

MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

May 18, 2006

Mr. Robert W. Johnson
Regional Director, Bureau of Reclamation
Lower Colorado Region
P.O. Box 61470
Boulder City, Nevada 89006-1470

Dear Mr. Johnson:

Agreement between Metropolitan and Reclamation to Implement a
Demonstration Program to Create Intentionally Created Surplus Water

The Metropolitan Water District of Southern California (Metropolitan) desires to enter into an agreement with the United States Bureau of Reclamation (Reclamation) to create 50,000 acre-feet of Intentionally Created Surplus (ICS) Water in 2006 as a demonstration program. In addition, Metropolitan will submit a separate request for creation of ICS Water in 2007 as further described below. "ICS Water" in this Letter Agreement means a quantity of surplus water that the Secretary of the Interior (Secretary) may make available for release as ICS Water under Article II(B)(2) of the Consolidated Decree of the Supreme Court of the United States in *Arizona v. California*, 547 U.S. ____ (2006) (Consolidated Decree).

Metropolitan is an entitlement holder eligible to participate in the ICS demonstration program by virtue of its Supplementary Contract for Delivery of Water dated September 28, 1931 with the Secretary. Prior to development of ICS Water in 2006, all of Metropolitan's outstanding inadvertent overrun obligations to the Colorado River system will be paid back in accordance with Metropolitan's 2006 plan for payback of overrun obligations (submitted under separate cover).

Metropolitan will create ICS Water in 2006 through water extraordinarily conserved by the Palo Verde Irrigation District Land Management, Crop Rotation and Water Supply Program. Metropolitan and the Palo Verde Irrigation District (PVID) have entered into a Forbearance and Fallowing Program Agreement dated August 18, 2004 to implement this program. Metropolitan has entered into fallowing agreements with the owners of land within PVID. Metropolitan and PVID have confirmed that these lands have historically received delivery of Priority 1 water and Reclamation has recognized the program as a form of extraordinary conservation.

But for Metropolitan's agreement with the owners to fallow these lands, they would have received delivery of Priority 1 water in 2006. It is estimated that the fallowing paid for by Metropolitan under the program will result in a reduction in the consumptive use of Priority 1

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water within PVID sufficient to support the ICS Water requested by Metropolitan. Reclamation has in place a process to verify the land being fallowed by the program.

The Forbearance and Fallowing Program Agreement provides that PVID will not divert, take delivery of, or authorize the diversion or use of the water conserved through the program. By letter dated October 10, 2003, the Imperial Irrigation District and Coachella Valley Water District consented to the diversion and consumptive use by Metropolitan of the water conserved by this program.

Metropolitan is entitled to the diversion and consumptive use of all of the water conserved by the fallowing program. However, Metropolitan proposes that in 2006 an amount equal to 50,000 acre-feet of this conserved water be recognized in Lake Mead as ICS Water. Metropolitan hereby accepts the following terms and conditions for the creation of this ICS Water:

1. Creation of ICS Water would augment Colorado River system reservoir storage. ICS Water would be considered in the development of the monthly Operation Plan for Colorado River System Reservoirs in the year the ICS Water is created and in future Annual Operating Plans, assisting in avoiding or delaying the declaration of shortage or reducing the severity of a future shortage in the Lower Colorado River Basin (Lower Basin).
2. Metropolitan will not divert any water that is available as partial domestic or full domestic surplus water in 2006.
3. Reclamation will verify that the Palo Verde Irrigation District Land Management, Crop Rotation and Water Supply Program is implemented in 2006 as indicated by Metropolitan. In the event that Reclamation determines that the fallowing program is not implemented as originally intended, the ICS Water shall only be created in an amount equal to the amount conserved by the actual fallowing and forbearance by Metropolitan and PVID. If Metropolitan exceeds its approved consumptive use request for 2006, the amount of water utilized in excess of the approved consumptive use request would be deducted from the agreed-upon amount of ICS Water to be created in that year by Metropolitan.
4. If conditions during the year change due to unforeseen circumstances, Metropolitan may request a modification of its water order to reduce the amount of ICS Water created during 2006 by Metropolitan. Reclamation agrees to approve modification of Metropolitan's water order within ten (10) business days of receipt of Metropolitan's request. Metropolitan shall not create ICS Water in 2006 in an amount greater than the 50,000 acre-feet authorized by this Letter Agreement.

