affect the establishment, collection, payment and
23 application of the Capacity Charge (including the Additional Rate Component) charged
24 for Navajo Surplus Power (the "Capacity Charge") as provided in the following
25 documents: (1) Reclamation Agreement No. O-CS-30-P1076, as amended by the First
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1 Amendment thereto (as amended, the "Interagency Agreement"); (2) Contracts Nos.
2 89-BCA-10287 and 91-PAO-10404 for Long Term Sale of Navajo Surplus Power
3 (collectively, the "Power Sales Contracts"); and (3) the Bond Indenture dated as of
4 May 1, 1990, by and between CAWCD and Citibank (Arizona) as trustee (together with
5 its successors, the "Bond Trustee"), as amended by the First Supplement to Bond
6 Indenture dated as of March 1, 1993, by and between CAWCD and the Bond Trustee
7 and by the Second Supplement to Bond Indenture dated as of September 1, 2001, by
8 and between CAWCD and the Bond Trustee; and the Bond Indenture dated as of
9 August 1, 1991, by and between CAWCD and the Bond Trustee, as supplemented by
10 the First Supplement to Bond Indenture dated as of February 1, 1994, by and between
11 CAWCD and the Bond Trustee and by the Second Supplement to Bond Indenture dated
12 as of September 1, 2001, by and between CAWCD and the Bond Trustee (collectively,
13 the "Bond Indentures"). This Judgment does not impose on the United States and the
14 United States does not by virtue of this Judgment assume any obligations under the
15 Bond Indentures. Notwithstanding the provisions of the Bond Indentures and the
16 Interagency Agreement, all revenues from the Capacity Charge and all monies held by
17 the Bond Trustee under the Bond Indentures, to the extent such revenues and monies
18 are not necessary to pay debt service, costs, or rebate obligations associated with
19 Outstanding Bonds or to fund reserves therefor, may be paid, at CAWCD's option and
20 in lieu of payment to Reclamation for deposit in the LBDF, to CAWCD to be used by
21 CAWCD solely to establish a reserve to cover the costs associated with major repair or
22 replacement of CAP features. To accomplish this result, the Bond Trustee may be
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1 directed by CAWCD to pay such amounts directly to CAWCD from time to time and,
2 whenever it is no longer necessary to have the Capacity Charge paid to the Bond
3 Trustee under the Bond Indentures, CAWCD may designate itself or any institutional
4 trustee acting on CAWCD's behalf, as trustee to receive the Capacity Charge. In
5 consideration for this, CAWCD has agreed to pay and, pursuant to this Judgment, shall
6 pay the United States \$12,000,000 on or before December 31, 2011, which payment
7 shall be applied as a prepayment of the last \$12,000,000 due on the non-interest bearing
8 portion of CAWCD's Exhibit "A" Repayment Obligation. The foregoing applies only
9 to revenues from the sale of Navajo Surplus Power prior to October 1, 2011.

12 (e) CAWCD shall annually have the right, upon 90 days advance
13 written notice, to audit the United States administration of the LBDF. To the extent that
14 a dispute arises over how the United States administers the LBDF provisions identified
15 in this paragraph, and no mutually agreeable resolution can be achieved, CAWCD and
16 the United States shall follow the ADR procedures set forth in paragraph 10 herein.

