



# IMPERIAL IRRIGATION DISTRICT

OPERATING HEADQUARTERS • P. O. BOX 937 • IMPERIAL, CALIFORNIA 92251

June 26, 2006

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

Re: Agreement between IID and Reclamation to Implement a  
Demonstration Program to Create Intentionally Created  
Surplus Water

|                                |          |           |
|--------------------------------|----------|-----------|
| BUREAU OF RECLAMATION RECEIVED |          |           |
| 6/29/06                        |          |           |
| SUPPLY DTD                     |          |           |
| DATE                           | INITIALS | COMP      |
|                                |          | 3000-1000 |
|                                |          | Actu      |
|                                |          |           |
|                                |          |           |
|                                |          |           |
|                                |          |           |
|                                |          |           |
| CLASSIFICATION                 |          |           |
| PROJECT                        |          |           |
| CONTRACT NO                    |          |           |
| HOLDER I.D.                    |          |           |
| KEYWORD                        |          |           |

Copy to LC-1000

Dear Mr. Johnson:

The Imperial Irrigation District (IID) desires to enter into an agreement with the United States Bureau of Reclamation (Reclamation) to create 5,000 acre-feet of Intentionally Created Surplus (ICS) Water in 2006 and up to 25,000 acre-feet of ICS Water in 2007, as a demonstration program. "ICS Water" in this Letter Agreement means a quantity of surplus water that the Secretary may make available for release under Article II(B)(2) of the Consolidated Decree of the Supreme Court of the United States in *Arizona v. California*, 547 US \_\_\_\_\_ (2006) (Consolidated Decree) as Intentionally Created Surplus. IID is an entitlement holder eligible to participate in the ICS Demonstration Program by virtue of its present perfected rights and its 1932 Water Delivery Contract.

IID will create ICS Water through water extraordinarily conserved by its On-Farm Fallowing Program, as more particularly described in IID's 2006 Extraordinary Conservation Plan, a copy of which is attached hereto marked Exhibit A. IID has entered into fallowing agreements with the owners of land within IID. IID has confirmed that these lands currently are, historically were, and otherwise would have been in production and irrigated in calendar 2006, and Reclamation has recognized the Program as a form of extraordinary conservation.

But for IID's agreement with the owners to fallow these lands, they would have received delivery of water in 2006 and 2007. It is estimated that the fallowing paid for by IID under the program will result in a reduction in the consumptive use of water within IID sufficient to support the ICS Water requested by IID. Reclamation has in place a process to verify the land being fallowed by the Program.

IID is entitled to the diversion and consumptive use of all of the water conserved by the fallowing program. However, IID proposes that an amount equal to 5,000 acre-feet in 2006, and up to 25,000 acre feet in 2007, of this conserved water be recognized in Lake

Mead as ICS Water. IID hereby accepts the following terms and conditions for the creation of this ICS Water:

1. Creation of ICS Water would augment Colorado River System 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. IID shall seek the written concurrence from the Palo Verde Irrigation District (PVID), the Coachella Valley Water District (CVWD), and The Metropolitan Water District of Southern California (MWD) for Reclamation that the water conserved in accordance with this Letter Agreement will not be ordered, demanded or diverted by these agencies. Upon receipt of such written concurrence by Reclamation, the water conserved for ICS Water would not be made available to PVID, CVWD or MWD. If Reclamation fails to receive written concurrence by October 1, 2006 from PVID, CVWD and MWD in a form reasonably acceptable to Reclamation and IID, then Reclamation agrees to notify IID and allow IID to either: 1) schedule the delivery of the conserved water that would have been recognized as water available in Lake Mead for diversion and consumptive use for IID in 2006 or 2007, or 2) use the conserved water as an early payback credit toward any existing IID payback obligation.
3. Reclamation will verify that the IID Fallowing Program is implemented in 2006 and 2007 as indicated by IID. 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 IID. If IID exceeds its approved consumptive use request for 2006 or future years, 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 or previously created by IID.
4. If conditions during the year change due to unforeseen circumstances, IID may request a modification of its water order to reduce the amount of ICS Water created during 2006 or 2007 by IID. Reclamation agrees to approve modification of IID's water order within ten (10) business days of receipt of IID's request. IID shall not create ICS Water in 2006 and 2007 in an amount greater than the 5,000 acre-feet and 25,000 acre-feet, respectively, authorized by this Letter Agreement. IID shall notify Reclamation by September 15, 2006 of the maximum amount of ICS Water IID shall create in 2007 and the method(s) of their creation.

