

**AGREEMENT REGARDING  
LOWER BASIN DROUGHT CONTINGENCY PLAN OBLIGATIONS**

This Agreement Regarding Lower Basin Drought Contingency Plan Obligations is entered into this 20th day of May, 2019, by and between the United States of America, acting through the U.S. Bureau of Reclamation, an agency of the United States Department of the Interior, and the Central Arizona Water Conservation District (“CAWCD”) (each a “Party” and collectively referred to herein as the “Parties”).

I. RECITALS

*WHEREAS*, the Central Arizona Project (“CAP”) was authorized and constructed pursuant to the Colorado River Basin Project Act, Pub. L. 90-537, 90th Cong. S. 104 (Sept. 30, 1968), partially codified at 43 U.S.C. §§ 1501 et seq (as amended). Congress authorized the Secretary to contract with “organizations which have power to levy assessments against all taxable real property within their boundaries” for repayment of the costs of construction of the CAP and for delivery of water through the CAP for irrigation, municipal and industrial uses. 43 U.S.C. § 1524.

*WHEREAS*, in A.R.S. § 48-3703, the Arizona Legislature authorized the creation of CAWCD to repay Arizona’s share of CAP construction costs and to contract and subcontract for the water supply delivered through the CAP. The Legislature further authorized CAWCD to “[c]ooperate and contract with the secretary to carry out the provisions of the reclamation act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto including the Colorado River Basin Project Act (82 Stat. 885).” A.R.S. § 48-3713.

*WHEREAS*, the Parties have entered into various contracts and agreements for the repayment, operation and maintenance of the Central Arizona Project, including the Contract Between the United States and the Central Arizona Water Conservation District for the Delivery of Water and Repayment of Costs of the Central Arizona Project, Amendment No. 1, Contract No. 14-06-W-245 (Dec. 1, 1988) (the “Master Repayment Contract,” or “MRC”); the Repayment Stipulation (“Stipulation”) (See Sec. 2(41), Title I, Pub. L. No. 108-451, 118 STAT. 3483 (2004). The Master Repayment Contract and the Stipulation address diversion and delivery of Project Water by CAWCD, as defined in the MRC and the Stipulation.

*WHEREAS*, the Lower Basin Drought Contingency Plan Agreement (“LBDCPA”) is executed concurrently herewith by the United States and the other parties thereto. The objectives of the LBDCPA are to utilize pragmatic and cooperative operational strategies to reduce the likelihood of the continued decline in the elevation of water in Lake Mead, incentivize the creation and storage in Lake Mead of Intentionally Created Surplus (“ICS”) under the 2007 Interim Guidelines, and reduce the collective harm that would

occur from prolonged interruptions in Lower Basin Colorado River water supplies, with these objectives to be accomplished through various mechanisms including DCP Contributions to Lake Mead, the application of additional rules relating to the creation and delivery of Intentionally Created Surplus ("ICS"), consultation among various parties, and other water management tools.

*WHEREAS*, CAWCD is expressly identified as a Third-Party Beneficiary in Section 5(l) of the LBDCPA.

*WHEREAS*, the Parties hereto desire to ensure that: a) the objectives and provisions of the LBDCPA that relate to the United States' and CAWCD's respective rights and obligations under the MRC and the Stipulation are carried out in a prompt and efficient manner; and, b) no modification or amendment is intended or implied with respect to existing contracts and agreements between the United States and CAWCD, including the MRC and the Stipulation, by virtue of execution of the LBDCPA and the United States implementation of Section 2(a) of Pub. L. No. 116-14 (2019).

All capitalized terms herein have the meanings ascribed to them in the LBDCPA, the 2007 Guidelines, the MRC and the Stipulation.

## II. AGREEMENT

In consideration of the above recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The United States agrees that it will carry out its obligations under Section 2 of Pub. L. No. 116-14 (2019).
2. This Agreement is an "Intra-State DCP Agreement" as defined in Section II of the Lower Basin Drought Contingency Operations, which is attached as Exhibit 1 to the LBDCPA.
3. CAWCD agrees to comply with the obligations of the LBDCPA that relate to operation of the CAP pursuant to the MRC and the Stipulation, including but not limited to:
  - a. CAWCD will not order or divert water from the Colorado River that constitutes Arizona DCP Contributions as described in the LBDCPA.
  - b. CAWCD agrees not to order or divert water to the extent necessary to fulfill Arizona's DCP Contribution obligations set forth in the LBDCPA unless those obligations are otherwise fulfilled by any combination of the following: 1) reductions by other Arizona contractors required pursuant to Arizona's priority system; 2) adjustments

in Arizona delivery schedules by the Secretary as required by the LBDCPA; 3) conversion of ICS; or 4) by voluntary agreements with higher priority water users within Arizona.

c. The Secretary agrees to follow and implement those Secretarial provisions of the LBDCPA and nothing in this Agreement determines the rights or relative priorities of Contractors in Arizona.

d. CAWCD will comply with all provisions of the LBDCPA relating to the creation and delivery of ICS and DCP ICS, and agrees not to order or divert ICS or DCP ICS of any Contractor other than CAWCD.

e. CAWCD will comply with provisions of the LBDCPA relating to the ordering, delivery, and diversion of Colorado River water.

f. CAWCD agrees to comply with all relevant provisions provided in the Agreement Concerning Colorado River Drought Contingency Management and Operations. ("Companion Agreement").

