

**SECOND AMENDED
OPERATIONAL AGREEMENT**

among

The Metropolitan Water District of Southern California

and the

Colorado River Commission of Nevada

and the

Southern Nevada Water Authority

This Second Amended Operational Agreement is made this 24th day of October, 2012 (Effective Date), among The Metropolitan Water District of Southern California (MWD), the Southern Nevada Water Authority (SNWA), and the Colorado River Commission of Nevada (CRCN), (collectively referred to herein as the "Parties" or individually as "Party").

Recitals

- A. On October 27, 2004, MWD, CRCN, SNWA, and the United States entered into a Storage and Interstate Release Agreement (SIRA) under 43 C.F.R. Part 414. The stated purpose of the SIRA is to establish an enduring cooperative relationship between MWD and SNWA under the Secretary of the Interior's (Secretary) Offstream Storage Regulations that will benefit both MWD and SNWA in the management of their respective water supplies and in the management of the Colorado River apportionments of their respective states during an era of limited water supplies. To this end, the SIRA provides a specific program for the storage by MWD of unused Nevada apportionment of Colorado River water in California and the subsequent recovery of such water by MWD and the development of Intentionally Created Unused Apportionment (ICUA) for SNWA.
- B. On October 21, 2004, MWD, CRCN, and SNWA entered into an Operational Agreement that provides additional terms and conditions, consistent with the SIRA, governing operational and financial matters relating to the Storage of Colorado River water and the creation of ICUA. The parties executed a First Amended Operational Agreement amending the original Operational Agreement on August 11, 2009. The parties are entering into this Second Amended Operational Agreement to further provide terms and conditions for implementation of Storage of Colorado River water and creation of ICUA in accordance with the SIRA.

- C. This Second Amended Operational Agreement addresses, among other things, the storage of ICUA for 2012-2016. SNWA does not intend to request development and delivery of ICUA prior to 2018, although nothing contained herein prohibits SNWA from making such a request.

Article 1

Definitions

1.1 Definitions: For purposes of this Operational Agreement, terms that are defined in Article I of the Consolidated Decree in *Arizona v. California*, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

- 1.1.1 “Agreement” shall mean this Second Amended Operational Agreement.
- 1.1.2 “Consolidated Decree” shall mean the Consolidated Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 126 S.Ct. 1543, 547 U.S. 150 (2006), as supplemented or amended.
- 1.1.3 “ICUA” or “Intentionally Created Unused Apportionment” shall have the same meaning as that term is defined in 43 C.F.R. §414.2.
- 1.1.4 “SNWA Interstate Account” shall mean the storage account established by MWD under the terms of this Agreement.
- 1.1.5 “Year” shall mean calendar year.

Article 2

Storage, Development, and Release of ICUA

2.1 Storage of Water:

- 2.1.1 Each Year through 2026 the CRCN, SNWA, and MWD will meet in person or via conference call at a mutually agreeable time and location to discuss the quantity of water available for storage in that Year. Additional discussions may be scheduled as needed. Based upon these discussions, MWD and SNWA will determine the quantity of water to be stored for that Year, and may amend such quantities during the Year as needed. MWD will use its best efforts to divert and store, without harming MWD’s own operational needs, the total quantity of Colorado

River water SNWA and MWD have agreed to store that Year as specified in SNWA's availability notice under Section 3.1 of the SIRA, subject to the release of such quantity to MWD by the Secretary pursuant to the SIRA. If in any Year through 2026, MWD concludes it cannot divert and store the full quantity of water that it agreed to store in that Year, MWD shall, within 30 days of the date of SNWA's availability notice, notify SNWA and the CRCN of the reasons therefore and the quantity that MWD can divert and store. On request of SNWA and CRCN, the Parties shall promptly confer so that MWD can notify the Secretary of the quantity of water it will store within the time specified by the SIRA.

2.1.2 The CRCN, SNWA, and MWD further agree that the total quantity of Colorado River water to be stored during the Years 2012 through 2016 shall be a minimum of 200,000 acre-feet and a maximum of 400,000 acre-feet. SNWA and MWD shall determine the annual amount of water to be stored to meet the cumulative range of storage set forth in this Section 2.1.2 through the process described in Section 2.1.1, above. The annual volume of water to be stored shall not exceed the limitation set forth in Section 7.1.1 of the SIRA. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of the water stored during the Years 2012 through 2016 pursuant to this Section 2.1.2.

