

AGREEMENT AMONG
THE UNITED STATES OF AMERICA, THROUGH THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
DENVER WATER, AND
THE SOUTHERN NEVADA WATER AUTHORITY,
FOR A PILOT PROGRAM FOR FUNDING THE CREATION OF COLORADO RIVER
SYSTEM WATER THROUGH VOLUNTARY WATER CONSERVATION AND
REDUCTIONS IN USE

1. PREAMBLE: THIS AGREEMENT ("Agreement") is entered into this 30th day of July, 2014 ("Effective Date"), by and between the UNITED STATES OF AMERICA ("United States"), represented by the Secretary of the Interior ("Secretary") acting through the officials executing this Agreement, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a multi-county water conservation district duly organized and existing under the laws of the State of Arizona ("CAWCD"), the METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a regional public water district duly organized under California law ("MWD"), DENVER WATER, a municipal corporation and political subdivision of the State of Colorado ("DW"), and the SOUTHERN NEVADA WATER AUTHORITY, a political subdivision of the State of Nevada ("SNWA"), each being referred to individually as "Party" and collectively as the "Parties", and pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto, the Act of March 4, 1921 referred to as the Contributed Funds Act (41 Stat. 1404, 43 U.S.C. § 395), the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C. § 397a), the Act of December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, the Act of April 11, 1956 (70 Stat. 105), designated the Colorado River Storage Project Act; the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act, the Act of

June 24, 1974 (88 Stat. 266), designated the Colorado River Basin Salinity Control Act, as amended, and the Act of March 30, 2009 (123 Stat. 991), known as the Omnibus Public Land Management Act, all of which acts are part of the body of law commonly known and referred to as Federal Reclamation law.

2. RECITALS:

2.1 WHEREAS, for the purposes of controlling floods, improving navigation, regulating the flow of the Colorado River, and providing for storage and delivery of stored water for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, acting under and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, has constructed and is now operating and maintaining in the mainstream of the Colorado River at Black Canyon that certain structure known and designated as Hoover Dam and incidental facilities, creating thereby a reservoir designated as Lake Mead;

2.2 WHEREAS, the Boulder Canyon Project Act provides, among other things, that the Secretary is authorized, under such general regulations as he or she may prescribe, to contract for the storage of water in Lake Mead and for the delivery of such water at such points as may be agreed upon for irrigation and domestic uses;

2.3 WHEREAS, the Boulder Canyon Project Act provides further that no person shall have or be entitled to have the use, for any purpose, of the stored water in Lake Mead, except by contract with the Secretary;

2.4 WHEREAS, the Colorado River Storage Project Act and the Colorado River Basin Project Act authorized, among other things, the Secretary to construct and operate Glen Canyon Dam and Lake Powell, which allows the Upper Division States to utilize their share of the Colorado River and meet their obligations to the Lower Division States under the Colorado River Compact;

2.5 WHEREAS, the Colorado River Basin Salinity Control Act of 1974 authorized the Secretary to implement various projects to reduce salinity in the Colorado River Basin and directed the Secretary to undertake research on additional methods for accomplishing that objective;

2.6 WHEREAS, the United States Bureau of Reclamation, hereinafter referred to as “Reclamation,” adopted a Policy Establishing a Demonstration Program for System Conservation of Colorado River Water (“Demonstration Policy”) on May 26, 2006, and extended the Policy in 2009. The Demonstration Policy expired on December 31, 2010;

2.7 WHEREAS, recognizing the effects of ongoing drought in the Colorado River Basin, the purpose of the Demonstration Policy was to establish a demonstration or “pilot” program of voluntary agreements with eligible holders of Colorado River water entitlements to conserve a portion of their approved annual consumptive use of Colorado River water for the benefit of Colorado River system storage;

2.8 WHEREAS, one of the purposes of the Pilot Program defined below and established herein shall be to further investigations and system benefits initiated under the Demonstration Policy;

