

DCP CONTRIBUTIONS AND ICS ACCUMULATION LIMITS
SHARING AGREEMENT

THIS DCP CONTRIBUTIONS AND ICS ACCUMULATION LIMITS SHARING AGREEMENT (“Sharing Agreement”) is made and entered into this 12th day of September, 2019, by and between the STATE OF ARIZONA, acting through the Director of the Arizona Department of Water Resources, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“MWD”), the COLORADO RIVER COMMISSION OF NEVADA, an agency of the State of Nevada (“CRCN”), and the SOUTHERN NEVADA WATER AUTHORITY a political subdivision of the State of Nevada (“SNWA”), each of which is at times referred to individually as “Party” or collectively as “Parties”.

RECITALS

WHEREAS, pursuant to Section III(B)(4) of the Lower Basin Drought Contingency Operations effective as of May 20, 2019 (“LBOPs”), Contractors within one or more Lower Division States, subject to certain conditions, may make all or any portion of the DCP Contributions required of another Lower Division State under Section III(B) of the LBOPs;

WHEREAS, MWD and SNWA, subject to the terms, conditions, and limitations set forth herein, desire that SNWA make up to 300,000 acre-feet of DCP Contributions on behalf of MWD to satisfy State of California DCP Contributions obligations through the Interim Period;

WHEREAS, the Parties desire that this Sharing Agreement constitute the agreement required by Section III(B)(4) of the LBOPs for DCP Contributions made for the benefit of another state;

WHEREAS, Section IV(C) of the LBOPs sets the maximum amount of Extraordinary Conservation ICS, Binational ICS, and DCP ICS that may be accumulated for each Lower Division State at 1.7 million acre-feet for California Contractors, 500,000 acre-feet for Arizona Contractors, and 500,000 acre-feet for Nevada Contractors (in each case an “ICS Accumulation Limit”);

WHEREAS, pursuant to Section IV(C) of the LBOps, one or more Lower Division States, subject to certain conditions, may agree to make available all or a portion of its ICS Accumulation Limit to another Lower Division State;

WHEREAS, the Parties desire that MWD and Nevada make available to the State of Arizona during the Interim Period up to 50,000 acre-feet each (not to exceed 100,000 acre-feet total) of their respective ICS Accumulation Limits;

WHEREAS, the Parties desire that this Sharing Agreement constitute the agreement required by Section IV(C) of the LBOps for ICS Accumulation Limits sharing;

AGREEMENT

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

I. DEFINITIONS

Terms defined in the LBOps or 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Interim Guidelines”) have the same meaning when used in this Sharing Agreement.

“**ICS Accumulation Limit**” shall have the meaning ascribed to such term in the recitals above.

“**Notice**” shall have the meaning ascribed to such term in Section III below.

II. SNWA DCP CONTRIBUTIONS ON BEHALF OF MWD; DCP ICS REPAYMENT

A. DCP Contributions

In any Year that MWD is required to make a DCP Contribution to satisfy a portion of California’s DCP Contribution obligation under the LBOps, SNWA agrees to make up to 100,000 acre-feet of such DCP Contribution; provided (i) the amount SNWA contributes in any Year shall not exceed the difference between MWD’s

required DCP Contribution and the sum of MWD's ICS Accounts available for use as DCP Contributions in such Year; and (ii) the cumulative volume of DCP Contributions made by SNWA pursuant to this Sharing Agreement shall not exceed 200,000 acre-feet through 2023 or 300,000 acre-feet through the Interim Period. MWD shall provide the maximum practicable notice of any MWD request pursuant to this paragraph. SNWA shall retain discretion to select any DCP Contributions mechanism authorized in the LBOps to satisfy SNWA's obligation hereunder.

B. SNWA DCP ICS Delivery and Repayment Obligations

In the event SNWA takes delivery of DCP ICS pursuant to Section III(F)(4) of the LBOps, MWD shall satisfy, pursuant to Section III(B)(4) of the LBOps, any SNWA DCP ICS repayment obligation required by the LBOps; provided (i) MWD is not obligated to make an annual repayment obligation on behalf of SNWA of more than 50,000 acre-feet; and (ii) MWD's total repayment obligation hereunder shall be the total volume of DCP Contributions SNWA makes on behalf of MWD pursuant to Section II(A) of this Sharing Agreement.

III. SHARING OF ICS ACCUMULATION LIMIT BY CALIFORNIA AND NEVADA

If, during the Interim Period, the State of Arizona desires to accumulate ICS in excess of Arizona's ICS Accumulation Limit, the States of California and Nevada, through their respective signatories to this Sharing Agreement, agree to make available to the State of Arizona for Arizona Contractors, up to 50,000 acre-feet each (a total of up to 100,000 acre-feet) of their respective ICS Accumulation Limits, subject to the following conditions:

- (i) Arizona shall provide not less than one-year's written notice to MWD, Nevada, and the Secretary of its intention to use space made available by MWD and Nevada hereunder ("Notice");

- (ii) Any Notice shall indicate the extent to which Arizona's ICS Accumulation Limit will be exceeded by the creation of ICS by Arizona during the succeeding Year;
- (iii) MWD and Nevada shall share equally in the provision of space necessary for Arizona to store ICS in excess of Arizona's ICS Accumulation Limit under this Sharing Agreement.

