



SOUTHERN NEVADA
WATER AUTHORITY

AGENDA

SOUTHERN NEVADA WATER AUTHORITY BOARD OF DIRECTORS

SPECIAL MEETING
9:00 A.M. – APRIL 29, 2015

COLORADO RIVER CONFERENCE ROOMS
SOUTHERN NEVADA WATER AUTHORITY
100 CITY PARKWAY, SEVENTH FLOOR, LAS VEGAS, NEVADA
(702) 258-3100

Board of Directors

Mary Beth Scow, Chair
Sam Bateman, Vice Chair
Susan Brager
Bob Coffin
Duncan McCoy
Steve Sisolak
Anita Wood

John J. Entsminger,
General Manager

Date Posted: 04/22/2015

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

All items on the agenda are for action by the Board of Directors, unless otherwise indicated. Items may be taken out of order. The board may combine two or more agenda items for consideration, and the board may remove an item from the agenda or delay discussions relating to an agenda item at any time.

CALL TO ORDER

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 Board about items within its jurisdiction, but not appearing on this agenda, you must wait until the "Comments by the General Public" period listed at the end of this agenda. 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.

ITEM NO.

1. *For Possible Action:* Approve agenda with the inclusion of tabled and/or reconsidered items, emergency items and/or deletion of items.
2. *For Possible Action:* Approve and authorize the General Manager to sign a Surface Water Sublease Agreement, in substantially the same form, between the Moapa Band of Paiute Indians and the Authority, and authorize the General Manager to sign all ministerial documents necessary to effectuate the transaction.
3. *For Possible Action:* Approve and authorize the General Manager to execute an agreement, in substantially the same form, between the Bureau of Reclamation and the Authority for a System Conservation Implementation Agreement, and receive funds for this work.

AGENDA - SOUTHERN NEVADA WATER AUTHORITY – SPECIAL MEETING – PAGE 2

4. *For Possible Action:* Approve and authorize the General Manager to execute an Agreement, in substantially the same form, among the Upper Colorado River Commission of Nevada, the Secretary of the Interior, the Board of Water Commissioners of the City and County of Denver, the Central Arizona Water Conservation District, the Metropolitan Water District of Southern California, Denver Water, and the Authority to facilitate the System Conservation Pilot Program in the Upper Colorado River Basin, and to authorize the General Manager to execute project specific funding agreements in both the Upper and Lower Basin to effectuate pilot projects under the System Conservation Pilot Program.
5. *For Possible Action:* Approve and authorize the General Manager to execute, in substantially the same form, Exhibit Q to the Forbearance Agreement among the Arizona Department of Water Resources, the Palo Verde Irrigation District, the Imperial Irrigation District, the City of Needles, the Coachella Valley Water District, the Metropolitan Water District of Southern California, the Colorado River Commission of Nevada, and the Authority, for the Central Arizona Water Conservation District's Funded Water Supply from Conserved Water.
6. *For Information Only:* Receive an overview and discuss the Fiscal Year 2015/2016 Tentative Budget.

COMMENTS BY THE GENERAL PUBLIC

NO ACTION MAY BE TAKEN: At this time, the Board of Directors will hear general comments from the public on matters under the jurisdiction of the Southern Nevada Water Authority. 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.

Visit our website at www.snwa.com/apps/agenda/snwa/index.cfm
for Southern Nevada Water Authority Agenda Postings and Approved Minutes

**SOUTHERN NEVADA WATER AUTHORITY
BOARD OF DIRECTORS
AGENDA ITEM**

April 29, 2015

Subject: Agreement	Director's Backup
Petitioner: Gregory J. Walch, General Counsel	
Recommendations: That the Board of Directors approve and authorize the General Manager to sign a Surface Water Sublease Agreement, in substantially the same form as that attached hereto, between the Moapa Band of Paiute Indians and the Authority, and authorize the General Manager to sign all ministerial documents necessary to effectuate the transaction, for an amount not to exceed \$902,000.	

Fiscal Impact:

If the above recommendation is approved, the Authority's total cost exposure under the Surface Water Sublease Agreement (Agreement) shall not exceed \$714,000. The Authority will pay the Muddy Valley Irrigation Company administrative fees not to exceed \$188,000 for conveying this water to Lake Mead pursuant to the Water Operation and Management Agreement dated May 12, 2008. Payments under the Agreement and to the Muddy Valley Irrigation Company will be made from the Authority's Operating Capital Budget.

Background:

On December 13, 2007, the Secretary of the Interior approved the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (Guidelines). The Guidelines allow the Authority to create and divert Tributary Conservation Intentionally Created Surplus (ICS) by conveying its pre-1929 Muddy River water rights to Lake Mead.

On July 30, 2014, the Authority entered into an agreement creating a Pilot Program for Funding the Creation of Colorado River System Water Through Voluntary Water Conservation and Reductions in Use (System Conservation). The purpose of the System Conservation program is to determine if voluntary demand management actions can create Colorado River system water to mitigate the impacts of ongoing drought. Water users who participate in the program are compensated for reducing their water demand, and the conserved water accumulates to the benefit of the Colorado River system as a whole.

If approved, this Agreement would allow the Authority to sublease up to 3,000 acre-feet of water per year from the Moapa Band of Paiute Indians (Tribe) for two years at the price of \$119 per acre-foot, for an annual maximum of \$357,000. The Authority would be able to create ICS or System Conservation water with the water subleased from the Tribe, aggregating it with water available for inclusion in System Conservation Pilot. The source of water for this Agreement is a 2006 lease between the Tribe and the Muddy Valley Irrigation Company.

This Agreement is authorized pursuant to NRS 277.180 and Sections 5(c) and 6(a) of the SNWA 1995 Amended Cooperative Agreement. The office of the General Counsel has reviewed and approved the Agreement.

Respectfully submitted:



John J. Entsminger, General Manager
JJE:PDS:GJW:CNP:cmc
Attachment

AGENDA ITEM #	2
------------------	---

SURFACE WATER SUBLEASE AGREEMENT

This SURFACE WATER SUBLEASE AGREEMENT ("Sublease") is hereby entered into this ____ day of _____, 2015, between the Moapa Band of Paiute Indians ("Tribe") as sublessor and the Southern Nevada Water Authority ("SNWA") as sublessee. The Tribe and SNWA are sometimes referred to herein individually as a "Party" and jointly as the "Parties."

RECITALS

- A. WHEREAS, the Tribe and the Muddy Valley Irrigation Company ("MVIC") are the parties to a Surface Water Lease dated April 20, 2006 ("MVIC-Tribe Water Lease"), under which MVIC leased to the Tribe for 99 years (with a Tribal option to extend for an additional 99 years) certain surface water rights in the Muddy River established under the laws of the State of Nevada. The water rights leased to the Tribe under the MVIC-Tribe Water Lease ("Tribe's MVIC Water Rights"):
- Have a diversion rate of 11.5 cubic feet per second ("cfs") from April to September and 10.5 cfs from October to March; authorize consumptive use of 3,700 acre-feet per year ("afy"); and are represented by permit numbers 78432, 73483, and 73695, and any additional change applications made thereto.
- B. WHEREAS, on December 13, 2007, the Secretary of the Interior issued the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead. Under and in accordance with the guidelines and related documents (collectively the "Guidelines"), SNWA may create Tributary Conservation Intentionally Created Surplus ("ICS") by conveying to Lake Mead water rights in the Muddy River purchased or controlled by SNWA. SNWA is then able to divert the ICS created by such conveyance at its intakes for municipal use in Las Vegas. The Guidelines require accurate accounting methods with respect to the Muddy River water rights conveyed to Lake Mead.
- C. WHEREAS, on July 30, 2014, SNWA, along with other water agencies and the United States, acting through the Bureau of Reclamation, entered into an agreement for a Pilot Program for Funding the Creation of Colorado System Conservation and Reductions in Use ("System Conservation") in an effort to examine the efficacy of basin-wide solutions to the increasing near-term risks posed by declining elevations in Lakes Powell and Mead. These parties are committed to financing projects during the next two years to develop water for the benefit of the Colorado River system rather than any individual user.
- D. WHEREAS, pursuant to this Sublease SNWA desires to sublease certain of the Tribe's MVIC Water Rights for the purposes of applying such water rights to the creation of ICS and for System Conservation as appropriate.

Terms and Conditions

On the basis of the foregoing recitals, and in consideration of the mutual promises set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Tribe hereby subleases to SNWA, and SNWA hereby subleases from the Tribe, the Subleased Water Rights described in Section 1 below, on the following terms and conditions:

1. **Subleased Water Rights.** Subject to the terms and conditions of the MVIC-Tribe Water Lease, the Tribe hereby subleases to SNWA 3,000 afy of the Tribe's MVIC Water Rights ("Subleased Water Rights"). The Tribe retains for its use 700 afy of the Tribe's MVIC Water Rights, which portion shall be hereinafter referred to as the "Retained Water Rights".

2. **Effective Date; Term; Years.**
 - a. **Effective Date.** As permitted by the Guidelines, this Sublease shall have an effective date ("Effective Date") retroactive to January 1, 2015.
 - b. **Term.** This Sublease shall have a term ("Term") commencing on the Effective Date and ending on December 31, 2016.
 - c. **Years.** The Term shall consist of the following "Years":
 - i. Year 1 – January 1, 2015 through December 31, 2015; and
 - ii. Year 2 – January 1, 2016 through December 31, 2016.

3. **Rent.** For the Subleased Water Rights, SNWA shall pay the following rent to the Tribe:
 - a. **Rental Rate.** Rent shall be paid at the rate ("Rental Rate") of \$119 per acre-foot of Subleased Water Rights during the Year.
 - b. **Annual Rent.** The total rent ("Annual Rent") to be paid by SNWA to the Tribe each Year shall consist of "Annual Sum" below:
 - i. **Annual Sum:** $\$119/\text{afy} \times 3,000 \text{ afy} = \$357,000$ per year
 - c. **Payment Date and Installments:** For Year 1, one-half (50%) of the Annual Sum shall be paid within 10 business days after both Parties execute this Sublease. The remaining amount shall be paid 30 days after the Tribe has provided flow meter readings showing the amount of water the Tribe diverted during Year 1. For Year 2, one-half (50%) of the Annual Sum will be paid by December 15, 2015; the remaining amount will be paid 30 days after the Tribe has provided flow meter readings showing the amount of water the Tribe diverted during Year 2

4. **Determination of Tribal Consumptive Use.** For any Year, SNWA shall have the right, at its expense, to reasonably monitor and determine the extent, if any, to which the Tribe or its designee(s) have consumptively used any Subleased Water Rights. The foregoing, however, shall not be construed as authorizing the Tribe (or its designee(s)) to consumptively use Subleased Water Rights. If it should be determined through the methods described below or by another method adopted by the State Engineer in the approval of SNWA's Certification Report, that the Tribe (or its designee(s)) consumptively used Subleased Water Rights in any Year for which the Tribe has received Annual Rent, SNWA shall have the right to do one or more of the

following: (i) offset such Annual Rent against the Next Annual Rent(s) due hereunder; (ii) pursue reimbursement of such Annual Rent under Section 11 below; and/or (iii) terminate this Sublease under Section 12 below.

- a. **Consumptive Use of Retained Water Rights.** During each Year, the Tribe's total consumptive use of the Tribe's MVIC Water Rights shall be calculated as follows:
- i. **For Agricultural Use on the Reservation:** For water diverted from the point of diversion described in permit numbers 73482, 73483, and 73695 for agricultural purposes, consumptive use shall be calculated as the lesser of 1) the difference between measured diversions and returns, or 2) the irrigated acreage as calculated by aerial photography or LANDSAT data multiplied by an appropriate crop use coefficient approved by the Nevada State Engineer and Bureau of Reclamation.
 - ii. **For Agricultural Use by the Hidden Valley Ranch, LLC:** Hidden Valley Ranch, LLC owns water rights and leases a portion of the Tribe's MVIC Water Rights as described in the Surface Water Sublease between the Tribe and Hidden Valley Ranch, LLC dated November 20, 2014. The owned and leased water rights are each a diversion right of 300 acre-feet with seasonal flow limitations of 0.50 cfs from April to September and 0.35 cfs from October to March for a total combined maximum diversion rate of 1.0 cfs from April to September and 0.70 cfs from October to March. For water diverted from the point of diversion described in the Matter of the Determination of the Relative Rights in and to the Muddy River and its tributaries in Clark Co., State of Nevada, Claim #01626, by the Hidden Valley Ranch, LLC for agricultural purposes, consumptive use shall be calculated as the lesser of 1) the difference between measured diversions and returns, or 2) the irrigated acreage as calculated by aerial photography or LANDSAT data multiplied by an appropriate crop use coefficient approved by the Nevada State Engineer and Bureau of Reclamation, recognizing and separately accounting for use of the Hidden Valley Ranch, LLC's owned water rights.
 - iii. **Any other uses:** Should the Tribe desire to use any portion of the Retained Water Rights at a point of diversion and/or for a manner of use other than i and ii above, the Tribe shall secure approvals necessary to authorize such point and/or consumptive use, if any, at its sole expense. Furthermore, the Parties agree to diligently and in good faith negotiate and agree to accommodate such point of diversion and/or consumptive use, including without limitation provisions setting forth how the quantum of such consumptive use will be determined and accounted for under this Section 4a in writing.
- b. **Methods and Procedures.** In conducting monitoring and making determinations under (a) above, SNWA shall employ data gathering and analytical techniques that are technically sound, appropriate and reasonably accurate. Upon reasonable prior notice, to the Tribe, SNWA shall have the right to independently read any flow meter(s) used by the Tribe for the Tribe's MVIC Water Rights, and check the flow meters' physical condition, operation, and accuracy. SNWA will share water use and meter readings with the Tribe upon request, including any records for Hidden Valley Ranch, LLC.

