

AGREEMENT

BETWEEN

Borrego Water District

AND

**Bureau of Reclamation, Department of the Interior
for the**

SOUTHEAST CALIFORNIA REGIONAL BASIN STUDY

THIS AGREEMENT for the Southeast California Regional Basin Study (Study) is made and entered into this 4th day of April 2011, by the Borrego Water District (BWD) and the United States Department of the Interior, Bureau of Reclamation (Reclamation) Southern California Area Office (SCAO), hereinafter collectively referred to as the “**Partners.**”

I. Purpose of the Agreement:

The Partners agree to work collaboratively to perform the Study. This Agreement establishes the terms for funding the Study and the terms and conditions that will help guide the performance of the Study.

II. Definitions:

- A. Reclamation means the United States Department of the Interior, Bureau of Reclamation.
- B. LC Region means the Lower Colorado Region of the Bureau of Reclamation.
- C. SCAO means the Southern California Area Office, Bureau of Reclamation.
- D. BWD means the Borrego Water District (or the District) who contributes monetary value and/or in-kind services during the course of this study.
- E. Partners mean Reclamation and the District, also referred collectively as the parties.
- F. Parties mean either Reclamation or the District.
- G. Stakeholder means any entity that is not Reclamation or another water agency that may provide input, data, comments, or participate in the public involvement process related to the Study. Reclamation and the District may invite Stakeholders to study-related meetings where their input and/or expertise are desired.
- H. Confidential Information means trade secrets or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. §552(b)(4). However, this

Agreement and the documents that are shared pursuant to this Agreement must comply with relevant Freedom of Information Act (FOIA) and State open records act laws.

- I. Term of Agreement means that period set forth under Section X, Article A.
- J. Subject Invention means any invention or discovery, which is or may be patentable under Title 35 of the United States Code, conceived or first actually reduced to practice in the performance of work under this Agreement.
- K. Project Team provides expertise, experience, and knowledge that relate to the Study's scope and objectives. Members include staff from Reclamation's SCAO, LC Region, Technical Services Center (TSC), and the District and other water agencies staff who may be contacted to provide specific information, knowledge, and/or support.

III. Purpose of the Study:

Reclamation's SCAO collaborated with the District and three other cooperating regional water districts – Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), and San Diego County Water Authority (SDCWA) – to develop a proposal that was submitted in June 2010 to the Basin Study Program. Additional stakeholders provided letters of support. This proposed study approach incorporates the following:

- Assess past and present regional and local planning studies within the Borrego, Coachella and Imperial Valleys and any relative basin west of the Borrego Valley in southeast California (within San Diego County);
- Conduct a “bottom-up” approach to regional water and related resources planning that integrates and engages partner collaboration;
- Expand collaborative outreach to major water users and stakeholders within the designated watersheds; and
- Use advanced science and technology regarding climate change scenario and greenhouse emissions modeling, and watershed adaptation planning.

The District acknowledges that Reclamation may utilize this Study to meet portions of the Secure Water Act (42U.S.C. §10363).

IV. Study Approach, Expected Outcomes and Deliverables:

- A. The Study will be technically oriented, incorporating information from the latest science, engineering technology, climate models, and innovations. The level of analysis of the strategies and options will be similar to an appraisal-level study. The Study will take a collaborative approach and foster Stakeholder participation and input throughout the Study process.

B. Management of the Study will be accomplished through the designation of Co-Study Managers:

1. One Co-Study Manager will be designated from Reclamation and one from the District. The Co-Study Managers will comprise the Study Steering Team.
2. The Study Steering Team will guide the study efforts such that the objectives are met in an effective and efficient manner and within both financial and time constraints.
3. The Project Team will ensure that the five major tasks and related sub-tasks in this Study are completed in a cost-effective, timely manner and are technically sound. Members of the Project Team may provide expertise, experience, and/or knowledge that relates to the Study's scope and objectives, or they may form workgroups with other water and related agency staff or other interested entities that may be contracted to provide specific information, knowledge, and/or support. The Co-Study Managers will lead the Project Team.

C. The primary products of this Study will be an interim written reports to be integrated into a final report that will include the following key task elements, they will:

- Assess optimal water utilization, conveyance and storage alternatives that address southeastern California issues;
- Characterize current regional water supply and demand, and conveyance and storage alternatives in southeastern California;
- Assess risk(s) to southeastern California water supplies through historical climate change variability, and future climate change and scenario modeling projections;
- Identify potential strategies and options to resolve southeastern California water supply and demand imbalances including;
- Identify potential legal and regulatory constraints and analysis of potential impacts to water users and southeastern California resources for the strategies and options considered; and
- Prioritize identified strategies and options and recommendations for potential future actions, including an engineering and economic feasibility study, Congressional authorization, environmental compliance activities, demonstration programs, and/or implementation as appropriate.

