

2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus

The State of Arizona, acting through the Arizona Department of Water Resources (“ADWR”); the Coachella Valley Water District (“CVWD”); the Imperial Irrigation District (“IID”); the Metropolitan Water District of Southern California (“MWD”); the City of Needles; the Southern Nevada Water Authority (“SNWA”); the State of Nevada, acting through the Colorado River Commission of Nevada (“CRCN”); and the Palo Verde Irrigation District (“PVID”); enter into this 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus (“2017 BICS Agreement”) as follows:

Recitals

- A. The purposes of this 2017 BICS Agreement are to:
1. Allow Contractors to invest in projects in Mexico that will make additional water available for use in the United States, through the creation, release, and use of Binational Intentionally Created Surplus (“Binational ICS”);
 2. Help reduce the probability and severity of shortages to the Lower Basin;
 3. Benefit both Lake Mead and Lake Powell by avoiding reaching critical elevations;
 4. Increase the surface elevations of both Lakes Powell and Mead to higher levels than would have otherwise occurred; and
 5. Assure any Contractor that invests in projects in Mexico to create Binational ICS under this 2017 BICS Agreement that no Contractor within another state will claim the Binational ICS created by the Contractor.
- B. The Parties to the 2017 BICS Agreement and their respective authority to forbear are as follows:
1. ADWR, through its Director, is the successor to the signatory agency of the State for the 1922 Colorado River Compact, and the 1944 Contract for Delivery of Water with the United States, both authorized and ratified by the Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. § 45-107, the Director is authorized and directed, subject to the limitations in A.R.S. § 45-106, for and on behalf of the State of Arizona, to consult, advise and cooperate with the Secretary of the Interior of the United States (“Secretary”) with respect to the exercise by the Secretary of Congressionally authorized authority relative to the waters of the Colorado River (including, but not limited to, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617, and the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1501) and with respect to the development, negotiation and execution of interstate agreements. Additionally, under A.R.S. § 45-105(A)(9), the Director is authorized to “prosecute and defend all rights, claims and privileges of this state respecting interstate streams.”

2. SNWA is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter this 2017 BICS Agreement and, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICS released by the Secretary for use within the State of Nevada pursuant to the Consolidated Decree.
3. CRCN is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.161 (6), (7) to enter this 2017 BICS Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this 2017 BICS Agreement to supplement the supply of water in the Colorado River which is available for use in Nevada, augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary.
4. PVID is an irrigation district created under the Palo Verde Irrigation District Act, codified at Section 33-1 *et seq.* of the Appendix to the California Water Code, and delivers Colorado River water in Riverside and Imperial Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
5. CVWD is a county water district created under the California County Water District Law, codified at Section 30000 *et seq.* of the California Water Code, and delivers Colorado River water to portions of its service area in Imperial, Riverside, and San Diego Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928 and the California Quantification Settlement Agreement.
6. IID is an irrigation district created under the California Irrigation District Law, codified at Section 20500 *et seq.* of the California Water Code, and delivers Colorado River water in Imperial County, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
7. MWD is a metropolitan water district created under the California Metropolitan Water District Act, codified at Section 109-1 *et seq.* of the Appendix to the California Water Code; and delivers Colorado River water to portions of its service area in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928.
8. The City of Needles is a charter city duly authorized and existing under and by the laws of the State of California and delivers Colorado River water, either directly or by exchange, to portions of Imperial, Riverside, and San Bernardino Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928.

- C. On December 13, 2007, the Parties to this 2017 BICS Agreement executed the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement (“2007 Forbearance Agreement”), which allowed Contractors to develop and take delivery of ICS through conservation and augmentation projects in the United States.
- D. On December 13, 2007, the Secretary adopted the Record of Decision for Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Interim Guidelines”), which includes provisions for the creation and delivery of ICS that are consistent with the provisions of the 2007 Forbearance Agreement. *See* 2007 Interim Guidelines, 73 Fed. Reg. 19873-19892.
- E. On September 21, 2017, the Commissioners of the International Boundary and Water Commission (“IBWC”) executed Minute No. 323, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin (“Minute No. 323”), which allows, among other things, U.S. entities to fund projects in Mexico that will create Mexico’s Water Reserve, a portion of which could be converted to Binational ICS.
- F. The Secretary, by and through the U.S. Department of the Interior, Bureau of Reclamation, the Parties to this 2017 BICS Agreement, and the other relevant parties are simultaneously entering an Interim Operating Agreement that addresses implementation of Minute No. 323, particularly the conversion of Mexico’s Water Reserve to Binational ICS. Nothing in the Interim Operating Agreement is intended to amend or affect the terms of Minute No. 323.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

Article 1 Definitions and Term

1.1 Definitions.

The definitions in the Interim Surplus Guidelines described in the Record of Decision dated January 16, 2001, and modified by the 2007 Interim Guidelines are hereby incorporated in this 2017 BICS Agreement. In addition, each of the following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.

- A. “2007 Forbearance Agreement” shall mean the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement executed on December 13, 2007.
- B. “2017 BICS Agreement” shall mean this Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus.

- C. “2007 Interim Guidelines” shall mean Section XI of the Record of Decision issued by the Secretary for the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead.
- D. “Binational ICS” shall mean Binational Intentionally Created Surplus.
- E. “Binational ICS Account” shall mean records established by the Secretary regarding Binational ICS.
- F. “Interim Operating Agreement” shall mean the Interim Operating Agreement for Implementation of Minute No. 323, entered simultaneously with the execution of this 2017 BICS Agreement.
- G. “Mexico’s Water Reserve” shall mean water described in Section V of Minute No. 323.
- H. “Minute No. 323” shall mean Minute No. 323, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin.
- I. “Parties” shall mean all of the signatories to this 2017 BICS Agreement.
- J. “Waiver” shall mean an agreement, as described in Part XI.A.1 of the 2007 Interim Guidelines, to refrain from exercising the right to surplus Colorado River water under the specified terms and conditions of this 2017 BICS Agreement.

1.2 Term of the 2017 BICS Agreement.

This 2017 BICS Agreement shall commence on the latter of the date Minute No. 323 enters force or the date of execution by all Parties and shall terminate December 31, 2026; provided, however, that any Binational ICS remaining on December 31, 2026, may be released as provided herein until December 31, 2036.

1.3 Seven Colorado River Basin States’ Agreement.

Notwithstanding Article 1.2 above, if one or more states withdraw from the agreement dated April 23, 2007, executed by the seven Colorado River Basin states, the Parties to this 2017 BICS Agreement shall consult to determine whether to continue this 2017 BICS Agreement in effect or to amend or terminate this 2017 BICS Agreement. In such event, the terms of this 2017 BICS Agreement shall continue in effect until the Parties have consulted and agreed to continue, amend, or terminate this 2017 BICS Agreement. In the event of termination, all Parties shall be relieved from the terms hereof and this 2017 BICS Agreement shall be of no further force or effect.

Article 2
Conversion of Mexico's Water Reserve to Binational ICS and
Release of Binational ICS

2.1 Binational ICS

Pursuant to procedures set forth in the Interim Operating Agreement, a Contractor may make contributions of capital to participate in a binational project in Mexico that will create Mexico's Water Reserve. A portion of Mexico's Water Reserve created by the binational project may be converted to Binational ICS for use by the contributing Contractors.

2.2 Creation of Binational ICS

Mexico's Water Reserve may be converted to Binational ICS subject to the following conditions:

- A. The amount of Mexico's Water Reserve shall be determined per the terms of Minute No. 323, and will be calculated based on reduced delivery volumes to Mexico.
- B. In accordance with Section 7.3 of the Interim Operating Agreement, the Secretary, through the Bureau of Reclamation, shall determine the portion of Mexico's Water Reserve that will be converted to Binational ICS and added to each Contractor's Binational ICS Account in consultation with the Lower Division States, with notification to the Upper Division states, and provide a final written decision to the Parties. Any Party may appeal Reclamation's determination of the amount of Binational ICS through administrative and judicial processes.
- C. Unless otherwise provided in an exhibit to this 2017 BICS Agreement, there shall be a one-time deduction of two percent (2%) from the amount of Binational ICS in the Year of its creation. This deduction results in additional water storage in Lake Mead for future use in accordance with the Consolidated Decree and the 2007 Interim Guidelines.
- D. Unless otherwise provided in an exhibit to this 2017 BICS Agreement, the quantity of Binational ICS remaining at the end of each Year shall be diminished by annual evaporation losses of three percent (3%). Losses shall be applied annually to the end-of-the-Year balance of Binational ICS beginning in the Year after the Binational ICS is created and continuing until no Binational ICS remains in Lake Mead. However, no evaporation losses shall be assessed during a Year in which the Secretary has determined a shortage.
- E. Binational ICS may not be transferred to a Contractor in another State.

2.3 Request for Release of Binational ICS

Binational ICS may be released subject to the following conditions:

- A. If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any Binational ICS. The Contractor may request that the amount of Binational ICS in the Contractor's account be reduced by the amount of the overrun payback obligation to pay the overrun payback obligation.
- B. Binational ICS shall only be released pursuant to a determination of an ICS Surplus Condition.
- C. The total amount of Binational ICS and Extraordinary Conservation ICS that may be released in any Year is limited to the following:
 - 1. 400,000 acre-feet for California Contractors;
 - 2. 300,000 acre-feet for Nevada Contractors; and
 - 3. 300,000 acre-feet for Arizona Contractors.
- D. If the May 24-month Study for that Year indicates that a Shortage Condition would be determined in the succeeding Year if the requested amounts for the current Year were released, the Secretary, through the Bureau of Reclamation, may release less than the amounts of Binational ICS requested to be released.
- E. During Flood Control releases, the Secretary shall take actions as described in Paragraph V.E.10 of Minute No. 323.
- F. Binational ICS is not available for delivery in a year for which a shortage condition has been determined.

