

Agreement 66880

OPERATIONAL AGREEMENT

among

The Metropolitan Water District of Southern California

and

Southern Nevada Water Authority

and the

Colorado River Commission of Nevada

This Operational Agreement is made this 21st day of October, 2004 among The Metropolitan Water District of Southern California (MWD), and the Southern Nevada Water Authority (SNWA), and the Colorado River Commission of Nevada (CRCN) (collectively referred to herein as the "Parties" or individually as "Party").

Recitals

- A. Concurrently with execution of this Agreement, SNWA, CRCN, MWD and the United States have entered into a Storage and Interstate Release Agreement (SIRA) under 43 C.F.R. Part 414. The stated purpose of the SIRA is to establish an enduring cooperative relationship between MWD and SNWA under the Secretary of the Interior's (Secretary) Offstream Storage Regulations that will benefit both MWD and SNWA in the management of their respective water supplies and in the management of the Colorado River apportionments of their respective states during an era of limited water supplies. To this end, the SIRA provides a specific program through 2010 for the storage by MWD of unused Nevada apportionment of Colorado River water in California and the subsequent recovery of such water by MWD and the development of ICUA for SNWA. The SIRA, together with this Agreement, also provides a structure whereby such cooperation and storage program might continue beyond 2010.
- B. This Operational Agreement provides additional terms and conditions, consistent with the SIRA, governing operational and financial matters as among MWD, SNWA, and CRCN relating to the Storage of Colorado River water and the creation of ICUA.

Article 1

Definitions

1.1 **Definitions.** For purposes of this Operational Agreement, terms that are defined in Article I of the Decree in *Arizona v. California*, 376 U.S. 340 (1964) and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

1.1.1 "Agreement" shall mean this Operational Agreement.

1.1.2 "Decree" shall mean the Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.

1.1.3 "ICUA" or "Intentionally Created Unused Apportionment" shall have the same meaning as that term is defined in 43 CFR §414.2.

1.1.4 "SNWA Interstate Account" shall mean the storage account established by MWD under the terms of this Agreement.

1.1.5 "Year" shall mean calendar year.

Article 2

Storage and Creation of ICUA

2.1 Each Year through 2010, MWD shall use its best efforts to divert and store, without harming MWD's own operational needs, the total quantity of Colorado River water specified in SNWA's availability notice under section 3.1 of the SIRA, subject to the release of such quantity to MWD by the Secretary pursuant to the SIRA. If in any Year through 2010 MWD concludes it cannot divert and store the full quantity specified by SNWA, MWD shall, within 30 days of the date of SNWA's availability notice, notify SNWA of the reasons therefore and the quantity that MWD can divert and store. On request of SNWA, the Parties shall promptly confer so that MWD can notify the Secretary of the quantity of water it will store within the time specified in the SIRA.

2.2 Each Year subsequent to 2010, MWD and SNWA shall timely confer over the quantity of Colorado River water that can be made available for storage pursuant to the SIRA, the quantity of such water that MWD will be able to store, and the cost to SNWA of such storage and the subsequent recovery of such water and creation of ICUA. The annual agreement of the Parties on such matters shall be memorialized in writing and shall govern the Parties actions under the SIRA with respect to such water.

2.3 Section 4.3 of the SIRA limits the amount of ICUA that may be developed and released to SNWA in any Year to "the lesser of (i) 30,000 acre-feet, unless MWD agrees to a larger amount in such Year, or (ii) the previous end-of-Year balance in the SNWA Interstate Account." If SNWA desires the creation of more than 30,000 acre-feet of ICUA in any Year as to which there will be sufficient credits in the SNWA Storage Account, by April 15 of the previous Year SNWA shall notify MWD of such fact and of the amount of ICUA that SNWA requests be created. The Parties shall promptly confer on such request, and if MWD agrees to develop ICUA in an amount greater than 30,000 acre-feet for the specified Year, SNWA shall include such increased amount in its request under section 4.4 of the SIRA for the development of ICUA and its request under section 5.1 of the SIRA for the release of ICUA, and MWD shall include such amount in its ICUA Certification under section 4.5 of the SIRA.

Article 3

Term of Agreement

3.1 This Agreement shall be effective as of October 21, 2004 upon its execution by all Parties and shall terminate concurrently with termination of the SIRA.

Article 4

Costs

4.1 MWD shall be responsible for all costs associated with (i) the diversion, conveyance and storage of water pursuant to the SIRA through 2010, and (ii) all costs associated with the recovery of water stored through 2010 pursuant to the SIRA and the development of ICUA with respect to such water.

4.2 Responsibility for the costs associated with (i) the diversion, conveyance and storage of water pursuant to the SIRA subsequent to 2010, and (ii) the recovery of water stored subsequent to 2010 pursuant to the SIRA and the development of ICUA with respect to such water shall be determined annually by the Parties, and the annual agreement of the Parties shall be memorialized in writing.

4.3 SNWA shall be responsible for all costs associated with its diversion of ICUA released by the Secretary pursuant to the SIRA.

4.4 SNWA shall be responsible for all federal charges associated with evaluating, processing, and executing the SIRA.

Article 5

Other Provisions

5.1 **Uncontrollable Forces.** No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than the obligation of SNWA to pay federal charges) 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, 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, any federal governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require any party to settle any strike or labor dispute in which it is involved.

5.2 In the event that any term or condition on this Agreement is determined to be invalid, illegal or otherwise unenforceable, such determination shall have no effect on the other terms and conditions, which shall continue to be binding upon the Parties hereto. Lack of enforcement of any term or condition of this Agreement shall not be construed as a waiver of any rights conferred by such term or condition. Unless otherwise agreed to in writing, the failure of any Party to require the performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.

5.3 This Agreement shall be binding on the Parties and their respective successors and assigns.

5.4 Any person signing this Agreement represents that he/she 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.

5.5 This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties, except as set forth herein, whether written or oral. This Agreement can be amended only in writing signed by the Parties.

5.6 Time is of the essence of this Agreement.

5.7 Each Party agrees to perform any further acts and to execute and deliver any documents, which may be reasonably necessary to carry out the provisions of this Agreement.

5.8 The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

5.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together,

shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to another counterpart identical thereto, except for having additional signature pages executed by another Party to this Agreement attached thereto.

5.10 This Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns. No other person or entity may have or acquire any right by virtue of this Agreement.

Article 6

Notices and Requests

6.1 All notices and requests required and allowed under the terms of this Agreement may be given in the following manner:

6.2 Notices and requests shall be in writing and shall be mailed first class postage paid to the parties at the following addresses:

MWD:

The Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, California 90054-0153
Attn: Chief Executive Officer

SNWA:

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

CRCN:

Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Attn: Director

6.3 Any party may, at any time, change its mailing address by notice to the other parties.

6.4 Notices and requests may be given by facsimile and shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 18th day of October ~~November~~ 2004.
 21st

ATTEST:

COLORADO RIVER COMMISSION

By: [Signature]
Executive Director

By: [Signature]
Chair

Approved as to form:

By: [Signature]

Title: [Signature]

ATTEST:

SOUTHERN NEVADA WATER AUTHORITY

By: [Signature]
General Manager

By: [Signature]
Chair

Approved as to form:

By: [Signature]

Title: Deputy Counsel

ATTEST:

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: [Signature]
Executive Secretary

By: [Signature]
Chief Executive Officer

Approved as to form:

By: [Signature]

Title: GENERAL COUNSEL

1
2 **STORAGE AND INTERSTATE RELEASE**
3 **AGREEMENT**

4 among

5 The United States of America, acting through the Secretary of the Interior; The
6 Metropolitan Water District of Southern California; the Southern Nevada Water
7 Authority; and the Colorado River Commission of Nevada (collectively referred to herein
8 as the "Parties" or individually as "Party").

9 **Recitals**

- 10 A. The Secretary of the Interior (Secretary) is authorized by the Boulder Canyon
11 Project Act (43 U.S.C. § 617d) to contract for the storage and delivery of
12 Colorado River water. The Secretary's authority over the storage and delivery of
13 Colorado River water to the Lower Division States is further articulated in the
14 Decree issued by the United States Supreme Court in *Arizona v. California*,
15 376 U.S. 340 (1964) (Decree).
- 16 B. In accordance with the authority granted in 5 U.S.C. § 553, 43 U.S.C. §§ 391,
17 485, and 617, the Supreme Court's opinion in *Arizona v. California*, 373 U.S. 546
18 (1963), and Article II (B) (6) of the Decree, the Secretary adopted regulations
19 providing for offstream storage of Colorado River water and development and
20 release of Intentionally Created Unused Apportionment in the Lower Division
21 States. (43 CFR Part 414). These regulations authorize the United States
22 Bureau of Reclamation (Reclamation), Lower Colorado Region, acting through
23 the Regional Director, to execute and administer this Storage and Interstate
24 Release Agreement (Agreement) on behalf of the United States. (43 CFR
25 § 414.3(c)) References to the Secretary in this Agreement include the
26 United States Bureau of Reclamation, Lower Colorado Region.
- 27 C. The Metropolitan Water District of Southern California (MWD) was incorporated
28 on December 6, 1928 pursuant to the Metropolitan Water District Act of the State
29 of California. In accordance with the provisions of that act, MWD is expressly
30 authorized to exercise such powers as are necessary and proper to carry out the
31 objects and purposes of the district, including the acquisition of water rights
32 within and without the state, and the storage and transport of water. (West's
33 California Water Code Appendix §§ 109-120 and 109-130) California law
34 authorizes MWD to contract with any public or private corporation for the purpose
35 of carrying out any of its powers. (California Public Contract Code § 21562)
- 36 D. In accordance with the authority granted by California law, MWD can enter into
37 Storage and Interstate Release Agreements and develop Intentionally Created

1 Unused Apportionment (ICUA) pursuant to the federal regulations. MWD has a
2 contract with the Secretary issued under Section 5 of the Boulder Canyon Project
3 Act for the storage and delivery of Colorado River water.