- c. **Documents.** SNWA shall promptly provide to the Tribe its "Plan for the Creation of ICS" and "Certification Report" as defined in Sections 3.8.1 and 3.D.1 of the Guidelines, and/or similar documentation (if any) for the creation of System Conservation water, when such documents are submitted to the Secretary of the Interior. SNWA shall also promptly provide other relevant documents and correspondence between SNWA and the Secretary of the Interior. Without limitation, electronic mail is a suitable form of transmission for the documents described in this subparagraph. SNWA agrees to meet with the Tribe as appropriate to explain and answer questions about the documents.
- d. **Disputes.** Any dispute arising between the Parties with respect to the monitoring or determinations under the foregoing provisions of this section shall be resolved as provided in Section 11 below.
5. **Expenses.** Except as expressly provided otherwise in this Sublease, SNWA shall bear all costs and expenses relating to its entitlement to the Subleased Water Rights including without limitation those relating to: securing, determining and administering ICS or System Conservation; securing any licenses, permits or other authorizations; and any federal, state, local, MVIC or Moapa Valley Water District fees, assessment or other charges.
6. **Maintenance of Subleased Water Rights.** During the Term, the Parties shall each take all actions necessary to maintain the Subleased Water Rights in good standing under Nevada state law, and shall timely provide to the other Party written notice of any matter known to it that is before the Nevada State Engineer, Secretary of the Interior, any other federal or State official or any administrative or judicial forum, that may result in cancellation, other termination, rejection or adjustment of Subleased Water Rights or ICS based thereon.
7. **Indemnification.** To the extent allowed under Nevada law, SNWA shall defend the Tribe and its officers, employees and agents, from any demand, claim, suit, action or other proceeding, for injury, loss, damage, obligation, assessment or penalty claimed or determined to result from SNWA or its employees or agents, or SNWA's contractors or subcontractors or their employees or agents, accessing the Reservation pursuant to this Sublease, and SNWA shall indemnify and hold harmless the Tribe and its officers, employees and agents from any liabilities arising therefrom, and from all reasonable expenses, costs and fees, including reasonable attorneys' fees, incurred in connection therewith.
8. **Federally-Reserved Rights.** If, during the Term, any portion of the Subleased Water Rights is replaced by legally-recognized federally-reserved water rights beneficially owned by the Tribe, which may lawfully be provided to SNWA for ICS or System Conservation, an equal amount of such federally-reserved water rights shall be deemed substituted under this Sublease for the replaced Subleased Water Rights.
9. **MVWD Water Dedication Ordinance.** If, during the Term, the Tribe requests municipal water service from the Moapa Valley Water District ("MVWD") to serve a new or proposed development project on the Reservation, but finds that it does not have sufficient water, financial or other resources lawfully required to be dedicated to MVWD under MVWD's Water Dedication Ordinance then in force, as lawfully applicable to the Tribe, to procure such new

service, MVWD may refuse such requested new service unless an amount of the Tribe's Muddy River water rights, equal to that required under the Water Dedication Ordinance, is released from this Sublease and dedicated to MVWD in accordance with the Water Dedication Ordinance and, on request of the Tribe, SNWA shall agree to terminate this sublease for the portion of water necessary to be dedicated to MVWD.

10. **Sharing of Banked Recovery Actions and Credits.** The Parties anticipate that the conveying to Lake Mead of Subleased Water Rights -- and the corresponding reduction of diversions from the Muddy River -- may have the effect of improving flows or habitat for threatened or endangered species in the Muddy River and its immediate vicinity. If, under any recovery plan or other program implemented under the Endangered Species Act, there are any bankable recovery credits or other credits available as a result of this Sublease or actions taken pursuant thereto, then the Parties shall engage in good faith negotiations to agree upon how such credits are to be shared between them.

11. **Dispute Resolution; Limited Waiver of Sovereign Immunity.**
 - a. **Informal Resolution.** Whenever any disagreement or dispute arises between the Parties as to interpretation of or compliance with any provision of this Sublease ("Dispute"), the Parties shall as soon as reasonably practicable, meet at SNWA's offices, or at some other mutually agreed place, and endeavor to reasonably resolve the matter by agreement as promptly as possible. If the Dispute is not resolved within 30 calendar days of such meeting, either Party may exercise its rights under (b) below.

 - b. **Suit.** Either Party shall have the right to seek to resolve a Dispute through suit between the Parties in the Eighth Judicial District Court, Clark County, Nevada. In such a suit, this Sublease shall be governed by and construed in accordance with State of Nevada law, without reference to State of Nevada conflicts of law rules that may direct the application of laws of another jurisdiction. The Tribe hereby waives its sovereign immunity as to such suits in such courts with respect to declaratory relief, injunctive relief, or monetary relief, and as to any appeals therefrom in State appellate courts with jurisdiction. The Tribe hereby waives any claim that exhaustion of federal or Tribal court remedies is a prerequisite to any such suit in State court.

12. **Termination for Noncompliance.** Either Party ("Terminating Party") shall have the right to terminate this Sublease on the grounds of material noncompliance by the other Party ("Terminated Party"), after giving written notice ("Notice of Noncompliance") to the Terminated Party specifying:
 - a. The noncompliance;

 - b. the corrective action which must be taken to eliminate the noncompliance;

 - c. when appropriate, a reasonable time limit within which to initiate such corrective action ("Initial Time Limit"); and

 - d. a reasonable time limit to complete the corrective action ("Final Time Limit"). The Initial Time Limit shall be not less than 10 calendar days from receipt of the

Notice of Noncompliance and the Final Time Limit shall be not less than 30 calendar days from receipt of the Notice of Noncompliance.

13. **Notices.** All notices and communications given under this Sublease shall be in writing and shall be delivered by fax and first class, certified or registered mail, postage prepaid, to the fax numbers and addresses shown below, or to such other persons, addresses or fax numbers as the Party entitled to notice may designate in writing from time to time. Any notice given hereunder shall be deemed to be effective upon receipt:

- a. If to the Tribe:

Chairperson
Moapa Band of Paiutes
P.O. Box 340
Moapa, Nevada 89025
Fax 702-865-2875

With a copy to:

Richard M. Berley
Ziontz Chestnut
2101 Fourth Avenue, Suite 1230
Seattle, Washington 98121
Fax: 206-448-0962

- b. If to SNWA:

General Manager
Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, Nevada 89153
Fax: 702-258-3268

With a copy to:

General Counsel
Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, Nevada 89153
Fax: 702-862-7444

14. **Representations and Warranties.** Each Party represents and warrants as follows:

- a. that it and the individual executing this Sublease on its behalf is fully empowered and authorized to execute and deliver this Sublease;

- b. that it is fully empowered and authorized to approve and perform this Sublease;
 - c. that this Sublease is binding on its interest at the moment of execution by both Parties and for so long as this Sublease is in effect;
 - d. that it has obtained all approvals necessary to enter into and perform this Sublease, including without limitation the Tribe's taking of all actions necessary to accomplish the Tribe's waiver of sovereign immunity set forth in Section 13(b) above ; and
 - e. that its governing body has authorized and approved this Sublease by duly adopted written resolution or other similar measure, a copy of which is attached hereto.
15. **No Partnership, Agency or Trust Relationship.** Nothing in this Sublease shall be construed as creating a partnership, joint venture, agency or trust relationship between the Parties. Each Party shall be solely liable for its own obligations under this Sublease.
16. **No Third Party Beneficiaries.** Nothing in this Sublease shall be construed as creating any duty to, standard of care with respect to, or liability to, any person or entity not a Party to the Sublease. This Sublease does not create any third party beneficiary rights or causes of action.
17. **Severability.** If any provision of this Sublease is found to be in violation of applicable law, that provision shall be considered null and void and the Parties shall promptly commence diligent and good faith negotiations for the purpose of establishing a lawful substitute provision in lieu of and as consistent as possible with the invalid provision, and this Sublease shall otherwise remain in full force and effect so long as the material purposes of this Sublease can be determined and effectuated.
18. **Interpretation.** This Sublease shall be construed as a whole and in accordance with its fair meaning. Captions are used for convenience and shall not be used in construing meaning.
19. **Amendment.** All amendments or modifications of this Sublease shall be effective only if reduced to writing and signed by both Parties.
20. **Successors.** Every obligation, term and condition of this Sublease shall extend to and be binding upon, and every right and benefit hereunder shall inure to, the authorized assignees, transferees or other successors of the respective Parties by operation of law or otherwise.
21. **Further Actions.** Each Party shall execute and deliver all further instruments and documents and take all further actions as may reasonably be necessary to give full force and effect to, or to otherwise effectuate the purposes and intent of, this Sublease.
22. **Entire Agreement.** This Sublease constitutes the entire agreement between the Parties with respect to the matters covered hereby, and subsumes and incorporates all other prior written and oral statements and understandings between the Parties.
23. **Counterparts.** This Sublease may be executed and approved in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have caused this Sublease to be executed by their duly authorized representatives as of the Effective Date of this Sublease.

MOAPA BAND OF PAIUTE INDIANS

By: _____
_____, Chairperson

SOUTHERN NEVADA WATER AUTHORITY

By: _____
John J. Entsminger, General Manager

Approved as to form:

By: _____
Dana R. Walsh, Director of Legal Services, SNWA

STATE OF NEVADA)
)
COUNTY OF CLARK)

This instrument was acknowledged before me on February ____, 2015 by _____ as Chairman of the Moapa Band of Paiute Indians.

STATE OF NEVADA)
)
COUNTY OF CLARK)

This instrument was acknowledged before me on February ____, 2015 by John J. Entsminger as General Manager of the Southern Nevada Water Authority.

**SOUTHERN NEVADA WATER AUTHORITY
BOARD OF DIRECTORS
AGENDA ITEM**

April 29, 2015

Subject: Agreement	Director's Backup
Petitioner: Gregory J. Walch, General Counsel	
Recommendations: That the Board of Directors approve and authorize the General Manager to execute an agreement, in substantially the same form as that attached hereto, between the Bureau of Reclamation and the Authority for a System Conservation Implementation Agreement, and receive funds for an amount not to exceed \$2,250,000.	

Fiscal Impact:

If the above recommendation is approved, the Authority will receive funds from the Bureau of Reclamation in an amount not to exceed \$2,250,000, \$15,000 of which is from the money authorized by the Board in connection with approval of the Pilot System Conservation Agreement on April 17, 2014.

Background:

In April 2014, the Board of Directors authorized the General Manager to negotiate and execute an agreement for the creation of a Colorado River System Conservation Pilot Program (Pilot Program Agreement). The Pilot Program Agreement seeks to determine if voluntary demand management actions such as agricultural land fallowing, curtailment of industrial uses, and municipal conservation would be feasible to create Colorado River system water to mitigate the impacts of ongoing drought. The Pilot Program Agreement was entered into on July 30, 2014, among the Central Arizona Water Conservation District, Metropolitan Water District of Southern California, Denver Water, and the Authority (the "Local Funding Entities") and the Bureau of Reclamation (Reclamation). Each of the Local Funding Entities agreed to contribute \$2,000,000 and Reclamation agreed to contribute \$3,000,000 for the Pilot Program Agreement.

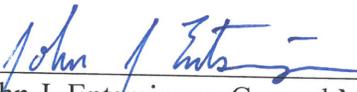
On May 15, 2014, the Board of Directors authorized the General Manager to extend leases of shares in the Muddy Valley Irrigation Company, Bunkerville Irrigation Company, and Mesquite Irrigation Company. The Authority can use water leased from the irrigation companies on the Muddy and Virgin Rivers for direct use during shortage conditions on the Colorado River, for banking in Lake Mead when not immediately needed as Intentionally Created Surplus (ICS), or to increase elevations in Lake Mead under the Pilot Program Agreement.

In the Lower Basin, Reclamation serves as the program administrator for the Pilot Program Agreement. In late 2014, Reclamation solicited proposals for eligible projects. The Authority submitted a proposal to contribute 7,500 acre-feet per year for two years to the System Conservation Pilot Program. This water would have otherwise been used to create ICS from Muddy and Virgin River leases. The Authority requested \$1,125,000 annually to dedicate this water to the System Conservation Pilot Program.

The Pilot Program Agreement requires selected program participants to enter into System Conservation Implementation Agreements before funding is transferred. If approved, this Agreement allows the Authority to receive a total of \$2,250,000 for the dedication of 7,500 acre-feet of Muddy and Virgin River water for two years to the benefit of the Colorado River system under the Pilot Program Agreement.

The agreement is authorized by NRS 277.180 and Section 6(j) of the SNWA 1995 Amended Cooperative Agreement. The office of the General Counsel has reviewed and approved the agreement.

Respectfully submitted:



John J. Entsminger, General Manager
JJE:PDS:GJW:CNP:cc
Attachment

SYSTEM CONSERVATION IMPLEMENTATION AGREEMENT (SCIA)
BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND
THE SOUTHERN NEVADA WATER AUTHORITY
TO IMPLEMENT A PILOT SYSTEM
CONSERVATION PROGRAM (PILOT PROGRAM)

This SCIA to Implement a Pilot Program is entered into this ___ day of _____, 2015, by and between the United States Bureau of Reclamation (“Reclamation”) and the Southern Nevada Water Authority (“SNWA”), hereinafter referred to singularly as “Party” or collectively as “Parties.”