V. Plan of Study:

The Plan of Study (POS) is attached hereto and incorporated herein as Exhibit B. All Parties acknowledge that as the Study progresses, additional detailed tasks and/or sub-tasks may be determined by the Project Team and must be approved by the Steering Team. If the Project

Team determines that substantial changes or modifications to the POS are necessary, the Parties may amend Exhibit B by mutual written agreement.

VI. Study Cost and Funding:

- A. The total estimated cost of this Study is approximately \$850,000 and will be cost-shared equally (50/50) between the Parties, or \$425,000 respectively, provided, however, that the District's cash contribution shall be no more than the sum as specified in paragraph VI. B. below. Borrego Water District will match its half of this cost-share with cash, in-kind services, and/or applied costs for acceptable work that contributes to this study. An approved list of acceptable work and costs will be documented and approved by the Area Manager and included with the Plan of Study.
- B. No later than July 11, 2011, the District shall contribute to this study with an approved 'in-kind' services and work list that's been or will be accomplished in support of this study; and then no later than October 11, 2011 the sum of \$12,000 'in cash' will be provided to Reclamation. Additionally, by the expiration date of this Agreement, the District will contribute any outstanding balance of their financial obligation as in-kind services pre-approved by Reclamation by performing concurrent studies to provide needed information and/or data that's integral to this Study's objective. All cash funds contributed by the District will be deposited within a designated Reclamation study cost account.
- C. In the event that any funds advanced to Reclamation by the District are not required to complete the work under the Study, such excess funds shall be returned by Reclamation without interest upon completion of the work defined by the Study provided, however, that in the event the Parties agree on additional work consistent with the direction of this Agreement, such excess funds may be retained by Reclamation.

VII. Authorities:

- A. Nothing in this Agreement alters the statutory authorities or any other authorities of Reclamation or the District. This Agreement is intended to facilitate cooperative efforts for mutual provision of services and support and technical assistance by both Parties in the conduct of meeting the objectives and scope of the Study. This Agreement does not supersede or void existing agreements between Reclamation and the District.
- B. Reclamation's authority to enter into this Agreement:
 - 1. Reclamation Act of June 17, 1902 (Ch. 1093, 32 Stat. 388; 43 U.S.C. §372, et seq.) and acts amendatory thereof and supplementary thereto; and
 - 2. The Sundry Civil Expenses Appropriations Act, March 4, 1921, 43 U.S.C. §395 (Contributed Funds Act).
- C. The District's authority to enter into this Agreement:

1. The Borrego Water District (District) is a public agency;
2. The District has legal authority to construct, operate, maintain and rehabilitate projects for irrigation, municipal, and/or industrial water supplies pursuant to; and
3. The District has legal authority to enter into agreement and participate as a full partner with Reclamation under the WaterSMART's Basin Study Program.

VIII. Anti-Deficiency Act:

The expenditure or contribution of any funds for the performance of any obligation of any Party under this Agreement shall be contingent upon appropriation or allotment of funds for the payment of such obligation. No liability shall accrue to any Party in case funds are not appropriated or allotted. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

IX. Reports:

- A. Freedom of Information Act (FOIA), 5 U.S.C. §552, Disclosures: The Parties understand and agree that all communications, including this Agreement, may be disclosed to the public in accordance with the FOIA process unless protected under any FOIA exemption. And, similarly, there is a State open records act in California (Code §§ 6250-6276.48) that may require the Parties to disclosure to the public in accordance with State law, unless protected by exemption.
- B. Final Reports: The results of this Agreement and the science, engineering, and technology data that are collected, compiled, and evaluated under this Agreement shall be shared and mutually interchanged by the District and Reclamation. A final report summarizing all data and findings shall be prepared by Reclamation and the District. Reclamation and the District shall have 60-days to review the manuscript prior to submission for publication. The report shall acknowledge this Agreement and the contribution of each Party's personnel and any Stakeholders contributions that are requested by Reclamation and/or the District. The final content of the Report will be determined by Reclamation and the District.

