March 19, 2019

Dear Members of Congress,

The designated representatives of the seven States of the Colorado River Basin collectively seek your support in promptly securing legislation to implement necessary actions in the Colorado River Basin in order to respond to the historic drought and ongoing dry conditions in the Basin.

The Colorado River provides water to approximately 40 million people and 5.5 million acres of irrigated agriculture in the Upper Basin (Colorado, New Mexico, Utah and Wyoming) and Lower Basin (Arizona, California and Nevada). Since 2000, the Basin has experienced historically dry conditions and combined storage in Lakes Powell and Mead has reached its lowest level since Lake Powell initially began filling in the 1960s. Last year's runoff into the Colorado River was the second lowest since 2000, and there is no sign that the trend of extended dry conditions will end any time soon even if 2019 provides above average runoff. Lakes Powell and Mead could reach critically low levels as early as 2021 if conditions do not significantly improve. Declining reservoirs threaten water supplies that are essential to the economy, environment, and health of the Southwestern United States.

Working together, the seven Basin States have developed drought contingency plans (DCPs) that are reflected in the agreements attached to this letter. We hereby request passage of federal legislation that would authorize and direct the Secretary of the Interior to sign and implement the agreements upon execution by the non-federal parties.

We look forward to working with you on legislation directing the Secretary of the Interior to implement the DCPs upon their execution by the Basin States and without granting any additional authority to the Secretary. Furthermore, the DCP agreements themselves reserve and recognize each party's existing rights and do not disturb the rights of other water users or stakeholders with interests in the Colorado River.

Federal legislation and subsequent implementation of the agreements will enable prompt action to enhance conservation of Colorado River water and provide us with water management tools necessary to address a looming crisis. These tools will assist us in reducing the probability that Lakes Powell and Mead will decline to critically low elevations. Our goal is

to have authorizing legislation in place so that the seven Basin States can execute the drought contingency plan agreements no later than April 22, 2019.

Over the past quarter century, the seven Basin States have worked together to better manage and share the waters of the Colorado River. Each Basin State has its own unique considerations and challenges. Historic dry conditions and the resulting decline in water supply in each of the states has contributed and will likely continue to contribute to significant economic, environmental and other impacts throughout the Basin. We support regional, state and local stakeholders in ongoing efforts to obtain federal funding through existing or future programs to help address those impacts.

We appreciate your support in advancing federal legislation that would allow us to implement the DCPs upon our execution of those agreements. We stand ready to provide additional information and background on the need for and the benefits of the DCPs, and to further explain the need for immediate legislative action. We look forward to working with you in this critical effort.

Respectfully,

Thomas Buschatzke
Governor's Representative
State of Arizona

L. James Eklund
Governor's Representative
State of Colorado

Peter Nelson
Governor's Representative
State of California

John J. Entsminger
Governor's Representative
State of Nevada

John R. D'Antonio, Jr.
Governor's Representative
State of New Mexico

Patrick T. Tyrrell
Governor's Representative
State of Wyoming

Eric L. Millis
Governor's Representative
State of Utah

AGREEMENT CONCERNING COLORADO RIVER DROUGHT CONTINGENCY MANAGEMENT AND OPERATIONS

This Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement") is entered into this ____ day of _____, 2019 ("Effective Date") by and among the United States of America ("United States"), represented by the Secretary of the Interior ("Secretary") and acting through the officer executing this Companion Agreement, the Upper Colorado River Division States of Colorado, New Mexico, Utah, and Wyoming through the Upper Colorado River Commission ("Commission"), the State of Arizona acting through the Director of the Arizona Department of Water Resources, The Metropolitan Water District of Southern California, the Coachella Valley Water District, the Palo Verde Irrigation District, the City of Needles, the Colorado River Commission of Nevada, and the Southern Nevada Water Authority, each of which is at times referred to individually as "Party" or collectively as "Parties."

RECITALS

A. Background

1. Federal law and practice (including, but not limited to, Section 16 of the Boulder Canyon Project Act, 43 U.S.C § 6170 and Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b), the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act, and the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead ("2007 Interim Guidelines")) contemplate that in the operation of Lakes Powell and Mead, the Secretary consults with the Colorado River Basin States and such state representatives as each Governor may designate. Through this law and practice, the Governors' Representatives and state agencies have in the past reached agreements among themselves and with the Secretary on various aspects of Colorado River reservoir operation. This Companion Agreement is entered into in furtherance of this law and practice.

2. The signatories to the April 23, 2007, Agreement Concerning Colorado River Management and Operations ("2007 Seven States' Agreement") intended to improve cooperation and communication among them; provide additional security and certainty in the water supply of the Colorado River System for the benefit of the people served by water from the Colorado River System; and avoid circumstances which could otherwise form the basis for claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the

Law of the River.[1]

3. The signatories to the 2007 Seven States' Agreement subsequently submitted to the Secretary a recommendation ("States' Recommendation") for operation of the Colorado River System, including proposed guidelines to be incorporated in a record of decision at the conclusion of a decision-making process pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 4347.

4. On December 13, 2007, the Secretary adopted a record of decision, based in large part on the States' Recommendation, entitled the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, effective through December 31, 2025 (through preparation of the 2026 Annual Operating Plan) ("Interim Period").

5. Consistent with and pursuant to provisions in the 2007 Seven States' Agreement and the 2007 Interim Guidelines, the Parties have regularly consulted regarding various issues that have arisen prior to and during implementation of the 2007 Interim Guidelines.

6. Based on the actual operating experience gained after the adoption of the 2007 Interim Guidelines and emerging scientific information regarding the increasing variability and anticipated decline in Colorado River flow volumes, the Parties recognize and acknowledge that those relying on water from the Colorado River System face increased individual and collective risk of temporary or prolonged interruptions in water supplies, with associated adverse impacts on the society, environment, and economy of the Colorado River Basin. Therefore, the Parties have agreed that it is necessary and beneficial to pursue additional actions beyond those contemplated in the 2007 Interim Guidelines to reduce the likelihood of reaching critical elevation levels in Lake Powell and Lake Mead through the Interim Period.

7. The Parties have developed two drought contingency plans: the Upper Basin Drought Contingency Plan ("Upper Basin DCP"), which affects operations above Lee Ferry, and the Lower Basin Drought Contingency Plan ("Lower Basin DCP"), which affects operations below Lee Ferry. Both the Upper Basin DCP and the Lower Basin DCP are

[1] The "Law of the River", as mentioned in this Companion Agreement, refers to the body of law existing on the Effective Date of this Companion Agreement and affecting the interstate and international use, management, and allocation of water in the Colorado River System, including the 1922 Colorado River Compact, the Mexican Water Treaty of 1944, the 1948 Upper Colorado River Basin Compact, several United States Supreme Court decisions, the Consolidated Decree of the Supreme Court in *Arizona v. California*, and a host of federal laws and administrative regulations.

supplemental to and in furtherance of the goals of the 2007 Interim Guidelines.

8. Beginning in 2008, the Parties began discussions with the International Boundary and Water Commission ("IBWC") and representatives of Mexico regarding potential cooperative actions in the Colorado River Basin pursuant to the United States-Mexico Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande ("1944 Water Treaty"), culminating in several agreements ("Minutes") designed to implement the Treaty terms.

9. From 2015 through 2017, the Parties participated in negotiations with the IBWC and representatives of Mexico on Minute 323 to the 1944 Water Treaty, titled Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin.

10. Minute 323, approved on September 27, 2017, includes a Binational Water Scarcity Contingency Plan for Mexico to participate in the equivalent of a drought contingency plan if a Lower Basin DCP is put into effect in the United States. The Binational Water Scarcity Contingency Plan is intended to allow Mexico to undertake water savings in parity with U.S. savings for drought contingencies which would be recoverable under specifically improved reservoir conditions.

B. Purpose

The Parties intend that the actions contemplated in and recognized by this Companion Agreement will allow the development and testing, on an interim basis, of tools to provide additional security and certainty in the water supply of the Colorado River System for the benefit of the people served by the System and to avoid circumstances which could otherwise form the basis for claims or controversies over interpretation or implementation of the Colorado River Compact and other applicable provisions of the Law of the River.

AGREEMENT

In consideration of the above recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Support for the Upper Basin DCP

For purposes of this Companion Agreement, the Upper Basin DCP includes the Agreement for

Drought Response Operations at the Initial Units of the Colorado River Storage Project Act and the Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program ("Demand Management Storage Agreement") which are attached and incorporated herein as Attachments A1 and A2. The Parties agree that, when executed, the additional agreement(s) specified in Section III.B.3.b of the Demand Management Storage Agreement shall constitute additional components of the Upper Basin DCP. The Parties agree that the components of the Upper Basin DCP are likely to have a beneficial effect on the management of the Colorado River System. The Parties further agree to support steps necessary to achieve final adoption and implementation of the Upper Basin DCP.

B. Support for the Lower Basin DCP

The Lower Basin DCP, entitled Lower Basin Drought Contingency Plan Agreement ("LB DCP Agreement") (including Exhibit 1 entitled Lower Basin Drought Contingency Operations "(LBOps")), is attached and incorporated herein as Attachment B. The Parties agree that the components of the Lower Basin DCP are likely to have a beneficial effect on the management of the Colorado River System. The Parties further agree to support steps necessary to achieve final adoption and implementation of the Lower Basin DCP.

C. Federal Legislation

Pursuant to Paragraph B of the Agreement Regarding Notice From the Secretary of the Interior for the Purpose of Implementing Section IV of Minute 323, the non-Federal Parties have worked through a consensus-based effort to develop and seek federal legislation to implement the Upper Basin and Lower Basin DCPs. The legislation developed by the non-Federal Parties is attached hereto as Attachment C.

D. Resolution of Claims or Controversies Related to the Upper Basin DCP or the Lower Basin DCP

Consistent with the purpose of this Companion Agreement, the Parties agree to pursue a consultative approach to resolution of any potential claim or controversy arising under or related to this Companion Agreement, the Upper Basin or Lower Basin DCPs, or the associated federal legislation. In the event any Party becomes concerned that there may be a claim or controversy under this Companion Agreement, the Upper Basin or Lower Basin DCPs, or the associated federal legislation, such Party shall notify all other Parties in writing, and the Parties shall meet in good faith in order to resolve such claim or controversy by mutual agreement. Further, the non-Federal Parties agree that before initiating any judicial or administrative proceeding against any other Party, no claim thereunder shall be ripe until such dispute resolution process set forth in this Paragraph D has been completed. All non-Federal Parties shall comply with any request

by the Secretary for consultation in order to resolve any claim or controversy. Notwithstanding anything in this Companion Agreement to the contrary, the terms of this Paragraph shall survive the termination or expiration of this Companion Agreement.

E. Implementation and Enforcement

The Parties acknowledge and agree that implementation and operation of the Upper Basin and Lower Basin DCPs consistent with this Companion Agreement are intended to further the goals and coordinated operations of Lake Powell and Lake Mead pursuant to the 2007 Interim Guidelines, and to enhance conservation of water in the Colorado River System for the benefit of each of the Colorado River Basin States.

The Secretary shall provide and describe 24-Month Study assumptions and projected operations, including those related to Lower Basin water use, to the Parties prior to the completion of the April and August 24-Month Studies under the 2007 Interim Guidelines. In addition to the consultations under the Annual Operating Plan, the Secretary shall also provide and describe to the Parties an evaluation of actual calendar-year operations and identify any substantial variations from modeling assumptions.

The Parties agree to comply with this Companion Agreement, including the Upper Basin and Lower Basin DCPs. The Parties agree to act in good faith and with fair dealing when entering into, implementing and performing their obligations under this Companion Agreement, including the Upper Basin and Lower Basin DCPs. In the event of failure to comply with this provision, any affected non-Federal Party may maintain an action to enforce pursuant to 43 U.S.C. §1551(c).

F. Past Consultation

Consistent with the 2007 Interim Guidelines and the 2007 Seven States' Agreement, and consistent with the recent history of collaboration on the Colorado River to address and avoid circumstances that could form the basis for claims or controversies, consultation on the terms and application of this Companion Agreement and the Upper Basin and Lower Basin DCPs has occurred between the Governors' Representatives, Colorado River Basin States and the Secretary. Such consultation was limited to the terms of this Companion Agreement and the Upper Basin and Lower Basin DCPs, and was not for the purpose of the Secretary's formal review required in Section XI.G.7.D of the 2007 Interim Guidelines.

G. Consultation on Operations

Any Party may request consultation with the other Parties on implementation or operation of this Companion Agreement including the Upper Basin and Lower Basin DCPs. Upon such request, the Parties shall consult in good faith with each other to address questions, concerns or issues that may arise regarding implementation or operation of this Companion Agreement including the Upper Basin and Lower Basin DCPs.

H. Consultation Regarding Future Implementation

The LBOps allows future ICS Exhibits to be offered, as set forth in Section IV.E.2 of the LBOps. After the Effective Date of this Companion Agreement, if new or amended ICS Exhibits offered under that section of the LBOps, the Lower Division States shall consult with the Upper Division States and the Upper Colorado River Commission prior to their approval.

