

ENVIRONMENTAL COST SHARING AGREEMENT

This Environmental Cost Sharing Agreement ("Agreement") is entered into as of December __, 2002, by and among the COACHELLA VALLEY WATER DISTRICT, a California county water district ("CVWD"); the IMPERIAL IRRIGATION DISTRICT, a California irrigation district ("IID"); THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a California metropolitan water district ("MWD"); and the SAN DIEGO COUNTY WATER AUTHORITY, a California county water authority ("SDCWA") (CVWD, IID, MWD and SDCWA are sometimes referred to individually in this Agreement as "Party" and collectively as the "Parties").

RECITALS:

A. IID, MWD and CVWD have entered into the Quantification Settlement Agreement dated as of December __, 2002 (the "QSA").

B. IID and SDCWA have executed an Agreement for Transfer of Conserved Water dated April 29, 1998, and various amendments thereto (collectively, the "1998 IID/SDCWA Transfer Agreement") subject to environmental review and other conditions, which describes certain proposed activities involving the conservation of water by IID and the transfer of the conserved water to SDCWA.

C. IID and SDCWA have entered into an agreement dated January 27, 2000 to share certain costs related to the environmental review and compliance process and other state and federal approvals required to satisfy conditions necessary to implement the transactions described in the 1998 IID/SDCWA Transfer Agreement on the terms set forth therein (as the same may be amended from time to time, the "IID/SDCWA Cost Sharing Protocol").

NOW, THEREFORE, in consideration of the above recitals and the mutual promises set forth herein, the Parties hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Incorporated Definitions. The terms with initial capital letters that are used in this Agreement shall have the same meaning as set forth in Section 1.1 of the QSA, as of the Execution Date of the QSA, unless the context otherwise requires.

1.2 Additional Definitions. The following terms with initial capital letters shall have the meaning as set forth below.

(1) Environmental Review Costs. All out-of-pocket costs reasonably incurred by any Party for goods and/or services provided by third parties for any environmental review and/or assessment required under CEQA, NEPA and applicable federal, state and agency regulations implementing those statutes and all costs incurred in obtaining any permit, approval,

authorization, opinion, assessment or agreement pursuant to the Endangered Species Act (“ESA”), the California Endangered Species Act (“CESA”), the public trust doctrine or any other federal or state environmental resource protection law or applicable federal or state regulations implementing same, including the costs of studying and/or designing any mitigation required to comply with CEQA, NEPA, ESA, CESA or any other federal or state resource protection law or applicable federal or state regulations implementing same.

(2) **Environmental Litigation Costs.** All costs reasonably incurred by any Party to defend any litigation involving transactions contemplated by the QSA that challenges in whole or in part compliance with applicable environmental laws and regulations or any permit, appraisal, authorization, opinion assessment or agreement pursuant to any other federal or any state resource protection law or applicable federal or state regulation implementing same.

(3) **Excluded Costs.** Any Environmental Mitigation Costs incurred in connection with the resource approvals contemplated under Section 6.2(2)(ii) of the QSA relating to the matters referenced in Section 4.4 hereof.

(4) **Remaining Expected Environmental Mitigation Costs.** All Expected Environmental Mitigation Costs other than Excluded Costs, determined by the mutual consent of the Parties as of the date that IID has determined that the Environmental Compliance Condition Subsequent has been satisfied, or on such earlier date as the Parties may mutually agree.

(5) **Resource Approval Requirements.** The respective actions and responsibilities of the Parties, as lead agency or otherwise, undertaken in connection with the resource approvals contemplated by Section 6.2(2)(ii) of the QSA.

(6) **Review Requirements.** The respective environmental reviews and assessments undertaken by the Parties, as lead agency or otherwise, as contemplated by Section 6.2(2)(i) of the QSA.

(7) **State and Federal Contributions.** The total amount of money to be made available by the California legislature and the United States Congress through appropriation, SB 482, SB 1473 or from other sources and means in connection with the Resource Approval Requirements and/or funding of Environmental Mitigation Costs.