1. EXPLANATORY RECITALS

1.1 On July 30, 2014, Reclamation and four municipal entities, the Central Arizona Water Conservation District (“CAWCD”), The Metropolitan Water District of Southern California (“MWD”), Denver Water (“DW”), and SNWA (collectively “Funding Agreement Parties”), entered into Agreement No. 14-XX-30-W0574 for a Pilot Program for funding the creation of Colorado River System water through voluntary water conservation and reductions in use (“Funding Agreement”).

1.2 Under the Funding Agreement, the Funding Agreement Parties will fund up to \$11 million for a Pilot Program to conserve Colorado River System water for storage in Lakes Powell and Mead.

1.3 Over the next 2 years, the Pilot Program will provide funding to develop short-term pilot projects that keep water in Lakes Powell and Mead through temporary, voluntary, and compensated conservation mechanisms.

1.4 Participation in System Conservation activities as part of the Pilot Program in the Lower Division States is limited to Entitlement Holders.

1.5 SNWA holds entitlements to Colorado River water under Contract No. 7-07-30-W0004, as amended, Contract No. 2-07-30-W0266, as amended, and Contract No. 09-07-30-W0011.

1.6 SNWA also owns or otherwise controls agricultural water rights on the Muddy and Virgin Rivers, all or a portion of which are not being used for agricultural irrigation, but instead, are being conveyed through the Muddy and Virgin River systems to the Colorado River mainstem to create Tributary Conservation Intentionally Created Surplus (ICS) credits in accordance with the ICS Program established in the December 2007 *Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead* (2007 Interim Guidelines).

1.7 SNWA submitted to Reclamation a Pilot Program proposal to dedicate to the Colorado River System during calendar years 2015 and 2016 a portion of the Muddy and Virgin River water that it owns and otherwise controls in lieu of creating Tributary Conservation ICS credits.

1.8 SNWA's Pilot Program proposal was evaluated independently and collectively by Reclamation, CAWCD, MWD and DW, pursuant to the factors provided in Section 5.5 of the Funding Agreement.

1.9 SNWA's Pilot Program proposal was selected by Reclamation, CAWCD, MWD, and DW for inclusion in the Pilot Program.

1.10 A copy of SNWA's Pilot Program proposal dated March 25, 2015, not including the exhibits, is attached hereto as Exhibit A and made a part of this SCIA.

1.11 SNWA desires to augment Colorado River System storage in Lake Mead by implementing the Pilot Program through this voluntary SCIA in exchange for financial compensation.

1.12 Prior to entering into this voluntary SCIA, as required in Section 5.3 of the Funding Agreement, Reclamation and the participating Funding Agreement Parties are required to enter into a project specific funding agreement providing for, among other things, the timing of the Funding Agreement Parties' contributions, and the project specific performance metrics.

1.13 The project specific funding agreement ("Project Funding Agreement No. 15-XX-30-W0577") was entered into and a copy is attached hereto as Exhibit B and made part of this SCIA.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, Reclamation and SNWA agree as follows:

2. DEFINITIONS

2.1 Definitions included in the Funding Agreement are applicable to this SCIA.

2.2 Colorado River Basin States means the states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

2.3 Exhibit A is a copy of the SNWA Pilot Program proposal dated March 25, 2015, not including the exhibits. Exhibit A is attached hereto and made a part of this SCIA.

2.4 Exhibit B is a copy of Project Funding Agreement No. 15-XX-30-W0577 among Reclamation and the participating Funding Agreement Parties, which is a project specific funding agreement providing for, among other things, the amount and timing of Funding Agreement Parties' contributions, and project specific performance metrics. Exhibit B is attached hereto and made a part of this SCIA.

2.5 System Conservation Water means Muddy and Virgin River water owned or otherwise controlled by SNWA that is conveyed to the Colorado River mainstem and is conserved in Lake Mead to the benefit of the Colorado River System pursuant to this SCIA.

3. DESCRIPTION OF THE SNWA PILOT PROGRAM PROJECT

3.1 SNWA owns or otherwise controls agricultural water rights on the Muddy and Virgin Rivers. These agricultural water rights fall under the jurisdiction of the State of Nevada's Division of Water Resources. The agricultural water rights owned or otherwise controlled by SNWA are not being used for agricultural irrigation and instead are being conveyed through the Muddy and Virgin River systems to the Colorado River mainstem to create Tributary Conservation ICS credits.

3.2 SNWA will dedicate a portion of the Muddy and Virgin River water to the Colorado River System during calendar years 2015 and 2016, in lieu of creating Tributary Conservation ICS credits.

3.3 For the purpose of creating System Conservation Water through participation in the Pilot Program, SNWA will conserve 7,500 acre-feet of Colorado River water from its Muddy and Virgin River projects during calendar year 2015 and calendar year 2016, for a total of 15,000 acre-feet.

3.4 Forbearance is not required for this project. SNWA will not need to reduce its approved Colorado River water order in order to ensure this quantity of water is conserved and remains in the Colorado River System.

4. IMPLEMENTATION

4.1 The 2-year period began January 1, 2015, and will end December 31, 2016.

4.2 SNWA will use the existing ICS Program process for creating and certifying Tributary Conservation ICS and System Conservation Water. This process requires transmittal by SNWA to Reclamation of an annual ICS Plan of Creation and ICS Certification Report (Section XI.G. 3.B.1 and Section XI.G. 3.D of the 2007 Interim Guidelines).

4.3 SNWA will use the approved methods consistent with the ICS Program and documented in Exhibit A to the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement to create System Conservation Water.

4.4 SNWA will amend the section entitled "Estimated Water Conserved" in the 2015 and 2016 Tributary Conservation ICS Plans of Creation to describe the volumes of water that will be dedicated as System Conservation Water resulting from this Pilot Program, along with the quantity of Tributary Conservation ICS to be created.

4.5 When the final conservation volumes created by the Muddy River project and the Virgin River project have been determined, SNWA will submit the required ICS certification

reports to Reclamation. SNWA's 2015 and 2016 Certification Reports will identify the respective conservation water volumes dedicated as System Conservation Water to remain in Lake Mead and the Tributary Conservation ICS within the section entitled "Flows Entering Lake Mead and SNWA Tributary Conservation ICS" for the Muddy River, and the section entitled, "Conclusions" for the Virgin River.

4.6 After consultation with the Colorado River Basin States, Reclamation will use the existing ICS Program process established in the 2007 Interim Guidelines to review and approve SNWA's ICS Plans of Creation for 2015, as amended, and 2016, as amended, and the ICS Certification Reports for 2015 and 2016, in which SNWA proposes and certifies, respectively, the quantity of Tributary Conservation ICS created pursuant to the ICS Program and the quantity of System Conservation Water created under this SCIA.

5. MONITORING

5.1 Pursuant to Section 5.3 of the Funding Agreement, Reclamation is required to verify and document reductions in consumptive use of Colorado River water under the Pilot Program.

5.2 By entering into this SCIA, SNWA grants access to Reclamation, or will provide for such access, to perform periodic on-site inspections of the Pilot Program project to verify compliance with this SCIA.

5.2 Reclamation and SNWA will use their existing periodic on-field verification process to determine that the Muddy and Virgin River water rights owned or otherwise controlled by SNWA are being used for ICS and creation of System Conservation Water in lieu of the irrigation of agricultural crops.

6. EVALUATION

6.1 SNWA agrees that Reclamation's annual *Colorado River Accounting and Water Use Report Arizona, California, and Nevada* will serve as the basis for documenting the amount of System Conservation Water created by SNWA in lieu of creating Tributary Conservation ICS credits.

6.2 Reclamation and SNWA agree that the System Conservation Water created pursuant to this SCIA shall accrue to the benefit of the Colorado River System and shall not accrue to the individual benefit of any Funding Agreement Party, SNWA, or any third party.

7. COMPENSATION AND PAYMENTS

7.1 Compensation for System Conservation Water created under this SCIA shall be paid by Reclamation from the amounts contributed by non-Federal Funding Agreement Parties and the funding available from Reclamation for the Pilot Program.

7.2 As required by Section 5.3 of the Funding Agreement, prior to entering into this SCIA, Reclamation and the Funding Agreement Parties entered into Project Funding Agreement No. 15-XX-30-W0577, a copy of which is Exhibit B.

7.3 Reclamation will pay SNWA \$150.00 per acre-foot for System Conservation Water created in calendar years 2015 and 2016 in accordance with this SCIA.

7.4 The total Pilot Project cost is \$2,250,000. As provided by Project Funding Agreement No. 15-XX-30-W0577, Reclamation is contributing \$2,190,000 and MWD, CAWCD, SNWA, and DW are each contributing \$15,000 for a total of \$60,000.

7.5 SNWA will be paid \$1,125,000 for water conserved in calendar year 2015 and \$1,125,000 for water conserved in calendar year 2016.

7.6 The payments to be made by Reclamation to SNWA for water conserved in calendar year 2015 will be as follows, as provided by Project Funding Agreement No. 15-XX-30-W0577:

<u>Calendar Year 2015 Conservation</u>	
Payments	Payment Amounts
Payment 1	\$375,000.00
Payment 2	\$375,000.00
Payment 3	\$375,000.00
Total Payment 2015	\$1,125,000.00

7.7 Payment 1 in the amount of \$375,000 will be made by Reclamation to SNWA no later than 60 days following Reclamation's receipt of SNWA's amended 2015 Plan of Creation, section entitled, "Estimated Water Conserved".

7.8 Payment 2 in the amount of \$375,000 will be made by Reclamation to SNWA no later than 60 days following the performance of the field verification inspection by Reclamation and SNWA.

7.9 Payment 3 in the amount of \$375,000 will be made by Reclamation to SNWA no later than 60 days following the date of the final verification letter to SNWA from the Regional Director, Lower Colorado Region, Bureau of Reclamation.

7.10 The payments to be made by Reclamation to SNWA for water conserved in calendar year 2016 will be as follows, as provided by Project Funding Agreement No. 15-XX-30-W0577:

<u>Calendar Year 2016 Conservation</u>	
Payments	Payment Amounts
Payment 4	\$375,000.00
Payment 5	\$375,000.00
Payment 6	\$375,000.00
Total Payment 2016	\$1,125,000.00

7.11 Payment 4 in the amount of \$375,000 will be made by Reclamation to SNWA no later than 60 days following Reclamation's receipt of SNWA's 2016 Plan of Creation, section entitled, "Estimated Water Conserved".

7.12 Payment 5 in the amount of \$375,000 will be made by Reclamation to SNWA no later than 60 days following performance of the field verification inspection by Reclamation and SNWA.

7.13 Payment 6 in the amount of \$375,000 will be made by Reclamation to SNWA no later than 60 days following the date of the final verification letter to SNWA from the Regional Director.

8. REIMBURSEMENT FOR OVERPAYMENT

8.1 In the event SNWA fails to create the amount of System Conservation Water as was paid for calendar years 2015 and 2016, in accordance with this SCIA, SNWA agrees to reimburse for the overpayment within 30 days of receipt of a bill for collection from Reclamation.

9. GENERAL TERMS

9.1 SNWA agrees to remain in compliance with applicable Federal, State, and local environmental, cultural, and paleontological resource protection laws and regulations throughout the term of this SCIA.

9.2 Reclamation shall be responsible for ensuring that System Conservation Water created by SNWA during calendar years 2015 and 2016 does not inure to the benefit of any individual Entitlement Holder.

9.3 The System Conservation Water created by SNWA under this SCIA will not be charged against SNWA's use of Colorado River water or charged to Nevada's Colorado River apportionment.

9.4 Except as otherwise provided in this SCIA, SNWA hereby releases and agrees that it will indemnify and hold harmless the United States and its officers, agents, employees, and successors or assigns, from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising by reason of the creation of System Conservation Water under this SCIA. The United States shall be liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, as amended.

9.5 None of the provisions of this SCIA shall be considered waived, except when such waiver is given in writing. The failure of a party to this SCIA to insist in any one or more instances upon strict performance of any of the provisions, or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or that party's relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

9.6 This SCIA is not intended nor shall it be construed to create any third-party beneficiary rights to enforce the terms of this SCIA in any person or entity that is not a party, other than CAWCD, MWD, and DW. CAWCD, MWD, and DW are expressly designated as third-party beneficiaries to this SCIA.

9.7 The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this SCIA be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this SCIA or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this SCIA or otherwise.

9.8 Each Party to this SCIA represents that the person executing 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.

9.9 This SCIA constitutes a valid and binding SCIA of each Party, enforceable against each Party in accordance with its terms. This SCIA is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

9.10 This SCIA may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by the Parties.

9.11 Any notice, demand, or request shall be deemed properly served, given, or made if delivered in person; sent by registered or certified mail, postage prepaid; or overnight delivery, charges prepaid or charged to the sender's account to the persons in the positions executing this SCIA.

9.12 All information and data obtained or developed with the performance of duties mentioned in this SCIA shall be available upon request to a Party, subject to the provisions of the Freedom of Information Act or other applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.

9.13 The expenditure or advance of any money or the performance of any obligation by the United States under this SCIA shall be contingent upon the appropriation or allotment of funds. No monetary liability shall accrue to the United States in case funds are not appropriated or allocated or received from the Funding Agreement Parties as provided in Project Funding Agreement No. 15-XX-30-W0577.

