

QUANTIFICATION SETTLEMENT AGREEMENT

by and among

IMPERIAL IRRIGATION DISTRICT,

a California irrigation district;

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,

a California metropolitan water district

and

COACHELLA VALLEY WATER DISTRICT,

a California county water district

Dated October 10, 2003

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QUANTIFICATION SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this 10th day of October, 2003, by and among Imperial Irrigation District ("**IID**"), a California irrigation district, The Metropolitan Water District of Southern California ("**MWD**"), a California metropolitan water district, and Coachella Valley Water District ("**CVWD**"), a California county water district, each of which is at times referred to individually as "**Party**" and which are at times collectively referred to as "**Parties**."

RECITALS:

A. IID is an irrigation district organized under the California Irrigation District Law, codified at §§ 20500 et seq. of the California Water Code, and delivers Colorado River water in Imperial County, California for potable and irrigation purposes.

B. MWD is a metropolitan water district organized under the California Metropolitan Water District Act, § 109-1 of the Appendix to the California Water Code, and engaged in developing, storing and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, California.

C. CVWD is a county water district organized under the California County Water District Law, codified at §§ 30000 et seq. of the California Water Code, and delivers Colorado River water in Riverside County, California for potable and irrigation purposes.

D. IID, MWD, PVID and CVWD are each contractors with the United States for delivery of Colorado River water as authorized by the Boulder Canyon Project Act (Act of December 21, 1928: 45 Stat.1057, as amended.)

E. Pursuant to those contracts, PVID, the Yuma Project (Reservation Division), IID and CVWD (collectively "the agricultural agencies") hold California's first three priorities to Colorado River water and are collectively entitled to the beneficial consumptive use as reasonably required of not to exceed 3,850,000 AFY. The fourth and fifth priorities totaling 1,212,000 AFY are held by MWD. The sixth priority of 300,000 AFY is held by IID, CVWD and PVID. The seventh priority of all remaining water available for use within California is reserved for agricultural use in the Colorado River Basin within California, which includes the lands within IID, CVWD and PVID. MWD and CVWD also have surplus water delivery contracts with the Secretary of the Interior.

F. MWD, IID and CVWD recognize that they have differences of opinion over various legal questions including the right to transfer water and the volumes of water to which the various right holders are entitled, but each Party wishes to go forward with this Agreement and associated agreements without regard to certain current or future differences, subject to the provisions of Article 4 hereof.

G. This Agreement and the Related Agreements are intended to consensually settle longstanding disputes regarding the priority, use and transfer of Colorado River water, to establish by agreement the terms for the further distribution of Colorado River water among the

Parties for up to seventy-five (75) years based upon the water budgets set forth herein, and to facilitate agreements and actions which will enhance the certainty and reliability of Colorado River water supplies available to the Parties and assist the Parties in meeting their water demands within California's apportionment of Colorado River water by identifying the terms, conditions and incentives for the conservation and distribution of Colorado River water within California.

H. IID seeks to settle disputes with CVWD and MWD and to use proceeds from the acquisition of Conserved Water by those Parties from IID to improve the reliability, efficiency and management of its Colorado River supply.

I. CVWD seeks to settle disputes with IID and MWD and to acquire Conserved Water for irrigation and potable uses to accommodate anticipated reductions in groundwater extraction.

J. MWD seeks to settle disputes with IID and CVWD and to ensure the reliability of its Colorado River supplies.

K. The Salton Sea Reclamation Act of 1998 expresses a federal interest in exploring whether the Salton Sea can be stabilized and reclaimed in the long term to preserve a healthy fish and wildlife resource habitat, yet recognizes that such stabilization and reclamation needs to accommodate the potential reduced inflows to the Salton Sea that may result from the conservation and transfer of conserved water by the IID.

L. The California State Legislature adopted and the Governor signed into law in 2003 three Acts (Stat. Chaps. 612, 611 and 654), commonly referenced as SB 317 (the "Kuehl Bill"), SB 277 (the "Ducheny Bill"), and SB 654 (the "Machado Bill") to facilitate implementation of this Agreement and the Related Agreements (as defined herein) (the Kuehl Bill, the Ducheny Bill and the Machado Bill are referenced collectively in this Agreement as the "QSA Legislation").