The Demand Management Storage Agreement contemplates certain future actions under specified conditions. Because the implementation of an Upper Basin Demand Management Program would relate to interests, rights and obligations regarding the Colorado River, the Parties agree to work together to seek consensus in finalizing an Upper Basin Demand Management Program. Specifically, the Upper Division States and the Secretary agree to consult with the Lower Division States regarding the following:

1. Verification of and accounting for the actual volume of conserved consumptive use, including consideration of water uses that may be eligible for designation as conserved consumptive use under a Demand Management Program, prior to reaching consensus on the feasibility thereof;

2. The methodology, process and documentation for verification of and accounting for the actual volume of conserved consumptive use considered during the Program Development stage prior to entering into any of the agreement(s) identified in Section III.B.3.b of the Demand Management Storage Agreement; and

3. Annual verification by the Upper Division States, through the Commission and the Secretary, of the volume of conserved water created, conveyed, and stored at the CRSPA Initial Units as set forth in Sections III.A.4, III.A.11, and III.B.2.b.vi of the Demand Management Storage Agreement.

I. Consultation on Amendments or Modifications

No substantive amendment or modification of the Companion Agreement shall be made without the written consent of the Parties.

No substantive amendment or modification to the Upper Basin and Lower Basin DCPs shall be made without prior consultation among the Parties. If a Party requests consultation for amendments or modifications pursuant to this Paragraph, the Parties shall consult in good faith to assess and consider suggested amendments or modifications.

Notwithstanding the above provisions, no amendments or modifications to this Companion Agreement or the Upper Basin and Lower Basin DCPs shall be made without a subsequent act of Congress if such amendments or modifications would conflict with existing law including, but not limited to, the Colorado River Compact, the Boulder Canyon Project Act, the Upper Colorado River Basin Compact, the 1944 Water Treaty, the Consolidated Decree of the Supreme Court in *Arizona v. California*, the Colorado River Storage Project Act or the Colorado River Basin Project Act.

J. Reservation of Rights

Notwithstanding the terms of this Companion Agreement, including the Upper Basin and Lower Basin DCPs, in the event that for any reason the Parties cannot reach consensus on any matter after the processes set forth in this Companion Agreement have been satisfied, the Parties reserve, and shall not be deemed to have waived, any and all rights, including any claims or defenses, they may have as of the date hereof or as may accrue after the term hereof, under any existing federal or state law or administrative rule, regulation or guideline, including without limitation the Colorado River Compact, the Boulder Canyon Project Act, the Upper Colorado River Basin Compact, the 1944 Water Treaty, the Consolidated Decree of the Supreme Court in *Arizona v. California*, the Colorado River Storage Project Act, the Colorado River Basin Project Act and any other applicable provision of federal law, rule, regulation, or guideline.

Nothing in this Companion Agreement, including the Upper Basin and Lower Basin DCPs, or any related or enabling legislation referenced in Paragraph C of this Companion Agreement shall be utilized against any other Party in any administrative, judicial or other proceeding, except for the sole purpose of enforcing the terms of this Companion Agreement, including the Upper Basin and Lower Basin DCPs. Notwithstanding anything in this Companion Agreement to the contrary, the terms of this Paragraph shall survive the termination or expiration of this Companion Agreement.

K. No Precedent/Reaffirmation of Existing Law

Except as provided in Section II of the Demand Management Storage Agreement, the Parties represent and agree, that nothing in this Companion Agreement, including the Upper Basin and Lower Basin DCPs, or any related or enabling legislation referenced in Paragraph C of this Companion Agreement, shall be interpreted or construed as establishing a precedent for employing the operational tools contemplated by the Upper Basin or Lower Basin DCPs and any related federal legislative approval beyond the terms of the Upper Basin and Lower Basin DCPs. The Parties hereby affirm the entitlement and right of each State under such existing law to use and develop the water of the Colorado River System. Notwithstanding anything in this Companion Agreement to the contrary, this Paragraph shall survive the termination or expiration of this Companion Agreement.

L. Scope

The Parties represent and agree that actions to be employed under the Upper Basin DCP are limited to Colorado River operations above Lee Ferry, and actions to be employed under the Lower Basin DCP are limited to Colorado River operations below Lee Ferry.

M. Term

Unless earlier termination is agreed to, in writing, by all Parties, this Companion Agreement shall be effective from the Effective Date through the Interim Period, unless otherwise specified in this Companion Agreement, including the Upper Basin and Lower Basin DCPs.

N. Representations and Warranties

Each Party warrants and represents to each of the other Parties, as a material inducement to enter into this Companion Agreement, the following:

1. The Party has all legal power and authority to enter into this Companion Agreement and to perform its obligations hereunder on the terms set forth in this Companion 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.

2. The individual executing this Companion 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 Companion Agreement.

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

O. No Third-Party Beneficiaries

This Companion Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Companion Agreement intends for this Companion Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.

P. The Parties are hereby notified of A.R.S. section 38-511.

Q. Governing Law

This Companion Agreement shall be interpreted, governed by, and construed under applicable Federal law.

R. Actual Operating Experience

Adoption of this Companion Agreement does not preclude exploration of additional approaches for operational flexibility in light of actual operating experience.

S. Uncontrollable Forces

No Party shall be considered to be in default in the performance of any of its obligations under this Companion 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 Companion Agreement by reason of an Uncontrollable Force shall give prompt written notice of such Uncontrollable Force to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

T. Successors and Assigns

The provisions of this Companion Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Companion Agreement or any right or

interest herein shall be valid until consented to in writing by all Parties, which consent shall not be unreasonably withheld.

U. Participation of Identified California Parties

If any Party from California identified herein fails to execute this Companion Agreement, such failure to execute shall not preclude this Companion Agreement from entering into full force and effect on the express condition that the remaining California Parties shall have agreed to implement all terms and conditions of this Companion Agreement by execution of this Companion Agreement.

V. Drafting Considerations

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

W. Notices

All notices and requests required or allowed under the terms of this Companion Agreement shall be in writing and shall be sent via electronic mail and mailed first class postage paid to the following entities at the following addresses:

[INSERT CONTACT INFORMATION]

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

X. Joint Defense Against Third-Party Claims

The Parties have certain common, closely parallel, or identical interests in supporting, preserving, and defending this Companion Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation, and defense of this Companion Agreement, as well as from the coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party to this Companion Agreement, the Parties will proceed with reasonable diligence and use best efforts

to support and defend the Companion Agreement in any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Companion Agreement, and will, to the extent appropriate, enter into joint defense or common interest agreements. Each Party will bear its own costs of participating in the defense of this Companion Agreement under this Paragraph.

Y. Counterparts

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

Z. Additional Parties

The non-Federal Parties to this Companion Agreement may agree in writing to permit Contractors that were not Parties as of the Effective Date to be added as Parties. The non-Federal Parties agree that any additional Party to the LB DCP Agreement shall also become a Party to this Companion Agreement. Any additional Party shall be bound to implement all relevant terms and conditions of this Companion Agreement.

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

[INSERT SIGNATURE PAGES FOR EACH PARTY]

Attachment A1 to the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement")

AGREEMENT FOR DROUGHT RESPONSE OPERATIONS AT THE INITIAL UNITS OF THE COLORADO RIVER STORAGE PROJECT ACT

This Agreement for Drought Response Operations ("Drought Response Operations Agreement") at the Glen Canyon Dam, Flaming Gorge Dam, Curecanti (the "Aspinall Unit"), and Navajo Dam authorized by the Colorado River Storage Project Act (collectively referred to as the "CRSPA Initial Units" and individually as "CRSPA Initial Unit"), an element of the Upper Colorado River Basin's Drought Contingency Plan, is hereby made and entered into this _____day of _____, 2019 by and among the Upper Colorado River Division States of Colorado, New Mexico, Utah, and Wyoming ("Upper Division States"), through the Upper Colorado River Commission ("Commission"), and the Secretary of the Interior ("Secretary") hereinafter collectively referred to as the "Parties." The Secretary may delegate his or her duties under this Drought Response Operations Agreement to the Bureau of Reclamation ("Reclamation").

I. INTRODUCTION

A. BACKGROUND/OBJECTIVE

Since 2000, drought conditions in the Colorado River Basin have led to marked fluctuations and decreases in water elevations at key Colorado River reservoirs. The Upper Division States, through the Commission, have developed a Drought Contingency Plan to address the possibility of reservoir storage at Lake Powell declining below a target elevation. This Drought Response Operations Agreement is one element of that Plan. Its primary goals are to minimize the risk of Lake Powell falling below a target elevation and thereby:

1. Help ensure the Upper Division States will continue fulfilling their interstate water compact obligations while exercising their rights to develop and utilize the Upper Colorado River Basin's ("Upper Basin") Colorado River System compact apportionment.
2. Maintain the ability to generate hydropower at Glen Canyon Dam so as to protect:
    a. Continued operation and maintenance of the Initial Units and participating projects authorized under the 1956 Colorado River Storage Project Act, as amended ("CRSPA");
    b. Continued funding and implementation of environmental and other programs that are beneficial to the Colorado River System;

c. Continued electrical service to power customers, including municipalities, cooperatives, irrigation districts, federal and state agencies and Native American Tribes, and the continued functioning of the western Interconnected Bulk Electric System that extends from Mexico to Canada and from California to Kansas and Nebraska; and
d. Safety contingencies for nuclear power plant facilities within the Colorado River Basin.

3. Minimize adverse effects to resources and infrastructure in the Upper Basin.

B. INTENT

The Parties intend through this Drought Response Operations Agreement to:

1. Prepare, in advance of drought conditions, drought response operations that will minimize the risk of low water storage conditions at Lake Powell, as well as ensure timely recovery of storage water at the upstream CRSPA Initial Units;
2. Reach consensus on a contingency framework for utilizing the CRSPA Initial Units to respond to drought conditions in the Upper Basin; and
3. Promote communication, coordination, and cooperation among themselves to provide additional certainty in Colorado River water management.

C. FRAMEWORK

The framework for this Drought Response Operations Agreement is developed in recognition of, and consistent with, the law and practice relevant to the Upper Basin as summarized herein:

1. The CRSPA directed and authorized the Secretary to construct and operate the CRSPA Initial Units to, among other things, allow the Upper Division States to utilize their apportionment of the Colorado River consistent with the Colorado River Compact.
2. Project-specific criteria govern the operation of each of the CRSPA Initial Units, including applicable Records of Decision and Biological Opinions to satisfy the requirements of the National Environmental Policy Act and the Endangered Species Act, the authorized purposes for each facility, and state water right systems and decrees.
3. The 1977 Department of Energy Organization Act generally transferred power marketing and transmission ("construction, operation, maintenance, and delivery") functions, including the responsibility to market and deliver power and energy from the applicable CRSPA Initial Units, from the Department of the Interior to Western Area Power Administration.
4. Articles IV(c) of the Colorado River Compact and XV(b) of the Upper Colorado River Basin Compact ("Upper Basin Compact") expressly recognize each compacting state's

rights and powers to regulate within its boundaries the appropriation, use, and control of water apportioned and available to the states by the Colorado River and Upper Basin Compacts.

5. Article VIII(d) of the Upper Basin Compact also establishes the Commission, which is composed of a commissioner representing each of the Upper Division States and a commissioner representing the United States, to perform all functions required by the Upper Basin Compact and do all things necessary, proper, or convenient in the performance of its duties either independently or in cooperation with any state or federal agency.
6. Federal law and practice (including, but not limited to, Section 602(b) of the 1968 Colorado River Basin Project Act, 43 U.S.C. § 1552(b), the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act, and the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead ("2007 Interim Guidelines")) contemplate that in the coordinated operations of Lake Powell and Lake Mead, the Secretary will consult with the Colorado River Basin States through Governors' Representatives, who represent the Governors and their respective state agencies.

II. AGREEMENT

In consideration of the above and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. BASES OF MUTUAL AGREEMENT

1. Best Efforts: The Parties agree to implement their best efforts to coordinate and collaborate on an ongoing basis to achieve the purposes and implement the provisions of this Drought Response Operations Agreement.

2. Target Elevation: For purposes of this Drought Response Operations Agreement only, Lake Powell surface elevation 3,525 feet mean sea level ("msl") will be considered the "Target Elevation" for minimizing the risk of Lake Powell declining below minimum power pool (approximately elevation 3,490 feet msl) and to assist in maintaining Upper Division States' compliance with the Colorado River Compact. The Parties agree that this elevation appropriately balances the need to protect infrastructure, compact obligations, and operations at Glen Canyon Dam, as storage approaches

minimum power pool with the Upper Division States' rights to put Colorado River System water to beneficial use.