**Article 3
Waiver**

3.1 In the absence of Waiver, surplus water is apportioned for use per the percentages provided in Article II(B)(2) of the Consolidated Decree. The Parties respectively agree as follows:

- A. ADWR hereby agrees not to exercise any right the State of Arizona may have to delivery of any Binational ICS released in accordance with the terms and conditions set forth in this 2017 BICS Agreement and any applicable Delivery Agreement for use within the State of California or the State of Nevada.
- B. PVID, CVWD, the City of Needles, IID and MWD hereby agree not to exercise any right they may have to delivery of any Binational ICS released in accordance with the terms and conditions set forth in this 2017 BICS Agreement and any applicable Delivery Agreement for use within the State of Arizona or the State of Nevada.

- C. SNWA and CRCN hereby agree not to exercise any right SNWA or the State of Nevada may have to delivery of any Binational ICS released in accordance with the terms and conditions set forth in this 2017 BICS Agreement and any applicable Delivery Agreement for use within the State of Arizona or the State of California.

3.2 Notwithstanding the foregoing Waiver of Binational ICS, the Parties only forbear with respect to Binational ICS that is created pursuant to exhibits attached to and incorporated within this 2017 BICS Agreement. This 2017 BICS Agreement incorporates Exhibit A as of the date of execution. Additional exhibits may be added to this 2017 BICS Agreement after written approval of all the Parties. Such approval shall not be unreasonably withheld.

3.3 In this 2017 BICS Agreement, the Parties do not forbear any right to the release or delivery of any water that is not described herein.

3.4 Waiver of all Parties is conditioned on the following:

- A. The execution, by the Secretary and any Contractor seeking to create Binational ICS, of a Delivery Agreement if the Parties to this 2017 BICS Agreement are third-party beneficiaries of such Delivery Agreement.
- B. The implementation by the Secretary, through the Bureau of Reclamation, of the Interim Operating Agreement, which includes Binational ICS procedures in substantial conformance with the provisions of this 2017 BICS Agreement and any Delivery Agreement.
- C. The continued implementation of an ICS program that is in substantial conformance with this 2017 BICS Agreement and any Delivery Agreement, including:
 - 1. The availability of the decision and appeal process described in Article 2.2(B);
 - 2. The establishment and use of Mexico's Water Reserve and Binational ICS accounting procedure by the Secretary, through the Bureau of Reclamation, in the 2017 Interim Operating Agreement; and
 - 3. The Secretary's annual determination of Normal, Surplus (other than Quantified Surplus), or Shortage conditions based on conditions in Lake Mead with consideration of the amount of Binational ICS accumulated by the Parties and the amount of Mexico's Water Reserve accumulated by Mexico. For the purpose of determining the existence, and establishing the volume, of Quantified Surplus, the Secretary shall not consider any volume of Binational ICS and Mexico's Water Reserve.

Article 4

General Provisions

4.1 The records of any Party to this 2017 BICS Agreement that relate to the creation of Binational ICS shall be open to inspection by any other Party.

4.2 The Parties to this 2017 BICS Agreement are hereby notified of A.R.S. § 38-511.

4.3 The Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

4.4 Except as provided in Article 3, nothing in this 2017 BICS Agreement shall be deemed to diminish or waive the rights of any Party. The failure of any Party to enforce a provision of this 2017 BICS Agreement shall not be deemed to constitute a waiver of that provision. The execution of, and BICS in compliance with, this 2017 BICS Agreement shall not be admissible against any Party in any action except for an action to enforce the terms of this 2017 BICS Agreement or a Delivery Agreement.

4.5 No Party to this 2017 BICS Agreement shall be in default in the performance of any obligations under this 2017 BICS Agreement when a failure of performance shall be due to uncontrollable forces. The term “uncontrollable force” shall mean any cause beyond the control of the Party unable to perform such obligation, including but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, a federal governmental agency or authority, which by exercise of due diligence and foresight such Party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

4.6 The Colorado River Board of California (“CRB”) is created by, and operates under, California Water Code sections 12500 et seq. The California Water Code charges the CRB and its officers with the duty to confer with representatives of other States in the Colorado River Basin, representatives of the United States, and others concerning problems and measures relating to the development of the Colorado River Basin, the use of the water of the Colorado River System, and the protection of the interests therein of the State, and to negotiate and to make recommendations respecting such problems and measures. Through its Chairman acting as the Colorado River Commissioner pursuant to the California Water Code section 12525, the Colorado River Board of California has the authority to exercise on behalf of California every right and power granted to California by the Boulder Canyon Project Act of 1928, and to perform all other things necessary or expedient to carry out the purpose of the Colorado River Board. Under this authority, the CRB through its officers has participated in the negotiation of, and has made recommendations concerning, this 2017 BICS Agreement and its exhibits. Although the CRB and the State of California are not Parties to this 2017 BICS Agreement, the Parties agree to include the CRB and its officers in any consultations under this 2017 BICS Agreement and in any negotiations related to amendment of this 2017 BICS Agreement and its exhibits.

Article 5
Notices

5.1 Notices and Requests

- A. All notices and requests required or allowed under the terms of this 2017 BICS Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

State of Arizona:

Arizona Department of Water Resources
P.O. Box 36020
Phoenix, AZ 85067
Attn: Director

State of California:

Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, CA 91203-1068
Attn: Executive Director

CRCN:

Colorado River Commission of Nevada
555 East Washington Avenue, Suite 3100
Las Vegas, NV 89101
Attn: Executive Director

CVWD:

Coachella Valley Water District
P. O. Box 1058
Coachella, CA 92236
Attn: General Manager

IID:

Imperial Irrigation District
P.O. Box 937
333 East Barioni Boulevard
Imperial, CA 92251
Attn: General Manager

MWD:

The Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90012
Attn: General Manager

City of Needles:

City of Needles
817 Third Street
Needles, CA 92363-2933
Attention: City Manager

PVID:

Palo Verde Irrigation District
180 West 14th Avenue
Blythe, CA 92225
Attn: General Manager

SNWA:

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

- B. Any Party may, at any time, change its mailing address by notice to the other Parties.

In Witness of this 2017 BICS Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 21st day of September, 2017.

[Signatures start next page]

THE STATE OF ARIZONA ACTING THROUGH THE ARIZONA DEPARTMENT OF
WATER RESOURCES

By: 
Thomas Buschatzke
Director

Approved as to form:

By: 
Nicole D. Klobas
Deputy Counsel

COACHELLA VALLEY WATER DISTRICT

By: 

J. M. Barrett
General Manager

Approved as to form:

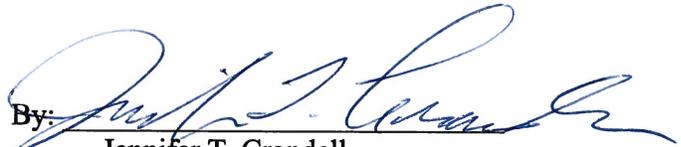
By: 

Steven B. Abbott
Special Counsel

THE STATE OF NEVADA ACTING THROUGH THE COLORADO RIVER COMMISSION
OF NEVADA

By: 
Jayne Harkins
Executive Director

Approved as to form:

By: 
Jennifer T. Crandell
Special Counsel Attorney General

IMPERIAL IRRIGATION DISTRICT

By: 
Kevin E. Kelley
General Manager

Approved as to form:

By: 
Frank A. Oswalt, III
General Counsel

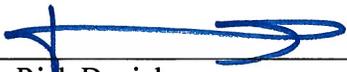
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: 
Jeffrey Kightlinger
General Manager

Approved as to form:

By: 
Marcia L. Scully
General Counsel

THE CITY OF NEEDLES

By: 
Rick Daniels
City Manager

Approved as to form:

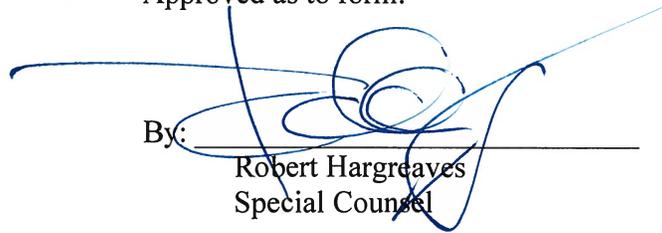
By: _____
Robert Hargreaves
Special Counsel

THE CITY OF NEEDLES

By: _____
Rick Daniels
City Manager

Approved as to form:

By: _____
Robert Hargreaves
Special Counsel

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PALO VERDE IRRIGATION DISTRICT

By: 
Dana B. Fisher, Jr.
President, Board of Trustees

SOUTHERN NEVADA WATER AUTHORITY

By: 
John J. Entsminger
General Manager

Approved as to form:

By: 
Gregory J. Walch
General Counsel

Exhibit A

Minute No. 323 Pilot Program

Pursuant to procedures set forth in Minute No. 323 and the 2017 BICS Agreement, Contractors and Reclamation will make contributions of capital to create 159,100 acre-feet of Mexico's Water Reserve. Of that volume, 109,100 acre-feet will be converted to Binational ICS and distributed to the contributing Contractors in proportion to each Contractor's contribution. The remaining 50,000 acre-feet, created based on Reclamation's capital contribution, will be debited from Mexico's account for the benefit of the Colorado River System.