4 E. By virtue of the authorities specified in Recitals C and D, MWD is an “Authorized
5 Entity” within the meaning of 43 CFR § 414.2(1).

6 F. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency
7 and political subdivision of the State of Nevada, created by agreement dated
8 July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant
9 to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to
10 enter into this Agreement and, pursuant to its contract issued under Section 5 of
11 the Boulder Canyon Project Act, SNWA has the right to divert ICUA released by
12 the Secretary for use within the State of Nevada pursuant to Article II(B)(6) of the
13 Decree.

14 G. By virtue of the authorities specified in Recital F, SNWA is an “Authorized Entity”
15 within the meaning of 43 CFR § 414.2(2).

16 H. The Colorado River Commission of the State of Nevada (CRCN) is an agency of
17 the State of Nevada, authorized generally by N.R.S. §§ 538.041 through
18 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement.
19 CRCN, in furtherance of the State of Nevada’s responsibility to promote the
20 health and welfare of its people in Colorado River matters, enters into this
21 Agreement to facilitate the storage of Colorado River water, establishment and
22 maintenance of a SNWA Interstate Account for SNWA, and development and
23 release of ICUA for SNWA.

24 I. This Agreement is entered into to establish an enduring cooperative relationship
25 between MWD and SNWA under the Secretary’s Offstream Storage Regulations
26 that will benefit both MWD and SNWA in the management of their respective
27 water supplies and in the management of the Colorado River apportionments of
28 their respective states during an era of limited water supplies. To this end, this
29 Agreement provides a specific program for the storage by MWD of unused
30 Nevada apportionment of Colorado River water in California and the subsequent
31 recovery of such water by MWD and the development of ICUA for SNWA. This
32 Agreement also provides a structure whereby such cooperation and storage
33 program might continue beyond 2010.

34 J. Concurrently with execution of this Agreement, CRCN, SNWA and MWD have
35 entered into a separate agreement (Operational Agreement), consistent with this
36 Agreement, governing operational and financial matters as between MWD,
37 SNWA, and CRCN relating to the storage of Colorado River water and the
38 development of ICUA.

39 NOW THEREFORE, in consideration of the mutual covenants herein contained,
40 the United States, MWD, SNWA, and CRCN hereby agree as follows:

1 **Article 1**
2 **Definitions and Term**

3 1.1 **Definitions.** The following terms shall have the meaning defined here.
4 All defined terms shall be identified by initial letter capitalization.

5 1.1.1 "ICUA" means Intentionally Created Unused Apportionment as that
6 term is defined in 43 CFR Part 414.

7 1.1.2 "SNWA Interstate Account" means the storage account established
8 by MWD under the terms of this Agreement.

9 1.1.3 "Year" means calendar year.

10 1.2 **Term of the Agreement.** This Agreement shall be effective as of
11 October 27, 2004, upon its execution by all Parties, and shall continue in effect
12 until terminated by 90 days' written notice from either SNWA or MWD given after
13 Colorado River water has been stored for SNWA and credited to the SNWA Interstate
14 Account and thereafter the SNWA Interstate Account balance has been reduced to
15 zero.

16 **Article 2**
17 **Water Available for Storage; Facilities**

18 2.1 Water stored pursuant to this Agreement shall be from within the State of
19 Nevada's unused basic or surplus apportionment under Articles II(B)(1) or II(B)(2) of the
20 Decree and may be made available from Nevada by the Secretary to California only in
21 accordance with Article II(B)(6) of the Decree. If the Secretary determines unused
22 apportionment from Nevada is available, the Secretary will make unused Nevada
23 apportionment available to MWD to be stored under the Agreement in accordance with
24 the terms of this Agreement and will not make that water available to other entitlement
25 holders. Water stored pursuant to this Agreement shall not include the State of
26 California's unused basic or surplus apportionment.

27 2.2 The facilities which may be utilized by MWD to store water pursuant to this
28 Agreement are those facilities described in MWD's Integrated Resources Plan,
29 2003 Update, dated May 2004, and located within the State of California. With respect
30 to water stored pursuant to this Agreement, all facilities to be used to divert, convey to
31 storage, store, withdraw from storage, and subsequently convey and distribute such
32 water, are facilities that have been constructed and financed by MWD or facilities to
33 which the title has been transferred to MWD by the United States.

34 2.3 The quantity of Colorado River water to be stored pursuant to this
35 Agreement shall be as agreed by MWD and SNWA, subject to the limitations specified
36 in Article 7.

1 **Article 3**
2 **Storage**

3 3.1 As early as practicable in each Year in which there will be unused Nevada
4 basic or surplus apportionment available for storage pursuant to this Agreement, SNWA
5 shall notify the Secretary and MWD of the total quantity of such water and the quantity
6 within each of Nevada's basic apportionment and Nevada's surplus apportionment.

7 3.2 Within 60 days of receipt of SNWA's notice under Section 3.1, MWD shall
8 notify the Secretary and SNWA of (i) the total quantity of unused Nevada
9 apportionment, which MWD can store, and (ii) confirm that MWD will store such water.

10 3.3 As soon as practicable after receipt of MWD's notice under Section 3.2,
11 the Secretary will confirm the existence of such unused Nevada apportionment, decide
12 whether such unused Nevada apportionment shall be released for consumptive use in
13 California under Article II(B)(6) of the Decree, and release the specified quantity of
14 Colorado River water to MWD pursuant to Article II(B)(6) of the Decree in accordance
15 with the Secretary's decision. MWD shall divert and store the released water.

16 **Article 4**
17 **Development of Intentionally Created Unused Apportionment**

18 4.1 ICUA shall be developed under this Agreement only after 2006.

19 4.2 MWD shall develop ICUA for the benefit of SNWA in accordance with the
20 provisions of this Agreement and the Operational Agreement and consistent with the
21 laws of the State of California and the United States and MWD's Colorado River water
22 storage and delivery contract with the Secretary. MWD shall develop ICUA by
23 withdrawing water that has been previously stored for SNWA and delivering such water
24 for consumptive use within California in lieu of Colorado River water that MWD
25 otherwise would divert. Any other potential means of developing ICUA must first be
26 approved by the Secretary. MWD will withdraw stored water from the facilities identified
27 in Section 2.2 above which are under MWD's control such that the development of
28 ICUA is enforceable by MWD. Because MWD will recover stored water from facilities
29 under the control of MWD, notice will not be given to other entitlement holders of
30 Colorado River water to participate in development of this ICUA. In the event MWD
31 elects, subject to the approval of the Secretary, to use a means other than the recovery
32 and use of stored water, MWD shall give such notice to other entitlement holders to
33 participate in development of the ICUA as the Secretary deems appropriate in light of
34 the means.

35 4.3 The amount of ICUA to be developed and released to SNWA in any Year
36 shall not exceed the lesser of (i) 30,000 acre-feet, unless MWD agrees to a larger
37 amount in such Year, or (ii) the previous end-of-Year balance in the SNWA Interstate
38 Account.

39 4.4 For any Year in which ICUA is to be developed for SNWA by MWD and
40 released by the Secretary, SNWA shall, by June 1 of the previous Year, make a written

1 request to MWD for the development of ICUA in accordance with the terms of this
2 Agreement, specifying the quantity of ICUA to be developed.

3 4.5 By December 1 of each Year in which SNWA has made a request for
4 development of ICUA in the following Year, MWD shall prepare and deliver to the
5 Secretary an ICUA Certification. The ICUA Certification shall:

6 4.5.1 certify: (i) whether the SNWA Interstate Account balance is
7 sufficient to support the development of the requested ICUA; (ii) that ICUA will be
8 developed in the upcoming Year in an amount equal to the amount requested by
9 SNWA; and (iii) that such ICUA otherwise would not exist.

10 4.5.2 request that the Secretary release the ICUA in the requested
11 amount for use in Nevada pursuant to Article II (B) (6) of the Decree and this
12 Agreement.

13 4.5.3 set forth the means by which MWD intends to develop ICUA
14 utilizing stored water in the SNWA Interstate Account and the quantity of ICUA which
15 MWD intends to develop.

16 4.6 In each Year as to which MWD has certified under Section 4.5 that it will
17 develop ICUA, MWD shall take all actions necessary to ensure that ICUA is developed
18 in accordance with such certification. If MWD does not develop ICUA as required under
19 this Article, MWD shall develop ICUA in another Year to repay to Lake Mead storage
20 the amount of ICUA consumptively used by SNWA but not developed by MWD. The
21 Secretary, in addition to any other remedy available, may seek a court order requiring
22 MWD to do so. The Year of repayment shall be at the discretion of the Secretary, but
23 shall not be more than three years after the year in which the shortfall occurred.