2.9 WHEREAS, MWD and Reclamation entered into an agreement pursuant to the Demonstration Policy on August 15, 2006, whereby owners of land within the Palo Verde Irrigation District (“PVID”) voluntarily fallowed land within the PVID service area that was eligible to receive Colorado River water pursuant to an agreement between PVID and MWD;

2.10 WHEREAS, pursuant to the August 15, 2006, agreement between Reclamation and MWD, Reclamation paid MWD to undertake fallowing on a voluntary basis within PVID, with the goal of conserving 10,000 acre-feet of Colorado River water for the benefit of the overall Colorado River system;

2.11 WHEREAS, the Yuma Mesa Irrigation and Drainage District (“YMIDD”) and Reclamation entered into agreements pursuant to the Demonstration Policy on February 4, 2008,

October 7, 2008, and December 28, 2009, whereby Reclamation paid YMIDD to undertake fallowing on a voluntary basis within YMIDD to conserve Colorado River water for the benefit of the overall Colorado River System;

2.12 WHEREAS, the Colorado River System has been suffering from the effects of a drought that began 14 years ago, leading to substantially decreased water elevation levels in both Lakes Mead and Powell;

2.13 WHEREAS, recent Colorado River System modeling projections show a serious near-term risk that water elevations in both Lakes Mead and Powell could decline to levels that would trigger shortages and could interrupt the ability of certain municipal users to draw or benefit from water from both lakes and certain hydropower users to benefit from hydroelectric energy generation;

2.14 WHEREAS, in December 2012, Reclamation and the seven Colorado River Basin States completed the Colorado River Basin Water Supply and Demand Study (“Basin Study”), with the purpose of defining future imbalances in water supply and demand through the year 2060, and to develop and analyze options and strategies to resolve those imbalances;

2.15 WHEREAS, results from the Basin Study show that without further proactive steps, there may be a long-term and potentially significant imbalance in future water supply and demand. Options to address these imbalances include increased agricultural and municipal water conservation;

2.16 WHEREAS, municipal water agencies in the Colorado River Basin provide a secure water supply to over 30 million residents in the United States, meeting basic human needs and sustaining vital economic functions in the region, United States and the world. Based on their many shared interests, municipal water agencies in the Colorado River Basin have been working together for nearly 20 years on initiatives to develop water supplies, manage demand through conservation, and operate Colorado River System reservoirs for the benefit of multiple interests;

2.17 WHEREAS, all CAWCD municipal customers supplied by the Central Arizona Project, including Phoenix and Tucson, have been successful in reducing per capita consumption by making significant investments in conservation, reuse, and infrastructure. The City of Phoenix has reduced water use by 35 percent since 1980, while approximately 97 percent of the City of Scottsdale's reclaimed water is reused for turf irrigation or recharge efforts. CAWCD municipal customers remain committed to expand these investments;

2.18 WHEREAS, in MWD's service area, southern California urban agencies have funded agricultural and urban conservation measures which have allowed the State of California to reduce its use of Colorado River water by 20 percent over the last decade. In addition, through investments in water conservation and local supply management, including recycling, urban southern California imports less water today than it did 20 years ago, despite the region having added more than 4 million people. MWD remains committed to expand these efforts;

2.19 WHEREAS, DW has reduced its overall water use by over 20 percent since 2002 while serving an ever-increasing population, in part through its nationally recognized Use Only What You Need campaign. DW has expended over \$100 million in its various conservation programs to save a cumulative total of over 1 million acre-feet of water, much of which has benefited the Colorado River Basin. DW has constructed a recycled water treatment plant, and is steadily increasing service to parks, golf courses, and industrial users in its service area using recycled water. DW remains committed to expand these efforts;

2.20 WHEREAS, SNWA's annual water consumption decreased by nearly 32 billion gallons between 2002 and 2013, despite a population increase of 480,000 people during that time. This equates to a reduction of approximately 30 percent in southern Nevada's gallons per capita per day demand. Southern Nevada currently reclaims nearly all of its wastewater, either through Colorado River return flow credits or direct reuse. SNWA remains committed to expand these efforts;

