

AGENDA

SPECIAL JOINT MEETING
9:00 A.M. – NOVEMBER 15, 2012

COLORADO RIVER COMMISSION OF NEVADA
AND
SOUTHERN NEVADA WATER AUTHORITY
BOARD OF DIRECTORS



Colorado River Commission
of Nevada



SOUTHERN NEVADA
WATER AUTHORITY

BOARD CHAMBERS, SOUTHERN NEVADA WATER AUTHORITY
100 CITY PARKWAY, SEVENTH FLOOR, LAS VEGAS, NEVADA
(702) 258-3100

The Southern Nevada Water Authority makes reasonable efforts to assist and accommodate persons with physical disabilities who desire to attend the meeting. For assistance, call Katie Horn at (702) 870-2011 at least 24 hours prior to the meeting.

THIS MEETING HAS BEEN PROPERLY NOTICED AND POSTED IN THE FOLLOWING LOCATIONS:

City of Boulder City, City Hall
401 California Street
Boulder City, Nevada

City of Henderson, City Hall
240 Water Street
Henderson, Nevada

City of North Las Vegas, City Hall
2250 Las Vegas Boulevard North
North Las Vegas, Nevada

City of Las Vegas, City Hall
495 South Main Street
Las Vegas, Nevada

Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, Nevada

Clark County Water Reclamation District
5857 E. Flamingo Road
Las Vegas, Nevada

Southern Nevada Water Authority
100 City Parkway, Suite 700
Las Vegas, Nevada

Las Vegas Valley Water District
1001 S. Valley View Boulevard
Las Vegas, Nevada

Grant Sawyer State Office Building
555 East Washington Avenue
Las Vegas, Nevada

Laughlin Chamber of Commerce
1725 Casino Drive
Laughlin, Nevada

Laughlin Town Manager's Office
101 Civic Way
Laughlin, Nevada

All items on the agenda are for action by the Board of Directors and the Commission, unless otherwise indicated. Items may be taken out of order. Two or more agenda items for consideration may be combined; items may be removed from the agenda or the discussions relating to an agenda item may be delayed at any time

A. CALL TO ORDER AND CONFORMANCE TO THE OPEN MEETING LAW

B. COMMENTS BY THE GENERAL PUBLIC

NO ACTION MAY BE TAKEN: This is a period devoted to comments by the general public pertaining to items on this agenda. If you wish to speak to the Southern Nevada Water Authority Board of Directors and the Colorado River Commission of Nevada about items within their jurisdictions, but not appearing on this agenda, you must wait until the "Comments by the General Public" period listed at the end of this agenda. In consideration of others who may also wish to provide public comment, please limit your comments to three minutes or less and refrain from making comments that are repetitious, offensive, or amounting to personal attacks. No action may be taken upon a matter not listed on the posted agenda.

C. ITEMS FOR CONSIDERATION AND POSSIBLE ACTION

1. *For Possible Action by the Colorado River Commission:*

Approve and authorize its Executive Director to execute the agreements described herein in materially the same form. (1) *Memorandum of Agreement on the Implementation of Minute No. 319*. The parties to the Agreement include: The United States Section of the International Boundary and Water Commission; the

Bureau of Reclamation; the States of Colorado, New Mexico, Utah, and Wyoming; the Upper Colorado River Commission; the Arizona Department of Water Resources; the Central Arizona Water Conservation District; appropriate California entities; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority. (2) *Interim Operating Agreement for Implementation of Minute No. 319*. The parties to the Agreement include: The Bureau of Reclamation; the States of Colorado, New Mexico, Utah, and Wyoming; the Upper Colorado River Commission; the Arizona Department of Water Resources; the Central Arizona Water Conservation District; appropriate California Contractors; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority. (3) *2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus*. The parties to the Agreement include: The Arizona Department of Water Resources; appropriate California Contractors; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority. (4) *2012 Contributed Funds Agreement*. The parties to the Agreement include: The Bureau of Reclamation; the Central Arizona Water Conservation District; the Metropolitan Water District of Southern California; the Colorado River Commission of Nevada; and Southern Nevada Water Authority. This pilot program includes a contribution of funds by the Authority for an amount not to exceed \$2,500,000. (5) *2012 Binational ICS Delivery Agreement*. The parties to this Agreement include: The Bureau of Reclamation; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority.

2. *For Possible Action by the Southern Nevada Water Authority:*

Approve and authorize its General Manager to execute the agreements described herein in materially the same form. (1) *Memorandum of Agreement on the Implementation of Minute No. 319*. The parties to the Agreement include: The United States Section of the International Boundary and Water Commission; the Bureau of Reclamation; the States of Colorado, New Mexico, Utah, and Wyoming; the Upper Colorado River Commission; the Arizona Department of Water Resources; the Central Arizona Water Conservation District; appropriate California entities; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority. (2) *Interim Operating Agreement for Implementation of Minute No. 319*. The parties to the Agreement include: The Bureau of Reclamation; the States of Colorado, New Mexico, Utah, and Wyoming; the Upper Colorado River Commission; the Arizona Department of Water Resources; the Central Arizona Water Conservation District; appropriate California Contractors; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority. (3) *2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus*. The parties to the Agreement include: The Arizona Department of Water Resources; appropriate California Contractors; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority. (4) *2012 Contributed Funds Agreement*. The parties to the Agreement include: The Bureau of Reclamation; the Central Arizona Water Conservation District; the Metropolitan Water District of Southern California; the Colorado River Commission of Nevada; and Southern Nevada Water Authority. This pilot program includes a contribution of funds by the Authority for an amount not to exceed \$2,500,000. (5) *2012 Binational ICS Delivery Agreement*. The parties to this Agreement include: The Bureau of Reclamation; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority.

D. COMMENTS BY THE GENERAL PUBLIC

NO ACTION MAY BE TAKEN: At this time, the Southern Nevada Water Authority Board of Directors and the Colorado River Commission of Nevada will hear general comments from the public on matters under the jurisdiction of the Southern Nevada Water Authority or the Colorado River Commission. In consideration of others who may also wish to provide public comment, please limit your comments to three minutes or less and refrain from making comments that are repetitious, offensive, or amounting to personal attacks. No action may be taken upon a matter not listed on the posted agenda.

E. COMMENTS OR QUESTIONS FROM THE MEMBERS

F. ADJOURNMENT

COLORADO RIVER COMMISSION OF NEVADA
SOUTHERN NEVADA WATER AUTHORITY BOARD OF DIRECTORS
AGENDA ITEM
 November 15, 2012

Subject: Agreements	Director's Backup
Petitioners: Patricia Mulroy, General Manager, Southern Nevada Water Authority; Jayne Harkins, Executive Director, Colorado River Commission of Nevada	
<p>Recommendation: That the Southern Nevada Water Authority Board of Directors approve and authorize its General Manager and the Colorado River Commission of Nevada approve and authorize its Executive Director to execute the agreements described herein in materially the same form.</p> <p>(1) Memorandum of Agreement on the Implementation of Minute No. 319. The parties to the Agreement include: The United States Section of the International Boundary and Water Commission; the Bureau of Reclamation; the States of Colorado, New Mexico, Utah, and Wyoming; the Upper Colorado River Commission; the Arizona Department of Water Resources; the Central Arizona Water Conservation District; appropriate California entities; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority.</p> <p>(2) Interim Operating Agreement for Implementation of Minute No. 319. The parties to the Agreement include: The Bureau of Reclamation; the States of Colorado, New Mexico, Utah, and Wyoming; the Upper Colorado River Commission; the Arizona Department of Water Resources; the Central Arizona Water Conservation District; appropriate California Contractors; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority.</p> <p>(3) 2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus. The parties to the Agreement include: The Arizona Department of Water Resources; appropriate California Contractors; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority.</p> <p>(4) 2012 Contributed Funds Agreement. The parties to the Agreement include: The Bureau of Reclamation; the Central Arizona Water Conservation District; the Metropolitan Water District of Southern California; the Colorado River Commission of Nevada; and Southern Nevada Water Authority. This pilot program includes a contribution of funds by the Authority for an amount not to exceed \$2,500,000.</p> <p>(5) 2012 Binational ICS Delivery Agreement. The parties to this Agreement include: The Bureau of Reclamation; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority.</p>	

Fiscal Impact:

If the above recommendation is approved, \$2,500,000 will be added to New Expansion Bond Fund commitments of the Southern Nevada Water Authority.

Background:

On December 6, 2007, the Authority's Board of Directors (Board) and the Colorado River Commission (Commission), in a joint session, approved a number of agreements that allowed development and delivery of Intentionally Created Surplus (ICS) water through conservation and augmentation projects in the United States, which became effective on December 13, 2007.

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Concurrent with this action, the Secretary of the Interior (Secretary) adopted the 2007 Interim Guidelines, which provides, among other things, provisions for coordinated operations for Lake Powell and Lake Mead, the implementation of shortages and providing for surpluses in the Lower Colorado River Basin based on water elevations in Lake Mead, and the creation and delivery of ICS.

On April 30, 2007, during the negotiation of these agreements, the Seven Basin States (States) described in a letter to then Secretary of the Interior, Dirk Kempthorne, the importance of Mexico sharing in reductions to their annual allotment of water provided under the 1944 Mexican Water Treaty when the States are in shortage, and how such sharing in shortages was a fundamental assumption used to develop the shortage sharing agreement between Arizona and Nevada. The States also supported a more comprehensive Colorado River management system between the two nations to benefit the entire Basin. This includes the opportunity for Mexico to store water in United States reservoirs. Since that time, the States, the Bureau of Reclamation, and the International Boundary and Water Commission (IBWC) have been engaged with Mexico in negotiations of these issues.

Minute No. 319 to the 1944 Mexican Water Treaty, which addresses cooperative management strategies in the management of the Colorado River system, will be executed by the IBWC concurrently with the execution of the agreements described below, and will allow for both countries to better assess the long-term opportunities for water conservation, management and development. Provisions include Mexico agreeing to adjust its delivery schedule during low reservoir conditions, Mexico having access to additional water during high reservoir conditions, and a commitment to work together on a pilot program that includes water for the environment and water benefits for the United States and Mexico (Pilot Program).

The Memorandum of Agreement on the Implementation of Minute No. 319 among the United States federal government, the States, and contractors clarifies the responsibilities of and benefits to the parties, and insures that the signatories confirm their mutual acceptance, cooperation, and coordination to carry out the terms of Minute No. 319.

The Interim Operating Agreement for Implementation of Minute No. 319 (2012 Interim Operating Agreement) would facilitate operations contemplated under Minute No. 319, such as contractor investment in projects in Mexico that will make additional water available for use in the United States and Mexico through the creation, release, and use of Binational ICS; accounting procedures for Binational ICS; implementation and accounting of high reservoir operations referenced in Minute No. 319; and ensuring that the implementation of Minute No. 319 is consistent with the 2007 Interim Guidelines.

The 2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus (2012 Forbearance Agreement) assures contractors participating in the Pilot Program that other eligible contractors will not claim Binational ICS created by another contractor. The 2012 Forbearance Agreement thereby gives the Authority the ability to make capital expenditures to fund the Pilot Program with the certainty that, in combination with the Delivery Agreement described below, such Binational ICS water credits will be available for use by the Authority.

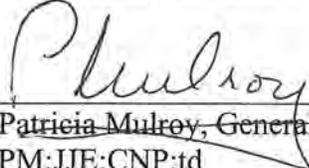
The Agreement for a Pilot Program for the Conversion of Intentionally Created Mexican Allocation to Binational Intentionally Created Surplus (2012 Contributed Funds Agreement) outlines the annual contributions for the Pilot Program: The Metropolitan Water District of California, \$1,666,666.66 annually, for a three-year total of \$5,000,000; and both the Central Arizona Water Conservation District and the Authority, \$833,333.34 annually, for a three-year total of \$2,500,000 each. Total United States contractor funds will result in the creation of 95,000 acre-feet of Binational ICS. The Authority will receive an amount proportional to its capital contribution of 23,750 acre-feet of water. The federal government will also contribute \$11,000,000 in funds in exchange for 29,000 acre-feet of water that will be dedicated to system benefits including bolstering the water elevation in Lake Mead.

The 2012 Binational ICS Delivery Agreement provides for the delivery of 23,750 acre-feet of Binational ICS by Reclamation to the Authority pursuant to the 2012 Interim Operating Agreement, the 2012 Forbearance Agreement, and the 2012 Contributed Funds Agreement.

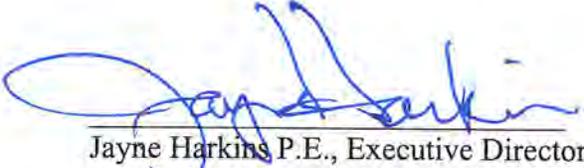
The Agreements before you today, which must be approved as a package to be effective, will provide the operational structure and legal authority necessary to implement Minute No. 319.

These agreements are being entered into pursuant to NRS 538.161, .171, and .186, and Section 6(a) of the SNWA 1995 Amended Cooperative Agreement. General Counsel for the Authority and the Senior Deputy Attorney General for the Commission have reviewed and approved these agreements.