IV. ADDITIONAL PROVISIONS

- A. No waiver. The failure of any Party to enforce a provision of this Sharing Agreement shall not be deemed to constitute a waiver of that provision.
- B. No Precedent. This Sharing Agreement does not establish or act as precedent for any future agreement or undertaking.
- C. Reservation of rights. Except as expressly provided herein or in the LBOps, nothing in this Sharing Agreement or the LBOps shall be deemed to diminish or waive the rights of any Party under Federal Reclamation Law, the Law of the River, or under any other state, federal, or local law.
- D. Uncontrollable Forces. No Party shall be considered to be in default in the performance of any of its obligations under this Sharing Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Sharing Agreement by reason of an Uncontrollable Force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

E. Representations and Warranties. Each Party warrants and represents to each of the other Parties, as a material inducement to enter into this Sharing Agreement and not as a mere recital, the following:

1. The Party has all legal power and authority to enter into this Sharing Agreement and to perform its obligations hereunder on the terms set forth in this Sharing Agreement, and the execution and delivery hereof by each Party and the performance by each Party of its obligations hereunder shall not violate or constitute an event of default under the terms or provisions of any agreement, document, or instrument to which each of the Parties is a Party or by which each Party is bound.
2. The individual executing this Sharing Agreement on behalf of the Party has the full power and authority to bind the Party he or she represents to the terms of this Sharing Agreement.
3. This Sharing Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.
4. The Party is authorized by, and has undertaken all prerequisite actions required by, applicable Federal and State laws and regulations to perform the obligations and exercise the rights contemplated herein.

F. Governing Law. This Sharing Agreement shall be interpreted, governed by, and construed under applicable Federal law. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Sharing Agreement shall be in an appropriate Federal court.

G. Successors and Assigns. The provisions of this Sharing Agreement shall apply to and bind the successors and assigns of the Parties, but no assignment or transfer of this Sharing Agreement or any right or interest herein shall be valid until consented to in writing by all Parties, which consent shall not be unreasonably withheld.

Assignments made without the consent of each of the Parties in writing shall be void and not merely voidable.

- H. Amendments and Modifications. This Sharing Agreement may be amended or modified only by the written agreement of the Parties.
- I. Drafting Considerations. Each Party and its counsel have participated fully in the drafting, review, and revision of this Sharing Agreement, each of whom is sophisticated in the matters to which this Sharing Agreement pertains, and no one Party shall be considered to have drafted this Sharing Agreement.
- J. Notices. All notices and requests required or allowed under the terms of this Sharing Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

ARIZONA DEPARTMENT OF WATER RESOURCES c/o Director 1110 W. Washington Street, Suite 310 Phoenix, Arizona 85007	METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA c/o General Manager 700 North Alameda Street Los Angeles, CA 90012-2944
SOUTHERN NEVADA WATER AUTHORITY c/o General Manager 1001 South Valley View Boulevard Las Vegas, Nevada 89153	COLORADO RIVER COMMISSION OF NEVADA C/O Executive Director 555 E. Washington Ave., Suite 3100 Las Vegas, NV 89101-1065

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

- K. No Third-Party Beneficiaries. This Sharing Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Sharing Agreement intends for this Sharing Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.

L. Resolution of Claims or Controversies. The Parties recognize that judicial or administrative proceedings are not preferred alternatives to the resolution of claims or controversies concerning the Law of the River. In furtherance of this Sharing Agreement, the Parties desire to avoid judicial or administrative proceedings, and agree to pursue a consultative approach to the resolution of any claim or controversy. If any Party becomes concerned that there may be a claim or controversy under this Sharing Agreement, such party shall notify all other Parties in writing, and the Parties shall in good faith meet to resolve such claim or controversy by mutual agreement prior to initiating any judicial or administrative proceeding. No Party shall initiate any judicial or administrative proceeding arising out of this Sharing Agreement against any other Party, and no claim hereunder shall be ripe, until such consultation has been completed. Notwithstanding any other provision of this Sharing Agreement, this Section IV(L) shall survive for a period of five (5) years following the expiration of this Sharing Agreement.

M. Joint Defense Against Third-Party Claims. The Parties have certain common, closely parallel, or identical interests in supporting, preserving, and defending the LBOs and this Sharing Agreement. The nature of this interest and the relationship among the Parties present common legal and factual issues and a mutuality of interests. Because of these common interests, the Parties will mutually benefit from an exchange of information relating to the support, preservation, and defense of the LBOs and this Sharing Agreement, as well as from the coordinated investigation and preparation for discussion of such interests. In furtherance thereof, in the event of any challenge by a third party to the LBOs or this Sharing Agreement, the Parties will proceed with reasonable diligence and use best efforts to support and defend the LBOs and this Sharing Agreement in any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of the LBOs or this Sharing Agreement, and will, to the extent appropriate, enter into joint defense or common interest agreements. Each Party will bear its own costs of

participating in the defense of the LBOps and this Sharing Agreement under this Section IV(M).

N. The Parties to this Agreement are hereby notified of and acknowledge A.R.S. § 38-511 regarding cancellation for conflict of interest.

O. Counterparts. This Sharing Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Sharing Agreement.

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

ARIZONA DEPARTMENT OF WATER
RESOURCES

By: 
Thomas Buschatzke

Its: Director

Approved as to form,

By: 
Nicole Klobas

Its: Deputy Chief Counsel

METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

Approved as to form,

By: _____

Jeffrey Kightlinger

Its: General Manager

By: _____

Mscully

Its: _____

General Counsel

SOUTHERN NEVADA WATER
AUTHORITY

By: 
John J. Entsminger

Its: General Manager

Approved as to form,

By: 
Its: General Counsel

COLORADO RIVER COMMISSION OF
NEVADA

By: 
Eric P. Witkoski

Its: Executive Director

Approved as to form,

By: 
Jennifer Crandell

Its: Special Counsel Attorney General