The contributing Contractors will contribute a total of \$15,000,000 during the term of Minute No. 323. The 109,100 acre-feet of Binational ICS will be distributed to the contributing Contractors in proportion to each Contractor's capital contribution.

Pursuant to the procedures set forth in Minute No. 323 and the 2017 BICS Agreement, an additional 109,100 acre-feet of Mexico's Water Reserve may be converted to Binational ICS under this Exhibit.

The contributing Contractors will not request delivery of the Binational ICS created pursuant to Minute No. 323 until its conversion from Mexico's Water Reserve and its credit to the Contractor's Binational ICS account.

There will be no deduction from the amount of Binational ICS created under this Exhibit A pursuant to Article 2.2(C) or Article 2.2(D) of the 2017 BICS Agreement and Article 7.3.3 and 7.3.4 of the Interim Operating Agreement because the 50,000 acre-feet will exceed the sum of the 2% assessment pursuant to Article 2.2(C) and evaporation assessments pursuant to Article 2.2(D).

In Witness of this Exhibit A to the 2017 BICS Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 21st day of September, 2017.

[Signatures start next page]

THE STATE OF ARIZONA ACTING THROUGH THE ARIZONA DEPARTMENT OF
WATER RESOURCES

By: 
Thomas Buschatzke
Director

Approved as to form:

By: 
Nicole D. Klobas
Deputy Counsel

COACHELLA VALLEY WATER DISTRICT

By: 

J. M. Barrett
General Manager

Approved as to form:

By: 

Steven B. Abbott
Special Counsel

THE STATE OF NEVADA ACTING THROUGH THE COLORADO RIVER COMMISSION
OF NEVADA

By: 
Jayne Harkins
Executive Director

Approved as to form:

By: 
Jennifer T. Crandell
Special Counsel Attorney General

IMPERIAL IRRIGATION DISTRICT

By: 
Kevin E. Kelley
General Manager

Approved as to form:

By: 
Frank A. Oswald, III
General Counsel

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: 
Jeffrey Kightlinger
General Manager

Approved as to form:

By: 
Marcia L. Scully
General Counsel

THE CITY OF NEEDLES

By: 

Rick Daniels
City Manager

Approved as to form:

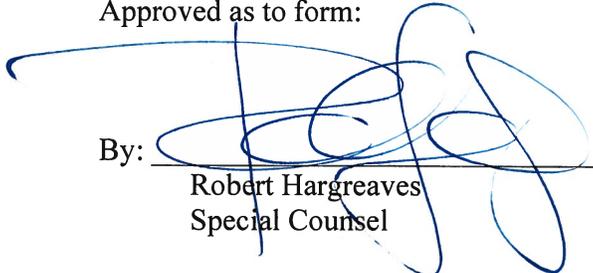
By: _____
Robert Hargreaves
Special Counsel

THE CITY OF NEEDLES

By: _____
Rick Daniels
City Manager

Approved as to form:

By: _____
Robert Hargreaves
Special Counsel

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PALO VERDE IRRIGATION DISTRICT

By: 

Dana B. Fisher, Jr.
President, Board of Trustees

SOUTHERN NEVADA WATER AUTHORITY

By: 
John J. Entsminger
General Manager

Approved as to form:

By: 
Gregory J. Walch
General Counsel

**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,
THE IMPERIAL IRRIGATION DISTRICT AND
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
FOR A PILOT PROGRAM FOR THE CONVERSION OF MEXICO'S WATER
RESERVE TO BINATIONAL INTENTIONALLY CREATED SURPLUS**

1. **PREAMBLE:** THIS AGREEMENT (hereinafter referred to as the “**2017 Contributed Funds Agreement**” or “**Agreement**”) made this 21st day of September, 2017, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto; the Act of March 4, 1921 referred to as the Contributed Funds Act (41 Stat. 1404, 43 U.S.C. §395); the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C §397a); the Act of December 21, 1928 (45 Stat.1057), designated the Boulder Canyon Project Act; the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act; the Act of June 24, 1974 (88 Stat. 266), designated the Colorado River Basin Salinity Control Act, as amended, and Section 397 of the Act of December 20, 2006, (120 Stat. 2922), all of which acts are part of the body of law commonly known and referred to as Federal Reclamation law; among the UNITED STATES OF AMERICA (“United States”), represented by the Secretary of the Interior (the “Secretary”) and acting through the officer executing this Agreement; THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“MWD”), a regional public water district duly organized under California law; IMPERIAL IRRIGATION DISTRICT (“IID”), an irrigation district created under the California Irrigation District Law; the COLORADO RIVER COMMISSION OF NEVADA (“CRCN”), an agency of the State of Nevada; the

SOUTHERN NEVADA WATER AUTHORITY (“SNWA”), a political subdivision of the State of Nevada; and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), a multi-county water conservation district duly organized and existing under the laws of the State of Arizona; each of which is at times referred to individually as “Party” or collectively as “Parties.”

WITNESSETH THAT:

2. **EXPLANATORY RECITALS:**

2.1 WHEREAS, for the purposes of controlling floods, improving navigation, regulating the flow of the Colorado River, and providing for storage and the delivery of stored water for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, acting under and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, has constructed and is now operating and maintaining in the mainstream of the Colorado River at Black Canyon that certain structure known as and designated Hoover Dam and incidental facilities, creating thereby a reservoir designated Lake Mead;

2.2 WHEREAS, the Boulder Canyon Project Act provides, among other things, that the Secretary is authorized, under such general regulations as he or she may prescribe, to contract for the storage of water in Lake Mead and for the delivery of such water at such points as may be agreed upon for irrigation and domestic uses;

2.3 WHEREAS, the Boulder Canyon Project Act provides further that no person shall have or be entitled to have the use, for any purpose, of the stored water in Lake Mead, except by contract with the Secretary;

2.4 WHEREAS, the United States Bureau of Reclamation (“Reclamation”) has been working closely and cooperatively with the United States International Boundary and Water Commission (“IBWC”), as described in Minute No. 317, dated June 17, 2010, to the United States-

Mexico Treaty for Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed February 3, 1944 (“1944 Water Treaty”), to “explore opportunities for binational cooperative projects that: minimize the impacts of potential Colorado River shortage conditions, generate additional volumes of water using new water sources by investing in infrastructure such as desalinization facilities, conserve water through investments in a variety of current and potential uses, including agriculture, among others; and envision the possibility of permitting Mexico to use United States infrastructure to store water”;

2.5 WHEREAS, on November 20, 2012, Minute No. 319 to the 1944 Water Treaty was adopted;

2.6 WHEREAS, Minute No. 319 identified cooperative measures that both countries would take through December 31, 2017, including distribution of flows under low and high elevation reservoir conditions, salinity considerations, the ability for Mexico to create Intentionally Created Mexican Allocation (“ICMA”), and a pilot program for water for the environment in Mexico and ICMA/Binational ICS Exchange (“Pilot Program”);

2.7 WHEREAS, the Pilot Program included elements as documented in Section 2.7 of the 2012 Minute No. 319 Contributed Funds Agreement;

2.8 WHEREAS, anticipating the expiration of Minute No. 319 on December 31, 2017, Minute No. 323 to the 1944 Water Treaty was adopted on September 27, 2017;

2.9 WHEREAS, Minute No. 323 extends through 2026 many of the cooperative measures established in Minute No. 319, including the continuation of the Pilot Program that the United States entities (both federal and non-federal) will fund through a new contribution of \$31.5 million USD;

2.10 WHEREAS, MWD, IID, SNWA, and CAWCD are willing and able, pursuant to

the provisions of the Interim Operating Agreement (defined below), to contribute capital for a modified Pilot Program under Minute No. 323 (“Minute 323 Pilot Program”, as further defined below) in the form of monetary contributions in exchange for Binational ICS (defined below) credits;

2.11 WHEREAS, the Parties desire to set forth their understanding as to the monetary contributions that will be provided by MWD, IID, SNWA, and CAWCD (collectively, the “Local Funding Agencies” as further defined below) with respect to the Minute 323 Pilot Program, the responsibilities of Reclamation with respect to these contributions and services, and the quantity of Binational ICS credits that each Local Funding Agency shall receive in exchange for such capital contributions;

2.12 WHEREAS, CRCN and SNWA have jointly consulted to acquire supplemental Colorado River water and are in compliance with N.R.S. § 538.186;

2.13 WHEREAS, no pilot program beyond 2026 is contemplated or proposed by Reclamation at this time; and

2.14 WHEREAS, any decision to expand the Minute 323 Pilot Program other than as expressly contemplated in Minute No. 323 or to create a new pilot program will be made in the future by the United States, subject to and based upon appropriate compliance with Federal law and after consultation with the Colorado River Basin States.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

3. **DEFINITIONS:** For the purpose of this Agreement, the following definitions shall apply:

3.1 1944 Water Treaty means the United States-Mexico Treaty for Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed February 3, 1944.

3.2 2017 BICS Agreement means the 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus.

3.3 Binational ICS means Binational Intentionally Created Surplus.

3.4 Binational ICS Account means records established by the Secretary regarding Binational ICS.

3.5 Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved in Section 13(a) of the Boulder Canyon Project Act.