5. Reclamation shall seek the written concurrence from Central Arizona Water Conservation District (CAP) and Southern Nevada Water Authority (SNWA) 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 Article II(B)(6) of the Consolidated Decree during 2006 or future years. If Reclamation fails to receive written concurrence by October 1, 2006, from CAP and SNWA, in a form reasonably acceptable to Reclamation and IID, then Reclamation agrees to notify IID and allow IID to either: 1) schedule the delivery of the conserved water that would have been recognized as water available in Lake Mead for diversion and consumptive use by IID in 2006 or 2007, or 2) use the conserved water as an early payback credit toward any existing IID payback obligation.
6. The water that results in creation of the ICS Water will not at the time of creation of the ICS Water be charged against IID's use of Colorado River water or charged against the apportionment of the State of California.
7. At the time the ICS Water is created, Reclamation will dedicate 5 percent of the ICS Water created to the Colorado River system to provide a water supply benefit to the system. Reclamation will deduct 5 percent from the ICS Water created to determine the remaining ICS Water created by IID.
8. ICS Water 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, and 2008 for ICS Water created in 2007. 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 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.
9. If, in future years, Reclamation releases water for flood control purposes, ICS Water would be the first water to be released. 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.
10. 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.

11. 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 IID, reduced by any overruns by IID, the amount of ICS Water dedicated to benefit the Colorado River system, 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 IID pursuant to this Letter Agreement.
12. IID 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 IID 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.
13. 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.
14. 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.
15. 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.

16. 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.
17. 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.
18. 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.
19. 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.
20. 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 FOIA or other applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.
21. 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.
22. The United States shall not charge IID any monetary sum for the creation or recognition of ICS Water in Lake Mead.
23. 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.

Reclamation, in consultation with IID 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 terms and conditions for other California agencies participating in the creation of ICS Water shall be set forth in separate written agreements with Reclamation.

This Letter Agreement does not address the recovery of ICS Water. IID 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 IID absent such an agreement. IID agrees that 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 Basin States. IID 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. This Letter Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97-293, 93 Stat. 1263).

This Letter Agreement between IID 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.

IMPERIAL IRRIGATION DISTRICT

By Charles J. Hosken  
Charles J. Hosken  
General Manager

Date: June 26, 2006

Accepted and Agreed this 6<sup>th</sup> day of July, 2006.

By Robert W. Johnson  
Robert W. Johnson  
Regional Director

## EXHIBIT A

### **IID 2006 EXTRAORDINARY CONSERVATION PLAN**

#### Purposes

- Creation of conserved water for transfer to San Diego County Water Authority ("SDCWA").
- Creation of conserved water to mitigate SDCWA transfer.
- Creation of conserved water for payback pursuant to Exhibit C of Colorado River Water Delivery Agreement ("CRWDA").
- Creation of Intentionally Created Surplus water.

#### Conservation Measure

- Following

#### Conservation Implementation

- Continuation of the IID 2005 Conservation Plan implementing procedures established by the IID Board of Directors for July 1, 2005 to June 30, 2006 following period and the July 1, 2006 to June 30, 2007 following period (see website backup information below).
- Fields selected for fallowing by random selection process if oversubscribed by eligible fields and reviewed for environmental impacts and administration costs.
- Gates will be locked; or if shared gate, delivery ditch blocked or other physical obstruction to water delivery created.
- Computerized crop codes modified to prevent water order from being processed for participating fields.
- IID staff will monitor fields to verify canal water is not being delivered.
- IID pays farmers for fallowing with a maximum payment for 6 AF/Acre, plus farmer pays for weed control and reimbursed through JPA for approved dust control measures; IID absorbs administrative costs.

#### Conservation: Estimated Savings, Rationale & Accounting

- The conserved water shall be used for the purposes set forth above.
- The estimated water yield for the calendar year 2006 is based on the 2005-2006 and 2006-2007 Water Conservation Programs. The estimated water yield for the

calendar year 2006 is 110,000 acre-feet measured at Imperial Dam. Taking into account delivery losses, this converts to approximately 95,000 acre-feet at farm headgates.

- Conserved water yield estimate for fallowed fields based on previous year's water history, 1995–2004 water history Baseline (minus high and low year) and reviewed for material trend deviation in recent years and crops grown during last three years.
- Fallowed field locations to be provided promptly after farmer contract execution deadline.
- Consumptive Use reduction accounting will be at IID diversion at Imperial Dam (Station 60) by the USBR taking into account total losses from field to Dam.
- BOR may verify 5% of randomly selected fallowed fields for locked gates or physical obstructions in Spring and Fall.
- Measurement Accuracy – assume Station 60 accuracy is comparable to All American Canal at Pilot Knob.
- Uncertainty of annual volume for the AAC at Pilot Knob has a 95% confidence of 2.0% (Clemmens and Wahlin, May 2004, p 25)<sup>1</sup>.

#### Relevant Backup Information

- See [http://www.iid.com/water/fallowing\\_program.html](http://www.iid.com/water/fallowing_program.html)

---

<sup>1</sup> *Accuracy of Annual Volume from Current-Meter Based Stage-Discharges*, Clemmens and Wahlin, ASCE Peer Review, May 2004.