24 **Article 5**
25 **Release of Intentionally Created Unused Apportionment**

26 5.1 For any Year as to which SNWA has made a request under Section 4.4
27 for the development of ICUA, SNWA shall also make a written request of the Secretary
28 for the release of ICUA for consumptive use in the State of Nevada. Such request shall
29 be made by September 15 of the previous Year, or such earlier date as reasonably
30 required in writing by the Secretary, for a release of ICUA in the following Year, and
31 shall be consistent with SNWA's request for the development of ICUA. The request
32 shall specify the quantity of ICUA to be released by the Secretary and shall certify that
33 SNWA has mailed, first class postage paid, a copy of the request to the States of
34 Nevada, Arizona, and California by providing copies to CRCN, the Arizona Department
35 of Water Resources and the Colorado River Board of California and MWD.

36 5.2 The request for the development of ICUA by SNWA shall be incorporated
37 into the Secretary's Annual Operating Plan for the Colorado River System Reservoirs.
38 The Annual Operating Plan shall state that, upon proper certification, the Secretary
39 intends to release that quantity of ICUA to SNWA under Article II (B) (6) of the Decree in
40 accordance with the terms of this Agreement.

1 5.3 Release of ICUA under this Agreement for diversion by SNWA shall
2 operate under 43 CFR § 414.3(f), Anticipatory Release of ICUA, as provided in this
3 article.

4 5.4 By December 20 of each Year in which the Secretary has received a
5 proper and timely request for release of ICUA, the Secretary shall determine whether
6 there is water stored under this Agreement in quantities sufficient to support the
7 development of the requested ICUA, whether MWD's certification under Section 4.5
8 meets the requirements of 43 CFR Part 414, and whether all necessary actions required
9 by 43 CFR Part 414 have been taken. Such request may be modified with the consent
10 of SNWA, MWD, and the Secretary. For purposes of this Agreement, all necessary
11 actions are those actions expressly enumerated in 43 CFR Part 414, as amplified by
12 this Agreement.

13 5.5 The Secretary shall, as he or she deems appropriate, review books and
14 records in accordance with Section 6.3 and take such other measures as appropriate to
15 verify the quantity of water stored and the quantity of ICUA developed under this
16 Agreement. In the event of a discrepancy in which there is a shortfall of ICUA
17 developed, the Secretary shall require MWD to repay to Lake Mead storage as set forth
18 in Section 4.6.

19 5.6 Pursuant to the provisions of 43 CFR §413.3(f) and only after determining
20 that MWD's certification under section 4 meets the requirements of 43 CFR Part 414,
21 the Secretary shall release ICUA to SNWA in the Year as to which, and to the extent
22 that, MWD has certified, pursuant to Section 4.5 of this Agreement, that ICUA will be
23 developed.

24 5.7 Once the Secretary has determined that ICUA will be released to SNWA,
25 such ICUA shall not be available for release to any entitlement holder in the States of
26 Arizona or California or any other entitlement holder in Nevada in that Year.

27 5.8 In any Year in which the Secretary has released ICUA to SNWA, MWD
28 shall debit the SNWA Interstate Account beginning-of-Year balance in an amount equal
29 to the amount of ICUA released by the Secretary to SNWA under this Agreement.

30 5.9 The amount of ICUA released for consumptive use in Nevada effective
31 January 1 of any Year shall not be subject to reduction unless:

32 5.9.1 SNWA requests that MWD cease development of ICUA, and

33 5.9.2 MWD certifies to the Secretary that a specific quantity of ICUA will
34 not be developed pursuant to the SNWA request.

35 5.10 The Secretary shall release ICUA in accordance with the request of
36 SNWA, the terms of this Agreement, in particular the determination of the Secretary, the
37 Boulder Canyon Project Act, Article II (B) (6) of the Decree and all other applicable
38 Federal laws and executive orders.

1 5.11 With respect to ICUA released for diversion by SNWA pursuant to this
2 Agreement, the only facilities that will be used to divert, store, convey, or distribute such
3 water that were constructed by the United States are certain facilities of the Southern
4 Nevada Water System that were constructed and financed by the United States, the
5 ownership of which was subsequently transferred to SNWA.

6 **Article 6**
7 **Accounting**

8 6.1 MWD shall establish and maintain a storage account entitled the “SNWA
9 Interstate Account” for accounting purposes, which account shall accurately reflect the
10 quantities of all water stored and all water debited from the account for purposes of
11 developing ICUA pursuant to this Agreement.

12 6.2 MWD shall report on the SNWA Interstate Account as follows:

13 6.2.1 MWD shall provide its final annual accounting to the Secretary by
14 March 1 of the Year following the Year in which MWD stored water or developed ICUA
15 for SNWA.

16 6.2.2 MWD shall prepare and submit to the Secretary and the States of
17 Arizona, California, and Nevada by March 1 of each Year a final verified accounting for
18 the prior Year of: (i) the beginning balance of the SNWA Interstate Account; (ii) the
19 amount of Colorado River water diverted and stored for the benefit of SNWA in that
20 Year; (iii) any debits from the SNWA Interstate Account during that Year on account of
21 water withdrawn for purposes of developing ICUA; (iv) the net balance in the SNWA
22 Interstate Account at the end of the Year; and (v) the cumulative amount properly
23 credited to the SNWA Interstate Account.

24 6.3 All records of MWD concerning this Agreement, including all records used
25 by MWD to prepare the final verified accounting, shall be available for inspection by the
26 Secretary and SNWA, such inspection to be during normal business hours and on
27 reasonable advance notice.

28 **Article 7**
29 **Environmental Compliance Limitation**

30 7.1 SNWA agrees with, and for the benefit of, the United States only that
31 SNWA will not request the storage of Colorado River water or the development of ICUA
32 in any Year in excess of the limitations specified in Sections 7.1.1 and 7.1.2 unless the
33 Secretary has first taken such actions as may be necessary to comply with the
34 requirements of the National Environmental Policy Act, the Endangered Species Act,
35 and any other applicable environmental law with respect to such excess storage or
36 development of excess ICUA.

37 7.1.1 With respect to storage of Colorado River water, SNWA will request
38 storage under this Agreement only to the extent that Colorado River water stored by the
39 Arizona Water Banking Authority for SNWA under the Agreement for Interstate Water

1 Banking among the Arizona Water Banking Authority, SNWA, and CRCN during such
2 Year is less than 200,000 acre-feet.

3 7.1.2 With respect to the development of ICUA, SNWA will not request
4 that more than an aggregate of 100,000 acre-feet of ICUA be developed pursuant to
5 this Agreement and the Storage and Interstate Release Agreement among the
6 United States, the Arizona Water Banking Authority, SNWA, and CRCN dated
7 December 18, 2002.

8 **Article 8**
9 **General Provisions**

Note

10 8.1 Upon execution of this Agreement and annually thereafter, SNWA shall
11 pay an annual administration fee of two thousand dollars (\$2,000.00) to cover the
12 United States' costs to perform the routine tasks necessary to administer this
13 Agreement. The initial annual administration fee shall be pro-rated on the basis of one
14 hundred sixty six dollars and sixty-seven cents (\$166.67) per month for the first Year,
15 payable upon execution of this Agreement. Thereafter, the fee for each subsequent
16 year shall be due on January 1.

17 8.2 The Secretary reserves the right at intervals of five (5) years, beginning
18 five (5) years after the date of execution of this Agreement, to reexamine the annual
19 administration fee and to revise the fee after three (3) months' advance written notice
20 and after consultation with SNWA if the Secretary determines that a different charge is
21 necessary to cover the United States' costs to perform the tasks described in this
22 Agreement. Upon SNWA's written request, the Secretary shall provide SNWA with a
23 detailed cost analysis supporting the adjustment to the annual administration fee.

24 8.3 No agreement to which the Secretary is not a Party shall be construed as
25 altering the rights and obligations as between the Secretary and the other Parties to this
26 Agreement.

27 8.4 The records of any Party to this Agreement that relate to the SNWA
28 Interstate Account, including the development and verification of the account balance,
29 and the development, release and use of ICUA shall be open to inspection by any other
30 Party.

31 8.5 The provisions of this section shall govern enforcement of this Agreement.

32 8.5.1 Time is of the essence in the performance of this Agreement.

33 8.5.2 The Parties recognize and acknowledge that the availability of
34 ICUA as provided in this Agreement is a critical alternative municipal water supply for
35 SNWA while other longer-term sources of supply are being developed; that in planning
36 to meet the needs of the area it serves, SNWA will rely on ICUA being available to it as
37 provided in this Agreement; that accordingly the release of ICUA as provided in Section
38 5.6 is critical to the economy, health and safety of the area served by SNWA; that the
39 release of ICUA as provided in this Agreement presents a unique opportunity for SNWA

1 to obtain additional Colorado River water under the Decree; and that, for these reasons,
2 among others, the water resources to be released as ICUA for use in Nevada are
3 unique and not susceptible of replacement by SNWA.

4 8.6 The Parties to this Agreement shall indemnify the United States, its
5 employees, agents, subcontractors, successors, or assignees from loss or claims for
6 damages and from liability to persons or property, direct or indirect, and loss or claim of
7 any nature whatsoever arising by reason of actions taken by non-Federal Parties to this
8 Agreement.

9 8.7 The Parties to this Agreement recognize and acknowledge that this
10 Agreement is a contract executed pursuant to Federal Reclamation law, including the
11 provisions of 43 U.S.C. § 390uu.

12 8.8 This Agreement shall not constitute approval by the Secretary of any other
13 agreement or water delivery program.

14 8.9 Nothing in this Agreement is intended or shall be construed to affect the
15 rights of any other Colorado River entitlement holder.