X. Term and Termination:

- A. Term: This Agreement shall take effect upon the approval of the Parties and, unless earlier terminated by the Parties, will expire on December 31, 2013, unless amended.
- B. Amendment: If any Party desires to modify this Agreement, all Parties shall confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all Parties.
- C. Withdrawal: Either Party may withdraw from this Agreement at any time, with or without cause, and without incurring liability or obligation to the other Party by providing notice to the other Party at least ninety (90) calendar days prior to withdrawing from this

Agreement. Notwithstanding the above, if the District withdraws from this Agreement it shall forfeit any funds provided to Reclamation under this Agreement prior to the date of withdrawal.

XI. Key Personnel:

- A. Each Party shall designate key personnel for receipt of notices and other purposes under this Agreement (Key Personnel). The Key Personnel for each Party are listed in Exhibit A, which is attached hereto and incorporated herein.
- B. Should a Party designate new Key Personnel during the term of this Agreement, the Party shall provide the other Parties with notice of the name of its new designated Key Personnel in accordance with Section XII.
- C. The Key Personnel are not authorized to change or interpret with authority the terms and conditions of this Agreement.

XII. Notices:

Notices, requests, demands, or other communications between the Parties under this Agreement, including copies of any correspondence among the scientific and/or technical representatives of each Party that interpret or may have a bearing on the legal effect of this Agreement's terms and conditions, shall be sent to the Key Personnel listed in Exhibit A. Notice will be sufficiently given for all purposes as follows:

- A. Personal Delivery: When delivered to the recipient, notice is effective upon delivery.
- B. United States Mail: When mailed, postage prepaid, by first class mail, notice is effective three business days after the date the notice is mailed by the sender. When mailed, postage prepaid, by certified mail, return receipt requested, notice is effective on receipt, if a return receipt confirms delivery.
- C. Overnight Delivery: When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

XIII. General Provisions:

- A. Limitations: This Agreement sets out the Parties' intentions and objectives and does not direct or apply to any person besides the District and Reclamation. This Agreement is not intended to, and does not create, any right, benefit, and/or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person.
- B. Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other Parties, including details of the contract or other arrangement. This requirement is to assure

that confidentiality is not breached and rights in Subject Inventions are not compromised.

- C. Assignment: No Party has the right to assign this Agreement or any of its responsibilities hereunder.
- D. Endorsement: This Agreement and/or the results of the Study funded under this Agreement are not to be construed as an endorsement of the results of the Study by the Federal government or BWD, except as may be explicitly stated by an authorized representative of the Federal government or by an authorized representative of the District.
- E. Disputes: Any dispute arising under this Agreement, which cannot be readily resolved, shall be submitted jointly to the Key Personnel, identified in Exhibit A, Key Personnel. Each Party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the Parties. Pending the resolution of any dispute or claim, each Party agrees that performance of all obligations shall be pursued diligently.
- F. Force Majeure: No Party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such Party:
 - 1. Which causes the Party to be unable to perform its obligations under this Agreement;
 - 2. Which it has been unable to overcome by the exercise of due diligence; and
 - 3. This includes, but is not limited to: flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure or sabotage of any Party's facilities or any order or injunction made by a court or public agency.
- G. Governing Law: The construction, validity, performance, and effect of this entire Agreement shall be governed by the laws applicable to the Government of the United States of America in accordance with applicable Federal Law as interpreted by Federal Courts.
- H. Waiver: The failure of any Party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.
- I. Severability: In the event any provision of this Agreement is determined to be invalid or unenforceable under any controlling law, the invalidity or unenforceability of that provision shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.
- J. Counterparts: This Agreement may be executed in duplicate and each original shall be equally effective.

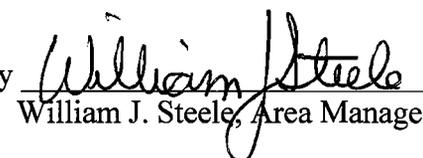
- K. Sovereign Immunity: The Parties do not waive their sovereign immunity by entering into this Agreement, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.
- L. Third Party Beneficiary Rights: The Parties do not intend to create in any other individual or entity the status of third party beneficiary. The rights, duties, and obligations contained in this Agreement shall operate only among the Parties and shall inure solely to the benefit of the Parties to this Agreement.
- M. All contractors shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- N. Drafting Considerations: Each Party has participated fully in the drafting, review and revision of this Agreement, each of whom is sophisticated in the matters to which this Agreement pertains, and no Party shall be considered to be the sole drafter of this Agreement.
- O. Officials Not To Benefit: No Member of or Delegate to the Congress, or Resident Commissioner, shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- P. Entire Agreement: The terms and conditions contained in this Agreement constitute the entire Agreement and understanding by and among the Parties and shall supersede all other communications, negotiations, arrangements and agreements either oral or written, with respect to the subject matter herein.

