

ORIGINAL

Agreement No. 08-XX-30-W0534

AGREEMENT BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND
THE YUMA MESA IRRIGATION AND DRAINAGE DISTRICT TO
IMPLEMENT A DEMONSTRATION PROGRAM FOR SYSTEM CONSERVATION
OF COLORADO RIVER WATER

This Agreement to Implement a Demonstration Program for System Conservation of Colorado River Water (Agreement) is entered into this 7th day of October 2008, by and between the Yuma Mesa Irrigation and Drainage District (YMIDD) and the United States Bureau of Reclamation (Reclamation), hereinafter referred to singularly as "party" or collectively as "parties."

RECITALS

1. Reclamation adopted a Policy Establishing a Demonstration Program for System Conservation of Colorado River Water (Policy) on May 26, 2006, which policy was extended on September 16, 2008, pursuant to authority granted by the Boulder Canyon Project Act of 1928 and the Colorado River Basin Salinity Control Act of 1974, all as amended.
2. The purpose of the Policy is to establish a program of voluntary agreements with eligible holders of Colorado River water entitlements to conserve a portion of their approved annual use or diversion of Colorado River water. This voluntary conservation would be one means for providing an interim, supplemental source of water to replace the drainage water from the Wellton-Mohawk Irrigation and Drainage District that is bypassed to the Cienega de Santa Clara and the reject stream from operation of the Yuma Desalting Plant.
3. YMIDD holds an entitlement to Colorado River water as provided by Contract No. 14-06-W-102, as amended, between the United States and YMIDD.
4. YMIDD desires to accommodate and assist Reclamation in implementing its Policy through a voluntary agreement for fallowing irrigated farmland in exchange for financial consideration.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, Reclamation and YMIDD agree as follows:

AGREEMENT

1. Reclamation agrees to pay YMIDD, pursuant to the payment provisions of paragraph 8, \$120.00 for each acre-foot of Colorado River water conserved by YMIDD (on a consumptive use basis) through land fallowing. Reclamation and YMIDD agree that payments under this Agreement will be based on 7.0 acre-feet of consumptive use per acre. In the event of any future agreement between Reclamation and YMIDD under the system conservation program, such quantity will be reviewed and adjusted, as appropriate, for that future agreement.
2. YMIDD agrees to fallow for a 1-year period approximately 500 acres of irrigated farmland that would have otherwise been irrigated during the period from October 1, 2008,

through December 31, 2009. Exhibit A to this Agreement is a description and a map or maps showing the lands that will be fallowed. YMIDD warrants that such lands have a recent history of irrigation, having been irrigated during 3 out of the 5 years preceding 2008, and that water use on such lands would be included in YMIDD's 2008/2009 water order (if not fallowed) under Part 417 of Title 43 of the Code of Federal Regulations.

3. (a) Reclamation's total payment for the conserved water is based on reduction in consumptive use of Colorado River water by YMIDD and shall be calculated by multiplying the number of acres fallowed times 7.0 acre-feet per acre times \$120 per acre-foot; provided, however, that the payment for any acre of land that is fallowed for less than 1 year shall be pro-rated based on the amount of the estimated amount of water conserved by such acre. The estimated amount of water conserved by such acre shall be determined by the following calculation: 7 acre-feet per acre times (1 minus (the quantity of water that is projected to be diverted by such acre during the remainder of the year divided by 12 acre-feet per acre)). No payment shall be made under this Agreement for any lands fallowed under the agreement between Reclamation and YMIDD dated February 4, 2008, for the period October 1, 2008, through December 31, 2008, as YMIDD has already received payment for such fallowing.