Respectfully submitted:



Patricia Mulroy, General Manager
PM:JJE:CNP:td
Attachments



Jayne Harkins P.E., Executive Director

**MEMORANDUM OF AGREEMENT
ON THE IMPLEMENTATION OF MINUTE NO. 319**

The Secretary of the Interior ("Secretary"), acting through the Commissioner of the Bureau of Reclamation ("Reclamation"); the Commissioner, United States Section of the International Boundary and Water Commission ("USIBWC"); the State of Arizona, acting through the Arizona Department of Water Resources, the State of Colorado, the State of Nevada, acting through the Colorado River Commission of Nevada, the State of New Mexico, the State of Utah, the State of Wyoming; the Upper Colorado River Commission; the Central Arizona Water Conservation District; the Coachella Valley Water District; the Colorado River Board of California; the Imperial Irrigation District; the Metropolitan Water District of Southern California; and the Southern Nevada Water Authority; collectively the "Parties,"

Recognizing and appreciating the historic opportunity presented to cooperate together with Mexico in the international management of the waters of Colorado River to ensure the effective use and enjoyment of waters; and

Desiring to gain experience through a series of temporary measures, including a pilot project to improve infrastructure and conservation in Mexico and share additional flows in Mexico and the United States;

Hereby affirm the following understandings and agreements:

1. The Colorado River is a vital resource to vast areas of the southwestern United States and northwestern Mexico, where it serves as the primary water supply to support agriculture, municipalities, energy, and natural resources.
2. Distribution and use of Colorado River water in the United States is governed by a complex framework of state and federal law, including for the operation of Colorado River infrastructure in the United States by Reclamation. Delivery of specific annual quantities of water from the Colorado River to Mexico is provided for in the 1944 Treaty Concerning the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande (Feb. 3, 1944, U.S.-Mex., 59 Stat. 1219, T.S. 994) ("1944 Water Treaty"), which is administered for the United States by the United States Section of the International Boundary and Water Commission ("USIBWC").
3. Since 2007, the United States and Mexico have been voluntarily seeking to identify cooperative opportunities to help ensure that the Colorado River system is able to continue to meet the needs of the people of both countries, particularly through innovative and proactive measures for water conservation, storage, supply augmentation, and environmental protection that both countries could implement consistent with the 1944 Water Treaty.
4. On June 17, 2010, the United States and Mexican Commissioners of the International Boundary and Water Commission ("IBWC") agreed to establish a binational Consultative Council composed of representatives of the Commission, the respective federal governments and the seven United States Colorado River Basin States, to facilitate consideration of the

legal, administrative and policy matters associated with developing opportunities for binational cooperative projects with benefits to both countries.

5. On December 17, 2010, the United States and Mexican IBWC Commissioners executed Minute No. 318 under the 1944 Treaty, providing for the temporary adjustment of delivery schedules for water allotted to Mexico under the 1944 Water Treaty to address Mexico's urgent needs as a result of infrastructure damage in Irrigation District 014 caused by the April 2010 earthquake in the Mexicali Valley, Baja California, Mexico.

6. The most recent binational, cooperative effort between the United States and Mexico, including participation by representatives of the seven United States Colorado River Basin States, has been memorialized in Minute No. 319, to be signed on November 20, 2012. Minute No. 319 provides for a five-year pilot project of temporary measures and increased cooperation and management of the water resources of the Colorado River, including:

- a. Extension of the provisions of Minute No. 318 to address Mexico's continuing need to recover from severe earthquake damage to water infrastructure in the Mexicali Valley, Baja California;
- b. Acceptance by Mexico of voluntary reductions of water deliveries under certain low reservoir conditions;
- c. Provision by the United States for increases of water deliveries to Mexico under certain high reservoir conditions;
- d. Provision for the creation and later delivery of Intentionally Created Mexican Allocation ("ICMA") and the minimization by Mexico of increased salinity impacts; and
- e. Provision by the United States for investment in water conservation and infrastructure projects in Mexico that will generate water for environmental flows in Mexico, as well as for allocation and use of waters within the United States, and to create long-term benefits for water use within Mexico.

7. Because of the vested legal rights to water allocations in the United States of certain governmental, agricultural, and municipal entities represented by the Parties, as well as the desire of some of the non-federal Parties to invest in Mexican conservation projects and generate additional water for use by those entities, Minute No. 319 requires the mutual acceptance, cooperation, and coordination of the Parties for its implementation in the United States. The Parties hereby confirm their mutual acceptance, cooperation and coordination to carry out the terms of Minute No. 319, which is memorialized through the agreement and execution on this day of a number of implementing arrangements, in the absence of which Minute No. 319 cannot be implemented. These are:

- a. The Interim Operating Agreement for Implementing Minute No. 319;

- b. The 2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus; and
- c. The 2012 Contributed Funds Agreement.

8. Section III.3 of Minute No. 319 provides that Mexico will decrease its order of Colorado River water when Lake Mead is at or below specific elevations. Reclamation and the USIBWC hereby confirm that they will implement such decreased deliveries strictly according to the terms of Minute No. 319. Any impacts to salinity resulting from these decreases will be minimized through measures other than through the release of additional water to Mexico.

9. Under Section III.2 of Minute No. 319, Mexico may order specific limited amounts of additional deliveries under certain high reservoir conditions. Reclamation and the USIBWC recognize and acknowledge that these additional deliveries may only be made available with the agreement of the non-federal Parties. The non-federal Parties hereby confirm that they have agreed to make arrangements to make this water available to Mexico, consistent with the agreements executed this day.

10. Section III.6 of Minute No. 319 requires Mexico to provide to the United States 124,000 acre-feet of ICMA or water deferred under Section III.1 of Minute No. 319 to the United States in consideration for funding provided by the United States for infrastructure and conservation improvements in Mexico to generate and conserve water. The non-federal Parties hereby confirm that they have approved the provision of \$10 million to the United States for transfer to Mexico, and the USIBWC and Reclamation confirm that they have secured approvals for the provision of \$11 million to Mexico for this purpose. The USIBWC hereby confirms that it will implement Minute No. 319 to assure that 124,000 acre-feet of water are available in Mexico's account and are transferred to the United States according to the terms of the Minute. Reclamation confirms that it will transfer the necessary amounts of water to contractors as provided in the implementing agreements executed this day.

11. Because Minute No. 319 can only be implemented with the support, cooperation, and agreement of the non-federal Parties, the USIBWC and Reclamation confirm that they would necessarily consult with, and seek the continued support, cooperation, and agreement of, the non-federal Parties before extending the terms and cooperative programs of Minute No. 319 or negotiating a new arrangement involving similar or different terms and cooperative programs.

12. Consistent with the assurances and commitments set forth in the February 16, 2012, letter from the Commissioners of Reclamation and the USIBWC, the assurances and commitments set out in this Memorandum of Agreement, and the implementing agreements executed this day, the Parties hereby mutually confirm their agreement to support execution and implementation of Minute No. 319, and to avoid circumstances that could in any way lead to disputes or controversies over interpretation or application of Minute No. 319, the 1944 Treaty, or other applicable provisions of law that govern the Colorado River. If an international or domestic dispute does arise, the USIBWC and Reclamation confirm their intention to consult and work with the non-Federal Parties to resolve any such dispute arising during implementation of Minute No. 319.

13. The Parties confirm their mutual understanding that nothing in Minute No. 319 or in its implementation alters or in any way affects the provisions of the Department of the Interior's 2007 Interim Guidelines for the Operation of Lake Powell and Lake Mead, or their respective rights and obligations thereunder. Nor have they waived any rights, claims, or defenses now or in the future under any applicable federal or state law or administrative rule, regulation or guideline.

Signed, on the 20th day of November, 2012, in Yuma, Arizona.

THE UNITED STATES OF AMERICA

By: _____
Michael L. Connor
Commissioner
Bureau of Reclamation

**THE UNITED STATES SECTION OF
THE INTERNATIONAL BOUNDARY
AND WATER COMMISSION**

By: _____
Edward Drusina
Commissioner

Approved as to form:

By: _____
Jay M. Johnson
General Counsel

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: _____
David V. Modeer
General Manager

**COLORADO RIVER BOARD OF
CALIFORNIA**

By: _____
Dana B. Fisher, Jr.
Chairman

Approved as to form:

By: _____
Gerald D. Shoaf
General Counsel

**COACHELLA VALLEY WATER
DISTRICT**

By: _____
J. M. Barrett
Acting General Manager

Approved as to form:

By: _____
Jennifer T. Crandell
Senior Deputy Attorney General

Approved as to form:

By: _____
John Penn Carter
Special Counsel

Approved as to form:

By: _____
Gregory J. Walch
General Counsel

Approved as to form:

By: _____
Marcia L. Scully
General Counsel

Approved as to form:

By: _____
Nicole D. Klobas
Deputy Counsel

Approved as to form:

By: _____
Karen M. Kwon
First Assistant Attorney General
Colorado Attorney General's Office

**COLORADO RIVER COMMISSION
OF NEVADA**

By: _____
Jayne Harkins
Executive Director

IMPERIAL IRRIGATION DISTRICT

By: _____
Kevin Kelley
General Manager

**SOUTHERN NEVADA WATER
AUTHORITY**

By: _____
Patricia Mulroy
General Manager

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: _____
Jeffrey Kightlinger
General Manager

**THE STATE OF ARIZONA ACTING
THROUGH THE ARIZONA
DEPARTMENT OF WATER
RESOURCES**

By: _____
Sandra A. Fabritz-Whitney
Director

THE STATE OF COLORADO

By: _____
Jennifer Gimbel
Colorado Commissioner, Upper
Colorado River Commission
Director, Colorado Water
Conservation Board

Approved as to form:

By: _____
Amy Haas
General Counsel
New Mexico Interstate Stream Commission

Approved as to form:

By: _____
Norman K. Johnson
Natural Resources Division Chief
Utah Attorney General's Office

Approved as to form:

By: _____
Christopher M. Brown
Senior Assistant Attorney General
Wyoming Attorney General's Office

Approved as to form:

By: _____
Jane Bird
General Counsel
Upper Colorado River Commission

THE STATE OF NEW MEXICO

By: _____
Estevan López
Director, New Mexico Interstate
Stream Commission

THE STATE OF UTAH

By: _____
Dennis Strong
Director, Utah Division of Water
Resources
Commissioner, Utah Interstate Stream

THE STATE OF WYOMING

By: _____
Patrick T. Tyrrell
Wyoming State Engineer

**UPPER COLORADO RIVER
COMMISSION**

By: _____
Don Ostler
Executive Director

**Interim Operating Agreement
for Implementation of Minute No. 319**

The State of Arizona, acting through the Arizona Department of Water Resources ("ADWR"), the State of Colorado, the State of Nevada, acting through the Colorado River Commission of Nevada ("Nevada"), the State of New Mexico, the State of Utah, and the State of Wyoming; the Palo Verde Irrigation District ("PVID"); the Imperial Irrigation District ("IID"); the City of Needles; the Coachella Valley Water District ("CVWD"); the Metropolitan Water District of Southern California ("MWD"); the Central Arizona Water Conservation District ("CAWCD"); the Southern Nevada Water Authority, ("SNWA"); Upper Colorado River Commission ("UCRC") and The Secretary of the Interior ("Secretary"), acting through the Bureau of Reclamation ("Reclamation"), collectively the "Parties,"

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties herein enter into this Interim Operating Agreement for Implementation of Minute No. 319 ("Interim Operating Agreement") and hereby agree as follows:

SECTION 1

The Parties to the 2012 Interim Operating Agreement and their respective authorities to enter this Interim Operating Agreement are as follows:

1.1 ADWR, through its Director, is the successor to the signatory agency of the State for the 1922 Colorado River Compact, and the 1944 Contract for Delivery of Water with the United States, both authorized and ratified by the Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. § 45-107, the Director is authorized and directed, subject to the limitations in A.R.S. § 45-106, for and on behalf of the State of Arizona, to consult, advise and cooperate with the Secretary of the Interior of the United States ("Secretary") with respect to the exercise by the Secretary of Congressionally authorized authority relative to the waters of the Colorado River (including, but not limited to, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617, and the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1501) and with respect to the development, negotiation and execution of interstate agreements. Additionally, under A.R.S. § 45-105(A)(9), the Director is authorized to "prosecute and defend all rights, claims and privileges of this state respecting interstate streams."