M. The State Water Resources Control Board, by its Order dated October 28, 2002, conditionally approved a joint petition, as amended, filed by IID and SDCWA for approval of the proposed transfer by IID of up to 200,000 AFY of Colorado River Water to SDCWA and for an acquisition of up to 100,000 AFY by CVWD or MWD and a petition filed by IID to change the point of diversion, place of use, and purpose of use under IID's Permit 7643 (as the same may be amended upon reconsideration, if any, the "SWRCB Order").

N. The Parties intend and believe that the Effective Date (defined below) of this Agreement and certain Related Agreements (as defined herein) will occur after the completion of review and adequate provision for any required mitigation under and in compliance with the California Environmental Quality Act, California Public Resources Code §§ 2100 et seq. ("CEQA").

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** As used in this Agreement, the following terms have the following meanings:

(1) **Approval Agreement.** The agreement between IID, MWD, CVWD and PVID dated December 19, 1989, and entitled Approval Agreement.

(2) **1998 IID/SDCWA Transfer Agreement.** The Agreement for Transfer of Conserved Water by and between IID and SDCWA dated April 29, 1998, as thereafter amended by IID and SDCWA through the Revised Fourth Amendment dated as of October 10, 2003, with such further changes thereto as IID and SDCWA may from time to time agree subject to the provisions of Section 4.8 hereof.

(3) **Acquisition Agreements.** Collectively, the 1998 IID/SDCWA Transfer Agreement, the CVWD/MWD Acquisition Agreement, the IID/MWD Acquisition Agreement, the IID/CVWD Acquisition Agreement, and the MWD/CVWD Transfer and Exchange Agreement.

(4) **AF.** Acre-foot, a measure of volume.

(5) **AFY.** Acre-feet per Calendar Year.

(6) **All-American Canal.** The canal and appurtenant works from Imperial Dam to the Imperial and Coachella Valleys authorized in Section 1 of the Boulder Canyon Project Act.

(7) **Allocation Agreement.** The Agreement dated as of the Closing Date among the Secretary and the other parties thereto, concerning the allocation of Conserved Water created as a result of the lining of the All-American Canal and the Coachella Canal, with such changes to such agreement as may be from time to time agreed upon in writing in accordance with such agreement.

(8) **Assignment (or Assign).** Any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights in or arising from this Agreement to any person or entity (excluding such a transfer by operation of law), regardless of the legal form of the transaction in which the attempted transfer occurs.

(9) **BOR.** The United States Bureau of Reclamation.

(10) **Business Day.** A day that is not a Saturday, Sunday, or federal or California state legal holiday.

(11) **Calendar Year.** The twelve (12)-month period running from January 1 through December 31.

(12) **Calendar Year Quarter**. Any of the four three-month periods (i) January through March; (ii) April through June; (iii) July through September; or (iv) October through December.

(13) **CEQA**. As defined in Recital N.

(14) **Closing Date**. October 10, 2003, the date as of which all Parties Execute this Agreement and all Related Agreements dated as of the Closing Date.

(15) **Coachella Canal**. The Coachella branch of the All-American Canal leading from the All-American Canal to the CVWD service area authorized in Section 1 of the Boulder Canyon Project Act.

(16) **Colorado River Aqueduct**. The aqueduct system owned and operated by MWD and extending from Lake Havasu to Lake Mathews in Riverside County.

(17) **Conserved Water**. Water made available for acquisition under this Agreement and the Related Agreements attributable to: (i) Temporary Land Fallowing or crop rotation, if an allowed use is for irrigation, or (ii) projects or programs that enable the use of less water to accomplish the same purpose or purposes of allowed use; provided, however, that such term does not include water attributable to:

(a) the activities described in (i) or (ii) above not voluntarily undertaken; or

(b) the activities described in (i) above voluntarily undertaken in exchange for money payment or other valuable consideration received from a governmental source other than SDCWA, MWD, CVWD or the California Department of Water Resources ("DWR"); and

(c) the resulting volume of reduced water produced from (a) or (b) above cannot be used anywhere within the IID Service Area.

(18) **Consumptive Use**. The diversion of water from the main stream of the Colorado River, including water drawn from the main stream by underground pumping, net of measured and unmeasured return flows.