3. Principles for Drought Response Operations: The Parties agree to consider the following principles when identifying appropriate drought response operations (*see* Section II.A.4 "Drought Response Process") at any CRSPA Initial Unit:
    a. *Definition of Drought Response Operations*: For purposes of this Drought Response Operations Agreement "drought response operations" refers to operational adjustments or releases made at or from the CRSPA Initial Unit(s) to minimize the risk of Lake Powell declining below the Target Elevation, as well as to provide for actions at the CRSPA Initial Unit(s) in subsequent years to recover storage at the same facility/facilities.
    b. *Scope of Drought Response Operations*: Any drought response operation, including drought response releases and recovery of storage operations, at a CRSPA Initial Unit will be managed with the maximum flexibility practicable consistent with: the Colorado River Compact; the Upper Colorado River Basin Compact; the Colorado River Storage Project Act; the Colorado River Basin Project Act; the San Juan-Chama Project Act (P.L. 87-483); the Northwestern New Mexico Rural Water Projects Act (P.L. 111-11); the project-specific criteria for each CRSPA Initial Unit, including the relevant Records of Decision, Biological Opinions and authorized purposes for each Unit (*see* Section I.C.2); legal obligations, including existing and future contracts related to water and/or hydropower; states' water right administration requirements and decrees; and all applicable rules and regulations promulgated thereunder.
    c. *Participation from all CRSPA Initial Units*: Recognizing the shared risk of extended drought and acknowledging the Upper Division States' continuing responsibilities to maintain compact compliance within the Upper Basin, a drought response operation contemplated by this Drought Response Operations Agreement shall ensure that ALL CRSPA Initial Units will be considered for drought response operations. To this end:
        i. *Operational Adjustments at Lake Powell*: Operational adjustments in monthly volumes at Glen Canyon Dam will be considered first to minimize the risk of Lake Powell declining below the Target Elevation consistent with the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs, which is currently implemented through the 2007 Interim Guidelines.
        ii. *All Initial Units Considered*: If operational adjustments at Glen Canyon Dam would not be sufficient to fully minimize the risk of Lake Powell

declining below the Target Elevation, operations at all other CRSPA Initial Units will be uniformly considered through evaluations that include, but are not limited to water availability, hydrology, resource conditions and operational limitations at each Initial Unit in conjunction with adjustments at Glen Canyon Dam to provide additional drought protection at Lake Powell.

iii. *Multiple Drought Response Releases*: If a CRSPA Initial Unit has participated in a drought response release, it will not be considered for another drought response release in subsequent years unless drought response releases from the other CRSPA Initial Units do not fully reduce the risk of Lake Powell declining below the Target Elevation. In such instances, a CRSPA Initial Unit may participate in subsequent drought response releases regardless of whether it has fully recovered storage following a prior drought response release, but only to the extent that a) water is available at that CRSPA Initial Unit for the drought response operation; and, b) contributions from the other CRSPA Initial Units cannot otherwise protect the Target Elevation at Lake Powell.

d. *Effectiveness*: The Parties agree that a drought response release from a CRSPA Initial Unit may be recommended even if it is determined that such release would not, by itself, fully achieve the intent or goals of this Drought Response Operations Agreement. Such releases, however, may not be recommended if they are ultimately determined to be futile to achieve the goals or intent of this Drought Response Operations Agreement.

e. *Recovery of Storage at CRSPA Initial Units*: Recovery of storage at the CRSPA Initial Units is essential to any drought response operation. Consistent with Section II.A.3.b-c, the drought response operations process will be completed only after each CRSPA Initial Unit has recovered the storage as defined below. When implementing recovery of storage at the CRSPA Initial Units, the following considerations will apply:

i. *Recovery of Storage Definition:* For purposes of this Drought Response Operations Agreement, storage at a CRSPA Initial Unit is recovered when the first of either of the following occurs:

1. The CRSPA Initial Unit, operating consistent with Section II.A.3.b, has recovered the cumulative volume of water that was released for implementation of drought response operations to minimize the risk of Lake Powell declining below the Target Elevation; or

2. The water elevation at the CRSPA Initial Unit has reached the regular operating target elevation for that facility, for example, deicing target elevation at the Aspinall Unit, the current end-of-water-year storage target at Navajo Reservoir, or the May 1 Upper Level Drawdown Elevation target at Flaming Gorge Reservoir.

ii. *Dual Operations*: Hydrologic variability within the Upper Basin may render releases from a CRSPA Initial Unit ineffective in achieving the intent and goal of this Drought Response Operations Agreement, *see* Section II.A.3.d, to reduce the risk of Lake Powell declining below the Target Elevation. However, such a CRSPA Initial Unit could still recover storage following a prior drought response release. Moreover, drought response releases from any CRSPA Initial Unit do not preclude recovery of storage actions at another Unit simultaneously.

f. *Natural Resource Considerations*: Drought response operations at the CRSPA Initial Units will consider the timing, duration, and magnitude of water releases to help minimize, to the extent practicable, impacts to natural resources conditions, recognizing the overall purpose of the drought response operations, and within the scope identified in Section II.A.3.b.

g. *Impacts to Basin Fund and Bulk Electric System*: Drought response operations at CRSPA Initial Units will consider the timing, duration, and magnitude of water releases to help minimize, to the extent practicable, impacts to the Upper Colorado River Basin Fund and impacts to the reliability of the western Interconnected Bulk Electrical System, within the scope identified in Section II.A.3.b.

h. *Monitoring*: The Parties agree to include monitoring activities as appropriate as part of any drought response operations (release or recovery of storage). The Parties will incorporate the results of such monitoring into consideration of whether to begin, end, or modify drought response operations.

i. *Forecast Uncertainty:* Because modeling projections that will be considered and relied upon for any drought response operations cannot predict precise conditions at any given time in the Upper Basin, plans for drought response operations developed in accordance with Section II.A.4.b shall provide sufficient flexibility to begin, end, or adjust operations as needed based on actual hydrologic conditions.

j. *Emergency*[1] *Action:* In light of the potential uncertainty associated with modeling projections, the Parties agree that notwithstanding the principles for implementing a drought response operation set forth in this subsection 3, the Secretary retains all applicable authority to make releases from the CRSPA Initial Units and perform subsequent recovery of storage operations if actual hydrology or actual operating experience demonstrate an imminent need to protect the Target Elevation at Lake Powell. Such action shall be performed, to the greatest extent practicable, with advance consultation and coordination with the Upper Division States, through the Commission, and following consultation with the Governors' Representatives of the Colorado River Basin States consistent with the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement").

4. Drought Response Process: In an effort to achieve the primary goals of this Drought Response Operations Agreement, and to implement the "Principles" outlined in Section II.A.3, the Parties agree that, subject to Section II.A.3.j "Emergency Action", they will work to minimize the risk of Lake Powell declining below the Target Elevation by:
   a. *Initiating drought response process*: The Parties will initiate a drought response process, which will include at a minimum:
      i. *Notice*: The Secretary will notify the Commission and the Lower Division States when Reclamation's 24-Month Study model, using Minimum Probable hydrology based upon the inflow forecast provided by the Colorado Basin River Forecast Center, projects Lake Powell's elevation at or below the Target Elevation at any time during the subsequent 24-month period, or when emergency action becomes necessary as set forth in Section II.A.3.j.
      ii. *Modeling:* The Secretary will commence monthly modeling of Minimum Probable, Maximum Probable and Most Probable hydrology for the subsequent 24-month period until the Minimum Probable 24-Month Study projects that Lake Powell will consistently remain above the Target Elevation for a 24-month period. Reclamation will report such modeling results to the Upper Division States and the Commission during monthly calls, *see* Section II.A.4.a.iii.

[1] The term "emergency" as used in this Drought Response Operations Agreement does not identify, describe or otherwise define what constitutes a general emergency under federal or state laws or other emergency situation at a Reclamation reservoir, a deficiency in the system under the Colorado River Compact, or an extraordinary drought under the 1944 Water Treaty between the United States and Mexico regarding the Colorado River.

iii. *Monthly Calls/Meetings:* The Secretary will commence monthly drought operations planning and coordination calls or meetings with the Upper Division States and the Commission to discuss monthly modeling and tracking of hydrology forecasts, system conditions, and status of CRSPA Initial Units; each Party may, in its sole discretion, choose the individuals or entities that will attend.

iv. *Duration:* The Secretary will continue the initiation of the drought response process under this subsection (a) until either:

1. The 24-Month Study Minimum Probable hydrology projects Lake Powell elevations to be above the Target Elevation at all times during the subsequent 24-month period, at which time the drought response process may be suspended; or
2. The 24-Month Study Most Probable hydrology projects Lake Powell elevations to be at or below the Target Elevation at any time during the subsequent 24-month period, at which time the Parties will begin developing a Draft Drought Response Operations Plan as set forth below in Section II.A.4.b.

b. *Developing Draft Drought Response Operations Plan*: The Parties agree to develop a Draft Drought Response Operations Plan by:

i. Continuing the Monthly Calls/Meetings described in Section II.A.4.a.iii.

ii. Considering the Drought Response Principles set forth in Section II.A.3, including: *Definition of Drought Response Operations; Scope of Drought Response Operations, Participation from all CRSPA Initial Units; Effectiveness, Recovery of Storage; Natural Resource Considerations; Effects to Basin Fund and Bulk Electric System; Monitoring: Forecast Uncertainty; and Emergency Operations*. In doing so, the Draft Plan will, to the greatest extent practicable, identify how to: (1) Minimize the risk of Lake Powell declining below the Target Elevation; (2) Provide for timely adjustments in drought response operations based upon actual monthly hydrology to achieve the purpose and intent of this Drought Response Operations Agreement; and (3) Allow for subsequent recovery of storage at the CRSPA Initial Units, consistent with water contract obligations, relevant Records of Decision and Biological Opinions, and other state or federal legal requirements relevant to each facility.

iii. Providing the terms of a Draft Drought Response Operations Plan as contemplated by the Parties to the Lower Division States for review, and consulting with the Governors' Representatives of the Lower Division States consistent with the Companion Agreement to consider and

address, as appropriate, any questions or concerns regarding the terms of the Draft Drought Response Operations Plan as contemplated by the Parties.

iv. Continuing the process described in Section II.A.4.b.i-iii until either:

1. The 24-Month Study Most Probable hydrology projects Lake Powell to remain above the Target Elevation at all times during the subsequent 24-month period, at which time the Parties will revert to the drought response process described in Section II.A.4.a; or
2. The April 24-Month Most Probable hydrology projects Lake Powell to be at or below the Target Elevation at any time in the next 12-month period, at which time the Parties will finalize the Draft Drought Response Operations Plan as described in Section II.A.4.c.

c. *Finalize Drought Response Operations Plan:* The Parties will finalize the Drought Response Operations Plan as follows:

i. The Commission will review and consider a Final Drought Response Operations Plan after consultation with the Governors' Representatives of the Lower Division States as provided in Section II.A.4.b.iii.

ii. Upon approval of the Final Drought Response Operations Plan by both the Upper Division State Commissioners and the Commission, the Commission will forward that Final Drought Response Operations Plan to the Secretary for consideration and approval.

iii. In the event of any dispute or disagreement arising from development of the Plan, or if the Secretary wishes to modify or reject the Plan, the Secretary and Commission agree to meet to jointly assess what other drought contingency options may be available.

d. *Implement Drought Response Operations Plan*: Upon the Secretary's approval of the Drought Response Operations Plan, the Parties agree to:

i. Implement drought response operations at the agreed-upon CRSPA Initial Unit(s) in accordance with the Drought Response Operations Plan, and coordinate weekly, or at such other intervals as otherwise agreed to, on such operations.

ii. Be available to respond to the Lower Division States' questions or concerns, should they arise, regarding ongoing implementation of Drought Response Operations.

iii. Conclude the Drought Response Operations only after the CRSPA Initial Units have recovered the storage that would have otherwise been

available to each Unit but for implementation of Drought Response Operations, as determined in accordance with Section II.A.3.e.

iv. If the Parties agree that the finalized Drought Response Operations Plan needs to be modified, amended, or supplemented for the purpose of more specifically clarifying the scope and detail of recovery of storage, they will consult with the Lower Division States consistent with Section II.A.4.b.iii.

v. In the event of any dispute or disagreement regarding implementation of the Drought Response Operations Plan, the Parties agree to meet to jointly assess what other drought contingency options may be available.

e. *Emergency Action:* Notwithstanding efforts to develop and implement a Drought Response Operations Plan as outlined above, in the event that actual hydrology or actual operating experience demonstrate an imminent need to protect the Target Elevation as set forth in Section II.A.3.j, the Secretary retains all applicable authority to make releases from the CRSPA Initial Units and perform subsequent recovery of storage operations. Such action shall be performed, to the greatest extent practicable, with advance consultation and coordination with the Upper Division States, through the Commission, and following consultation with the Governors' Representatives of the Colorado River Basin States consistent with the Companion Agreement.

5. Public Outreach: The Parties will coordinate on any public outreach for drought response operations at the CRSPA Initial Units. Such coordination will begin prior to outreach activities with the goal of streamlining discussions and avoiding or resolving differences. Except when an imminent need does not permit sufficient time, public outreach regarding drought response operations will include, but may not be limited to, notifying Native American Tribes, local governments, interested stakeholders, and operational and technical workgroups relevant to the respective CRSPA Initial Units of plans and concepts for drought response operations as they become available.

6. Term for Drought Response Operations: Drought response operations as contemplated through this Drought Response Operations Agreement will not extend beyond the term for operations as set forth in the Record of Decision for the 2007 Interim Guidelines (December 31, 2025 but after finalization of the 2026 Annual Operating Plan, unless terminated sooner). Operations to recover storage after a drought response operation has been implemented will continue as long as necessary to recover from any drought response operations taken before October 1, 2026.