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

21 (ii) CAWCD will not dispute the categories of costs specified in
22 paragraph 8.3 of the Operating Agreement, but may dispute the amount of such costs
23 billed by the United States. CAWCD may dispute any cost billed that is not within the
24 category of costs specified in paragraph 8.3 of the Operating Agreement. If a bill is
25 disputed, CAWCD shall, after noting its protest, nonetheless pay the disputed bill, and
26 CAWCD and the United States shall follow the ADR procedures set forth in
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1 paragraph 10 below with respect to the disputed bill. If CAWCD fails to pay the full
2 amount billed, and the United States prevails, in whole or in part, in the ADR process or
3 in litigation, CAWCD shall pay or lose credit in the applicable amount with interest
4 and/or penalties provided for in Article 9.10 of the 1988 Contract. If CAWCD prevails,
5 in whole or in part, in the ADR process or in litigation, the United States shall repay or
6 credit CAWCD with the full amount awarded plus interest at the Arizona State
7 Treasury investment rate for relevant periods.
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10 (g) Beginning January 1, 2000, net revenues in the LBDF that are
11 available as a credit toward CAWCD's repayment obligation shall be accounted for and
12 quantified by Reclamation on a monthly basis. Within 15 days after each month,
13 Reclamation shall calculate an offsetting credit calculated at 1/24 of 3.342% (simple
14 interest) on the revenues collected during that month plus 1/12 of 3.342% (simple
15 interest) of the revenues collected during each previous month of the current calendar
16 year (the "Additional Offsetting Credit"). Reclamation shall provide CAWCD a
17 monthly report of LBDF revenues and credits calculated under this paragraph. Each
18 year the accumulated balance of the Additional Offsetting Credit, if any, shall be
19 applied against the annual payment due on the following January 20. The offsetting
20 credits dealt with in this subparagraph 6(h) are for the purpose of offsetting interest, if
21 any, that would otherwise be due from CAWCD. The offsetting credits shall have no
22 effect on the principal payments that are otherwise due from CAWCD.
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26 (h) Article 10.3 of the 1988 Contract requires the establishment of
27 certain reserve funds. Article 10.3(a) provides for the establishment of a \$4,000,000
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1 emergency OM&R reserve fund. Article 10.3(b) provides for the establishment of a
2 \$40,000,000 repayment reserve fund. Notwithstanding the limitations on the utilization
3 of the reserve funds that may otherwise exist in the 1988 Contract, CAWCD may, at its
4 reasonable discretion, utilize monies in either fund for meeting the purposes identified
5 in Article 10.3(a)(iv) of the 1988 Contract.
6

7 7. CAWCD and the United States have executed an Operating Agreement
8 (Exhibit "C") setting forth the terms and conditions for performing OM&R-related
9 activities.
10

11 8. All claims for relief raised by Intervenor in this case are deemed to be
12 fully resolved in accordance with the provisions of this Judgment. The United States'
13 objections filed in the bankruptcy action involving Intervenor Central Arizona
14 Irrigation and Drainage District, at the United States' request, are deemed withdrawn.
15

16 9. All matters within the Complaint and Counterclaim not specifically
17 mentioned herein are dismissed with prejudice.
18

19 10. The following non-binding ADR process shall be followed for any dispute
20 arising under subparagraphs 4(e), 4(g), 6(c), 6(e), and 6(f) of this Judgment:

21 (a) CAWCD and the United States shall meet and confer about the issue
22 or issues in an attempt to resolve the dispute. If there are issues that cannot be resolved
23 by CAWCD and the United States, each shall appoint one arbitrator to a panel of
24 arbitrators which will decide the dispute. The appointment of the two arbitrators will
25 occur within 30 days of the meeting referred to above.
26

27 //
28

1 (b) Arbitrators appointed to the arbitration panel shall be skilled and
2 experienced in the field or fields pertaining to the dispute. The two selected arbitrators
3 shall meet within 30 days of their appointment, and at their first meeting they shall
4 appoint a third neutral arbitrator to complete the arbitration panel. The third arbitrator
5 shall act as chairperson of the arbitration panel and shall direct the arbitration
6 proceedings.
7

8 (c) The arbitration process shall be limited to the issue or issues
9 submitted by CAWCD or the United States. The arbitration panel shall not rewrite,
10 amend, or modify this Judgment, the 1988 Contract, the Operating Agreement, or any
11 other agreement or contract between the Parties.
12

13 (d) There shall be no discovery beyond the information and documents
14 made available during the informal meet and confer process provided for in
15 subparagraph 10(a) and the general exchange or availability of records provided for
16 within the 1988 Contract.
17

18 (e) No formal evidentiary hearing shall be provided unless one is
19 requested by either CAWCD or the United States in writing, at the same meeting that
20 the neutral arbitrator is appointed. Assuming that no hearing has been requested, the
21 arbitration panel will meet as deemed necessary by the panel and shall, in a manner it
22 deems appropriate, receive evidence, receive argument or written briefs from CAWCD
23 and the United States, and otherwise gather whatever information is deemed helpful by
24 the panel. The arbitration process to be followed shall be informal in nature, and
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26
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1 CAWCD and the United States shall not be entitled to trial-type proceedings under, for
2 example, formal rules of evidence.

