

when Colorado River water is exchanged for ground water that otherwise would have been pumped and consumed.

Secretary means the Secretary of the Interior or an authorized representative.

Storage and Interstate Release Agreement means an agreement, consistent with this part, between the Secretary and authorized entities in two or more Lower Division States that addresses the details of:

(1) Offstream storage of Colorado River water by a storing entity for future use within the Storing State;

(2) Subsequent development of ICUA by the storing entity, consistent with the laws of the Storing State;

(3) A request by the storing entity to the Secretary to release ICUA to the consuming entity;

(4) Release of ICUA by the Secretary to the consuming entity; and

(5) The inclusion of other entities that are determined by the Secretary and the storing entity and the consuming entity to be appropriate to the performance and enforcement of the agreement.

Storing entity means an authorized entity in a Storing State.

Storing State means a Lower Division State in which water is stored off the mainstream in accordance with a Storage and Interstate Release Agreement for future use in that State.

Surplus apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary, to satisfy in excess of 7.5 maf of annual consumptive use in the Lower Division States.

Unused apportionment means Colorado River water within a Lower Division State's basic or surplus apportionment, or both, which is not otherwise put to beneficial consumptive use during that year within that State.

Upper Division States means the States of Colorado, New Mexico, Utah, and Wyoming.

Water delivery contract means a contract between the Secretary and an entity for the delivery of Colorado River water in accordance with section 5 of the BCPA.

Subpart B—Storage and Interstate Release Agreements

§ 414.3 Storage and Interstate Release Agreements.

(a) *Basic requirements for Storage and Interstate Release Agreements.* Two or more authorized entities may enter into Storage and Interstate Release Agreements with the Secretary in accordance with paragraph (c) of this section. Each agreement must meet all of the requirements of this section.

(1) The agreement must specify the quantity of Colorado River water to be stored, the Lower Division State in which it is to be stored, the entity(ies) that will store the water, and the facility(ies) in which it will be stored.

(2) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Storing State. For water from the Storing State's apportionment to qualify as unused apportionment available for storage under this part, the water must first be offered to all entitlement holders within the Storing State for purposes other than interstate transactions under proposed Storage and Interstate Release Agreements.

(3) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Consuming State. If the water to be stored will be unused apportionment of the Consuming State, the agreement must acknowledge that any unused apportionment of the Consuming State may be made available from the Consuming State by the Secretary to the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the Secretary will make the unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders.

(4) The agreement must specify the maximum quantity of ICUA that will be developed and made available for release to the consuming entity.

§ 414.3

43 CFR, Subtitle B, Ch. I (10-1-10 Edition)

(5) The agreement must specify that ICUA may not be requested by the consuming entity in a quantity that exceeds the quantity of water that had been stored under a Storage and Interstate Release Agreement in the Storing State.

(6) The agreement must specify a procedure to verify and account for the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement.

(7) The agreement must specify that, by a date certain, the consuming entity will:

(i) Notify the storing entity to develop a specific quantity of ICUA in the following calendar year;

(ii) Ask the Secretary to release that ICUA; and

(iii) Provide a copy of the notice or request to each Lower Division State.

(8) The agreement must specify that when the storing entity receives a request to develop a specific quantity of ICUA:

(i) It will ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the requested quantity of ICUA; and

(ii) Any actions that the storing entity takes will be consistent with its State's laws.

(9) The agreement must include a description of:

(i) The actions the authorized entity will take to develop ICUA;

(ii) Potential actions to decrease the authorized entity's consumptive use of Colorado River water;

(iii) The means by which the development of the ICUA will be enforceable by the storing entity; and

(iv) The notice given to entitlement holders, including Indian tribes, of opportunities to participate in development of this ICUA.

(10) The agreement must specify that the storing entity will certify to the Secretary that ICUA has been or will be developed that otherwise would not have existed. The certification must:

(i) Identify the quantity, the means, and the entity by which ICUA has been or will be developed; and

(ii) Ask the Secretary to make the ICUA available to the consuming entity under Article II(B)(6) of the Decree

and the Storage and Interstate Release Agreement.

(11) The agreement must specify a procedure for verifying development of the ICUA appropriate to the manner in which it is developed.

(12) The agreement must specify that the Secretary will release ICUA developed by the storing entity:

(i) In accordance with a request of the consuming entity;

(ii) In accordance with the terms of the Storage and Interstate Release Agreement;

(iii) Only for use by the consuming entity and not for use by other entitlement holders; and

(iv) In accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree and all other applicable laws and executive orders.

(13) The agreement must specify that ICUA shall be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity by reducing Colorado River water use within the Storing State.

(14) The agreement must specify that the Secretary will release ICUA only after the Secretary has determined that all necessary actions have been taken under this part.

(15) The agreement must specify that before releasing ICUA the Secretary must first determine that the storing entity:

(i) Stored water in accordance with the Storage and Interstate Release Agreement in quantities sufficient to support the development of the ICUA requested by the consuming entity; and

(ii) Certified to the satisfaction of the Secretary that the quantity of ICUA requested by the consuming entity has been developed in that year or will be developed in that year under § 414.3(f).