3.6 Colorado River System shall have the meaning ascribed to such term in the Colorado River Compact.

3.7 Consolidated Decree means the decree entered by the United States Supreme Court in the matter of Arizona v. California et al. on March 27, 2006.

3.8 Delivery Agreement means an agreement entered into by the Secretary and a Local Funding Agency seeking to create Binational ICS, providing for delivery of Binational ICS according to the terms of the 2017 BICS Agreement and the Interim Operating Agreement (defined below).

3.9 Eligible Project Costs means costs for which Reclamation may expend appropriated or contributed funds or receive in-kind services under the Minute 323 Pilot Program.

3.10 Exhibit A is the Delivery Agreement for CAWCD.

3.11 Exhibit B is the Delivery Agreement for MWD.

3.12 Exhibit C is the Delivery Agreement for SNWA.

3.13 Exhibit D is the Delivery Agreement for IID.

3.14 Interim Guidelines means the guidelines adopted by the Secretary on December 13,

2007, in a Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations of Lake Powell and Lake Mead.

3.15 Interim Operating Agreement for Implementation of Minute No. 323 (“Interim Operating Agreement”) means the Interim Operating Agreement for Implementation of Minute No. 323, entered into simultaneously with the execution of this 2017 Contributed Funds Agreement.

3.16 Local Funding Agencies means MWD, IID, SNWA, and CAWCD, which are entities holding entitlements to Mainstream (defined below) water under a water delivery contract with the United States through the Secretary and providing capital contributions identified in this Agreement.

3.17 Mainstream shall have the meaning ascribed to such term in the Consolidated Decree.

3.18 Mexico’s Water Reserve means any and all water retained in the United States as a result of Mexico’s deferred deliveries of or adjustments to Mexico’s annual water delivery schedule pursuant to the terms of Minute No. 323 as specified in Section V, and any action of the Secretary in accordance with Section IX.A. of Minute No. 323.

3.19 Minute No. 319 means Minute No. 319 to the 1944 Water Treaty, Interim International Cooperative Measures In the Colorado River Basin Through 2017 and Extension of Minute 318 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California, dated November 20, 2012.

3.20 Minute No. 323 means Minute No. 323 to the 1944 Water Treaty, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin dated September 21, 2017.

3.21 Minute 323 Pilot Program means the program described in Section IX of Minute No. 323.

4. **GENERAL TERMS AND CONDITIONS:**

4.1 This Agreement shall become effective upon the date set forth in Article 1 and shall remain in effect until fully performed or the expiration of Minute No. 323 on December 31, 2026, whichever first occurs.

5. **CAPITAL CONTRIBUTIONS:**

5.1 Federal Contribution. Reclamation, or another federal agency, will provide \$16,500,000 USD to fund a portion of the total Minute 323 Pilot Program costs. Federal contributions will result in the creation of 50,000 acre-feet of water for the benefit of the Colorado River System and 70,000 acre-feet of water to discharge the United States' financial commitment to provide water for the environment under Section VIII of Minute No. 323.

5.2 Local Funding Agencies Contribution. The Local Funding Agencies shall make Pilot Program contributions of \$15,000,000 USD in exchange for 109,100 acre-feet of water by transferring funds to Reclamation within 60 days of receiving a request from Reclamation consistent with the provisions of Minute No. 323 (all monetary values are in USD) provided that such transfers in the aggregate shall not be less than \$5.0 million dollars from the inception of Minute No. 323 through December 31, 2020, not less than \$10.0 million dollars from the inception of Minute No. 323 through December 31, 2023, and not less than \$15.0 million dollars from the inception of Minute No. 323 through December 31, 2026, split equally among the Local Funding Agencies. The contributions set forth in this section are subject to: (1) each Local Funding Agency's determination whether to continue to contribute funds contemplated under this Agreement, (2) availability of funding through annual appropriations by necessary governing

boards, and (3) completion of the conversion of 124,000 acre-feet of water as originally contemplated in Section III.6.e.iii. of Minute No. 319 and restated in Section IX. of Minute No. 323. If any Local Funding Agency does not provide funding in accordance with this Section, that Agency's contribution may be assumed in equal proportions by the other Local Funding Agencies, if they so elect to provide additional funding. In the event that a Local Funding Agency does not provide funding in accordance with this Section, the remaining Local Funding Agencies and Reclamation may secure the participation of additional funding entities to replace amounts necessary to meet the \$15.0 million dollar amount identified in Section IX.A. of Minute No. 323.

5.3 Modification. The Parties may, individually or as a group, waive certain contingencies set forth in Section 5.2 for Local Funding Agency funding and may collectively agree upon different funding proportions without requiring amendment of this 2017 Contributed Funds Agreement. Finally, consistent with Section IX of Minute No. 323, the Parties may agree to fund additional projects in Mexico and, in turn, create additional water for transfer and use in the United States or in connection with use for environmental purposes consistent with Section VIII of Minute No. 323.

5.4 Method of Transfer of Monetary Contributions. All transfers of money required by Section 5.2 above shall be made electronically in accordance with instructions from Reclamation.

6. **CREATION AND ACCOUNTING OF BINATIONAL ICS:**

6.1 The Secretary has determined that the creation of Binational ICS from Mexico's Water Reserve provided by Mexico to the United States pursuant to Section V of Minute No. 323 meets the requirements of the Interim Operating Agreement and Exhibit A to the 2017 BICS Agreement.

6.2 Upon transfer of funds to Mexico under Minute No. 323, the Secretary shall cause

Mexico's Water Reserve to be converted to Binational ICS at the rate of \$137.50/acre-foot, and shall credit the Binational ICS accounts of the Local Funding Parties or, in the case of federal funders, account for the water as benefiting the system, in proportion to their respective investments. If there is insufficient Mexico's Water Reserve to satisfy the aforementioned credits required by any funding transfer, the Secretary will take any action necessary, consistent with the provisions of Section IX.A. of Minute No. 323, to create volumes of deferred deliveries sufficient to create Binational ICS or system water in proportion to, and contemporaneous with, such funding transfer, including, without limitation, reducing requested deliveries to Mexico.

6.3 Binational ICS shall be accounted for and reported in the Water Accounting Report described in Section 3.D.3 of the Interim Guidelines consistent with the provisions of the Interim Operating Agreement.

7. **AVAILABILITY OF BINATIONAL ICS TO LOCAL FUNDING AGENCIES:** The delivery conditions for Binational ICS available to the Local Funding Agencies are set forth in the Interim Operating Agreement. All Binational ICS available to a Local Funding Agency pursuant to this Agreement shall be delivered to such Local Funding Agency pursuant to such agency's Delivery Agreement. The Delivery Agreements for the Local Funding Agencies are attached hereto as Exhibits A, B, C, and D.

8. **NON-WAIVER:** No Party to this Agreement shall be considered to have waived any right hereunder except when such waiver of the right is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or a relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

9. **UNCONTROLLABLE FORCES:** No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

10. **REPRESENTATIONS AND WARRANTIES:**

10.1 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.

10.2 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.

10.3 This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.

10.4 Each Party: (1) warrants and represents that such Party is authorized by, and has undertaken all prerequisite actions required by, applicable Federal and State laws and regulations to perform the obligations and exercise the rights contemplated herein, and (2) acknowledges that

such warranty and representation is a material inducement to, and has been relied upon by, the other Parties in entering into this 2017 Contributed Funds Agreement and performing their respective obligations hereinafter.

11. **GOVERNING LAW**: 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.

12. **MINUTE NO. 323**: Nothing in this Agreement amends or affects the terms of Minute No. 323.

13. **BINDING EFFECT AND LIMITED ASSIGNMENT**: The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties upon receipt of written agreement to the terms of this Agreement, but 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 is and shall be binding upon and shall inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

14. **AMENDMENT, MODIFICATION, AND/OR SUPPLEMENT**: This Agreement may be amended, modified, or supplemented only by the written agreement of the Parties. No amendment, modification, or supplement shall be binding unless it is in writing and signed by all Parties.

15. **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**: Nothing in this Agreement may be construed to obligate Reclamation, the United States, or the Local Funding Agencies to any current or future expenditure of resources in advance of the availability of appropriations.

16. **DRAFTING CONSIDERATIONS:** Each Party and its counsel have 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 one Party shall be considered to have drafted this Agreement.

17. **NOTICES:**

17.1 All notices and requests required or allowed under the terms of this 2017 Contributed Funds Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

RECLAMATION:

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

CAWCD:

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

CRCN:

Colorado River Commission of Nevada
555 East Washington Avenue, Suite 3100
Las Vegas, NV 89101
Attn: Executive Director

IID:

Imperial Irrigation District
P.O. Box 937
333 East Barioni Boulevard
Imperial, CA 92251
Attn: General Manager

MWD:

The Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90012
Attn: General Manager

SNWA:

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

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

18. **JUDICIAL REMEDIES NOT FORECLOSED**: Nothing herein shall be construed (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have; or (ii) as depriving any Party of any defense thereto which would otherwise be available.

19. **AVAILABILITY OF INFORMATION**: Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party books and records relating to matters covered by this Agreement.

20. **OFFICIALS NOT TO BENEFIT**: No Member of or Delegate to the Congress, or Resident Commissioner, or official of MWD, SNWA, CRCN, CAWCD, or IID or any Elector or Electors shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

21. **EXHIBITS MADE PART OF THIS AGREEMENT**: Exhibits A, B, C, and D are attached hereto and made a part hereof.