2.21 WHEREAS, the Parties propose to establish a Pilot Program (defined below) whereby users of Colorado River water would be compensated for voluntary reductions in water use, including the fallowing of agricultural lands or increased water efficiency, and whereby other system losses or demands would be eliminated in order to create conserved water for storage in Lakes Powell and Mead so as to manage water elevation levels in Lakes Mead and Powell above critically low elevations, to benefit the overall Colorado River System, and to reduce salinity;

2.22 WHEREAS, the Parties desire to cooperate with the users of water for agricultural purposes, avoid adverse economic and environmental impacts, and compensate voluntary reductions of consumptive use of water by fallowing agricultural lands only to the extent such reductions in consumptive use avoids injury to existing water rights;

2.23 WHEREAS, CAWCD, MWD, DW, and SNWA are willing and able pursuant to the terms of this Agreement to make monetary capital contributions to implement the Pilot Program in recognition of financial commitments from the United States for the Pilot Program;

2.24 WHEREAS, Reclamation has committed to further the objectives of this Agreement and the Pilot Program by making available \$3 million within its existing authorities and available funding for system conservation efforts pursuant to the Pilot Program;

2.25 WHEREAS, other entities have expressed interest in potentially contributing capital for the Pilot Program; and

2.26 WHEREAS, the Parties desire to set forth their understanding as to the monetary contributions that will be provided by CAWCD, MWD, DW, SNWA, the United States, and any additional parties, with respect to these contributions and services.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

3. APPLICABILITY: Participation in System Conservation activities as part of the Pilot Program implemented pursuant to this Agreement within the Lower Division States shall be

limited to Entitlement Holders (as defined below). Participation in System Conservation activities as part of the Pilot Program implemented pursuant to this Agreement within the Upper Division States shall be limited to Upper Basin Colorado River Water Users (as defined below).

4. DEFINITIONS: For the purpose of this Agreement, the following definitions shall apply:

4.1 Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved in Section 13(a) of the Boulder Canyon Project Act.

4.2 Colorado River System shall have the meaning ascribed to such term in the Colorado River Compact.

4.3 Consolidated Decree means the decree entered by the United States Supreme Court in the matter of *Arizona v. California* on March 27, 2006 (547 U.S. 150).

4.4 Consumptive Use means diversions from the Colorado River System, less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican Treaty Obligation. Consumptive use from the Colorado River includes the consumptive use of water drawn from the Colorado River System by underground pumping. The Mexican Treaty Obligation is set forth in the February 3, 1944 Water Treaty between Mexico and the United States, including supplements and associated Minutes of the International Boundary and Water Commission.

4.5 Entitlement Holder means a person, or entity, within the Lower Division States or Mexico that: (i) has an existing authorization to divert or order Colorado River water, (ii) with the consent of (i) is located within the water service area of (i); or (iii) has control of state appropriated water rights on the Muddy and Virgin Rivers, all as reasonably required for beneficial uses.

4.6 Local Funding Agencies means CAWCD, MWD, DW, and SNWA, all of which are public entities that use water from the Colorado River Basin for municipal purposes.

4.7 Lower Division States means Arizona, California, and Nevada, as defined in the Colorado River Compact.

4.8 Mainstream shall have the meaning ascribed to such term in the Consolidated Decree.

4.9 Pilot Program means the program described in this Agreement.

4.10 System Conservation means a voluntary, measurable reduction of consumptive use of Colorado River water, including the elimination of system losses or reduction in demands through increased efficiency, by an Entitlement Holder or Upper Basin Colorado River Water User through the Pilot Program. All water conserved as a result of the Pilot Program shall be for the sole purpose of increasing storage levels in Lakes Mead and Powell as a benefit to the Colorado River System, and shall not accrue to the benefit or use of any individual user. System Conservation does not include measures: (i) required by Reclamation under its existing contract(s) for delivery of water with an Entitlement Holder, (ii) required by Reclamation to avoid non-beneficial or unreasonable use determinations, (iii) implemented for the purpose of paying back an Inadvertent Overrun by an Entitlement Holder, (iv) implemented by the Entitlement Holder or an Upper Basin Colorado River Water User to meet consumptive use reduction obligations under any transfer, acquisition, or conservation agreement with another party, (v) implemented for monetary payment or other valuable consideration from any third-party not a signatory to this Agreement, (vi) for which an Entitlement Holder receives Intentionally Created Surplus or Intentionally Created Mexican Allocation credits; or (vii) voluntarily or administratively or judicially ordered to be undertaken by an Entitlement Holder or an Upper Basin Colorado River Water User for purposes other than System Conservation.