(b) It is noted that most of the water returned to the Colorado River system as a result of YMIDD's diversion, which plays a key role in determining the amount of Colorado River water consumptively used (diversion minus return flows) by YMIDD, results from drainage pumping operations controlled by Reclamation and not by YMIDD. Reclamation agrees the Yuma Mesa Division of the Gila Project's losses/accruals to storage is set at 51,150 acre-feet for 2009 under the Final Administrative Determination of Appropriate and Equitable Shares of the Colorado River Water Entitlement for the Mesa Division of the Gila Project dated December 27, 2001. YMIDD is aware the State of Arizona will forbear the use of up to 25,000 acre-feet of return flow credits under ADWR Transport Permit Number 31-001, entitled "Permit to Transport Groundwater Withdrawn from the Yuma Groundwater Basin" which will also affect YMIDD's consumptive use. Given that YMIDD does not control these key factors that determine its consumptive use of Colorado River water but that YMIDD does control the amount of water diverted, the water limitation elements of this Agreement have been structured to focus on the quantity of water diverted by YMIDD. YMIDD agrees to limit its diversion in 2009 at Imperial Dam to **202,000** acre-feet (208,000 acre-feet minus (500 fallowed acres times 12 acre-feet per acre) in accordance with its letter to Reclamation dated September 6, 2008. YMIDD shall be allowed to revise its water order to adjust for lands released from the program prior to December 31, 2009.

(c) For 2008, YMIDD's approved diversion quantity as of the date of this Agreement is 206,343 acre-feet. To the extent that lands are fallowed for the period October 1, 2008, through December 31, 2008, and such lands are not covered under the agreement between Reclamation and the YMIDD dated February 4, 2008, YMIDD agrees to submit a revised water order for the remainder of 2008 that reflects such fallowing based on current uses for that time period.

4. YMIDD agrees to forbear and limit its diversion of Colorado River water in 2008 and 2009 to the quantity of water contained in the approved original or revised water order; provided, however, that YMIDD may, under changed conditions, emergency, or hardship, and within its Colorado River water entitlement, submit for Reclamation's approval an increase in YMIDD's water diversion estimate. Any such increase in YMIDD's water order is subject to Part 417 of

Title 43 of the Code of Federal Regulations. In the event that Reclamation's final Colorado River Accounting and Water Use Accounting Report for 2008 or 2009 indicates that YMIDD did not meet this diversion limitation, as such amount may be adjusted as a result of a changed condition, emergency, or hardship, any amount of water diverted by YMIDD in excess of such limitation (and for which payment has been made by Reclamation) shall be subject to payback by YMIDD under the Inadvertent Overrun and Payback Policy. In that event, YMIDD agrees in accordance with such policy to submit a water order that provides for payback of such quantity in the time frames provided for under the policy and to undertake extraordinary conservation measures, approved by Reclamation, to pay back the water to the Colorado River system.

5. The amount of water conserved by land fallowing under this Agreement shall be determined by verification procedures used by Reclamation. During the fallowing program, YMIDD shall ensure that water is not delivered to the fallowed fields. Reclamation shall conduct at least three field inspections to verify that the lands are being fallowed. In addition, Reclamation may use satellite imagery and other techniques to verify the land fallowing. YMIDD agrees to provide Reclamation or its contractors with full access to lands within YMIDD for purposes of verifying land fallowing and administering the terms of this Agreement. Reclamation shall arrange for the field inspections, in advance, by contacting the Watermaster for YMIDD.

6. Subject to the terms of this Agreement, the total payment to be made by Reclamation to YMIDD under this Agreement is \$420,000. Reclamation has established cost authority no. S50-1292-6YDP-ALT-00-1-1-3 from which the funds will be expended and has named Ms. Amber Cunningham as the Contracting Officer Technical Representative (COTR) for this Agreement.

7. On or before February 1, 2009, YMIDD will deliver to Reclamation's COTR a written invoice that includes the cost authority number identified in paragraph 6, for one-half of the amount due to YMIDD in accordance with paragraph 6. The written invoice shall be accompanied by a statement that YMIDD has satisfied the conditions of the Agreement necessary to fallow approximately 500 acres of land.