1.2 CAWCD is a multi-county water conservation district established pursuant to A.R.S. §§ 48-3701 *et seq.*, that operates and maintains the Central Arizona Project. CAWCD is authorized by A.R.S. §§ 48-3712 and 48-3713 to enter into this Interim Operating Agreement and, pursuant to its contract with the Secretary of the Interior issued under Section 5 of the Boulder Canyon Project Act of 1928, is authorized to divert all Colorado River water to which Arizona is entitled under the Decree in *Arizona v. California*, 376 U.S. 340 (1964), that is not needed to satisfy the water orders of those water users in Arizona with an equal or higher priority to Colorado River water. Accordingly, CAWCD

- 40 has the right to divert ICS released by the Secretary for use within the State of Arizona
41 pursuant to the Consolidated Decree.
- 42 1.3 SNWA is a Nevada joint powers agency and political subdivision of the State of Nevada,
43 created by agreement dated July 25, 1991, as amended November 17, 1994, and
44 January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by
45 N.R.S. § 538.186 to enter into this Interim Operating Agreement and, pursuant to its
46 contract issued under Section 5 of the Boulder Canyon Project Act of 1928, SNWA has
47 the right to divert ICS released by the Secretary for use within the State of Nevada
48 pursuant to the Consolidated Decree.
- 49 1.4 PVID is an irrigation district created under the Palo Verde Irrigation District Act,
50 codified at Section 33-1 et seq. of the Appendix to the California Water Code, and
51 delivers Colorado River water in Riverside and Imperial Counties, California, pursuant to
52 its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
- 53 1.5 IID is an irrigation district created under the California Irrigation District Law, codified at
54 Section 20500 et seq. of the California Water Code, and delivers Colorado River water in
55 Imperial County, California, pursuant to its contract issued under Section 5 of the
56 Boulder Canyon Project Act of 1928.
- 57 1.6 CVWD is a county water district created under the California County Water District Law,
58 codified at Section 30000 et seq. of the California Water Code, and delivers Colorado
59 River water to portions of its service area in Imperial, Riverside, and San Diego Counties,
60 California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project
61 Act of 1928 and the California Quantification Settlement Agreement.
- 62 1.7 MWD is a metropolitan water district created under the California Metropolitan Water
63 District Act, codified at Section 109-1 et seq. of the Appendix to the California Water
64 Code; and delivers Colorado River water to portions of its service area in Los Angeles,
65 Orange, Riverside, San Bernardino, San Diego and Ventura Counties, California,
66 pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of
67 1928.
- 68 1.8 The City of Needles is a charter city duly authorized and existing under and by virtue of
69 the laws of the State of California and delivers Colorado River water, either directly or by
70 exchange, to portions of Imperial, Riverside, and San Bernardino Counties, California,
71 pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of
72 1928.
- 73 1.9 Colorado. Section 24-1-109, Colorado Revised Statutes (2005) provides that “Interstate
74 compacts authorized by law shall be administered under the direction of the office of the
75 governor.” This includes the Colorado River Compact and the Upper Colorado River
76 Basin Compact. Section 37-60-109 provides that “the governor from time to time, with
77 approval of the board, shall appoint a commissioner, who shall represent the State of
78 Colorado upon joint commissions to be composed of commissioners representing the
79 State of Colorado and another state or other states for the purpose of negotiating and
80 entering into compacts or agreements between said states...” By letter dated April 12,

- 81 2006, the Governor appointed Upper Colorado River Commissioner Jennifer Gimbel to
82 represent the State of Colorado.
- 83 1.10 Nevada. The Colorado River Commission of Nevada (CRCN) is an agency of the State of
84 Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is further
85 authorized by the Boulder Canyon Project Act, 43 U.S.C. 617 (1928) and more
86 specifically by N.R.S. § 538.161 (6), (7) to enter into this Interim Operating Agreement.
87 The CRCN, in furtherance of the State of Nevada's responsibility to promote the health
88 and welfare of its people in Colorado River matters, makes this Interim Operating
89 Agreement to supplement the supply of water in the Colorado River which is available
90 for use in Nevada, augment the waters of the Colorado River, and facilitate the more
91 flexible operation of dams and facilities by the Secretary.
- 92 1.11 New Mexico. Pursuant to NMSA 1978, 72-14-3, the New Mexico Interstate Stream
93 Commission is authorized to investigate water supply, to develop, to conserve, to protect
94 and to do any and all other things necessary to protect, conserve and develop the waters
95 and stream systems of the State of New Mexico, interstate or otherwise. The Interstate
96 Stream Commission also is authorized to institute or cause to be instituted in the name of
97 the State of New Mexico any and all negotiations and/or legal proceedings as in its
98 judgment are necessary. By Resolution dated January 24, 2007, the Interstate Stream
99 Commission authorizes the execution of this Interim Operating Agreement.
- 100 1.12 Utah. The Division of Water Resources (DWR) is the water resource authority for the
101 State of Utah. Utah Code Ann. § 73-10-18. The Utah Department of Natural Resources
102 Executive Director (Department), with the concurrence of the Utah Board of Water
103 Resources (Board), appoints the DWR Director (Director). § 63-34-6(1). The Board
104 makes DWR policy. § 73-10-1.5. The Board develops, conserves, protects, and controls
105 Utah waters, § 73-10-4(4), (5), and, in cooperation with the Department and Governor,
106 supervises administration of interstate compacts, § 73-10-4, such as the Colorado River
107 Compact, §§ 73-12a-1 through 3, and the Upper Colorado River Basin Compact, § 73-13-
108 10. The Board, with Department and Gubernatorial approval, appoints a Utah Interstate
109 Stream Commissioner, § 73-10-3, currently the DWR Director, to represent Utah in
110 interstate conferences to administer interstate compacts. §§ 73-10-3 and 73-10-4. These
111 delegations of authority authorize the Utah Interstate Stream Commissioner/DWR
112 Director to sign this document. He acts pursuant to a Board resolution, acknowledged by
113 the Department, dated March 7, 2007.
- 114 1.13 Wyoming. Water in Wyoming belongs to the state. Wyo. Const. Art. 8 § 1. The
115 Wyoming State Engineer is a constitutionally created office and is Wyoming's chief
116 water official with general supervisory authority over the waters of the state. Wyo.
117 Const. Art. 8 § 5. The Wyoming legislature conferred upon Wyoming officers the
118 authority to cooperate with and assist like authorities and entities of other states in the
119 performance of any lawful power, duty, or authority. Wyo. Stat. Ann. § 16-1-101 (2005).
120 Wyoming and its State Engineer represent the rights and interests of all Wyoming
121 appropriators with respect to other states. Wyoming v. Colorado, 286 U.S. 494 (1922).
122 See Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92 (1938). In

123 signing this Interim Operating Agreement, the State Engineer intends that this Interim
124 Operating Agreement be mutually and equally binding between the Parties.

125 1.14 Upper Colorado River Commission. An interstate water administrative agency composed
126 of one Commissioner representing each of the States of Colorado, New Mexico, Utah and
127 Wyoming and one Commissioner representing the United States as established pursuant
128 to Article VIII of the Upper Colorado River Basin Compact of 1948, 63 Stat. 31. Article
129 VIII empowers the Commission to, among other things, make findings of fact in the
130 event of the occurrence of extraordinary drought or serious accident to the irrigation
131 system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may
132 be required to deliver in order to aid in fulfilling obligations of the United States of
133 America to the United Mexican States arising under the Treaty between the United States
134 of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994)
135 become difficult, and report such findings to the Governors of the Upper Basin States, the
136 President of the United States of America, the United States Section of the International
137 Boundary and Water Commission, and such other Federal officials and agencies as it may
138 deem appropriate to the end that the water allotted to Mexico under Division III of such
139 treaty may be reduced in accordance with the terms of such Treaty; and perform all
140 functions required of it by the Upper Colorado River Basin Compact and do all things
141 necessary, proper or convenient in the performance of its duties thereunder, either
142 independently or in cooperation with any state or federal agency.

143 1.15 Reclamation is responsible for water management throughout the western United States
144 by the limiting provisions of Reclamation law, beginning with the Reclamation Act of
145 1902, as amended and supplemented. The Secretary also has a broader and unique legal
146 role in the management of the lower Colorado River system in accordance with
147 applicable federal law, including the Boulder Canyon Project Act of 1928, the 1963
148 Decision of the U.S. Supreme Court in *Arizona v. California*, the 2006 Consolidated
149 Decree of the U.S. Supreme Court in *Arizona v. California*, the Colorado River Basin
150 Project Act of 1968, and other applicable provisions of federal law.

151 SECTION 2

152 2.1 The definitions in the Interim Surplus Guidelines described in the Record of Decision
153 dated January 16, 2001, and modified by the 2007 Interim Guidelines are hereby
154 incorporated in this Interim Operating Agreement. In addition, each of the following
155 terms shall have the meaning defined here. All defined terms shall be identified by initial
156 letter capitalization.

157 2.1.1 “2007 Interim Guidelines” shall mean Section XI of the Record of Decision
158 issued by the Secretary for the Colorado River Interim Guidelines for Lower
159 Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead.

160 2.1.2 “2012 Forbearance Agreement” shall mean the 2012 Lower Colorado River Basin
161 Forbearance Agreement for Binational Intentionally Created Surplus attached as
162 Exhibit A to this Interim Operating Agreement.

- 163 2.1.3 "Binational ICS" or "BICS" shall mean Binational Intentionally Created Surplus.
 164 2.1.3 "Binational ICS Account" shall mean records established by the Secretary
 165 regarding Binational ICS.
- 166 2.1.4 "Contributed Funds Agreement" shall mean an agreement between one or more
 167 Contractors and Reclamation in which Contractor(s) agree to make contributions
 168 of capital to participate in a binational project that will create ICMA for
 169 conversion to Binational ICS.
- 170 2.1.5 "Delivery Agreement" shall mean an agreement entered into by the Secretary and
 171 one or more Contractors seeking to create Binational ICS, providing for delivery
 172 of Binational ICS according to the terms of the 2012 Forbearance Agreement and
 173 this Interim Operating Agreement.
- 174 2.1.6 "ICMA" shall mean either water accounted for under Section III(1) of Minute No.
 175 319 or Intentionally Created Mexican Allocation as referred to in Section III(4) of
 176 Minute No. 319.
- 177 2.1.7 "Minute No. 319" shall mean Minute No. 319, "Interim International Cooperative
 178 Measures In the Colorado River Basin Through 2017 and Extension of Minute
 179 318 Cooperative Measures To Address the Continued Effects of the April 2010
 180 Earthquake in the Mexicali Valley, Baja California", attached hereto and
 181 incorporated herein as "Exhibit B."
- 182 2.1.8 ""Treaty" or "1944 Water Treaty" shall mean the Treaty between the United
 183 States of America and Mexico Respecting the Utilization of Waters of the
 184 Colorado and Tijuana Rivers and of the Rio Grande, Feb. 3, 1944, U.S.-Mex., 59
 185 Stat. 1219, T.S. 994.

186 SECTION 3

- 187 3.1 On August 13, 2007, a Joint Statement by officials from the governments of the United
 188 States and Mexico was issued expressing the interest of both countries in identifying
 189 cooperative opportunities to help ensure that the Colorado River system is able to
 190 continue to meet the needs of both nations. See also the Joint Declaration by the United
 191 States Secretary of the Interior and Mexico's Ambassador on January 15, 2009.
 192
- 193 3.2 On December 13, 2007, the Secretary adopted the 2007 Interim Guidelines, which
 194 provide among other things provisions for coordinated operations for Lake Powell and
 195 Lake Mead, implementing shortages and providing for surpluses in the Lower Colorado
 196 River Basin, and the creation and delivery of Intentionally Created Surplus ("ICS"). See
 197 2007 Interim Guidelines, 73 Fed. Reg. 19873-19892.
 198
- 199 3.3 On June 17, 2010, the Commissioners of the International Boundary and Water
 200 Commission ("IBWC") executed Minute No. 317 which stipulates that the IBWC "shall
 201 in particular explore opportunities for binational cooperative projects that: minimize the
 202 impacts of potential Colorado River shortage conditions; generate additional volumes of

203 water using new water sources by investing in infrastructure such as desalinization
 204 facilities; conserve water through investments in a variety of current and potential uses,
 205 including agriculture, among others; and envision the possibility of permitting Mexico to
 206 use United States infrastructure to store water.”

207 3.4 On December 17, 2010, the IBWC Commissioners executed Minute No. 318 permitting
 208 adjustment of the delivery of schedules for water allotted to Mexico under the 1944
 209 Water Treaty to address Mexico’s needs as a result of infrastructure damage in Irrigation
 210 District 014 caused by the April 2010 earthquake in Mexicali Valley, Baja California,
 211 Mexico.

212 3.5 Pursuant to Minute No. 317, the Commissioners agreed to establish a binational
 213 Consultative Council, composed of representatives of the Commission, the respective
 214 federal governments and the basin states, to facilitate consideration of the legal,
 215 administrative and policy matters associated with Section 3.3 and 3.4 above.

216 3.6 On November 20, 2012, the IBWC Commissioners executed Minute No. 319 which
 217 would allow for both countries to better assess the long-term opportunities for water
 218 conservation, management and development.

219 3.7 Minute No. 319 addresses cooperative measures with regard to the management of the
 220 Colorado River system identified by the IBWC and the Parties. These measures include:
 221 salinity; variable water supplies within the Colorado River basin; opportunities to
 222 establish ICMA when Mexico chooses to adjust its delivery schedule; sharing in the
 223 benefits of water that may be available temporarily through high reservoir conditions;
 224 engaging with the United States in cooperative measures to reduce the likelihood of
 225 substantial and unprecedented reductions in water deliveries to water users in both
 226 countries; exchange of water; and the arrangement of water for the environment. At the
 227 same time, several specific binational projects were identified that could be jointly
 228 implemented to the benefit of both countries.

229 3.8 The countries have identified these measures to be undertaken during an interim five-year
 230 period from the date Minute No. 319 enters into force through December 31, 2017.

231 3.9 On November 20, 2012, certain parties to this Interim Operating Agreement executed the
 232 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally
 233 Created Surplus (“2012 Forbearance Agreement”) and related Delivery Agreements,
 234 which allowed Contractors to participate in and take delivery of Binational ICS.

235 SECTION 4

236 4.1 This Interim Operating Agreement establishes operational procedures which are in
 237 addition to and consistent with the 2007 Interim Guidelines and that are necessary to
 238 implement Minute No. 319.

239 4.2 This Interim Operating Agreement does not establish or act as precedent for any future
 240 agreement or undertaking.

