

Third-Party Contribution Agreement

This Third-Party Contribution Agreement is entered into this 6th day of July, 2018, pursuant to Section 6.3 of Agreement No. 14-XX-30-W0574, the Agreement Among the United States of America, through the Department of the Interior, Bureau of Reclamation (“Reclamation”), the Central Arizona Water Conservation District (“CAWCD”), The Metropolitan Water District of Southern California (“MWD”), the City and County of Denver acting by and through its Board of Water Commissioners, a municipal corporation and political subdivision of the State of Colorado (“Denver Water” or “DW”), and the Southern Nevada Water Authority (“SNWA”), for a Pilot Program for Funding the Creation of Colorado River System Water Through Voluntary Water Conservation and Reductions in Use, as amended (“2014 Funding Agreement”). The signatories to the 2014 Funding Agreement are referred to herein collectively as the “2014 Parties,” and the 2014 Parties and the Third-Party Contributor individually as a “Party” and collectively as the “Parties.” Pursuant to the 2014 Funding Agreement, “Local Funding Agencies” means CAWCD, MWD, DW, and SNWA. “Local Funding Agency” means either CAWCD, MWD, DW, or SNWA as applicable for a particular agreement.

Third-Party Contributor: Environmental Defense Fund, Inc.

Additional Donor(s): Walton Family Foundation

1. Recitals.

- A. Section 6.3 of the 2014 Funding Agreement originally provided that entities other than the 2014 Parties, such as non-governmental organizations, could provide funding for System Conservation projects under the Pilot Program described in that agreement by providing money through a Local Funding Agency.
- B. Through Amendment No. 3 to the 2014 Funding Agreement, the 2014 Parties amended Section 6.3 to provide that entities other than the 2014 Parties may, under certain conditions, participate in both funding Pilot Program costs and review of System Conservation proposals.
- C. Amended Section 6.3 states that entities not a party to the 2014 Funding Agreement (“Third-Party Contributors”) “may, subject to the prior approval of all Parties hereto, participate in funding Pilot Program costs and review of System Conservation proposals by executing a Third-Party Contribution Agreement on the terms and in the form attached hereto as Exhibit A.” This Agreement serves as an Exhibit A agreement to Amendment No. 3 to the 2014 Funding Agreement.

Now, therefore, the 2014 Parties and the Third-Party Contributor agree as follows:

2. Term. This Agreement will terminate on December 31, 2018, but may be renewed for subsequent one calendar-year terms in accordance with the provisions herein.
3. Third-Party Contributions. For the term of calendar year 2018, and for any renewal term, the Third-Party Contributor agrees to provide commitments for funding (“Funding

Commitments”) for Program Costs no less than either: i) the amount of funding provided in that term by the individual Local Funding Agency which is contributing the least amount of funding; or, ii) a lesser amount agreed upon by the 2014 Parties and by the Third-Party Contributor. For the calendar year 2018 term, this Third-Party Contributor amount is \$1.0 million. For purposes of this Agreement, Funding Commitments for the Third-Party Contributor may consist of the aggregate of (i) contributions committed directly by the Third-Party Contributor for Program Costs (“Direct Contributions”) that are available for use during the applicable term (i.e. contributions can be provided prior to the applicable term but must be available for use within the applicable term); and (ii) contributions committed for Program Costs from other parties (“Additional Donors”) if such Additional Donors have provided written confirmation that the Third-Party Contributor may include the Additional Donor contributions in determining the Third-Party Contributor’s Funding Commitments for the purpose of this Agreement. Additional Donors and their contributions will be identified to the 2014 Parties. The 2014 Parties acknowledge that the Third-Party Contributor’s Funding Commitment is contingent upon the Third-Party Contributor’s internal approval for Direct Contributions and upon receipt of funding commitments from one or more Additional Donors, if applicable. Third-Party Contributor must provide evidence of its Funding Commitments for the initial calendar year term no later than ten days after the execution of this Agreement.

3.1 The Parties further acknowledge that, absent approval by the Upper Colorado River Commission (“UCRC”) and amendment of the May 13, 2015 Agreement to Facilitate the System Conservation Pilot Program in the Upper Colorado River Basin, as amended, between the UCRC and the 2014 Parties, the UCRC shall not be bound to the terms of this Agreement.

3.2 For the initial calendar year term and any renewal term, and subject to any internal approval described above, and upon a determination of the amount to be contributed for System Conservation projects, the Third-Party Contributor will provide funding (provided either directly as a Direct Contribution or indirectly as received through an agreement with one or more Additional Donors):

a. As invoiced by Reclamation for Lower Basin System Conservation projects or,

b. To the UCRC as invoiced for Upper Basin System Conservation projects, subject to the limitations in Paragraph 3.1 of this Agreement,

with payment due 30 days from the day the invoice was received by the Third-Party Contributor.

4. Review of Proposals.

4.1. The 2014 Parties will select projects pursuant to the 2014 Agreement, as amended, and the 2015 Agreement to Facilitate the System Conservation Pilot Program in the Upper Colorado River Basin between the UCRC and the 2014 Parties, as amended.

