

IMPLEMENTATION AGREEMENT

The United States by and through the Secretary of the Interior (Secretary) hereby agrees with the Imperial Irrigation District (IID), the Coachella Valley Water District (CVWD), the Metropolitan Water District of Southern California (MWD), (these three districts are collectively referred to herein as the Districts), and the San Diego County Water Authority (SDCWA) as follows:

**A. Predicates to Operative Terms**

1. By regulations dated September 28, 1931, the Secretary incorporated the schedule of priorities provided in the Seven Party Agreement dated August 18, 1931, and established priorities One through Seven for use of the waters of the Colorado River within the State of California. The regulations were promulgated pursuant to the Boulder Canyon Project Act (BCPA) and required that contracts be entered into for the delivery of water within those priorities.
2. The Secretary has entered into contracts with, among others, the Palo Verde Irrigation District (PVID), IID, CVWD, and MWD and for the delivery of Colorado River water pursuant to Section 5 of the BCPA (Section 5 Contracts). Under those Section 5 Contracts, PVID, IID, CVWD and MWD have certain rights to the delivery of Colorado River water.
3. IID and MWD have entered into an Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water dated December 22, 1988 (1988 Agreement); IID, MWD, PVID and CVWD have entered into a related Approval Agreement, dated December 19, 1989 (1989 Approval Agreement); and MWD and CVWD have entered into an Agreement to Supplement Approval Agreement, dated December 19, 1989 (1989 Supplemental Agreement).
4. IID and SDCWA have entered into an Agreement for Transfer of Conserved Water, dated April 29, 1998, and a Third Amendment to Agreement For Transfer of Conserved Water dated as of \_\_\_\_\_ (as amended, the 1998 IID/SDCWA Transfer Agreement).
5. SDCWA and MWD have entered into an Agreement for the Exchange of Water, dated November 10, 1998 and an Amendment Agreement dated as of \_\_\_\_\_, (as amended, the MWD/SDCWA Exchange Agreement).
6. CVWD, IID and MWD have entered into a Quantification Settlement Agreement dated as of \_\_\_\_\_ (QSA).
7. IID, CVWD, MWD, PVID, the San Luis Rey Indian Water Rights Settlement Parties and the Secretary have entered into an Agreement pertaining to the water to be conserved from the All American Canal Lining Project and the Coachella Canal Lining Project of even date herewith (Allocation Agreement).

8. CVWD and MWD have entered into a Transfer and Exchange Agreement for 35,000 acre-feet of State Water Project entitlement for Colorado River water of even date herewith (MWD/CVWD Transfer and Exchange Agreement).
9. The 1988 Agreement, the 1989 Approval Agreement, and the 1989 Supplemental Agreement have been modified by Amendatory Agreements of even date herewith to reflect the terms of the QSA (as modified, the Amended 1988 and 1989 Agreements).
10. IID and CVWD have entered into an Agreement for Acquisition of Conserved Water (IID/CVWD Acquisition Agreement).
11. CVWD and MWD have entered into an Agreement for Acquisition of Water (CVWD/MWD Acquisition Agreement).
12. IID and MWD have entered into an Agreement for Acquisition of Conserved Water (IID/MWD Acquisition Agreement).
13. IID, CVWD, MWD and SDCWA desire that, for a temporary period, Priority 3a and 6a Colorado River water be delivered by the Secretary in the manner contemplated by the QSA and the other agreements specifically referenced herein.
14. The Secretary has determined that appropriate environmental review and compliance for this Implementation Agreement (Agreement) have been completed under federal law.
15. The Secretary finds that the water budget components of the QSA and the water budget components of the other agreements specifically referenced herein facilitate and will benefit the Secretary's management of the Colorado River.
16. The Secretary has the authority to enter into this Implementation Agreement on behalf of the United States pursuant to the BCPA, the Decree in Arizona v. California, and other applicable authorities.