- 241
242 4.3 The purposes of this Interim Operating Agreement are to:
243
244 4.3.1 Facilitate Contractor investment in projects in Mexico that will make additional
245 water available for use in the United States, through the creation, release, and use
246 of Binational ICS;
- 247 4.3.2 Facilitate implementation of the assurances and accounting provided for in the
248 2012 Lower Colorado River Basin Forbearance Agreement for Binational
249 Intentionally Created Surplus;
- 250 4.3.3 Facilitate implementation and accounting of high reservoir operations referenced
251 in Section III.2 and Resolution 2 of Minute No. 319;
- 252 4.3.4 Ensure that implementation of Minute No. 319 is consistent with the 2007 Interim
253 Guidelines.
- 254 4.3.5 Facilitate consultation among the Parties regarding implementation and operations
255 contemplated under Minute No. 319.

256 **SECTION 5**

- 257 5.1 Term of the Interim Operating Agreement. This Interim Operating Agreement shall
258 commence on the later of: (1) the date of execution by all Parties or (2) the date that
259 Minute No. 319 enters into force, and shall terminate December 31, 2017; provided,
260 however, that any Binational ICS remaining in a Binational ICS Account on
261 December 31, 2017, may be released as provided herein until December 31, 2036.

262 **SECTION 6**

- 263 6.1 When Section III.2 of Minute No. 319 is operative (High Reservoir Conditions),
264 Reclamation will operate the system consistent with the following provisions:
- 265 6.1.1 For any year in which a Domestic Surplus Condition under Section 2.B.2.a of the
266 2007 Interim Guidelines is determined the following provisions shall apply:
- 267 6.1.1.1 CAWCD will first request delivery of and use existing ICS equal to one-
268 third of the quantity of high reservoir flows delivered to Mexico before
269 requesting delivery of any Domestic Surplus water that would otherwise
270 be available to CAWCD under Section 2.B.2.a of the 2007 Interim
271 Guidelines.
- 272 6.1.1.2 SNWA will first request delivery of and use existing ICS equal to one-
273 third of the quantity of high reservoir flows delivered to Mexico before
274 requesting delivery of any Domestic Surplus water that would otherwise

- 275 be available to SNWA under Section 2.B.2.a of the 2007 Interim
276 Guidelines.
- 277 6.1.1.3 MWD will not request delivery of an amount of water equal to one-third
278 of the quantity of high reservoir flows delivered to Mexico that would
279 otherwise be available to MWD under Section 2.B.2.a of the 2007
280 Interim Guidelines.
- 281 6.1.2 For any year in which a Domestic Surplus Condition under Section 2.B.2.b of the
282 2007 Interim Guidelines (applicable during 2017) is determined the following
283 provisions shall apply:
- 284 6.1.2.1 The amount that would otherwise be available to CAWCD under
285 Section 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-
286 third of the quantity of high reservoir flows delivered to Mexico. For
287 example, if Mexico requested delivery of 30,000 acre-feet, the
288 maximum amount available to Arizona would be 90,000 acre-feet.
- 289 6.1.2.2 The amount that would otherwise be available to SNWA under Section
290 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-third of
291 the quantity of high reservoir flows delivered to Mexico. For example, if
292 Mexico requested delivery of 30,000 acre-feet, the maximum amount
293 available to SNWA would be 90,000 acre-feet.
- 294 6.1.2.3 The amount that would otherwise be available to MWD under Section
295 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-third of
296 the quantity of high reservoir flows delivered to Mexico. For example,
297 if Mexico requested delivery of 30,000 acre-feet, the maximum amount
298 available to MWD would be 240,000 acre-feet, except as provided in
299 Section 6.1.2.4 below.
- 300 6.1.2.4 In the event SNWA and/or Arizona do not request or take delivery of the
301 maximum amount to which they are entitled under Section 2.B.2.b of the
302 2007 Interim Guidelines, MWD will have the right to request such water
303 up to an amount equal to one-third of the quantity of high reservoir
304 flows delivered to Mexico. Under no circumstances shall uses under
305 Section 2.B.2.b of the 2007 Interim Guidelines exceed 250,000 acre-feet
306 by MWD and 450,000 acre-feet by MWD, SNWA, Arizona, and Mexico
307 combined.
- 308 6.1.3 For any year in which a Quantified Surplus Condition (Section 2.B.3 of the 2007
309 Interim Guidelines) is determined, the Secretary shall allocate water to Mexico
310 pursuant to Section III.2 of Minute No. 319 prior to establishing the volume of
311 Quantified Surplus under Section 2.B.3.a of the 2007 Interim Guidelines. For the
312 purpose of determining the existence, and establishing the volume, of Quantified
313 Surplus, the Secretary shall not consider any volume of Binational ICS and
314 ICMA.

315 6.1.4 The allocations of Quantified Surplus to any California Contractors that do not
 316 have a contract to create Binational ICS shall not be reduced as a result of the
 317 quantification referenced in the preceding Section 6.1.3.

318 **SECTION 7**

319 7.1 Certain Parties have entered into the 2012 Forbearance Agreement to enable
 320 implementation of the operations contemplated by this Interim Operating Agreement and
 321 Minute No. 319. The 2012 Forbearance Agreement provides the appropriate legal
 322 mechanism to achieve successful conversion of ICMA to Binational ICS and delivery of
 323 Binational ICS. The forbearing parties have indicated that among the conditions of their
 324 forbearance, they will forbear only with respect to Binational ICS described in exhibits to
 325 the 2012 Forbearance Agreement.

326 7.1.1 The Secretary agrees to administer Binational ICS, including accounting for and
 327 delivery of Binational ICS, in a manner that is fully consistent with the terms and
 328 conditions of the 2012 Forbearance Agreement and Section XI.A of the 2007
 329 Interim Guidelines.

330 7.1.2 The Secretary acknowledges that forbearance is a condition for converting ICMA
 331 to Binational ICS.

332 7.2 Pursuant to procedures set forth in this Interim Operating Agreement, a Contractor may make
 333 contributions of capital to participate in a binational project in Mexico that will create ICMA.
 334 A portion of the ICMA created by the binational project may be converted to Binational ICS
 335 for use by the contributing Contractors.
 336

337 7.3 ICMA may be converted to Binational ICS subject to the following conditions:
 338

339 7.3.1 The amount of ICMA created, including ICMA in Mexico's account and ICMA that
 340 will be converted to Binational ICS, shall not exceed the volume of water actually
 341 retained in the United States through reduced deliveries to Mexico.
 342

343 7.3.2 In accounting for ICMA and ICMA converted to Binational ICS, the IBWC and the
 344 Secretary shall determine the amount of ICMA created as provided in Section III.6 of
 345 Minute No. 319. The Secretary shall determine the amount of Binational ICS that
 346 will be added to each Contractor's Binational ICS Account in consultation with the
 347 Lower Division States and provide a final written decision to the Parties. Any
 348 forbearing Party may appeal the Secretary's determinations through administrative
 349 and judicial processes.
 350

351 7.3.3 Unless otherwise provided in an exhibit to the 2012 Forbearance Agreement, there
 352 shall be a one-time deduction of two percent (2%) from the amount of Binational ICS
 353 in the Year of its conversion. This deduction results in additional water storage in
 354 Lake Mead for future use in accordance with the Consolidated Decree and the 2007
 355 Interim Guidelines.

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- 7.3.4 Unless otherwise provided in an exhibit to the 2012 Forbearance Agreement, the quantity of Binational ICS remaining at the end of each Year shall be diminished by annual evaporation losses of three percent (3%). Losses shall be applied annually to the end-of-the-Year balance of Binational ICS beginning in the Year after the Binational ICS is converted and continuing until no Binational ICS remains in Lake Mead. However, no evaporation losses shall be assessed during a Year in which the Secretary has determined a shortage.
- 7.3.5 The Parties hereby agree to the terms of Exhibit A to the 2012 Forbearance Agreement. The Parties must agree, prior to execution, to any subsequent exhibit to the 2012 Forbearance Agreement that does not provide for the deductions described in Sections 7.3.3 and 7.3.4. of this Interim Operating Agreement and the 2012 Forbearance Agreement.
- 7.3.6 Binational ICS may not be credited to a Contractor in another State.
- 7.4 Binational ICS may be released subject to the following conditions:
- 7.4.1 If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any Binational ICS. The Contractor may request that the amount of Binational ICS in the Contractor's account be reduced by the amount of the overrun payback obligation in order to pay the overrun payback obligation.
- 7.4.2 Binational ICS shall only be released pursuant to a determination of an ICS Surplus Condition.
- 7.4.3. The total amount of Binational ICS and Extraordinary Conservation ICS that may be released in any Year is limited to the following:
- 7.4.3.1 400,000 acre-feet for California Contractors;
- 7.4.3.2 300,000 acre-feet for Nevada Contractors; and
- 7.4.3.3 300,000 acre-feet for Arizona Contractors;
- 7.4.4 If the May, 24-month study for that Year indicates that a shortage condition would be determined in the succeeding Year if the requested amounts for the current Year were released, the Secretary may release less than the amounts of Binational ICS requested to be released in order to avoid a shortage condition.
- 7.4.5 During Flood Control releases, the Secretary shall take actions as described in Section III.4.j of Minute No. 319.

402 7.4.6 Binational ICS is not available for delivery in a year for which a shortage condition
403 has been determined.
404

405 7.4.7 Contractors shall request delivery of its Binational ICS in the same manner as
406 required for ICS under the 2007 Interim Guidelines.
407

408 7.4.8 Delivery of Binational ICS will be made pursuant to a Binational ICS Delivery
409 Agreement.
410

411 7.5 Binational ICS shall be accounted for and reported in the Water Accounting Report described
412 in Section 3.D.3 of the 2007 Interim Guidelines consistent with the provisions of this Interim
413 Operating Agreement.

414

SECTION 8

415 8.1 Except as provided herein, nothing in this Interim Operating Agreement shall be deemed to
416 diminish or waive the rights of any Party. The failure of any Party to enforce a provision
417 of this Interim Operating Agreement shall not be deemed to constitute a waiver of that
418 provision.
419

420 8.2 No Party to this Interim Operating Agreement shall be considered to be in default in the
421 performance of any obligations under this Interim Operating Agreement when a failure of
422 performance shall be due to uncontrollable forces. The term "uncontrollable force" shall
423 mean any cause beyond the control of the party unable to perform such obligation, including
424 but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire,
425 lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience,
426 strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or
427 regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain
428 the necessary authorizations or approvals from, a federal governmental agency or authority,
429 which by exercise of due diligence and foresight such party could not reasonably have been
430 expected to overcome. Nothing contained herein shall be construed to require any Party to
431 settle any strike or labor dispute in which it is involved.

432 8.3 All activities undertaken pursuant to this Interim Operating Agreement shall be subject to
433 the availability of funds, resources, and corresponding personnel, as well as to applicable
434 laws and regulations.

435 8.4 The Parties to this Interim Operating Agreement are hereby notified of A.R.S. § 38-511.

436 8.5 The Parties agree to comply with all applicable federal or state laws relating to equal
437 opportunity and non-discrimination.

438

439

- 440 8.6 The Colorado River Board of California (“CRB”) is created by, and operates under,
 441 California Water Code sections 12500 et seq. The California Water Code charges the
 442 CRB and its officers with the duty to confer with representatives of other States in the
 443 Colorado River Basin, representatives of the United States, and others concerning
 444 problems and measures relating to the development of the Colorado River Basin, the use
 445 of the water of the Colorado River System, and the protection of the interests therein of
 446 the State, and to negotiate and to make recommendations respecting such problems and
 447 measures. Through its Chairman acting as the Colorado River Commissioner pursuant to
 448 the California Water Code section 12525, the Colorado River Board of California has the
 449 authority to exercise on behalf of California every right and power granted to California
 450 by the Boulder Canyon Project Act of 1928, and to perform all other things necessary or
 451 expedient to carry out the purpose of the Colorado River Board. Under this authority, the
 452 CRB through its officers has participated in the negotiation of, and has made
 453 recommendations concerning, this Interim Operating Agreement and its exhibits.
 454 Although the CRB and the State of California are not Parties to this Interim Operating
 455 Agreement, the Parties agree to include the CRB and its officers in any consultations
 456 under this Interim Operating Agreement and in any negotiations related to amendment of
 457 this Interim Operating Agreement and its exhibits.
 458
- 459 8.7 Minute No. 319 serves to implement the Treaty through a series of temporary,
 460 cooperative measures. Minute No. 319 requires the mutual acceptance, cooperation, and
 461 coordination of the Parties for its implementation in the United States. The Parties agree
 462 that this Interim Operating Agreement is one of a number of implementing agreements, in
 463 the absence of which, Minute No. 319 cannot be implemented.