7. Voluntary Efforts: Drought response operations agreed to pursuant to this Drought Response Operations Agreement are voluntary and in the interest of comity. Nothing in this Drought Response Operations Agreement shall be construed to diminish or modify the rights of any Party under existing law.

8. Consistency with Existing Law and Compliance: For the purposes of this Drought Response Operations Agreement, storage of water in and release of water from the CRSPA Initial Units to accomplish a drought response operation does not, and shall not be construed to, violate the Colorado River Compact, Upper Colorado River Basin Compact, Colorado River Storage Project Act, Colorado River Basin Project Act, the San Juan-Chama Project Act (P.L. 87-483), the Northwestern New Mexico Rural Water Projects Act (P.L. 111-11), Records of Decision for each facility, Biological Opinions for each facility, or contracts for water or power, states' water right systems and decrees and all applicable rules and regulations promulgated thereunder.

B. ADDITIONAL PROVISIONS

1. Participation in Similar Activities: This Drought Response Operations Agreement in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations and individuals, as state and federal law may allow.

2. Term: This Drought Response Operations Agreement shall be effective as of the date all Parties provide their written approval and shall be effective as to any additional Party as of the date of execution by such Party. This Drought Response Operations Agreement will not extend beyond the term for operations as set forth in the Record of Decision for the 2007 Interim Guidelines (December 31, 2025 but after finalization of the 2026 Annual Operating Plan, unless terminated sooner) without the written consent of all the Parties.

3. Amendments and Modifications: This Drought Response Operations Agreement may be amended or modified, but only by the written agreement of the Parties after consultation as set forth in Paragraph I of the Companion Agreement.

4. Resolution of Claims or Controversies: The Parties recognize that judicial or administrative proceedings are not the preferred alternatives to the resolution of claims or controversies regarding this Drought Response Operations Agreement. In furtherance of this Drought Response Operations Agreement, the Parties desire to avoid judicial and administrative proceedings, and agree to pursue a consultative approach to the resolution of any claim or controversy triggered by this Drought

Response Operations Agreement. If any Party becomes concerned that there may be a claim or controversy under this Drought Response Operations Agreement, or as a result of implementing this Drought Response Operations Agreement, such Party shall notify all other Parties via electronic mail or other writing and the Parties shall in good faith meet in order to resolve such claim or controversy by mutual agreement prior to initiating any judicial or administrative proceeding. No Party shall initiate any judicial or administrative proceeding against any other Party under this Drought Response Operations Agreement, or as a result of implementing this Drought Response Operations Agreement until such consultation has been completed. Notwithstanding any other provision of this Drought Response Operations Agreement, this Paragraph shall survive the termination or expiration of this Drought Response Operations Agreement.

5. Reservation of Rights and Authorities: Nothing in this Drought Response Operations Agreement alters the rights, obligations and authorities of the respective Parties. Moreover, nothing in this Drought Response Operations Agreement affects or shall be interpreted to affect the obligations that each Party may have related to natural resources at or around the CRSPA Initial Units under applicable law. Nor have the Parties waived any rights, claims, or defenses now or in the future under any applicable federal or state law or administrative rule, regulation or guideline.

6. No Waiver: The failure of any Party to enforce a provision of this Drought Response Operations Agreement shall not be deemed to constitute a waiver of that provision.

7. No Precedent: The Parties represent and agree that nothing in this Drought Response Operations Agreement, nor the execution of this Drought Response Operations Agreement, establishes or acts as any precedent for managing or operating the CRSPA Initial Units or administering water from the Colorado River System in the Upper Colorado River Basin. This Drought Response Operations Agreement also shall not be interpreted or construed as establishing a precedent for employing the plans or operational tools contemplated by this Drought Response Operations Agreement. The Parties hereby affirm the entitlement and right of each State under such existing law to use and develop the water of the Colorado River System. Notwithstanding anything in this Drought Response Operations Agreement to the contrary, this provision shall survive termination of this Drought Response Operations Agreement.

8. Actual Operating Experience: Adoption of this Drought Response Operations Agreement does not preclude exploration of additional approaches for operational flexibility in light of actual operating experience.

9. Uncontrollable Forces: No Party shall be considered to be in default in the performance of any of its obligations under this Drought Response Operations 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 Drought Response Operations Agreement by reason of an Uncontrollable Force shall give prompt written notice of such Uncontrollable Force to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

10. Governing Law: This Drought Response Operations 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 Drought Response Operations Agreement shall be in an appropriate Federal court within the Upper Basin.

11. Successors and Assigns: The provisions of this Drought Response Operations Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Drought Response Operations Agreement or any right or interest herein shall be valid until consented to in writing by all Parties, which consent shall not be unreasonably withheld.

12. Drafting Considerations: Each Party and its counsel have participated fully in the drafting, review, and revision of this Drought Response Operations Agreement, each of whom is sophisticated in the matters to which Drought Response Operations Agreement pertains, and no one Party shall be considered to have drafted this Drought Response Operations Agreement.

13. Notices: All notices and requests required or allowed under the terms of this Drought Response Operations Agreement shall be in writing and shall be sent via electronic mail and mailed first class postage paid to the following entities at the following addresses:

[INSERT CONTACT INFORMATION]

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

14. No Third-Party Beneficiaries: This Drought Response Operations Agreement is made for the benefit of the Parties. No Party to this Drought Response Operations Agreement intends for this Drought Response Operations Agreement to confer any benefit upon any person or entity not a signatory to this Drought Response Operations Agreement upon a theory of third-party beneficiary or otherwise.

15. Authority for Signing: The persons and entities executing this Drought Response Operations Agreement on behalf of the Parties are recognized by the Parties as representing the respective Upper Division States and the Commission and the Department of the Interior in matters concerning the Colorado River and operation of the CRSPA Initial Units, and as those persons authorized to bind the respective Parties to the terms hereof. Each person executing this Drought Response Operations Agreement represents that he or she has the full power and authority to bind the respective Party to the terms of this Drought Response Operations Agreement. This Drought Response Operations Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms. No Party shall challenge the authority of any person or Party to execute this Drought Response Operations Agreement and bind such Party to the terms hereof, and the Parties waive the right to challenge such authority.

16. Joint Defense Against Third-Party Claims: The Parties have certain common, closely parallel, or identical interests in supporting, preserving, and defending this Drought Response Operations Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation, and defense of this Drought Response Operations Agreement, as well as from the coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party to this Drought Response Operations Agreement, the Parties will proceed with reasonable diligence and use best efforts to support and defend the Drought Response Operations Agreement in any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Drought Response Operations Agreement, and will, to the extent

appropriate, enter into joint defense or common interest agreements. Each Party will bear its own costs of participating in the defense of this Drought Response Operations Agreement under this Paragraph.

17. Counterparts: This Drought Response Operations Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Drought Response Operations Agreement.

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

[INSERT SIGNATURE PAGES FOR EACH PARTY]

Attachment A2 to the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement")

AGREEMENT REGARDING STORAGE AT COLORADO RIVER STORAGE PROJECT ACT RESERVOIRS UNDER AN UPPER BASIN DEMAND MANAGEMENT PROGRAM

I. INTRODUCTION

The Upper Colorado River Division States of Colorado, New Mexico, Utah, and Wyoming ("Upper Division States") through the Upper Colorado River Commission ("Commission"), and the Secretary of the Interior ("Secretary"), collectively referred to as the Parties, hereby enter into this Agreement Regarding Storage at Colorado River Storage Project Act Reservoirs Under an Upper Basin Demand Management Program ("Demand Management Storage Agreement"), this _____day of _____, 2019 to secure storage capacity at the Initial Units authorized under the Colorado River Storage Project Act ("CRSPA") pursuant to an operational Upper Basin Demand Management Program, if finalized and approved in the future. The Secretary may delegate his or her duties under this Demand Management Storage Agreement to the Bureau of Reclamation ("Reclamation").

A. Recitals

1. Since 2000, the Colorado River Basin has experienced drought conditions that have contributed to decreased water supplies at key Colorado River reservoirs and increased uncertainty regarding water availability to sustain existing uses throughout the Basin.

2. The Parties have worked together and with the Lower Colorado River Division States of Arizona, California and Nevada ("Lower Division States"), relevant federal agencies and interested stakeholders to identify and develop a Drought Contingency Plan that will help minimize and mitigate the risks associated with drought in the Upper Basin. This Demand Management Storage Agreement is one element of that Plan.

3. For purposes of this Demand Management Storage Agreement, the Upper Basin Drought Contingency Plan includes exploring the feasibility of developing and implementing an Upper Basin Demand Management Program.

4. The purpose of an Upper Basin Demand Management Program will be to temporarily reduce Consumptive Uses in the Upper Basin or augment supplies with Imported

Water, if needed in times of drought, to help assure continued compliance with Article III of the Colorado River Compact without impairing the right to exercise existing Upper Basin water rights in the future.

5. The Parties have learned through investigating aspects of demand management that no Upper Basin Demand Management Program is likely to conserve enough water in any single year to help assure continued compliance with the Colorado River Compact during extended drought conditions. The Parties, therefore, recognize that an Upper Basin Demand Management Program will require the ability to store conserved water over multiple years.

6. The Parties acknowledge that securing the authorization for storage capacity for an Upper Basin Demand Management Program does not certify, warrant or otherwise guarantee the development and implementation of such a Program. Nor does it predetermine the type of any Program that may be adopted in the future. However, the Parties understand that without securing the authorization for storage capacity at the CRSPA Initial Units for an Upper Basin Demand Management Program, investigation regarding the feasibility into development and implementation of such a Program is likely unwarranted.

B. Intent

Through this Demand Management Storage Agreement, the Parties intend to:

1. Secure the authorization for storage capacity at CRSPA Initial Units to preserve the Parties' ability to explore the feasibility and development of an Upper Basin Demand Management Program, and implement such a Program if it is finalized;
2. Agree upon the minimum conditions under which the authorized storage capacity will be available for an Upper Basin Demand Management Program; and
3. Promote communication, coordination and cooperation among themselves to provide additional certainty in Colorado River water management and to remove causes of future controversy.

II. AUTHORIZATION

Upon approval of this Demand Management Storage Agreement by the United States Congress and full execution by the Parties, the Secretary is authorized to make Unfilled Storage Capacity at the CRSPA Initial Units available for use by the Upper Division States, through the Commission, at no charge and in accordance with the terms of this Demand Management Storage Agreement. The Secretary shall make such storage capacity available provided that the Commission requests

use of the storage capacity for the purpose of storing water conserved as part of an Upper Basin Demand Management Program. The authorization in this Section II shall not expire, and shall survive the termination of this Demand Management Storage Agreement.

III. AGREEMENT

In consideration of the above and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Definitions

For purposes of this Demand Management Storage Agreement, the following definitions shall apply:

1. "Colorado River Basin" shall have the same meaning as defined in the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact.
2. "Colorado River System" shall have the same meaning as defined in the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact.
3. "Consumptive Use" means the depletion of water for domestic and agricultural beneficial uses as those terms are defined and referred to in the 1922 Colorado River Compact. For purposes of this definition, Consumptive Use also includes the full amount of water: (i) consumed in association with the production of electrical power other than hydropower; and (ii) diverted from the Upper Colorado River System for which there are no return flows to that system, including, for example, diversions outside the natural Colorado River watershed.
4. "CRSPA Initial Units" refers to Glen Canyon Dam, Flaming Gorge, Curecanti (the "Aspinall Unit"), and Navajo Reservoir as authorized under the 1956 Colorado River Storage Project Act.
5. "Effective Date" means the date that all of the Upper Division State Commissioners to the Upper Colorado River Commission and the Secretary sign this Demand Management Storage Agreement.
6. "Imported Water" means water introduced to the Upper Colorado River System from outside the Colorado River System for the specific purpose of augmenting the supplies available for, or storing water as part of, an Upper Basin Demand Management Program. Such Imported Water need not have been previously consumptively used in its basin of origin.

7. "Unfilled Storage Capacity" means the storage space available at a given CRSPA Initial Unit after satisfying the legal storage obligations applicable to that Unit, consistent with applicable water rights administration requirements and decrees.
8. "Upper Basin" shall refer to the Upper Colorado River Basin and have the same meaning as defined in the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact.
9. "Upper Basin Demand Management Program" refers to a program approved by the Upper Colorado River Commission and each Upper Division State, acting through its Commission representative, consistent with this Demand Management Storage Agreement to reduce Consumptive Uses or augment water supplies with Imported Water, if needed, to help assure compliance with Article III of the Colorado River Compact without impairing the right to exercise any existing Upper Basin water rights in the future.
10. "Upper Colorado River System" means the Colorado River System within the Upper Basin.
11. "Verification" means the confirmation of the actual volume of Consumptive Use that is conserved, or Imported Water that is introduced, conveyed to and stored in a CRSPA Initial Unit under an Upper Basin Demand Management Program.

