

MWD Demo  
Project

AGREEMENT BETWEEN  
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT AND  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
FOR A DEMONSTRATION PROJECT ON UNDERGROUND STORAGE  
OF COLORADO RIVER WATER

1. PREAMBLE: This Agreement is made this 15th day of October, 1992, by and between the Central Arizona Water Conservation District ("CAWCD"), and The Metropolitan Water District of Southern California ("MWD"), hereinafter referred to as the Parties, to create and implement a demonstration project for the underground storage of Colorado River water supplies.

2. EXPLANATORY RECITALS:

2.1 The Parties hereto desire to optimize the use of waters of the Colorado River within the United States.

2.2 Consistent with such optimization of use, the Parties desire to store Colorado River water to reduce the possibility of losing the water through flood control releases or additional releases in advance of flood control releases which exceed the beneficial use within the United States.

2.3 In order to test the storage concept, the Parties desire to implement a demonstration project for the underground storage in Arizona of Colorado River water with a maximum amount of 30,000 acre-feet ("af") of storage in 1992, and up to a maximum total amount of 100,000 af for the test.

3. DEFINITIONS:

3.1 "CAP" shall mean the Central Arizona Project.

3.2 "IS&R Project" shall mean Indirect Groundwater Storage and Recovery Project, as authorized under Arizona Revised Statutes §§ 45-851, et seq.

3.3 "US&R Project" shall mean Underground Storage and Recovery Project, as authorized under Arizona Revised Statutes §§ 45-801, et seq.

3.4 "Interstate Underground Storage Credits" shall mean stored water credits which will be developed by CAWCD and used pursuant to this Agreement.

3.5 "Interstate Underground Storage Account" shall mean an account of Interstate Underground Storage Credits.

3.6 "Secretary" shall mean the Secretary of the Interior of the United States (U.S.) or his duly authorized representative.

4. ESTABLISHMENT OF AN INTERSTATE UNDERGROUND STORAGE ACCOUNT:

CAWCD shall establish an Interstate Underground Storage Account ("IUS Account") for keeping track of Interstate Underground Storage Credits ("IUS Credits") created pursuant to this Agreement. The key elements of this account will be the total number of IUS Credits available, and the total number of IUS Credits assigned to MWD. CAWCD will maintain the account and provide MWD with an annual report by March 15 of each year showing the IUS Credits available, the total number of IUS Credits assigned to MWD, the previous year's credits to the account, and the previous year's debits from the account. In

addition to the annual reports, CAWCD will furnish MWD with current status reports upon written request.

5. CREDITS TO THE INTERSTATE UNDERGROUND STORAGE ACCOUNT: CAWCD will obtain, at its own expense, at least 30,000 af of stored water credits annually pursuant to one or more IS&R Project and/or US&R Project Permits issued by the Arizona Department of Water Resources ("ADWR") to CAWCD if such quantity of water is available from the Colorado River and is not needed to meet CAP demands. The Parties to this Agreement do not warrant the quality of Colorado River water diverted. CAWCD will designate up to 30,000 af annually of these stored water credits as IUS Credits and place them in an IUS Account created under this Agreement. Said 30,000 af may be increased as mutually agreed upon by MWD and CAWCD. The stored water credits reflected in the IUS Account shall not exceed 100,000 af and will remain in CAWCD's name with respect to ADWR's records. Any amount in excess of the initial amount of 30,000 af in 1992 will be subject to acceptance by MWD and a mutual determination of the cost under paragraph 6.

6. FINANCIAL CONSIDERATIONS: In 1992, MWD will pay \$68.00 to CAWCD for every af of IS&R Project stored water credits contributed by CAWCD to the IUS Account. Such payment reflects the costs of operation and maintenance (\$32 per af), and pumping energy (\$36 per af) for delivery of water through the CAP system. For every af of US&R Project stored water credits contributed by CAWCD to the IUS

Account, MWD will pay \$80.00 to CAWCD. Such payment reflects the CAP delivery costs above and the costs for operation, maintenance, and development of a US&R project (\$12 per af). CAWCD retains the right to decide whether IS&R Project or US&R Project stored water credits will be made available for transfer into the IUS Account. The price to be paid by MWD to CAWCD for IUS Credits assigned to the IUS Account by CAWCD after 1992 will be determined annually by mutual agreement of the Parties. Payments will be due from MWD within thirty (30) days of receipt of invoices from CAWCD which identify the amount of incremental IUS Credits which have been established in the IUS Account since the last previous billing.

7. DEBITS TO THE INTERSTATE UNDERGROUND STORAGE ACCOUNT:

7.1 In the event that in any year during the period when this Agreement is in effect the Secretary declares a shortage on the Colorado River resulting in at least 300,000 af less than 7.5 million af of Colorado River water being available for consumptive use in the Lower Division States (Arizona, California, and Nevada), then the quantity of IUS Credits available in the IUS Account which have not been assigned to MWD pursuant to paragraph 7.2, may be reduced at CAWCD's discretion, after consultation with MWD, by the amount of shortage apportioned to CAWCD up to the total available IUS Credits.

