

DELIVERY AGREEMENT

This Delivery Agreement is entered into this 6th day of January 2010 between the UNITED STATES OF AMERICA and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD), (each referred to individually as “Party” or, collectively, as “Parties”). The Parties hereby agree as follows:

I. Recitals

- A. The Secretary of the Interior (Secretary) issued a Record of Decision (ROD) for the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead on December 13, 2007, which implements Interim Guidelines for the Operation of Lake Powell and Lake Mead (Guidelines).
- B. The Guidelines establish criteria for the development and delivery of Intentionally Created Surplus (ICS) and Developed Shortage Supply (DSS).
- C. CAWCD is a multi-county water conservation district and political subdivision of the State of Arizona organized pursuant to A.R.S. §48-3701 *et seq.* for the purposes, among others, of contracting with the United States for the delivery of Central Arizona Project (CAP) water and the repayment of CAP costs. CAWCD operates and maintains the CAP and has the right to divert Colorado River water released by the Secretary for use within the State of Arizona under the following agreements: Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contact No. 14-06-W-245, dated December 15, 1972, as amended and supplemented by Amendment No. 1, dated December 1, 1988, Supplement No. 1, dated August 14, 2007, and Amendment No. 2, dated November 30, 2007 (Existing CAWCD Delivery Agreements).
- D. The Arizona Department of Water Resources has secured the forbearance of certain Contractors through the execution of a Forbearance Agreement dated December 13, 2007, attached hereto, as amended, as Attachment 1, in which under specific and limited circumstances the Contractors forbear the exercise of certain rights to Colorado River water otherwise available to them under the Consolidated Decree in Arizona v. California and under contracts entered into under Section 5 of the Boulder Canyon Project Act of 1928.

II. Authority

The Secretary is authorized under the Reclamation Act of 1902 and all acts amendatory thereof and supplementary thereto, including in particular Section 5 of the Boulder

Canyon Project Act of 1928, to enter into contracts for the delivery of Colorado River water.

III. Definitions

Defined terms appear in this Delivery Agreement with initial capitalization and shall have the same meaning as in the Guidelines; provided, however:

- A. “Drop 2 Funding Agreement” shall mean the Agreement Among the United States of America, through the Department of the Interior, Bureau of Reclamation; the Colorado River Commission of Nevada; and the Southern Nevada Water Authority for the Funding and Construction of the Lower Colorado River Drop 2 Storage Reservoir Project dated December 13, 2007.
- B. “Forbearance Agreement” shall mean the Forbearance Agreement of December 13, 2007, as amended, in which under specific and limited circumstances the Contractors forbear the exercise of certain rights to Colorado River water otherwise available to them under the Consolidated Decree in Arizona v. California and under contracts entered into under Section 5 of the Boulder Canyon Project Act of 1928.
- C. “Guidelines” shall mean the express language of the Interim Guidelines for Operation of Lake Powell and Lake Mead in the Record of Decision issued by the Secretary on December 13, 2007.
- D. “YDP Pilot Project” shall have the same meaning as in the YDP Pilot Project Agreement.
- E. “YDP Pilot Project Agreement” shall mean the Agreement Among the United States of America, through the Department of the Interior, Bureau of Reclamation, The Metropolitan Water District of Southern California, the Colorado River Commission of Nevada, the Southern Nevada Water Authority, and the Central Arizona Water Conservation District, for a Pilot Project for Operation of the Yuma Desalting Plant executed on October 29, 2009.

IV. Term

This Delivery Agreement shall become effective upon execution by the Parties and shall remain in effect until such time as all deliveries of ICS and DSS permissible under the terms of the Guidelines and this Delivery Agreement have occurred.

V. Relationship to Guidelines

The Parties to this Delivery Agreement expressly acknowledge that this agreement will be administered in compliance with the terms of the Guidelines. Specific

reference in this agreement to particular sections of the Guidelines shall not render inapplicable to the Parties those sections not specifically referred to herein.

VI. Approval and Verification of System Efficiency ICS

- A. As set forth in Article 6 of the YDP Pilot Project Agreement, the Secretary has determined that the YDP Pilot Project Agreement constitutes:
1. A valid multi-year plan for creation of System Efficiency ICS under Sections 3.A.3 and 3.B.1 of the Guidelines; and
 2. A verified Certification Report under Sections 3.D.1 and 3.D.2 of the Guidelines for System Efficiency ICS.
- B. As set forth in the Drop 2 Funding Agreement, the Secretary has determined that the Drop 2 Reservoir System Efficiency Project constitutes:
1. A valid multi-year plan for creation of System Efficiency ICS under Sections 3.A.3 and 3.B.1 of the Guidelines; and
 2. A verified Certification Report under Sections 3.D.1 and 3.D.2 of the Guidelines for System Efficiency ICS in the amount of 100,000 acre-feet to be made available to CAWCD.