464 SECTION 9

- 465 9.1 **NOTICES AND REQUESTS.** All notices and requests required or allowed under the
 466 terms of this Interim Operating Agreement shall be in writing and shall be mailed first
 467 class postage paid to the following entities at the following addresses:

468 SNWA:

469 Southern Nevada Water Authority
 470 1001 S. Valley View Boulevard
 471 Las Vegas, NV 89153
 472 Attn: General Manager
 473

474 PVID:

475 Palo Verde Irrigation District
 476 180 West 14th Avenue
 477 Blythe, CA 92225
 478 Attn: General Manager
 479

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IID:

Imperial Irrigation District
333 East Barioni Boulevard
Imperial, CA 92251
Attn: General Manager

CVWD:

Coachella Valley Water District
P. O. Box 1058
Coachella, CA 92236
Attn: General Manager/Chief Engineer

City of Needles:

City of Needles
817 Third Street
Needles, CA 92363-2933
Attention: City Manager

MWD:

The Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90012
Attn: General Manager

CRB:

Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, CA 91203-1068
Attn: Executive Director

ADWR:

Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, AZ 85012
Attn: Director

CAWCD:

Central Arizona Water Conservation District
23636 North Seventh Street
Phoenix, Arizona 85024
Attn: General Manager

State of Colorado:

Colorado Water Conservation Board
1313 Sherman Street, Room 721

525 Denver, CO 80203
526 Attn: Director

527
528 Nevada:
529 Colorado River Commission of Nevada
530 555 East Washington Avenue, Suite 3100
531 Las Vegas, NV 89101
532 Attn: Executive Director, Colorado River Commission
533

534 State of Colorado:
535 Colorado Commissioner to the Upper Colorado River Commission
536 c/o Colorado Water Conservation Board
537 1313 Sherman Street, Room 721
538 Denver, CO 80203
539 Attn: Commissioner/Director
540

541 State of New Mexico:
542 New Mexico Interstate Stream Commission
543 P.O. Box 25102
544 Santa Fe, NM 87504-5102
545 Attn: Director Estevan R. López
546

547 State of Wyoming:
548 Wyoming State Engineer's Office
549 Herschler Building, 4th East
550 Cheyenne, Wyoming 82002-0370
551 Attn: Wyoming State Engineer
552

553 Upper Colorado River Commission
554 355 S 400 E
555 Salt Lake City, UT 84111-2904
556 Attn: Executive Director
557

558 State of Utah:
559 Utah Division of Water Resources
560 1594 West North Temple, Suite 310
561 P.O. Box 146201
562 Salt Lake City, Utah 84114-6201
563 Attn: Dennis J Strong, Director

564
565 Bureau of Reclamation:
566 1849 C Street, N.W.
567 Washington DC, 20240
568 Attn: Commissioner
569

570 9.2 Any Party may, at any time, change its mailing address by notice to the other Parties.

571 In Witness of this Interim Operating Agreement, the Parties affix their official signatures
572 below, acknowledging execution of this document on this 20th day of November, 2012.

573 [Signatures start next page]

574

575 BUREAU OF RECLAMATION

576

577

578 By: _____

579 Terrance J. Fulp
580 Regional Director

581

Approved as to form:

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By: _____

584

585

586 IMPERIAL IRRIGATION DISTRICT

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589 By: _____

590 John Pierre Menvielle
591 President

592

593 Attest:

Approved as to form:

594 :

595 By: _____

596 Gloria A. Rivera
597 Secretary

By: _____

John Penn Carter
Special Counsel

598 THE CITY OF NEEDLES

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601 By: _____

602 Name
603 City Manager Chair

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605 Attest:

Approved as to form:

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607 By: _____

608 Name
609 Title

By: _____

Name
Title

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612 COACHELLA VALLEY WATER DISTRICT

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615 By: _____

616 J. M. Barrett

617 Acting General Manager

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Approved as to form:

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By: _____

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Gerald D. Shoaf

623

General Counsel

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625 COLORADO RIVER COMMISSION OF NEVADA

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628 By: _____

629 Jayne Harkins

630 Executive Director

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Approved as to form:

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By: _____

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Jennifer T. Crandell

635

Senior Deputy Attorney General

636

637 THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

638

639

640 By: _____

641 Jeffrey Kightlinger

642 General Manager

643

Approved as to form:

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By: _____

646

Marcia L. Scully

647

General Counsel

648

649 PALO VERDE IRRIGATION DISTRICT

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651

652 By: _____

653 Daniel E. Robinson

654 President, Board of Trustees

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Approved as to form:

By: _____
David Saunders, Esq.
General Counsel

SOUTHERN NEVADA WATER AUTHORITY

By: _____
Patricia Mulroy
General Manager

Approved as to form:

By: _____
Gregory J. Walch
General Counsel

675 THE STATE OF ARIZONA acting through the ARIZONA DEPARTMENT OF WATER
676 RESOURCES

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By: _____
Sandra Fabritz-Whitney
Director

Approved as to form:

By: _____
Nicole D. Klobas
Deputy Counsel

688 THE STATE OF COLORADO

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By: _____
Jennifer Gimbel
Governor's Representative for Colorado
Director, Colorado Water Conservation Board

Approved as to form:

By: _____
Karen M. Kwon
First Assistant Attorney General
Colorado Attorney General's Office

THE STATE OF NEW MEXICO

By: _____
Estevan López
Director, New Mexico Interstate Stream Commission

Approved as to form:

By: _____
xxxxxx

THE STATE OF UTAH

By: _____
Dennis Strong
Director, Utah Department of Water Resources
Utah Interstate Stream Commissioner

Approved as to form:

By: _____
xxxxxx

THE STATE OF WYOMING

By: _____
Patrick T. Tyrrell
Wyoming State Engineer

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Approved as to form:

By: _____
Chris M. Brown
Senior Assistant Attorney General
Wyoming Attorney General's Office

UPPER COLORADO RIVER COMMISSION

By: _____
Don Ostler
Executive Director

Approved as to form:

By: _____
XXXXXX

1 **2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally**
2 **Created Surplus**
3
4

5 The State of Arizona, acting through the Arizona Department of Water Resources
6 (“ADWR”); the Palo Verde Irrigation District (“PVID”); the Imperial Irrigation District
7 (“IID”); the City of Needles; the Coachella Valley Water District (“CVWD”); the
8 Metropolitan Water District of Southern California (“MWD”); the Southern Nevada Water
9 Authority (“SNWA”); and the Colorado River Commission of Nevada (“CRCN”) enter into
10 this 2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally
11 Created Surplus (“2012 Forbearance Agreement”) as follows:
12

13 **Recitals**
14

15 A. The purposes of this 2012 Forbearance Agreement are to:
16

- 17 1. Allow Contractors to invest in projects in Mexico that will make additional
18 water available for use in the United States, through the creation, release, and
19 use of Binational Intentionally Created Surplus (“ Binational ICS”);
20
- 21 2. Help avoid shortages to the Lower Basin;
22
- 23 3. Benefit both Lake Mead and Lake Powell;
24
- 25 4. Increase the surface elevations of both Lakes Powell and Mead to higher
26 levels than would have otherwise occurred; and
27
- 28 5. Assure any Contractor that invests in projects in Mexico to create Binational
29 ICS under this 2012 Forbearance Agreement that no Contractor within another
30 state will claim the Binational ICS created by the Contractor.
31

32 B. The Parties to the 2012 Forbearance Agreement and their respective authority to
33 forbear are as follows:
34

- 35 1. ADWR, through its Director, is the successor to the signatory agency of the
36 State for the 1922 Colorado River Compact, and the 1944 Contract for
37 Delivery of Water with the United States, both authorized and ratified by the
38 Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. § 45-
39 107, the Director is authorized and directed, subject to the limitations in
40 A.R.S. § 45-106, for and on behalf of the State of Arizona, to consult, advise
41 and cooperate with the Secretary of the Interior of the United States
42 (“Secretary”) with respect to the exercise by the Secretary of Congressionally
43 authorized authority relative to the waters of the Colorado River (including,
44 but not limited to, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617,
45 and the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1501) and with
46 respect to the development, negotiation and execution of interstate

47 agreements. Additionally, under A.R.S. § 45-105(A)(9), the Director is
48 authorized to “prosecute and defend all rights, claims and privileges of this
49 state respecting interstate streams.”
50

51 2. SNWA is a Nevada joint powers agency and political subdivision of the State
52 of Nevada, created by agreement dated July 25, 1991, as amended
53 November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and
54 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this 2012
55 Forbearance Agreement and, pursuant to its contract issued under Section 5 of
56 the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICS
57 released by the Secretary for use within the State of Nevada pursuant to the
58 Consolidated Decree.
59

60 3. CRCN is an agency of the State of Nevada, authorized generally by N.R.S. §§
61 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.161 (6), (7) to
62 enter into this 2012 Forbearance Agreement. The CRCN, in furtherance of
63 the State of Nevada’s responsibility to promote the health and welfare of its
64 people in Colorado River matters, makes this 2012 Forbearance Agreement to
65 supplement the supply of water in the Colorado River which is available for
66 use in Nevada, augment the waters of the Colorado River, and facilitate the
67 more flexible operation of dams and facilities by the Secretary.
68

69 4. PVID is an irrigation district created under the Palo Verde Irrigation District
70 Act, codified at Section 33-1 *et seq.* of the Appendix to the California Water
71 Code, and delivers Colorado River water in Riverside and Imperial Counties,
72 California, pursuant to its contract issued under Section 5 of the Boulder
73 Canyon Project Act of 1928.
74

75 5. IID is an irrigation district created under the California Irrigation District Law,
76 codified at Section 20500 *et seq.* of the California Water Code, and delivers
77 Colorado River water in Imperial County, California, pursuant to its contract
78 issued under Section 5 of the Boulder Canyon Project Act of 1928.
79

80 6. CVWD is a county water district created under the California County Water
81 District Law, codified at Section 30000 *et seq.* of the California Water Code,
82 and delivers Colorado River water to portions of its service area in Imperial,
83 Riverside, and San Diego Counties, California, pursuant to its contract issued
84 under Section 5 of the Boulder Canyon Project Act of 1928 and the California
85 Quantification Settlement Agreement.
86

87 7. MWD is a metropolitan water district created under the California
88 Metropolitan Water District Act, codified at Section 109-1 *et seq.* of the
89 Appendix to the California Water Code; and delivers Colorado River water to
90 portions of its service area in Los Angeles, Orange, Riverside, San
91 Bernardino, San Diego and Ventura Counties, California, pursuant to its
92 contracts issued under Section 5 of the Boulder Canyon Project Act of 1928.

93
94 8. The City of Needles is a charter city duly authorized and existing under and
95 by virtue of the laws of the State of California and delivers Colorado River
96 water, either directly or by exchange, to portions of Imperial, Riverside, and
97 San Bernardino Counties, California, pursuant to its contracts issued under
98 Section 5 of the Boulder Canyon Project Act of 1928,
99

100 C. On December 13, 2007, the Parties to this 2012 Forbearance Agreement executed the
101 Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement (“2007
102 Forbearance Agreement”), which allowed Contractors to develop and take delivery of ICS
103 through conservation and augmentation projects in the United States.
104

105 D. On December 13, 2007, the Secretary adopted the Record of Decision for Colorado
106 River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for
107 Lake Powell and Lake Mead (“2007 Interim Guidelines”), which includes provisions for the
108 creation and delivery of ICS that are consistent with the provisions of the 2007 Forbearance
109 Agreement. *See* 2007 Interim Guidelines, 73 Fed. Reg. 19873-19892.
110

111 E. On November 20, 2012, the Commissioners of the International Boundary and Water
112 Commission (“IBWC”) executed Minute No. 319, Interim International Cooperative
113 Measures In the Colorado River Basin Through 2017 and Extension of Minute 318
114 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the
115 Mexicali Valley, Baja California (“Minute No. 319”), which allows, among other things,
116 U.S. entities to fund projects in Mexico that will create Intentionally Created Mexican
117 Allocation (“ICMA”), a portion of which could be converted to Binational ICS.
118

119 F. The Secretary, by and through the Bureau of Reclamation, the Parties to this 2012
120 Forbearance Agreement, and the other relevant parties are simultaneously entering into an
121 Interim Operating Agreement that addresses implementation of Minute No. 319, particularly
122 the conversion of ICMA to Binational ICS.
123

124 NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties
125 hereby agree as follows:
126

127 **Article 1**
128 **Definitions and Term**
129

130 **1.1 Definitions.**
131

132 The definitions in the Interim Surplus Guidelines (“ISG”) described in the Record of
133 Decision dated January 16, 2001, and modified by the 2007 Interim Guidelines are hereby
134 incorporated in this 2012 Forbearance Agreement. In addition, each of the following terms
135 shall have the meaning defined here. All defined terms shall be identified by initial letter
136 capitalization.
137

- 138 A. "2007 Forbearance Agreement" shall mean the Lower Colorado River Basin
139 Intentionally Created Surplus Forbearance Agreement executed on December
140 13, 2007.
141
- 142 B. "2012 Forbearance Agreement" shall mean this Lower Colorado River Basin
143 Forbearance Agreement for Binational Intentionally Created Surplus.
144
- 145 C. "2007 Interim Guidelines" shall mean Section XI of the Record of Decision
146 issued by the Secretary for the Colorado River Interim Guidelines for Lower
147 Basin Shortages and the Coordinated Operations for Lake Powell and Lake
148 Mead.
149
- 150 D. "Binational ICS" shall mean Binational Intentionally Created Surplus.
151
- 152 E. "Binational ICS Account" shall mean records established by the Secretary
153 regarding Binational ICS.
154
- 155 F. "ICMA" shall mean either water accounted for under Section III.1 of Minute
156 No. 319 or Intentionally Created Mexican Allocation as referred to in Section
157 III.4 of Minute No. 319.
158
- 159 G. "Interim Operating Agreement" shall mean the Interim Operating Agreement
160 for Implementation of Minute No. 319, entered into simultaneously with the
161 execution of this 2012 Forbearance Agreement.
162
- 163 H. "Minute No. 319" shall mean Minute No. 319, Interim International
164 Cooperative Measures In the Colorado River Basin Through 2017 and
165 Extension of Minute 318 Cooperative Measures To Address the Continued
166 Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California.
167
- 168 I. "Parties" shall mean all of the signatories to this 2012 Forbearance
169 Agreement.
170

171 1.2 Term of the 2012 Forbearance Agreement.
172

173 This 2012 Forbearance Agreement shall commence on the latter of the date Minute No. 319
174 enters into force or the date of execution by all Parties and shall terminate December 31,
175 2017; provided, however, that any Binational ICS remaining on December 31, 2017, may be
176 released as provided herein until December 31, 2036.
177

178 1.3 Seven Colorado River Basin States' Agreement
179

180 Notwithstanding Article 1.2 above, if one or more states withdraw from the agreement dated
181 April 23, 2007, executed by the seven Colorado River Basin states, the Parties to this 2012
182 Forbearance Agreement shall consult to determine whether to continue this 2012
183 Forbearance Agreement in effect or to amend or terminate this 2012 Forbearance Agreement.