3
4 (f) In the event that either CAWCD or the United States requests a
5 hearing, the arbitration panel shall meet to receive evidence, receive argument and
6 written briefs from CAWCD and the United States as follows:

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

10
11 (ii) Within 10 days of the appointment of the neutral arbitrator,
12 CAWCD and the United States shall each submit a brief of no longer than 15 pages
13 setting forth its case. The brief shall include discussion of all issues relevant to the
14 party's case. Each party shall, as an attachment to its brief, include declarations of not
15 more than two experts and any relevant factual witness. Declarations of expert
16 witnesses must include all opinions to be elicited upon direct testimony and a complete
17 explanation of the basis of these opinions. Disputes with respect to the sufficiency of
18 declarations or the appropriateness of the testimony shall be resolved by the arbitration
19 panel who may allow the testimony or exclude it. All expert witnesses must be
20 available for cross-examination at the time of the arbitration hearing. Factual witnesses
21 for which a declaration is prepared shall be made available for cross-examination at the
22 time of the arbitration hearing only if requested by the other party.

23 //

24 //

1 (iii) Each party shall have the opportunity, within 5 days of the
2 close of the hearing, to submit a closing brief not to exceed 10 pages. The closing brief
3 shall be argument with no additional factual evidence to be submitted.
4

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

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

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

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

21 (h) If either CAWCD or the United States declines to accept the
22 decision of the arbitration panel, it may initiate an action in the appropriate Federal
23 court within 60 days of the issuance of the panel's written decision to obtain a judicial
24 determination of the underlying dispute. If an action is not filed within 60 days of the
25 panel's decision, the decision of the panel shall be deemed to be final and not subject to
26 judicial review. The decision of the panel and record of the arbitration shall not be
27
28

1 privileged and may be submitted as part of the record by either side in support of its
2 case.

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

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

15
16 (k) Nothing contained within this Paragraph 10 is intended nor shall it
17 be interpreted as an agreement to toll any applicable statute of limitations.

18
19 11. Except as provided for herein, the 1988 Contract remains in full force and
20 effect, including but not limited to the provisions of Articles 9.6(e) and 9.9. Article
21 10.9 of the 1988 Contract shall govern all obligations of the United States under this
22 Judgment. Except as otherwise provided for herein, terms defined within the 1988
23 Contract that are used in this Judgment have been capitalized and shall have the
24 meaning ascribed to them in the 1988 Contract. Notwithstanding the foregoing, to the
25 extent that the 1988 Contract is inconsistent with the provisions of this Judgment, the
26 provisions of this Judgment shall govern. Nothing in this Judgment is intended to affect
27
28

1 the rights of long-term contractors and subcontractors of Project Water service or any
2 Colorado River water right holders. Nothing in this Judgment is intended to preclude
3 CAWCD and the United States from entering into additional agreements or
4 amendments to existing agreements regarding the subjects addressed in this Judgment.
5 This Judgment and all actions authorized hereunder are subject to Federal law, State of
6 Arizona law, and such rules and regulations as the Secretary may deem appropriate, as
7 those laws and rules and regulations may be amended, and, except as provided herein,
8 the 1988 Contract. Nothing in this Judgment may be used in any way to control the
9 CAP water allocation process or affect its interpretation.

12 12. The Parties shall cooperate in carrying out the provisions and intent of this
13 Stipulation.

15 13. Each Party shall pay for its own costs, including attorney fees and expert
16 fees in this litigation. These costs shall not be included as Fixed OM&R Costs; nor are
17 they to be made reimbursable or made part of costs billable to CAWCD.