9.14 No member of or Delegate to Congress, Resident Commissioner, or official of SNWA shall benefit from this SCIA other than as a water user or landowner in the same manner as other water users or landowners.

9.15 This SCIA is entered into under the Reclamation Act of 1902 as supplemented and amended and, in particular, the Boulder Canyon Project Act (45 Stat. 1057), the Colorado

River Basin Salinity Control Act (88 Stat. 266), as amended, and consistent with Section 206 of Title II of Division D of the Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235) constitutes a pilot project designed to increase Colorado River System water in Lake Mead to address the effects of historic drought conditions. Nothing in this SCIA diminishes or abrogates the authority of the Secretary of the Interior under applicable Federal law, regulations, or the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.*, entered March 27, 2006, (547 U.S. 150 (2006)), or as it may be further modified.

10. EFFECTIVE DATE

10.1 This SCIA shall become effective upon the date of its execution by both Parties. Once effective, this SCIA will remain in effect until all terms and conditions are satisfied.

10.2 The Parties hereto have executed this SCIA on the day and year first written above.

Approved as to form:

**SOUTHERN NEVADA WATER
AUTHORITY**

By: _____
Gregory J. Walch, Esq.
General Counsel

By: _____
John J. Entsminger
General Manager

Approved as to form:

UNITED STATES OF AMERICA

By: _____
Robert Snow, Esq.
Attorney-Advisor

By: _____
Terrance J. Fulp, Ph.D.
Regional Director
Lower Colorado Region
Bureau of Reclamation

EXHIBIT A

1. A copy of the Southern Nevada Water Authority's Pilot Program proposal dated March 25, 2015, not including the exhibits, is attached.



SOUTHERN NEVADA WATER AUTHORITY

1001 South Valley View Boulevard • Las Vegas, NV 89153
(702) 258-3939 • snwa.com

March 25, 2015

Mr. Steven C. Hvinden
Chief, Boulder Canyon Operations Office
Bureau of Reclamation
Lower Colorado Regional Office
PO Box 61470
Boulder City, NV 89006-1470

Dear Mr. Hvinden

Subject: Southern Nevada Water Authority's Submission of a Formal Proposal for the Pilot System Conservation Program (Pilot Program)

As requested in your letter dated February 5, 2015, enclosed please find our formal proposal that includes the information provided in our pre-proposal plus a copy of the documentation referenced in the Verification Method section of our pre-proposal.

If you have any questions regarding our proposal, please contact me at 702-822-3378.

Sincerely,

Colby N. Pellegrino
Colorado River Program Manager

CNP/cmc
Enclosure

SNWA MEMBER AGENCIES

Proposal for the Pilot System Conservation Program (PSCP)
By SNWA

Entitlement Holder: Southern Nevada Water Authority (SNWA)

Project Description: SNWA owns or controls water on the Muddy and Virgin Rivers. These agricultural water rights fall under the jurisdiction of the State of Nevada. The SNWA-controlled water rights are not being used for agricultural irrigation and instead are being conveyed through the Muddy and Virgin River systems to the Colorado River mainstem to create Tributary Conservation Intentionally Created Surplus (ICS) credits pursuant to the *2007 Colorado River Interim Guidelines for Lower Colorado River Shortages and Coordinated Operations for Lake Powell and Lake Mead* (2007 Interim Guidelines). In lieu of creating ICS credits, SNWA proposes dedicating a portion of the conserved water as System Conservation Water in calendar years 2015 and 2016.

Proposed Conservation Amount: 7,500 acre-feet per year for two calendar years, 2015 and 2016, for a total of 15,000 acre-feet.

Verification Method: As provided in Section 7.3 of the PSCP Funding Agreement, SNWA will use the existing process for creating and certifying Tributary Conservation ICS. This process includes transmittal to Reclamation of an annual ICS Plan of Creation and ICS Certification Report (Section 3.B.1 and Section 3.D of the 2007 Interim Guidelines). SNWA proposes to amend the section titled "Estimated Water Conserved" in the 2015 and 2016 Plans of Creation to describe the volume of water that would be dedicated as System Conservation Water under this proposal. The 2015 and 2016 ICS Certification reports will document the creation of conserved water from the Muddy and Virgin River projects and will identify the final volume of System Conservation Water entering Lake Mead, thus quantifying the respective portions of the conserved water which will remain Tributary Conservation ICS and those which will be dedicated to the System.

SNWA will use the approved methods consistent with the last seven years of the ICS Program and documented in Exhibit A to the *Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement*. The following documents have been attached as Exhibits A-D:

- Exhibit A – Muddy River Intentionally Created Surplus (ICS) Tributary Conservation Plan of Creation 2015
- Exhibit B – Virgin River Intentionally Created Surplus (ICS) Tributary Conservation Plan of Creation 2015
- Exhibit C – Muddy River Tributary Conservation Intentionally Created Surplus Certification Report Calendar Year 2012
- Exhibit D – Virgin River Tributary Conservation Intentionally Created Surplus Certification Report Calendar Year 2012

Once the final conservation volume achieved by each project has been determined, SNWA will submit the required ICS Certification Reports. SNWA's 2015 and 2016 ICS Certification Reports will identify the

Mr. Steven C. Hvinden

March 25, 2015

respective conservation water volumes dedicated as System Conservation Water to remain in Lake Mead and the Tributary Conservation ICS within:

- the “Conclusions” section for the Virgin River; and,
- the “Flows Entering Lake Mead and SNWA Tributary Conservation ICS” section for the Muddy River.

Pursuant to Section 5.3 of the PSCP Funding Agreement, System Conservation Water volumes will be verified by Reclamation using the process currently employed for verifying ICS creation under the 2007 Interim Guidelines.

Implementation Timing: The agreements necessary to implement this conservation project are already in-place. Some future agreements may be negotiated that will further the efforts of this Program and/or increase SNWA’s ability to create ICS. These future agreements will not affect the quantity and/or price requested by SNWA.

Project Duration: Two calendar years, 2015 and 2016.

Amount of Funding Requested: SNWA requests \$150 per acre-foot for an annual total of \$1,125,000. The costs for SNWA’s short-term leases for this water range between approximately \$130 and \$340 per acre-foot, paid directly to the shareholder or water right owner. Depending upon the source of water and the conveyance method, additional fees necessary to convey the water to Lake Mead range from approximately \$10 to \$125 per acre-foot are generally paid to the irrigation company. Accordingly, \$150 per acre-foot is a conservative estimate for this proposal; actual costs paid by SNWA will likely exceed this amount. SNWA will not seek reimbursement for personnel or accounting costs, and the numbers above do not include these costs.

Methodology for water to remain in Lake Mead: Water conveyed to Lake Mead from the Muddy and Virgin Rivers does not require forbearance by SNWA since it is not a portion of SNWA’s Colorado River entitlement. As such, SNWA will not need to reduce its approved water order in order to ensure this quantity of water remains in Lake Mead.

EXHIBIT B

1. A copy of Project Funding Agreement No. 15-XX-30-W0577, is attached.

LC-4405
WTR-4.00

Project Funding Agreement No. 15-XX-30-W0577

Mr. Jeffrey Kightlinger
General Manager
Metropolitan Water District of
Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153

Mr. Jim Lochhead
CEO/Manager
Denver Water
1600 West 12th Avenue
Denver, CO 80204

Mr. Ted Cooke
Acting General Manager
Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, AZ 85024

Mr. John Entsminger
General Manager
Southern Nevada Water Authority
1001 South Valley View Blvd. MS 480
Las Vegas, NV 89153

Subject: Project Specific Funding Agreement Required by Agreement No. 14-XX-30-W0574, Dated July 30, 2014 (2014 Funding Agreement), Among the United States, the Central Arizona Water Conservation District (CAWCD), The Metropolitan Water District of Southern California (MWD), the City and County of Denver Acting by and Through its Board of Water Commissioners (DW), and the Southern Nevada Water Authority (SNWA) (Collectively, the Funding Agreement Parties)

Dear Gentlemen:

SNWA provided a proposal, described in further detail below, to make 15,000 acre-feet of Virgin and Muddy River water available pursuant to the pilot system conservation program created by the 2014 Funding Agreement (Pilot Program). SNWA's proposal was approved to be part of the Pilot Program. The Bureau of Reclamation (Reclamation) and SNWA, pursuant to Sections 4.11 and 5.3 of the 2014 Funding Agreement, will enter into a System Conservation Implementation Agreement (SCIA) relating to SNWA's proposal upon approval by the Funding Agreement Parties of a project specific funding agreement providing for, among other things, the timing of the Funding Agreement Parties' contributions and project specific performance metrics. This letter serves as the project specific funding agreement (Project Funding Agreement).

Reclamation, CAWCD, MWD, DW, and SNWA agree as follows:

1. Project Costs:

1.1 Reclamation, CAWCD, MWD, DW, and SNWA will severally be charged \$150 per acre-foot of System Conservation Water created by SNWA from the Muddy River project and the Virgin River project in calendar year 2015 and calendar year 2016 according to the schedule set forth herein.

1.2 It is estimated that 7,500 acre-feet of System Conservation Water will be created in calendar year 2015 and calendar year 2016, totaling 15,000 acre-feet over the 2-year period.

1.3 The total project cost is \$2,250,000. Reclamation will contribute \$2,190,000 and CAWCD, MWD, DW, and SNWA will each contribute \$15,000 for a total of \$60,000. Although the intent of the Funding Agreement Parties is to fund Pilot Program Projects on a proportional basis, Reclamation is contributing most of the costs toward this project to ensure prompt obligation (and implementation of actions) regarding funding during this Federal fiscal year. Once Reclamation has obligated its \$3 million for projects, CAWCD, MWD, DW, and SNWA will contribute more on future projects to ultimately achieve proportional funding.

2. Contributions - For Water Conserved in Calendar Year 2015: The contributions to be made by Reclamation, CAWCD, MWD, DW, and SNWA under this Project Funding Agreement for water conserved in calendar year 2015 will be as follows:

Calendar Year 2015 Conservation

Invoices	Reclamation's Contributions	CAWCD, MWD, DW, and SNWA Contributions			
		CAWCD	MWD	DW	SNWA
Invoice 1	\$365,000.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Invoice 2	\$365,000.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Invoice 3	\$365,000.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Total by Entity	\$1,095,000.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00
Total Amount:					\$1,125,000.00

3. Contributions - For Water Conserved in Calendar Year 2016: The contributions to be made by Reclamation, CAWCD, MWD, DW, and SNWA under this Project Funding Agreement for water conserved in calendar year 2016 will be as follows:

Calendar Year 2016 Conservation

Invoices	Reclamation's Contributions	CAWCD, MWD, DW, and SNWA Contributions			
		CAWCD	MWD	DW	SNWA
Invoice 4	\$365,000.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Invoice 5	\$365,000.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Invoice 6	\$365,000.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Total by Entity	\$1,095,000.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00
Total Amount:					\$1,125,000.00

4. Invoicing For Water Conserved in Calendar Year 2015 and Water Conserved in Calendar Year 2016:

4.1 Reclamation will invoice CAWCD, MWD, DW, and SNWA for their contributions at least 45 days before payments are to be made by Reclamation to SNWA under the Implementation Agreement entered into between Reclamation and SNWA.

4.2 Invoices must be paid within 30 days of the date of the invoice.

5. Payments to Reclamation: CAWCD, MWD, DW and SNWA will submit their contributed shares to Reclamation using the payment options listed on the invoice.
6. Payments to SNWA: Payments from Reclamation to SNWA for water conserved in calendar year 2015 and water conserved in calendar year 2016 will be made in accordance with the SCIA entered into between Reclamation and SNWA.
7. Performance Metrics: Project Specific Performance Metrics are captured in Sections 3, 4, 5, and 6 of the SCIA entered into between Reclamation and SNWA.
8. Effective Date: This Project Funding Agreement will be effective upon the date of execution of the SCIA entered into between Reclamation and SNWA.

CAWCD, MWD, DW, and SNWA agree to the provisions of this Project Funding Agreement and their formal concurrence with this Project Funding Agreement is evidenced by their signatures below, as provided herein. Reclamation's signature on this Project Funding Agreement provides its formal concurrence, subject to the execution of this Project Funding Agreement by CAWCD, MWD, DW, and SNWA. This Project Funding Agreement may be signed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Project Funding Agreement.

If you agree with the terms of this Project Funding Agreement, please sign as indicated below and return it to Reclamation. Reclamation will then forward to each party a fully executed original of the Project Funding Agreement.

If you have questions, please contact Mr. Steven C. Hvinden, Chief, Boulder Canyon Operations Office, at 702-293-8414.