IN WITNESS WHEREOF, the Partners hereto have caused this Agreement to be executed.

Approved as to form: **Borrego Water District**

By  _____ 4/27/11
Jerry Rolwing, Acting General Manager Date

Approved as to form: **Bureau of Reclamation**

By  _____ 4/30/11
William J. Steele, Area Manager Date

SOUTHEAST CALIFORNIA REGIONAL BASIN STUDY

**Exhibit A
Key Personnel:**

Organization	Primary Contact	Contact Information
Borrego Water District (BWD) 806 Palm Canyon Drive Borrego Springs, CA 92004	Jerry Rolwing	<i>General Manager</i> Engineering & Operations Manager 760-767-5806 jerry@borregowd.org

Reclamation Key Personnel

Region	Primary Contact	Contact Information
SCAO 27708 Jefferson Ave, Suite 202 Temecula, CA 92590	Bill Steele	Area Manager 951-695-5310 ext. 13 wsteele@usbr.gov
SCAO	Greg Krzys	Water Resources Planner 951-695-5310 ext. 19 gkrzys@usbr.gov

Borrego Water District (BWD) Basin Study Cost-Share			
Title:	BWD Cost:	How it applies to this Basin Study:	Partner Cost:
Groundwater Basin Study 2009	\$171,114	Groundwater Flow Modeling	\$48,858 (USGS)
Groundwater Basin Study 2010	\$53,211	Groundwater Flow Modeling	\$55,442 (USGS)
Groundwater Basin Study 2011	\$101,050	Groundwater Flow Modeling	\$30,450 (USGS)
Sustainable Water Program 2009	\$292,389.12	Imported water study	
Sustainable Water Program 2010	\$395,871.79	Imported water study	
Sustainable Water Program 2011	\$218,230 (45%)	Imported water study	\$266,770 (EPA – 55%) TL Study Cost: \$485,000
Borrego IWMP	\$68,492.50	Region Integrated Water Management Plan	
2008 Borrego Valley Hydrogeological Investigation Report	\$48,191.09		
Cash	\$12,000	Per MOA Pg 4, Para 6B.	
Total Cost-Share:	\$1,360,549.50		

Appendix 1, Exhibit B: SE California Regional Basin Study Cost-Share List

Note: These studies, reports, and/or technical documents have been prepared within the last three years (2008 to present).

Exhibit C

**Southeast California Basin Study
Public Involvement Plan (Attached)**

Southeast California Regional Basin Study

Public Involvement Plan

Introduction

The Bureau of Reclamation (Reclamation) Southern California Area Office (SCAO) collaborated with the Borrego Water District (BWD) and three other cooperating regional water districts – Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), and San Diego County Water Authority (SDCWA) – to develop a proposal that was submitted in June 2010 to the Basin Study Program. Additional stakeholders in this Region provided letters of support. The proposed Basin Study approach incorporates the following:

- Assess past and present regional and local planning studies within the Borrego, Coachella and Imperial Valleys and any relative basin west of the Borrego Valley in southeast California (within San Diego County);
- Conduct a “bottom-up” approach to regional water and related resources planning that integrates and engages partner collaboration;
- Expand collaborative outreach to major water users and stakeholders within the designated watersheds; and
- Use advanced science and technology regarding climate change scenario and greenhouse emissions modeling, and watershed adaptation planning.

The purpose of this Basin Study is five-fold: 1) to assess optimal water utilization, conveyance and storage alternatives that address southeastern California issues; 2) to characterize current regional water supply and demand, and conveyance and storage alternatives in southeastern California; 3) to assess risk(s) to southeast California water supplies through historical climate change variability, and future climate change and scenario modeling projections; 4) to identify potential strategies and options to resolve southeastern California water supply and demand imbalances including; identify potential legal and regulatory constraints and analysis of potential impacts to water users and southeastern California resources for the strategies and options considered; and 5) to prioritize identified strategies and options and recommendations for potential future actions, including an engineering and economic feasibility study, Congressional authorization, environmental compliance activities, demonstration programs, and/or implementation as appropriate.

The Study partners will facilitate public involvement to solicit and incorporate stakeholder input throughout the study. This Public Involvement Plan (PIP) provides the framework for that effort.