16 8.10 No Party to this Agreement shall be considered to be in default in the
17 performance of any obligations under this Agreement when a failure of performance
18 shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any
19 cause beyond the control of the Party unable to perform such obligation, including but
20 not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire,
21 lightning, and other natural catastrophes, epidemic, war, civil disturbance or
22 disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by
23 order of a court or regulatory agency of competent jurisdiction, and action or non-action
24 by, or failure to obtain the necessary authorizations or approvals from, a Federal
25 governmental agency or authority, which by exercise of due diligence and foresight
26 such Party could not reasonably have been expected to overcome. Nothing contained
27 herein shall be construed to require any Party to settle any strike or labor dispute in
28 which it is involved.

29 8.11 Non-Federal Parties to this Agreement may assign their interest in this
30 Agreement, in whole or in part, to other authorized entities, as defined in 43 CFR
31 Part 414, subject to the approval of all other Parties to this Agreement.

32 8.12 The Secretary does not warrant the quality of water released or delivered
33 under this Agreement. The United States is not liable for damages of any kind resulting
34 from water quality problems and the United States has no obligation to construct or
35 furnish water treatment facilities to maintain or improve water quality except as may
36 otherwise be provided in relevant Federal law.

37 8.13 The expenditure or advance of any money or the performance of any
38 obligation of the United States under this Agreement shall be contingent on
39 appropriation or allotment of funds. No liability shall accrue to the United States in case

1 funds are not appropriated or allotted. Absence of appropriation or allotment of funds
2 shall not relieve MWD, SNWA, or CRCN from any obligation under this Agreement

3 8.14 No member of or Delegate to Congress, Resident Commissioner, or
4 official of MWD, SNWA, or CRCN shall benefit from this Agreement other than as a
5 water user or landowner in the same manner as other water users or landowners.

6 **Article 9**
7 **Notices**

8 9.1 Notices and Requests.

9 9.1.1 All notices, requests, and other communications required or
10 provided by this Agreement shall be in writing and addressed to the affected Party, with
11 a copy sent to all other Parties to this Agreement and, unless sent by facsimile pursuant
12 to Section 9.2, shall be mailed first class postage paid addressed as follows:

13 MWD:
14 The Metropolitan Water District of Southern California
15 P.O. Box 54153
16 Los Angeles, California 90054-0153
17 Attn: Chief Executive Officer

18 SNWA:
19 Southern Nevada Water Authority
20 1001 S. Valley View Boulevard
21 Las Vegas, Nevada 89153
22 Attn: General Manager

23 CRCN:
24 Colorado River Commission of Nevada
25 555 E. Washington Avenue, Suite 3100
26 Las Vegas, Nevada 89101
27 Attn: Director

28 Secretary:
29 U.S. Department of the Interior
30 Bureau of Reclamation
31 Lower Colorado Regional Office
32 P.O. Box 61470
33 Boulder City, Nevada 89006
34 Attn: Regional Director

35 The State of Arizona:
36 Arizona Department of Water Resources
37 500 North 3rd Street
38 Phoenix, Arizona 85004
39 Attn: Director

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The State of California:
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1035
Attn: Executive Director

The State of Nevada:
Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Attn: Director

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

9.2 Notices and Requests by Facsimile.

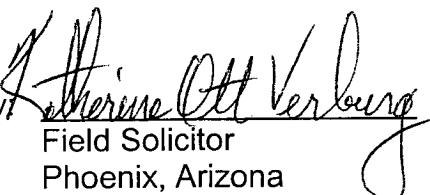
9.2.1 Notices and requests may be given by facsimile among MWD, SNWA, CRCN and the Secretary in lieu of first class mail as provided in sub-article 9.1. Such facsimiles shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.


MWD Facsimile Number	213-217-5704
SNWA Facsimile Number	702-258-3951
CRCN Facsimile Number	702-486-2695
Secretary Facsimile Number	702-293-8042

9.2.2 Any Party may, at any time, change its facsimile number by notice to the other Parties.

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 27 day of October, 2004.

Legal Review and Approval: **THE UNITED STATES OF AMERICA**

By: 
Katherine Ott Verburg
Field Solicitor
Phoenix, Arizona

By: 
Danto R.
Assistant Secretary
for Water and Science
Department of the Interior

STATE OF NEVADA, acting through its
COLORADO RIVER COMMISSION

Attest:

By: [Signature]
Executive Director

By: [Signature]
Chair

Approved as to form:

By: [Signature]

Title: Sp. Dep. Atty. Gen.

SOUTHERN NEVADA WATER AUTHORITY

Attest:

By: [Signature]
General Manager

By: [Signature]
Chair

Approved as to form:

By: [Signature]

Title: Deputy Counsel

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Attest:

By: [Signature]
Executive Secretary

By: [Signature]
Chief Executive Officer

Approved as to form:

By: [Signature]

Title: GENERAL COUNSEL

**FIRST AMENDED
OPERATIONAL AGREEMENT**

among

The Metropolitan Water District of Southern California

and the

Colorado River Commission of Nevada

and the

Southern Nevada Water Authority

This First Amended Operational Agreement is made this 11th day of August, 2009 (Effective Date) among The Metropolitan Water District of Southern California (MWD), the Southern Nevada Water Authority (SNWA), and the Colorado River Commission of Nevada (CRCN), (collectively referred to herein as the "Parties" or individually as "Party").

Recitals

- A. On October 27, 2004, MWD, CRCN, SNWA, and the United States entered into a Storage and Interstate Release Agreement (SIRA) under 43 C.F.R. Part 414. The stated purpose of the SIRA is to establish an enduring cooperative relationship between MWD and SNWA under the Secretary of the Interior's (Secretary) Offstream Storage Regulations that will benefit both MWD and SNWA in the management of their respective water supplies and in the management of the Colorado River apportionments of their respective states during an era of limited water supplies. To this end, the SIRA provides a specific program for the storage by MWD of unused Nevada apportionment of Colorado River water in California and the subsequent recovery of such water by MWD and the development of Intentionally Created Unused Apportionment (ICUA) for SNWA.
- B. This First Amended Operational Agreement amends the original Operational Agreement entered into on October 21, 2004, and provides additional terms and conditions, consistent with the SIRA, governing operational and financial matters among MWD, CRCN, and SNWA relating to the Storage of Colorado River water and the creation of ICUA.

Article 1

Definitions

1.1 **Definitions:** For purposes of this Operational Agreement, terms that are defined in Article I of the Consolidated Decree in *Arizona v. California*, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

- 1.1.1 “Agreement” shall mean this First Amended Operational Agreement.
- 1.1.2 “Consolidated Decree” shall mean the Consolidated Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 126 S.Ct. 1543, 547 U.S. 150 (2006), as supplemented or amended.
- 1.1.3 “ICUA” or “Intentionally Created Unused Apportionment” shall have the same meaning as that term is defined in 43 C.F.R. §414.2.
- 1.1.4 “SNWA Interstate Account” shall mean the storage account established by MWD under the terms of this Agreement.
- 1.1.5 “Year” shall mean calendar year.

Article 2

Storage, Development and Release of ICUA

2.1 **Storage of ICUA:** Each Year through 2026 SNWA and MWD will meet in person or via conference call at a mutually agreeable time and location to discuss the quantity of water available for storage in that Year. Additional discussions may be scheduled as needed. Based upon these discussions, MWD and SNWA will determine the quantity of water to be stored for that Year, and may amend such quantities during the Year as needed. MWD will use its best efforts to divert and store, without harming MWD’s own operational needs, the total quantity of Colorado River water SNWA and MWD have agreed to store that Year as specified in SNWA’s availability notice under Section 3.1 of the SIRA, subject to the release of such quantity to MWD by the Secretary pursuant to the SIRA. If in any Year through 2026, MWD concludes it cannot divert and store the full quantity of water that it agreed to store in that Year, MWD shall, within 30 days of the date of SNWA’s availability notice, notify SNWA of the reasons therefore and the quantity that MWD can divert and store. On request of SNWA, the Parties shall promptly confer so that MWD can notify the Secretary of the quantity of water it will store within the time specified by the SIRA.