VII. Approval, Certification and Verification of DSS

- A. To the extent CAWCD desires to create DSS, CAWCD shall submit a plan to create DSS, or a modification to a previously approved plan to create DSS, to the Secretary in accordance with Section 4.B.1 of the Guidelines. DSS may only be created by a project that is approved by the Secretary for creation prior to the Secretary determining a Shortage Condition.
- B. CAWCD may combine plans required to be submitted under this Article VII; provided, however, that the Guideline requirements for each type of plan are fully addressed in the combined plan.
- C. To the extent the Secretary determines that a plan or modification submitted by CAWCD in accordance with this Article VII does not meet the requirements of the Guidelines, the Secretary shall, in writing, inform CAWCD as to which matters were determined not to meet the requirements of these sections of the Guidelines and permit CAWCD to resubmit the plan or modification.
- D. CAWCD shall submit a Certification Report to the Secretary for each type of DSS created, in accordance with Section 4.D.1 of the Guidelines.

- E. The Secretary shall verify the information in the Certification Reports submitted by CAWCD for DSS, in accordance with Section 4.D.2 of the Guidelines. If the Secretary determines that insufficient information has been provided in the Certification Report to verify the quantity of DSS created or to verify that the creation was consistent with this Delivery Agreement, the Secretary shall, in writing, request additional information from CAWCD.
- F. After review of a Certification Report submitted by CAWCD for DSS, including the review of such additional information as has been requested by the Secretary and provided by CAWCD, the Secretary shall provide a final written decision to CAWCD, as provided in Section 4.D.2 of the Guidelines, which may be appealed by CAWCD as provided in Section 4.D.2 of the Guidelines.

VIII. Delivery of ICS and DSS

- A. CAWCD shall neither order nor accept delivery of ICS or DSS created and credited to CAWCD's account except in accordance with the terms of the Guidelines, this Delivery Agreement and, for ICS, the Forbearance Agreement.
- B. CAWCD's existing entitlement to Colorado River water shall remain in full force and effect and with this Delivery Agreement shall govern the delivery to CAWCD of ICS and DSS.
- C. ICS. The Secretary shall deliver to CAWCD the ICS created under the terms of the YDP Pilot Project Agreement and the Drop 2 Funding Agreement, and requested by CAWCD, in accordance with Existing CAWCD Delivery Agreements, Section 3.C of the Guidelines, and the Forbearance Agreement; provided, however:
 - 1. The Secretary must have determined an ICS Surplus Condition applicable to the Year of the delivery, in accordance with Sections 2.B.5 and 3.C.2 of the Guidelines;
 - 2. The ICS delivery must be in accordance with 43 C.F.R. Part 417; and
 - 3. Nothing in this Delivery Agreement modifies, or is intended to modify, the rights of any person or entity that is not a party to the Forbearance Agreement.
- D. DSS. The Secretary shall deliver to CAWCD any DSS created under the terms of the Guidelines and requested by CAWCD, in accordance with Section 4.C of the Guidelines; provided, however:
 - 1. The Secretary must have determined a Shortage Condition applicable to the Year of delivery, in accordance with Sections 2.D and 4.C.2 of the Guidelines;

2. The Secretary must have verified the creation of the requested DSS in accordance with Section 4.D.2; and
3. The delivery must be in accordance with 43 C.F.R. Part 417.

IX. Accounting for ICS and DSS

- A. ICS. The Secretary shall incorporate into the Decree Accounting Report a separate ICS Account for CAWCD. The account shall separately identify and report each type of ICS created by CAWCD in the manner provided in Section 3.D.3 of the Guidelines. The account shall further reflect any reductions for payback obligations, in accordance with Section 3.C.7 of the Guidelines, and shall reflect excess deliveries of ICS as an inadvertent overrun until repaid, in accordance with Section 3.C.8 of the Guidelines.
- B. DSS. If and when a Tributary Conservation DSS project or an Imported DSS project is approved for CAWCD under the Interim Guidelines, the Secretary shall incorporate into the Decree Accounting Report a separate DSS Account for CAWCD. The account shall separately identify and report each type of DSS created by CAWCD in the manner provided in Section 4.D.3 of the Guidelines. The account shall further reflect any reductions for payback obligations, in accordance with Section 4.C.5, and shall reflect excess deliveries of DSS as an inadvertent overrun until repaid, in accordance with Section 4.C.6 of the Guidelines.