Approach

Several communication methods will be employed to effectively maintain communication with all interested stakeholders and to provide, seek, and receive information. A response will be provided for all comments received. All information received regarding technical aspects of the Study will be considered and feedback regarding that consideration will be provided.

All outreach materials, information received, and feedback provided will be archived in a centralized electronic filing system. As the Study progresses, the effectiveness of the public involvement will be assessed periodically and adjustments will be made as necessary to ensure that appropriate communication and feedback is occurring.

Communication Methods

Effective communication is essential for the ongoing success of the Study. The methods of communication that will be used to disseminate information and accept input during the course of this Study include the following:

- a Study website will be maintained to provide up-to-date, on-line information;
- an e-mail address will be established to facilitate communication electronically;
- a facsimile (fax) telephone number will be established to allow communication by fax;
- points-of-contact will be established to facilitate additional information exchange;
- news releases and informational mailings will be provided as appropriate;
- a mailing list will be established and maintained to ensure that all interested stakeholders receive information;
- public meetings will be held at strategic points throughout the Study; and
- additional meetings with interested stakeholders groups will be held as appropriate.

Additional information on each of these methods is provided below.

Web Site

Reclamation's Study web site will be used to post up-to-date information. Web site content will be updated periodically, particularly at major milestones and prior to public meetings. In addition, the web site will be used as a tool for soliciting input from stakeholders.

E-mail

Reclamation has established a Study e-mail address to disseminate information regarding the Study and to receive input. The Study e-mail address is: SECABasinStudy@usbr.gov.

Facsimile

Input may also be submitted by facsimile at either the Borrego Water District at: 760-767-5994 or Reclamation at: 951-695-5319.

Points-of-Contact

For additional information, questions, or comments on the Study, Reclamation has designated two Study Points of Contact:

- Jerry Rowling, at: 760-767-5806 or at: SECABasinStudy@usbr.gov
- Jack Simes, at: 951-695-5310 or at: SECABasinStudy@usbr.gov.

News Releases and Informational Mailings

News releases and other informational mailings will occur near major milestones throughout the Study to inform stakeholders and the public of the Study status, provide opportunities for input, and provide meeting information including dates and locations of the public meetings. New release content and informational mailings will be coordinated with the Borrego Water District's newsletters and informational emails.

Mailing List

Informational mailings will be sent to interested stakeholders on the Study mailing list (either physically, electronically, or both). During each informational mailing, the recipient will be asked if he or she would like to remain on the list. Individuals will be added to the mailing list when requested through the Study e-mail address or through attendance at a public meeting captured on the sign-in sheet. An initial mailing will be made in February 2011 to a list of SE California Regional stakeholders to develop a long-term mailing list.

Public Meetings

Public meetings will be held at strategic points throughout the Study, beginning with an initial meeting in the spring of 2011. Additionally, prior to completion of each Study phase, public meetings will be held to provide a summary of the results of the previous phase and to seek comments on the upcoming phase of the Study, thereby allowing consideration of information and suggestions by the public for incorporation in the Study. Public meetings will also be noticed and advertised by Borrego Water District as part of the agency's public outreach effort.

Four public meetings are currently envisioned as follows:

1. *Targeted for March 2011* - Meeting to discuss the Study objectives, structure, schedule, and the proposed study approach, to include assessment of current and future water supply, and assessment of current and future water demand;
2. *Targeted for July 2011* – Meeting to discuss the results of the supply and demand analysis and to address the proposed approach for analysis of the current and future system reliability;
3. *Targeted for October 2011* – Meeting to discuss the results of current and future systems reliability and address the proposed approach for analysis of strategies and options for resolving supply/demand imbalances; and

4. *Targeted for January 2012* – Meeting to discuss the results of strategies and options and scenario planning to deal with climate change variability.

Additional Meetings with Interested Stakeholder Groups

During the course of the Study, additional meetings may be held with interested stakeholder groups to solicit additional input, expertise, data, and information. As appropriate, representatives of interested stakeholder groups may participate in specific Study tasks to facilitate incorporation of such input into the Study.

Interested stakeholder groups may include, but are not limited to Federal agencies, Native American tribes and communities, water districts, scientific research groups, representatives of the energy industry, environmental groups, and recreational interests. An initial mailing will be made in February 2011 to Regional interest groups to gauge their further interest and capability for participating in this Study. All interest groups are encouraged to provide their contact information via one of the communication methods listed above.