2.2 Development and Release of ICUA:

- 2.2.1 Availability of ICUA: MWD specifically agrees to develop ICUA for release to SNWA in accordance with the SIRA during the Term of this Agreement regardless of the Lake Mead Operating Condition¹, including specifically any Shortage Condition declared by the Secretary, during any Year in which SNWA requests the development and release of ICUA available to SNWA under the terms of this Agreement and the SIRA.
- 2.2.2 Quantity of ICUA Available for Development: Section 4.3 of the SIRA limits the amount of ICUA that may be developed and released to SNWA in any Year to “the lesser of (i) 30,000 acre-feet, unless MWD agrees to a larger amount in such Year, or (ii) the previous end-of-Year balance in the SNWA Interstate Account.” If SNWA desires the creation of more than 30,000 acre-feet of ICUA in any Year as to which there will be sufficient credits in the SNWA Storage Account, by August 15 of the previous Year SNWA shall notify MWD of such fact and of the amount of ICUA that SNWA requests be created. The Parties shall promptly confer on such request, and if MWD agrees to develop ICUA in an amount greater than 30,000 acre-feet for the specified Year, SNWA shall include such increased amount in its request under Section 4.4 of the SIRA for the development of ICUA and its request under Section 5.1 of the SIRA for the release of ICUA, and MWD shall include such amount in its ICUA Certification under Section 4.5 of the SIRA.
- 2.2.3 Development and Release through 2019: Subject specifically to the provisions of Section 2.2.5 of this Agreement, SNWA agrees to forgo requesting development and release of ICUA from the SNWA Interstate Account through the Year 2019, unless SNWA confers with MWD, and MWD agrees to the development and release of ICUA during a specific Year prior to the Year 2019.
- 2.2.4 Development and Release During 2020 and 2021: Subject specifically to the provisions of Section 2.2.5 of this Agreement, during Years 2020 and 2021 SNWA agrees to limit requesting development and release of ICUA from the SNWA Interstate Account to an amount equal to the lesser of (i) the difference between 300,000 acre-feet and the amount apportioned for use within Nevada by the Secretary pursuant to Section 2(D)(1)(a), 2(D)(1)(b), or 2(D)(1)(c), of the *December 2007 Interim Guidelines for the Operation of Lake Powell and Lake Mead*

¹ As set forth in Section 2 of the December 2007 Interim Guidelines for the Operation of Lake Powell and Lake Mead.

whichever is applicable or (ii) the previous end-of-Year balance in the SNWA Interstate Account. During the Years 2020 and 2021, MWD agrees to develop and release ICUA as requested by SNWA in accordance with this Section 2.2.4.

- 2.2.5 Development and Release During Specific Shortage Conditions: Notwithstanding anything to the contrary contained in this Agreement, in any Year in which the Secretary apportions less than 280,000 acre-feet of Colorado River water for use in Nevada, exclusive of any ICUA, Intentionally Created Surplus or Developed Shortage Supply available to SNWA in that Year, then, at SNWA's request, MWD shall develop and release one (1) acre-foot of ICUA from the SNWA Interstate Account to SNWA for each acre-foot less than 280,000 acre-feet apportioned by the Secretary for use in Nevada in that Year, provided, however, that in no event shall SNWA be entitled to the development and release of more than the lesser of: 50,000 acre-feet in one Year; or the total previous end-of-Year balance in the SNWA Interstate Account.
- 2.2.6 Operation of Section 4.3 of the SIRA: For purposes of Section 4.3 of the SIRA, MWD expressly agrees that an amount of ICUA greater than 30,000 acre-feet will be developed and released to SNWA if necessary to meet the terms of Section 2.2.5 of this Agreement.

Article 3

Term of Agreement

3.1 This Agreement shall be effective as of the Effective Date and shall terminate (i) upon recovery of all SNWA credits stored under this Agreement and both Parties mutually agree in writing to terminate this Agreement, or (ii) concurrently with the termination of the SIRA, which ever comes first.

Article 4

Costs

4.1 MWD shall be responsible for all costs associated with (i) the diversion, conveyance, and storage of water pursuant to the SIRA, and (ii) all costs associated with the recovery of water stored pursuant to the SIRA and the development of ICUA with respect to such water.

4.2 SNWA shall be responsible for all costs associated with its diversion of ICUA released by the Secretary pursuant to the SIRA.

4.3 SNWA shall be responsible for all federal charges associated with evaluating, processing, executing, and administering the SIRA.

Article 5

Other Provisions

5.1 Uncontrollable Forces: No Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than the obligation of SNWA to pay federal charges) 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, 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 necessary authorizations or approvals from, any federal governmental agency or authority, which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

5.2 In the event that any term or condition of this Agreement is determined to be invalid, illegal, or otherwise unenforceable, such determination shall have no effect on the other terms and conditions, which shall continue to be binding upon the Parties hereto. Lack of enforcement of any term or condition of this Agreement shall not be construed as a waiver of any rights conferred by such term or condition. Unless otherwise agreed to in writing, the failure of any Party to require the performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.

5.3 This Agreement shall be binding on the Parties and their respective successors and assigns.

5.4 Any person signing this Agreement represents that he/she 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.

5.5 This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties, except as set forth herein, whether written or oral. This Agreement can be amended only in writing signed by the Parties.

5.6 Time is of the essence of this Agreement.

5.7 Each Party agrees to perform any further acts and to execute and deliver any documents, which may be reasonably necessary to carry out the provisions of this Agreement.

5.8 The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

5.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to another counterpart identical thereto, except for having additional signature pages executed by another Party to this Agreement attached thereto.

5.10 This Agreement is made solely for the benefit of the Parties hereto and respective successors and assigns. No other person or entity may have or acquire any right by virtue of this Agreement.

Article 6
Notices and Requests

6.1 All notices and requests required and allowed under the terms of this Agreement may be given in the following manner:

6.2 Notices and requests shall be in writing and shall be mailed first-class postage paid to the Parties at the following addresses:

MWD

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

CRCN

Director
Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101

SNWA

General Manager
Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153

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

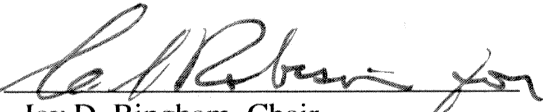
6.4 Notices and requests may be given by facsimile and shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document as of the Effective Date.

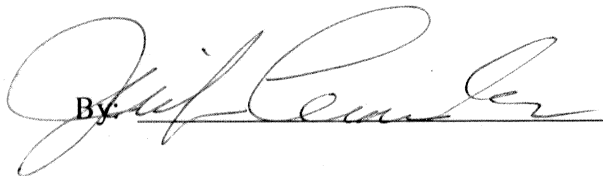
ATTEST:

COLORADO RIVER COMMISSION
OF NEVADA

By: 
Executive Director

By: 
Jay D. Bingham, Chair

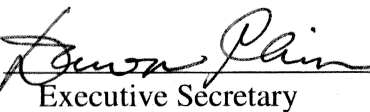
Approved as to form:

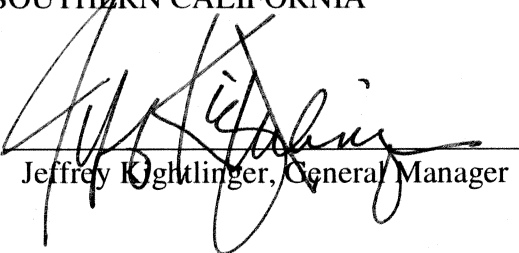
By: 

Title: Senior Deputy Attorney General

ATTEST:

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: 
Executive Secretary

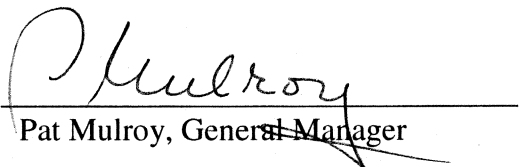
By: 
Jeffrey Kightlinger, General Manager

Approved as to form:

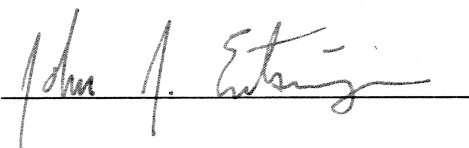
By: 

Title: General Counsel

SOUTHERN NEVADA WATER
AUTHORITY

By: 
Pat Mulroy, General Manager

Approved as to form:

By: 

Title: Deputy General Counsel



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: October 24, 2012
To: Thomas E. DeBacker, Controller
From: Harry Ruzgerian, Senior Engineer
Subject: Executed Second Amendment for operational agreement, MWD/SNWA/CRCN
2004 Storage and Interstate Release Agreement

Enclosed for your file is a fully executed original of *SECOND AMENDED OPERATIONAL AGREEMENT among The Metropolitan Water District of Southern California and the Colorado River Commission of Nevada and the Southern Nevada Water Authority*. The Amendment addresses storage of 200,000 to 400,000 AF during 2012 through 2016 for the benefit of the Southern Nevada Water Authority. Water stored during the 2012-2016 period will be charged with a loss of 1/3 of the amount stored.


Harry M. Ruzgerian

HMR:tt

o:\a\s\m\2012\HMR_Memo to Controller_Second Amended Operational Agreement_100812.docx

Attachment

cc w/ attachment:

W. Hasencamp
J. P. Matusak
H. M. Ruzgerian
J. A. Vanderhorst
WRM Files

**SECOND AMENDED
OPERATIONAL AGREEMENT**

among

The Metropolitan Water District of Southern California

and the

Colorado River Commission of Nevada

and the

Southern Nevada Water Authority

This Second Amended Operational Agreement is made this 24th day of October, 2012 (Effective Date), among The Metropolitan Water District of Southern California (MWD), the Southern Nevada Water Authority (SNWA), and the Colorado River Commission of Nevada (CRCN), (collectively referred to herein as the "Parties" or individually as "Party").

Recitals

- A. On October 27, 2004, MWD, CRCN, SNWA, and the United States entered into a Storage and Interstate Release Agreement (SIRA) under 43 C.F.R. Part 414. The stated purpose of the SIRA is to establish an enduring cooperative relationship between MWD and SNWA under the Secretary of the Interior's (Secretary) Offstream Storage Regulations that will benefit both MWD and SNWA in the management of their respective water supplies and in the management of the Colorado River apportionments of their respective states during an era of limited water supplies. To this end, the SIRA provides a specific program for the storage by MWD of unused Nevada apportionment of Colorado River water in California and the subsequent recovery of such water by MWD and the development of Intentionally Created Unused Apportionment (ICUA) for SNWA.
- B. On October 21, 2004, MWD, CRCN, and SNWA entered into an Operational Agreement that provides additional terms and conditions, consistent with the SIRA, governing operational and financial matters relating to the Storage of Colorado River water and the creation of ICUA. The parties executed a First Amended Operational Agreement amending the original Operational Agreement on August 11, 2009. The parties are entering into this Second Amended Operational Agreement to further provide terms and conditions for implementation of Storage of Colorado River water and creation of ICUA in accordance with the SIRA.