(19) **Conveyance Loss**. The actual loss of water to evaporation, seepage, or other similar cause resulting from any transportation of Conserved Water from Imperial Dam to the CVWD service area or to the MWD service area, as the case may be.

(20) **CVWD**. As defined in Recital C.

(21) **CVWD/MWD Acquisition Agreement**. The agreement between CVWD and MWD dated as of the Closing Date regarding the acquisition of Conserved Water, with such changes thereto as CVWD and MWD may from time to time agree subject to the provisions of Section 4.8 hereof.

(22) **CVWD/MWD Supplemental Agreement.** The agreement between CVWD and MWD dated December 19, 1989, and entitled Agreement to Supplement Approval Agreement.

(23) **Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement.** The date on which the Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement becomes effective.

(24) **NEPA.** The National Environmental Policy Act.

(25) **Delegation (or Delegate).** Any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the obligations or liabilities in or arising from this Agreement to any person or entity (excluding such a transfer by operation of law), regardless of the legal form of the transaction in which the attempted transfer occurs.

(26) **Intentionally Not Used.**

(27) **Effective Date.** The date on which the United States District Court, Southern District of California, Case No. 03cv0069w (JFS) executes the Stipulation and Order dismissing the case IID v. United States, et al.

(28) **Environmental Cost Sharing, Funding and Habitat Conservation Plan Development Agreement or ECSA.** The agreement among IID, CVWD and SDCWA dated as of the Closing Date, concerning, among other things, the sharing and payment of certain environmental review and mitigation costs pertaining to this Agreement and certain Related Agreements with such changes thereto as such parties may from time to time agree in writing.

(29) **QSA Legislation.** As defined in Recital L.

(30) **Execution or Executed.** The execution and delivery of this Agreement and the Related Agreements dated as of the Closing Date by a duly-authorized representative of a party thereto, on behalf of such party, without conditions or reservations of any kind, except as may be expressly set forth in the agreement thereby executed and delivered.

(31) **Flood Control Release.** The release of water from Lake Mead and the operation of Hoover Dam for flood control purposes pursuant to the reservoir operating criteria specified in the February 8, 1984 Field Working Agreement between the U.S. Army Corps of Engineers and the BOR, and the U.S. Army Corps of Engineers regulations contained in Volume 33 of the Code of Federal Regulations, Part 208.11.

(32) **Force Majeure.** An event, not within the control of the Parties, which materially and adversely affects the performance of their respective obligations and duties to properly construct, operate, establish, implement or maintain the means of creating or receiving deliveries of Conserved Water, including a Transfer Stoppage as defined herein.

(33) **GDPIPD Inflation Index.** For any Calendar Year Quarter after the fourth Calendar Year Quarter of 1998, the ratio of the published value for that quarter of the Gross Domestic Product Implicit Price Deflator published quarterly by the Bureau of Economic

Analysis of the United States Department of Commerce in the Survey of Current Business, divided by the value of the Gross Domestic Product Implicit Price Deflator for the fourth Calendar Year Quarter of 1998. The GDPIPD Inflation Index for future quarter "n" is calculated by the following formula:

$$\frac{\text{GDPIPD Inflation Index Quarter "n"}}{\text{GDPIPD Inflation Index Fourth Quarter 1998}}$$

(34) **IID**. As defined in Recital A.

(35) **IID Service Area**. That area of Imperial Valley described in IID's Section 5 Contract as in effect on October 15, 1999.

(36) **IID/CVWD Acquisition Agreement**. The agreement between IID and CVWD dated as of the Closing Date regarding the acquisition of Conserved Water, with such changes thereto as IID and CVWD may from time to time agree subject to the provisions of Section 4.8 hereof.

(37) **IID/MWD 1988 Agreement**. The agreement between IID and MWD dated December 22, 1988, and entitled Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water.

(38) **IID/MWD Acquisition Agreement**. The agreement between IID and MWD dated as of the Closing Date regarding the acquisition of Conserved Water, with such changes thereto as IID and MWD may from time to time agree subject to the provisions of Section 4.8 hereof.

(39) **Implementation Agreement**. The Colorado River Water Delivery Agreement among the Secretary, IID, CVWD, MWD and SDCWA, dated as of the Closing Date, containing the terms of agreement with the Secretary regarding this Agreement and the Related Agreements in taking actions concerning the Colorado River, with such changes thereto as the parties thereto may from time to time agree.

