

## EXHIBIT B

### **AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF WATER RESOURCES AND THE ENVIRONMENTAL DEFENSE FUND, INC. TO FUND THE CREATION OF SYSTEM CONSERVATION WATER IN LAKE MEAD BY THE COLORADO RIVER INDIAN TRIBES**

**PREAMBLE:** The Colorado River Indian Tribes (“CRIT”) have agreed to fallow sufficient irrigable farm land on the Colorado River Indian Reservation in Arizona (“CRIR”) to create 50,000 acre-feet of System Conservation Water in Lake Mead (“CRIT Proposal”) in each of three years beginning January 1, 2020 and ending December 31, 2022 (“Fallowing Period”). CRIT will forego irrigation water deliveries and fallow approximately 10,000 acres of farmland in exchange for receiving from the Arizona System Conservation Fund (“Fund”) \$247.20 per acre-foot of water in 2020, with a 3% annual escalator, for up to 150,000 acre-feet conserved in Lake Mead and available to the Lower Colorado River System to maintain lake levels (“Project”).

The Arizona Department of Water Resources (“ADWR”), the U.S. Bureau of Reclamation (“Reclamation”), and the Central Arizona Water Conservation District (“CAWCD”) will enter an agreement setting forth the terms for CRIT’s creation of System Conservation Water in Lake Mead (“CRIT Agreement”). This Exhibit B will be part of the CRIT Agreement. To fund the Project, the State of Arizona has appropriated \$30,000,000 in FY 2019/2020 for deposit into the Fund pursuant to Laws 2019, Chapter 1, Sec. 21. Contingent on this funding agreement becoming effective as set forth in Section XI below, EDF has agreed to deposit a total of \$2,000,000 into the Fund by January 31, 2020 and use best efforts to contribute an additional \$6,000,000 into the Fund no later than July 15, 2021.

This Agreement (“Funding Agreement”) is intended to describe the State of Arizona’s and EDF’s commitment to contribute monies to the Fund to assist in funding the Project during the Fallowing Period such that CRIT receives compensation from the Fund in accordance with Section 8 of the CRIT Agreement.

I. **Key Terms:** The defined terms in the CRIT Agreement shall have the same meaning in this Funding Agreement.

II. **Cost of Project:** The total cost for the conservation of 150,000 acre-feet of water in Lake Mead by CRIT is \$38,160,000, which includes \$160,000 of interest that will accrue in the Fund from monies contributed to the Fund for the purpose of funding the Project by the State of Arizona and EDF, and others if necessary, during the Fallowing Period.

III. **Financial Contributions by State of Arizona:** To fund the Project, the State of Arizona has appropriated \$30,000,000 in FY 2019/2020 for deposit into the Fund pursuant to Laws 2019, Chapter 1, Sec. 21. ADWR expects that these monies will be deposited by the State into the Fund by July 31, 2019. No other monies shall be deposited into the Fund by the State of Arizona to complete its obligation to the CRIT pursuant to the CRIT Agreement. Interest accrued on the

monies deposited into the Fund by the State of Arizona will accrue to the benefit of CRIT and will be paid to CRIT in accordance with the terms of Section 8 of the CRIT Agreement up to the total amount of funding for CRIT to create 150,000 acre-feet of System Conservation Water. Any monies remaining in the Fund including accrued interest, after the final payment to CRIT, shall be returned to the State of Arizona and EDF according to each party's contribution to the Fund. Any monies contributed to the Fund by a party other than the State of Arizona and EDF, shall not be included in the distribution of monies remaining in the Fund to the State and EDF.

IV. Financial Contributions by EDF:

EDF shall make financial contributions to the Fund according to the Table below:

<b>Contributions</b>	<b>Due Date</b>	<b>EDF</b>
Contribution 1	On or before July 31, 2019	\$ 1,000,000.00
Contribution 2	On or before January 31, 2020	\$ 1,000,000.00
<b>TOTAL</b>		<b>\$ 2,000,000.00</b>

Interest accrued on the monies deposited into the Fund by EDF for the purpose of funding the Project will accrue to the benefit of CRIT and will be paid to CRIT in accordance with the terms of Section 8 of the CRIT Agreement. Any monies remaining in the Fund including accrued interest, after final payment to CRIT, shall be returned to EDF and the State of Arizona according to each party's contribution to the Fund. Any monies contributed to the Fund by a party other than the State of Arizona and EDF, shall not be included in the distribution of monies remaining in the Fund to the State and EDF.

V. Additional Contributions by EDF: In addition to EDF's agreement to contribute \$2,000,000 to the Fund according to the provisions set forth in Section IV herein, EDF has made significant progress toward raising \$2,000,000 to \$3,000,000 to be contributed to the Fund by January 31, 2021. EDF will use best efforts to raise an additional amount of money to be contributed to the Fund on or before July 15, 2021 in an amount equal to the difference between \$8,000,000 and the total amount of monies previously contributed to the Fund by EDF. Any monies contributed by EDF to the Fund pursuant to this Section shall be used to fund the Project under the terms of the CRIT Agreement. Notwithstanding any other provision in this Funding Agreement, the total amount of contributions that EDF will endeavor to make to the Fund during the Following Period shall not exceed \$8,000,000.

VI. Notice: EDF agrees that should it be unable to meet any of its funding commitments as set forth in Sections IV and V herein, it shall provide written notice to ADWR and CRIT no later than July 1, 2021 stating the reason for, and the amount of, its funding shortfall. EDF shall not be held

liable by any of the parties to the CRIT Agreement in the event that EDF is unable to raise funds beyond its \$2,000,000.00 commitment herein.

VII. Invoicing: ADWR will invoice EDF for its \$1,000,000 contribution due on or before January 31, 2020 at least sixty (60) days prior to the final due date listed in the table in Section IV herein.

VIII. Payments to CRIT by ADWR: Payments from the Fund by ADWR to CRIT shall be made in accordance with the terms of the CRIT Agreement

IX. Third-Party Beneficiary: CRIT is a third-party beneficiary to this Funding Agreement.

X. Performance Metrics: Specific performance metrics are set forth in Sections 6 and 8 of the CRIT Agreement and must be met prior to payment from the Fund by ADWR to CRIT. ADWR will provide these performance metrics to EDF in the same manner that it was provided to ADWR within 45 days of ADWR's receipt of such metrics. The terms of the CRIT Agreement govern the implementation of this Funding Agreement.

XI. Effective Date: This Funding Agreement becomes effective upon the occurrence of the latter of: (1) signing of this Agreement by ADWR and EDF, and (2) signing of the CRIT Agreement by all of the parties to that agreement.

XII. Termination Date: This Funding Agreement shall terminate upon fulfillment of the obligations set forth herein and in the CRIT Agreement. ADWR is supportive of establishing a program to create additional system conservation water in Lake Mead to protect lake levels if participants and funders are willing and able to participate.

ADWR and EDF's signature below indicates agreement with the terms of this Funding Agreement. This Funding Agreement may be signed in counterparts, each of which shall be an original and all of which, together shall constitute Exhibit B of the CRIT Agreement.

**ADWR:**

By:   
Thomas Buschatzke

Its: Director


Date: 7/19/19

**Approved as to form:**

By:   
Ayesha Vohra

Its: Deputy Counsel

**ENVIRONMENTAL DEFENSE FUND, INC.**

By: 

Its: CEO

Date: 7-30-19

**Approved as to form:**

By: \_\_\_\_\_

Its: \_\_\_\_\_