- C. This Second Amended Operational Agreement addresses, among other things, the storage of ICUA for 2012-2016. SNWA does not intend to request development and delivery of ICUA prior to 2018, although nothing contained herein prohibits SNWA from making such a request.

Article 1

Definitions

1.1 Definitions: For purposes of this Operational Agreement, terms that are defined in Article I of the Consolidated Decree in *Arizona v. California*, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

- 1.1.1 “Agreement” shall mean this Second Amended Operational Agreement.
- 1.1.2 “Consolidated Decree” shall mean the Consolidated Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 126 S.Ct. 1543, 547 U.S. 150 (2006), as supplemented or amended.
- 1.1.3 “ICUA” or “Intentionally Created Unused Apportionment” shall have the same meaning as that term is defined in 43 C.F.R. §414.2.
- 1.1.4 “SNWA Interstate Account” shall mean the storage account established by MWD under the terms of this Agreement.
- 1.1.5 “Year” shall mean calendar year.

Article 2

Storage, Development, and Release of ICUA

2.1 Storage of Water:

- 2.1.1 Each Year through 2026 the CRCN, SNWA, and MWD will meet in person or via conference call at a mutually agreeable time and location to discuss the quantity of water available for storage in that Year. Additional discussions may be scheduled as needed. Based upon these discussions, MWD and SNWA will determine the quantity of water to be stored for that Year, and may amend such quantities during the Year as needed. MWD will use its best efforts to divert and store, without harming MWD’s own operational needs, the total quantity of Colorado

River water SNWA and MWD have agreed to store that Year as specified in SNWA's availability notice under Section 3.1 of the SIRA, subject to the release of such quantity to MWD by the Secretary pursuant to the SIRA. If in any Year through 2026, MWD concludes it cannot divert and store the full quantity of water that it agreed to store in that Year, MWD shall, within 30 days of the date of SNWA's availability notice, notify SNWA and the CRCN of the reasons therefore and the quantity that MWD can divert and store. On request of SNWA and CRCN, the Parties shall promptly confer so that MWD can notify the Secretary of the quantity of water it will store within the time specified by the SIRA.

2.1.2 The CRCN, SNWA, and MWD further agree that the total quantity of Colorado River water to be stored during the Years 2012 through 2016 shall be a minimum of 200,000 acre-feet and a maximum of 400,000 acre-feet. SNWA and MWD shall determine the annual amount of water to be stored to meet the cumulative range of storage set forth in this Section 2.1.2 through the process described in Section 2.1.1, above. The annual volume of water to be stored shall not exceed the limitation set forth in Section 7.1.1 of the SIRA. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of the water stored during the Years 2012 through 2016 pursuant to this Section 2.1.2.

2.2 Development and Release of ICUA:

2.2.1 Availability of ICUA: MWD specifically agrees to develop ICUA for release to SNWA in accordance with the SIRA during the Term of this Agreement regardless of the Lake Mead Operating Condition¹, including specifically any Shortage Condition declared by the Secretary, during any Year in which SNWA requests the development and release of ICUA available to SNWA under the terms of this Agreement and the SIRA. The annual volume of ICUA to be developed shall not exceed the limitation set forth in Section 7.1.2 of the SIRA.

2.2.2 Quantity of ICUA Available for Development: Section 4.3 of the SIRA limits the amount of ICUA that may be developed and released to SNWA in any Year to "the lesser of (i) 30,000 acre-feet, unless MWD agrees to a larger amount in such Year, or (ii) the previous end-of-Year balance in the SNWA Interstate

¹ As set forth in Section 2 of the December 2007 Interim Guidelines for the Operation of Lake Powell and Lake Mead.

Account.” If SNWA desires the creation of more than 30,000 acre-feet of ICUA in any Year as to which there will be sufficient credits in the SNWA Storage Account, by August 15 of the previous Year SNWA shall notify MWD of such fact and of the amount of ICUA that SNWA requests be created. The Parties shall promptly confer on such request, and if MWD agrees to develop ICUA in an amount greater than 30,000 acre-feet for the specified Year, SNWA shall include such increased amount in its request under Section 4.4 of the SIRA for the development of ICUA and its request under Section 5.1 of the SIRA for the release of ICUA, and MWD shall include such amount in its ICUA Certification under Section 4.5 of the SIRA.

- 2.2.3 Development and Release of Water Stored in 2012 through 2016: Water stored by MWD in the SNWA Interstate Account during the period 2012 through 2016 shall be available for the development and release to SNWA as ICUA pursuant to Sections 2.2.1 and 2.2.2, above, notwithstanding the restrictions on development and release of ICUA provided in Section 2.2.4, 2.2.5 and 2.2.6, below. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of the development and release of ICUA based on water stored during the Years 2012 through 2016 pursuant to Section 2.1.2, above.
- 2.2.4 Development and Release through 2019: Subject specifically to the provisions of Section 2.2.6 of this Agreement, SNWA agrees to forgo requesting development and release of ICUA from the SNWA Interstate Account through the Year 2019, unless SNWA confers with MWD, and MWD agrees to the development and release of ICUA during a specific Year prior to the Year 2019.
- 2.2.5 Development and Release During 2020 and 2021: Subject specifically to the provisions of Section 2.2.6 of this Agreement, during Years 2020 and 2021 SNWA agrees to limit requesting development and release of ICUA from the SNWA Interstate Account to an amount equal to the lesser of (i) the difference between 300,000 acre-feet and the amount apportioned for use within Nevada by the Secretary pursuant to Section 2(D)(1)(a), 2(D)(1)(b), or 2(D)(1)(c) of the *December 2007 Interim Guidelines for the Operation of Lake Powell and Lake Mead* whichever is applicable, or (ii) the previous end-of-Year balance in the SNWA Interstate Account. During the Years 2020 and 2021, MWD agrees to develop and release ICUA as requested by SNWA in accordance with this Section 2.2.5.
- 2.2.6 Development and Release During Specific Shortage Conditions: Notwithstanding anything to the contrary contained in this

Agreement, in any Year in which the Secretary apportions less than 280,000 acre-feet of Colorado River water for use in Nevada, exclusive of any ICUA, Intentionally Created Surplus or Developed Shortage Supply available to SNWA in that Year, then, at SNWA's request, MWD shall develop and release one (1) acre-foot of ICUA from the SNWA Interstate Account to SNWA for each acre-foot less than 280,000 acre-feet apportioned by the Secretary for use in Nevada in that Year, provided, however, that in no event shall SNWA be entitled to the development and release of more than the lesser of: 50,000 acre-feet in one Year; or the total previous end-of-Year balance in the SNWA Interstate Account.

2.2.7 Operation of Section 4.3 of the SIRA: For purposes of Section 4.3 of the SIRA, MWD expressly agrees that an amount of ICUA greater than 30,000 acre-feet will be developed and released to SNWA if necessary to meet the terms of Section 2.2.6 of this Agreement.

Article 3

Term of Agreement

3.1 This Agreement shall be effective as of the Effective Date and shall terminate (i) upon recovery of all SNWA credits stored under this Agreement and both Parties mutually agree in writing to terminate this Agreement, or (ii) concurrently with the termination of the SIRA, which ever comes first.

Article 4

Costs and Losses

4.1 MWD shall be responsible for all costs associated with (i) the diversion, conveyance, and storage of water pursuant to the SIRA; and (ii) all costs associated with the recovery of water stored pursuant to the SIRA and the development of ICUA with respect to such water.

4.2 Water stored by MWD during the Years 2012 through 2016 pursuant to Section 2.1.2, above, shall be charged with a loss equal to one-third (1/3) of the amount of water stored in the Year in which the water is delivered to MWD for storage. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of this loss charged to water stored during the Years 2012 through 2016. The loss shall not be charged against any other water stored in the SNWA Interstate Account.

4.3 SNWA shall be responsible for all costs associated with its diversion of ICUA released by the Secretary pursuant to the SIRA.

4.4 SNWA shall be responsible for all federal charges associated with evaluating, processing, and executing the SIRA.

Article 5
Other Provisions

5.1 Uncontrollable Forces: No Party to this Agreement shall be considered in default in the performance of any of its obligations under this Agreement (other than the obligation of SNWA to pay federal charges) 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, 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 necessary authorizations or approvals from, any federal governmental agency or authority, which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

5.2 In the event that any term or condition of this Agreement is determined to be invalid, illegal, or otherwise unenforceable, such determination shall have no effect on the other terms and conditions, which shall continue to be binding upon the Parties hereto. Lack of enforcement of any term or condition of this Agreement shall not be construed as a waiver of any rights conferred by such term or condition. Unless otherwise agreed to in writing, the failure of any Party to require the performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.

5.3 This Agreement shall be binding on the Parties and their respective successors and assigns.

5.4 Any person signing this Agreement represents that he/she 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.

5.5 This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties, except as set forth herein, whether written or oral. This Agreement can be amended only in writing signed by the Parties.

5.6 Time is of the essence of this Agreement.

5.7 Each Party agrees to perform any further acts and to execute and deliver any documents, which may be reasonably necessary to carry out the provisions of this Agreement.