2.2 Development and Release of ICUA:

2.2.1 Availability of ICUA: MWD specifically agrees to develop ICUA for release to SNWA in accordance with the SIRA during the Term of this Agreement regardless of the Lake Mead Operating Condition¹, including specifically any Shortage Condition declared by the Secretary, during any Year in which SNWA requests the development and release of ICUA available to SNWA under the terms of this Agreement and the SIRA. The annual volume of ICUA to be developed shall not exceed the limitation set forth in Section 7.1.2 of the SIRA.

2.2.2 Quantity of ICUA Available for Development: Section 4.3 of the SIRA limits the amount of ICUA that may be developed and released to SNWA in any Year to "the lesser of (i) 30,000 acre-feet, unless MWD agrees to a larger amount in such Year, or (ii) the previous end-of-Year balance in the SNWA Interstate

¹ As set forth in Section 2 of the December 2007 Interim Guidelines for the Operation of Lake Powell and Lake Mead.

Account.” If SNWA desires the creation of more than 30,000 acre-feet of ICUA in any Year as to which there will be sufficient credits in the SNWA Storage Account, by August 15 of the previous Year SNWA shall notify MWD of such fact and of the amount of ICUA that SNWA requests be created. The Parties shall promptly confer on such request, and if MWD agrees to develop ICUA in an amount greater than 30,000 acre-feet for the specified Year, SNWA shall include such increased amount in its request under Section 4.4 of the SIRA for the development of ICUA and its request under Section 5.1 of the SIRA for the release of ICUA, and MWD shall include such amount in its ICUA Certification under Section 4.5 of the SIRA.

2.2.3 Development and Release of Water Stored in 2012 through 2016: Water stored by MWD in the SNWA Interstate Account during the period 2012 through 2016 shall be available for the development and release to SNWA as ICUA pursuant to Sections 2.2.1 and 2.2.2, above, notwithstanding the restrictions on development and release of ICUA provided in Section 2.2.4, 2.2.5 and 2.2.6, below. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of the development and release of ICUA based on water stored during the Years 2012 through 2016 pursuant to Section 2.1.2, above.

2.2.4 Development and Release through 2019: Subject specifically to the provisions of Section 2.2.6 of this Agreement, SNWA agrees to forgo requesting development and release of ICUA from the SNWA Interstate Account through the Year 2019, unless SNWA confers with MWD, and MWD agrees to the development and release of ICUA during a specific Year prior to the Year 2019.

2.2.5 Development and Release During 2020 and 2021: Subject specifically to the provisions of Section 2.2.6 of this Agreement, during Years 2020 and 2021 SNWA agrees to limit requesting development and release of ICUA from the SNWA Interstate Account to an amount equal to the lesser of (i) the difference between 300,000 acre-feet and the amount apportioned for use within Nevada by the Secretary pursuant to Section 2(D)(1)(a), 2(D)(1)(b), or 2(D)(1)(c) of the *December 2007 Interim Guidelines for the Operation of Lake Powell and Lake Mead* whichever is applicable, or (ii) the previous end-of-Year balance in the SNWA Interstate Account. During the Years 2020 and 2021, MWD agrees to develop and release ICUA as requested by SNWA in accordance with this Section 2.2.5.

2.2.6 Development and Release During Specific Shortage Conditions: Notwithstanding anything to the contrary contained in this

Agreement, in any Year in which the Secretary apportions less than 280,000 acre-feet of Colorado River water for use in Nevada, exclusive of any ICUA, Intentionally Created Surplus or Developed Shortage Supply available to SNWA in that Year, then, at SNWA's request, MWD shall develop and release one (1) acre-foot of ICUA from the SNWA Interstate Account to SNWA for each acre-foot less than 280,000 acre-feet apportioned by the Secretary for use in Nevada in that Year, provided, however, that in no event shall SNWA be entitled to the development and release of more than the lesser of: 50,000 acre-feet in one Year; or the total previous end-of-Year balance in the SNWA Interstate Account.

2.2.7 Operation of Section 4.3 of the SIRA: For purposes of Section 4.3 of the SIRA, MWD expressly agrees that an amount of ICUA greater than 30,000 acre-feet will be developed and released to SNWA if necessary to meet the terms of Section 2.2.6 of this Agreement.

Article 3

Term of Agreement

3.1 This Agreement shall be effective as of the Effective Date and shall terminate (i) upon recovery of all SNWA credits stored under this Agreement and both Parties mutually agree in writing to terminate this Agreement, or (ii) concurrently with the termination of the SIRA, which ever comes first.

Article 4

Costs and Losses

4.1 MWD shall be responsible for all costs associated with (i) the diversion, conveyance, and storage of water pursuant to the SIRA; and (ii) all costs associated with the recovery of water stored pursuant to the SIRA and the development of ICUA with respect to such water.