Sincerely,

Terrance J. Fulp, Ph.D.
Regional Director

Approved as to legal sufficiency:

By: _____
Robert Snow, Esq.
Its: Attorney-Advisor

In Quintuple

CAWCD:

Approved as to form:

By: _____
Ted Cooke
Its: Acting General Manager

By: _____
Its:

MWD:

Approved as to form:

By: _____
Jeffrey Kightlinger
Its: General Manager

By: _____
Marcia L. Scully, Esq.
Its: General Counsel

CITY AND COUNTY OF DENVER,
acting by and through its BOARD OF
WATER COMMISSIONERS

Approved as to form:

By: _____
Its: President

By: _____
Its:

SNWA:

Approved as to form:

By: _____
John J. Entsminger
Its: General Manager

By: _____
Gregory J. Walch, Esq.
Its: General Counsel

Chrono – SNWA – FUNDING AGREEMENT DRAFT APRIL 21, 2015
Daily

WBR:NDiDonato;702-293-8532;April 21, 2015

**SOUTHERN NEVADA WATER AUTHORITY
BOARD OF DIRECTORS
AGENDA ITEM**

April 29, 2015

Subject: Agreements	Director's Backup
Petitioner: Gregory J. Walch, General Counsel	
<p>Recommendations: That the Board of Directors approve and authorize the General Manager to execute an agreement, in substantially the same form as that attached hereto, among the Upper Colorado River Commission of Nevada, the Secretary of the Interior, the Board of Water Commissioners of the City and County of Denver, the Central Arizona Water Conservation District, the Metropolitan Water District of Southern California, Denver Water, and the Authority to facilitate the System Conservation Pilot Program in the Upper Colorado River Basin, and to authorize the General Manager to execute project specific funding agreements in both the Upper and Lower Basin to effectuate pilot projects under the System Conservation Pilot Program.</p>	

Fiscal Impact:

None by approval of the recommendation. The Authority's \$2,000,000 commitment to fund pilot projects under the System Conservation Pilot Program was approved by the Board of Directors on April 17, 2014.

Background:

In April 2014, the Board of Directors authorized the General Manager to negotiate and execute an agreement for the creation of a Colorado River System Conservation Pilot Program (Pilot Program Agreement). The Pilot Program Agreement seeks to determine if voluntary demand management actions such as agricultural land fallowing, curtailment of industrial uses, and municipal conservation would be feasible to create Colorado River system water to mitigate the impacts of ongoing drought. The Pilot Program Agreement was entered into on July 30, 2014, among the Central Arizona Water Conservation District, Metropolitan Water District of Southern California, Denver Water, and the Authority (the "Local Funding Entities") and the Bureau of Reclamation (Reclamation). Each of the Local Funding Entities agreed to contribute \$2,000,000 and Reclamation agreed to contribute \$3,000,000 for the Pilot Program Agreement.

In the Lower Basin, Reclamation serves as the program administrator for the Pilot Program Agreement. If approved, the Agreement to Facilitate the System Conservation Pilot Program in the Upper Colorado River Basin (UCRC Agreement) identifies the Upper Colorado River Commission (UCRC) as the program administrator for the Upper Basin and sets forth roles, obligations and expectations for the UCRC and Local Funding Entities. As administrators, the UCRC and Reclamation will enter into System Conservation Implementation Agreements with program participants to effectuate the Pilot Program Agreement.

Additionally, the Pilot Program Agreement requires that all of the funding entities and the respective administrator enter into project specific funding agreements prior to the administrator entering into System Conservation Implementation Agreements. Project specific funding agreements specify, among other things, the timing of the funding entity contributions and project specific performance

metrics. The Authority's total contribution to all project specific funding agreements is limited to \$2,000,000. If this agenda item is approved, the General Manager will be authorized to execute project specific funding agreements for projects in the Upper and Lower Basin that meet these guidelines.

If approved, the UCRC Agreement and subsequent project specific funding agreements will benefit the Authority by effectuating the previously approved Pilot Program Agreement and creating a program to promote conservation among Colorado River users to protect water levels in Lakes Mead and Powell. The Pilot Program will provide an opportunity to demonstrate that voluntary, compensated reductions in use may be a feasible method to mitigate the impacts of salinity and ongoing drought on the Colorado River by increasing water levels in Lakes Mead and Powell and/or enhancing flows in upstream areas. Increased water levels in Lakes Mead and Powell decrease the likelihood of shortages and improve water quality for Southern Nevada.

The agreements are being entered into pursuant to NRS 277.180 and Section 6(j) of the SNWA 1995 Amended Cooperative Agreement. The office of the General Counsel has reviewed and approved the agreements.

Respectfully submitted:



John J. Entsminger, General Manager

JJE:PDS:GJW:CNP:cc

Attachments

[INSERT DATE]

**AGREEMENT
TO FACILITATE THE SYSTEM CONSERVATION PILOT PROGRAM IN THE
UPPER COLORADO RIVER BASIN**

This Agreement (“Agreement”) is entered into this ____ day of _____, 2015 (“Effective Date”), by and between the UPPER COLORADO RIVER COMMISSION (“Commission”), an interstate administrative agency established under the Upper Colorado River Basin Compact, the UNITED STATES OF AMERICA (“United States”), represented by the Secretary of the Interior (“Secretary”) acting through the officials of the U.S. Bureau of Reclamation executing this Agreement, CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (“DW”), a municipal corporation and political subdivision of the State of Colorado, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a multi-county water conservation district duly organized and existing under the laws of the State of Arizona (“CAWCD”), THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a regional public water district duly organized under California law (“MWD”), and the SOUTHERN NEVADA WATER AUTHORITY, a political subdivision of the State of Nevada (“SNWA”), each being referred to individually as “Party” or collectively as the “Parties.”

A. RECITALS

A.1 Parties.

a. Upper Basin Contracting Entity

- i. Commission – The Commission was created by the Upper Colorado River Basin Compact (“Upper Basin Compact”) among the states of Arizona, Colorado, New Mexico, Utah and Wyoming on October 11, 1948, and consented to by the Act of April 6, 1949 (63 Stat. 31, Chapter 48). Article VIII of the Upper Basin Compact authorizes the Commission to, among other things: i) engage in cooperative studies of water supplies of the Colorado River and its tributaries; ii) collect, analyze, correlate, preserve and report on data as to the stream flows, storage, and diversion of water from the Colorado River and its tributaries; iii) make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Colorado River Basin and in each Upper Basin State; iv) make findings on the quantity of water deliveries at Lee Ferry during each water year; v) make findings as to the necessity for and the extent of the curtailment of use required, if any, in the Upper Colorado River Basin (“Upper Basin”); and vi) perform all functions required by the Compact and do all things necessary, proper and convenient in the performance of its duties either independently or in cooperation with any state or federal agency.

Relying on these authorizations, and pursuant to Article X.2 of the Commission By-Laws, the Commission Chairperson and Commission Secretary (a/k/a

Executive Director), acting upon approval of the Commission, are required and have the authority to execute any contracts or other instruments in writing to be signed for and on behalf of the Commission to do and perform all things necessary and expedient to carry out the purposes of the Commission.

b. System Conservation Partners

- i. DW is a municipal corporation and political subdivision of the State of Colorado invested by Article XX of the Colorado Constitution with the power to operate works “within or without its territorial limits.” Pursuant to its authority under the State Constitution and its Charter, DW is authorized to and may exercise all the powers of the City and County of Denver in regard to maintaining, conducting and operating a water works system and plant for all uses and purposes. In furtherance of these powers, DW is authorized to make and execute contracts, take and give instruments of conveyance, and do all other things necessary or incidental to its powers.
- ii. 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 NRS Chapter 277 to, among other things, contract for Colorado River water, develop and implement projects to acquire, develop, treat, and transport water to its purveyor members, acquire and dispose of water supplies, and to execute contracts as necessary in furtherance of these powers.
- iii. CAWCD is a multi-county water conservation district duly organized and existing under the laws of the State of Arizona pursuant to ARS Title 48, Chapter 22. CAWCD is authorized to, among other things, contract for and deliver Colorado River water, and to execute contracts as necessary for the furtherance of these authorities.
- iv. MWD is a regional public water district duly organized under California law. MWD is authorized by Section 25 of the Metropolitan Water District Act to develop, store, and distribute water for domestic and municipal purposes.
- v. United States is referred to in parts of this Agreement as the Federal System Conservation Partner, and is represented by the Secretary acting through the officials from the Bureau of Reclamation (“Reclamation”) executing this Agreement.

A.2 Background/Purpose.

- a. The Secretary, through Reclamation, has constructed and now operates and maintains Lakes Powell and Mead to serve as the primary storage facilities in the Upper Basin and Lower Basin, respectively. These reservoirs are operated conjunctively to, among other things, provide for storage and delivery of water for beneficial uses pursuant to the provisions of the Colorado River Compact, Boulder Canyon Project Act, 1944 Water Treaty with Mexico, Upper Basin

Compact, Colorado River Storage Project Act, *Arizona v. California* Consolidated Decree and Colorado River Basin Project Act.

- b. The Colorado River and its tributaries serve as the primary water supply for almost 40 million people in the United States and Mexico, irrigate approximately 5.5 million acres of land, provide over 4,200 megawatts of hydroelectric generating capacity, function as the lifeblood for at least 22 Native American tribal communities, and sustain environmental resources throughout the almost 250,000 square mile basin.
- c. As of March 26, 2015, Lake Powell storage is at 45% of capacity and Lake Mead storage is at 40%. The period 2000 through 2014 has constituted the most severe 15-year drought in the long history of recordkeeping for the Colorado River basin, leading to significant fluctuations in water elevations and low storage at Lake Powell and contributing to decreases in water elevations and storage at Lake Mead.
- d. Colorado River System modeling projections show a potential for water elevations at Lake Powell and Lake Mead to reach critically low levels that could trigger reductions in water deliveries and/or interrupt the benefit of hydroelectric power generation for certain hydropower users.
- e. Colorado, Utah, Wyoming and New Mexico (“Upper Division States”), through the Commission, have been working in parallel with Arizona, California and Nevada (“Lower Division States”) and water user entities within the Colorado River Basin, and in conjunction with the Department of the Interior, through Reclamation, to develop and implement drought contingency options, as appropriate, to avoid reaching critical reservoir elevations at either Lake Powell or Lake Mead.
- f. Four municipal water suppliers (DW, CAWCD, MWD, and SNWA) entered into an agreement with Reclamation (collectively the “System Conservation Partners”) on July 30, 2014 to fund a 2-year pilot program to test creation of Colorado River System water through voluntary water conservation and reductions in use (“System Conservation Agreement”).
- g. Pursuant to the System Conservation Agreement, Reclamation agreed to commit up to \$3 million, and DW, CAWCD, MWD, and SNWA (Non-Federal System Conservation Partners) agreed to commit up to \$2 million each over a 2-year period to determine whether System Conservation is a sufficiently cost effective, robust and feasible method to partially mitigate the impacts of salinity and ongoing drought on the Colorado River System by managing water levels in Lakes Mead and Powell above critically low elevations, with the ancillary benefit of enhancing flows in areas upstream of storage reservoirs (“Pilot Program”).

- h. The System Conservation Agreement contemplates a portion of the funding for the Pilot Program will be used for projects in the Upper Basin to allow for a better understanding of whether and how voluntary reductions in consumptive use could help protect critical reservoir levels during extended drought.
- i. Projects funded pursuant to the System Conservation Agreement in the Upper Basin are intended to, among other things, help explore, learn from and determine if a voluntary, compensated reduction in Consumptive Use is a feasible method to partially mitigate the decline of, or to raise, water levels in Lake Powell and should, thereby, serve as a useful tool for the contingency planning processes in the Upper Basin.
- j. The System Conservation Agreement contemplates facilitating the Pilot Program in the Upper Basin through an entity with the authority to enter into and administer system conservation implementation agreements with water users in the Upper Basin (“Upper Basin Contracting Entity”).
- k. The Commission passed a formal resolution on December 10, 2014 finding the Pilot Program had the potential to provide useful information and experience that could inform the Upper Basin drought contingency planning process.
- l. The Parties recognize that with the consent of the Upper Division States and the United States, through their respectively appointed Upper Colorado River Commissioners, the Commission can best coordinate and facilitate the rights and obligations of the signatories to the Upper Basin Compact, and that to ensure the greatest opportunity for success, development and implementation of the Pilot Program in the Upper Basin, the Commission should serve as the Upper Basin Contracting Entity for the Pilot Program in the Upper Basin.

A.3 Intent.

Through this Agreement, the Parties intend to set forth the roles, obligations and expectations of the Commission serving as the Upper Basin Contracting Entity and the System Conservation Partners serving as funders for the Pilot Program as it is to be implemented in the Upper Basin consistent with the System Conservation Agreement and the rights, authorities and obligations of the Commission. The Parties do not intend through this Agreement to create any future rights or obligations or set forth any precedent regarding management, operation or administration of the Colorado River System beyond the scope of the Pilot Program.

B. DEFINITIONS

The following definitions shall apply for purposes of this Agreement and this Agreement only. No definition set forth herein shall be construed as evidence or an indicator of any Party’s interpretation or intent as it relates to similar terms that may exist in other laws, rules, regulations, agreements, or other relevant documents that may involve, implicate or otherwise affect the Parties.