5.8 The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

5.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to another counterpart identical thereto, except for having additional signature pages executed by another Party to this Agreement attached thereto.

5.10 This Agreement is made solely for the benefit of the Parties hereto and respective successors and assigns. No other person or entity may have or acquire any right by virtue of this Agreement.

Article 6
Notices and Requests

6.1 All notices and requests required and allowed under the terms of this Agreement may be given in the following manner:

6.2 Notices and requests shall be in writing and shall be mailed first class postage paid to the Parties at the following addresses:

MWD
General Manager
The Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, California 90054-0153
Fax: (213) 217-6655

CRCN
Executive Director
Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Fax: 702-486-2695

SNWA
General Manager
Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153
Fax: 702-822-8429

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

6.4 Notices and requests may be given by facsimile and shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

///


///

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document.

ATTEST:

COLORADO RIVER COMMISSION
OF NEVADA

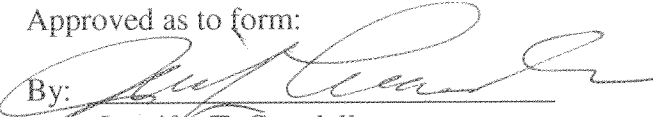
By: 
Jayne Harkins, Executive Director

By: 
George F. Ogilvie III, Chair

Date: 10/4/12

Date: 10/4/12

Approved as to form:

By: 
Jennifer T. Crandell
Senior Deputy Attorney General

Date: 10/2/12

ATTEST:

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

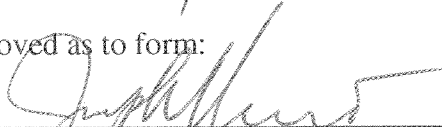
By: 
Executive Secretary

By: 
Jeffrey Kightlinger, General Manager

Date: 10/24/12


Date: 10/22/12

Approved as to form:

By: 
Joseph Wanderhorst
Chief Deputy General Counsel

Date: October 9, 2012

SOUTHERN NEVADA WATER
AUTHORITY

By: 
Patricia Mulroy, General Manager

Date: 10/2/12

Approved as to form:

By: 
Gregory J. Walch, General Counsel

Date: 10/2/12

THIRD AMENDED OPERATIONAL AGREEMENT

among

The Metropolitan Water District of Southern California

and the

Colorado River Commission of Nevada

and the

Southern Nevada Water Authority

This Third Amended Operational Agreement is made this ____ day of _____, 2015 (Effective Date), among The Metropolitan Water District of Southern California (MWD), the Southern Nevada Water Authority (SNWA), and the Colorado River Commission of Nevada (CRCN), (collectively referred to herein as the "Parties" or individually as "Party").

Recitals

- A. On October 27, 2004, MWD, CRCN, SNWA, and the United States entered into a Storage and Interstate Release Agreement (SIRA) under 43 C.F.R. Part 414, and identified as Reclamation Contract No.04-XX-30-W0430. The stated purpose of the SIRA is to establish an enduring cooperative relationship between MWD and SNWA under the Secretary of the Interior's (Secretary) Offstream Storage Regulations that will benefit both MWD and SNWA in the management of their respective water supplies and in the management of the Colorado River apportionments of their respective states during an era of limited water supplies. To this end, the SIRA provides a specific program for the storage by MWD of unused Nevada apportionment of Colorado River water in California and the subsequent recovery of such water by MWD and the development of Intentionally Created Unused Apportionment (ICUA) for SNWA.
- B. On October 21, 2004, MWD, CRCN, and SNWA entered into an Operational Agreement that provides additional terms and conditions, consistent with the SIRA, governing operational and financial matters relating to the storage of Colorado River water and development of ICUA (Original Agreement). The Parties executed a First Amended Operational Agreement on August 11, 2009 (First Amendment). The parties executed a Second Amended Operational Agreement on October 21, 2012 (Second Amendment). The Parties are entering into this Third Amended Operational Agreement to further provide terms and conditions for implementation of storage of Colorado River water and development of ICUA in accordance with the SIRA. The Parties desire that this Third Amended Operational Agreement shall amend and

supersede all terms and conditions set forth in the Original Agreement, First Amendment, and Second Amendment such that only this Third Amended Operational Agreement need be consulted to determine the Parties' rights and obligations respecting the subject matter hereof.

NOW, THEREFORE, in exchange for the mutual covenants and promises set forth below, and other valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

Article 1

Definitions

1.1 Definitions: For purposes of this Operational Agreement, terms that are defined in Article I of the Consolidated Decree in *Arizona v. California*, and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

- 1.1.1 "2007 Guidelines" shall mean the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead.
- 1.1.2 "Operational Agreement" shall mean this Third Amended Operational Agreement.
- 1.1.3 "Consolidated Decree" shall mean the Consolidated Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 126 S.Ct. 1543, 547 U.S. 150 (2006), as supplemented or amended.
- 1.1.4 "ICUA" or "Intentionally Created Unused Apportionment" shall have the same meaning as that term is defined in 43 C.F.R. §414.2.
- 1.1.5 "SNWA Interstate Account" shall mean the storage account established by MWD under the terms of this Operational Agreement.
- 1.1.6 "Year" shall mean calendar year.

Article 2

Storage, Development, and Release of ICUA

2.1 Storage of Water:

- 2.1.1 Each Year through 2026, the CRCN, SNWA, and MWD will meet in person or via conference call at a mutually agreeable time and location to discuss the quantity of water available for storage in that Year. Additional discussions may be scheduled as needed. Based upon these discussions,

MWD and SNWA will determine the quantity of water to be stored for that Year, and may amend such quantities during the Year as needed. MWD will use its best efforts to divert and store, without harming MWD's own operational and storage needs, the total quantity of Colorado River water SNWA and MWD have agreed to store that Year as specified in SNWA's availability notice under Section 3.1 of the SIRA, subject to the release of such quantity to MWD by the Secretary pursuant to the SIRA. If in any Year through 2026, MWD concludes it cannot divert and store the full quantity of water that it agreed to store in that Year, MWD shall, within 30 days of the date of SNWA's availability notice, notify SNWA and the CRCN of the reasons therefore and the quantity that MWD can divert and store. On request of SNWA and CRCN, the Parties shall promptly confer so that MWD can notify the Secretary of the quantity of water it will store within the time specified by the SIRA.

- 2.1.2 Notwithstanding section 2.1.1, CRCN, SNWA, and MWD agree that the quantity of SNWA's Colorado River water to be stored by MWD in 2015 shall be 150,000 acre-feet. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of the water stored during the Year 2015 pursuant to this Section 2.1.2.
- 2.1.3 The balance in the SNWA Interstate Account on January 1, 2015, prior to activities described in Section 2.1.2 above was 205,225 acre-feet. After Section 2.1.2 has been implemented in 2015, the balance in the SNWA Interstate Account on January 1, 2016 will be 330,225 acre-feet which accounts for losses of 25,000 acre-feet pursuant to Section 4.2 below.

2.2 Development and Release of ICUA:

- 2.2.1 Availability of ICUA: MWD specifically agrees to develop ICUA for release by the Secretary to SNWA in accordance with the SIRA during the Term of this Operational Agreement regardless of the Lake Mead Operating Condition¹, including specifically any Shortage Condition declared by the Secretary, during any Year in which SNWA requests the development and release of ICUA available to SNWA under the terms of this Operational Agreement and the SIRA. The annual volume of ICUA to be developed shall not exceed the limitation set forth in Section 7.1.2 of the SIRA.
- 2.2.2 Quantity of ICUA Available for Development: Section 4.3 of the SIRA limits the amount of ICUA that may be developed and released to SNWA in any Year to "the lesser of (i) 30,000 acre-feet, unless MWD agrees to a

¹ As set forth in Section 2 of the 2007 Guidelines.

larger amount in such Year, or (ii) the previous end-of-Year balance in the SNWA Interstate Account.” If SNWA desires the development of more than 30,000 acre-feet of ICUA in any Year when there will be sufficient credits in the SNWA Interstate Account to satisfy a request for more than 30,000 acre-feet, by August 15 of the previous Year, SNWA shall notify MWD of such fact and of the amount of ICUA that SNWA requests to be developed. The Parties shall promptly confer on such request, and if MWD agrees to develop ICUA in an amount greater than 30,000 acre-feet for the specified Year, SNWA shall include such increased amount in its request under Section 4.4 of the SIRA for the development of ICUA and its request under Section 5.1 of the SIRA for the release of ICUA, and MWD shall include such amount in its ICUA Certification under Section 4.5 of the SIRA.