4.2 Water stored by MWD during the Years 2012 through 2016 pursuant to Section 2.1.2, above, shall be charged with a loss equal to one-third (1/3) of the amount of water stored in the Year in which the water is delivered to MWD for storage. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of this loss charged to water stored during the Years 2012 through 2016. The loss shall not be charged against any other water stored in the SNWA Interstate Account.

4.3 SNWA shall be responsible for all costs associated with its diversion of ICUA released by the Secretary pursuant to the SIRA.

4.4 SNWA shall be responsible for all federal charges associated with evaluating, processing, and executing the SIRA.

Article 5
Other Provisions

5.1 Uncontrollable Forces: No Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than the obligation of SNWA to pay federal charges) when a failure of performance shall be due to uncontrollable forces. The term “uncontrollable force” shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure or threat of failure of facilities, flood, earthquake, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain necessary authorizations or approvals from, any federal governmental agency or authority, which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

5.2 In the event that any term or condition of this Agreement is determined to be invalid, illegal, or otherwise unenforceable, such determination shall have no effect on the other terms and conditions, which shall continue to be binding upon the Parties hereto. Lack of enforcement of any term or condition of this Agreement shall not be construed as a waiver of any rights conferred by such term or condition. Unless otherwise agreed to in writing, the failure of any Party to require the performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.

5.3 This Agreement shall be binding on the Parties and their respective successors and assigns.

5.4 Any person signing this Agreement represents that he/she 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.

5.5 This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties, except as set forth herein, whether written or oral. This Agreement can be amended only in writing signed by the Parties.

5.6 Time is of the essence of this Agreement.

5.7 Each Party agrees to perform any further acts and to execute and deliver any documents, which may be reasonably necessary to carry out the provisions of this Agreement.

5.8 The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

5.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to another counterpart identical thereto, except for having additional signature pages executed by another Party to this Agreement attached thereto.

5.10 This Agreement is made solely for the benefit of the Parties hereto and respective successors and assigns. No other person or entity may have or acquire any right by virtue of this Agreement.

Article 6

Notices and Requests

6.1 All notices and requests required and allowed under the terms of this Agreement may be given in the following manner:

6.2 Notices and requests shall be in writing and shall be mailed first class postage paid to the Parties at the following addresses:

MWD

General Manager
The Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, California 90054-0153
Fax: (213) 217-6655

CRCN

Executive Director
Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Fax: 702-486-2695

SNWA

General Manager
Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153
Fax: 702-822-8429

6.3 Any Party may, at any time, change its mailing address by notice to the other Parties.

6.4 Notices and requests may be given by facsimile and shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

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In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document.

ATTEST:

COLORADO RIVER COMMISSION
OF NEVADA

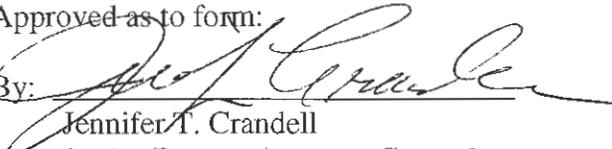
By: 
Jayne Harkins, Executive Director

By: 
George F. Ogilvie III, Chair

Date: 10/4/12

Date: 10/4/12

Approved as to form:

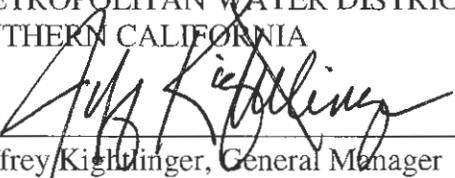
By: 
Jennifer T. Crandell
Senior Deputy Attorney General

Date: 10/2/12

ATTEST:

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

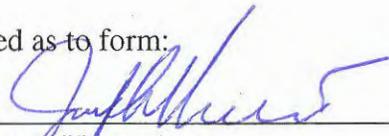
By: 
Executive Secretary

By: 
Jeffrey Kightlinger, General Manager

Date: 10/24/12

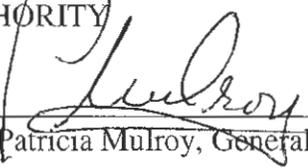
Date: 10-22-12

Approved as to form:

By: 
Joseph Vanderhorst
Chief Deputy General Counsel

Date: October 9, 2012

SOUTHERN NEVADA WATER
AUTHORITY

By: 
Patricia Mulroy, General Manager

Date: 10-2-12

Approved as to form:

By: 
Gregory J. Walch, General Counsel

Date: 10/2/12