8. Reclamation shall make the initial payment of one-half of the amount due to YMIDD under paragraph 7 by March 1, 2009, based on a field inspection conducted by Reclamation during February 2009. The remaining balance of the amount due to YMIDD shall be paid in two installments. The first such installment of 25 percent shall be paid, upon receipt of an invoice from YMIDD, on or around September 1, 2009, based on a field inspection conducted by Reclamation during August 2009. The last installment of 25 percent shall be paid, upon receipt of an invoice from YMIDD, on or around December 1, based on a field inspection conducted by Reclamation during November 2009. Reclamation shall provide YMIDD with a written report of the field inspections.

9. Costs associated with the land fallowing program, including but not limited to dust or weed control, or any other similar costs, shall be borne by YMIDD or program landowners.

10. YMIDD shall ensure it is registered in the Central Contractor Registration (CCR) database (4QQB4) prior to initial payment, during performance, and through final payment. YMIDD is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from Reclamation's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, YMIDD is required to review

and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate, and complete in order for Reclamation to make payments to YMIDD under this Agreement. For payment purposes, Reclamation also requires YMIDD's Data Universal Numbering System (DUNS) number, which is **045810686**.

11. In the event that Reclamation determines that the voluntary land fallowing is not implemented as required in this Agreement, Reclamation shall only make payment for the number of acres actually fallowed; provided, however, that if YMIDD or Reclamation discovers that any lands covered by Exhibit A inappropriately received irrigation water during the term of this Agreement, YMIDD may substitute other fallowed acres that are acceptable to Reclamation without a reduction in payment other than for the period of time that the lands received water inappropriately. Exhibit A shall be modified to reflect any substitution of lands.

12. It is intended that any future system conservation program with YMIDD be implemented on an October 1 to December 31 schedule. Therefore, in order to transition from a calendar year basis, certain irrigated lands may be rotated in September- December 2009 from lands identified in Exhibit A to other lands. YMIDD will provide to Reclamation the location of both the lands being removed from the program and the irrigated lands being entered into the program to ensure that the agreed-to acreage is continued to be fallowed for 365 consecutive days and Exhibit A shall be modified accordingly.

13. Reclamation will reserve funding for this agreement as part of the fiscal year 2009 federal appropriations.

14. In accordance with Section II.A.8 of the Policy, Reclamation shall be responsible to obtain any further consents or forbearances required to ensure that the Colorado River water that is conserved by fallowing under this Agreement remains in Colorado River system storage to serve the purposes of this Agreement. As a condition precedent to execution of this Agreement, Reclamation has obtained necessary assurances from the junior water user in the State of Arizona, the Central Arizona Water Conservation District, indicating that it will not order the water conserved under the Agreement.

15. The Colorado River water conserved by fallowing under this Agreement and forborne by YMIDD will not be charged against YMIDD's use of Colorado River water or charged against the apportionment of the State of Arizona.

16. Except as otherwise provided in this Agreement, YMIDD hereby releases and agrees that it will indemnify and hold harmless the United States and its officers, agents, employees, and successors or assigns, from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising by reason of the conservation of Colorado River water by fallowing under this Agreement and the forbearance by YMIDD under this Agreement. The United States shall be liable only for negligence on the part of its officers and employees in accordance with the Federal Tort Claims Act, as amended.

17. None of the provisions of this Agreement shall be considered waived, except when such waiver is given in writing. The failure of a party to this Agreement to insist in any one or more instances upon strict performance of any of the provisions, or to take advantage of any of its rights, hereunder shall not be construed as a waiver of any such provisions or that party's

relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

18. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to enforce the terms of this Agreement in any person or entity that is not a party.

19. The parties do not intend that any right or remedy given to a party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching party fails to exercise or delays in exercising any such right or remedy, the non-breaching party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this Agreement or otherwise.