X. Other Terms

- A. Signatories to the Forbearance Agreement are intended third-party beneficiaries of this Delivery Agreement solely for the purposes of ensuring compliance with the Guidelines and the Forbearance Agreement and enforcing the provisions of this agreement that require compliance or consistency with the Guidelines and the Forbearance Agreement. Notwithstanding anything to the contrary contained in this paragraph, no third-party shall accrue any right to ICS or DSS as a result of the third-party beneficiary status conferred in this paragraph.
- B. In accordance with Sections 3.C.10 and 4.C.8 of the Guidelines, the books and records of CAWCD relating to the creation of ICS or DSS shall be open to inspection by any Party, Contractor or Basin State.
- C. This Delivery Agreement is subject to and controlled by the Colorado River Compact of 1922.
- D. No member of or Delegate to Congress, Resident Commissioner, or official of any Party shall benefit from this Delivery Agreement other than as a water user or landowner in the same manner as other water users or landowners.

- E. This Delivery 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.
- F. Each Party to this Delivery Agreement represents that the person executing it on behalf of such Party has full power and authority to do so, and that his or her signature is legally sufficient to bind the Party on whose behalf he or she is signing.
- G. The expenditure or advance of any money or the performance of any obligation of the United States under this Delivery Agreement shall be contingent on appropriation or allotment of funds.
- H. Each Party shall comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

IN WITNESS WHEREOF, the Parties hereto have executed this Delivery Agreement No. 09-XX-30-W0547 the day and year first written above.

Approved as to legal sufficiency:

THE UNITED STATES OF AMERICA

by: 
Field Solicitor

by: 
Regional Director
Lower Colorado Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

by: 
Secretary

by: 
President

Exhibit P
Yuma Desalting Plant Pilot Run

In accordance with Paragraph 3.2 of the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement (Forbearance Agreement) dated December 13, 2007, the State of Arizona, acting through the Arizona Department of Water Resources (ADWR); the Palo Verde Irrigation District (PVID); the Imperial Irrigation District (IID); the City of Needles; the Coachella Valley Water District (CVWD); The Metropolitan Water District of Southern California (MWD); the Southern Nevada Water Authority (SNWA); and the Colorado River Commission of Nevada (CRCN) (collectively, "the Parties") hereby agree to the addition of this Exhibit "P" to the Forbearance Agreement.

1. **Type:** System Efficiency Intentionally Created Surplus (ICS) project that will conserve water that would otherwise be delivered from lower Colorado River system storage to replace water conveyed through the bypass drain to the Ciénega de Santa Clara. Absent this System Efficiency ICS project, the water conveyed through the bypass drain is not counted as part of the U.S. treaty delivery to Mexico.
2. **Purpose:** Test operation of the Yuma Desalting Plant (YDP) and, among other things, evaluate maintenance and repair needs, replacement requirements, operational challenges and costs of potential future long-term YDP operation. Although not the purpose of test operation a benefit of test operation of the YDP is the production of desalinated Main Outlet Drain Extension (MODE) water to be released to the Colorado River with additional MODE water to be released to the Gila River Pilot Channel to then flow into the Colorado River for delivery to Mexico under the Mexican Water Treaty of 1944 (Treaty) in a Pilot Run. Any subsequent operation of the YDP will be the subject of a separate decision process. This Exhibit P provides forbearance solely for the Pilot Run.
3. **Project Description:** The YDP was built to desalt saline water to permit this water to be used in the United States or delivered to Mexico in accordance with International Boundary and Water Commission, United States and Mexico Minute 242. Currently, the United States does not operate the YDP and instead conveys saline water through the bypass drain to Mexico. An equivalent amount of water is released from lower Colorado River system storage to replace the water entering the bypass drain.

Pilot Run operation of the YDP will provide cost and operational information that can only be obtained through actual YDP operation. Pilot Run operation of the YDP will occur for 365 operation days which may be non-continuous within 12 to 18 months from the first date of Pilot Run operation. MODE water from Wellton Mohawk Irrigation and Drainage District will be the source of water for desalting at the YDP during Pilot Run operation. Desalinated MODE water will be

released to the Colorado River approximately concurrent with releases of untreated MODE water to the Gila River Pilot Channel.

Proposed Pilot Run operation of the YDP, if approved, is expected to begin in 2010 and continue into 2011 and to produce approximately 29,000 acre-feet of desalinated and untreated MODE water.