4.11 System Conservation Implementation Agreement means an agreement to implement System Conservation entered into between Reclamation and an Entitlement Holder or between an Upper Basin Colorado River Water User and the Upper Basin Contracting Entity. Local Funding Agencies shall be third-party beneficiaries of all System Conservation

Implementation Agreements, and shall be entitled to all rights thereunder including specifically the right of enforcement.

4.12 Upper Basin Colorado River Water User means a person or entity within an Upper Division State that has an existing authorization under applicable state law to divert Colorado River System water as reasonably required for beneficial uses.

4.13 Upper Basin Contracting Entity means an entity to be agreed upon by the Parties, such as, by way of example, the Upper Colorado River Commission, the Colorado River Basin Salinity Control Forum, an Upper Division State or States, or Reclamation.

4.14 Upper Division States means Colorado, New Mexico, Utah, and Wyoming, as defined in the Colorado River Compact.

5. GENERAL TERMS AND CONDITIONS:

5.1 Effective Date. This Agreement shall become effective upon the date set forth in Article 1 of this Agreement (the Effective Date) and shall remain in effect until the latter of: (i) two years from the Effective Date; or (ii) December 31 of the year in which the latest System Conservation Implementation Agreement expires.

5.2 Purpose. The purpose of this Agreement is to initiate a Pilot Program for System Conservation to determine whether System Conservation is a sufficiently cost-effective, robust, and feasible method to partially mitigate the impacts of salinity and ongoing drought on the Colorado River System by managing water elevation levels in Lakes Mead and Powell above critically low elevations as a first priority, with the ancillary benefit of enhancing flows in areas upstream of storage reservoirs.

5.3 Reclamation/Upper Basin Contracting Entity Responsibilities. Reclamation shall consult with the Local Funding Agencies, respective Basin States, and other appropriate entities regarding implementation of the Pilot Program. For projects in the Lower Division States, Reclamation shall process requests for and review of Pilot Program proposals, enter into and administer System Conservation Implementation Agreements with Entitlement Holders selected

for inclusion in the Pilot Program, and verify and document consumptive use reductions under the Pilot Program, consistent with this Agreement. For projects in the Upper Division States, the Upper Basin Contracting Entity shall enter into and administer System Conservation Implementation Agreements with Upper Basin Colorado River Water Users selected for inclusion in the Pilot Program. Prior to entering into any System Conservation Implementation Agreement, Reclamation or the Upper Basin Contracting Entity, as applicable, shall enter into a project specific funding agreement with the participating Local Funding Agencies providing for, among other things, the timing of Local Funding Agency contributions, and project specific performance metrics.

5.4 Sequence of Pilot Program Proposals. The Parties will seek proposals from Entitlement Holders following the effective date of this Agreement; provided that no proposals shall be sought until Reclamation has completed all appropriate documentation and approvals, including environmental compliance documentation, as appropriate. The Parties will begin seeking proposals from Upper Basin Colorado River Water Users for implementation during 2015, subject to consultation with the Upper Division States.