## **B. Operative Terms**

1. **Priorities 1, 2, 3b, 6b, and 7 are not affected by this Agreement.**
2. **Water Delivery Contracts**
  - a. The Secretary agrees to deliver Colorado River water in the manner set forth in this Agreement during the Quantification Period. The Quantification Period shall commence on the Effective Date of the QSA and shall end on the Termination Date of the QSA. The Secretary shall begin to deliver water in the manner set forth in this Agreement when the Quantification Period begins and shall cease delivering water in the manner provided in this Agreement when the Quantification Period ends; provided, however, that the Secretary's delivery commitment to the San Luis Rey Indian Water Rights Settlement Parties shall not terminate at the

end of the Quantification Period but shall instead continue, pursuant to Section 106 of Public Law 100-675, 102 Stat. 4000 et seq., as amended, subject to the terms of the Allocation Agreement.

- b. The Districts' respective Section 5 Contracts shall remain in full force and effect throughout the Quantification Period and with this Agreement shall govern the delivery of Colorado River water during the Quantification Period.
- c. At the end of the Quantification Period, the Agreement shall terminate; provided, however, that the rights of the Districts under their respective Section 5 Contracts shall be subject to any continuing reparation requirements under any agreements relating to the impacts of delivering surplus; and provided, further, the Secretary shall continue to deliver for the benefit of the San Luis Rey Indian Water Rights Settlement Parties, a maximum of 16,000 AFY of water made available by the lining of portions of the All American Canal and the Coachella Canal in accordance with Section 2.a of this Agreement.

**3. Priority 3a - IID's Entitlement**

- a. Except as otherwise provided in this Section B.3, or as otherwise determined under the Inadvertent Overrun and Payback Program referenced in Section B.8.a hereof, the Secretary shall deliver Colorado River water to IID in an amount up to but not more than IID's QSA Priority 3a consumptive use quantification cap of 3.1 million AFY less the amount of water equal to that conserved by IID for the benefit of others as outlined in paragraphs b, c, d, e and f below. Colorado River water acquired by IID pursuant to a transaction permitted under the QSA or a Related Agreement (as defined in the QSA) and, where necessary, approved by the Secretary after appropriate environmental compliance, shall not count against this cap.
- b. **The Amended 1988 and 1989 Agreements**
  - i. IID has implemented water conservation measures for the benefit of MWD under the Amended 1988 and 1989 Agreements and has reduced IID's diversion of Colorado River water accordingly by up to 110,000 AFY.
  - ii. The Secretary shall deliver Priority 3a water for the benefit of MWD in an amount equal to that amount of water conserved by IID for the benefit of MWD in accordance with the terms of the Amended 1988 and 1989 Agreements.

c. **1998 IID/SDCWA Transfer Agreement**

- i. IID has agreed to implement water conservation measures for the benefit of SDCWA under the circumstances specified in the 1998 IID/SDCWA Transfer Agreement and to reduce IID's diversions of Colorado River water accordingly by up to 200,000 AFY.
- ii. The Secretary shall deliver Priority 3a water for the benefit of SDCWA, in an amount equal to that water conserved by IID for the benefit of SDCWA, in accordance with the terms, including the point of delivery, of the 1998 IID/SDCWA Transfer Agreement. At SDCWA's election, the Secretary shall deliver that water to the intake facilities for the Colorado River Aqueduct and SDCWA may then exchange up to 200,000 AFY of Colorado River water with MWD at Lake Havasu pursuant to, and during the term of, the MWD/SDCWA Exchange Agreement.
- iii. The rights and interests of SDCWA under this Agreement are limited to those provided in Section B.3.a., this Section B.3.c., and in Sections B.9, B.10 and B.11 hereof.

d. **Conserved Water for CVWD**

- i. IID has agreed to implement water conservation measures for the benefit of CVWD under the circumstances specified in the IID/CVWD Acquisition Agreement in order to reduce IID's diversion of Priority 3a water by amounts up to a total of 100,000 AFY.
- ii. The Secretary shall deliver such amount of Priority 3a water to CVWD at Imperial Dam, as and to the extent requested by CVWD in an amount equal to that amount of water conserved by IID for the benefit of CVWD in accordance with the terms of the IID/CVWD Acquisition Agreement. This water shall be in addition to CVWD's entitlement to Priority 3a water under Section B.4. hereof. In the event CVWD declines a portion of this water, and the water is not delivered to others in accordance with Section 5.e. of this Agreement so that CVWD is required to pay IID under the terms of Section 3.6 of the IID/CVWD Acquisition Agreement, the declined water may then be used by CVWD for any lawful purpose anywhere within CVWD's jurisdictional area.

e. **Canal Lining Projects**

- i. Pursuant to California Water Code Sections 12560-12565, the State of California has agreed to provide funds to construct a new lined canal parallel to the unlined portion of the All American Canal from Pilot Knob to Drop 3 (the AAC Project), and to line the unlined portion of the Coachella Canal.