4. **Capital Contribution:** As described in Contract No. 09-XX-30-W0536 and Contract No. 09-XX-30-W0541 among the U.S. Bureau of Reclamation, MWD, SNWA, CRCN and the Central Arizona Water Conservation District (CAWCD).
5. **Quantity of System Efficiency ICS:** A volume of ICS equivalent to: the total volume of treated MODE water released to the Colorado River during Pilot Run operation and untreated MODE water released to the Gila River Pilot Channel for delivery under the Treaty will be credited to MWD, SNWA and CAWCD's ICS Accounts in proportion to the capital contribution of each Contractor after MODE water has been desalinated, measured and released to the Colorado River with untreated MODE water. This constitutes a portion of the total water conserved under the Pilot Run in that the release of the desalinated water to the Colorado River during Pilot Run operation immediately upstream of the point of delivery for Treaty obligations and untreated water released to the Gila River Pilot Channel results in a savings in conveyance losses otherwise incurred by the release of water from lower Colorado River system storage for delivery to Mexico.

ICS will be created for up to 365 YDP Pilot Run operation-days and must be created within 18 months of the first day of operation. Based on projections calculated from currently existing data, Reclamation anticipates that the total amount of System Efficiency ICS developed under the Pilot Run will be 29,000 acre-feet. This projection is subject to variable plant operating recovery rates during the course of the 365-day YDP operation and therefore Reclamation will calculate ICS credits on the basis of the total actual amount of treated and untreated water released for delivery to Mexico under Pilot Run operation. Because plant operating recovery rates cannot be predicted with precision based on existing data, and because of the necessity of certainty in determining the scope of forbearance, the forbearance provided for the Pilot Run under this Exhibit P is capped at 31,000 acre-feet.

6. **Schedule of Deliveries:** MWD, SNWA, and CAWCD may request delivery of any volume of ICS created pursuant to this Exhibit P at any time after the ICS is created.
7. **System Benefit:** It is expected that system benefits will be gained as the Pilot Run is anticipated to increase Colorado River system storage until CAWCD, SNWA, and MWD call on all of their accrued System Efficiency ICS credits. Also, making direct delivery of the water to Mexico in lieu of releasing the water

from lower Colorado River system storage reduces conveyance losses. Finally, the YDP Pilot Run is designed to gather benchmark performance and cost information and determine whether any additional corrective actions to plant design or equipment would be necessary for potential future long-term operation. This information will permit informed decisions to be made regarding potential future long-term operation of the YDP, potentially increasing Colorado River system storage over time. Any future ICS projects involving YDP operation may be subject to different assessments for system benefits.

8. **Reclamation Authority:** Reclamation Act of 1902, 32 Stat. 388, as amended and supplemented, including in particular, Boulder Canyon Project Act, 45 Stat. 1057, Act of March 4, 1921, 41 Stat. 1404, Act of January 21, 1927, 44 Stat. 1010, chapter 47, designated the Colorado River Front Work and Levee System, as amended and P.L. 109-432, 120 Stat. 2922 §396.
9. **Counterparts:** This Exhibit P to the Forbearance Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Exhibit P to the Forbearance Agreement.

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In Witness of this Exhibit P to the Forbearance Agreement executed on December 13, 2007, the Parties affix their official signatures below, acknowledging approval of this document on this 28th day of October, 2009.

Approved as to form:

THE STATE OF ARIZONA acting through
the ARIZONA DEPARTMENT OF
WATER RESOURCES

By: Nicole D. Klobas
Nicole D. Klobas
Deputy Counsel

By: Herbert R. Guenther
Herbert R. Guenther
Director

Attest:

PALO VERDE IRRIGATION DISTRICT

By: Edward W. Smith
Edward W. Smith
General Manager

By: Charles H. Van Dyke
Charles H. Van Dyke
Chairman

Attest and Approved:

IMPERIAL IRRIGATION DISTRICT

By: John Fenn Carter
John Fenn Carter
Legal Counsel

By: James C. Hanks
James C. Hanks
President

Approved as to form:

THE CITY OF NEEDLES

By: John Pinkney
John Pinkney
City Attorney

By: Patrick Murch
~~Jeff Williams~~ Patrick Murch
Mayor-Vice

Approved as to form:

COACHELLA VALLEY WATER DISTRICT

By: Steven B. Abbott
Steven B. Abbott
Legal Counsel

By: Steven B. Robbins
Steven B. Robbins
General Manager/Chief Engineer

Approved as to form:

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: Karen L. Tachiki
Karen L. Tachiki
General Counsel

By: Jeffrey Kightlinger
Jeffrey Kightlinger
General Manager

Approved as to form:

SOUTHERN NEVADA WATER AUTHORITY

By: John J. Entsminger
John J. Entsminger
Deputy General Counsel

By: Patricia Mulroy
Patricia Mulroy
General Manager

Approved as to form:

COLORADO RIVER COMMISSION OF NEVADA

By: Jennifer T. Crandell
Jennifer T. Crandell
Senior Deputy Attorney General

By: George M. Caan
George M. Caan
Executive Director