B. Upper Basin Demand Management Program

The Upper Division States, through the Commission, shall have access to the Unfilled Storage Capacity authorized in Section II only upon development and approval of an Upper Basin Demand Management Program. In developing and approving such a Program, the following conditions and requirements, at a minimum, must be satisfied:

1. Feasibility: The Upper Division States, through the Commission, must investigate the feasibility of developing and implementing an Upper Basin Demand Management Program, and reach consensus on, among other things:
   a. Verification of and accounting for the actual volume of conserved Consumptive Use;
   b. Conveyance of the conserved Consumptive Use to appropriate destinations, and accounting for associated conveyance losses;
   c. Providing for storage at and release from the CRSPA Initial Units of any conserved Consumptive Use;
   d. Administration of an Upper Basin Demand Management Program;
   e. Funding of an Upper Basin Demand Management Program; and
   f. Compliance with federal and state laws within each Upper Division State.
2. Program Development: If the Upper Division States, through the Commission, agree that an Upper Basin Demand Management Program is feasible and pursue

development of a Program, it must include, at a minimum, the following water conservation, storage and release considerations:

a. Water conserved shall only be recognized as part of any Upper Basin Demand Management Program if:
   i. The source of conserved water is Upper Colorado River System water, or Imported Water;
   ii. The water is conserved, stored and released for the specific purpose of helping the Upper Division States assure continued compliance with Article III of the Colorado River Compact;
   iii. For Upper Colorado River System water, the water must have been beneficially and consumptively used under valid water rights prior to being conserved as part of an Upper Basin Demand Management Program;
   iv. For Upper Colorado River System water, the water must have been physically available for diversion in the year it was conserved, and would have been beneficially and consumptively used within a state or states of the Upper Division but for the conservation for the benefit of an Upper Basin Demand Management Program; and
   v. The conserved or Imported Water has arrived at a CRSPA Initial Unit after accounting for any conveyance and associated losses.

b. Any conserved water or Imported Water to be stored in a CRSPA Initial Unit for the purposes of an Upper Basin Demand Management Program shall be subject to:
   i. Assessment of its proportionate share of evaporation during storage;
   ii. Available Unfilled Storage Capacity;
   iii. An annual creation limitation at the CRSPA Initial Units combined, which volume shall be determined as part of the feasibility investigation;
   iv. A maximum combined storage limitation of 500,000 acre-feet at the CRSPA Initial Units;
   v. Reduction, in any year in which water flows over or through the spillway at Glen Canyon Dam, by the amount of that flow on an acre-foot for acre-foot basis up to the full amount of water stored under an Upper Basin Demand Management Program; and
   vi. Annual Verification by the Upper Division States, through the Commission, and the Secretary of the volume of conserved water created, conveyed, and stored at the CRSPA Initial Units.

c. Any conserved water stored and released from a CRSPA Initial Unit under an Upper Basin Demand Management Program shall:

i. Be accounted for consistent with the provisions in Section III.B.2.b and this Section III.B.2.c until 2057;

ii. Through the year 2057, not be released or cause a different release from Lake Powell than would have otherwise occurred under the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead ("2007 Interim Guidelines") or post 2026 operational rules. This provision shall survive termination of this Demand Management Storage Agreement through 2057; and

iii. Be subject to release from any of the CRSPA Initial Units only at the request of the Commission to help assure continued compliance with Article III of the Colorado River Compact. This provision shall survive termination of this Demand Management Storage Agreement through 2057.

3. Upper Basin Demand Management Program Approval: The following findings, agreement, consultation, and approvals must be made before any Upper Basin Demand Management Program can be finalized and made operational in the Upper Basin:

   a. *Commission Findings*: The Commission must make findings that demand management activities are necessary to help assure continued compliance with Article III of the Colorado River Compact;

   b. *Agreement and Consultation*: The Upper Division States, through the Commission, and the Secretary must enter into agreement(s) on the methodology, process and documentation for Verification and accounting for the creation, conveyance, and storage of conserved water to be stored in and released from a CRSPA Initial Unit as part of an Upper Basin Demand Management Program. Before entering into such agreement(s), the Commission and Secretary must consult with the Lower Division States using the consensus-based approach as agreed to in the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement");

   c. *Commission Approval:* The Commission must approve the Upper Basin Demand Management Program; and

   d. *State Approval:* In addition to Commission approval, each Upper Division State, acting through its Commission representative, must approve the Upper Basin Demand Management Program.

4. Considerations - Post-2025: A position has not been formally expressed regarding implementation of an Upper Basin Demand Management Program after 2025. The Parties acknowledge and expect that operation and implementation of an Upper Basin Demand Management Program following the Term of this Demand Management Storage Agreement will be informed by and considered as part of the

Secretary's formal review to evaluate the effectiveness of the 2007 Interim Guidelines in consultation with the seven Colorado River Basin States, which is scheduled to begin no later than December 31, 2020. (See Section XI.G.7.D of 2007 Interim Guidelines).

The Upper Division States and the Commission also acknowledge and expect that, at a minimum, any Upper Basin Demand Management Program implemented after 2025 would include the terms for feasibility and program development set forth in Section III.B.1 and III.B.2.a of this Demand Management Storage Agreement as well as the findings and approval provisions set forth herein.

C. Term

This Demand Management Storage Agreement will remain in effect from the Effective Date through December 31, 2025 (through preparation of the 2026 Annual Operating Plan) except for those provisions that survive termination of this Demand Management Storage Agreement.

D. Additional Provisions

1. No Waiver: The failure of any Party to enforce a provision of this Demand Management Storage Agreement shall not be deemed to constitute a waiver of that provision.
2. No Precedent: Except for the Authorization provided in Section II of this Demand Management Storage Agreement, the Parties represent and agree that nothing in this Demand Management Storage Agreement establishes or acts as precedent for any future agreement or undertaking. In particular, this Demand Management Storage Agreement shall not be interpreted or construed as establishing a precedent for employing the operational tools contemplated in this Demand Management Storage Agreement. The Parties hereby affirm the entitlement and right of each State under existing law to use and develop the water of the Colorado River System. Notwithstanding anything in this Demand Management Storage Agreement to the contrary, this provision shall survive termination of this Demand Management Storage Agreement.
3. Reservation of Rights: Except as expressly provided herein, the Parties reserve, and nothing in this Demand Management Storage Agreement shall be deemed to diminish or waive, any and all rights, including any claims or defenses, they may have as of the date hereof or as may accrue after the term hereof, under any existing federal or state law, including without limitation the Colorado River Compact, the Boulder Canyon Project Act, the Upper Colorado River Basin Compact, the 1944 Water Treaty, the

Consolidated Decree of the Supreme Court in *Arizona v. California*, the Colorado River Storage Project Act, and the Colorado River Basin Project Act.

4. Uncontrollable Forces: No Party shall be considered to be in default in the performance of any of its obligations under this Demand Management Storage 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 Demand Management Storage Agreement by reason of an Uncontrollable Force shall give prompt written notice of such Uncontrollable Force to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.
5. Representations and Warranties: Each Party warrants and represents to each of the other Parties, as a material inducement to enter into this Demand Management Storage Agreement, the following:
   a. The Party has all legal power and authority to enter into this Demand Management Storage Agreement and to perform its obligations hereunder on the terms set forth in this Demand Management Storage 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.
   b. The individual executing this Demand Management Storage 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 Demand Management Storage Agreement.
   c. This Demand Management Storage Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.
6. Governing Law: This Demand Management Storage 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 Demand Management Storage Agreement shall be in an appropriate Federal court within the Upper Basin.
7. Successors and Assigns: The provisions of this Demand Management Storage Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Demand Management Storage Agreement or any right

or interest herein shall be valid until consented to in writing by all Parties, which consent shall not be unreasonably withheld.

8. Amendments or Modifications: Section II of this Demand Management Storage Agreement cannot be modified without a subsequent act of Congress. The remainder of this Demand Management Storage Agreement may be amended or modified, but only by the written agreement of the Parties after consultation among the Parties and the Lower Division States as set forth in Paragraph I of the Companion Agreement.
9. Drafting Considerations: Each Party and its counsel have participated fully in the drafting, review, and revision of this Demand Management Storage Agreement, each of whom is sophisticated in the matters to which this Demand Management Storage Agreement pertains, and no one Party shall be considered to have drafted this Demand Management Storage Agreement.
10. Notices: All notices and requests required or allowed under the terms of this Demand Management Storage Agreement shall be in writing and shall be sent via electronic mail and mailed first class postage paid to the following entities at the following addresses:

    [INSERT CONTACT INFORMATION]

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

11. No-Third Party Beneficiaries: This Demand Management Storage Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Demand Management Storage Agreement intends for this Demand Management Storage Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.
12. Resolution of Claims or Controversies: The Parties recognize that judicial or administrative proceedings are not preferred alternatives to the resolution of claims or controversies concerning the Law of the River. In furtherance of this Demand Management Storage Agreement, the Parties desire to avoid judicial or administrative proceedings, and agree to pursue a consultative approach to the resolution of any claim or controversy. If any Party becomes concerned that there may be a claim or controversy under this Demand Management Storage Agreement or, specific to the Secretary, Section 601 of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1551), and all applicable rules and regulations promulgated thereunder, such Party shall notify all other Parties in writing, and shall in good faith meet to resolve such claim or controversy by mutual agreement prior to initiating any judicial or administrative proceeding. No Party shall initiate any judicial or administrative

proceeding arising out of this Demand Management Storage Agreement against any other Party, and no claim hereunder shall be ripe, until such consultation has been completed. Notwithstanding any other provision of this Demand Management Storage Agreement, this Paragraph shall survive the termination or expiration of this Demand Management Storage Agreement.

13. Joint Defense Against Third-Party Claims: The Parties have certain common, closely parallel, or identical interests in supporting, preserving, and defending this Demand Management Storage Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation, and defense of this Demand Management Storage Agreement, as well as from the coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party to this Demand Management Storage Agreement, the Parties will proceed with reasonable diligence and use best efforts to support and defend the Demand Management Storage Agreement in any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Demand Management Storage Agreement, and will, to the extent appropriate, enter into joint defense or common interest agreements. Each Party will bear its own costs of participating in the defense of this Demand Management Storage Agreement under this Paragraph.
14. Counterparts: This Demand Management Storage Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Demand Management Storage Agreement.

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

[INSERT SIGNATURE PAGES FOR EACH PARTY]

Attachment B to the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement")

LOWER BASIN DROUGHT CONTINGENCY PLAN AGREEMENT

This LOWER BASIN DROUGHT CONTINGENCY PLAN AGREEMENT ("LB DCP Agreement") is made and entered into this _____ day of _____, 2019, by and among the United States of America ("United States"), represented by the Secretary of the Interior ("Secretary") and acting through the officer executing this LB DCP Agreement, the State of Arizona acting through the Director of the Arizona Department of Water Resources, The Metropolitan Water District of Southern California ("Metropolitan"), the Coachella Valley Water District, the Palo Verde Irrigation District, the City of Needles, the Colorado River Commission of Nevada ("CRCN"), and the Southern Nevada Water Authority ("SNWA"), each of which is at times referred to individually as "Party" or collectively as "Parties", 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 January 12, 1927 (44 Stat. 957, 43 U.S.C §397a); the Act of December 21, 1928 (45 Stat.1057), designated the Boulder Canyon Project Act; and the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act, all of which acts are part of the body of law commonly known and referred to as Federal Reclamation law.

RECITALS

A. WHEREAS, as a result of actual operating experience subsequent to the adoption of the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead ("2007 Interim Guidelines"), as well as emerging scientific information regarding the increasing variability and anticipated decline in Colorado River flow volumes, the Parties recognize and acknowledge that entities that rely on the Colorado River as a water source face increased individual and collective risk of temporary or prolonged interruptions in water supplies, with associated adverse impacts on the society, environment and economy of the southwestern United States.

B. WHEREAS, the Parties recognize that for decades dating back to 1970, reliance on pragmatic and cooperative Colorado River operational strategies has proven more durable, adaptable, and effective than approaches that would rely exclusively on a determination of precise legal rights and obligations. This approach has also served to avoid destabilizing inter- or multi-state litigation, thereby preserving operational flexibility to respond to changing conditions and societal concerns.

C. WHEREAS, the Parties recognize the need to develop and test, on an interim basis, additional operational tools through December 31, 2025 (through preparation of the 2026

Annual Operating Plan for Colorado River reservoirs developed by the Secretary to implement the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968), to address and reduce the likelihood of the continued decline of the elevation of Lake Mead.

D. WHEREAS, the Parties, in consultation with the States of Colorado, New Mexico, Utah, and Wyoming, and stakeholders throughout the Colorado River Basin, have developed the Lower Basin Drought Contingency Operations ("LBOps") attached hereto as Exhibit "1" and incorporated herein by this reference, which, among other things, provides for the storage of water in Lake Mead under varying conditions, and incentivizes the creation and storage in Lake Mead of Intentionally Created Surplus ("ICS") under the 2007 Interim Guidelines.

E. AND WHEREAS, for their individual and mutual benefit, the Parties make the commitments set forth herein recognizing the individual and collective harm that could occur from prolonged interruptions in Lower Basin water supplies from the Colorado River.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. Terms defined in the LBOps or 2007 Interim Guidelines have the same meaning when used in this LB DCP Agreement.