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5. Reclamation shall seek the written concurrence from the Central Arizona Water Conservation District (Central Arizona Project) and Southern Nevada Water Authority that the water conserved in accordance with this Letter Agreement will not be ordered or demanded by those agencies. Upon receipt of such written concurrence, the water conserved for ICS Water would not be made available to a user in another Lower Division State pursuant to the Consolidated Decree during 2006 or future years. If Reclamation fails to receive written concurrence by October 1, 2006, from the Central Arizona Water Conservation District and Southern Nevada Water Authority, in a form reasonably acceptable to Reclamation and Metropolitan, then Reclamation agrees to notify Metropolitan and allow Metropolitan to schedule the delivery of the conserved water that would have been recognized in Lake Mead as ICS Water.
6. Metropolitan may consult with the Palo Verde Irrigation District, Imperial Irrigation District, and Coachella Valley Water District to ensure that the water conserved in accordance with this Letter Agreement will not be ordered or demanded by those agencies. In the event that Reclamation receives a water delivery order from one of these California agricultural agencies that would require the release of water from Lake Mead that would reduce the amount of ICS Water created, or to be created, by Metropolitan, Reclamation shall notify Metropolitan and allow Metropolitan ten (10) days to schedule the delivery of the conserved water that would have been recognized in Lake Mead as ICS Water.
7. The water that results in creation of the ICS Water will not at the time of creation of the ICS Water be charged against Metropolitan's use of Colorado River water or charged against the apportionment of the State of California. Metropolitan's and California's consumptive use of Colorado River water in 2006 will be reduced below what would have been consumptively used absent the creation of ICS Water in accordance with this Letter Agreement.
8. At the time the ICS Water is created, Reclamation will dedicate 5 percent of the ICS Water created to storage in the Colorado River system reservoirs to provide a collective water supply benefit for entitlement holders receiving water from Colorado River system reservoir storage. Reclamation will deduct 5 percent from the ICS Water created to determine the remaining ICS Water available.
9. The remaining ICS Water available will be subject to an annual evaporation loss of 2.8 percent during each calendar year beginning with 2007 for ICS Water created in 2006. The evaporation loss shall be applied annually to the end-of-year balance of ICS Water until no ICS Water remains in Lake Mead. Notwithstanding the above, no evaporation loss shall be assessed during a calendar year in which the Secretary has declared a shortage

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condition. Reclamation reserves the right to review and adjust the annual evaporation loss percentage, after consultations with the Lower Division States, based on data or other factors that indicate an adjustment is needed; *provided* that in no event would the adjusted annual evaporative loss percentage exceed 3 percent.

10. If, in future years, Reclamation releases water for flood control purposes, ICS Water will be the first water to be released. In such years, ICS Water will be reduced on a pro-rata basis among all holders of ICS Water on an acre-foot by acre-foot basis until no ICS Water remains.
11. In future years, when determining the existence and establishing the volume of Quantified Surplus, Reclamation shall not consider the volume of ICS Water that will be available.
12. Reclamation, in its water accounting report prepared under Article V of the Consolidated Decree for calendar year 2006 and afterwards, agrees to include a supplemental accounting section that reports the creation of ICS Water under the ICS demonstration program. Reclamation will report the amount of ICS Water created by Metropolitan, reduced by: any overruns incurred by Metropolitan; the amount of ICS Water dedicated to provide a collective water supply benefit for entitlement holders receiving water from Colorado River system reservoir storage; the amount of ICS Water evaporated; and the amount of ICS Water released for flood control purposes. The sum of the above calculation results in the amount of ICS Water remaining from that created by Metropolitan pursuant to this Letter Agreement.
13. Metropolitan 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 creation of ICS Water by Metropolitan under this Letter 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.
14. None of the provisions of this Letter Agreement shall be considered waived, except when such waiver is given in writing. The failure of a party to this Letter 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.