7.2 In the event that in any year during the period when this Agreement is in effect the Secretary declares that Colorado River water must be released from Lake Mead in accordance with the then current U.S. Army Corps of Engineers' flood control regulations

for Hoover Dam, or makes additional releases in advance of flood control releases or declares a surplus, then IUS Credits shall be assigned to MWD. The number of IUS Credits to be assigned to MWD shall be the lesser of: (1) the total volume of Colorado River water delivered to Mexico in excess of the minimum amount that would have been delivered pursuant to the Treaty between the U.S. and Mexico ("Utilization of Waters of the Colorado and Tijuana Rivers and the Rio Grande") absent such flood or surplus conditions (i.e., the amount of water in excess of 1.5 maf, plus water bypassed to Mexico in accordance with Minute 242 of the International Boundary and Water Commission, United States and Mexico, through the bypass drain, plus regulatory waste), or (2) the total IUS Credits available. Correspondingly, the quantity of IUS Credits available for assignment to MWD in the IUS Account will be reduced by this same amount.

8. MWD RECOVERY MECHANISM:

8.1 Recovery of IUS Credits assigned to MWD shall be by exchange through diversion of Colorado River water.

8.2 At any time there are IUS Credits assigned to MWD in the IUS Account, MWD may request those IUS Credits subject to the following conditions:

8.2.1 MWD may request the IUS Credits only in years during which the quantity of Colorado River water available for consumptive use in Arizona, as declared by the Secretary, is at least 2,800,000 acre-feet.

8.2.2 Unless mutually agreed otherwise, on or before

October 1 of any year, MWD must submit in writing to CAWCD a demand schedule indicating the amounts of IUS Credits desired by MWD during each month of the following year.

8.2.3 For each af of water recovered by MWD, the quantity of IUS Credits assigned to MWD in the IUS Account will be reduced by 110% of the amount so recovered<sup>1</sup>, with the cumulative amount for any month rounded to the nearest af.

8.2.4 The maximum monthly quantity of water which MWD can recover is 15,000 af.

8.3 In any year in which there are MWD IUS Credits in the IUS Account, CAWCD agrees (1) to limit its diversion of Colorado River water to that amount allocated to CAWCD by the Secretary minus the total annual quantity of IUS Credits recovered by MWD pursuant to paragraph 8.2 of this Agreement, and (2) to permit MWD's diversion of Colorado River water to be as high as that amount allocated to MWD by the Secretary plus the total annual quantity of IUS Credits recoverable by MWD pursuant to paragraph 8.2 of this Agreement.

8.4 MWD's right to recover water under this paragraph 8 shall not be limited by conditions related to CAWCD's recovery of water stored underground. Such conditions may include, but are not limited to, the location of CAWCD's underground storage projects, the time and rate of recovery under such projects, the volume recovered, and the facilities used for recovery.

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<sup>1</sup> This formula is necessary to account for the Arizona state law requirement to leave part of the stored water underground.

9. TERM OF AGREEMENT: This Agreement shall become effective on the date first written above. IUS Credits to the IUS Account described under paragraph 5 of this Agreement will continue through December 31, 1996, unless such storage activities are terminated by either Party with 14 days' advance written notice to the other Party. Except as provided by paragraph 18.1, this Agreement will terminate when the available IUS Credits for assignment and IUS Credits assigned to MWD equal zero.

10. NO DEDICATION OF FACILITIES: Any undertaking by one Party to the other Party under any provision of this Agreement shall not constitute the dedication of such Party of the system or any portion thereof to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of its obligations hereunder.

11. NON-WAIVER: None of the provisions of this Agreement shall be considered waived by either Party except when such waiver is given in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or their relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

12. NO THIRD-PARTY RIGHTS: The Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established hereunder.

13. UNCONTROLLABLE FORCES: Neither Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" shall mean anything caused by the act of the other or the act of any agent of the other; action of the elements, excluding severe and/or prolonged low-flow conditions on the Colorado River; the act or threat of any public enemy; Acts of God; court order; war and war defense conditions; and strikes or other labor disputes; or other causes beyond its control. Each Party shall use reasonable diligence to avoid any such delay or default and to resume performance under this Agreement as promptly as possible after any such delay or default. However, nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force shall exercise due diligence to remove such inability with all reasonable dispatch.

14. GOVERNING LAW: This Agreement shall be interpreted, governed by and construed under the laws of the States of Arizona, California,

and Nevada and any applicable federal law.

15. BINDING EFFECT; ASSIGNMENT: This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. No Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party hereto.