2. Term. This LB DCP Agreement shall commence on the date first set forth above and terminate on the later of (i) December 31, 2026; or (ii) the date on which all ICS Accounts and DCP ICS Accounts are reduced to zero (in either case, the "Term").

3. Agreements of the Secretary. Subject to applicable law, including the availability of appropriations:

a. ***Implementation of LBOps***. Beginning on the Effective Date of the LBOps, the Secretary shall perform those Secretarial actions required in the attached LBOps.

b. ***Development of Colorado River System Water***. 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. Prior to implementing affirmative actions pursuant to this Section, the Secretary will meet and confer with the other Parties. The other Parties hereto 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 programs implemented by the Secretary under this Section. For informational purposes, there are a number of

Lower Basin system efficiency activities/projects that the Secretary may undertake in fulfillment of this commitment.

c. ***Additional Appropriations***. The Secretary will explore mechanisms to arrange for additional appropriations or other funding mechanisms to assist the Parties in taking additional Lower Basin drought response actions in a manner consistent with the goals of this LB DCP Agreement.

4. Agreements of the Parties.

a. ***Intra-State DCP Agreements***. Prior to or concurrent with the execution of this LB DCP Agreement, the Parties shall enter into and implement Intra-State DCP Agreements as necessary to carry out the obligations of the non-Federal Parties in the LBOps and enable the Secretary to perform the Secretarial actions required in the LBOps.

b. ***ICS***. The United States and the non-Federal Parties agree that no Party or Contractor may claim as surplus under Article II.B of the Consolidated Decree any DCP ICS created under the LBOps. Notwithstanding any contrary provisions in existing Lower Basin ICS agreements dated December 13, 2007; November 20, 2012; and September 21, 2017, ICS shall be available according to the terms and conditions of the LBOps.

c. ***Implementation of LBOps***. Beginning on the Effective Date of the LBOps, the non-Federal Parties shall perform those actions necessary to fulfill the requirements of the LBOps, including, without limitation, the obligation to make DCP Contributions as and when required.

d. ***Future ICS Exhibits.*** Each of the parties to the 2007 Lower Basin Intentionally Created Surplus Agreement ("ICS Agreement") that are a Party to this LB DCP Agreement agree to consider and approve or reject any newly proposed or amended exhibit to the ICS Agreement within 120 days of the proposal. If a party rejects the exhibit, that party shall provide a meaningful explanation of the basis for its rejection.

e. ***Sharing Agreement***. Concurrently with the execution of this LB DCP Agreement, certain Parties are executing the DCP Contributions and ICS Accumulation Limits Sharing Agreement, which provides:

1. Pursuant to Section IV.C of the LBOps, SNWA and CRCN shall make up to 50,000 acre-feet of ICS accumulation space available for use by Contractors in Arizona under the conditions described therein; and
2. Pursuant to Section IV.C of the LBOps, Metropolitan shall make up to 50,000 acre-feet of ICS accumulation space available for use by Contractors in Arizona under the conditions described therein.

5. Additional Provisions.

a. ***No Waiver***. The failure of any Party to enforce a provision of this LB DCP Agreement shall not be deemed to constitute a waiver of that provision.

b. ***No Precedent***. This LB DCP Agreement does not establish or act as

precedent for any future agreement or undertaking.

c. ***Reservation of Rights***. Except as expressly provided herein or in the LBOps, nothing in this LB DCP Agreement or the LBOps shall be deemed to diminish or waive the rights of any Party under Federal Reclamation Law, the Law of the River (as defined in the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement")), or under any other state, federal, or local law.

d. ***Actual Operating Experience***. Adoption of the additional provisions related to ICS in the LBOps does not preclude exploration of additional provisions for operational flexibility during the Interim Period in light of actual operating experience.

e. ***Uncontrollable Forces***. No Party shall be considered to be in default in the performance of any of its obligations under this LB DCP 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 LB DCP 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.

f. ***Representations and Warranties***. Each Party warrants and represents to each of the other Parties, as a material inducement to enter into this LB DCP Agreement and not as a mere recital, the following:

1. The Party has all legal power and authority to enter into this LB DCP Agreement and to perform its obligations hereunder on the terms set forth in this LB DCP 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.
2. The individual executing this LB DCP 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 LB DCP Agreement.
3. This LB DCP Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.
4. The 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.

g. ***Governing Law***. This LB DCP 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 LB DCP Agreement shall be in an appropriate Federal court.

h. ***Successors and Assigns.*** The provisions of this LB DCP Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this LB DCP Agreement or any right or interest herein shall be valid until consented to in writing by all Parties, which consent shall not be unreasonably withheld.

i. ***Amendments and Modifications.*** This LB DCP Agreement may be amended or modified, but only by the written agreement of the Parties after consultation as set forth in Paragraph I of the Companion Agreement.

j. ***Participation of Identified California Parties.*** If any Party from California identified herein fails to execute this LB DCP Agreement, such failure to execute shall not preclude this LB DCP Agreement from entering into full force and effect on the express condition that the remaining California Parties shall have agreed to implement all terms and conditions of this LB DCP Agreement by execution of this LB DCP Agreement.

k. ***Drafting Considerations***. Each Party and its counsel have participated fully in the drafting, review, and revision of this LB DCP Agreement, each of whom is sophisticated in the matters to which this LB DCP Agreement pertains, and no one Party shall be considered to have drafted this LB DCP Agreement.

l. ***Notices***. All notices and requests required or allowed under the terms of this LB DCP Agreement shall be in writing and shall be sent via electronic mail and mailed first class postage paid to the following entities at the following addresses:

[INSERT CONTACT INFORMATION]

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

m. ***Third-Party Beneficiaries; Consultation***. The Central Arizona Water Conservation District ("CAWCD") shall be a third-party beneficiary for the purposes described in this Section 5.l. This LB DCP Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties and for CAWCD. No Party to this LB DCP Agreement intends for this LB DCP Agreement to confer any benefit upon any person or entity other than the Parties and CAWCD upon a theory of third-party beneficiary or otherwise. The purposes for which CAWCD is a third party beneficiary are Sections 4.c, 5.m, and 5.n of this LB DCP Agreement. In addition, the Parties agree that CAWCD shall be invited to fully participate in any consultation conducted pursuant to Sections 5.i and 5.m of this LB DCP Agreement, and Sections III.D and V.B of the LBOps.

n. ***Resolution of Claims or Controversies***. The Parties recognize that judicial or administrative proceedings are not preferred alternatives to the resolution of claims or controversies concerning the Law of the River. In furtherance of this LB DCP Agreement, the Parties desire to avoid judicial or administrative proceedings, and agree to pursue a consultative approach to the resolution of any claim or controversy. If any Party becomes concerned that there may be a claim or controversy under this LB DCP Agreement or, specific to the Secretary, Section 601 of the Colorado River Basin Project Act of 1968 (43 U.S.C. § 1551), and all applicable rules and regulations promulgated thereunder, such Party shall notify all other Parties in writing, and the non-Federal Parties shall in good faith meet to resolve such claim or controversy by mutual agreement prior to initiating any judicial or administrative proceeding. No non-Federal Party shall initiate any judicial or administrative proceeding arising out of this LB DCP Agreement against any other Party, and no claim hereunder shall be ripe, until such consultation has been completed. Notwithstanding any other provision of this LB DCP Agreement, this Section 5.m shall survive for a period of five (5) years following the expiration of this LB DCP Agreement.

o. ***Joint Defense Against Third-Party Claims***. The Parties have certain common, closely parallel, or identical interests in supporting, preserving, and defending the LBOps and this LB DCP Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation, and defense of the LBOps and this LB DCP Agreement, as well as from the coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party to the LBOps or this LB DCP Agreement, the Parties will proceed with reasonable diligence and use best efforts to support and defend the LBOps and this LB DCP Agreement in any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of the LBOps or this LB DCP Agreement, and will, to the extent appropriate, enter into joint defense or common interest agreements. Each Party will bear its own costs of participating in the defense of the LBOps and this LB DCP Agreement under this Section 5.n.

p. ***Counterparts***. This LB DCP Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one LB DCP Agreement.

q. The Parties are hereby notified of A.R.S. section 38-511.

r. ***Additional Parties.*** The non-Federal Parties to this LB DCP Agreement may agree in writing to permit Contractors that were not Parties as of the Effective Date to be

added as Parties. Any additional Party shall be bound to implement all relevant terms and conditions of this LB DCP Agreement.

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

[INSERT SIGNATURE PAGES FOR EACH PARTY]

Exhibit 1 to the Lower Basin Drought Contingency Plan Agreement

LOWER BASIN DROUGHT CONTINGENCY OPERATIONS

I. Relationship to 2007 Interim Guidelines and Implementing Agreements

These Lower Basin Drought Contingency Operations (LBOps) shall, in addition to the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines) and the Implementing Agreements accompanying the 2007 Interim Guidelines, govern the operation of Lake Mead for the various periods set forth herein and as otherwise set forth in the 2007 Interim Guidelines. Terms defined in Section XI.F of the 2007 Interim Guidelines shall have the same meaning when used in these LBOps. In the event of any inconsistency between the provisions of the 2007 Interim Guidelines and Implementing Agreements on the one hand, and these LBOps on the other, the provisions of these LBOps shall control; provided, however, that nothing herein shall be construed to impact the implementation of coordinated operations of Lakes Powell and Mead during the Interim Period as set forth in Section XI.G.6 of the 2007 Interim Guidelines. California Contractors that are Parties to the Lower Basin Drought Contingency Plan Agreement (LB DCP Agreement) shall be subject to provisions of these LBOps. California Contractors that are not Parties to the LB DCP Agreement shall not be subject to the provisions of these LBOps but shall instead remain subject to all of the applicable terms and conditions of the 2007 Interim Guidelines.

II. Definitions

"**Binational ICS"** shall mean Binational Intentionally Created Surplus as that term is used in the Interim Operating Agreements for Minutes 319 and 323 to the 1944 Mexican Water Treaty.

"**Creation of Non-ICS Water"** under these LBOps occurs when, and to the extent, the amount of Colorado River water available for use by a State in a given Year under Article II.B of the Consolidated Decree (after adjustments for reductions, Developed Shortage Supply creation or delivery, and ICS creation or delivery under the 2007 Interim Guidelines), exceeds the amount of Colorado River mainstream water consumptively used by that State in such Year. Such water shall not be DCP ICS.

"**DCP Contributions**" shall mean those contributions benefiting Lake Mead through any of the following:

- Conversion of existing Extraordinary Conservation ICS to DCP ICS
- Conversion of Extraordinary Conservation, System Efficiency, or Binational ICS created after the effective date of these LBOps to DCP ICS

- Simultaneous creation and conversion of Extraordinary Conservation, System Efficiency, or Binational ICS to DCP ICS
- Creation of Non-ICS Water

"**DCP ICS**" shall mean Intentionally Created Surplus converted from Extraordinary Conservation ICS, System Efficiency ICS, or Binational ICS as set forth in these LBOps. Reductions in Colorado River water available to a State pursuant to Section XI.G.2.D of the 2007 Interim Guidelines shall not constitute DCP ICS.

"**DCP ICS Account**" shall mean records established by the Secretary regarding DCP ICS.

"**Effective Date**" means the date first set forth in the Lower Basin Drought Contingency Agreement.

"**Intra-State DCP Agreements**" means agreements among, as appropriate, the United States, a Lower Division State, Contractors, Tribes and local government entities within such state setting forth the relative rights and obligations among Contractors within the state regarding DCP Contributions.

III. Operational Provisions

A. Reservoir Elevation Projections

In making projections of Lake Mead water surface elevations as required throughout these LBOps, the Secretary shall use the Bureau of Reclamation's August 24-Month Study for the most probable inflows unless expressly provided otherwise herein.

B. DCP Contributions

In addition to any reductions provided in Section XI.G.2.D. of the 2007 Interim Guidelines, from the Effective Date of these LBOps through December 31, 2025 (through preparation of the 2026 AOP), and consistent with applicable Intra-State DCP Agreements, the States of Arizona, California, and Nevada, shall make DCP Contributions as follows:

1. ***Arizona***

   a. Lake Mead January 1 elevation projected to be above 1,045 feet and at or below 1,090 feet

   In Years when Lake Mead elevation is projected to be above 1,045 feet and at or below 1,090 feet on January 1, the State of Arizona shall make annual DCP Contributions in the total amount of 192,000 acre-feet.

   b. Lake Mead January 1 elevation projected to be at or below 1,045 feet

In Years when Lake Mead elevation is projected to be at or below 1,045 feet on January 1, the State of Arizona shall make annual DCP Contributions in the total amount of 240,000 acre-feet.

2. ***Nevada***

   a. Lake Mead January 1 elevation projected to be above 1,045 feet and at or below 1,090 feet

      In Years when Lake Mead elevation is projected to be above 1,045 feet and at or below 1,090 feet on January 1, the State of Nevada shall make annual DCP Contributions in the total amount of 8,000 acre-feet.

   b. Lake Mead January 1 elevation projected to be at or below 1,045 feet

      In Years when Lake Mead elevation is projected to be at or below 1,045 feet on January 1, the State of Nevada shall make annual DCP Contributions in the total amount of 10,000 acre-feet.