1.3 Rules of Construction and Word Usage. Unless the context clearly requires otherwise:

(1) The Recitals to this Agreement are a part of this Agreement to the same extent as the Articles;

(2) The Exhibits attached to this Agreement are incorporated by reference and are to be considered part of the terms of this Agreement;

(3) The plural and singular numbers include the other;

- (4) The masculine, feminine, and neuter genders include the others;
- (5) "Shall," "will," "must," and "agrees" are each mandatory;
- (6) "May" is permissive;
- (7) "May not" is prohibitory;
- (8) "Or" is not exclusive;
- (9) "Includes" and "including" are not limiting;
- (10) "Between" includes the ends of the identified range; and
- (11) "Person" includes any natural person or legal entity.

ARTICLE 2 ENVIRONMENTAL MITIGATION MANAGEMENT

2.1 Ongoing Review Requirements. The Parties will cooperate and consult with one another with a view to assuring the timely and proper completion of all environmental reviews and assessments contemplated under Section 6.2(2)(i) of the QSA.

2.2 Ongoing Resource Approval Requirements.

(1) **Primary Responsibility.** After the date of this Agreement, each Party serving as a lead agency, co-lead agency or otherwise in a position of authority and responsibility with respect to any resource approval contemplated under Section 6.2(2)(ii) of the QSA shall obtain the prior consent of the other Parties (which consent may not be unreasonably withheld) before entering into a binding agreement with any person other than a Party which contains terms and conditions pertaining to such approval requiring the incurrence of significant Environmental Mitigation Costs that will be funded or reimbursed pursuant to this Agreement.

(2) **Cooperation and Consent.** The Parties will cooperate and consult with one another, as appropriate, with a view to assuring the timely acquisition of all resource approvals contemplated under Section 6.2(2)(ii) of the QSA.

2.3 Mitigation Implementation Measures.

(1) **Primary Responsibility.** Each Party serving as a lead agency, co-lead agency or otherwise in a position of authority and responsibility with respect to the acquisition, construction or carrying out of mitigation implementation measures that will result in Environmental Mitigation Costs that will be funded or reimbursed pursuant to this Agreement

shall exercise due care and prudence in the making of any decision and the performance of any activity relating to such measures.

(2) **Cooperation and Consent.** The Parties will cooperate and consult with one another, as appropriate, with a view to assuring the timely and proper implementation of all environmental mitigation measures described in paragraph (1) at a reasonable cost consistent with both the Parties' interests in minimizing their respective obligations under this Agreement and the public interest.

ARTICLE 3 ENVIRONMENTAL REVIEW AND LITIGATION COSTS

3.1 Environmental Review Costs. Each Party shall bear its own Environmental Review Costs, except as a Party and one or more of the other Parties may otherwise agree under the IID/SDCWA Cost Sharing Protocol or under any other cost sharing protocol or similar written arrangement.

3.2 Environmental Litigation Costs. It is contemplated that the Parties will join in the defense of any environmental litigation pertaining to the QSA and the transactions contemplated by the QSA as their interests therein may appear. Each Party shall bear its own Environmental Litigation Costs incurred in connection with any such defense, except as such Party may otherwise agree pursuant to a joint defense agreement between or among one or more of the other Parties pertaining to any such defense and specifying the respective responsibilities of the parties to such agreement, including any cost-sharing with respect thereto.

3.3 Cost of Environmental Insurance. The Parties agree that they will use their reasonable best efforts jointly to purchase Environmental Mitigation Insurance to insure the payment of Unexpected Environmental Mitigation Costs. SDCWA shall be responsible for obtaining one or more proposals from reputable insurance companies to provide such insurance upon payment of a single premium. The Parties will in good faith review the merits of any such proposal, and, if the Parties unanimously concur that the terms and conditions of such proposal are fair and otherwise reasonably acceptable for purposes of the QSA, the Parties shall jointly accept such proposal. The Parties shall pay the premium or premiums for any Environmental Mitigation Insurance, in the aggregate, as follows: **[CVWD, \$100,000; MWD, \$100,000; SDCWA, \$200,000; and IID shall pay the balance.]** The Parties' respective shares of any such premium shall be included as costs for purposes of computing their respective shares of certain Expected Environmental Mitigation Costs, as set forth in Section 4.1 hereof.