5.5 Selection of Pilot Program Participants. The Parties will jointly select Entitlement Holder and Upper Basin Colorado River Water User proposals for inclusion in the Pilot Program based on factors including, without limitation and not in order of importance, the following:

5.5.1 The consistency of the proposal with the requirements of this Agreement;

5.5.2 The need to implement geographically diverse conservation measures, including conservation in both the Upper and Lower Colorado River Basins, to most effectively demonstrate the efficacy of Colorado River System-wide efforts to reduce salinity and maximize the volume of water remaining in Lakes Mead and Powell;

5.5.3 The proposed cost per acre-foot of System Conservation;

5.5.4 The relative size of the proposed project;

5.5.5 The comparative ease or difficulty of administering the contract and verifying the proposed System Conservation, reduction in salinity, or increase in the quantity of water flowing into Lakes Mead and/or Powell;

5.5.6 The amount of time required to implement the activities needed to generate System Conservation;

5.5.7 Required environmental compliance;

5.5.8 Considering the character and relative amount of proposed reductions in consumptive use, the potential for third-party economic impacts that would not be adequately mitigated via compensation to be paid under the proposed program;

5.5.9 The number of intervening water users that are located between the proposed project and Lakes Mead or Powell;

5.5.10 The number and relative difficulty of obtaining any required third-party consents or forbearance agreements;

5.5.11 The degree to which the proposed project will generate measureable increases in flows or water quality that are beneficial for habitat and the environment;

5.5.12 The degree to which the proposed project is consistent with, or leverages additional funding from, other programs, including salinity control and Natural Resources Conservation Service (NRCS) programs; and

5.5.13 The location and timing of increases in flows or water quality from the proposed project.

5.5.14 In addition to the foregoing, the Parties shall consider and utilize, as appropriate, the evaluation criteria developed by Reclamation for the WaterSMART Program evaluation (attached as Attachment 1). Reclamation will document the utilization of the foregoing criteria as part of its consideration for any proposed System Conservation project as part of the Pilot Program.

5.6 Unanimity Required. The Parties' goal is that a System Conservation Implementation Agreement would receive approval by Reclamation and each of the Local Funding Agencies; provided, however, that this provision shall not preclude any of the Parties, or any combination of them, from entering into unrelated contracts with Entitlement Holders or Upper Basin Colorado River Water Users to conserve water in accordance with applicable law or any other program or contract. Further, if a Local Funding Agency does not agree with accepting a proposed System Conservation project into the Pilot Program, a System Conservation Implementation Agreement for the project may still be available, but no funds from the dissenting Local Funding Agency will be used to fund that project; provided, however, that in no event shall a System Conservation Implementation Agreement be executed without the consent of the Local Funding Agency (CAWCD, MWD, DW, or SNWA) located within the same state as the proposed System Conservation project. The Parties shall make no more than \$8.25 million of the funds made available pursuant to this Agreement for proposed System Conservation projects with Entitlement Holders. For proposed System Conservation projects with Upper Basin Colorado River Water users, the Parties shall: (i) seek input regarding potential and proposed projects from the members of the Colorado River Basin Salinity Control Forum; and (ii) approve a System Conservation Implementation Agreement only with the consent of the respective Governor's Representative of the Colorado River Basin state in which the proposed project is located. Within one year from the execution of this Agreement, the Local Funding Agencies shall meet and confer on the progress of implementing projects in the Upper Basin.

5.7 Form of System Conservation Implementation Agreement. Entitlement Holders and Upper Basin Colorado River Water Users selected for participation in the Pilot Program shall be required to execute a System Conservation Implementation Agreement with Reclamation or the Upper Basin Contracting Entity, as applicable. The form of the System Conservation Implementation Agreements may differ based upon the unique needs of each Entitlement Holder or Upper Basin Colorado River Water User and the type of System

Conservation being funded. If an existing agreement is established between a Party and the Entitlement Holder or Upper Colorado Basin River Water User prior to this Agreement, the Party may use that existing agreement and seek reimbursement through a System Conservation Implementation Agreement for its costs, provided that all water conserved as a result of that existing agreement shall be for the sole purpose of increasing storage levels in Lakes Mead and Powell as a benefit to the Colorado River System, and shall not accrue to the benefit or use of any individual user.