3. ***California***

   a. Lake Mead January 1 elevation projected to be above 1,040 feet and at or below 1,045 feet

      In Years when Lake Mead elevation is projected to be above 1,040 feet and at or below 1,045 feet on January 1, the State of California shall make annual DCP Contributions in the total amount of 200,000 acre-feet.

   b. Lake Mead January 1 elevation projected to be above 1,035 feet and at or below 1,040 feet

      In Years when Lake Mead elevation is projected to be above 1,035 feet and at or below 1,040 feet on January 1, the State of California shall make annual DCP Contributions in the total amount of 250,000 acre-feet.

   c. Lake Mead January 1 elevation projected to be above 1,030 feet and at or below 1,035 feet

      In Years when Lake Mead elevation is projected to be above 1,030 feet and at or below 1,035 feet on January 1, the State of California shall make annual DCP Contributions in the total amount of 300,000 acre-feet.

   d. Lake Mead January 1 elevation projected to be at or below 1,030 feet

      In Years when Lake Mead elevation is projected to be at or below 1,030 feet on January 1, the State of California shall make annual DCP Contributions in the total amount of 350,000 acre-feet.

4. ***DCP Contributions for the benefit of another State***

Contractors within one or more Lower Division States may make all or any portion of the DCP Contributions required of another Lower Division State under this Section III.B or DCP ICS repayment as required under Section III.F, provided:

(i) agreement by the necessary Parties in each of the Lower Division States to any such contribution(s) is made in writing consistent with any applicable Intra-State DCP Agreements. Such agreement shall only be required of Parties to the LB DCP Agreement, non-Party consent is not required;

(ii) drafts of such agreements are provided to the Secretary and the Upper Division States prior to any required board authorizations;

(iii) DCP Contributions on behalf of another State through conversion of ICS to DCP ICS shall accrue to the DCP ICS Accounts of applicable Contractors in the contributing State and not the State on whose behalf the contribution is made; and

(iv) notwithstanding the foregoing subsection (iii), the volume of any DCP ICS contributions made for the benefit of another State shall count against the storage limit set forth in Section IV.C below and the ICS delivery limit set forth in Section IV.D below of the State on whose behalf the contribution is made and not the contributing State.

C. <u>Combined DCP Contributions and 2007 Interim Guidelines Shortages</u>

For purposes of illustrating the combined DCP Contributions volumes set forth in these LBOps and the shortages required under Section XI.G.2.D of the 2007 Interim Guidelines, Table 1 combines the applicable volumes by elevation for each State.

Table 1 – DCP Contributions and 2007 Interim Guidelines Shortages by State

Projected January 1 Lake Mead Elevation *(feet msl)*	2007 Interim Guidelines Shortages		DCP Contributions			Combined Volumes *(2007 Interim Guidelines Shortages & DCP Contributions)*			
	Arizona	Nevada	Arizona	Nevada	California	Arizona	Nevada	California	Lower Division States Total
	(thousand acre-feet)								
At or below 1,090 and above 1,075	0	0	192	8	0	192	8	0	200
At or below 1,075 and at or above 1,050	320	13	192	8	0	512	21	0	533
Below 1,050 and above 1,045	400	17	192	8	0	592	25	0	617
At or below 1,045 and above 1,040	400	17	240	10	200	640	27	200	867
At or below 1,040 and above 1,035	400	17	240	10	250	640	27	250	917
At or below 1,035 and above 1,030	400	17	240	10	300	640	27	300	967
At or below 1,030 and at or above 1,025	400	17	240	10	350	640	27	350	1,017
Below 1,025	480	20	240	10	350	720	30	350	1,100

D. Water Deliveries/DCP Contributions

1. ***Process regarding DCP Contributions***

In any year that DCP Contributions are required, the Secretary shall meet and confer at least once each quarter with any Contractor that is required to make DCP Contributions (consistent with applicable Intra-State DCP Agreements) for the purpose of ensuring that the best available information regarding DCP Contribution status and the source of the DCP Contribution is available to both the Secretary and the affected Contractor. The Secretary shall consult upon request with any other Contractor regarding the implementation of DCP Contributions.

2. ***Delivery Schedule Adjustments***

The Secretary shall adjust as necessary any scheduled deliveries of Colorado River water in a manner that ensures each State's DCP Contributions are within 25,000 acre-feet of the amounts set forth in Section III.B by the end of the Year in which such DCP Contributions are required. Such adjustments shall be in accordance with any Intra-State DCP Agreements. Prior to making any delivery schedule adjustment pursuant to this section, the Secretary shall provide the affected Contractor the maximum practicable notice and an opportunity to meet and confer with the Secretary.

3. ***DCP Contributions Not Surplus***

The Secretary shall not release pursuant to Article II.B of the Consolidated Decree any DCP Contribution during the Year of the DCP Contribution.

E. DCP Contributions Accounting Matters

1. ***DCP Contributions***

On an annual basis, the Secretary shall document and publish in its Accounting Report pursuant to Article V of the Consolidated Decree, the amount of each of the DCP Contributions made pursuant to these LBOps.

2. ***DCP ICS and System Benefit***

a. In the annual Water Accounting Report the Secretary shall separately account for and verify the creation and delivery of DCP ICS in a manner consistent with Section XI.G.3.D of the 2007 Interim Guidelines.

b. Any delivery of DCP ICS pursuant to Section III.F of these LBOps shall be limited to amounts documented and published by the Secretary pursuant to this Section III.E.2.

c. Beginning in 2027, and each Year thereafter, the Secretary shall diminish each DCP ICS Account by three percent (3%) for the benefit of the Colorado River System.

d. The provisions for DCP ICS accounting shall remain in effect through December 31, 2057, for any amounts remaining to be delivered on December 31, 2026.

3. ***Conversion of Excess DCP ICS to ICS***

In the event Lake Mead's January 1 elevation in a given Year is higher than that projected in the preceding August 24-Month Study, any DCP ICS creation that

would not have occurred in such Year if the DCP Contribution had been determined based on Lake Mead's actual January 1 elevation rather than a projection will instead remain available as the type of ICS originally created to the extent such volumes are the result of conservation actions consistent with ICS Exhibits to the 2007 Lower Colorado River Basin Intentionally Created Surplus Agreement (2007 ICS Agreement).

4. ***DCP Contribution Deficiency***

   Notwithstanding Section III.D.2, above, in the event that any final Water Accounting Report indicates that a State's DCP Contribution in any prior Year is less than the exact amount required in Section III.B above, the State shall make DCP Contributions in the amount of the deficiency during the Year in which such final Water Accounting Report is published in addition to any DCP Contributions required by Section III.B for that Year.

5. ***Cumulative DCP Contributions Accounting***

   If at any time the cumulative volume of DCP Contributions is greater than or equal to 3.35 million acre-feet of contributions from Arizona, California and Nevada, the Secretary shall separately account for all such volumes in excess of 3.35 million acre-feet, and such volumes shall be available for delivery pursuant to Section III.F notwithstanding Section IV.C, below.

F. <u>Delivery of DCP ICS</u>

1. ***Annual Limits***

   Delivery of DCP ICS pursuant to this Section III.F shall be combined with and count toward the limitations on delivery of ICS set forth in Section XI.G.3.C.4 of the 2007 Interim Guidelines.

2. ***Effective Period of Annual limits***

   The annual limitations on delivery set forth in Section III.F.1 above shall remain in effect through December 31, 2057, for any amounts remaining to be recovered on December 31, 2026.

3. ***Delivery of DCP ICS through December 31, 2026; repayment obligations***

   a. <u>Lake Mead January 1 elevation projected to be above 1,110 feet</u>

      In Years when Lake Mead's January 1 elevation is projected to be above 1,110 feet, the States of Arizona, California and Nevada shall be permitted to schedule delivery of DCP ICS without any repayment obligation.

   b. <u>Lake Mead January 1 elevation projected to be above 1,025 feet and at or below 1,110 feet</u>

In Years when Lake Mead's January 1 elevation is projected to be above 1,025 feet and at or below 1,110 feet, the States of Arizona, California and Nevada shall be permitted to have short-term access to existing DCP ICS (adjusted to reflect any borrowing or repayment pursuant to this Section) as reflected in the most recent final Water Accounting Report, with the obligation that such volumes be repaid by December 31 of the Year following delivery. If there are insufficient repayments, the Secretary shall make appropriate delivery schedule adjustments consistent with Section III.D.2 to ensure that DCP ICS delivered pursuant to this Section III.F.3.b is fully and timely repaid.

c. Lake Mead January 1 elevation projected to be at or below 1,025 feet

In Years when Lake Mead's January 1 elevation is projected to be at or below 1,025 feet, delivery of DCP ICS shall not be permitted.

4. ***Delivery of DCP ICS from January 1, 2027, through December 31, 2057; repayment obligations***

a. Lake Mead January 1 elevation projected to be above 1,110 feet

In Years when Lake Mead's January 1 elevation is projected to be above 1,110 feet, the States of Arizona, California and Nevada shall be permitted to schedule delivery of DCP ICS without any repayment obligation.

b. Lake Mead January 1 elevation projected to be above 1,075 feet and at or below 1,110 feet

In Years when Lake Mead's January 1 elevation is projected to be above 1,075 feet and at or below 1,110 feet, the States of Arizona, California and Nevada may schedule delivery of DCP ICS and shall, not later than the fourth Year following the Year in which the water was delivered, elect one of the following repayment options:

1. Repay such quantities before or during the fifth Year following the Year in which the water was delivered; or

2. Instruct the Secretary to reduce the DCP ICS Account from which the water was borrowed by an additional twenty percent (20%) of the amount borrowed before or during the fifth Year following the Year the water was delivered.

In the event there is insufficient DCP ICS repaid under option 1, or insufficient DCP ICS in the DCP ICS Account to make the adjustment contemplated in option 2, the Secretary shall make appropriate delivery schedule adjustments consistent with Section III.D.2 to ensure that DCP ICS delivered pursuant to this Section III.F.4.b is fully repaid by the end of the fifth Year following the Year in which it was delivered.

c. Lake Mead January 1 elevation projected to be above 1,025 feet and at or below 1,075 feet

In Years when Lake Mead's January 1 elevation is projected to be above 1,025 feet and at or below 1,075 feet, the States of Arizona, California and Nevada shall be permitted to have short-term access to existing DCP ICS (adjusted to reflect any borrowing or repayment pursuant to this Section) as reflected in the most recent final Water Accounting Report, with the obligation to repay any such quantities by December 31 of the Year following the Year in which the water was delivered. If there are insufficient repayments, the Secretary shall make appropriate delivery schedule adjustments consistent with Section III.D.2 to ensure that DCP ICS delivered pursuant to this Section III.F.4.c is fully and timely repaid.

d. Lake Mead January 1 elevation projected to be at or below 1,025 feet

In Years when Lake Mead's January 1 elevation is projected to be at or below 1,025 feet, delivery of DCP ICS shall not be permitted.

5. ***No System Assessment for DCP ICS Repayments***

There shall be no system assessment on the creation of any ICS for conversion to DCP ICS as repayment pursuant to Sections III.F.3.b, III.F.4.b, and III.F.4.c above.

IV. Incentives for Enhanced Creation of Intentionally Created Surplus Benefitting Lake Mead

A. Provisions Relating to System and Evaporation Assessments

1. ***Total assessed losses – existing Extraordinary Conservation ICS***

The amount of Extraordinary Conservation ICS available as of the Effective Date in each ICS Account maintained by the Secretary is provided in the table attached hereto as Appendix "1" and incorporated herein by this reference. On the Effective Date, the Secretary shall assess additional losses as necessary such that the total assessed losses (including both system assessments and evaporation) for all ICS set forth in Appendix 1 is ten percent (10%). Through December 31, 2026, these volumes shall not be subject to any further assessments for system or evaporation losses.

2. ***Total assessed losses – Extraordinary Conservation, Tributary, or Imported ICS created after the Effective Date***

There shall be a one-time deduction of ten percent (10%) of any Extraordinary Conservation, Tributary, or Imported ICS created after the Effective Date. Through December 31, 2026, these volumes shall not be subject to any further assessments for system or evaporation losses.

3. ***Replenishment Incentive***

   Notwithstanding Section IV.A.2 above, there shall be no assessment made upon the creation of Extraordinary Conservation ICS to the extent of the volume of Extraordinary Conservation ICS delivered to the same Contractor in the preceding Year.

4. ***Total assessed losses – System Efficiency ICS***

   System assessments and evaporation losses for System Efficiency projects created after the Effective Date, if any, will be determined on a case-by-case basis through exhibits to forbearance agreements.

B. Creation Limits Flexibility Consultation

If one but not all of the Lower Division States reaches its annual Extraordinary Conservation ICS creation limit as set forth in Section XI.G.3.B.4 of the 2007 Interim Guidelines, and if there remains a desire to create additional amounts of Extraordinary Conservation ICS, the Secretary, provided there is no objection by any Lower Division State not reaching its annual limit, may authorize additional Extraordinary Conservation ICS creation within the total annual limitation set forth in Section XI.G.3.B.4 of the 2007 Interim Guidelines (625,000 acre-feet).