3.4 Implementation Agreement EIS and Other Federal Agency Reimbursement Claims. If BOR, the United States Fish and Wildlife Service, or any other federal agency request the Parties to reimburse it for any of its costs in consulting, participating in, or conducting an environmental assessment, or any part thereof, with respect to the Review Requirements or Resource Approval Requirements, and should the Parties agree to the request, then the Parties will share and pay such requested reimbursement as follows: twenty-five percent

(25%) by IID, twenty-five percent (25%) by CVWD, and fifty percent (50%) jointly by MWD and SDCWA. Each Party shall pay its share of any such requested reimbursement directly to the requesting agency and shall notify the other Parties of the date and amount of such payment. This Section shall not apply to reimbursement requests arising out of the matters referenced in Section 4.4 hereof.

3.5 California Agency Reimbursement Claims. Should the California Department of Fish and Game, or any other California State agency, request the Parties to reimburse it for any of its costs in consulting, participating in, or conducting an environmental assessment, or any part thereof, with respect to the Review Requirements, or Resource Approval Requirements, and should the Parties agree to the request, then the Parties will share and pay such requested reimbursement as follows: twenty-five percent (25%) by IID, twenty-five percent (25%) by CVWD, and fifty percent (50%) jointly by MWD and SDCWA. . Each Party shall pay its share of any such requested reimbursement directly to the requesting agency and shall notify the other Parties of the date and amount of such payment. This Section shall not apply to reimbursement requests arising out of the matters referenced in Section 4.4 hereof.

ARTICLE 4 ENVIRONMENTAL MITIGATION COSTS

4.1 Allocation of Expected Environmental Mitigation Costs in Excess of State and Federal Contribution.

(1) **In General.** After taking into account the State and Federal Contributions, and except in the event of an Election Out pursuant to paragraph (3) below, the Parties will pay or reimburse the Remaining Expected Environmental Mitigation Costs, as and when incurred, in shares to be determined by the Parties within thirty days after IID has determined that the Environmental Compliance Condition Subsequent has been satisfied. In fulfilling their respective obligations to pay Remaining Expected Environmental Mitigation Costs, SDCWA will receive credit or reimbursement, as the case may be, from IID pursuant to the 1998 IID/SDCWA Transfer Agreement, subject to the limit on liability set forth in paragraph (2); and CVWD will receive credit or reimbursement, as the case may be, from MWD pursuant to the CVWD/MWD Acquisition Agreement, and from SDCWA pursuant to the 1998 IID/SDCWA Transfer Agreement.

(2) **IID Contribution.** IID's total payments of Environmental Mitigation Costs, net of any reimbursements received by IID pursuant to Section 4.3(4), shall not exceed thirty million dollars (\$30,000,000) in 1998 Dollars, as described in the 1998 IID/SDCWA Transfer Agreement, as amended as of the Execution Date of the QSA.

(3) **Election Out.** Except as provided in this paragraph (3), any Party may give notice to the other Parties of such Party's election to terminate its obligations under this

Section 4, effective retroactively to the Effective Date, if (a) the Parties have not agreed upon an allocation of shares of Remaining Expected Environmental Mitigation Costs pursuant to Section 4.1(1), or (b) the electing Party has determined in its sole discretion that its share of Remaining Expected Environmental Mitigation Costs under this Agreement, after taking into account any State and Federal Contributions, will likely be unacceptably high relative to its anticipated benefits under the QSA and the Related Agreements. Such election must be made by December 31, 2003, or within thirty days after IID has determined that the Environmental Compliance Condition Subsequent has been satisfied, whichever date occurs later. In the event any such election is duly made, the Parties' obligations under this Section 4.1 shall thereupon be limited to Remaining Expected Environmental Mitigation Costs incurred prior to December 31, 2003 or the date of such election, whichever date occurs later, which costs shall be shared equally (twenty-five percent (25%) each) by the Parties; and notwithstanding Section 3.1, any Environmental Review Costs incurred after the Execution Date and prior to December 31, 2003, shall be shared twenty-five percent (25%) by IID, twenty-five percent (25%) by CVWD, and fifty percent (50%) jointly by MWD and SDCWA. The procedures and requirements set forth in Section 4.3, including paragraph (5) thereof, shall apply to the cost sharing obligations determined under this paragraph (3).

