

AGREEMENT BETWEEN THE UNITED STATES, ACTING THROUGH THE
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, AND
THE COACHELLA VALLEY WATER DISTRICT FOR THE CONSERVATION OF
COLORADO RIVER WATER

1. PREAMBLE THIS AGREEMENT (“Agreement”) is entered into this ___ day of ____, 2022, by and between the United States, Department of the Interior, Bureau of Reclamation (“Reclamation”), acting through the Regional Director of the Lower Colorado Basin Region of the Bureau of Reclamation, and the Coachella Valley Water District (“CVWD”), a County Water District created, organized, and existing under and by virtue of the County Water District Law of the State of California, and acts amendatory thereof and supplementary thereto, hereinafter referred to singularly as “Party” or collectively as “Parties” and pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto, the Act of December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and Public Law 116-14, the Colorado River Drought Contingency Plan Authorization Act, dated April 16, 2019.

2. EXPLANATORY RECITALS

2.1 WHEREAS, CVWD shares priorities 3a and 6a to Colorado River water in accordance with Contract No. Ilr-781 dated October 15, 1934, as amended and supplemented (“CVWD Contract”); as modified (or quantified) by the terms of the Colorado River Water Delivery Agreement (“CRWDA”) dated October 10, 2003, specifically Exhibit B of the CRWDA, while the CRWDA remains in effect;

2.2 WHEREAS, due to the Colorado River Basin experiencing its driest 23-year period in the historical record, the United States and the Colorado River Basin States developed the Agreement Concerning the Colorado River Drought Contingency Management and Operations (“Companion Agreement”). Attachment B to the Companion Agreement is the Lower Basin Drought Contingency Plan Agreement (“LBDCP”), which, among other things, is designed to create new flexibility to incentivize additional voluntary conservation of water to be stored in Lake Mead;

2.3 WHEREAS, among other things, the Companion Agreement provides for the implementation of several interstate agreements including the LBDCP and its Attachment Exhibit 1 - Lower Basin Drought Contingency Operations (collectively DCP Agreements);

2.4 WHEREAS, Public Law 116-14, the Colorado River Drought Contingency Plan Authorization Act (“Act”), was signed into law on April 16, 2019. This Act directed the Secretary of the Interior (“Secretary”) to execute the DCP Agreements, and the DCP Agreements were subsequently executed on May 20, 2019;

2.5 WHEREAS, Section 3.b. of the LBDCP, among other things, provides that, subject to appropriations, (1) the Secretary will take affirmative actions to implement Lower Basin programs designed to create or conserve 100,000 acre-feet (af) per annum or more of Colorado River System water to contribute to conservation of water supplies in Lake Mead and other Colorado River reservoirs in the Lower Basin and (2) the other parties to the LBDCP shall not request delivery of, and the Secretary shall not deliver to any party or Contractor the volumes of Colorado River System water conserved through such programs;

2.6 WHEREAS, additional measures need to be taken to avoid and protect against the potential for Lake Mead to decline below 1,020 feet and a *Memorandum of Understanding Among the United States of America Acting Through the Department of the Interior, Bureau of Reclamation, the State of Arizona Acting Through the Arizona Department of Water Resources, the Central Arizona Water Conservation District, the Metropolitan Water District of Southern California, the State of Nevada acting Through the Colorado River Commission of Nevada, and the Southern Nevada Water Authority to Facilitate Near-Term Actions Necessary to Maintain the Elevation of Water in Lake Mead*, (“2021 MOU Parties”) was entered into on December 15, 2021, also referred to as the “500 + Plan”, in which the 2021 MOU Parties agreed to target a combined minimum of 1,000,000 af of additional water in 2022 and 2023, to remain in Lake Mead;

2.7 WHEREAS, recognizing the severity of the ongoing historic drought, CVWD desires to help mitigate the impacts of the current drought by entering into an agreement to make some of its Colorado River water entitlement under its CVWD Contract available in calendar year 2022 as Colorado River System water with the intent that Reclamation will apply such water to help meet the Secretary’s commitment under Section 3 b. of the LBDCP and to help meet the water conservation efforts described in the 500 + Plan;

2.8 WHEREAS, CVWD notified Reclamation by September 22, 2022 of its interest in entering into an agreement with the United States to conserve Colorado River water;

2.9 WHEREAS, Reclamation’s Interior Region 8: Lower Colorado Basin has received appropriated funds or drought related purposes that may be utilized for system conservation; and

2.10 WHEREAS, the Parties desire to enter into this Agreement whereby CVWD agrees, among other things, to reduce its annual water order in calendar year 2022 for water under priority 3a and 6a by up to 9,083 af and allow such reduction in consumptive use volumes to remain in Lake Mead in exchange for financial compensation.

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

3. DEFINITIONS

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

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

3.3 System Conservation Water means Colorado River water that is conserved by CVWD under this Agreement for storage in Lake Mead to benefit the Colorado River System.