19 14. The United States shall market and exchange Navajo Surplus Power after
20 September 30, 2011, in accordance with the amended Navajo Power Marketing Plan.

22 15. All requirements or obligations set forth within this Judgment that require
23 an appropriation on the part of the United States are expressly subject to such
24 appropriations being approved by Congress.

26 16. The United States shall provide CAWCD with an annual accounting of its
27 uses of the LBDF revenues.

28 //

17. The Parties have by joint motion requested entry of Judgment in accordance with this Stipulation for Judgment and, to the extent the terms of the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon Satisfaction of Conditions, filed April 11, 2003, are inconsistent with this Stipulation for Judgment, the Parties agree to and shall abide by the terms of this Stipulation for Judgment. The provisions of this Stipulation for Judgment do not and shall not be interpreted to affect or supersede Paragraphs 10(b)–(h) of the Revised Stipulation which shall continue to be binding on the Parties except as the Parties otherwise shall agree.

SOMACH, SIMMONS & DUNN
A Professional Corporation

Dated: September 27, 2007

By

Stuart L. Somach

Attorneys for Plaintiff Central Arizona Water
Conservation District

UNITED STATES DEPARTMENT OF JUSTICE

Dated: September 27, 2007

By

John T. Stemplewicz

Attorneys for Defendants

1 17. The Parties have by joint motion requested entry of Judgment in
2 accordance with this Stipulation for Judgment and, to the extent the terms of the
3 Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the
4 Stay, and for Ultimate Judgment Upon Satisfaction of Conditions, filed April 11, 2003,
5 are inconsistent with this Stipulation for Judgment, the Parties agree to and shall abide
6 by the terms of this Stipulation for Judgment. The provisions of this Stipulation for
7 Judgment do not and shall not be interpreted to affect or supersede Paragraphs 10(b)-
8 (h) of the Revised Stipulation which shall continue to be binding on the Parties except
9 as the Parties otherwise shall agree.
10