### III. GENERAL PROVISIONS

#### 1. NO CONFLICT; RESERVATION OF RIGHTS

a. Nothing in this Agreement, or the implementation of LBDCPA, is intended to contravene or diminish the Secretary's or CAWCD's rights and obligations under the MRC, the Stipulation, any Long-Term Contract or Federal Law. In the case of a conflict between this Agreement and pre-existing agreements between the United States and CAWCD, (e.g., the MRC, the Stipulation), those pre-existing agreements will prevail. Nothing in this Agreement shall be construed as a delegation of authority to perform or interpret inherently Federal functions.

b. **Reservation of Rights:** The Parties do not waive, and each Party expressly reserves, any rights, claims, or arguments with respect to the authority, scope of authority, legal necessity or consequences of the agreed upon course of action for effecting and implementing the LBDCP.

#### 2. UNCONTROLLABLE FORCES

No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party

rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

### 3. REPRESENTATION AND WARRANTIES – AUTHORITY TO ENTER INTO AGREEMENT ETC.

Each Party has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by each Party and the performance by each Party of its obligations hereunder shall not violate or constitute an event of default under the terms or provisions of any agreement, document, or instrument to which each of the Parties is a party or by which each Party is bound. Each Party warrants and represents that the individual executing this Agreement on behalf of the Party has the full power and authority to bind the Party he or she represents to the terms of this Agreement.

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

Each Party: (i) warrants and represents that such Party is authorized by, and has undertaken all prerequisite actions required by, applicable Federal and State laws and regulations to perform the obligations and exercise the rights contemplated herein, (ii) acknowledges that such warranty and representation is a material inducement to, and has been relied upon by, the other Parties in entering into this Agreement and performing their respective obligations hereinafter.

### 4. GOVERNING LAW

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

### 5. AMENDMENT, MODIFICATION, AND/OR SUPPLEMENT

This Agreement may be amended, modified, or supplemented only by the written agreement of the Parties. No amendment, modification, or supplement shall be binding unless it is in writing and signed by all Parties.

### 6. JUDICIAL REMEDIES NOT FORECLOSED

Nothing in this Agreement shall be construed: (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have; or (ii) as depriving any Party of any defense thereto which would otherwise be available.

7. CONTINGENT ON APROPRIATION OR ALLOTMENT OF FUNDS

The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Parties from any obligations under this Agreement. No liability shall accrue to the United States in case funds are not appropriated or allotted.

8. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to the Congress, or Resident Commissioner, or official of CAWCD, or any Elector or Electors shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

9. THIRD-PARTY BENEFICIARIES

All non-Federal parties to the LBD CPA shall be considered Third-Party Beneficiaries to this Agreement. Neither Party to this Agreement intends for this Agreement to confer any benefit upon any person or entity that is neither a signatory to this Agreement or a Third-Party Beneficiary to this Agreement.

10. COUNTERPARTS

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

11. AVAILABILITY OF INFORMATION

Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Agreement.

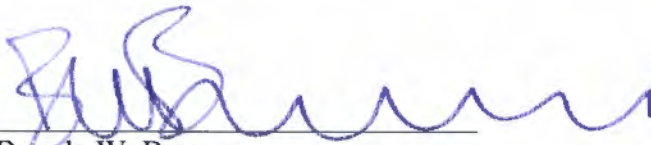
12. BINDING EFFECT AND LIMITED ASSIGNMENT

The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties upon receipt of written agreement to the terms of this Agreement, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by all Parties. This Agreement is and shall be binding upon and shall inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

### 13. NON-WAIVER

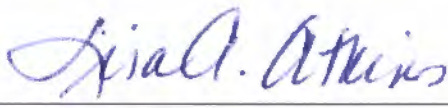
No Party to this Agreement shall be considered to have waived any right hereunder except when such waiver of the right is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any provisions of this Agreement or to take advantage of any of its rights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

UNITED STATES OF AMERICA

By:   
Brenda W. Burman  
Commissioner  
Bureau of Reclamation  
United States Department of the Interior

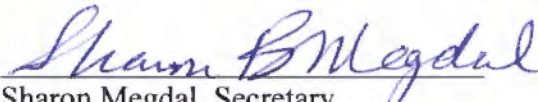
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CENTRAL ARIZONA WATER CONSERVATION DISTRICT

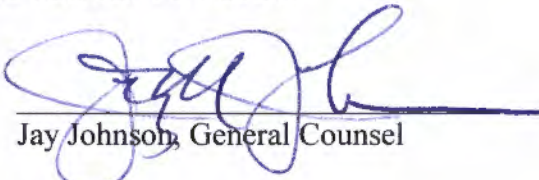
By:   
Lisa Atkins, President

Date: 20 May 19

ATTEST:

By:   
Sharon Megdal, Secretary

APPROVED AS TO FORM:

By:   
Jay Johnson, General Counsel