

FUNDING AGREEMENT AMONG
THE UNITED STATES OF AMERICA, THROUGH THE
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, AND
THE SOUTHERN NEVADA WATER AUTHORITY,
FOR THE CREATION OF COLORADO RIVER SYSTEM WATER

1. PREAMBLE: THIS FUNDING AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2021, by and between the UNITED STATES OF AMERICA (“United States”), represented by the Secretary of the Interior (“Secretary”) acting through the officials executing this Agreement, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a multi-county water conservation district duly organized and existing under the laws of the State of Arizona (“CAWCD”), THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a regional public water district duly organized under California law (“MWD”), and the SOUTHERN NEVADA WATER AUTHORITY, a political subdivision of the State of Nevada (“SNWA”), each being referred to individually as “Party” and collectively as the “Parties”, and pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto, the Act of December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act, and Public Law 116-14, the Colorado River Drought Contingency Plan Authorization Act, dated April 16, 2019.

2. EXPLANATORY RECITALS:

2.1 WHEREAS, the Colorado River Basin is experiencing the driest 22-year period in the historical record, and Lake Mead’s elevation has dropped to levels where the Secretary may determine a shortage condition for Lake Mead as early as 2022;

2.2 WHEREAS, due to the Colorado River Basin experiencing its driest 22-year period in recorded history, 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 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 applicable law, including the availability of appropriations, (1) the Secretary will take affirmative actions to implement Lower Basin programs designed to create or conserve 100,000 acre-feet 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, (2) the Secretary will meet and confer with the other parties to the LBDCP, and (3) 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, MWD is a metropolitan water district created under the California Metropolitan Water District Act, codified at Section 109-1 et seq., of the Appendix to the California Water Code; and delivers Colorado River water to portions of its service area in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928;

2.7 WHEREAS, the Palo Verde Irrigation District (“PVID”) holds an entitlement to Colorado River water for the irrigation of the Palo Verde Valley lands within its service area under

Contract for Delivery of Water dated February 7, 1933, between the United States and PVID;

2.8 WHEREAS, MWD and PVID executed an agreement entitled, *Forbearance and Fallowing Program Agreement* dated August 18, 2004 (“Program Agreement”), which established the 35-year Palo Verde Irrigation District Land Management, Crop Rotation and Water Supply Program, by which MWD executes agreements with the owners of land within the PVID service area that is eligible to receive Priority 1 water pursuant to the California Seven-Party Agreement of 1931 and that has historically been irrigated. Under such agreements the participating landowners (herein after referred to as “Participating Landowners”) fallow land in exchange for monetary payments from MWD making such water available to MWD;

2.9 WHEREAS, as provided in Section 3.8 of the Program Agreement, PVID agreed it shall not divert, take delivery of, or authorize the diversion or use of, or transfer to third parties the water conserved under the Program Agreement;

2.10 WHEREAS, as discussed in Section 6.1 of the Program Agreement, by letter dated October 10, 2003, the Imperial Irrigation District and the Coachella Valley Water District agreed to not directly or indirectly claim, pump, divert, use, or demand the water conserved under the Program Agreement;

2.11 WHEREAS, the Program Agreement is attached hereto as Exhibit A;

2.12 WHEREAS, instead of making all the water conserved under the Program Agreement available to MWD, MWD desires to create System Conservation Water in accordance with this Agreement;

2.13 WHEREAS, Reclamation, CAWCD, and SNWA desire to pay for land fallowing by Participating Landowners in exchange for the creation of System Conservation Water;

2.14 WHEREAS, CAWCD is a political subdivision of the State of Arizona, established pursuant to Arizona Revised Statutes § 48-3701 et seq., which operates the Central Arizona Project pursuant to various contracts and agreements with Reclamation;

2.15 WHEREAS, SNWA is a joint-powers agency and political subdivision of the State of Nevada. SNWA is authorized to enter into this Agreement pursuant to NRS 277.180 and Section 6(j) of the 1995 Amended Cooperative Agreement; and

2.16 WHEREAS, Reclamation, CAWCD, MWD, and SNWA desire to enter into this Agreement to provide funding for land fallowing under the Program Agreement to create System Conservation Water.

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

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

3.1 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 Exhibit A is a copy of the Program Agreement attached hereto and made part of this Agreement.