4.2 Allocation of Unexpected Environmental Mitigation Costs.

(1) **In General.** The Parties other than IID will pay or reimburse all Unexpected Environmental Mitigation Costs other than Excluded Costs in the same shares as they shall determine for Remaining Expected Environmental Mitigation Costs pursuant to Section 4.1(1). In fulfilling their respective obligations under this Section 4.2, SDCWA will receive credit or reimbursement, as the case may be, from IID pursuant to the 1998 IID/SDCWA Transfer Agreement, if and to the extent the limitation set forth in Section 4.1(2) has not been reached; and CVWD will receive reimbursement for MWD to the extent required under the CVWD/MWD Acquisition Agreement.

(2) **Discontinuance.** At any time after the Parties determine that there will be Unexpected Environmental Mitigation Costs, any Party other than IID may give advance written notice to the other Parties of that Party's decision to withdraw its financial support for the continued funding of Unexpected Environmental Mitigation Costs, as otherwise required by this Agreement. Any such notice shall not become effective until the expiration of the 365th day following its receipt by the other Parties. Upon becoming effective, any such notice shall be treated as a Discontinuance of Environmental Cost Funding Obligation. If any such notice becomes effective, the Party giving such notice shall thereupon cease to be obligated under this Agreement or under the CVWD/MWD Acquisition Agreement, as the case may be, to fund any portion of Unexpected Environmental Mitigation Costs incurred after such date, except to the extent required pursuant to Section 4.3(5) hereof, and except as such Party may otherwise agree in connection with any reinstatement of the Environmental Cost Funding Obligation pursuant to Section 3.4(2)(iii) of the QSA.

4.3 Payment and Reimbursement of Environmental Mitigation Costs, as Incurred.

(1) **In General.** Each Party will maintain proper accounting records detailing the Environmental Mitigation Costs other than Excluded Costs incurred by it. Except as may otherwise be agreed by the Parties, indirect costs shall not be counted as incurred costs. For purposes of this Agreement, “indirect costs” include, but are not limited to, overhead costs, losses of revenue from any source and other opportunity costs of any kind.

(2) **Quantification of Incurred Costs.** Each Party will provide to the other Parties within 30 days after the end of each calendar quarter a detailed report setting forth the Environmental Mitigation Costs other than Excluded Costs incurred by it during such quarter. The form of such report will be as agreed from time to time by the Parties. Each such report will be subject to audit and verification by any Party, at that Party’s expense.

(3) **Reconciliation of Incurred Costs.** Within 30 days after receipt of the quarterly reports provided pursuant to paragraph (2), the Parties will determine the balance to be received or paid by each Party other than IID, depending on whether that Party’s incurred Environmental Mitigation Costs other than Excluded Costs are more (a “net creditor”) or less (a “net debtor”) than that Party’s tentative share determined under Section 4.1 hereof. Environmental Mitigation Costs other than Excluded Costs incurred by IID will be treated for such purposes as incurred by SDCWA. Any amount to be received or paid by IID will be determined by IID and SDCWA under the 1998 IID/SDCWA Transfer Agreement. After taking into account (i) any credits or reimbursements of Environmental Mitigation Costs (other than Excluded Costs) to CVWD by MWD and/or SDCWA, and (ii) any amounts paid to IID by CVWD for Environmental Mitigation Costs under the IID/CVWD Acquisition Agreement, the Parties will then determine the specific amounts to be paid by each net debtor Party to a particular net creditor Party or Parties, together with interest from the end of the calendar quarter at a rate equal to the rate then being earned on deposits with the Local Agency Investment Fund or at such other rate as the Parties may then agree.