1. Act means the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235).
2. Colorado River Basin States means the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.
3. Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved in Section 13(a) of the Boulder Canyon Project Act.
4. Colorado River System shall have the meaning ascribed to such term in the Colorado River Compact.
5. Commission means the Upper Colorado River Commission created by the Upper Basin Compact.
6. Commission Chairperson refers to the Upper Colorado River Commissioner representing the United States of America who serves as chair of the Commission pursuant to the Commission's By-Laws.
7. Commission Secretary refers to the Secretary of the Commission as identified in the Upper Basin Compact and selected by the Commission pursuant to the Commission's By-Laws. The Commission Secretary is also referred to as the Executive Director.
8. Consolidated Decree means the decree entered by the United States Supreme Court in the matter of *Arizona v. California* on March 27, 2006 (547 U.S. 150).
9. Consumptive Use means diversions from the Colorado River System, less any return flow to the river system that is available for Consumptive Use in the Upper Basin. Examples of Consumptive Use in the Upper Basin include withdrawal of water from its source because it has evaporated, been transpired by plants, incorporated into products or crops, consumed by people or livestock or otherwise removed from the immediate water environment.
10. Federal System Conservation Partner refers to the Secretary of the Interior ("Secretary") acting through the officials of the U.S. Bureau of Reclamation that agreed to fund the Pilot Program pursuant to the System Conservation Agreement.
11. Governor's Representative means any one of the Upper Colorado River Commissioners representing his or her state on the Commission.
12. Lower Basin means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado

River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry, as defined in the Colorado River Compact

13. Lower Division States means Arizona, California, and Nevada, as defined in the Colorado River Compact.
14. Monitoring means the efforts taken to evaluate the results of the Pilot Program, including but not necessarily limited to identifying or estimating the volume of System Conservation achieved by approved projects and estimating the system benefit, if any, of the water conserved in the Upper Basin.
15. Non-Federal System Conservation Partner means CAWCD, MWD, DW, or SNWA, each of which agreed to fund the Pilot Program pursuant to the System Conservation Agreement.
16. Pilot Program means the program identified and funded through the System Conservation Agreement to determine whether System Conservation could be a feasible method to help mitigate the impacts of salinity and ongoing drought on the Colorado River System. The Pilot Program, as referenced herein, refers to the execution and implementation of System Conservation activities within the Upper Basin consistent with the System Conservation Agreement and further clarified by this Agreement.
17. Pilot Program Funds means funds provided by the System Conservation Partners to finance System Conservation projects as part of the Pilot Program consistent with the System Conservation Agreement, the terms of this Agreement, and according to the schedules and terms of System Conservation Implementation Agreements as executed in the Upper Basin.
18. Pilot Program Funding Account means a bank account deemed suitable by the **Non-Federal System Conservation Partners** that is capable of accepting, maintaining and releasing Pilot Program Funds **from the Non-Federal System Conservation Partners** according to the terms of this Agreement and any applicable System Conservation Implementation Agreement.
19. Project Proponent means a water user from the Upper Basin who applies to participate in the Pilot Program pursuant to the terms of this Agreement.
20. Reclamation means the United States Bureau of Reclamation, a United States Department of the Interior agency.
21. Secretary means the Secretary of the United States Department of the Interior.

22. System Conservation means a voluntary, measurable reduction of Consumptive Use of Colorado River water, including the elimination of system losses or reduction in demands through increased efficiency by an Upper Basin Water User through the Pilot Program for the sole purpose of benefitting the Colorado River System and learning whether such reductions can have a mitigating effect on declining storage levels in the Colorado River reservoirs. System Conservation does not include: (i) measures implemented by an Upper Basin Water User to meet Consumptive Use reduction obligations under any transfer, acquisition, or conservation agreement with another party, (ii) implemented for monetary payment or other valuable consideration from any third party not a signatory to this Agreement, or (iii) efforts that are voluntarily, administratively or judicially ordered to be undertaken by an Upper Basin Water User for purposes other than System Conservation.
23. System Conservation Agreement means the agreement among the System Conservation Partners for a Pilot Program for Funding the Creation of Colorado River System Water through Voluntary Water Conservation and Reductions in Use executed July 30, 2014, as Reclamation Agreement No. 14-XX-30-W0574.
24. System Conservation Implementation Agreement means an agreement to implement System Conservation entered into between the Commission and the Project Proponent following approval of a proposal for participating in the Pilot Program consistent with the terms of this Agreement.
25. System Conservation Partners means the signatories to the System Conservation Agreement, including DW, CAWCD, MWD, SNWA and the United States.
26. Upper Basin means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry, as defined in the Colorado River Compact.
27. Upper Basin Compact means the Upper Colorado River Basin Compact regarding the Colorado River System signed by the states of Arizona, Colorado, New Mexico, Utah and Wyoming on October 11, 1948, and consented to by an act of Congress April 6, 1949 (63 Stat. 31, Chapter 48).
28. Upper Basin Contracting Entity is defined in the System Conservation Agreement and has been further clarified under this Agreement to mean the Commission.
29. Upper Basin Water Users means a person or entity within an Upper Division State that has an existing authorization under applicable state law to divert Colorado River System water as reasonably required for beneficial uses.

30. Upper Colorado River Commissioners means those Commissioners appointed to the Commission pursuant to the Upper Basin Compact.
31. Upper Division States means the states of Colorado, New Mexico, Utah, and Wyoming, as defined in the Colorado River Compact.
32. Verification means the efforts taken to confirm that the action(s) proposed by the Project Proponent and agreed to under a System Conservation Implementation Agreement to accomplish the contemplated System Conservation have been taken.

C. STATEMENT OF WORK AND RESPONSIBILITIES

C.1 Proposal Phase.

To implement the Pilot Program in the Upper Basin, the Parties intend to seek, review and approve proposals from Upper Basin Water Users consistently with the terms of the System Conservation Agreement, authorities granted the Commission, and laws of the Upper Division State in which a project may be proposed and considered for approval.

- a. Good Faith Efforts - Each Party agrees to employ good faith efforts in the proposal review, evaluation and selection process.
- b. Request for Proposal – Upon the Parties’ consent, the Commission will develop and issue Request for Proposals (“RFPs”) for 2015 from Upper Basin Water Users in consultation with the System Conservation Partners and Upper Division States. The Parties will agree to the framework and content of such RFPs, recognizing that different formats may be developed to better fit within the laws and Water User preferences of the Upper Division States within which the RFPs will be distributed. Furthermore, the Commission will coordinate with the Upper Division States and the System Conservation Partners to perform useful outreach within the Upper Basin, and thereby help accomplish the best distribution of the Upper Basin RFPs possible.
- c. Proposal Review – For 2015, the Commission will collect the Upper Basin proposals submitted for consideration in the Pilot Program, and perform an initial review to evaluate proposals based on criteria set forth in the System Conservation Agreement and any additional considerations developed by the Commission that reflect Upper Basin perspectives regarding compact considerations, administration, policies and planning. Within 10 days of receiving all proposal(s), the Commission will provide the proposal(s) to the System Conservation Partners, and, to the extent time permits, summaries of the Commission’s initial evaluations, prior to the Parties meeting to review and evaluate the Upper Basin proposals for inclusion in the Pilot Program.
- d. Proposal Approval – The Parties, or their designee(s), will meet promptly after the proposal review described in Section C.1.c above to discuss and jointly select the

Upper Basin proposals, if any, to be included in the Pilot Program for 2015. Approval of an Upper Basin proposal for inclusion in the Pilot Program shall, in addition to approvals required by System Conservation Partners and the consequent funding apportionment set forth in the System Conservation Agreement, require the consent of the Commission and the Governor's Representative for the state in which the proposal is to be implemented.

- e. Approval Documentation – The Parties agree to document in writing the terms and conditions of their approvals for each project to be included in the Pilot Program. The Commission will maintain this approval documentation as part of its Pilot Program Facilitation duties.
- f. Should the Parties agree that a second proposal phase, separate from the initial round described in Sections C.1.b-d above, is appropriate, then the Parties will agree on timelines for initiating and conducting the second phase of RFPs, proposal review and proposal approval and perform the second phase according to the process and procedures set forth herein.
- g. Additional or alternative provisions may be adopted and generally applied to the proposal development, review and/or approval if unanimously agreed to by each Party in writing during the course of this Agreement. Moreover, the Commission and those System Conservation Partners that have agreed to fund a specific project may also adopt additional or alternative procedures to further the approval and implementation processes for a selected project. Such additions or alternations will only require the approval of the participating Parties and not the unanimous approval of all Parties.

C.2 Implementation Phase.

To implement the Pilot Program in the Upper Basin, the Commission will contract for, verify and monitor implementation of the selected projects according to the provisions set forth below.

- a. System Conservation Implementation Agreements –
 - i. Following the Parties' approval of Upper Basin Water User proposals to include in the Pilot Program pursuant to C.1.d, the Commission will prepare a draft System Conservation Implementation Agreement ("SCIA") for each proposal selected and distribute the draft as follows:
 - a. First, to the System Conservation Partners for review and concurrence that the provisions reflect the basis for agreement on inclusion of the proposed project in the Pilot Program; and
 - b. Second, upon the Parties' consensus regarding the drafts, to the Project Proponent for review and agreement of terms and conditions.
 - ii. After the draft SCIA has been circulated to both the System Conservation Partners and the Project Proponent, and to the extent the System Conservation Partners, Project Proponent, or Commission requires edits or adjustment to the draft SCIA upon additional review, the Commission, or

- its designee(s), will circulate any suggested changes to the System Conservation Partners and Project Proponent to facilitate consensus on the final SCIA.
- iii. Upon obtaining the Commission's, System Conservation Partners' and Project Proponent's consent to finalize the SCIA, the Commission will finalize and execute the SCIA with the Project Proponent.
 - iv. In the event consensus on the terms of a SCIA cannot be reached, approval for the project's inclusion in the Pilot Program will be deemed retracted.
- b. Verification of Selected Project(s) –
- i. Recognizing that an important aspect of the Pilot Program is Verification that a selected project is implemented consistently with the terms of the Parties' project approval, the Parties agree that funds made available pursuant to the System Conservation Agreement can be used to pay for Verification efforts if agreed to by the Commission and the System Conservation Partner(s) who agree to fund the project.
 - ii. To inform whether funds for Verification efforts can be provided, the Parties agree that proposals by Project Proponents shall include, to the extent possible, a plan that outlines, at a minimum, the preferred methods and costs associated with verifying implementation of the proposed project.
 - iii. If a Project Proponent is unable to reasonably identify methods and costs associated with Verification, the Parties may identify, as a condition precedent to project approval, a Verification plan to be incorporated as part of the approved project and the funds to be made available, if any, to ensure the approved project is implemented according to the terms approved by the Parties.
 - iv. The Parties shall include as part of project approval, the terms for Verification, and funds to be applied toward Verification. These terms and funding provisions should be incorporated into the SCIA.
- c. Contract Administration and Enforcement –
- i. Administration – The Parties acknowledge the Commission will serve as administrator of the SCIA's as executed in the Upper Basin for both the System Conservation Partners and the Project Proponent. However, the Commission is not required or obligated to file, pursue, defend or otherwise be involved in any lawsuit, arbitration or other legal proceeding to enforce any SCIA on behalf of the System Conservation Partners against the Project Proponent or on behalf of the Project Proponent against the System Conservation Partners.
 - ii. Third Party Status – The System Conservation Partners shall be expressly included as intended third-party beneficiaries to any SCIA executed in the Upper Basin as part of the Pilot Program, thereby enabling the System Conservation Partners to enforce the terms of and receive the benefits intended under the SCIA's.

- iii. Indemnification – To the extent permitted by law, each Non-Federal System Conservation Partner agrees to indemnify, defend and hold harmless the Commission and Commission’s agents and employees from and against all liability, claims, losses, damages, costs and expenses of any nature or kind, including, but not limited to, attorneys’ fees and all litigation related expenses arising out of or resulting from any failure to make available those funds that such Non-Federal System Conservation Partner agreed to provide as part of the approval of a proposed project and final SCIA for project implementations in the Upper Basin.
- iv. Jurisdiction/Venue – The SCIA shall be interpreted, governed by and construed under applicable Federal law. Where Federal law is silent or where Federal law does not conflict, the laws of the state in which the approved project is implemented shall apply. Moreover, to the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under the SCIA shall be in an appropriate Federal court within the 10th Circuit.

C.3 Monitoring Phase.

- a. The Parties acknowledge that Monitoring the results of each approved project and the implementation of the overall Pilot Program in the Upper Basin is important to understanding and learning whether, and to what extent, voluntary, compensated reductions of Consumptive Use in the Upper Basin can benefit the Colorado River System.
- b. The Parties further recognize that additional funds and resources, beyond those contemplated under the System Conservation Agreement, may be necessary to provide for extensive Monitoring of the Pilot Program.
- c. The Commission agrees to explore mechanisms and opportunities available in each Upper Division State for Monitoring or estimating the System Conservation achieved by approved projects, and the system benefits, if any, of the conserved water in the Upper Basin.
- d. Regardless of funding matters, the Parties understand that Monitoring methods may have to be tailored for different projects based on the ability to directly measure or estimate the achieved System Conservation. For example, Monitoring of the System Conservation achieved for irrigation projects may have to be evaluated based on estimated crop consumptive use, taking into account diversion limitations due to physical or legal water availability and other limitations associated with estimating return flows. Whereas, Monitoring for potential municipal conservation projects could be substantially different.

C.4 Reporting Phase.

- a. In the event additional funding is secured to provide for administration of the Pilot Program, the Commission agrees to prepare a report, in consultation and, to the extent the Commission deems appropriate, in coordination with reporting efforts of the System Conservation Partners, upon completion of the Pilot Program that identifies lessons learned as a result of Pilot Program implementation in the Upper Basin.
- b. In the absence of additional funding, the Parties agree to consult upon completion of the Pilot Program to discuss and identify relevant information and lessons learned from implementation of the Pilot Program in the Upper Basin.

C.5 Re-consultation Phase.

- a. The Parties agree to reconvene in September 2015 to review progress of the Pilot Program and assess whether modifications or alterations to this Agreement should be made to streamline continued implementation, administration and funding for 2016. Any alteration or modification to this Agreement can only be made upon the unanimous written approval of each signatory.
- b. If no modifications are approved, and the Agreement is not terminated, the Parties will identify an appropriate timeline and follow the procedures and processes described in this Section C for soliciting, reviewing, and approving proposals, implementing approved projects, and Monitoring results as part of the Pilot Program for 2016.