11
12 SOMACH, SIMMONS & DUNN
13 A Professional Corporation

14
15 Dated: September 27, 2007

16 By 

Stuart L. Somach

17 Attorneys for Plaintiff Central Arizona Water
18 Conservation District

19
20 UNITED STATES DEPARTMENT OF JUSTICE

21
22
23 Dated: September 27, 2007

24 By 

John T. Stemplewicz

25 Attorneys for Defendants
26
27
28

Exhibit A to
EXHIBIT B

CENTRAL ARIZONA WATER CONSERVATION DISTRICT
FEDERAL REPAYMENT OBLIGATION

EXHIBIT A

	Beginning Balance Interest Bearing		Beginning Balance Non-Interest Bearing		Payment Due		
	Stage I	Stage II	Stage I	Stage II	Principal	Interest	Total
1994	917,744,685		339,439,815		12,571,845	8,945,716	21,517,561
1995	905,194,412		339,418,243		12,571,845	30,251,597	42,323,442
1996	893,625,867		338,414,943		12,571,845	29,864,976	42,436,821
1997	882,118,224	286,755,315	337,350,741	106,060,185	16,500,000	32,275,538	48,775,538
1998	870,744,611	282,827,160	336,152,509	106,060,185	16,500,000	38,552,369	55,052,369
1999	859,339,950	278,899,005	334,985,325	106,060,185	16,500,000	38,039,946	54,539,946
2000	847,695,473	274,970,850	334,057,957	106,060,185	16,500,000	37,519,509	54,019,509
2001	836,242,764	271,042,695	332,938,821	106,060,185	20,271,554	37,005,480	57,277,034
2002	820,999,366	267,114,540	331,838,821	106,060,185	20,271,554	36,364,767	56,636,320
2003	805,755,967	263,186,385	330,738,821	106,060,185	20,271,554	35,724,053	55,995,607
2004	790,512,569	259,258,230	329,638,821	106,060,185	21,450,000	35,083,340	56,533,340
2005	775,269,170	254,151,629	328,538,821	106,060,185	21,450,000	34,403,243	55,853,243
2006	759,725,772	249,045,027	327,738,821	106,060,185	21,450,000	33,713,120	55,163,120
2007	744,182,373	243,938,426	326,938,821	106,060,185	21,450,000	33,022,997	54,472,997
2008	728,638,975	238,831,824	326,138,821	106,060,185	25,221,554	32,332,874	57,554,428
2009	709,324,023	233,725,223	325,338,821	106,060,185	25,221,554	31,516,706	56,738,259
2010	690,009,071	228,618,621	324,538,821	106,060,185	25,221,554	30,700,537	55,922,091
2011	670,694,119	223,512,020	323,738,821	106,060,185	26,400,000	29,884,369	56,284,369
2012	651,379,167	217,226,972	322,938,821	106,060,185	26,400,000	29,028,817	55,428,817
2013	632,064,215	210,941,924	322,138,821	106,060,185	26,400,000	28,173,265	54,573,265
2014	612,749,263	204,656,876	321,338,821	106,060,185	26,400,000	27,317,713	53,717,713
2015	593,434,311	198,371,828	320,538,821	106,060,185	31,428,738	26,462,161	57,890,899
2016	569,090,621	192,086,780	319,738,821	106,060,185	31,428,738	25,438,549	56,867,287
2017	544,746,931	185,801,732	318,938,821	106,060,185	31,428,738	24,414,938	55,843,674
2018	520,403,241	179,516,684	318,138,821	106,060,185	33,000,000	23,391,324	56,391,324
2019	495,859,551	171,660,374	317,538,821	106,060,185	33,000,000	22,308,518	55,308,518
2020	471,315,881	163,804,064	316,938,821	106,060,185	33,000,000	21,225,708	54,225,708
2021	446,772,171	155,947,754	316,338,821	106,060,185	33,000,000	20,142,900	53,142,900
2022	422,228,481	148,091,444	315,738,821	106,060,185	40,543,107	19,060,092	59,603,199
2023	390,141,684	140,235,134	315,138,821	106,060,185	40,543,107	17,725,193	58,268,300
2024	358,054,887	132,378,824	314,538,821	106,060,185	40,543,107	16,390,295	56,933,402
2025	325,968,090	124,522,514	313,938,821	106,060,185	42,900,000	15,055,396	57,955,396
2026	293,731,293	114,309,311	313,488,821	106,060,185	42,900,000	13,636,717	56,536,717
2027	261,494,496	104,095,108	313,038,821	106,060,185	42,900,000	12,218,038	55,118,038
2028	229,257,699	93,882,905	312,588,821	106,060,185	42,900,000	10,799,359	53,699,359
2029	197,020,902	83,669,702	312,138,821	106,060,185	44,157,185	9,380,680	53,537,864
2030	163,526,920	73,456,499	311,688,821	106,060,185	44,157,185	7,919,986	52,077,170
2031	130,032,939	63,243,296	311,238,821	106,060,185	44,157,185	6,459,292	50,616,476
2032	96,538,957	53,030,093	310,788,821	106,060,185	44,550,000	4,998,598	49,548,598
2033	63,024,176	42,424,074	310,359,621	106,060,185	44,550,000	3,524,080	48,074,080
2034	29,488,594	31,818,056	309,951,221	106,060,185	44,550,000	2,048,868	46,598,868
2035	-	21,212,037	305,495,834	106,060,185	44,550,000	708,908	45,258,906
2036	-	10,606,019	271,551,852	106,060,185	44,550,000	354,453	44,904,453
2037	-	-	237,607,871	106,060,185	44,550,000	-	44,550,000
2038	-	-	203,663,889	95,454,167	44,550,000	-	44,550,000
2039	-	-	169,719,908	84,848,148	44,550,000	-	44,550,000
2040	-	-	135,775,926	74,242,130	44,550,000	-	44,550,000
2041	-	-	101,831,945	63,636,111	44,550,000	-	44,550,000
2042	-	-	67,887,963	53,030,093	44,550,000	-	44,550,000
2043	-	-	33,943,982	42,424,074	44,550,000	-	44,550,000
2044	-	-	-	31,818,056	10,606,019	-	10,606,019
2045	-	-	-	21,212,037	10,606,019	-	10,606,019
2046	-	-	-	10,606,019	10,606,019	-	10,606,019
					1,650,000,000	973,384,980	2,623,384,980