- ii. The Secretary shall deliver Priority 3a water, available as a result of the AAC Project, to MWD, and/or to IID, and make available Colorado River water for the benefit of the San Luis Rey Indian Water Rights Settlement Parties, in accordance with the terms of the Allocation Agreement and in accordance with Section 106 of Public Law 100-675, 102 Stat. 4000 et seq., as amended.

f. **Miscellaneous and Indian Present Perfected Rights**

- i. In any given Year (as Year is defined in the QSA), the Secretary may reduce the amount of water otherwise available for IID's consumptive use by up to 11,500 AFY as a result of the satisfaction within the State of California of the miscellaneous and Indian present perfected rights recognized in the Decree in Arizona v. California, as amended and supplemented.
- ii. If the aggregate volume of such miscellaneous and Indian present perfected rights used in any year is less than 14,500 AF, then the maximum amount of reduction will be in accordance with the terms of the IID/CVWD Acquisition Agreement.
- iii. Any such reduction shall be charged to IID's rights under Priorities 3a, 6a, or 7 to the extent such rights exist and water is available, as elected by IID for such year.
- iv. Nothing herein waives the ability of IID to challenge the exercise of particular miscellaneous or Indian present perfected rights.

4. **Priority 3a - CVWD's Entitlement**

- a. Except as otherwise provided in this Section B.4., or as otherwise determined under the Inadvertent Overrun and Payback Program referenced in Section B.8.a. hereof, the Secretary shall deliver Colorado River water to CVWD in an amount up to but not more than CVWD's QSA Priority 3a consumptive use quantification cap of 330,000 AFY less an amount of water equal to that conserved by CVWD for the benefit of others, as outlined in paragraphs c. and d. below. Colorado River water acquired by CVWD pursuant to a transaction permitted under the QSA, or a Related Agreement (as defined in the QSA) and, where necessary, approved by the Secretary after appropriate environmental compliance, shall not count against this cap.
- b. CVWD may utilize Colorado River water, in accordance with the provisions of Section 4.5 of the QSA, outside of Improvement District No. 1 for the purpose of maximizing the effectiveness of Improvement District No.1's water use and recharge programs, so long as such utilization occurs within Coachella Valley and is otherwise consistent with the applicable provisions of the QSA.

c. **Canal Lining Projects**

The Secretary shall deliver Priority 3a water, available as a result of the lining of the unlined portion of the Coachella Canal to MWD and/or IID, and make available Colorado River water for the benefit of the San Luis Rey Indian Water Rights Settlement Parties, as and to the extent provided under the Allocation Agreement and in accordance with Section 106 of Public Law 100-675, 102 Stat. 4000 et seq., as amended.

d. **Miscellaneous and Indian Present Perfected Rights**

- i. In any given Year (as Year is defined in the QSA), the Secretary may reduce the amount of water otherwise available for CVWD's consumptive use by up to 3,000 AFY as a result of the satisfaction within the State of California of the miscellaneous and Indian present perfected rights recognized in the Decree in Arizona v. California, as amended and supplemented.
- ii. If the aggregate volume of such miscellaneous and Indian present perfected rights used in any year is less than 14,500 AF, then the maximum amount of reduction will be in accordance with the terms of the IID/CVWD Acquisition Agreement.
- iii. Any such reduction shall be charged to CVWD's rights under Priorities 3a, 6a, or 7 to the extent such rights exist and water is available, as elected by CVWD for such year.
- iv. Nothing herein waives the ability of CVWD to challenge the exercise of particular miscellaneous and Indian present perfected rights.