D. PILOT PROGRAM FUNDING MANAGEMENT

D.1 Pilot Program Funding – Participation.

- a. The System Conservation Partners agree to fund the Pilot Program as implemented in the Upper Basin (“Pilot Program Funds”), consistent with the System Conservation Agreement, the terms of this Agreement and according to the schedules and terms of SCIAAs as executed in the Upper Basin.
- b. Consistent with the System Conservation Agreement, no System Conservation Partner shall be compelled to fund any part of a conservation project simply by virtue of this Agreement. Rather, the System Conservation Partners agree to identify for the Commission as part of the approval process set forth in Section C.1.d, *supra* and consistent with Section D.3.a, *infra*, which System Conservation Partners will provide funding for each project, and the amounts of funding to be provided by the identified Partner(s) for each project approved for implementation in the Upper Basin. A System Conservation Partner shall only be responsible for its agreed upon portion of any funding for a project, and shall not be responsible for any other System Conservation Partner’s portion.

- c. The Commission agrees to facilitate payment of Pilot Program Funds to Project Proponents consistent with Article VIII of the Upper Basin Compact, Commission By-Laws, the terms of this Agreement, and according to the schedules and terms of SCIAAs as executed for each project in the Upper Basin.

D.2 Transfer and Disbursement of Pilot Program Funds.

- a. Consistent with Section D.1.b of this Agreement, the System Conservation Partners will identify for the Commission the funding entity(ies) and the amounts that each funding entity will provide for each project, including any funds for approved project Verification..
- c. Federal System Conservation Partner –
 - i. Grant – Following execution of this Agreement, the Commission and Reclamation will coordinate to transfer funds via grant consistent with Title II, Section 206 of the *Consolidated and Further Continuing Appropriations Act, 2015* (Pub. L. 113-235) (“Act”) and applicable federal law to provide funding for projects selected for inclusion in the Pilot Program and approved by Reclamation to receive funds consistent with the terms and understanding of Reclamation’s role in the System Conservation Agreement, which was approved and in existence prior to the date of enactment of the Act.
 - ii. Distribution of Federal Funds –
 - a. Following the transfer of funds consistent with Section D.2.b.i of this Agreement, and if Reclamation has been identified as a funding entity for an approved project as identified in Section D.1.b and D.2.a, *supra*, and consistent with the terms of any such grant, the Commission will authorize distribution of Reclamation’s proportion of funding for the approved project consistent with the payment schedule set forth in the relevant SCIA.
 - b. Distribution of any federal funds for the approved project under this Agreement shall be subject to there being sufficient money granted consistent with the Act to implement Reclamation’s rights and obligations under the System Conservation Agreement as it relates to funding projects selected in the Upper Basin for inclusion in the Pilot Program.
 - iii. Reimbursement of Federal Funds – At the conclusion of the Pilot Program, the Commission will direct any funds transferred via grant consistent with the Act but not expended as part of the Pilot Program to be returned or redirected according to Reclamation’s instructions. The Parties recognize that funds to be reimbursed or redirected as set forth in this provision will be equal to the funding granted by the Federal Funding Partner, minus any funding expended, and may also include deductions from the reimbursement total for any fees associated with maintaining the Pilot Program Funding Account and any other administrative costs incurred that have been previously agreed to by the Commission and the Federal System Conservation Partner.

- c. Non-Federal System Conservation Partners –
- i. Pilot Program Funding Account – Following execution of this Agreement, the Commission and Non-Federal System Conservation Partners agree to identify and establish a suitable funding account capable of accepting and releasing Pilot Program Funds provided by the Non-Federal System Conservation Partners according to the terms of this Agreement and any applicable SCIA (“Pilot Program Funding Account”).
 - ii. Initial Transfer – After the Pilot Program Funding Account has been established, but before or concurrently with the execution of a final, agreed upon SCIA, the Non-Federal System Conservation Partners as identified in Section D.1.b and D.2.a of this Agreement will initiate measures to transfer initial payments to be disbursed for the approved project(s) consistent with applicable instructions and the payment schedule set forth in the relevant SCIA.
 - iii. Subsequent Transfers – The Commission will invoice the appropriate Non-Federal System Conservation Partners for subsequent payments to be disbursed to Project Proponents in a timeframe that allows the Commission to remain consistent with the payment schedule for each Upper Basin SCIA.
 - iv. Timing – The Non-Federal System Conservation Partners will have a maximum of 30 days from invoice receipt to transfer funds.
 - v. Disbursements –
 - a. The Commission will distribute payments from the Pilot Program Funding Account to:
 1. Each Project Proponent according to the payment schedule and terms provided in the relevant SCIA for the Upper Basin; and
 2. The entity, person or contractor tasked with performing Verification activities if agreed to by the Parties as part of their approval for including the project in the Pilot Program and in a manner that is consistent with the schedule and terms in the relevant SCIA.
 - b. The Non-Federal System Conservation Partners agree that distribution of funds to Project Proponents shall be subject to there being sufficient funds in the Pilot Program Funding Account.
 - vi. Reimbursement of Funds to Non-Federal System Conservation Partners – At the conclusion of the Pilot Program, the Commission will return or redirect Pilot Program Funds that were not expended as part of the Pilot Program to each of the Non-Federal System Conservation Partner(s) who provided the funding originally according to instructions agreed to by the Commission and the relevant Non-Federal System Conservation Partner(s). Unless otherwise jointly instructed by the Non-Federal System Conservation Partner(s), the Parties agree that funds to be reimbursed or redirected as set forth in this provision will be equal to the funding provided by each Non-Federal System Conservation Partner minus funding expended, and may include any proportionate share of interest, minus any fees associated with maintaining the account and any

proportionate share of other administrative costs incurred by the Commission that have been previously agreed to by the Parties.

- d. General Assurance – The Commission will not transfer or reassign funds provided under this Agreement to projects or activities not approved pursuant to Sections B or C, *supra*.

D.3 Administration of Funds.

- a. The Commission or its designated agent(s) shall keep full and complete records of Pilot Program Funds and expenditures made pursuant to this Agreement according to generally accepted accounting standards. These records shall be available for inspection, audit and reproduction by the System Conservation Partners during normal business hours. At the end of the Pilot Program, the Commission shall provide an itemized statement to the System Conservation Partners documenting how the Pilot Program Funds were spent and any credits that are available for reimbursement if Program Funds exceed expenditures made.
- b. Notwithstanding any fees associated with maintaining the Pilot Program Funding Account or funds granted by Reclamation, Pilot Program Funds will not be used for administrative costs associated with facilitating or implementing the Pilot Program in the Upper Basin, and will not be used to reimburse the Commission or other entity which is tasked with implementing any or all parts of the Pilot Program in the Upper Basin unless previously agreed to by all Parties.
- c. The Parties agree to collaborate to identify separate funding sources as needed to provide compensation for administrative, Monitoring and Verification costs associated with implementing the Pilot Program in the Upper Basin.

E. WARRANTIES

E.1 Authority.

Each Party represents and warrants that it possesses the legal authority to enter into this Agreement and that it has taken all prerequisite actions required by its respective procedures, by-laws, and applicable laws and regulations to perform the obligations and exercise the rights contemplated herein; furthermore, each Party acknowledges that such warranty and representation as contained in this Section E.1 is a material inducement to, and has been relied upon by the other Parties in entering into this Agreement.

E.2 Conservation Goal not Requirement.

The Parties recognize that implementing the Pilot Program in the Upper Basin will provide valuable information concerning obstacles, complications and pathways forward for developing drought management tools in each of the Upper Division States. Such information will be useful regardless of whether the Pilot Program produces conserved water in quantities that result in measurable increased stream flow benefitting the Colorado River System. The Parties, therefore,

agree that no Party shall be liable, if despite good faith efforts, expenditure of Pilot Program Funds does not produce measurable yields of conserved water at Lake Powell or elsewhere.

E.3 Conflict of Interest.

Each Party, its directors, officers, agents, employees and authorized volunteers warrant to the best of their knowledge that no conflicts of interest exist as a result of entering into this Agreement. Moreover, the Parties agree to waive any incidental conflict of interest that may arise as a result of or in relation to the Parties entering this Agreement.

E.4 Parties Held Harmless.

No Party, its directors, officers, agents, employees or authorized volunteers shall be responsible for any damage or liability occurring by reason of an act or omission of any other Party in connection with any work, obligation, authority, or any criteria arising out of this Agreement.

F. NOTICE AND REPRESENTATIVES

F.1 Notice.

All notices required to be given hereunder shall be hand delivered or sent by mail to such Party's principal representative at the address set forth below. In addition to paper-copy notice, notice also may be sent by e-mail message to the e-mail address, if any, set forth below. Any Party from time to time may by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

F.2 Representatives.

The individuals listed below are the principal representatives of the respective Parties. Any Party may from time to time designate in writing new or substitute representatives or addresses. Until changed by notice in writing, all notices and communications shall be addressed as follows:

Commission:

Don A. Ostler, Executive Director
Upper Colorado River Commission
355 South 400 East
Salt Lake City, UT 84111
Dostler@ucrcommission.com

DW:

Mr. James S. Lochhead, Manager/CEO
Denver Water
1600 W. 12th Avenue
Denver, CO 80204
Jim.lochhead@denverwater.org

SNWA:
Mr. John Entsminger, General Manager
Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, NV 89153
John.Entsminger@SNWA.com

MWD:
Mr. Jeffrey Kightlinger, General Manager
The Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, CA 90054-0153
jkightlinger@mwdh2o.com

CAWCD:
Mr. Theodore "Ted" C. Cooke, General Manager
Central Arizona Project
P.O. Box 43020
Phoenix, AZ 85080
tcooke@cap-az.com

United States:
Regional Director
Upper Colorado Region
125 South State Street, Room 61 07
Salt Lake City, UT 84138-1147

G. EFFECTIVE DATE/TERMINATION

G.1 Effective Date and Notice of Non-liability.

This Agreement shall become effective and enforceable upon approval and signature of each Upper Colorado Commissioner to the Commission or his or her designee and the designated representative(s) for the System Conservation Partners. The Parties shall not be liable to perform, pay or reimburse for any performance, hereunder, including but not limited to, costs or expenses incurred or be bound by any provision hereof prior to the Effective Date.

G.2 Term and Termination.

- a. The term of this Agreement shall commence on the Effective Date and shall remain in effect until the latter of: (i) July 30, 2016; or (ii) December 31 of the year in which the latest SCIA expires, unless sooner terminated as provided for below, herein. Performance of the Parties' respective obligations under this Agreement shall begin as soon as practicable following commencement of the Effective Date.
- b. The Parties may mutually agree to extend the term of this Agreement for a period not to exceed two months if the Parties are negotiating a replacement agreement or term extension or an amendment to the Agreement, at or near the end of any

initial term or an extension thereof. The provisions of the Agreement in effect when said notice is given shall remain in effect during said two-month extension. However, the two-month extension shall immediately terminate when and if a replacement Agreement becomes effective following approval of the Commission and the System Conservation Partners.

G.3 Early Termination.

- a. Generally – This Agreement may be terminated in its entirety by written agreement of the Parties. In the event of complete termination of this Agreement, the Commission shall refund to the System Conservation Partners all Pilot Program Funds not expended or encumbered for expenditure as of the day of termination.
- b. System Conservation Partners – Any System Conservation Partner, Federal or Non-Federal, may terminate its participation in this Agreement on 30-days written notice to the other Parties. Termination by any one Party except the Commission does not result in termination of this Agreement. Termination by any Party, other than the Commission, will result in forfeiture of all Pilot Program Funds that have been paid by that Party to the Commission or Pilot Program Funding Account and/or that are encumbered for expenditure to fund a pilot project approved according to Sections B and C, *supra*.
- c. Commission – The Commission may, in its sole discretion, terminate this Agreement in whole or in part, for cause or convenience. Exercise by the Commission of this right shall not be deemed a breach of its obligations hereunder. To accomplish early termination for cause or convenience, the Commission shall provide written notice of termination to the System Conservation Partners in accordance with Section F.1., Notice, hereof specifying the Effective Date of termination and whether it affects all or a portion of this Agreement. To the extent specified in the notice of termination, the Commission shall not incur further obligations or render further performance past the Effective Date of such notice. If the Agreement is terminated by the Commission for cause or convenience, the System Conservation Partners shall be refunded all unencumbered Pilot Program Funds that were previously transferred to the Commission for distribution as part of the Pilot Program. Unless otherwise jointly instructed by the System Conservation Partners, the Parties recognize that funds to be refunded as set forth in this provision will be equal to the funding provided by each Non-Federal System Conservation Partner minus the funding expended and encumbered and may include any proportionate share of interest, minus any proportionate share of fees associated with maintaining the account and any proportionate share of other administrative costs incurred by the Commission that have been previously agreed to by the Parties. At the time of notice of termination, the Commission shall identify how any Pilot Program Funds encumbered but not yet released for distribution to Project Proponents shall be paid out according to the terms of the SCIA's for Project Proponents' participation in the Pilot Program

H. OBTAINED OR DEVELOPED INFORMATION

The Parties recognize that the information obtained or developed from activities performed under this Agreement may be public information that is available for release upon request, except to the extent otherwise provided by law.