Exhibit A-1 to
EXHIBIT B

Exhibit A-1

Year	Exhibit A Print Due Next Jan 20	CAWCD Payment	HVID Advance	Siphon Deficiencies Credit [1]	Siphon Settlement Credit	SO2 Credit	Employee Credit	LBDP Navajo	LBDP Hoover/PO	Net Misc Revenues [2][3]	BOR Oversight	Interest on LBDP	Interest on Credit Balance	TOTAL CREDITS	(Over) Under Payment	Balance	AZ Interest Rate
1993	21,471,429	-	22,743,047	-	-	-	2,969,251	(5,288,453)	858,461	193,802	(4,679)	-	-	21,471,429	-	(15,178,631)	6.26%
1994	42,731,633	34,331,706	8,953,975	168,368	-	-	-	10,777,530	3,732,431	(11,479)	(48,267)	-	-	57,910,264	(15,178,631)	(15,178,631)	6.26%
1995	42,345,913	-	-	352,075	-	-	-	32,708,643	3,519,477	(22,526)	(126,870)	-	953,218	37,384,017	4,961,896	(10,216,735)	6.28%
1996	48,671,116	10,850,478	-	22,438,705	-	-	-	14,486,194	4,281,017	(12,851)	(222,623)	-	587,462	52,408,382	(3,738,266)	(13,855,001)	5.75%
1997	54,934,575	18,248,989	-	8,861,720	-	-	-	23,260,373	7,143,485	66,073	(240,886)	-	826,136	56,165,890	(1,231,315)	(15,186,316)	5.82%
1998	54,423,335	38,443,395	-	2,172,381	-	-	-	21,961,922	6,731,890	(15,786)	(189,904)	-	929,403	70,033,101	(15,609,766)	(30,796,082)	5.12%
1999	53,904,080	25,898,378	-	3,953,909	-	-	-	21,982,887	5,926,876	316,697	(405,370)	-	1,807,730	58,486,707	(5,562,627)	(36,378,709)	5.87%
2000	57,154,701	-	-	5,330,057	-	-	-	20,970,052	5,588,040	204,788	-	460,581	2,346,427	35,089,945	22,084,758	(14,293,953)	6.45%
2001	56,515,440	8,098,875	-	367,300	-	-	-	27,764,909	5,342,166	532,688	-	551,633	714,698	43,370,169	13,145,271	(1,148,682)	5.00%
2002	55,876,179	20,552,794	-	902,461	-	-	-	28,745,297	4,962,006	333,207	-	499,842	40,089	56,035,696	(159,517)	(1,308,199)	3.49%
2003	56,412,839	27,281,313	-	(68,033)	2,450,000	-	-	20,418,293	4,056,605	527,082	-	439,380	-	55,104,640	1,308,199	-	-
2004	55,734,279	19,258,226	-	2,005,997	1,050,000	3,000,000	-	25,530,794	3,402,225	903,481	-	883,556	-	55,734,279	-	-	-
2005	55,045,693	3,453,519	-	495,963	-	9,350,000	-	22,436,578	4,221,504	14,521,083	-	567,046	-	55,045,693	-	-	-
2006	54,357,105	8,676,308	-	-	-	-	-	18,160,993	6,056,345	20,845,719	-	617,740	-	54,357,105	-	-	-
	709,578,317	215,091,981	31,703,022	45,587,903	3,500,000	12,350,000	2,969,251	283,515,712	65,792,128	38,381,978	(1,238,599)	3,719,778	8,205,163	709,578,317	-	-	-

[1] Includes true-up adjustment of \$446 in 2004.

[2] Includes a rounding adjustment of \$4 in 2003.

[3] Includes collection of recreation admin reimbursements credited on oversight bills and repayment bills - \$-605,000

Includes collection of interest related to recreation admin bills - \$-11,718