C. Storage Limits Augmentation and Sharing

The maximum total amount of Extraordinary Conservation ICS, Binational ICS, and DCP ICS that may be accumulated in all ICS Accounts, at any time, is limited to the following:

1. 1.7 million acre-feet for California Contractors

2. 500 thousand acre-feet for Nevada Contractors

3. 500 thousand acre-feet for Arizona Contractors

Notwithstanding the foregoing, the appropriate Parties in Arizona, California, and Nevada may agree that one or more Lower Division State may make available ICS accumulation space within the limits set forth above to another Lower Division State for use by such state's Contractors; provided (i) such agreements are in writing; and (ii) drafts of such agreements are provided to the Secretary and the Upper Division States prior to any required board authorizations.

D. Delivery of ICS

In addition to any Developed Shortage Supply, Extraordinary Conservation ICS, Binational ICS, and System Efficiency ICS shall be available for delivery as follows:

1. ***Lake Mead January 1 elevation projected to be above 1,045 feet and at or below 1,075 feet***

In Years when Lake Mead's January 1 elevation is projected to be above 1,045 feet and at or below 1,075 feet, the combined total delivery of Extraordinary Conservation ICS, Binational ICS, System Efficiency ICS and DCP ICS shall be limited to the quantities set forth in Section XI.G.3.C.4 of the 2007 Interim Guidelines.

2. ***Lake Mead January 1 elevation projected to be above 1,025 feet and at or below 1,045 feet***

   In Years when Lake Mead's January 1 elevation is projected to be above 1,025 feet and at or below 1,045 feet, the combined total delivery of Extraordinary Conservation ICS, Binational ICS, System Efficiency ICS, DCP ICS, and the conversion of ICS to DCP ICS shall be limited to the quantities identified in Section XI.G.3.C.4 of the 2007 Interim Guidelines.

3. ***Lake Mead January 1 elevation projected to be at or below 1,025 feet***

   In Years when Lake Mead's January 1 elevation is projected to be at or below 1,025 feet, delivery of Extraordinary Conservation ICS, Binational ICS and System Efficiency ICS shall not be permitted.

E. Additional Cooperative Measures

1. Notwithstanding anything to the contrary within 43 C.F.R. Part 414 (Offstream Storage Of Colorado River Water And Development And Release Of Intentionally Created Unused Apportionment In The Lower Division States), interstate water transactions shall be permitted in Years when Lake Mead's January 1 elevation is projected to be above 1,045 feet.

2. On or before the Effective Date, the party to the LB DCP Agreement from Arizona, the parties to the LB DCP Agreement from California, and the parties to the LB DCP Agreement from Nevada shall identify, for their respective States, such new or modified ICS Exhibits from that State that are necessary to implement the provisions of the LB DCP Agreement and these LBOps, and the Secretary shall approve and implement such new or modified ICS Exhibits. After the Effective Date, any new or modified ICS Exhibits shall only become effective pursuant to the provisions of the 2007 ICS Agreement.

3. The Secretary shall only deliver ICS created under the ICS Exhibits approved pursuant to Section IV.E.2 to the Contractor that created such ICS, or as otherwise directed by that Contractor subject to the 2007 Interim Guidelines.

4. The Secretary shall ensure that no other Contractor may claim as surplus under Article II.B of the Consolidated Decree any ICS created under the ICS Exhibits approved pursuant to Section IV.E.2.

F. Additional Intentional Conservation

The Secretary shall not release pursuant to Article II of the Consolidated Decree water intentionally conserved by a conservation program within a Lower Division State in which the Secretary participates and that results in reductions in consumptive use.

V. LBOps Implementation

A. AOP Process

The Secretary shall utilize the AOP process to determine operations under these LBOps in addition to those pursuant to the 2007 Interim Guidelines.

B. Consultation

The Secretary shall consult with the Lower Division States on the implementation of these LBOps in circumstances including, but not limited to, the following:

1. If any 24-Month Study for the most probable inflows projects that Lake Mead will reach an elevation of 1,075 feet or below by December 31 of the Year in which such study is produced, the Secretary and Lower Division States shall meet and consult at least twice annually to review current and projected operations and associated projected Lake Mead elevations, and to consider whether any adjustments to projected Lower Basin operations are prudent or necessary.

2. A position has not been formally expressed regarding a goal of operationally protecting a specific elevation of Lake Mead. In light of the foregoing, and for their individual and mutual benefit, the parties to the Lower Basin Drought Contingency Plan Agreement have formally acknowledged their commitment to individual and collective action in the Lower Basin to avoid and protect against the potential for the elevation of Lake Mead to decline to elevations below 1,020 feet. Such parties made these commitments recognizing the individual and collective harm that could occur from prolonged interruptions in Lower Basin water supplies from the Colorado River and will implement the commitment identified in this paragraph as follows:

   If any 24-Month Study for the minimum probable inflows projects that Lake Mead elevations will be at or below 1,030 feet anytime within the succeeding two Years, the Secretary and Lower Division States shall consult and determine what additional measures will be taken by the Secretary and Lower Division States to avoid and protect against the potential for Lake Mead to decline below 1,020 feet.

C. Term

These LBOps will remain in effect from the Effective Date through the Interim Period except for those matters for which longer periods are specified.

After the Interim Period the provisions for the accounting and delivery of DCP ICS shall remain in effect through December 31, 2057, as set forth in Section III.E.2.d, III.F.2 and III.F.4 above.

The provisions for the delivery of ICS set forth in Section IV.D above shall remain in effect through December 31, 2036, for any ICS remaining in an ICS Account on December 31, 2026.

The period during which Tributary Conservation ICS, Imported ICS, or Developed Shortage Supply may be created and delivered are unchanged from the 2007 Interim Guidelines.

Appendix 1 to the Lower Basin Drought Contingency Operations ("LBOps")

Table of Extraordinary Conservation (EC) ICS available as of the Effective Date, in accordance with Section IV.A.1 of the LBOps.

Values are in Acre-Feet

State/Contractor	Amount of EC ICS Available As Of the Effective Date [1]	Assessment Applied Pursuant to Section IV.A.1 of the LBOps [2]	Amount of EC ICS Available On the Effective Date, After Assessment
Arizona			
Central Arizona Water Conservation District [3]	171,590	-	171,590
California			
The Metropolitan Water District of Southern California [4]	387,136	(7,548)	379,588
Nevada			
Southern Nevada Water Authority [5]	173,093	(1,217)	171,876

Footnotes:

[1]This column reflects ICS created through calendar year 2017, with system and evaporation assessments, consistent with the 2007 Interim Guidelines, applied through calendar year 2018.

[2]Additional system losses assessed by the Secretary to ensure that total assessed losses for all ICS set forth in Appendix 1 is at least 10%.

[3]EC ICS credited to CAWCD includes the conservation referenced in Footnote 8 of Table 11 in the 2015 Water Accounting Report and Footnote 7 of Table 11 in the 2016 Water Accounting Report.

[4]EC ICS credited to MWD includes the conservation referenced in Footnote 8 of Table 11 of the 2017 Water Accounting Report.

[5]EC ICS credited to SNWA includes the conservation referenced in Footnote 10 of Table 11 of the 2017 Water Accounting Report.

EC ICS Creation 2015 through 2017

In addition to the conservation created through the ICS Exhibits approved with the 2007 ICS Agreement, ICS was created in 2015, 2016 and 2017 in accordance with the following ICS Exhibits:

Exhibit Q - Central Arizona Water Conservation District – Funded Intentionally Created Surplus Water Supply from Conserved Water

Exhibit W - Southern Nevada Water Authority - Municipal Conservation and Offstream Storage Intentionally Created Surplus Project for implementation under the Lower Basin Drought Contingency Plan

EC ICS Creation in 2018

In addition to the conservation created through the ICS Exhibits approved with the 2007 ICS Agreement, ICS will be created in 2018 in accordance with the following ICS Exhibits:

Exhibit R - Central Arizona Water Conservation District - Demand Reduction Incentives to Create Extraordinary Conservation Intentionally Created Surplus

Exhibit W - Southern Nevada Water Authority - Municipal Conservation and Offstream Storage Intentionally Created Surplus Project for implementation under the Lower Basin Drought Contingency Plan

EC ICS Creation From 2019 Through Term of LBOps

In addition to the conservation created through the ICS Exhibits approved with the 2007 ICS Agreement, additional ICS Exhibits will be used to create EC ICS from 2019 through the term of the LBOps pursuant to Section IV.E.2 of the LBOps and the 2007 Interim Guidelines.

Attachment C to the Agreement Concerning Colorado River Drought Contingency Management and Operations ("Companion Agreement")

PROPOSED LEGISLATION

SEC. __ COLORADO RIVER BASIN DROUGHT CONTINGENCY PLANS

(a) Notwithstanding any other provision of law directly related to operation of the applicable Colorado River System reservoirs, upon execution of the March 19, 2019 versions of the Agreement Concerning Colorado River Drought Contingency Management and Operations and the agreements attached thereto as Attachments A1, A2 and B, by all of the non-federal parties thereto, the Secretary of the Interior shall, without delay, execute such agreements, and is directed and authorized to carry out the provisions of such agreements and operate applicable Colorado River System reservoirs accordingly; provided, that nothing in this section shall be construed or interpreted as precedent for the litigation of, or as altering, affecting, or being deemed as a congressional determination regarding, the water rights of the United States, any Indian tribe, band, or community, any state or political subdivision or district thereof, or any person.

Rationale for Proposed Legislation

This proposed legislation was developed by the seven Basin States, and water contractors within those states, working on a consensus-basis. Much like the Drought Contingency Plans (DCPs) themselves, it is the product of collaboration and compromise. The DCPs, when authorized by this proposed legislation, will enhance existing water management tools in order to address a looming water crisis in the Colorado River Basin. The seven-year term of the DCPs will also provide the opportunity for the Basin States, federal government and other key stakeholders to collaborate on a longer-term set of sustainable solutions for managing the Colorado River.

The proposed legislation is tailored to authorize and require the Secretary of the Interior to carry out the provisions of the DCPs, and to limit the Secretary's authority to that which is necessary to carry out the flexible operational tools the states have developed. This legislation would grant no additional authority to the Secretary beyond congressional direction to implement the DCPs upon their execution by the parties. Furthermore, the proposed legislation and the DCP agreements themselves reserve and recognize each party's existing rights and do not impact the rights of other water users or stakeholders with interests in the Colorado River.

To achieve compromise with regard to the proposed legislation, the Basin States, and water contractors within those states, had to assure that the DCPs respect the existing Law of the River, while providing for the flexibility found within the DCPs. For example, certain provisions of the Lower Basin DCP are inconsistent with some Parties'

interpretations of the Law of the River. Additionally, the Upper Basin DCP authorizes the ability to store water under an Upper Basin Demand Management Program should one be developed. To allow for full implementation of the DCPs, the proposed legislation requires their implementation notwithstanding any other provision of law directly related to operation of the applicable Colorado River System reservoirs. Accordingly, through that provision, existing laws will not preclude DCP implementation.

The Parties developed the DCPs with a clear recognition of the environmental considerations associated with operating the applicable Colorado River System reservoirs. For example, the impacts of additional reduced deliveries of water consistent with what will occur under the Lower Basin DCP were previously evaluated as part of the Environmental Impact Statement associated with the 2007 Record of Decision on "Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead," prepared pursuant to the National Environmental Policy Act (NEPA). Furthermore, the Upper Basin's Drought Response Operations Agreement expressly provides that the action contemplated to protect target elevations at Lake Powell will operate within the framework of existing NEPA and Endangered Species Act (ESA) compliance, and other listed federal and state laws and regulations, for each of the Initial Units of the Colorado River Storage Project (CRSP) Act. Additionally, the Authorization for Demand Management Storage and the creation of a process to potentially use such storage as an element of the Upper Basin DCP do not affect existing NEPA or ESA compliance for the CRSP Act Initial Units.

The DCPs must also be implemented without delay. Immediate implementation of the Lower Basin DCP would benefit the Lower Basin. The new operational flexibility created by the Lower Basin DCP will enable Lower Basin water contractors to put Intentionally Created Surplus into storage this year, rather than needing to draw it down, helping preserve the level of Lake Mead. Determinations regarding reservoir operations for water year 2020 will be made in August 2019. Timely implementation is important with regards to contributions by the Republic of Mexico. Those contributions are conditioned upon the effectiveness of the Lower Basin DCP and will require several months to effectuate, potentially precluding Mexico's participation in water year 2020 if the DCPs are not implemented by April 22, 2019. Moreover, implementation cannot begin until the agreements have been executed by all parties, which is predicated upon securing congressional legislation. It is the position of the Basin States, and water contractors within those states, that immediately enacting the proposed federal legislation and implementing the DCPs reduces the probability that Lakes Powell and Mead will decline to critically low elevations – which could occur as early as 2021 – and promotes both domestic and binational participation in drought contingency planning.