(16) The agreement must specify that the non-Federal parties to the Storage and Interstate Release Agreement will indemnify the United States, its employees, agents, subcontractors, successors, or assigns from loss or claim for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of the actions taken

by the non-federal parties to the Storage and Interstate Release Agreement under this part.

(17) The agreement must specify the extent to which facilities constructed or financed by the United States will be used to store, convey, or distribute water associated with a Storage and Interstate Release Agreement.

(18) The agreement must include any other provisions that the parties deem appropriate.

(b) *How to address financial considerations.* The Secretary will not execute an agreement that has adverse impacts on the financial interests of the United States. Financial details between and among the non-Federal parties need not be included in the Storage and Interstate Release Agreement but instead can be the subject of separate agreements. The Secretary need not be a party to the separate agreements.

(c) *How the Secretary will execute storage and interstate release agreements.* The Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) may execute and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The Secretary will notify the public of his/her intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input. In considering whether to execute a Storage and Interstate Release Agreement, the Secretary may request, and the non-Federal parties must provide, any additional supporting data necessary to clearly set forth both the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction. The Secretary will also consider: applicable law and executive orders; applicable contracts; potential effects on trust resources; potential effects on entitlement holders, including Indian tribes; potential impacts on the Upper Division States; potential effects on third parties; potential environmental impacts and potential effects on threatened and endangered species; comments from interested parties, particularly parties who may be affected by the proposed action; comments from the State agencies responsible for consulting with the Sec-

retary on matters related to the Colorado River; and other relevant factors, including the direct or indirect consequences of the proposed Storage and Interstate Release Agreement on the financial interests of the United States. Based on the consideration of the factors in this section, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

(d) *Assigning interests to an authorized entity.* Non-Federal parties to a Storage and Interstate Release Agreement may assign their interests in the Agreement to authorized entities. The assignment can be in whole or in part. The assignment can only be made if all parties to the agreement approve.

(e) *Requirement for contracts under the Boulder Canyon Project Act.* Release or diversion of Colorado River water for storage under this part must be supported by a water delivery contract with the Secretary in accordance with Section 5 of the BCPA. The only exception to this requirement is storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part also must be supported by a Section 5 water delivery contract.

(1) An authorized entity may satisfy the requirement of this section through a direct contract with the Secretary. An authorized entity also may satisfy the Section 5 requirement of the BCPA, for purposes of this part, through a valid subcontract with an entitlement holder that is authorized by the Secretary to subcontract for the delivery of all or a portion of its entitlement.

(2) For storing entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be stored, the Storage and Interstate Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.

(3) For consuming entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be released by the Secretary as ICUA, the Storage and Interstate

§414.4

43 CFR, Subtitle B, Ch. I (10–1–10 Edition)

Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.

(f) *Anticipatory release of ICUA.* The Secretary may release ICUA to a consuming entity before the actual development of ICUA by the storing entity if the storing entity certifies to the Secretary that ICUA will be developed during that same year that otherwise would not have existed.

(1) These anticipatory releases will only be made in the same year that the ICUA is developed.

(2) Before an anticipatory release, the Secretary must be satisfied that the storing entity will develop the necessary ICUA in the same year that the ICUA is to be released.

(g) *Treaty obligations.* Prior to executing any specific Storage and Interstate Release Agreements, the United States will consult with Mexico through the International Boundary and Water Commission under the boundary water treaties and other applicable international agreements in force between the two countries.

§414.4 Reporting requirements and accounting under Storage and Interstate Release Agreements.

(a) *Annual report to the Secretary.* Each storing entity will submit an annual report to the Secretary containing the material required by this section. The report will be due on a date to be agreed upon by the parties to the Storage and Interstate Release Agreement. The report must include:

(1) The quantity of water diverted and stored during the prior year under all Storage and Interstate Release Agreements; and

(2) The total quantity of stored water available to support the development of ICUA under each Storage and Interstate Release Agreement to which the storing entity is a party as of December 31 of the prior calendar year.

(b) *How the Secretary accounts for diverted and stored water.* The Secretary will account for water diverted and stored under Storage and Interstate Release Agreements in the records maintained under Article V of the Decree.

(1) The Secretary will account for the water that is diverted and stored by a storing entity as a consumptive use in the Storing State for the year in which it is stored.

(2) The Secretary will account for the diversion and consumptive use of ICUA by a consuming entity as a consumptive use in the Consuming State of unused apportionment under Article II(B)(6) of the Decree in the year the water is released in the same manner as any other unused apportionment taken by that State.

(3) The Secretary will maintain individual balances of the quantities of water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The appropriate balances will be reduced when ICUA is developed by the storing entity and released by the Secretary for use by a consuming entity.

Subpart C—Water Quality and Environmental Compliance

§414.5 Water quality.

(a) *Water Quality is not guaranteed.* The Secretary does not warrant the quality of water released or delivered under Storage and Interstate Release Agreements, and the United States will not be liable for damages of any kind resulting from water quality problems. The United States is not under any obligation to construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

(b) *Required water quality standards.* All entities, in diverting, using, and returning Colorado River water, must:

(1) Comply with all applicable water pollution laws and regulations of the United States, the Storing State, and the Consuming State; and

(2) Obtain all applicable permits or licenses from the appropriate Federal, State, or local authorities regarding water quality and water pollution matters.