3.4 System Conservation Water means Colorado River water that is conserved by land fallowing under the Program Agreement and which under this Agreement is added to storage in Lake Mead to benefit the Colorado River System.

4. TERMS AND CONDITIONS:

4.1 Effective Date. This Agreement shall become effective on August 5, 2021, and shall remain in effect through July 31, 2024, unless otherwise agreed to in writing by the Parties.

4.2 Purpose. The purpose of this Agreement is for Reclamation, CAWCD, and SNWA to fund land fallowing under the Program Agreement to create System Conservation Water. Instead of using the water created under the Program Agreement for its own use, MWD will create System Conservation Water under this Agreement, unless otherwise determined in accordance

with Section 5.4 herein. MWD will execute agreements with PVID and the Participating Landowners within PVID on a voluntary basis ensuring that the land fallowing is performed in accordance with the terms and conditions of the Program Agreement and such voluntary landowner agreements.

4.3 Land Fallowing. For each fallowed acre within PVID pursuant to this Agreement the Parties agree that the estimated water savings is 4.5 acre-feet per acre on a consumptive use basis.

4.3.1 First Year: MWD will cause the Participating Landowners to fallow up to 13,333 acres of land from August 1, 2021, through July 31, 2022. The actual acres of land fallowed subject to the terms of this Agreement will be confirmed based on the Participating Landowners as of December 31, 2021.

4.3.2 Second Year: MWD will cause the Participating Landowners to fallow approximately 13,333 acres of land from August 1, 2022, through July 31, 2023.

4.3.3 Third Year: MWD will cause the Participating Landowners to fallow approximately 13,333 acres of land from August 1, 2023, through July 31, 2024.

4.4 Monetary payments by MWD to the Participating Landowners for fallowing for the First Year is \$909.00 per acre. In the Second and Third Years, such payments will be adjusted by MWD using the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers: All Items ("CPI"), for Riverside-San Bernardino-Ontario, Reference Base December 2017 Equals 100, Not Seasonally Adjusted.

5. PAYMENTS:

5.1 MWD will invoice Reclamation, CAWCD, and SNWA based on the total number of acres fallowed under the Program Agreement, and only for the portion of fallowed acreage that is contributed to the creation of System Conservation Water, within 60 days after MWD makes its payments to the Participating Landowners. In the First Year, MWD payments to the Participating Landowners will be made between September 1, 2021 and January 31, 2022, but will not invoice

Reclamation, CAWCD, and SNWA until 60 days after the acres of fallowed land is confirmed as provided in Section 4.3.1 herein. In the Second and Third Years, MWD payments to the Participating Landowners will be made by September 1 annually.

5.2 The Parties agree to the following percentages of monetary payments for land fallowing for the creation of System Conservation Water by each Party annually:

Party	Percentage of Total Annual Payments and Maximum Annual Payments for Land Fallowing in 2021 Dollars
Reclamation	50.00% – up to 6,666.50 acres – up to \$6,059,848.50
CAWCD	16.67% – up to 2,222.61 acres – up to \$2,020,353.49
MWD	16.67% – up to 2,222.61 acres – up to \$2,020,353.49
SNWA	16.67% – up to 2,222.61 acres – up to \$2,020,353.49
Annual payments in Second Year and Third Year will be adjusted using the CPI.	

5.3 Reclamation will apply its share (50 percent) of System Conservation Water created annually and paid for under this Agreement toward the Secretary’s commitment to create or conserve 100,000 acre-feet or more per annum of System Conservation Water pursuant to Section 3 b. of the LBDCP.

5.4 MWD may elect, by providing notification in writing to Reclamation, CAWCD, and SNWA, to retain a portion of the water created under the Program Agreement for its own use, that would otherwise be devoted to System Conservation Water. If MWD retains a portion of the water created under the Program Agreement such that it is not contributed to System Conservation Water, the Parties will discuss and may agree in writing to adjust the allocation of potential associated payments among Reclamation, CAWCD, and SNWA.

6. ACCOUNTING FOR SYSTEM CONSERVATION WATER:

6.1 Notwithstanding the estimated water savings on a consumptive use basis in Section 4.3 herein, the actual volume of System Conservation Water created by fallowing of the PVID lands shall be determined in accordance with the same verification and quantification procedures

used by Reclamation to determine the amount of water conserved pursuant to the Program Agreement.