20. Each party to this Agreement represents that the person executing on behalf of such party has full power and authority to do so, and that his/her signature is legally sufficient to bind the party on whose behalf he/she is signing.

21. This Agreement constitutes a valid and binding Agreement of each party, enforceable against each party in accordance with its terms. This Agreement is and will be binding upon and will inure to the benefit of the parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

22. This Agreement may be supplemented, amended, or modified only by the written Agreement of the parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by the parties.

23. Any notice, demand, or request shall be deemed properly served, given, or made if delivered in person; sent by registered or certified mail, postage prepaid; or overnight delivery, charges prepaid or charged to the sender's account: to the persons in the positions executing this Agreement.

24. All information and data obtained or developed with the performance of duties mentioned in this Agreement shall be available upon request to a party, subject to the provisions of the Freedom of Information Act or other applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.

25. The expenditure or advance of any money or the performance of any obligation by the United States under this Agreement shall be contingent upon the appropriation or allotment of funds. No monetary liability shall accrue to the United States in case funds are not appropriated or allocated.

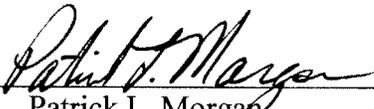
26. No member of or Delegate to Congress, Resident Commissioner, or official of YMIDD shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

27. This Agreement is entered into under the Reclamation Act of 1902 as supplemented and amended and, in particular, Section 5 of the Boulder Canyon Project Act and contracts entered

into thereunder. Nothing in this Agreement diminishes or abrogates the authority of the Secretary of the Interior under applicable federal law, regulations, or the Consolidated Decree.

28. This Agreement shall become effective upon the date of its execution by both parties and upon YMIDD providing the initial Exhibit A to Reclamation. Once effective, this Agreement will remain in effect until all terms and conditions are satisfied.

YUMA MESA IRRIGATION AND DRAINAGE DISTRICT

By: 
Patrick L. Morgan
Manager

Date: 9/26/08

UNITED STATES BUREAU OF RECLAMATION

By: 
Lorri Gray
Regional Director

Date: 10/7/08

YUMA MESA IRRIGATION AND DRAINAGE DISTRICT

COUNTY 14½ AND 4th AVENUE EXT. • 14329 SO. 4th AVENUE EXT.

YUMA, ARIZONA 85365

(928) 726-4353 • FAX (928) 726-9618

BOARD OF DIRECTORS
JAMES WEDDLE, PRESIDENT
ELDON PAULSEN
BRUCE EASTERDAY

PATRICK L. MORGAN
MANAGER-SECRETARY
A. JAMES CLARK
ATTORNEY
(928) 783-6233

September 24, 2008

RESOLUTION # 08-009

BE IT RESOLVED by the Board of Directors of the YUMA MESA IRRIGATION AND DRAINAGE DISTRICT that they agree and approve the signing of the AGREEMENT with United States Bureau of Reclamation, to establish and fund the Yuma Mesa Irrigation and Drainage District System Conservation in the months between October 1, 2008 and December 2009, for the conservation of Colorado River Water.

BE IT FURTHER RESOLVED that DISTRICT MANAGER, PATRICK L. MORGAN, is hereby authorized to sign the aforementioned Agreement on behalf of the District in the basic form presented to the District Board at the bill paying meeting of 9/24/08. Allowing for minor changes with verbal approval of Board President James Weddle.

CERTIFICATE

I, JAMES WEDDLE, the duly appointed PRESIDENT OF THE BOARD OF DIRECTORS, OF THE YUMA MESA IRRIGATION AND DRAINAGE DISTRICT, do hereby certify that the foregoing Resolution was authorized by the Board of Directors of the YUMA MESA IRRIGATION AND DRAINAGE DISTRICT on January 16, 2008, at the Special Board Meeting duly posted and called by the Board of Directors. Those Directors being present: Eldon Paulsen, Jim Weddle, Bruce Easterday.



JAMES WEDDLE
BOARD PRESIDENT