5.8 Payments to Participating Entitlement Holders and Upper Basin Colorado River Water Users. Compensation for System Conservation shall be paid by Reclamation or the Upper Basin Contracting Entity from the amounts contributed by the Local Funding Agencies and the funding available from Reclamation for the Pilot Program. Where feasible, Entitlement Holders and Upper Basin Colorado River Water Users shall be paid some or all of the required payments in arrears (after verification has occurred).

5.9 Coordination with NRCS. On-farm water conservation improvements that complement the voluntary water conservation projects proposed through this program may be considered for NRCS funding and technical assistance to the extent such assistance is available. Complementing NRCS Farm Bill programs include the Environmental Quality Incentive Program (EQIP) and Agricultural Water Enhancement Program (AWEP), which are the primary programs that address water quantity and water quality conservation practices. Reclamation will ensure that any proposed project is coordinated with the respective NRCS State Conservationist to assess opportunities for potential NRCS funding and technical assistance.

5.10 Evaluation of Pilot Program. The Local Funding Agencies and Reclamation will evaluate the results of the Pilot Program after its conclusion and consult with the seven Colorado River Basin States and other interested parties to determine whether the Pilot Program should be extended or a long-term System Conservation program should be adopted.

6. CAPITAL CONTRIBUTIONS:

6.1 United States. The United States, through Reclamation, will provide up to \$3 million in funding towards the total Pilot Program costs. Provided, however, that if additional Federal funding becomes available through grants as authorized by Congress, such money can be added to this Agreement without requiring additional contributions from the Local Funding Agencies or amendment of this Agreement.

6.2 Local Funding Agencies. The Local Funding Agencies shall contribute up to \$2 million each towards the Pilot Program costs on schedules that will be determined at such time as projects are approved for implementation pursuant to the Pilot Program. Any unobligated funds after implementing this Agreement, shall be returned to each Local Funding Agency in proportion to the amount contributed.

6.3 Other Entities. Other entities, such as non-governmental organizations, may also provide funding for System Conservation projects under the Pilot Program described in this Agreement by providing money through a Local Funding Agency.

7. ACCOUNTING FOR SYSTEM CONSERVATION WATER:

7.1 Conserved Water. In addition to commitments contained in System Conservation Implementation Agreements, with regard to System Conservation water created pursuant to the Pilot Program, the Local Funding Agencies agree not to request delivery of any of the System Conservation water created pursuant to the Pilot Program to any Entitlement Holder, Upper Basin Colorado River Water User, or a third-party. The System Conservation water created pursuant to this Agreement and a System Conservation Implementation Agreement shall accrue to the benefit of the overall Colorado River System, not for the benefit of any Local Funding Agency, System Conservation Implementation Agreement signatory, or third-party.

7.2 Accounting. Reclamation will provide information regarding the amount of any System Conservation water created by an Entitlement Holder pursuant to the Pilot Program in its annual Colorado River accounting and water use report prepared under Article V of the

Consolidated Decree. Reclamation will provide information regarding the amount of any System Conservation water created by an Upper Basin Colorado River Water User through independent reports and after consultation with the state in which the conservation took place. Reclamation will consult with the Parties on accounting and verification and will consult with the Parties prior to the publication of such data.

7.3 Duplication of Effort. The Parties may already have established programs or processes to calculate consumptive use reductions. For example, additional fallowing on the Virgin River could be tracked simultaneously with SNWA's Intentionally Created Surplus accounting. To the extent complementary efforts exist, Reclamation should utilize the information provided from these efforts. The Parties agree not to seek repayment for any additional costs related to calculating consumptive use reductions.

7.4 Overrun Payback Obligations. An Entitlement Holder that is paying back an overrun under the Inadvertent Overrun and Payback Policy may concurrently participate in the Pilot Program, but will first be obligated to meet its annual overrun payback obligation before forbearing any additional water available for System Conservation under this Agreement and would only be compensated for the additional water forborne beyond its payback obligations.