6.2 The actual water savings for each acre fallowed within PVID pursuant to this Agreement and the annual volume of System Conservation Water created will be reported in the *Land Fallowing and Verification Report* jointly prepared by PVID, MWD, and Reclamation and generally finalized by May 15th of each year.

6.3 This Agreement does not set a precedent in Colorado River water accounting matters regarding the final Reclamation determination of the volume of System Conservation Water created.

6.4 For Reclamation approval, MWD will submit to Reclamation and MWD will request PVID submit to Reclamation a revised water order, as needed, for calendar years 2021 and 2022 to account for the calendar year 2021 and calendar year 2022 land fallowing and the System Conservation Water created. For calendar year 2023 and calendar year 2024, MWD will submit to Reclamation and MWD will request PVID submit to Reclamation annual water orders that account for the land fallowing and the System Conservation Water created.

6.5 Subject to Section 5.4 herein, MWD agrees to forbear the delivery and diversion of Colorado River water conserved under the Program Agreement in the amounts determined according to this Agreement and will submit adjusted annual water orders as described in Section 6.4 herein.

6.6 Reclamation shall be responsible for obtaining any consents or forbearances required to ensure that the water left in Lake Mead remains in the Colorado River System and does not inure to the benefit of any individual entitlement holder.

6.7 Reclamation will document the quantity of Colorado River System water created under this Agreement, in the annual *Colorado River Accounting and Water Use Report – Arizona, California, and Nevada* (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. NON-WAIVER: No Party to this Agreement shall be considered to have waived any right hereunder except when such waiver of the right is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or a relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

8. UNCONTROLLABLE FORCES: No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

9. REPRESENTATIONS AND WARRANTIES:

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

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

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

9.4 Each Party: (i) warrants and represents that such Party is authorized by, and has undertaken all prerequisite actions required by, applicable Federal and State laws and regulations to perform the obligations and exercise the rights contemplated herein, (ii) acknowledges that such warranty and representation is a material inducement to, and has been relied upon by, the other Parties in entering into this Agreement and performing their respective obligations hereinafter; and (iii) with respect to implementation of this Agreement, the Parties will cooperate to use reasonable best efforts in the support, preservation and defense thereof, including any lawsuit or administrative proceeding challenging the legality, validity or enforceability related to this Agreement, and will to the extent appropriate enter into such agreements, including joint defense or common interest agreements, as are necessary therefor; provided that each Party shall bear its own costs of participation and representation in any such matter.

10. GOVERNING LAW: This Agreement shall be interpreted, governed by, and construed under applicable Federal law. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Agreement shall be in an appropriate Federal court.

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

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

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

14. NOTICES: All notices and requests required or allowed under the terms of this Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

RECLAMATION:

Regional Director
Interior Region 8: Lower Colorado Basin
Bureau of Reclamation
Attention: LCB-1000
500 Date Street, Building 900
Boulder City, NV 89005

CAWCD:

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

MWD:

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

SNWA:

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

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

15. JUDICIAL REMEDIES NOT FORECLOSED: Nothing in this Agreement shall be construed: (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have; or (ii) as depriving any Party of any defense thereto which would otherwise be available.

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

17. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS: The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Parties from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

17.1 In accordance with Nevada Revised Statutes 332.400, the expenditure or advance of any money or the performance of any obligation of SNWA under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Parties from any obligations under this Agreement. No liability shall accrue to the SNWA in case funds are not appropriated or allotted.

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

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

20. AUTHORITY OF THE SECRETARY: 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.

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

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

THE UNITED STATES OF AMERICA

By: _____
Acting Regional Director
Interior Region 8: Lower Colorado
Basin
Bureau of Reclamation

Approved as to form:

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: _____
Jay M. Johnson
General Counsel

By: _____
Theodore Cooke
General Manager

Approved as to form:

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: _____
Marcia L. Scully
General Counsel

By: _____
Adel Hagekhalil
General Manager

Approved as to form:

**SOUTHERN NEVADA WATER
AUTHORITY**

By: _____
Gregory J. Walch
General Counsel

By: _____
John J. Entsminger
General Manager

EXHIBIT A – A COPY OF THE PROGRAM AGREEMENT.