- 2.2.3 Development and Release of Water Stored: 125,000 acre-feet of water stored by MWD in the SNWA Interstate Account shall be available for development and release to SNWA as ICUA pursuant to Sections 2.2.1 and 2.2.2, above, notwithstanding the restrictions on development and release of ICUA provided in Sections 2.2.4 and 2.2.5. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of the development and release of ICUA based on water stored pursuant to Section 2.1.2, above.
- 2.2.4 Development and Release through 2019: Subject specifically to the provisions of Section 2.2.6 of this Operational Agreement, SNWA agrees to forgo requesting development and release of ICUA from the SNWA Interstate Account through the Year 2019, unless SNWA confers with MWD, and MWD agrees to the development and release of ICUA during a specific Year prior to the conclusion of Year 2019.
- 2.2.5 Development and Release During 2020 and 2021: Subject specifically to the provisions of Section 2.2.6 of this Operational Agreement, during Years 2020 and 2021 SNWA agrees to limit requesting development and release of ICUA from the SNWA Interstate Account to an amount equal to the lesser of (i) the difference between 300,000 acre-feet and the amount apportioned for use within Nevada by the Secretary pursuant to Section XI.G.2(D)(1)(a), XI.G.2(D)(1)(b), or XI.G.2(D)(1)(c) of the 2007 Guidelines whichever is applicable, or (ii) the previous end-of-Year balance in the SNWA Interstate Account. During the Years 2020 and 2021, MWD agrees to the development and release of ICUA as requested by SNWA in accordance with this Section 2.2.5.
- 2.2.6 Development and Release During Specific Shortage Conditions: Notwithstanding anything to the contrary contained in this Operational Agreement, in any Year in which the Secretary apportions less than 280,000 acre-feet of Colorado River water for use in Nevada, exclusive of

any ICUA, Intentionally Created Surplus or Developed Shortage Supply available to SNWA in that Year, then, at SNWA's request, MWD shall develop for release one (1) acre-foot of ICUA from the SNWA Interstate Account for SNWA for each acre-foot less than 280,000 acre-feet apportioned by the Secretary for use in Nevada in that Year, provided, however, that in no event shall SNWA be entitled to the development and release of more than the lesser of: 50,000 acre-feet in one Year; or the total previous end-of-Year balance in the SNWA Interstate Account.

- 2.2.7 Operation of Section 4.3 of the SIRA: For purposes of Section 4.3 of the SIRA, MWD expressly agrees that an amount of ICUA greater than 30,000 acre-feet will be developed for release to SNWA if necessary to meet the terms of Section 2.2.6 of this Operational Agreement.
- 2.2.8 Development and Release of Water Stored Under Section 2.1.2: If SNWA requests development and release of the water stored in 2015 pursuant to Section 2.1.2 above, SNWA shall pay MWD the sums set forth in Section 4.4.1 below.

Article 3

Term of Agreement

3.1 This Operational Agreement shall be effective as of the Effective Date and shall terminate (i) upon recovery of all water in the SNWA Interstate Account and both Parties mutually agree in writing to terminate this Operational Agreement, or (ii) concurrently with the termination of the SIRA, whichever comes first.

Article 4

Costs, Losses, and Drought Considerations

4.1 MWD shall be responsible for all costs associated with (i) the diversion, conveyance, and storage of water pursuant to the SIRA; and (ii) all costs associated with the recovery of water stored pursuant to the SIRA and the development of ICUA with respect to such water.

4.2 Water stored by MWD in 2015 pursuant to Section 2.1.2, above, shall be charged with a loss of 25,000 acre-feet. The SNWA Interstate Account maintained by MWD pursuant to Article 6 of the SIRA shall include a separate accounting of this loss charged to water stored during 2015. This loss shall not be charged against the balance in the SNWA Interstate Account on January 1, 2015.

4.3 SNWA shall be responsible for all costs associated with its diversion of ICUA released by the Secretary pursuant to the SIRA after being stored with MWD hereunder.

4.4 In exchange for SNWA's commitment to store Colorado River water with MWD in 2015 pursuant to Section 2.1.2 above, MWD shall pay SNWA \$44,375,000, which

shall be paid within 30 days of notification of the Secretary's decision to release the water to MWD pursuant to Section 3.3 of the SIRA.

- 4.4.1 If SNWA requests development and release of any ICUA stored in the SNWA Interstate Account pursuant to Section 2.2.8, SNWA will reimburse MWD for an equivalent proportion of the cost paid under Section 4.4 (\$44,375,000) based upon the volume developed in the Year requested and the volume credited to the SNWA Interstate Account in 2015 (125,000 acre-feet). The reimbursement of the equivalent portion of the cost paid under Section 4.4 will be adjusted annually utilizing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (CPI-U), U.S. city average, All items (1967 equals 100), Series Id: CUUR000AA0, ("CPI") commencing in 2016. For each Year thereafter, the equivalent portion of the cost paid shall be adjusted (upward or downward) to the amount yielded by the following formula to determine the reimbursement:

Cost paid under Section 4.4 x [volume of ICUA developed in the Year requested in acre-feet ÷ 125,000 acre-feet] x [CPI₂ ÷ CPI₁]

where: CPI₁ = CPI for June 2016, and

CPI₂ = CPI for June of the Year of ICUA development (utilizing the Bureau of Labor Statistics successor base period if the CPI for the 1967 base period is no longer published).

4.5 Drought Considerations: If less than 75,000 acre-feet of ICUA has been developed and released to SNWA pursuant to Section 2.2, then during each Year prior to 2027 for which Lake Mead begins the Year at or below elevation 1,045 feet, MWD will create 50,000 acre-feet per Year of Intentionally Created Surplus (ICS) in Lake Mead, until the combined sum of ICS created and ICUA developed and released under Section 2.2 equals 75,000 acre-feet. MWD agrees that prior to 2027, it may request delivery of ICS created in satisfaction of this Section 4.5 only during a Year in which Lake Mead begins the Year at or above elevation 1,080 feet. The parties agree to consult and potentially modify the terms of this Section 4.5 should any Party experience issues meeting direct delivery domestic use needs.

Article 5
Other Provisions

5.1 Uncontrollable Forces: No Party to this Operational Agreement shall be considered in default in the performance of any of its obligations under this Operational 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 necessary authorizations or approvals from, any federal governmental agency or authority, which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

5.2 Lack of enforcement of any term or condition of this Operational Agreement shall not be construed as a waiver of any rights conferred by such term or condition. Unless otherwise agreed to in writing, the failure of any Party to require the performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.

5.3 This Operational Agreement shall be binding on the Parties and their respective successors and assigns.

5.4 Any person signing this Operational Agreement represents that he/she 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.

5.5 This Operational Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties regarding the subject matter hereof, except as set forth herein, whether written or oral. This Operational Agreement amends and supersedes all terms and conditions set forth in the Original Agreement, First Amendment, and Second Amendment. This Operational Agreement can be amended only in writing signed by the Parties.

5.6 Time is of the essence of this Operational Agreement.

5.7 Each Party agrees to perform any further acts and to execute and deliver any documents, which may be reasonably necessary to carry out the provisions of this Operational Agreement.

5.8 The provisions of this Operational Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

5.9 This Operational Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to another counterpart identical thereto, except for having additional signature pages executed by another Party to this Operational Agreement attached thereto.

5.10 This Operational Agreement is made solely for the benefit of the Parties hereto and respective successors and assigns. No third party to this agreement shall be intended to or deemed to be a third party beneficiary hereof, nor shall such person acquire any right by virtue of this Operational Agreement.

Article 6

Notices and Requests

6.1 All notices and requests required and allowed under the terms of this Operational Agreement shall be given in the following manner:

6.2 Notices and requests shall be in writing and may be mailed first class postage paid to the Parties at the following addresses:

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

CRCN
Executive Director
Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101

SNWA
General Manager
Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153

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

In Witness of this agreement, the Parties affix their official signatures below, acknowledging execution of this document.

ATTEST:

By: 
Jayne Harkins, Executive Director

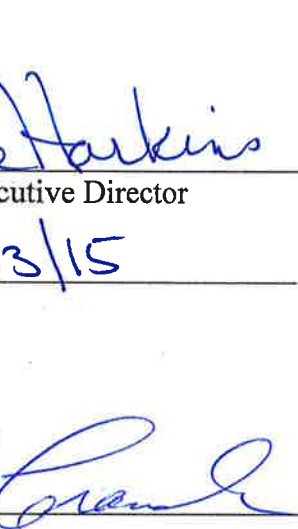
Date: 10/13/15

COLORADO RIVER COMMISSION OF NEVADA

By: 
George F. Ogilvie, III, Chair

Date: OCTOBER 13, 2015

Approved as to form:

By: 
Jennifer T. Crandell
Senior Deputy Attorney General

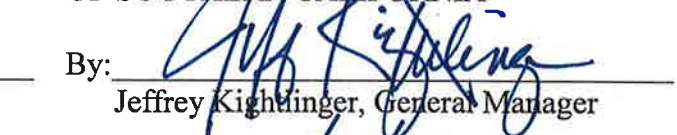
Date: 10/13/15

Approved as to form:

By:
Marcia L. Scully, General Counsel

Date: 10/19/15

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: 
Jeffrey Kightlinger, General Manager

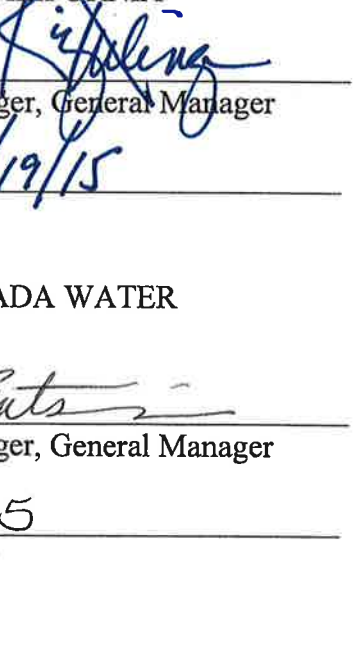
Date: 10/19/15

Approved as to form:

By:
Gregory J. Walch, General Counsel

Date: 10/5/15

SOUTHERN NEVADA WATER AUTHORITY

By: 
John J. Entsminger, General Manager

Date: 10.5.15