184 In such event, the terms of this 2012 Forbearance Agreement shall continue in effect until the
185 Parties have consulted and agreed to continue, amend, or terminate this 2012 Forbearance
186 Agreement. In the event of termination, all Parties shall be relieved from the terms hereof
187 and this 2012 Forbearance Agreement shall be of no further force or effect.

188
189 **Article 2**

190 **Conversion of ICMA to Binational ICS and Release of Binational ICS**

191
192 **2.1 Binational ICS**

193
194 Pursuant to procedures set forth in the Interim Operating Agreement, a Contractor may make
195 contributions of capital to participate in a binational project in Mexico that will create ICMA.
196 A portion of the ICMA created by the binational project may be converted to Binational ICS
197 for use by the contributing Contractors.

198
199 **2.2 Creation of Binational ICS**

200
201 ICMA may be converted to Binational ICS subject to the following conditions:

- 202
- 203 A. The amount of ICMA created, including ICMA in Mexico's account and
204 ICMA that will be converted to Binational ICS, shall not exceed the volume
205 of water actually retained in the United States through reduced deliveries to
206 Mexico.
 - 207
 - 208 B. The IBWC and the Secretary, through the Bureau of Reclamation, shall
209 determine the amount of ICMA created and the Bureau of Reclamation shall
210 determine the amount of Binational ICS that will be added to each
211 Contractor's Binational ICS Account in consultation with the Lower Division
212 States and provide a final written decision to the Parties. Any Party may
213 appeal Reclamation's determinations through administrative and judicial
214 processes.
 - 215
 - 216 C. Unless otherwise provided in an exhibit to this 2012 Forbearance Agreement,
217 there shall be a one-time deduction of two percent (2%) from the amount of
218 Binational ICS in the Year of its creation. This deduction results in additional
219 water storage in Lake Mead for future use in accordance with the
220 Consolidated Decree and the 2007 Interim Guidelines.
 - 221
 - 222 D. Unless otherwise provided in an exhibit to this 2012 Forbearance Agreement,
223 the quantity of Binational ICS remaining at the end of each Year shall be
224 diminished by annual evaporation losses of three percent (3%). Losses shall
225 be applied annually to the end-of-the-Year balance of Binational ICS
226 beginning in the Year after the Binational ICS is created and continuing until
227 no Binational ICS remains in Lake Mead. However, no evaporation losses
228 shall be assessed during a Year in which the Secretary has determined a
229 shortage.

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E. Binational ICS may not be transferred to a Contractor in another State.

2.3 Request for Release of Binational ICS

Binational ICS may be released subject to the following conditions:

- A. If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any Binational ICS. The Contractor may request that the amount of Binational ICS in the Contractor's account be reduced by the amount of the overrun payback obligation in order to pay the overrun payback obligation.
- B. Binational ICS shall only be released pursuant to a determination of an ICS Surplus Condition.
- C. The total amount of Binational ICS and Extraordinary Conservation ICS that may be released in any Year is limited to the following:
 - 1. 400,000 acre-feet for California Contractors;
 - 2. 300,000 acre-feet for Nevada Contractors; and
 - 3. 300,000 acre-feet for Arizona Contractors;
- D. If the May, 24-month study for that Year indicates that a shortage condition would be determined in the succeeding Year if the requested amounts for the current Year were released, the Secretary, through the Bureau of Reclamation, may release less than the amounts of ICS requested to be released in order to avoid a shortage condition.
- E. During Flood Control releases, the Secretary shall take actions as described in Paragraph III.4.j of Minute No. 319.
- F. Binational ICS is not available for delivery in a year for which a shortage condition has been determined.

**Article 3
Forbearance**

3.1 In the absence of forbearance, surplus water is apportioned for use according to the percentages provided in Article II(B)(2) of the Consolidated Decree. The Parties respectively agree as follows:

275 A. ADWR hereby forbears any right the State of Arizona may have to
276 delivery of any Binational ICS released in accordance with the terms and
277 conditions set forth in this 2012 Forbearance Agreement and any
278 applicable Delivery Agreement for use within the State of California or
279 the State of Nevada.

280
281 B. PVID, IID, CVWD, the City of Needles and MWD hereby forbear any
282 right they may have to delivery of any Binational ICS released in
283 accordance with the terms and conditions set forth in this 2012
284 Forbearance Agreement and any applicable Delivery Agreement for use
285 within the State of Arizona or the State of Nevada.

286
287 C. SNWA and CRCN hereby forbear any right SNWA or the State of Nevada
288 may have to delivery of any Binational ICS released in accordance with
289 the terms and conditions set forth in this 2012 Forbearance Agreement and
290 any applicable Delivery Agreement for use within the State of Arizona or
291 the State of California.

292
293 3.2 Notwithstanding the foregoing forbearance of Binational ICS, the Parties only
294 forbear with respect to Binational ICS that is created pursuant to exhibits attached to and
295 incorporated within this 2012 Forbearance Agreement. This 2012 Forbearance
296 Agreement incorporates Exhibit A as of the date of execution. Additional exhibits may be
297 added to this 2012 Forbearance Agreement after written approval of all of the Parties.
298 Such approval shall not be unreasonably withheld.

299
300 3.3 In this 2012 Forbearance Agreement, the Parties do not forbear any right to the
301 release or delivery of any water that is not described herein.

302
303 3.4 Forbearance of all Parties is conditioned on the following:

304
305 A. The execution, by the Secretary and any Contractor seeking to create Binational
306 ICS, of a Delivery Agreement providing that the Parties to this 2012 Forbearance
307 Agreement are third-party beneficiaries of such Delivery Agreement.

308
309 B. The implementation by the Secretary, through the Bureau of Reclamation, of the
310 Interim Operating Agreement, which includes Binational ICS procedures in substantial
311 conformance with the provisions of this 2012 Forbearance Agreement and any Delivery
312 Agreement.

313
314 C. The continued implementation of an ICS program that is in substantial
315 conformance with this 2012 Forbearance Agreement, the 2007 Forbearance Agreement,
316 and any Delivery Agreement, including:

317
318 1. The availability of the decision and appeal process described in Article 2.2(B);

319

320 2. The establishment and use of an ICMA and Binational ICS accounting procedure
321 by the Secretary, through the Bureau of Reclamation, in the 2012 Interim Operating
322 Agreement; and
323

324 3. The Secretary's annual determination of Normal, Surplus (other than Quantified
325 Surplus), or Shortage conditions based on conditions in Lake Mead with consideration of
326 the amount of Binational ICS accumulated by the Parties and the amount of ICMA
327 accumulated by Mexico. For the purpose of determining the existence, and establishing
328 the volume, of Quantified Surplus, the Secretary shall not consider any volume of
329 Binational ICS and ICMA.
330

331 **Article 4**
332 **General Provisions**
333

334 4.1 The records of any Party to this 2012 Forbearance Agreement that relate to the
335 creation of Binational ICS shall be open to inspection by any other Party.
336

337 4.2 The Parties to this 2012 Forbearance Agreement are hereby notified of A.R.S.
338 § 38-511.
339

340 4.3 The Parties agree to comply with all applicable federal or state laws relating to
341 equal opportunity and non-discrimination.
342

343 4.4 Except as provided in Article 3, nothing in this 2012 Forbearance Agreement
344 shall be deemed to diminish or waive the rights of any Party. The failure of any Party to
345 enforce a provision of this 2012 Forbearance Agreement shall not be deemed to
346 constitute a waiver of that provision. The execution of, and forbearance in compliance
347 with, this 2012 Forbearance Agreement shall not be admissible against any Party in any
348 action except for an action to enforce the terms of this 2012 Forbearance Agreement or a
349 Delivery Agreement.
350

351 4.5 No Party to this 2012 Forbearance Agreement shall be considered to be in default
352 in the performance of any obligations under this 2012 Forbearance Agreement when a
353 failure of performance shall be due to uncontrollable forces. The term "uncontrollable
354 force" shall mean any cause beyond the control of the Party unable to perform such
355 obligation, including but not limited to failure or threat of failure of facilities, flood,
356 earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil
357 disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage,
358 restraint by order of a court or regulatory agency of competent jurisdiction, and action or
359 non-action by, or failure to obtain the necessary authorizations or approvals from, a
360 federal governmental agency or authority, which by exercise of due diligence and
361 foresight such Party could not reasonably have been expected to overcome. Nothing
362 contained herein shall be construed to require any Party to settle any strike or labor
363 dispute in which it is involved.
364

365 4.6 The Colorado River Board of California (“CRB”) is created by, and operates
366 under, California Water Code sections 12500 et seq. The California Water Code charges
367 the CRB and its officers with the duty to confer with representatives of other States in the
368 Colorado River Basin, representatives of the United States, and others concerning
369 problems and measures relating to the development of the Colorado River Basin, the use
370 of the water of the Colorado River System, and the protection of the interests therein of
371 the State, and to negotiate and to make recommendations respecting such problems and
372 measures. Through its Chairman acting as the Colorado River Commissioner pursuant to
373 the California Water Code section 12525, the Colorado River Board of California has the
374 authority to exercise on behalf of California every right and power granted to California
375 by the Boulder Canyon Project Act of 1928, and to perform all other things necessary or
376 expedient to carry out the purpose of the Colorado River Board. Under this authority, the
377 CRB through its officers has participated in the negotiation of, and has made
378 recommendations concerning, this 2012 Forbearance Agreement and its exhibits.
379 Although the CRB and the State of California are not Parties to this 2012 Forbearance
380 Agreement, the Parties agree to include the CRB and its officers in any consultations
381 under this 2012 Forbearance Agreement and in any negotiations related to amendment of
382 this 2012 Forbearance Agreement and its exhibits.

383
384 **Article 5**
385 **Notices**

386
387 5.1 Notices and Requests

388
389 A. All notices and requests required or allowed under the terms of this 2012
390 Forbearance Agreement shall be in writing and shall be mailed first class postage paid to
391 the following entities at the following addresses:

392
393 CRCN:
394 Colorado River Commission of Nevada
395 555 E. Washington Ave., Suite 3100
396 Las Vegas, NV 89101
397 Attn: Executive Director, Colorado River Commission

398
399 SNWA:
400 Southern Nevada Water Authority
401 1001 S. Valley View Boulevard
402 Las Vegas, NV 89153
403 Attn: General Manager

404
405 PVID:
406 Palo Verde Irrigation District
407 180 West 14th Avenue
408 Blythe, CA 92225
409 Attn: General Manager

410

411 IID:
412 Imperial Irrigation District
413 333 E. Barioni Boulevard
414 Imperial, CA 92251
415 Attn: General Manager
416
417 CVWD:
418 Coachella Valley Water District
419 P. O. Box 1058
420 Coachella, CA 92236
421 Attn: General Manager/Chief Engineer
422
423 City of Needles:
424 City of Needles
425 817 Third Street
426 Needles, CA 92363-2933
427 Attention: City Manager
428
429 MWD:
430 The Metropolitan Water District of Southern California
431 700 North Alameda Street
432 Los Angeles, CA 90012
433 Attn: General Manager
434
435 State of California:
436 Colorado River Board of California
437 770 Fairmont Avenue, Suite 100
438 Glendale, CA 91203-1068
439 Attn: Executive Director
440
441 State of Arizona:
442 Arizona Department of Water Resources
443 3550 North Central Avenue
444 Phoenix, AZ 85012
445 Attn: Director
446
447
448
449
450
451
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456

457 B. Any Party may, at any time, change its mailing address by notice to the
458 other Parties.

459
460 In Witness of this 2012 Forbearance Agreement, the Parties affix their official signatures
461 below, acknowledging execution of this document on the 20th day of November, 2012.