22. **NO THIRD-PARTY BENEFICIARIES**: This Agreement and any agreements made or

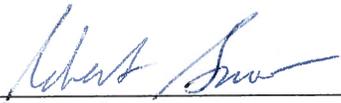
actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Agreement intends for this Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise, including but not limited to the country of Mexico and non-governmental organizations.

23. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement No. 17-XX-30-W0625 on the day and year first written above.

Approved as to legal sufficiency:

THE UNITED STATES OF AMERICA

By: 
Robert Snow
Attorney-Advisor

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

Approved as to form:

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: 
Jay M. Johnson
General Counsel

By: 
Theodore C. Cooke
General Manager

Approved as to form:

**COLORADO RIVER COMMISSION
OF NEVADA**

By: 
Jennifer T. Crandell
Special Counsel Attorney General

By: 
Jayne Harkins
Executive Director

Approved as to form:

IMPERIAL IRRIGATION DISTRICT

By: 
Frank A. Oswalt, III
General Counsel

By: 
Kevin E. Kelley
General Manager

Approved as to form:

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: 

Marcia L. Scully
General Counsel

By: 

Jeffrey Kightlinger
General Manager

Approved as to form:

**SOUTHERN NEVADA WATER
AUTHORITY**

By: 

Gregory J. Walch
General Counsel

By: 

John J. Entsminger
General Manager

Interim Operating Agreement for Implementation of Minute No. 323

The State of Arizona, acting through the Arizona Department of Water Resources (“ADWR”), the State of Colorado, the State of Nevada, acting through the Colorado River Commission of Nevada (“Nevada”), the State of New Mexico, the State of Utah, and the State of Wyoming; the Central Arizona Water Conservation District (“CAWCD”); the Coachella Valley Water District (“CVWD”); the Imperial Irrigation District (“IID”); the Metropolitan Water District of Southern California (“MWD”); the City of Needles; the Palo Verde Irrigation District (“PVID”); the Southern Nevada Water Authority, (“SNWA”); the Upper Colorado River Commission (“UCRC”) and the Secretary of the Interior (“Secretary”), acting through the U.S. Department of the Interior, Bureau of Reclamation (“Reclamation”), collectively the “Parties,”

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties herein enter into this Interim Operating Agreement for Implementation of Minute No. 323 (“Interim Operating Agreement”) and hereby agree as follows:

SECTION 1

The Parties to this Interim Operating Agreement and their respective authorities to enter this Interim Operating Agreement are as follows:

- 1.1 ADWR, through its Director, is the successor to the signatory agency of the State for the 1922 Colorado River Compact, and the 1944 Contract for Delivery of Water with the United States, both authorized and ratified by the Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. § 45-107, the Director is authorized and directed, subject to the limitations in A.R.S. § 45-106, for and on behalf of the State of Arizona, to consult, advise and cooperate with the Secretary of the Interior of the United States (“Secretary”) with respect to the exercise by the Secretary of Congressionally authorized authority relative to the waters of the Colorado River (including, but not limited to, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617, and the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1501) and with respect to the development, negotiation and execution of interstate agreements. Additionally, under A.R.S. § 45-105(A)(9), the Director is authorized to “prosecute and defend all rights, claims and privileges of this state respecting interstate streams.”
- 1.2 CAWCD is a multi-county water conservation district established pursuant to A.R.S. §§ 48-3701 *et seq.*, that operates and maintains the Central Arizona Project. CAWCD is authorized by A.R.S. §§ 48-3712 and 48-3713 to enter into this Interim Operating Agreement and, pursuant to its contract with the Secretary of the Interior issued under Section 5 of the Boulder Canyon Project Act of 1928, is authorized to divert all Colorado River water to which Arizona is entitled under the Decree in *Arizona v. California*, 376 U.S. 340 (1964), that is not needed to satisfy the water orders of those water users in Arizona with an equal or higher priority to Colorado River water. Accordingly, CAWCD has the right to divert Intentionally Created Surplus (ICS) released by the Secretary for use

within the State of Arizona pursuant to the Consolidated Decree of the U.S. Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006) ("Consolidated Decree").

- 1.3 Colorado. Section 24-1-109, Colorado Revised Statutes (2016) provides that “Interstate compacts authorized by law shall be administered under the direction of the office of the governor.” This includes the Colorado River Compact and the Upper Colorado River Basin Compact. Section 37-60-109 provides that “the governor from time to time, with approval of the board, shall appoint a commissioner, who shall represent the State of Colorado upon joint commissions to be composed of commissioners representing the State of Colorado and another state or other states for the purpose of negotiating and entering into compacts or agreements between said states...” By letter dated February 6, 2015, the Governor notified the Upper Colorado River Commission that he appointed Commissioner L. James Eklund to represent the State of Colorado.
- 1.4 CVWD is a county water district created under the California County Water District Law, codified at Section 30000 et seq. of the California Water Code, and delivers Colorado River water to portions of its service area in Imperial, Riverside, and San Diego Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928 and the California Quantification Settlement Agreement.
- 1.5 IID is an irrigation district created under the California Irrigation District Law, codified at Section 20500 et seq. of the California Water Code, and delivers Colorado River water in Imperial County, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
- 1.6 MWD is a metropolitan water district created under the California Metropolitan Water District Act, codified at Section 109-1 et seq. of the Appendix to the California Water Code; and delivers Colorado River water to portions of its service area in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928.
- 1.7 The City of Needles is a charter city duly authorized and existing under and by virtue of the laws of the State of California and delivers Colorado River water, either directly or by exchange, to portions of Imperial, Riverside, and San Bernardino Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928, and the Lower Colorado Water Supply Act of 1986 (100 Stat. 3665) as amended.
- 1.8 Nevada. The Colorado River Commission of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is further authorized by the Boulder Canyon Project Act, 43 U.S.C. 617 (1928) and more specifically by N.R.S. § 538.161 (6), (7) to enter into this Interim Operating Agreement. The CRCN, in furtherance of the State of Nevada’s responsibility to promote the health and welfare of its people in Colorado River matters, makes this Interim Operating Agreement to supplement the supply of water in the Colorado River which is available for use in Nevada, augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary.

- 1.9 New Mexico. Pursuant to NMSA 1978, § 72-14-3, the New Mexico Interstate Stream Commission is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of the State of New Mexico, interstate or otherwise. The Interstate Stream Commission also is authorized to institute or cause to be instituted in the name of the State of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary.
- 1.10 PVID is a special district created under the Palo Verde Irrigation District Act, codified at Section 33-1 et seq. of the Appendix to the California Water Code, and delivers Colorado River water in Riverside and Imperial Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
- 1.11 Reclamation is responsible for water management throughout the western United States by the limiting provisions of Reclamation law, beginning with the Reclamation Act of 1902, as amended and supplemented. The Secretary also has a broader and unique legal role in the management of the lower Colorado River system in accordance with applicable federal law, including the Boulder Canyon Project Act of 1928, the 1963 Decision of the U.S. Supreme Court in *Arizona v. California*, the Consolidated Decree, the Colorado River Basin Project Act of 1968, and other applicable provisions of federal law.
- 1.12 SNWA is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Interim Operating Agreement and, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICS released by the Secretary for use within the State of Nevada pursuant to the Consolidated Decree.
- 1.13 Upper Colorado River Commission. An interstate water administrative agency composed of one Commissioner representing each of the States of Colorado, New Mexico, Utah and Wyoming and one Commissioner representing the United States as established pursuant to Article VIII of the Upper Colorado River Basin Compact of 1948, 63 Stat. 31. Article VIII empowers the Commission to, among other things, make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such Treaty may be reduced in accordance with the terms of such Treaty; and perform all functions required of it by the Upper Colorado River Basin Compact and do all things necessary, proper or convenient in the performance of its duties thereunder, either independently or in cooperation with any state or federal agency.

- 1.14 Utah. The Division of Water Resources (DWR) is the water resource authority for the State of Utah. Utah Code Ann. § 73-10-18. The Utah Department of Natural Resources Executive Director (Department), with the concurrence of the Utah Board of Water Resources (Board), appoints the DWR Director (Director). §79-2-204(1)(a). The Board makes DWR policy. § 73-10-1.5. The Board develops, conserves, protects, and controls Utah waters, § 73-10-4(4), (5), and, in cooperation with the Department and Governor, supervises administration of interstate compacts, § 73-10-4, such as the Colorado River Compact, §§ 73-12a-1 through 3, and the Upper Colorado River Basin Compact, § 73-13-10. The Board, with Department and Gubernatorial approval, appoints a Utah Interstate Stream Commissioner, § 73-10-3, currently the DWR Director, to represent Utah in interstate conferences to administer interstate compacts. §§ 73-10-3 and 73-10-4. These delegations of authority authorize the Utah Interstate Stream Commissioner/DWR Director to sign this document.
- 1.15 Wyoming. Water in Wyoming belongs to the state. Wyo. Const. Art. 8 § 1. The Wyoming State Engineer is a constitutionally created office and is Wyoming’s chief water official with general supervisory authority over the waters of the state. Wyo. Const. Art. 8 § 5. The Wyoming legislature conferred upon Wyoming officers the authority to cooperate with and assist like authorities and entities of other states in the performance of any lawful power, duty, or authority. Wyo. Stat. § 16-1-101. Wyoming and its State Engineer represent the rights and interests of all Wyoming appropriators with respect to other states. Wyoming v. Colorado, 286 U.S. 494 (1922). See Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92 (1938). In signing this Interim Operating Agreement, the State Engineer intends that this Interim Operating Agreement be mutually and equally binding between the Parties.