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15. This Letter 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.
16. The parties do not intend that any right or remedy given to a party on the breach of any provision under this Letter Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Letter 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 Letter Agreement or otherwise.
17. Each party to this Letter 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.
18. This Letter Agreement constitutes a valid and binding agreement of each party, enforceable against each party in accordance with its terms. This Letter 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.
19. This Letter 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.
20. 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 Letter Agreement.
21. All information and data obtained or developed with the performance of duties mentioned in this Letter 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.
22. The expenditure or advance of any money or the performance of any obligation by the United States under this Letter Agreement shall be contingent upon the appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allocated.

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23. The United States shall not charge Metropolitan any monetary sum for the creation or recognition of ICS Water in Lake Mead.
24. No member of or Delegate to Congress, Resident Commissioner, or official of Metropolitan shall benefit from this Letter Agreement other than as a water user or landowner in the same manner as other water users or landowners.

Metropolitan shall, either separately or in conjunction with other California agencies with rights to use Colorado River water, notify Reclamation by September 15, 2006 of the amount of ICS Water proposed for creation in 2007, up to a maximum of 200,000 acre-feet, and the method(s) of its creation. The extraordinary conservation measures that may be used for creation of ICS Water in 2007 include the Palo Verde Irrigation District Land Management, Crop Rotation and Water Supply Program (August 2004), the conservation measures implemented pursuant to the Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water (December 1988, as amended), the conservation measures implemented pursuant to the Agreement Between Imperial Irrigation District and San Diego County Water Authority for Transfer of Water (April 1998, as amended), the lining of the All-American and Coachella Canals in accordance with Title II of Public Law 100-675 (102 Stat. 4005), and other land following and extraordinary conservation programs that existed as of January 1, 2006. Reclamation, in consultation with Metropolitan and other interested Colorado River entitlement holders, will identify appropriate verification procedures to ensure the implementation of the extraordinary conservation measures proposed to create ICS Water. The creation of ICS Water in 2007 by Metropolitan shall be subject to the same terms and conditions set forth in this Letter Agreement, and the terms and conditions for other California agencies participating in the creation of ICS Water in 2007 shall be set forth by amendment to this Letter Agreement or separate written agreements with Reclamation.

This Letter Agreement does not address the recovery of ICS Water. Metropolitan understands and agrees that a subsequent agreement would be required to recover ICS Water created during the Demonstration Program and that ICS Water may be lost to Metropolitan absent such an agreement. Any decision to release or use the ICS Water must be contingent upon the completion of necessary environmental compliance, and appropriate forbearance agreements between and among the Lower Division States. Metropolitan may consult with Reclamation to explore possible arrangements for the release or use of the ICS Water.

This Letter 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 Letter Agreement diminishes or abrogates the authority of the Secretary under applicable federal law, regulations, or the Consolidated Decree.

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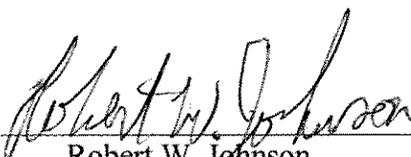
This Letter Agreement between Metropolitan and Reclamation shall become effective upon the date of its execution by Reclamation and will remain in effect until all terms and conditions are satisfied.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: 
Jeffrey Kightlinger
General Manager

Date: May 23, 2006

THE UNITED STATES BUREAU
OF RECLAMATION

By: 
Robert W. Johnson
Regional Director

Accepted and Agreed this 26 day of May, 2006.