16. NOTICES:

16.1 All notices, requests, demands and other communications authorized or required under this Agreement shall be in writing and shall be deemed to have been received either when delivered or on the fifth business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, whichever is earlier, addressed as set forth below:

(i) If to CAWCD:

The Central Arizona Water Conservation District  
Attention: General Manager  
23636 North 7th Street  
Phoenix, Arizona 85024

(ii) If to MWD:

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

16.2 Each Party may change the addressee or address to which communications or copies are to be sent by giving notice of such change of addressee or address in conformity with the provision of paragraph 16.1 for the giving of notice.

17. DISCLAIMER: Nothing in this Agreement is intended to interpret or modify the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 994, 59 Stat. 1219), the United States/Mexico Agreement in Minute No. 242 of the International Boundary and Water Commission of August 30, 1973 (Treaty Series 7708; 24 UST 1968), the Decree entered by the Supreme Court of the United States in Arizona v California et al. (376 U.S. 340), as supplemented and amended, the Boulder Canyon Project Act (43 U.S.C. 617), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501), the Colorado River Basin Salinity Control Act (88 Stat. 266; 43 U.S.C. 1951), or the Hoover Power Plant Act of 1984 (98 Stat. 1333).

18. APPROVALS AND RESERVATION OF RIGHT TO PARTICIPATE:

18.1 In the event the U.S., acting for this purpose by the Secretary, the ADWR, the Colorado River Board of California, the Colorado River Commission of Nevada, the California Agricultural

Agencies (Palo Verde Irrigation District, Imperial Irrigation District, and Coachella Valley Water District), and the Southern Nevada Water Authority (SNWA) refuse to approve this Agreement within six months of the effective date of this Agreement, unless any such approval is mutually waived in writing by the Parties, then this Agreement shall terminate and CAWCD shall pay at that time all funds received to the then-existing participants in the demonstration project according to their respective percentages of participation. The funds shall be returned with interest earned from the date of receipt at a rate one percent less than that earned by CAWCD's general funds over the same period of time.

18.2 It is intended by the Parties that approvals set forth in paragraph 18.1 be in accordance with the following:

18.2.1 The ADWR, agreeing not to object to any diversions made pursuant to paragraph 8 of this Agreement.

18.2.2 The Colorado River Board of California, agreeing not to object to any diversions made pursuant to paragraph 8 of this Agreement.

18.2.3 The Colorado River Commission of Nevada, agreeing not to object to diversions made pursuant to paragraph 8 of this Agreement.

18.2.4 The U.S., agreeing to deliver to MWD the water made available pursuant to paragraph 8 of this Agreement.

18.2.5 The California agricultural Agencies, agreeing not to use, or object to, the water made available to MWD pursuant to paragraph 8 of this Agreement and agreeing not to use, or object to,

the water made available to SNWA pursuant to paragraph 8 of this Agreement if SNWA should become a participant in the demonstration project.

18.2.6 The SNWA, agreeing not to use, or object to, the water made available to MWD pursuant to paragraph 8 of this Agreement, and agreeing not to use, or object to, the water made available to the Agricultural Agencies pursuant to paragraph 8 of this Agreement if the Agricultural Agencies should become a participant in the demonstration project.

18.3 For a period of six months from the effective date of this Agreement, SNWA and/or the California Agricultural Agencies, will have the opportunity to participate in the demonstration project with the same rights and obligations of MWD under this Agreement. SNWA's participation shall be limited to a maximum of 50 percent of the then-existing stored water credits in the IUS Account and 50 percent of all stored water credits thereafter placed in the IUS Account by CAWCD. The California Agricultural Agencies' participation shall be in accordance with percentages agreed in California up to a maximum of 25 percent of the then-existing stored water credits in the IUS Account and 25 percent of all stored water credits thereafter placed in the IUS Account by CAWCD. In the event the SNWA and/or the California Agricultural Agencies elect to participate in the storage of the initial 30,000 af, said entity(ies) shall inform MWD and CAWCD in writing of the respective percentage share elected and shall pay MWD within 30 days of that election date the funds necessary to reimburse MWD for its costs. Such payment

shall be equal to the respective percentage share of the water stored in the IUS Account multiplied by the amount billed MWD by CAWCD plus interest from the date of payment initially by MWD to the date of payment by the respective party electing to participate at a rate equal to that earned by MWD's general funds over the same period of time.

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

THE CENTRAL ARIZONA WATER  
CONSERVATION DISTRICT

By: *Jack Williams*  
President

ATTEST: *Betty Furr*  
Secretary

APPROVED AS TO FORM:

BY: *Douglas R. Pruitt*  
General Counsel  
Central Arizona Water  
Conservation District

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

BY: *Carl Boronoff*  
General Manager

ATTEST: *Dorinda Carroll*  
Executive Secretary

APPROVED AS TO FORM:

BY: *Shirley L. Tachiki*  
General Counsel  
Metropolitan Water District  
of Southern California

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