8. NON-WAIVER: No Party to this Agreement shall be considered to have waived any right hereunder except when such waiver of the right is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or a relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

9. UNCONTROLLABLE FORCES: No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance,

labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

10. REPRESENTATIONS AND WARRANTIES:

10.1 Each Party has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by each Party and the performance by each Party of its obligations hereunder shall not violate or constitute an event of default under the terms or provisions of any agreement, document, or instrument to which each of the Parties is a party or by which each Party is bound.

10.2 Each Party warrants and represents that the individual executing this Agreement on behalf of the Party has the full power and authority to bind the Party he or she represents to the terms of this Agreement.

10.3 This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.

10.4 Each Party: (i) warrants and represents that such Party is authorized by, and has undertaken all prerequisite actions required by, applicable Federal and State laws and regulations to perform the obligations and exercise the rights contemplated herein, (ii) acknowledges that such warranty and representation is a material inducement to, and has been relied upon by, the other Parties in entering into this Agreement and performing their respective obligations hereinafter; and (iii) with respect to projects that are considered or approved for implementation pursuant to the Pilot Program, the Parties will cooperate to use reasonable best efforts in the support, preservation and defense thereof, including any lawsuit or administrative proceeding challenging the legality, validity or enforceability related to such project, and will to the extent appropriate enter into such agreements, including joint defense or common interest agreements,

as are necessary therefor; provided that each Party shall bear its own costs of participation and representation in any such matter.

11. GOVERNING LAW: This Agreement shall be interpreted, governed by, and construed under applicable Federal law. 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.

12. BINDING EFFECT AND LIMITED ASSIGNMENT: The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties upon receipt of written agreement to the terms of this Agreement, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by all Parties. This Agreement is and shall be binding upon and shall inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

13. AMENDMENT, MODIFICATION, AND/OR SUPPLEMENT: This Agreement may be amended, modified, or supplemented only by the written agreement of the Parties. No amendment, modification, or supplement shall be binding unless it is in writing and signed by all Parties.

14. DRAFTING CONSIDERATIONS: Each Party and its counsel have participated fully in the drafting, review, and revision of this Agreement, each of whom is sophisticated in the matters to which this Agreement pertains, and no one Party shall be considered to have drafted this Agreement.

15. 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:

RECLAMATION:

Regional Director
Lower Colorado Region
Attention: LC-1000
500 Fir Street
Boulder City, NV 89005

Regional Director
Upper Colorado Region
125 South State Street, Room 6107
Salt Lake City, UT 84138-1147

CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, AZ 85024-3801
Attn: General Manager

MWD:

The Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153
Attn: General Manager

DW:

Denver Water
1600 West 12th Avenue
Denver, CO 80204-3412
Attn: CEO/Manager

SNWA:

Southern Nevada Water Authority
1001 South Valley View Boulevard, MS #485
Las Vegas, NV 89153
Attn: General Manager

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

16. 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.

17. AVAILABILITY OF INFORMATION: Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Agreement.

18. 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 Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Parties from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

19. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to the Congress, or Resident Commissioner, or official of CAWCD, MWD, DW, or SNWA, or any Elector or Electors shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

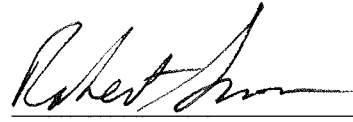
20. NO THIRD-PARTY BENEFICIARIES: This Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Agreement intends for this Agreement to confer any benefit upon any person or entity not a signatory to this Agreement, whether as a third-party beneficiary or otherwise.

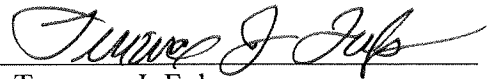
21. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

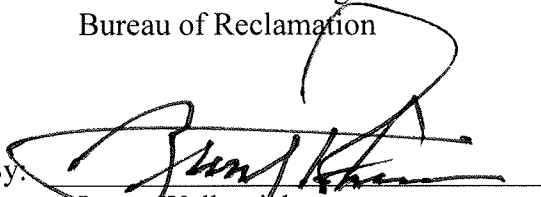
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

Approved as to legal sufficiency:

THE UNITED STATES OF AMERICA

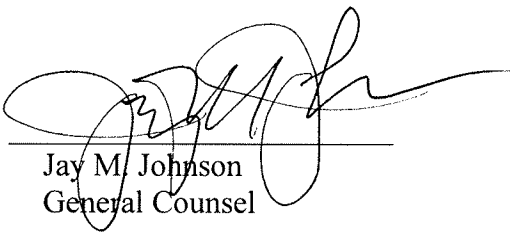
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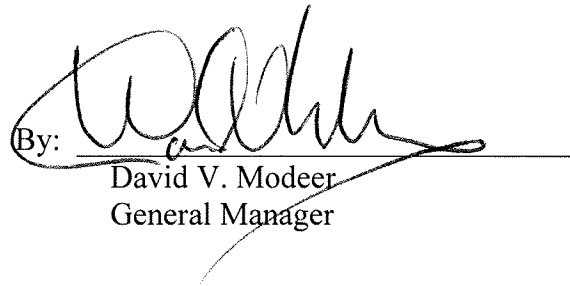
By: 
Terrance J. Fulp
Lower Colorado Regional Director
Bureau of Reclamation

By: 
Larry Walkoviak
Upper Colorado Regional Director
Bureau of Reclamation

Approved as to form:

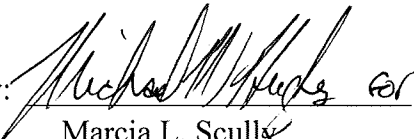
**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: 
Jay M. Johnson
General Counsel

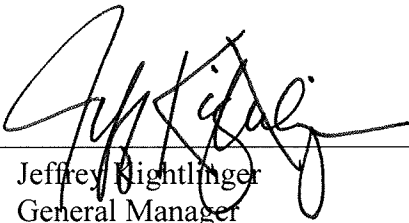
By: 
David V. Modeer
General Manager

Approved as to form:

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: 

Marcia L. Scully
General Counsel

By: 

Jeffrey Kightlinger
General Manager

Attest:

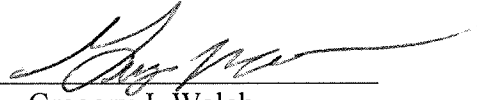
**DENVER BOARD OF WATER
COMMISSIONERS**

By: Mrs. Allmeyer
Secretary

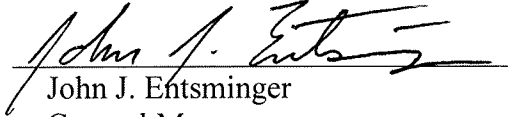
By: Greg Ault
President

Approved as to form:

**SOUTHERN NEVADA WATER
AUTHORITY**

By: 

Gregory J. Walch
General Counsel

By: 

John J. Entsminger
General Manager

ATTACHMENT 1 - WaterSMART Program Evaluation Criteria

V.A.1 Evaluation Criterion A: Water Conservation

Subcriterion No. A.1—Water Conservation

Subcriterion No. A.1(a)—Quantifiable Water Savings

Subcriterion No. A.1(b)—Improved Water Management

Subcriterion No. A.2—Percentage of Total Supply

Subcriterion No. A.3—Reasonableness of Costs

V.A.2 Evaluation Criterion B: Energy-Water Nexus

Subcriterion No. B.1—Implementing Renewable Energy

Projects Related to Water Management and Delivery

Subcriterion No. B.2—Increasing Energy Efficiency in Water Management

V.A.3 Evaluation Criterion C: Benefits to Endangered Species

V.A.4 Evaluation Criterion D: Water Marketing (not applicable*)**

V.A.5 Evaluation Criterion E: Other Contributions to Water Supply Sustainability

V.A.6 Evaluation Criterion F: Implementation and Results

Subcriterion No. F.1—Project Planning

Subcriterion No. F.2—Readiness to Proceed

Subcriterion No. F.3—Performance Measures

V.A.7 Evaluation Criterion G: Additional Non-Federal Funding

V.A.8 Evaluation Criterion H: Connection to Reclamation Project Activities