- 4.2. Subject to Paragraph 3.1 of this Agreement, the Third-Party Contributor may, at its election, participate in the review of all System Conservation proposals for the applicable term in accordance with Sections 5.5 and 5.6 of the 2014 Funding Agreement, as amended. If having elected to participate, a representative of the Third-Party Contributor and/or a designated alternate, could participate in the review of System Conservation proposals. For the term of calendar year 2018, the Third-Party Contributor has elected i) (X) to participate; or ii) () to not participate.
- 4.3. Pursuant to Section 5.6 of the 2014 Funding Agreement, as amended, the Agreement does not preclude any Third-Party Contributor from entering into unrelated contracts with Lower Basin Entitlement Holders or Upper Basin Colorado River Water Users to conserve water in accordance with applicable law or any other program or contract.
- 4.4. A Third-Party Contributor may choose not to fund a particular project. While Third-Party Contributors may participate in the review of System Conservation proposals subject to Paragraph 3.1 of this Agreement, in no event shall the dissent of a Third-Party Contributor alone prevent the execution of a System Conservation Implementation Agreement, as project selection is ultimately subject to the provisions of Section 5.6 of the 2014 Funding Agreement, as amended.

5. Renewal.

- 5.1. Renewal of this Agreement for any calendar year is subject to the unanimous approval of all of the 2014 Parties and the Third-Party Contributor. If there is unanimous support from the 2014 Parties to renew the agreement, then they will, by December 1, 2018 and by December 1 of any renewal term, provide to Third-Party Contributor written notice of the opportunity to renew. Such notice will set forth the amount of funding, if any, that each of the 2014 Parties will provide for System Conservation projects in the next succeeding calendar year.
 - 5.2. On or before December 31, 2018 for purposes of the first renewal or December 31 of any renewal term, or another date that is mutually agreed to in writing by the Third-Party Contributor and the 2014 Parties, the Third-Party Contributor must provide the 2014 Parties written notice of its Funding Commitment for the first or subsequent renewal term, respectively, and indicate whether it will participate in the review of System Conservation proposals. The notice of Funding Commitment will include the amount of Direct Contributions by the Third-Party Contributor and the identity and the amount of contributions to be provided by one or more Additional Donors, as applicable.
 - 5.3. Without written notice of the intent to renew, this Agreement will automatically expire, on January 1 of the year after the initial calendar year term or January 1 of the year following any renewal term.
6. Return of Funds. Upon the expiration of this Agreement, any unobligated funds contributed by Third-Party Contributor will be returned to Third-Party Contributor within sixty (60) days. If renewed, any unobligated funds of Third-Party Contributor may either be returned to

Third-Party Contributor or applied toward its required contribution for the renewal term, as specified by the invoicing.

7. General Provisions.

7.1. Representations and Warranties.

- a. Each Party has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this 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. Each Party warrants and represents that the individual executing this 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 Agreement. This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.
- b. Third-Party Contributor acknowledges and agrees that its provision of funding hereunder does not ensure the funding of any particular System Conservation project. No Party hereto makes any representation or warranty as to the effect of any System Conservation project, or the cumulative effect of System Conservation projects, on conservation efforts, lake levels, stream flows, the availability of water, or water quality.

7.2. Miscellaneous. This Agreement shall bind and inure to the benefit of the Parties and their successors and assigns. This 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 Agreement shall be in an appropriate Federal court. This document contains the entire agreement between the Parties with respect to the subject matter hereof. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any obligation waived, except by a writing signed by the Parties. No assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by all Parties. This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

7.4. Notices. All notices and requests required or allowed under the terms of this Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

Environmental Defense Fund, Inc.
257 Park Avenue South, Fl. 17
New York, NY 10010
Attn: Maxwell Fine, Attorney

Reclamation:

Regional Director
Lower Colorado Region
Attention: LC-1000
500 Fir Street
Boulder City, NV 89005

Regional Director
Upper Colorado Region
125 South State Street, Room 6107
Salt Lake City, UT 84138-1147

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, AZ 85024-3801
Attn: General Manager

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


Denver Water
1600 West 12th Avenue
Denver, CO 80204-3412
Attn: CEO/Manager

Southern Nevada Water Authority
1001 South Valley View Boulevard, MS #485
Las Vegas, NV 89153
Attn: General Manager

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

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

Approved as to form:

By: 
Kevin Moran
Senior Director, Western Water


**ENVIRONMENTAL DEFENSE
FUND, INC.**

By: 
Fred Krupp
President

Approved as to legal sufficiency:

By: _____
Robert Snow, Esq.
Attorney-Advisor

THE UNITED STATES OF AMERICA

By: 
Terrance J. Fulp, Ph. D.
Lower Colorado Regional Director
Bureau of Reclamation

By: _____
Brent Rhees, P.E.
Upper Colorado Regional Director
Bureau of Reclamation

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Approved as to form:

By: 
Jay M. Johnson
General Counsel

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: 
Theodore C. Cooke
General Manager

Approved as to form:

By: _____
Marcia L. Scully
General Counsel

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: _____
Jeffrey Kightlinger
General Manager

Approved as to form:

By: _____
Office of General Counsel

**CITY AND COUNTY OF DENVER,
ACTING BY AND THROUGH ITS
BOARD OF WATER
COMMISSIONERS**

By: _____
James S. Lochhead
CEO/Manager

Approved as to form:

By: _____
Gregory J. Walch
General Counsel

**SOUTHERN NEVADA WATER
AUTHORITY**

By: _____
John J. Entsminger
General Manager

Approved as to form:


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By: 

Marcia L. Scully
General Counsel

By: 

Jeffrey Kightlinger
General Manager

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By: _____
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By: *Daniel J. Arnold*
Office of General Counsel

By: *James S. Lochhead*
James S. Lochhead
CEO/Manager

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