SECTION 2

- 2.1 The definitions in the Interim Surplus Guidelines described in the Record of Decision dated January 16, 2001, and modified by the 2007 Interim Guidelines are hereby incorporated in this Interim Operating Agreement. In addition, each of the following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.
- 2.1.1 “2007 Interim Guidelines” shall mean Section XI of the Record of Decision issued by the Secretary for the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead.
- 2.1.2 “2017 BICS Agreement” shall mean the 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus executed contemporaneously with this Agreement.
- 2.1.3 “Binational ICS” or “BICS” shall mean Binational Intentionally Created Surplus.
- 2.1.4 “Binational ICS Account” shall mean records established by the Secretary regarding Binational ICS.

- 2.1.5 “Minute 323 Delivery Agreement” shall mean an agreement entered into by the Secretary and one or more Contractors seeking to create Binational ICS through a binational project pursuant to Minute No. 323, providing for delivery of Binational ICS.
- 2.1.6 “ICMA” shall mean either water accounted for under Section III.1 of Minute No. 319 or Intentionally Created Mexican Allocation as referred to in Section III.4 of Minute No. 319.
- 2.1.7 “Mexico’s Water Reserve” shall mean water described and accounted for under Section V of Minute No. 323
- 2.1.8 “Minute No. 319” shall mean Minute No. 319, Interim International Cooperative Measures In the Colorado River Basin Through 2017 and Extension of Minute 318 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California
- 2.1.9 “Minute No. 323” shall mean Minute No. 323, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin.
- 2.1.10 “Treaty” or “1944 Water Treaty” shall mean the Treaty between the United States of America and Mexico Respecting the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande (Feb. 3, 1944, U.S.-Mex., 59 Stat. 1219, T.S. 994).

SECTION 3

- 3.1 On August 13, 2007, a Joint Statement by officials from the governments of the United States and Mexico was issued expressing the interest of both countries in identifying cooperative opportunities to help ensure that the Colorado River system is able to continue to meet the needs of both nations. See also the Joint Declaration by the United States Secretary of the Interior and Mexico’s Ambassador on January 15, 2009.
- 3.2 On December 13, 2007, the Secretary adopted the 2007 Interim Guidelines, which provide among other things provisions for coordinated operations of Lake Powell and Lake Mead, implementing shortages and providing for surpluses in the Lower Colorado River Basin, and the creation and delivery of ICS. See 2007 Interim Guidelines, 73 Fed. Reg. 19873-19892.
- 3.3 On June 17, 2010, the Commissioners of the International Boundary and Water Commission (“IBWC”) executed Minute No. 317 which stipulates that the IBWC “shall in particular explore opportunities for binational cooperative projects that: minimize the impacts of potential Colorado River shortage conditions; generate additional volumes of water using new water sources by investing in infrastructure such as desalinization facilities; conserve water through investments in a variety of current and potential uses,

including agriculture, among others; and envision the possibility of permitting Mexico to use United States infrastructure to store water.”

- 3.4 On December 17, 2010, the IBWC Commissioners executed Minute No. 318 permitting adjustment of the delivery of schedules for water allotted to Mexico under the 1944 Water Treaty to address Mexico’s needs as a result of infrastructure damage in Irrigation District 014 caused by the April 2010 earthquake in Mexicali Valley, Baja California, Mexico.
- 3.5 Pursuant to Minute No. 317, the Commissioners agreed to establish a binational Consultative Council, composed of representatives of the Commission, the respective federal governments and the Seven Colorado River Basin States (Basin States), to facilitate consideration of the legal, administrative and policy matters associated with Section 3.3 and 3.4 above.
- 3.6 On November 20, 2012, the IBWC Commissioners executed Minute No. 319 which would allow for both countries to assess, through December 31, 2017, the long-term opportunities for water conservation, management and development.
- 3.7 Minute No. 319 addressed cooperative measures with regard to the management of the Colorado River system identified by the IBWC and the Parties. These measures included: salinity; variable water supplies within the Colorado River basin; opportunities to establish ICMA when Mexico chooses to adjust its delivery schedule; sharing in the benefits of water that may be available temporarily through high reservoir conditions; engaging with the United States in cooperative measures to reduce the likelihood of substantial and unprecedented reductions in water deliveries to water users in both countries; exchange of water; and the arrangement of water for the environment. At the same time, several specific binational projects were identified that could be jointly implemented to the benefit of both countries.
- 3.8 Consistent with the stated intention memorialized in Minute No. 319, the United States and Mexico agree in Minute No. 323 to extend binational, cooperative efforts through 2026, and establish a pilot program of temporary measures and increased cooperation and management of the water resources of the Colorado River.
- 3.9 The countries have identified these measures to be undertaken during an interim period from the date Minute No. 323 enters into force through December 31, 2026.
- 3.10 On September 21, 2017, certain parties to this Interim Operating Agreement executed the 2017 BICS Agreement and related Minute 323 Delivery Agreements, which allowed Contractors to participate in and take delivery of Binational ICS.

SECTION 4

- 4.1 This Interim Operating Agreement establishes operational procedures which are in addition to and consistent with the 2007 Interim Guidelines and that are necessary to implement Minute No. 323. This Interim Operating Agreement does not in any way amend or affect the terms of Minute No. 323.

- 4.2 This Interim Operating Agreement does not establish or act as precedent for any future agreement or undertaking.
- 4.3 The purposes of this Interim Operating Agreement are to:
- 4.3.1 Facilitate implementation of the assurances and accounting provided for in the 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus;
 - 4.3.2 Facilitate implementation and accounting of high elevation reservoir operations referenced in Section II and Resolution 1 of Minute No. 323;
 - 4.3.3 Ensure that implementation of Minute No. 323 is consistent with the 2007 Interim Guidelines; and
 - 4.3.4 Facilitate consultation among the Parties regarding implementation and operations contemplated under Minute No. 323.
- 4.4 This Interim Operating Agreement applies to the implementation of Minute No. 323 within the United States.
- 4.5 Upon the effectiveness of Section IV of Minute No. 323, the Parties to this Agreement shall amend this Agreement in writing for the limited purpose of conforming this Agreement to any changes to applicable law.
- 4.6 By separate agreement with the Secretary dated this day, IID has agreed to the terms and conditions of the 2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus and the 2012 Contributed Funds Agreement (Agreement No. 12-XX-30-WO565) (the 2012 Agreements). Accordingly, the parties to the 2012 Agreements hereby agree to strike in its entirety the 2nd sentence of Exhibit A under the heading "Delivery" that appears in the 2012 Agreements.

SECTION 5

- 5.1 Term of the Interim Operating Agreement. This Interim Operating Agreement shall commence on the later of: (1) the date of execution by all Parties or (2) the date that Minute No. 323 enters into force, and shall terminate December 31, 2026; provided, however, that any Binational ICS remaining in a Binational ICS Account on December 31, 2026, may be released as provided herein until December 31, 2036.

SECTION 6

- 6.1 When Section II of Minute No. 323 is operative (Distribution of Flows Under High Elevation Reservoir Conditions), Reclamation will operate the system consistent with the following provisions:

- 6.1.1 For any year in which a Domestic Surplus Condition under Section 2.B.2.b of the 2007 Interim Guidelines is determined the following provisions shall apply:
- 6.1.1.1 The amount that would otherwise be available to CAWCD under Section 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-third of the quantity of high elevation reservoir flows delivered to Mexico. For example, if Mexico requested delivery of 30,000 acre-feet, the maximum amount available to Arizona would be 90,000 acre-feet.
 - 6.1.1.2 The amount that would otherwise be available to SNWA under Section 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-third of the quantity of high elevation reservoir flows delivered to Mexico. For example, if Mexico requested delivery of 30,000 acre-feet, the maximum amount available to SNWA would be 90,000 acre-feet.
 - 6.1.1.3 The amount that would otherwise be available to MWD under Section 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-third of the quantity of high elevation reservoir flows delivered to Mexico. For example, if Mexico requested delivery of 30,000 acre-feet, the maximum amount available to MWD would be 240,000 acre-feet, except as provided in Section 6.1.1.4 below.
 - 6.1.1.4 In the event SNWA and/or Arizona do not request or take delivery of the maximum amount to which they are entitled under Section 2.B.2.b of the 2007 Interim Guidelines, MWD will have the right to request such water up to an amount equal to one-third of the quantity of high elevation reservoir flows delivered to Mexico. Under no circumstances shall uses under Section 2.B.2.b of the 2007 Interim Guidelines exceed 250,000 acre-feet by MWD and 450,000 acre-feet by MWD, SNWA, Arizona, and Mexico combined.
- 6.1.2 For any year in which a Quantified Surplus Condition (Section 2.B.3 of the 2007 Interim Guidelines) is determined, the Secretary shall allocate water to Mexico pursuant to Section II of Minute No. 323 prior to establishing the volume of Quantified Surplus under Section 2.B.3.a of the 2007 Interim Guidelines. For the purpose of determining the existence, and establishing the volume, of Quantified Surplus, the Secretary shall not consider any volume of Binational ICS and Mexico's Water Reserve.
- 6.1.3 The allocations of Quantified Surplus to any Contractors that do not have an agreement to create Binational ICS pursuant to Minute No. 323 shall not be reduced as a result of the quantification referenced in the preceding Section 6.1.2.