5. **MWD's Entitlement**

- a. Except as otherwise provided in this Section B.5., or as otherwise determined under the Inadvertent Overrun and Payback Program referenced in Section B.8.a hereof, the Secretary shall deliver Colorado River water to MWD in an amount up to but not more than 550,000 AFY under Priority 4 and 662,000 AFY under Priority 5; provided, however, if in any given calendar year the use of Colorado River water in accordance with Priorities 1 and 2, together with the use of Colorado River water on PVID Mesa lands in accordance with Priority 3b, exceeds 420,000 AFY, the Secretary will reduce the amount of water available to MWD in Priorities 4, 5 or 6 by the amount that such use exceeds 420,000 AFY. To the extent that the amount of water used in accordance with Priorities 1, 2 and 3b is less than 420,000 AFY, the Secretary shall deliver to MWD the difference.

**b. MWD's Entitlement to be Made Available to CVWD**

- i. The Secretary shall deliver to CVWD at Imperial Dam 20,000 AFY of Priority 3a water made available by MWD under the Amended 1989 Agreement.
- ii. The Secretary shall deliver to CVWD at Imperial Dam up to 50,000 AFY of water made available by MWD in Year 46 (as Year 46 is defined in the QSA) and thereafter under the CVWD/MWD Acquisition Agreement.
- iii. The Secretary shall deliver to CVWD at Imperial Dam up to 35,000 AFY of water under the terms of the MWD/CVWD Transfer and Exchange Agreement.

**c. Miscellaneous and Indian Present Perfected Rights**

- i. In any given Year (as Year is defined in the QSA), the Secretary may reduce the amount of water otherwise available for MWD's consumptive use by the amount necessary to satisfy within the State of California the miscellaneous and Indian present perfected rights, recognized in the Decree in Arizona v. California, as amended and supplemented, to the extent those uses exceed 14,500 AF.
- ii. Any such reduction shall be charged at MWD's election to any Priority pursuant to which MWD has water available.
- iii. Nothing herein waives the ability of MWD to challenge the exercise of particular miscellaneous and Indian present perfected rights.

- d. CVWD may decline to take a portion of the water to be conserved by IID pursuant to the IID/CVWD Acquisition Agreement. In this event, the Secretary shall instead deliver such portion of water to IID or MWD, or to other unspecified water users, as and to the extent requested by any of them; provided, however, that any such request must be in accordance with the provisions of the IID/MWD Acquisition Agreement; and provided, further, that any such delivery to an unspecified user is, where necessary, subject to Secretarial approval and must be otherwise lawful and will be subject to any necessary environmental review.

**6. Priority 6a Entitlements**

- a. Except as otherwise provided under the Interim Surplus Guidelines, or under the agreements contemplated by those guidelines, the Secretary will deliver Priority 6a water to MWD, IID and CVWD in the following order and volumes: (i) 38,000 AFY to MWD; (ii) 63,000 AFY to IID; and (iii) 119,000 AFY to CVWD.

- b. Any water not used by MWD, IID or CVWD as set forth above will be available to satisfy the next listed amount in Section 6.a. Any additional water available for Priority 6.a shall be delivered by the Secretary in accordance with IID and CVWD's entitlements under their respective Section 5 Contracts in effect as of October 15, 1999.

**7. Reasonable and Beneficial Use**

- a. The Secretary has considered the water budget components and transactions contemplated by the QSA. Because of the substantial commitment by IID to implement water conservation measures in accordance with the terms of the QSA and its related agreements, the Secretary has determined no action by the United States Department of the Interior is necessary to consider whether the past use of Colorado River water by IID satisfies applicable requirements for reasonable and beneficial use.
- b. The QSA contemplates major conservation activities to be implemented by IID over the course of many years. The Secretary will take IID's conservation measures and the schedule of implementation under the QSA and the related agreements into account in connection with any future assessment of IID's reasonable and beneficial use of water. Subject to IID's implementation of such conservation measures, and absent any material adverse change in IID's irrigation practices or material advances in technology associated with economically feasible irrigation efficiency, and assuming the continuing effectiveness of the QSA, the Secretary, as of the date of the execution of this Agreement, does not anticipate any need to assess IID's reasonable and beneficial use of water prior to Year 20 (as Year 20 is defined in the QSA).