4. PURPOSE

4.1 The purpose of this Agreement is for Reclamation to compensate CVWD for the System Conservation Water that is created by CVWD reducing the volume of water delivered for recharge of the groundwater basin underlying the district with the intent of Reclamation applying such water toward the Secretary's commitment to create or conserve 100,000 af per annum or more of Colorado River System water, as required in Section 3.b. of the LBDCP and to help meet the water conservation efforts described in the 500 + Plan. In the absence of this Agreement, CVWD attests that it used such water in previous years and it would have used such water in calendar year 2022 covered under this Agreement.

5. SYSTEM CONSERVATION IMPLEMENTATION

5.1 The term of this Agreement begins upon execution of this Agreement and continues until the final payment in accordance with Section 8 herein is made to CVWD and all terms and conditions are satisfied.

5.2 CVWD operates the Thomas E. Levy Groundwater Replenishment Facility in Coachella Valley. CVWD recharges groundwater as a method, among other things, to preserve local groundwater supplies. CVWD under this Agreement agrees in lieu of recharging a portion of its groundwater (up to 9,083 af) it will conserve such water under this Agreement.

5.3 2022 VOLUME BASELINE LIMITATION:

5.3.1 In order to control the volume of water diverted by CVWD, CVWD shall limit the maximum volume of water delivered for groundwater replenishment at the Thomas E. Levy Groundwater Replenishment Facility in calendar year 2022 to 27,993 af which is hereinafter referred to as the "Groundwater Replenishment Limitation" and is calculated by subtracting 9,083 af from CVWD's five-year average (37,076 af) of groundwater replenishment at the Thomas E. Levy Groundwater Replenishment Facility from 2017-2021 as reported by CVWD.

5.3.2 CVWD will submit a calendar year 2022 adjusted water order for at Imperial Dam for a volume of 374,917 af to reflect the 9,083 af reduction to Priority 3a water and contributions to the Colorado River system in the Lower Basin.

5.3.3 If the Groundwater Replenishment Limitation or adjusted water order is inadvertently exceeded, CVWD agrees that the reduction in conservation yield attributable to that exceedance shall be deducted from the System Conservation Water volume to be created in calendar year 2022 and its Payment 4 in Section 8.1.4 herein will be reduced accordingly.

6. MONITORING

6.1 The Parties agree that Reclamation shall (1) verify and document reductions in consumptive use of Colorado River water under this Agreement and (2) report the verified volume of System Conservation Water created in calendar year 2022 under this Agreement in the Water

Accounting Report.

6.2 Reclamation will use its existing Colorado River water order approval process and other authorities to ensure that CVWD's Colorado River water under this Agreement is not ordered or used by other Colorado River water entitlement holders.

6.3 The Parties agree that the terms of this Agreement shall not establish a precedent for potential future water conservation activities.

7. IDENTIFICATION AND TRACKING OF COLORADO RIVER SYSTEM WATER

7.1 Reclamation will document the quantity of System Conservation Water created by CVWD through the reductions in consumptive use described in this Agreement in the annual Water Accounting Report. The quantity of System Conservation Water to remain in Lake Mead, as determined by Reclamation, will be reported in the section of the annual Water Accounting Report titled, "Conservation, Transfers and Exchanges."

7.2 The Parties agree that the water left in Lake Mead pursuant to this Agreement shall accrue to the benefit of the Colorado River System and shall not accrue to the individual benefit of CVWD or any third party.

8. PAYMENTS

8.1 Reclamation will pay CVWD a total payment up to the amount of not to exceed \$2,376,112.80 calculated by multiplying \$261.60 per af times up to 9,083 af on a consumptive use basis of System Conservation Water ("Total Payment"), as follows:

8.1.1 Payment 1 of the Total Payment in the amount of \$1,782,084.60 will be made by Reclamation to CVWD no later than 60 days after (1) the execution of this Agreement and (2) CVWD submits an amended water order to Reclamation for calendar year 2022 reducing its Priority 3a water diversion request by 9,083 af, whichever (1) or (2) occurs last.

8.1.2 Payment 2 of the Total Payment in the amount of \$594,028.20 will be made by Reclamation to CVWD no later than 60 days after publication of the annual Water Accounting Report verifying the amount of System Conservation Water created in calendar year 2022. Such publication normally occurs in May of the year following the reporting period.

8.1.3 If Reclamation finds that CVWD did not create the System Conservation Water in accordance with this Agreement, Payment 2 in Section 8.1.2 herein shall be reduced accordingly and CVWD may be required to reimburse Reclamation as provided in Section 10 herein.

9. CVWD COSTS

9.1 CVWD agrees to bear all costs for implementation of this Agreement under this Agreement in return for the payments to be made by Reclamation, as specified in this Agreement.