SECTION 7

- 7.1 Certain Parties have entered into the 2017 BICS Agreement to enable implementation of the operations contemplated by this Interim Operating Agreement and Minute No. 323.

The 2017 BICS Agreement provides the appropriate legal mechanisms to achieve successful conversion of Mexico's Water Reserve to Binational ICS and delivery of Binational ICS. The 2017 BICS Agreement parties have indicated that among the conditions of their waiver, they will waive only with respect to Binational ICS described in exhibits to the 2017 BICS Agreement.

- 7.1.1 The Secretary agrees to administer Binational ICS, including accounting for and delivery of Binational ICS, in a manner that is fully consistent with the terms and conditions of the 2017 BICS Agreement, and Section XI.A of the 2007 Interim Guidelines.
- 7.1.2 The Secretary acknowledges that waiver is a condition for converting Mexico's Water Reserve to Binational ICS.
- 7.2 Pursuant to procedures set forth in this Interim Operating Agreement, a Contractor may make contributions of capital to participate in a binational project in Mexico that will create Mexico's Water Reserve. A portion of Mexico's Water Reserve created by the binational project may be converted to Binational ICS for use by the contributing Contractors.
- 7.3 Mexico's Water Reserve may be converted to Binational ICS subject to the following conditions:
 - 7.3.1 The amount of Mexico's Water Reserve created shall not exceed the volume of water actually retained in the United States through reduced deliveries to Mexico.
 - 7.3.2 In accounting for Mexico's Water Reserve and Mexico's Water Reserve converted to Binational ICS, the IBWC and the Secretary, through Reclamation, shall determine the amount of Mexico's Water Reserve created as provided in Section V of Minute No. 323. Reclamation shall determine the amount of Binational ICS that will be added to each Contractor's Binational ICS Account in consultation with the Lower Division States, with notification to the Upper Division States, and provide a final written decision to the Parties. Any Party to the 2017 BICS Agreement may appeal the Secretary's determinations through administrative and judicial processes.
 - 7.3.3 Unless otherwise provided in an exhibit to the 2017 BICS Agreement, there shall be a one-time deduction of two percent (2%) from the amount of Binational ICS in the Year of its conversion from Mexico's Water Reserve. This deduction results in additional water storage in Lake Mead for future use in accordance with the Consolidated Decree and the 2007 Interim Guidelines.
 - 7.3.4 Unless otherwise provided in an exhibit to the 2017 BICS Agreement, the quantity of Binational ICS remaining at the end of each Year shall be diminished by annual evaporation losses of three percent (3%). Losses shall be applied annually to the end-of-the-Year balance of Binational ICS beginning in the Year after the Binational ICS is converted and continuing until no Binational ICS remains in Lake Mead. However, no evaporation losses shall be assessed during a Year in which the Secretary has determined a shortage.

- 7.3.5 The Parties hereby agree to the terms of Exhibit A to the 2017 BICS Agreement. The Parties must agree, prior to execution, to any subsequent exhibit to the 2017 BICS Agreement that does not provide for the deductions described in Sections 7.3.3 and 7.3.4 of this Interim Operating Agreement.
- 7.3.6 Binational ICS may not be transferred to a Contractor in another State.
- 7.4 Binational ICS may be released subject to the following conditions:
- 7.4.1 If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any Binational ICS. The Contractor may request that the amount of Binational ICS in the Contractor's account be reduced by the amount of the overrun payback obligation in order to pay the overrun payback obligation.
- 7.4.2 Binational ICS shall only be released pursuant to a determination of an ICS Surplus Condition.
- 7.4.3. The total amount of Binational ICS and Extraordinary Conservation ICS that may be released in any Year is limited to the following:
- 7.4.3.1 400,000 acre-feet for California Contractors;
 - 7.4.3.2 300,000 acre-feet for Nevada Contractors; and
 - 7.4.3.3 300,000 acre-feet for Arizona Contractors.
- 7.4.4 If the May 24-month Study for that Year indicates that a Shortage Condition would be determined in the succeeding Year if the requested amounts for the current Year were released, the Secretary, through the Bureau of Reclamation, may release less than the amounts of Binational ICS requested to be released.
- 7.4.5 During Flood Control releases, the Secretary shall take actions as described in Section V.E.10 of Minute No. 323.
- 7.4.6 Binational ICS is not available for delivery in a year for which a shortage condition has been determined.
- 7.4.7 Contractors shall request delivery of Binational ICS in the same manner as required for ICS under the 2007 Interim Guidelines.
- 7.4.8 Delivery of Binational ICS will be made pursuant to a Binational ICS Minute 323 Delivery Agreement.

- 7.5 Binational ICS shall be accounted for and reported in the Water Accounting Report described in Section 3.D.3 of the 2007 Interim Guidelines consistent with the provisions of this Interim Operating Agreement.

SECTION 8

- 8.1 Except as provided herein, nothing in this Interim Operating Agreement shall be deemed to diminish or waive the rights of any Party. The failure of any Party to enforce a provision of this Interim Operating Agreement shall not be deemed to constitute a waiver of that provision.
- 8.2 No Party to this Interim Operating Agreement shall be considered to be in default in the performance of any obligations under this Interim Operating Agreement when a failure of performance shall be due to uncontrollable forces. The term “uncontrollable force” shall mean any cause beyond the control of the party unable to perform such obligation, including but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, a federal governmental agency or authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.
- 8.3 All activities undertaken pursuant to this Interim Operating Agreement shall be subject to the availability of funds, resources, and corresponding personnel, as well as to applicable laws and regulations.
- 8.4 The Parties to this Interim Operating Agreement are hereby notified of A.R.S. § 38-511.
- 8.5 The Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.
- 8.6 The Colorado River Board of California (“CRB”) is created by, and operates under, California Water Code sections 12500 et seq. The California Water Code charges the CRB and its officers with the duty to confer with representatives of other States in the Colorado River Basin, representatives of the United States, and others concerning problems and measures relating to the development of the Colorado River Basin, the use of the water of the Colorado River System, and the protection of the interests therein of the State, and to negotiate and to make recommendations respecting such problems and measures. Through its Chairman acting as the Colorado River Commissioner pursuant to the California Water Code section 12525, the Colorado River Board of California has the authority to exercise on behalf of California every right and power granted to California by the Boulder Canyon Project Act of 1928, and to perform all other things necessary or expedient to carry out the purpose of the Colorado River Board. Under this authority, the CRB through its officers has participated in the negotiation of, and has made recommendations concerning, this Interim Operating Agreement and its exhibits. Although the CRB and the State of California are not Parties to this Interim Operating

Agreement, the Parties agree to include the CRB and its officers in any consultations under this Interim Operating Agreement and in any negotiations related to amendment of this Interim Operating Agreement and its exhibits.

- 8.7 Minute No. 323 serves to implement the Treaty through a series of temporary, cooperative measures. Minute No. 323 requires the mutual acceptance, cooperation, and coordination of the Parties for its implementation in the United States. The Parties agree that this Interim Operating Agreement is one of a number of implementing agreements, in the absence of which, Minute No. 323 cannot be implemented.

SECTION 9

- 9.1 **NOTICES AND REQUESTS.** All notices and requests required or allowed under the terms of this Interim Operating Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

ADWR:

Arizona Department of Water Resources
P.O. Box 36020
Phoenix, Arizona 85067
Attn: Director

Bureau of Reclamation:

P.O. Box 61470
Boulder City, NV 89006-1470
Attn: Regional Director

CAWCD:

Central Arizona Water Conservation District
23636 North Seventh Street
Phoenix, AZ 85024
Attn: General Manager

State of Colorado:

Colorado Commissioner to the Upper Colorado River Commission
c/o Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203
Attn: Director

CVWD:

Coachella Valley Water District
P. O. Box 1058
Coachella, CA 92236
Attn: General Manager

IID:

Imperial Irrigation District
P.O. Box 937
333 East Barioni Boulevard
Imperial, CA 92251
Attn: General Manager

MWD:

The Metropolitan Water District of Southern California
700 North Alameda Street
Los Angeles, CA 90012
Attn: General Manager

City of Needles:

City of Needles
817 Third Street
Needles, CA 92363-2933
Attn: City Manager

State of New Mexico:

New Mexico Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102
Attn: Secretary

Nevada:

Colorado River Commission of Nevada
555 East Washington Avenue, Suite 3100
Las Vegas, NV 89101
Attn: Executive Director

PVID:

Palo Verde Irrigation District
180 West 14th Avenue
Blythe, CA 92225
Attn: General Manager

SNWA:

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

Upper Colorado River Commission

355 S 400 E
Salt Lake City, UT 84111-2904
Attn: Executive Director

State of Utah:

Utah Division of Water Resources
1594 West North Temple, Suite 310
P.O. Box 146201
Salt Lake City, UT 84114-6201
Attn: Director

State of Wyoming:

Wyoming State Engineer's Office
122 West 25th Street
Herschler Building, 1st Floor West
Cheyenne, WY 82002
Attn: Wyoming State Engineer

9.2 Any Party may, at any time, change its mailing address by notice to the other Parties.

In Witness of this Interim Operating Agreement, the Parties affix their official signatures below, acknowledging execution of this document on this 21st day of September, 2017.