(4) **Payment and Reimbursements.** Within 10 days after completion of the reconciliation process required by paragraph (3), all amounts plus interest determined to be owing by any net debtor Party or Parties thereunder shall be paid by wire transfer to the net creditor Party or Parties.

(5) **Post-Termination Date Costs.** Notwithstanding any other provision of this Agreement, the obligations of the Parties under Article 4 shall continue after the Termination Date with respect to Expected and Unexpected Environmental Mitigation Costs attributable to Conserved Water transferred to or acquired by the Parties prior to the Termination Date for as long as environmental mitigation is required to mitigate the impacts of those transfers and acquisitions. In the event that the Parties have not determined their respective shares of Remaining Expected Environmental Mitigation Costs pursuant to Section 4.1(1) as of the Termination Date, the Parties shares of Post-Termination Date Costs shall be shared equally (twenty-five percent (25%) each) by the Parties.

(6) **Final Reconciliation.** As soon as possible, but not later than sixty (60) days after the final quantification of shares pursuant to Section 4.1, the Parties will determine each Party's status as a net creditor Party or a net debtor Party based on the total of all amounts paid, less the total of all amounts received by that Party, exclusive of interest, pursuant to paragraph (4) of this Section 4.3, relative to that Party's final share of Remaining Environmental Mitigation Costs determined under Sections 4.1 and 4.2. The Parties will then determine the specific amounts to be paid by each net debtor Party to a particular net creditor Party or Parties. All such amounts determined to be owing by a net debtor Party shall be paid promptly by wire transfer to the net credit Party or Parties.

4.4 Excluded Matters. This Agreement does not cover the following matters, which are addressed in other Related Agreements.

- (1) Environmental impacts on the Colorado River.
- (2) Environmental impacts within the CVWD and MWD service areas.
- (3) Environmental impacts associated with the All-American Canal and the Coachella Canal lining projects.
- (4) Any socioeconomic impacts.

ARTICLE 5 CONTRACT ADMINISTRATION

5.1 **Contract Managers.**

(1) **Designation of Contract Managers.** In order to facilitate and implement this Agreement, the contract manager designated by each Party herein shall be responsible for managing and implementing that Party's performance hereunder. Any Party may change its designated contract manager at any time by prior written notice to the other Parties. The initial contract managers are:

For CVWD: Steve Robbins

For IID: Tim Shields Anderholt

For MWD: Laura Simonek

For SDCWA: Larry Purcell

(2) **Communications.** All correspondence, notices or other matters related to this Agreement, including payments, shall be directed to the appropriate contract manager designated above.

(3) **Administrative Protocols.** The contract managers will develop and amend from time to time written administrative protocols, subject in each case to the approval of the Parties or their delegates, that will aid the Parties' administration of Article 4 of this Agreement.

ARTICLE 6 DISPUTES

6.1 Disputes Among or Between the Parties. The Parties or their delegates shall seek to resolve any dispute concerning the interpretation or implementation of this Agreement through negotiation involving, as and when appropriate, the general manager or chief executive officer of each of the Parties. Any unresolved dispute among or between CVWD, IID, MWD and/or SDCWA concerning the quantification or reconciliation of incurred costs or the final quantification of shares for purposes of this Agreement shall be resolved pursuant to Section 6.3. Any other unresolved dispute among or between Parties under this Agreement shall be resolved by litigation pursuant to Section 6.2.

6.2 Action or Proceeding Between the Parties. Each Party acknowledges that it is a "local agency" within the meaning of § 394(c) of the California Code of Civil Procedure ("CCP"). Each Party further acknowledges that any action or proceeding commenced by one Party against the other would, under § 394(a) of the CCP, as a matter of law be subject to being transferred to a "Neutral County," or instead, having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding. Each party therefore:

(1) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action or proceeding;

(2) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;

(3) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and

(4) Acknowledges that this Agreement, and in particular this section, may be submitted to the court as part of the moving papers.