I. RIGHTS TO DATA/INFORMATION

For activities performed under this Agreement, all information and data obtained or developed by the Parties and Project Proponents, contractors or vendors as allowed by their contracts, shall be available upon request, except where prohibited by law, to the other Parties without further charge. Use of said reports, data, and information shall appropriately reference the source of such information.

J. MISCELLANEOUS

J.1 No Precedent.

Neither the terms and conditions in this Agreement nor the execution of this Agreement shall be deemed to establish any precedent for managing Consumptive Use by the Commission or any Upper Division State. Nor does this Agreement give any Party any rights to obtain any similar agreement after the expiration of the term of this Agreement. Moreover, nothing in this Agreement or in the execution of this Agreement, shall be deemed to affect, influence or otherwise give meaning to any particular provision of the Colorado River Compact, Upper Basin Compact, Boulder Canyon Project Act, Supreme Court Consolidated Decree in Arizona v. California, 1944 Mexico Water Treaty and its related Minutes of the International Boundary and Water Commission, Colorado River Storage Project Act, Colorado River Basin Project Act, or related rules and regulations that together govern and inform management and allocation of resources included in the Colorado River System.

J.2 Reservation of Rights and Authorities.

Neither the terms and conditions of this Agreement, nor its execution by the signatory Parties shall be deemed to limit, reduce or alter any Party's rights, authorities or obligations under existing state or federal law or any signatory Party's current By-Laws, if applicable. Furthermore, each Party reserves the right to exercise and protect its respective rights, obligations and entitlements related to water from the Colorado River System as it deems appropriate.

J.3 Entire Agreement/Severability.

This Agreement, and its attachments, contain the entire understanding of the Parties with respect to the subject matter hereof, and supersede any prior understanding between the Parties, except as set forth herein, whether written or oral.

J.4 Counterparts.

This Agreement and any amendments thereto may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument with the same force and effect as though all signatures appeared on a single document.

J.5 Amendment.

This Agreement may not be modified or amended except in writing executed by all the Parties.

J.6 Ambiguities.

Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this agreement, including any amendments or modifications.

J.7 Existing Law.

- a. Compliance with existing laws - The Parties intend the implementation of this Agreement and any uses of water as a result of this Agreement, to be consistent with existing law, including, but not limited, to the Colorado River Compact, the Upper Basin Compact, the Boulder Canyon Project Act, the 1944 Mexico Water Treaty, the Colorado River Storage Project Act, Supreme Court Consolidated Decree in Arizona v. California, and the Colorado River Basin Project Act. The Parties further intend for this Agreement to be consistent with the water rights and administration laws of the Upper Division State(s) in which the Pilot Program is to be implemented.
- b. Reaffirmation of existing law - Nothing in this Agreement is intended to, nor shall this Agreement be construed so as to, diminish or modify the rights or entitlements of any Party, or of water users, under existing law to waters from the Colorado River System.

J.8 Assignment.

No Party may assign its rights or obligations under this Agreement to another person or entity without written consent of the other Parties.

J.9 Officials Not to Benefit.

No Member of or Delegate to the Congress, or Resident Commissioner, or official of DW, MWD, SNWA, CRCN, or CAWCD 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.

J.10 Third Party Beneficiaries.

No Party to this Agreement intends for this Agreement to confer any right or entitlement to benefits from this Agreement upon any person or entity that is not signatory to this Agreement upon a theory of third-party beneficiary or otherwise.

J.11 Jurisdiction/venue.

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 agreed to by the adjudicating Parties. In the event no agreement can be reached, venue for adjudication of any disputes under this Agreement shall be in an appropriate federal court within the DC Circuit. Consistent with Section J.1, *supra*, this provision shall not be construed as setting precedent for any other current or future agreement among all Parties or a subset thereof.

J.12 Joint Defense.

The Parties may in the future enter into an agreement for joint defense against third party claims.

J.13 Force Majeure.

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.

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

**Upper Colorado River Commission
Bureau of Reclamation**

By: _____
Felicity Hannay
Federal Commissioner

By: _____
Patrick Tyrrell
Wyoming Commissioner

By: _____
L. James Eklund
Colorado Commissioner

By: _____
Eric Millis
Utah Commissioner

By: _____
Amy Haas
New Mexico Commissioner

The United States of America

By: _____
Brent Rhees, P.E.
Regional Director

Central Arizona Water Conservation District

By: _____
Theodore "Ted" C. Cooke
General Manager

The Metropolitan Water District of Southern California

By: _____
Jeffrey Kightlinger
General Manager

City and County of Denver, acting by and through its Board of Water Commissioners

By: _____
James S. Lochhead
Manager/CEO

Southern Nevada Water Authority

By: _____
John J. Entsminger
General Manager

**SOUTHERN NEVADA WATER AUTHORITY
BOARD OF DIRECTORS
AGENDA ITEM**

April 29, 2015

Subject: Amendment	Director's Backup
Petitioner: Gregory J. Walch, General Counsel	
Recommendations: That the Board of Directors approve and authorize the General Manager to execute, in substantially the same form as that attached hereto, Exhibit Q to the Forbearance Agreement among the Arizona Department of Water Resources, the Palo Verde Irrigation District, the Imperial Irrigation District, the City of Needles, the Coachella Valley Water District, the Metropolitan Water District of Southern California, the Colorado River Commission of Nevada, and the Authority for the Central Arizona Water Conservation District's Funded Water Supply from Conserved Water.	

Fiscal Impact:

None by approval of the above recommendation.

Background:

In December 2007, the Secretary of the Interior approved the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (Guidelines). Among other things, the Guidelines established the Intentionally Created Surplus (ICS) Program. Along with the Guidelines, all of the major contractors for Colorado River water in the Lower Basin entered into a Forbearance Agreement, which assures that no other contractor for Colorado River water in the Lower Basin will claim ICS created by another contractor. As new programs for creation of ICS are identified, new exhibits to the Forbearance Agreement are created and signed.

In December 2014, to begin to address the continued effects of the ongoing drought, the Authority entered into a Memorandum of Understanding regarding Pilot Drought Response Actions (MOU) with other Colorado River Basin partners. The MOU identifies mechanisms to develop additional quantities of water stored in Lake Mead to reduce the risk of reaching critical reservoir elevations (Protection Volumes). Each of the MOU signatories committed to use their best efforts to generate a cumulative total of 740,000 acre-feet of Protection Volumes in Lake Mead between 2014 and 2017.

The Central Arizona Water Conservation District (CAWCD) has a goal of generating up to 345,000 acre-feet towards the 740,000 acre-feet goal. Exhibit Q describes activities to create up to 100,000 acre-feet per year of Extraordinary Conservation ICS in 2015 and 2016 through land fallowing and use of non-Colorado River water in lieu of Colorado River water. Approval of Exhibit Q will allow CAWCD to create ICS that may be used to meet its demands or to create Protection Volumes. By signing Exhibit Q, the Authority agrees not to request delivery of ICS created under CAWCD's program.

Agreement
April 29, 2015
Page Two

This agreement is being entered into pursuant to NRS 277.180 and Section 6(j) of the SNWA 1995 Amended Cooperative Agreement. The office of the General Counsel has reviewed and approved the Exhibit.

Respectfully submitted:

A handwritten signature in blue ink, appearing to read "John J. Entsminger", is written over a horizontal line.

John J. Entsminger, General Manager
JJE:PDS:GJW:CNP:cc
Attachment

Exhibit Q

Central Arizona Water Conservation District (CAWCD)-Funded Intentionally Created Surplus (ICS) Water Supply from Conserved Water

Type: Pursuant to Article 2, CAWCD will create the following types of Extraordinary Conservation ICS:

2.1 A. Fallowing of land that currently is, historically was, and otherwise would have been irrigated in the next Year; and,

2.1. H. Other extraordinary conservation measures, including development and acquisition of a non-Colorado River System water supply used in lieu of Mainstream water within the same state, as agreed upon by the Parties pursuant to this Forbearance Agreement.

Under agreements CAWCD will execute with CAWCD customers holding contracts for the delivery of Central Arizona Project (CAP) water, CAWCD will conserve Colorado River water that would otherwise be delivered to these CAWCD water users from the Colorado River mainstem by offsetting or reducing that Colorado River water use.

Such extraordinary conservation will be achieved by: fallowing irrigated agricultural lands within CAWCD's service area and use of local Arizona water supplies in lieu of Colorado River water which may include the transfer or delivery of long-term storage credits, investment in new conservation programs and infrastructure, investment in new water development projects and infrastructure, investment in new reuse programs, and investment in new demand reduction programs.

Verification: On or before October 1 of each year, CAWCD receives water orders from all of its customers for the coming year. For each CAWCD customer participating in this Extraordinary Conservation (EC) ICS program, CAWCD shall submit the participating customers' original water order to the United States Bureau of Reclamation prior to January 1 of the following year.

By delivering local water supplies in lieu of Colorado River water to CAWCD customers or by its customers' reducing their usage of water through extraordinary conservation programs, CAWCD will reduce its deliveries of lower Colorado River water by an equal quantity of water. This reduction in net deliveries will therefore result in an equivalent reduction in net diversions by CAWCD of Colorado River water at the Mark Wilmer Pumping Plant and a net reduction in releases from Colorado River system storage. Only those reductions in diversions to the Mark Wilmer Pumping Plant, as measured against CAWCD's original water orders submitted by CAWCD customers, shall be eligible for creation of EC ICS pursuant to this Exhibit _.

Total Amount of ICS Credited Annually: The amount of EC ICS that can be created during any Year is limited to the reduction in deliveries to CAWCD ICS Program participating customers from those CAWCD deliveries that were originally scheduled to be delivered to those CAWCD ICS Program participating customers, provided that CAWCD does not divert such water.

The volume of water conserved pursuant to this program eligible for the creation of EC ICS is further limited to 100,000 acre-feet per year and is subject to the following:

Limitations on Creation of EC ICS

- a) The amount of EC ICS that CAWCD may create in any Year is limited to the amount of Colorado River water that, if added to its consumptive use, would not result in an inadvertent overrun pursuant to the October 10, 2003 Inadvertent Overrun and Payback Policy.
- b) The total amount of annual EC ICS created by this program is limited to the amount of water that could have been delivered for beneficial use from the Colorado River.
- c) Underused or unused CAWCD apportionment is not eligible for creation of EC ICS. EC ICS may only be created on CAWCD water orders that are reduced by the delivery of local water supplies or through extraordinary conservation programs.
- d) EC ICS may only be created in 2015 and 2016.

Limitations on Delivery of EC ICS

In addition to the conditions specified in Article 2.6 of this Forbearance Agreement:

- a) CAWCD will limit the delivery of EC ICS to Direct Delivery Domestic Use as defined in Section XI.F.13. of the Secretary of the Interior's Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead, December 2007, and authorities pursuant to ARS 48-3700 et seq.
- b) CAWCD will not request delivery of EC ICS prior to January 1, 2020, unless the August 24-Month study in years prior to 2020 projects Lake Mead's elevation to exceed 1,145 feet on January 1 of the subsequent year.

In Witness of this Exhibit __ to the Forbearance Agreement, the Parties affix their official signatures below, acknowledging approval of this document on the __ day of _____, 201__.

Approved as to form:

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

By: _____
Chief Counsel

By: _____
Thomas Buschatzke
Director

Attest:

PALO VERDE IRRIGATION DISTRICT

By: _____
Ned Hyduke
General Manager

By: _____
Jack Seiler
Chair

Attest and Approved:

IMPERIAL IRRIGATION DISTRICT

By: _____

Legal Counsel

By: _____

Stephen W. Benson
President

Approved as to form:

COACHELLA VALLEY WATER DISTRICT

By: _____

Legal Counsel

By: _____

Jim Barrett
General Manager

Approved as to form:

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____

General Counsel

By: _____

Jeffrey Kightlinger
General Manager

Approved as to form:

SOUTHERN NEVADA WATER AUTHORITY

By: _____

General Counsel

By: _____

John Entsminger
General Manager

Approved as to form:

COLORADO RIVER COMMISSION OF NEVADA

By: _____

Deputy Attorney General

By: _____

Jayne Harkins
Executive Director

Approved as to form:

The City of Needles

By: _____

City Attorney

By: _____

Edward Paget
Mayor

**SOUTHERN NEVADA WATER AUTHORITY
BOARD OF DIRECTORS
AGENDA ITEM**

April 29, 2015

Subject: Budget Workshop	Director's Backup
Petitioner: John J. Entsminger, General Manager	
Recommendations: That the Board of Directors receive an overview and discuss the Fiscal Year 2015/2016 Tentative Budget.	

Fiscal Impact:

None by approval of the above recommendation.

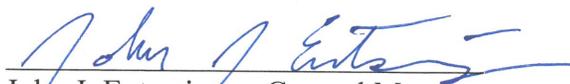
Background:

The Authority conducts annual budget workshops to provide the Board of Directors the opportunity to receive an overview of the upcoming fiscal year budget. The workshop is intended to facilitate discussion regarding the Authority's budget prior to the Authority's Budget Hearing held in May.

At this time, the Board is being asked to receive an overview on the Authority's Fiscal Year 2015/2016 Tentative Budget.

This action is authorized pursuant to NRS Chapter 354 and Section 22 of the SNWA 1995 Amended Cooperative Agreement. The office of the General Counsel has reviewed and approved this agenda item.

Respectfully submitted:



John J. Entsminger, General Manager
JJE:PDS:GLN

AGENDA ITEM #	6
------------------	---