10. REIMBURSEMENT FOR OVERPAYMENT

10.1 If the total amount of System Conservation Water under this Agreement is not added to Lake Mead as Colorado River System water as was paid for by Reclamation due to CVWD taking an action that interferes with the foregoing objective, CVWD agrees to reimburse Reclamation for the overpayment proportionate to the water that was not added to Lake Mead within 30 days of receipt of a bill for collection from Reclamation.

11. DISPUTE RESOLUTION

11.1 If any Party disputes any compliance with or performance under this Agreement by the other Party, the Party claiming such dispute shall notify the other Party in writing, specifically identifying the claimed deficiency in compliance or performance. Upon such notice, the Parties shall timely meet and confer regarding the claim and use good faith efforts to resolve the claim informally.

11.2 To the extent any claim of non-compliance or non-performance affects any payment from Reclamation to CVWD hereunder, amounts of such payment that are not associated with such non-compliance or non-performance shall be paid in a timely manner, and any remaining balance shall be held pending resolution of the claim of non-compliance or non-performance.

12. SYSTEM CONSERVATION WATER IS NOT A DCP CONTRIBUTION

12.1 The Parties to this Agreement agree that the System Conservation Water created under this Agreement shall be additive to the total conserved water volume associated with the 500 + Plan and shall not be used to satisfy any Lower Division States' DCP contribution required under the LBOPs.

13. ENVIRONMENTAL COMPLIANCE

13.1 Because implementation of this Agreement may result in reduced flows in the Colorado River, the Parties agree to consult with Reclamation about measures to fulfill any of its environmental obligations resulting from reduction in river flows, including, any conservation measures required by the Endangered Species Act; provided, any funding obligations between the Parties for the Endangered Species Act compliance shall be pursuant to the Lower Colorado River Multi-Species Conservation Program Funding Agreements.

14. THIRD PARTY BENEFICIARIES

14.1 This Agreement is not intended nor shall it be construed to create any third-party beneficiary rights to enforce the terms of this Agreement in any person that is not a Party.

15. GENERAL TERMS

15.1 CVWD 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 Agreement.

15.2 The Parties agree that consistent with the provisions of 3(b) of the LB DCP Agreement, and Section IV F. of the Lower Basin Drought Contingency Operations, water intentionally conserved pursuant to this Agreement will remain in Lake Mead and shall not be subject to release pursuant to Article II of the Consolidated Decree in the year in which the conservation occurs.

15.3 The water left in Lake Mead under this Agreement will not be reported as a CVWD diversion or consumptive use.

15.4 None of the provisions of this Agreement shall be considered waived, except when such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions, 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.

15.5 The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement 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 Agreement or otherwise.

15.6 Each Party to this Agreement 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.

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

15.8 This Agreement 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.

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

If to Reclamation:

Bureau of Reclamation
Interior Region 8: Lower Colorado Basin
Attn: Regional Director
500 Date Street, Building 900
Boulder City, NV 89005
Email: jgould@usbr.gov

With a copy to:

Bureau of Reclamation
Interior Region 8: Lower Colorado Basin
Attn: Chief, Boulder Canyon Operations Office
500 Date Street, Building 900
Boulder City, NV 89005
Email: dbunk@usbr.gov

If to CVWD:

Coachella Valley Water District
Attn: General Manager
75-515 Hovley Lane
East Palm Desert, CA 92236
Email: jbarrett@cvwd.org

15.10 All information and data obtained, books, and other records or developed with the performance of duties mentioned in this Agreement shall be available for inspection and audit upon request to a Party for five years after completion of this Agreement, subject to the provisions of the Freedom of Information Act and California public records law, if applicable, or other applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.

15.11 The expenditure or advance of any money or the performance of any obligation by the United States under this Agreement 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. Nothing in this Agreement shall bind the United States to expenditures in excess of funds appropriated and allotted for the purposes outlined in this Agreement.

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

15.13 Nothing in this Agreement diminishes or abrogates the authority of the Secretary 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.

15.14 If a dispute arises regarding this Agreement, the Parties agree to meet and attempt to resolve the dispute before seeking any remedy. The Parties agree to engage in any alternative dispute resolution procedures authorized by their statutes, regulation and court rules.

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

15.16 This Agreement shall be interpreted, governed by, and construed under applicable Federal law and any relevant provisions of California state law. In case of conflict between Federal law and California state law, Federal law controls. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Agreement shall be in appropriate Federal Court.

16. COUNTERPARTS:

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

17. EFFECTIVE DATE

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

17.2 The Parties hereto have executed this Agreement on the day and year first written above.

Signatures next page.

Approved as to form:
REDWINE AND SHERRILL, LLP

COACHELLA VALLEY WATER DISTRICT

By: _____
Special Counsel

By: _____
General Manager

Signatures continued next page.

Draft

THE UNITED STATES OF AMERICA

By: _____
Jacklynn L. Gould, P.E.
Regional Director
Interior Region 8: Lower Colorado Basin
Bureau of Reclamation

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