Nothing in this section, however, impairs or limits the ability of a Party to contest the suitability of any particular county to serve as a Neutral County.

6.3 Resolution of Arbitration Disputes. Disputes among or between Parties concerning the quantification of costs for purposes of this Agreement shall be resolved pursuant to the provisions of this Article.

(1) Any dispute which cannot be resolved by consensual agreement shall be resolved through binding arbitration by a panel of arbitrators in an arbitration proceeding conducted in a Neutral County, or such other location as the Parties may agree. Arbitration proceedings may be initiated by any Party sending a demand for arbitration to the other Parties in conformance with the Notice provisions of this Agreement. The Parties shall impanel a group of five (5) arbitrators by each selecting an arbitrator of its choice who shall then select the fifth (5th) member of the panel. If the four (4) arbitrators appointed by the Parties cannot agree on a fifth (5th) arbitrator within ten (10) Business Days from the initiation of the arbitration proceeding, the fifth (5th) neutral arbitrator shall be selected by the presiding judge of the Neutral County superior court. At least one of the arbitrators must be a person who has actively engaged in the practice of law with expertise deciding disputes and interpreting contracts. Prior to the commencement of proceedings, the appointed arbitrators will take an oath of impartiality. The Parties shall use their reasonable best efforts to have the arbitration proceeding concluded within ninety (90) Business Days of the selection of the fifth (5th) panel member.

(2) In rendering the award, the arbitrators shall determine the rights and obligations of the Parties according to the substantive and procedural laws of California. All discovery shall be governed by the CCP with all applicable time periods for notice and scheduling provided therein being reduced by one-half (½). The arbitrators may establish other discovery limitations or rules. The arbitration process will otherwise be governed by the Commercial Arbitration Rules of the American Arbitration Association. All issues regarding compliance with discovery requests shall be decided by the arbitrators. A decision by three (3) of five (5) arbitrators will be deemed the arbitration decision. The arbitration decision shall be in writing and shall specify the factual and legal bases for the decision. The decision of such arbitrators shall be final and binding upon the parties, and judgment upon the decision rendered by the arbitration may be entered in the Neutral County superior court.

(3) The costs (including, but not limited to, reasonable fees and expenses of counsel and expert or consultant fees and costs), incurred in an arbitration (including the costs to enforce or preserve the decision) shall be borne by the Party(ies) whom the decision is against. If the decision is not clearly against one Party on one or more issues, each Party shall bear its own costs. The arbitration decision shall identify whether any Party shall be responsible for the costs of the other Party(ies).

ARTICLE 7 GENERAL PROVISIONS

7.1 Term. This Agreement shall commence as of the Execution Date and shall terminate on the Termination Date, except that the requirements of Section 4.3(5) shall survive the Termination Date.

7.2 Amendment. This Agreement may be amended only by a written instrument signed by the IID, SDCWA, MWD and CVWD.

7.3 Attorneys' Fees. If any Party commences a legal proceeding for any relief against any other Party to this Agreement arising out of this Agreement, the losing Party shall pay the prevailing Party's legal costs and expenses, including, but not limited to, reasonable attorneys' fees and court costs, except as may otherwise be specified in the decision or order entered in said proceeding.

7.4 Authority. Each party represents and warrants that it has the requisite power and authority to enter into and perform its obligations under this Agreement.

7.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of which, taken together, shall constitute one and the same Agreement after each party has signed such a counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Date first written above.

"CVWD"

COACHELLA VALLEY WATER DISTRICT

By: _____

Title: _____

"IID"

IMPERIAL IRRIGATION DISTRICT

By: _____

Title: _____

"MWD"

THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

By: _____

Title: _____

"SDCWA"

SAN DIEGO COUNTY WATER AUTHORITY

By: _____

Title: _____