**8. Decree Accounting**

- a. The Secretary acknowledges the ongoing importance to the QSA of the Secretary's recently adopted Inadvertent Overrun and Payback Program, adopted \_\_\_\_\_, which is consistent in all material respects with that contemplated by the QSA and set forth in Exhibit B thereto. The Secretary also acknowledges that the application of such Program during the Quantification Period has been determined by each of IID, CVWD and MWD to be essential to their willingness to enter into the QSA's related agreements and this Agreement. Accordingly, so long as there is full and timely implementation of the water budget components of the QSA, the Secretary will not materially modify the Inadvertent Overrun and Payback Program for a 30 year period (during which the implementation of the California plan to reduce its use to 4.4 million acre-feet per year is anticipated), absent extraordinary circumstances such as significant Colorado River infrastructure failures, and subject to the provisions of Section 9 of this Agreement. In the event that extraordinary circumstances arise, the Secretary will consult with the Districts and other interested



parties before initiating any material change. If at any time implementation of the water budget components falls short of the requirements of the QSA, the Secretary may, after consultation with the Districts and other interested parties, change or alter the Inadvertent Overrun and Payback Program, including but not limited to putting into effect an immediate payback policy for inadvertent overruns.

- b. The Secretary also acknowledges the ongoing importance to the QSA, and to the willingness of each of IID, CVWD and MWD to enter into the QSA's related agreements and this Agreement, of the recently adopted Interim Surplus Guidelines and the accompanying Record of Decision.

## 9. Shortages

- a. The Secretary's authority under II.B.3 of the Decree in Arizona v. California is not limited in any way by this Agreement, by the QSA, or by the QSA's related agreements which include all agreements specifically referenced herein.
- b. If for any reason there is less than 3.85 million AF available under Priorities 1, 2 and 3 during the Quantification Period, any water which is made available by the Secretary to IID shall be delivered to IID, CVWD, MWD and SDCWA in accordance with the shortage sharing provisions in the 1998 IID/SDWCA Transfer Agreement and the Acquisition Agreements.

## 10. Amendments

- a. This Agreement may be modified or amended only by written amendment signed by the Secretary, IID, CVWD, and MWD (and, with respect to any modification or amendment of this Section B.3.a., B.3.c., B.10., B.11. or B.12., also by SDCWA).
  - i. No amendment of the QSA or of any of the QSA's related agreements, including the agreements specifically referenced in this Agreement, shall modify or otherwise affect any right or obligation of the Secretary with respect to the limitations on, or the timing or volume of, any Colorado River water deliveries to be made hereunder without the Secretary's written consent.

## 11. Reservation of Legal Positions

- a. IID, CVWD, MWD and SDCWA do not agree on the nature or scope of rights to the delivery, use or transfer of Colorado River water within the State of California.
- b. IID, CVWD, MWD and SDCWA agree not to use this Agreement or any provision hereof, as precedent for purposes of evidence, negotiation or agreement on any issue of California or federal law in any administrative,

judicial or legislative proceeding, including without limitation, any attempt by IID and SDCWA to obtain future approval of any water transaction.

- c. By executing this Agreement, the Districts and SDCWA are not estopped from asserting in any administrative, judicial or legislative proceeding, including those involving the United States, that neither this Agreement nor any of its terms was necessary or required in order to effectuate the transactions contemplated herein.

**12. Relation to Reclamation Law**

- a. This Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97-293, 93 Stat. 1263).

UNITED STATES SECRETARY OF THE  
INTERIOR

\_\_\_\_\_  
Gale A. Norton

COACHELLA VALLEY WATER DISTRICT

By \_\_\_\_\_  
Tom Levy  
General Manager-Chief Engineer

IMPERIAL IRRIGATION DISTRICT

By \_\_\_\_\_  
Jesse Silva  
General Manager

THE METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA

By \_\_\_\_\_  
Ronald R. Gastelum  
General Manager

SAN DIEGO COUNTY WATER AUTHORITY

By \_\_\_\_\_  
Maureen Stapleton  
General Manager