462
463
464 THE STATE OF ARIZONA acting through the ARIZONA DEPARTMENT OF
465 WATER RESOURCES

466
467
468 By: _____
469 Sandra Fabritz-Whitney
470 Director

Approved as to form:

471
472
473 By: _____
474 Nicole D. Klobas
475 Deputy Counsel

476
477
478 PALO VERDE IRRIGATION DISTRICT

479
480
481 By: _____
482 Daniel E. Robinson
483 President, Board of Trustees

Approved as to form:

484
485
486
487 By: _____
488 David Saunders, Esq.
489 General Counsel

490
491
492

493 IMPERIAL IRRIGATION DISTRICT

494

495

496 By: _____

497 John Pierre Menvielle

498 President

499

500 Attest:

501 :

502 By: _____

503 Gloria A. Rivera

504 Secretary

Approved as to form:

By: _____

John Penn Carter

Special Counsel

505

506

507 THE CITY OF NEEDLES

508

509

510 By: _____

511 Name

512 City Manager/Chair

513

514 Attest:

515 :

516 By: _____

517 Name

518 Title

Approved as to form:

By: _____

Name

Title

519

520

521 COACHELLA VALLEY WATER DISTRICT

522

523

524 By: _____

525 J. M. Barrett

526 Acting General Manager

527

528

Approved as to form:

529

530

By: _____

531

Gerald D. Shoaf

532

General Counsel

533

534

535

536 THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

537

538

539 By: _____

540 Jeffrey Kightlinger

541 General Manager

542

Approved as to form:

543

544

By: _____

545

Marcia L. Scully

546

General Counsel

547

548

549 SOUTHERN NEVADA WATER AUTHORITY

550

551

552 By: _____

553 Patricia Mulroy

554 General Manager

555

Approved as to form:

556

557

By: _____

558

Gregory J. Walch

559

General Counsel

560

561

562 COLORADO RIVER COMMISSION OF NEVADA

563

564

565 By: _____

566 Jayne Harkins

567 Executive Director

568

Approved as to form:

569

570

By: _____

571

Jennifer T. Crandell

572

Senior Deputy Attorney General

573

Exhibit A

Minute No. 319 Pilot Project

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Pursuant to procedures set forth in Minute No. 319 and this Agreement, CAWCD, MWD, SNWA and the Bureau of Reclamation will make contributions of capital to create ICMA in Mexico for use in the United States. The total amount of ICMA that will be created pursuant to this Exhibit A is 124,000 acre-feet. Of that volume, 95,000 acre-feet of ICMA will be converted to Binational ICS and distributed to CAWCD, MWD, and SNWA. The remaining 29,000 acre-feet of ICMA will be debited from Mexico's account and considered water for future use in accordance with the Consolidated Decree and the 2007 Interim Guidelines.

Contributions:

1. CAWCD will contribute \$2,500,000 in exchange for 23,750 acre-feet of Binational ICS.
2. MWD will contribute \$5,000,000 in exchange for 47,500 acre-feet of Binational ICS.
3. SNWA will contribute \$2,500,000 in exchange for 23,750 acre-feet of Binational ICS.

Delivery: CAWCD, MWD, and SNWA will not request delivery of the Binational ICS created by this agreement until the ICMA is debited from Mexico's account, which shall not be later than December 31, 2017.

Accounting: There will be no deduction from the amount of Binational ICS created under this Exhibit A pursuant to Article 2.2(C) or Article 2.2(D) of the 2012 Forbearance Agreement and Article 7.3.2 and 7.3.3 of the Interim Operating Agreement because the 29,000 acre-feet that will become a system benefit will exceed the sum of the 2% assessment pursuant to Article 2.2(C) and evaporation assessments pursuant to Article 2.2(D).

In Witness of this Exhibit A to the 2012 Forbearance Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 20th day of November, 2012.

THE STATE OF ARIZONA acting through the ARIZONA DEPARTMENT OF WATER RESOURCES

614

615

616

By: _____

617

Sandra Fabritz-Whitney

618

Director

619

Approved as to form:

620

621

By: _____

622

Nicole D. Klobas

623

Deputy Counsel

624

PALO VERDE IRRIGATION DISTRICT

625

626

627

By: _____

628

Daniel E. Robinson

629

President, Board of Trustees

630

Approved as to form:

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632

633

By: _____

634

David Saunders, Esq.

635

General Counsel

636

IMPERIAL IRRIGATION DISTRICT

637

638

639

By: _____

640

John Pierre Menvielle

641

President

642

643

Attest:

Approved as to form:

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By: _____

By: _____

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Gloria A. Rivera

John Penn Carter

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Secretary

Special Counsel

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THE CITY OF NEEDLES

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By: _____
Name
City Manager/Chair

Attest:
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By: _____
Name
Title

Approved as to form:

By: _____
Name
Title

COACHELLA VALLEY WATER DISTRICT

By: _____
J. M. Barrett
Acting General Manager

Approved as to form:

By: _____
Gerald D. Shoaf
General Counsel

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____
Jeffrey Kightlinger
General Manager

Approved as to form:

By: _____
Marcia L. Scully
General Counsel

692 SOUTHERN NEVADA WATER AUTHORITY

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695 By: _____

696 Patricia Mulroy
697 General Manager

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Approved as to form:

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By: _____

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Gregory J. Walch
General Counsel

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705 COLORADO RIVER COMMISSION OF NEVADA

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708 By: _____

709 Jayne Harkins
710 Executive Director

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Approved as to form:

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By: _____

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Jennifer T. Crandell
Senior Deputy Attorney General

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Agreement No. _____

AGREEMENT AMONG
THE UNITED STATES OF AMERICA, THROUGH THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
THE COLORADO RIVER COMMISSION OF NEVADA,
THE SOUTHERN NEVADA WATER AUTHORITY, AND
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
FOR A PILOT PROGRAM FOR THE CONVERSION OF INTENTIONALLY
CREATED MEXICAN ALLOCATION TO INTENTIONALLY CREATED SURPLUS

1. PREAMBLE: THIS AGREEMENT (hereinafter referred to as the “2012 Contributed Funds Agreement” or “Agreement”) made this 20th day of November, 2012, 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 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 Section 397 of the Act of December 20, 2006, (120 Stat. 2922); all of which acts are part of the body of law commonly known and referred to as Federal Reclamation law; among the UNITED STATES OF AMERICA, hereinafter referred to as the “United States,” represented by the Secretary of the Interior, hereinafter referred to as the “Secretary,” and acting through the officer executing this Agreement; THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a regional public water district duly organized under California law, hereinafter referred to as “MWD”; the COLORADO RIVER COMMISSION OF NEVADA, an agency of the State of Nevada, hereinafter referred to as “CRCN”; the SOUTHERN NEVADA WATER AUTHORITY, a political subdivision of the

State of Nevada, hereinafter referred to as "SNWA"; and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a multi-county water conservation district duly organized and existing under the laws of the State of Arizona, hereinafter referred to as "CAWCD"; each of which is at times referred to individually as "Party" and which are at times collectively referred to as "Parties."

WITNESSETH THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, for the purposes of controlling floods, improving navigation, regulating the flow of the Colorado River, and providing for storage and the 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 as and designated Hoover Dam and incidental facilities, creating thereby a reservoir designated 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 United States Bureau of Reclamation, hereinafter referred to as "Reclamation," has been working closely and cooperatively with the United States International Boundary and Water Commission, hereinafter referred to as "IBWC," as described in Minute No. 317, dated June 17, 2010, to the United States-Mexico Treaty for Utilization of Waters of the

Colorado and Tijuana Rivers and of the Rio Grande, signed February 3, 1944 (1944 Water Treaty), to “explore opportunities for binational cooperative projects that: minimize the impacts of potential Colorado River shortage conditions; generate additional volumes of water using new water sources by investing in infrastructure such as desalinization facilities; conserve water through investments in a variety of current and potential uses, including agriculture, among others; and envision the possibility of permitting Mexico to use United States infrastructure to store water”;

2.5 WHEREAS, on November 20, 2012, Minute No. 319 to the 1944 Water Treaty was adopted;

2.6 WHEREAS, Minute No. 319 identifies cooperative measures that both countries will take through December 31, 2017, including distribution of flows under low and high reservoir conditions, salinity considerations, the ability for Mexico to create Intentionally Created Mexican Allocation (“ICMA”), and a pilot program for water for the environment in Mexico and ICMA/Binational ICS Exchange as defined below;

2.7 WHEREAS, the Pilot Program will include the following elements:

2.7.1 Approximately 105,566 acre-feet (130 mcm) of water will be delivered as a pulse flow for environmental purposes within Mexico in 2014. The source of water to implement this pulse flow shall be from water deferred under Minute No. 318 or from ICMA created under Minute No. 319.

2.7.2 A total of 124,000 acre-feet of water will be converted from ICMA before December 30, 2017, for use in the United States. The source of water to implement this exchange shall be from water deferred under Minute No. 318 or from ICMA created under Minute No. 319.

2.7.3 United States entities (both federal and non-federal) will contribute a total of \$21,000,000 U.S. Dollars (“USD”) to Mexico for investment in environmental enhancement

of Colorado River riparian areas including the areas of the Colorado River Delta, water infrastructure including Canal Reforma and Module 18, and related projects.

2.8 WHEREAS, MWD, SNWA, and CAWCD are willing and able pursuant to the provisions of the Interim Operating Agreement (defined below) to contribute capital for the Pilot Program (defined below) in the form of monetary contributions in exchange for Binational ICS (defined below) credits;

2.9 WHEREAS, the Parties desire to set forth their understanding as to the monetary contributions that will be provided by MWD, SNWA, and CAWCD, (collectively, the "Local Funding Agencies" as defined below), the responsibilities of Reclamation with respect to these contributions and services, and the quantity of Binational ICS credits that each Local Funding Agency shall receive in exchange for such capital contributions;

2.10 WHEREAS, CRCN and SNWA have jointly consulted to acquire supplemental Colorado River water and are in compliance with N.R.S. § 538.186;

2.11 WHEREAS, no additional or expanded Pilot Program is contemplated or proposed by Reclamation at this time; and

2.12 WHEREAS, any decision to expand or create a new Pilot Program after the completion or termination of the Pilot Program will be made in the future by the United States, subject to and based upon appropriate compliance with Federal law and consultation with the Colorado River Basin States.

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

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

3.1 1944 Water Treaty means the United States-Mexico Treaty for Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed February 3, 1944.

3.2 Binational ICS means Binational Intentionally Created Surplus.

3.3 Binational ICS Account means records established by the Secretary regarding Binational ICS.

3.4 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.

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

3.6 Consolidated Decree means the decree entered by the United States Supreme Court in the matter of Arizona v. California et al. on March 27, 2006.

3.7 Delivery Agreement means an agreement entered into by the Secretary and one or more Contractors seeking to create Binational ICS, providing for delivery of Binational ICS according to the terms of the 2012 Forbearance Agreement and this Interim Operating Agreement.

3.8 Eligible Project Costs means costs for which Reclamation may expend appropriated or contributed funds or receive in-kind services under the Pilot Program.

3.9 Exhibit A is the Delivery Conditions for Binational ICS.

3.10 Exhibit B is the Delivery Agreement for CAWCD.

3.11 Exhibit C is the Delivery Agreement for MWD.

3.12 Exhibit D is the Delivery Agreement for SNWA.

3.13 Exhibit E is the Delivery Agreement for Imperial Irrigation District (IID), in the event it becomes a Local Funding Agency as described in section 3.18.

3.14 Forbearance Agreement means the 2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus.

3.15 ICMA means any and all water retained in the United States as a result Mexico's deferred deliveries of or adjustments to Mexico's annual water delivery schedule pursuant to the

terms of Minute No. 319. ICMA as defined herein specifically includes water retained in the United States through the actions of Mexico in accordance Sections III.1, III.4, and III.6 of Minute No. 319.

3.16 Interim Guidelines means the guidelines adopted by the Secretary on December 13, 2007, in a Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations of Lake Powell and Lake Mead.

3.17 Interim Operating Agreement for Implementation of Minute No. 319 ("Interim Operating Agreement") means the Interim Operating Agreement for Implementation of Minute No. 319, entered into simultaneously with the execution of this 2012 Contributed Funds Agreement.

3.18 Local Funding Agencies means MWD, SNWA, and CAWCD which are entities holding entitlements to Mainstream water under a water delivery contract with the United States through the Secretary and providing capital contributions identified in this Agreement. In addition to the foregoing, MWD and IID are in ongoing discussions as of the date of execution of this 2012 Contributed Funds Agreement regarding IID's participation in the funding for the Pilot Program and sharing in Binational ICS under Minute No. 319. The process and terms for IID's participation will be implemented pursuant to a legally binding, enforceable written agreement between MWD and IID. Under such agreement, and no later than December 31, 2017, MWD and IID shall provide written notice to all Parties that IID has, or has not, agreed to become a participant pursuant to the IID/MWD agreement. Upon notice that IID and MWD have agreed to IID's participation, IID shall have the rights and obligations of a Local Funding Agency to the extent, and on the terms, of the sharing agreement between IID and MWD.

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

3.20 Minute No. 319 means Minute No. 319 Interim International Cooperative Measures In the Colorado River Basin Through 2017 and Extension of Minute 318 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California, dated November 20, 2012, to the 1944 Water Treaty.

3.21 Pilot Program means the program described in Section ~~III.65~~ of Minute No. 319.

4. GENERAL TERMS AND CONDITIONS:

4.1 This Agreement shall become effective upon the date set forth in Article 1 of this 2012 Contributed Funds Agreement and shall remain in effect until fully performed or the expiration of Minute No. 319, whichever first occurs.

5. CAPITAL CONTRIBUTIONS:

5.1 Federal Contribution. Reclamation, or another federal agency, will provide funding of a portion of the total Pilot Program costs, or \$11,000,000 USD. Federal contributions result in the creation of 29,000 acre-feet of ICMA that will be debited from Mexico's account and considered water for future use in accordance with the Consolidated Decree and the 2007 Interim Guidelines.

5.2 Local Funding Agencies Contribution. The Local Funding Agencies shall make Pilot Program contributions by transferring funds to Reclamation pursuant to the following schedule (all monetary values are in USD):

Table 1: Funding Schedule

Date (on or before)	MWD	CAP	SNWA
December 31, 2014	\$1,666,666.66	\$833,333.33	\$833,333.33
December 31, 2015	\$1,666,666.66	\$833,333.33	\$833,333.33
December 31, 2016	\$1,666,666.67	\$833,333.34	\$833,333.34
Total	\$5,000,000.00	\$2,500,000.00	\$2,500,000.00

5.3 The timing of payments described in Section 5.2 above may be modified by mutual consent of the Parties without requiring amendment of this 2012 Contributed Funds Agreement.