[Signatures start next page]

THE UNITED STATES OF AMERICA

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

**THE STATE OF ARIZONA ACTING THROUGH THE ARIZONA DEPARTMENT OF
WATER RESOURCES**

By: 

Thomas Buschatzke
Director

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: 
Theodore C. Cooke
General Manager

COACHELLA VALLEY WATER DISTRICT

By: 

J. M. Barrett
General Manager

THE STATE OF COLORADO

By:  _____
L. James Eklund
Colorado Commissioner, Upper
Colorado River Commission
Governor's Representative

**THE STATE OF NEVADA ACTING THROUGH THE COLORADO RIVER
COMMISSION OF NEVADA**

By: 
Jayne Harkins
Executive Director

IMPERIAL IRRIGATION DISTRICT

By: *Kevin E. Kelley*
Kevin E. Kelley
General Manager

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: 
Jeffrey Kightlinger
General Manager

THE CITY OF NEEDLES

By: 

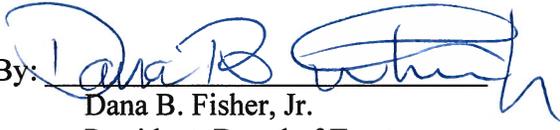
Rick Daniels
City Manager

THE STATE OF NEW MEXICO

By: 

Tom Blaine
Secretary, New Mexico Interstate
Stream Commission
New Mexico State Engineer

PALO VERDE IRRIGATION DISTRICT

By: 
Dana B. Fisher, Jr.
President, Board of Trustees

SOUTHERN NEVADA WATER AUTHORITY

By: 

John J. Entsminger
General Manager

UPPER COLORADO RIVER COMMISSION

By: 
Don Ostler
Executive Director

THE STATE OF UTAH

By: 
Eric Millis
Director, Utah Department of Water Resources
Utah Interstate Stream Commission

THE STATE OF WYOMING

By: 
Patrick T. Tyrrell
Wyoming State Engineer

2017 BINATIONAL ICS DELIVERY AGREEMENT

This 2017 Binational ICS Delivery Agreement (“Delivery Agreement”) is entered into this 21st day of September, 2017, by and between the UNITED STATES OF AMERICA, through the Department of the Interior, Bureau of Reclamation (“Reclamation”), and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“MWD”), (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 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. On November 20, 2012, the Commissioners of the International Boundary and Water Commission (“IBWC”) executed Minute No. 319, Interim International Cooperative Measures In the Colorado River Basin Through 2017 and Extension of Minute No. 318 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California (“Minute No. 319.”), which allows, among other things, U.S. entities to fund projects in Mexico that will create Intentionally Created Mexican Allocation (“ICMA”), a portion of which will be converted to Binational ICS.
- C. On September 21, 2017, the IBWC executed Minute No. 323, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin (“Minute No. 323”), which allows, among other things, U.S. entities to fund projects in Mexico that will create Mexico’s Water Reserve, a portion of which will be converted to Binational ICS.
- D. The Secretary, by and through the Bureau of Reclamation, and the other relevant parties are simultaneously entering into an Interim Operating Agreement for Implementation of Minute 323 (“Interim Operating Agreement”) that addresses implementation of Minute No. 323, particularly the conversion of Mexico’s Water Reserve to Binational ICS.
- E. MWD is a metropolitan water district created under the California Metropolitan Water District Act, codified at Section 109-1 et seq. of the Appendix to the West’s Annotated California Water Code; and delivers Colorado River water to its service area in portions of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928. MWD is a Contractor and holds an entitlement to the delivery of Colorado River water under Contract

No. Ilr-645, dated April 24, 1930; Supplementary Contract No. Ilr-645, dated September 28, 1931; Contract Merging Rights No. Ilr-1483, dated October 4, 1946; and Contract for Delivery of Surplus Flows from the Colorado River, No.7-07-30-W0171, dated September 9, 1987 (“Existing MWD Contracts”).

- F. MWD has secured the agreement of certain Contractors through the simultaneous execution of a 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus, in which under specific and limited circumstances the Contractors agree not to exercise 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. 2017 Contributed Funds 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, the Imperial Irrigation District, and the Central Arizona Water Conservation District for a Pilot Program for the Conversion of Mexico’s Water Reserve to Binational Intentionally Created Surplus;
- B. 2017 BICS Agreement shall mean the 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus;
- C. Binational ICS shall mean Binational Intentionally Created Surplus;
- D. Interim Operating Agreement shall mean the Interim Operating Agreement for Implementation of Minute No. 323, entered into simultaneously with the execution of this Delivery Agreement; and
- E. Mexico’s Water Reserve shall consist of the following:
 - (A) Water that Mexico chose to defer delivery in order to address potential emergencies, such as earthquakes, failures in the conveyance system, unforeseeable circumstances or force majeure,

- among others, which could prevent Mexico from using its full allotment of Colorado River water under the 1944 Water Treaty;
- (B) Up to 366,136 acre-feet of water stored by Mexico in the United States and accounted for in a Revolving Account, which would include any remaining balance of volumes deferred in accordance with the provisions of IBWC Minute Nos. 318 and 319; and
 - (C) Intentionally Created Mexican Allocation, which is water that Mexico chose to defer delivery through adjustments to its annual delivery schedule resulting from water conservation projects or new water sources projects, which would include any remaining volume of ICMA created under Minute No. 319.

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 Binational ICS permissible under the terms of the Interim Operating Agreement and this Delivery Agreement have occurred.

V. Relationship to Interim Operating Agreement

The Parties to this Delivery Agreement expressly acknowledge that this Delivery Agreement will be administered in compliance with the terms of the Interim Operating Agreement. Specific reference in this Delivery Agreement to particular sections of the Interim Operating Agreement shall not render inapplicable to the Parties those sections not specifically referred to herein.

VI. Creation and Accounting of Binational ICS

- A. The Secretary has determined that the creation of Binational ICS from Mexico's Water Reserve or water from any other source pursuant to Section IX.A of Minute No. 323 meets the requirements of the Interim Operating Agreement and Exhibit A to the 2017 BICS Agreement.
- B. When Mexico's Water Reserve or water from any other source is converted for use in the United States in accordance with Section IX.A of Minute No. 323, Reclamation shall credit MWD's Binational ICS Account, in accordance with Section 7.3.2 of the Interim Operating Agreement and Section 6 of the 2017 Contributed Funds Agreement.
- C. Binational ICS shall be accounted and reported in the Water Accounting Report described in Section 3.D.3 of the Guidelines consistent with the provisions of the Interim Operating Agreement.

VII. Delivery of Binational ICS

- A. MWD shall neither order nor accept delivery of Binational ICS except in accordance with the terms of the Interim Operating Agreement, this Delivery Agreement, and the 2017 BICS Agreement.
- B. MWD's existing entitlements to Colorado River water shall remain in full force and effect and with this Delivery Agreement shall govern the delivery of Binational ICS to MWD.
- C. Binational ICS. The Secretary shall deliver to MWD under the Existing MWD Contracts, the Binational ICS created under the terms of this Delivery Agreement and requested by MWD, in accordance with Section 7.4 of the Interim Operating Agreement and the 2017 BICS Agreement; provided, however:
 - i. The Binational ICS delivery must be in accordance with 43 C.F.R. Part 417; and
 - ii. 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 2017 BICS Agreement.

VIII. Imperial Irrigation District Call Rights Under Allocation Agreement

The creation under the Interim Operating Agreement and the 2017 Contributed Funds Agreement, the release, or delivery of Binational ICS, or the declaration of an ICS Surplus Condition in a calendar year shall not constitute a determination by the Secretary of the existence of surplus Colorado River water in that calendar year for the purposes of Section 9.2.2 of the Allocation Agreement Among the United States of America, The Metropolitan Water District of Southern California, Coachella Valley Water District, Imperial Irrigation District, San Diego County Water Authority, the La Jolla, Pala, Pauma, Rincon and San Pasqual Bands of Mission Indians, the San Luis Rey River Indian Water Authority, the City of Escondido and Vista Irrigation District, dated October 10, 2003.

IX. Other Terms

- A. Signatories to the 2017 BICS Agreement are intended third-party beneficiaries of this Delivery Agreement solely for the purposes of ensuring compliance with the Interim Operating Agreement and the 2017 BICS Agreement and enforcing the provisions of this Delivery Agreement that require compliance and/or consistency with the Interim Operating Agreement and the 2017 BICS Agreement. Notwithstanding anything to the contrary contained in this paragraph, no third-party shall accrue any right to Binational ICS as a result of the third-party beneficiary status conferred in this paragraph.

- B. This Delivery Agreement is subject to the Colorado River Compact of 1922 and all other applicable federal laws and agreements.
- C. 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.
- D. 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.
- E. Each Party to this Delivery Agreement represents that the person executing this Delivery Agreement 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.
- F. The expenditure or advance of any money or the performance of any obligation of the Parties under this Delivery Agreement shall be contingent on appropriation or allotment of funds.
- G. Each Party shall comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.
- H. Upon termination of this Delivery Agreement, the terms and conditions contained herein shall have no effect on any federal law or agreement applicable to the Parties.

[Signatures start next page]

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

Approved as to legal sufficiency:

THE UNITED STATES OF AMERICA

by: 
Robert Snow
Attorney-Advisor

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

Approved as to form:

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

by: 

Marcia Scully
General Counsel

by: 

Jeffrey Knightlinger
General Manager