5.4 Method of Transfer of Monetary Contributions. All transfers of money required by Section 5.2 above shall be made electronically in accordance with instructions from Reclamation.

6. CREATION AND ACCOUNTING OF BINATIONAL ICS:

6.1 The Secretary has determined that the creation of Binational ICS described in Section III.6 of Minute No. 319 has met the requirements of the Interim Operating Agreement and Exhibit A to the 2012 Forbearance Agreement.

6.2 When ICMA is converted for use in the United States in accordance with Section III.6.d-~~iii~~.iii of Minute No. 319, Reclamation shall, in accordance with Section 7.3.2 of the Interim Operating Agreement, credit each Local Funding Agency's Binational ICS Account in proportion to their contributions to date until each Local Funding Agency is credited the full amount of Binational ICS identified in Exhibit A.

6.3 If on December 31, 2016, Mexico has not made 124,000 acre-feet of ICMA available for conversion in accordance with Sections III.6.d and III.6.e of Minute No. 319, the Secretary will take any action necessary, including the reduction of Mexico's delivery schedule if necessary, in order to satisfy the Local Funding Agencies with the full amount of Binational ICS identified in Exhibit A by December 31, 2017.

6.4 The proportion of Binational ICS credited to MWD's Binational ICS Account in accordance with Section 6.1 above can be reduced and credited to the Binational ICS Account of another Contractor within California.

6.5 Binational ICS shall be accounted for and reported in the Water Accounting Report described in Section 3.D.3 of the Interim Guidelines consistent with the provisions of the Interim Operating Agreement

7. AVAILABILITY OF BINATIONAL ICS TO LOCAL FUNDING AGENCIES:

The delivery conditions for Binational ICS available to the Local Funding Agencies are set forth in Exhibit A hereto. All Binational ICS available to a Local Funding Agency pursuant to this Agreement shall be delivered to such Local Funding Agency pursuant to such agency's Delivery Agreement. The Delivery Agreements for the Local Funding Agencies are attached hereto as Exhibits B, C, and D, and E, if applicable.

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 of the 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: (1) 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; and (2) acknowledges that such warranty and representation is a material inducement to, and has been relied upon by, the other Parties in entering into this 2012 Contributed Funds Agreement and performing their respective obligations hereinafter.

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 2012 Contributed Funds 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

MWD:

The Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90012
Attn: General Manager

SNWA:

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

CRCN:

Colorado River Commission of Nevada
555 E. Washington Ave., Suite 3100
Las Vegas, NV 89101
Attn: Executive Director, Colorado River Commission

CAWCD:

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

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

16. JUDICIAL REMEDIES NOT FORECLOSED: Nothing herein 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. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to the Congress, or Resident Commissioner, or official of MWD, SNWA, CRCN, CAWCD, or IID (if applicable) 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.

19. EXHIBITS MADE PART OF THIS AGREEMENT: Exhibits A, B, C, D and E are attached hereto and made a part hereof.

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 upon a theory of third-party beneficiary or otherwise, including but not limited to the country of Mexico and non-governmental organizations.

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.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement No.

_____ on the day and year first written above.

Approved as to legal sufficiency:

THE UNITED STATES OF AMERICA

By: _____
XXX

By: _____
Terrance J. Fulp
Bureau of Reclamation

Approved as to form:

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: _____
Marcia L. Scully
General Counsel

By: _____
Jeffrey Kightlinger
General Manager

Approved as to form:

**SOUTHERN NEVADA WATER
AUTHORITY**

By: _____
Gregory J. Walch
General Counsel

By: _____
Patricia Mulroy
General Manager

Approved as to form:

**COLORADO RIVER COMMISSION
OF NEVADA**

By: _____
Jennifer T. Crandell
Senior Deputy Attorney General

By: _____
Jayne Harkins
Executive Director

Approved as to form:

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: _____
Jay M. Johnson
General Counsel

By: _____
David V. Modeer
General Manager

EXHIBIT A

Minute 319 Pilot Project

Pursuant to procedures set forth in Minute 319 and this Agreement, CAWCD, MWD, SNWA and the Bureau of Reclamation will make contributions of capital to create ICMA in Mexico for use in the United States. The total amount of ICMA that will be created pursuant to this Exhibit A is 124,000 acre-feet. Of that volume, 95,000 acre-feet of ICMA will be converted to Binational ICS and distributed to CAWCD, MWD, and SNWA. The remaining 29,000 acre-feet of ICMA will be debited from Mexico's account and considered water for future use in accordance with the Consolidated Decree and the 2007 Interim Guidelines.

Contributions:

1. CAWCD will contribute \$2,500,000 in exchange for 23,750 acre-feet of Binational ICS.
2. MWD will contribute \$5,000,000 in exchange for 47,500 acre-feet of Binational ICS.
3. SNWA will contribute \$2,500,000 in exchange for 23,750 acre-feet of Binational ICS.

Delivery: CAWCD, MWD, and SNWA will not request delivery of the Binational ICS created by this Agreement until the ICMA is debited from Mexico's account which shall not be later than December 31, 2017.

Accounting: There will be no deduction from the amount of Binational ICS created under this Exhibit A pursuant to Article 2.2(C) or Article 2.2(D) of the 2012 Forbearance Agreement and Article 7.3.2 and 7.3.3 of the Interim Operating Agreement because the 29,000 acre-feet that will become a system benefit will exceed the sum of the two percent (2%) assessment pursuant to Article 2.2(C) and evaporation assessments pursuant to Article 2.2(D).

2012 BINATIONAL ICS DELIVERY AGREEMENT

This 2012 Binational ICS Delivery Agreement (“Delivery Agreement”) is entered into this 20th day of November 2012 by and between the UNITED STATES OF AMERICA, through the Department of Interior, Bureau of Reclamation (“Reclamation”), the SOUTHERN NEVADA WATER AUTHORITY (“SNWA”), and the COLORADO RIVER COMMISSION OF NEVADA (“CRCN”), (each referred to individually as “Party”, or collectively as “Parties”). The Parties hereby agree as follows:

I. Recitals

- A. The Secretary of the Interior (“Secretary”) issued a Record of Decision (ROD) for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead on December 13, 2007, which implements Interim Guidelines for the Operation of Lake Powell and Lake Mead (“Guidelines”).
- B. On November 20, 2012, the Commissioners of the International Boundary and Water Commission (“IBWC”) executed Minute No. 319, Interim International Cooperative Measures In the Colorado River Basin Through 2017 and Extension of Minute 318 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California (“Minute No. 319”), which allows, among other things, U.S. entities to fund projects in Mexico that will create Intentionally Created Mexican Allocation (“ICMA”), a portion of which could be converted to Binational ICS.
- C. The Secretary, by and through the Bureau of Reclamation, and the other relevant parties are simultaneously entering into an Interim Operating Agreement (“Interim Operating Agreement”) that addresses implementation of Minute No. 319, particularly the conversion of ICMA to Binational ICS.
- D. SNWA is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§277.074 and 277.120. SNWA is authorized by N.R.S. §538.186 to enter into this Delivery Agreement. SNWA is an existing Contractor and holds an entitlement to the delivery of Colorado River water under Contract No. 2-07-30-W0266 dated March 2, 1992, as amended and restated November 17, 1994, and amended and restated December 29, 2009.
- E. CRCN is an agency of the State of Nevada, authorized generally by N.R.S. §§538.041 and 538.251 and authorized by N.R.S. §538.161 (6) and (7) to enter into this Delivery Agreement. The CRCN, in furtherance of the State of Nevada’s responsibility to promote the health and welfare of its people in Colorado River matters, makes this Delivery Agreement to supplement the supply of water in the Colorado River that is available for use in Nevada, augment the waters of the

Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary.

- F. CRCN and SNWA have secured the forbearance of certain Contractors through the simultaneous execution of a 2012 Forbearance Agreement, attached hereto as Exhibit "A," in which under specific and limited circumstances the Contractors forbear the exercise of certain rights to Colorado River water otherwise available to them under the Consolidated Decree in Arizona v. California and under contracts entered into under Section 5 of the Boulder Canyon Project Act of 1928.

II. Authority

The Secretary is authorized under the Reclamation Act of 1902 and all acts amendatory thereof and supplementary thereto, including in particular Section 5 of the Boulder Canyon Project Act of 1928, to enter into contracts for the delivery of Colorado River water.

III. Definitions

Defined terms appear in this Delivery Agreement with initial capitalization and shall have the same meaning as in the Guidelines; provided, however:

- A. 2012 Contributed Funds Agreement shall mean the Agreement among the United States of America, through the Department of the Interior, Bureau of Reclamation, the Metropolitan Water District of Southern California, the Colorado River Commission of Nevada, the Southern Nevada Water Authority, and the Central Arizona Water Conservation District for a Pilot Program for the Conversion of Intentionally Created Mexican Allocation to Binational Intentionally Created Surplus;
- B. 2012 Forbearance Agreement shall mean the 2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus;
- C. Binational ICS shall mean Binational Intentionally Created Surplus;
- D. ICMA shall mean water accounted for under Section III.1 of Minute No. 319 and Intentionally Created Mexican Allocation as referred to in Section III.4 of Minute No. 319; and
- E. Interim Operating Agreement shall mean the Interim Operating Agreement for Implementation of Minute No. 319, entered into simultaneously with the execution of this Delivery Agreement.

IV. Term

This Delivery Agreement shall become effective upon execution by the Parties and shall remain in effect until such time as all deliveries of Binational ICS permissible under the terms of the Interim Operating Agreement and this Delivery Agreement have occurred.

V. Relationship to Interim Operating Agreement

The Parties to this Delivery Agreement expressly acknowledge that this Delivery Agreement will be administered in compliance with the terms of the Interim Operating Agreement. Specific reference in this Delivery Agreement to particular sections of the Interim Operating Agreement shall not render inapplicable to the Parties those sections not specifically referred to herein.

VI. Creation and Accounting of Binational ICS

- A. The Secretary has determined that the creation of Binational ICS described in Section III.6 of Minute No. 319 has met the requirements of the Interim Operating Agreement and Exhibit A to the 2012 Forbearance Agreement.
- B. When ICMA is converted for use in the United States in accordance with Section III.6.d.ii of Minute No. 319, Reclamation shall credit SNWA's Binational ICS Account, in accordance with Section 7.3.2 of the Interim Operating Agreement and Section 6 of the 2012 Contributed Funds Agreement.
- C. Binational ICS shall be accounted for and reported in the Water Accounting Report described in Section 3.D.3 of the Guidelines consistent with the provisions of the Interim Operating Agreement.

VII. Delivery of Binational ICS

- A. SNWA shall neither order nor accept delivery of Binational ICS except in accordance with the terms of the Interim Operating Agreement, this Delivery Agreement, and the 2012 Forbearance Agreement.
- B. SNWA's existing entitlement to Colorado River water shall remain in full force and effect and with this Delivery Agreement shall govern the delivery of Binational ICS to SNWA.
- C. Binational ICS. The Secretary shall deliver to SNWA under Contract No. 2-07-30-W0266 dated March 2, 1992, as amended and restated November 17, 1994, and amended and restated on December 29, 2009, the Binational ICS created under the terms of this Delivery Agreement and requested by SNWA, in accordance with Section 7.4 of the Interim Operating Agreement and the 2012 Forbearance Agreement; provided, however:

1. The Binational ICS delivery must be in accordance with 43 C.F.R. Part 417; and
2. Nothing in this Delivery Agreement modifies, or is intended to modify, the rights of any person or entity that is not a party to the 2012 Forbearance Agreement.

VIII. Other Terms

- A. Signatories to the 2012 Forbearance Agreement are intended third-party beneficiaries of this Delivery Agreement solely for the purposes of ensuring compliance with the Interim Operating Agreement and the 2012 Forbearance Agreement and enforcing the provisions of this Delivery Agreement that require compliance and/or consistency with the Interim Operating Agreement and the 2012 Forbearance Agreement. Notwithstanding anything to the contrary contained in this paragraph, no third-party shall accrue any right to Binational ICS as a result of the third-party beneficiary status conferred in this paragraph.
- B. This Delivery Agreement is subject to and controlled by the Colorado River Compact of 1922.
- C. No member of or Delegate to Congress, Resident Commissioner, or official of any Party shall benefit from this Delivery Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- D. This Delivery Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982.
- E. Each Party to this Delivery Agreement represents that the person executing this Delivery Agreement on behalf of such Party has full power and authority to do so, and that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.
- F. The expenditure or advance of any money or the performance of any obligation of the United States under this Delivery Agreement shall be contingent on appropriation or allotment of funds.
- G. Each Party shall comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

IN WITNESS WHEREOF, the Parties hereto have executed this Delivery Agreement No. _____ the day and year first written above.

Approved as to legal sufficiency:

THE UNITED STATES OF AMERICA

by: _____
Field Solicitor

by: _____
Terrance J. Fulp
Lower Colorado Region
Bureau of Reclamation

Approved as to form:

SOUTHERN NEVADA WATER AUTHORITY

by: _____
Gregory J. Walch
General Counsel

by: _____
Patricia Mulroy
General Manager

Approved as to form:

**COLORADO RIVER COMMISSION OF
NEVADA**

by: _____
Jennifer T. Crandell
Senior Deputy Attorney General

by: _____
Jayne Harkins
Executive Director