(40) **Improvement District No. 1**. That area of land described in Exhibit "B" of the Contract for Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures and for Delivery of Water between the United States and Coachella Valley County Water District dated October 15, 1934, as heretofore or hereafter modified under Section 15 of the Agreement of Compromise between Imperial Irrigation District and Coachella Valley County Water District dated February 14, 1934; provided, however, that any modification that requires IID's consent shall also require MWD's consent for purposes of this definition.

(41) **Inadvertent Overrun and Payback Policy**. The BOR program described in and contemplated under Section 6.2(4) hereof.

(42) **Inflation Index**. For any Calendar Year Quarter ending after January 1, 1999, the arithmetic average of the PPI Inflation Index and the GDPIPD Inflation Index. The Inflation Index for any future Calendar Year Quarter "n" is calculated by the following formula:

$$I_n = \frac{(\text{PPI Inflation Index} + \text{GDPIPD Inflation Index})}{2}$$

(43) **Interim Surplus Guidelines.** The federal guidelines described in Section 6.2(5) hereof.

(44) **MWD.** As defined in Recital B.

(45) **MWD/CVWD Delivery and Exchange Agreement.** The agreement between MWD and CVWD dated as of the Closing Date regarding the transfer by MWD to CVWD of thirty-five thousand (35,000) AFY of MWD's State Water Project entitlement and the exchange of such water for Colorado River water, with such changes thereto as MWD and CVWD may from time to time agree subject to the provisions of Section 4.8 hereof.

(46) **"N" Dollars.** That nominal dollar amount in a future Calendar Year Quarter "n" which, when adjusted based on the Inflation Index ("I_n") is equivalent to the specified dollar amount in the Agreement measured as of the Year Z specified in the Agreement. The adjustment is calculated according to the following formula:

$$\text{"N" Dollars} = \text{Nominal Dollar Amount} = \$\text{zzz}(\text{Year Z}) \times \text{Inflation Index}_n$$

(47) **Neutral County.** Any county other than Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego or Ventura.

(48) **Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement.** The termination of the 1998 IID/SDCWA Transfer Agreement after the Effective Date,

(i) [Intentionally not used]

(ii) by reason of the termination pursuant to Section 4.1(c) of the 1988 IID/SDCWA Transfer Agreement; or

(iii) by reason of the expiration of the Initial Term without the commencement of a Renewal Term in Year 46, as defined in the 1998 IID/SDCWA Transfer Agreement, or if renewed, the expiration of the Renewal Term.

(49) **QSA.** This Agreement, the Quantification Settlement Agreement.

(50) **PPI Inflation Index.** For the last month of any Calendar Year Quarter ending after January 1, 1999, the ratio for the published value for that month of the Producer Price Index for the Materials and Components for Construction (ID #WPUSOP2200) published by the United States bureau of Labor Statistics, divided by the published value for December 1998. The PPI Inflation Index for future month "n" is calculated by the following formula for published values:

PPI month "n"
PPI December 1998

(51) **Priority "Z"**. The contractual priority level of the right to Colorado River water by the California agencies with Section 5 Contracts, with "Z" varying between Priority 1 and Priority 7, as set forth in the provisions of Article I, Sections 1-7 of the Seven-Party Agreement of 1931, which provisions are included in each Section 5 Contract.

(52) **QSA-JPA**. The QSA Joint Powers Agreement dated as of the Closing Date among IID, CVWD, SDCWA and the State of California or the Joint Powers Authority established thereby, as the context requires.

(53) **PVID**. The Palo Verde Irrigation District, an irrigation district organized under the Palo Verde Irrigation District Act, §§ 33-1 et seq. of the Appendix to the California Water Code.

(54) **Related Agreements**. The Acquisition Agreements, the Allocation Agreement, the Implementation Agreement, the Amendments to the IID/MWD 1988 Agreement, the 1989 Approval Agreement and the CVWD/MWD Supplemental Agreement, the MWD/CVWD Delivery and Exchange Agreement, the ECSA, the QSA-JPA, the agreements listed on Exhibits A and B hereto, and any other agreements, amendments and waivers entered into or adopted by or with the written consent of all Parties in connection with this Agreement or made pursuant to Section 4.8 hereof. The Parties recognize and agree that the performance under, or the effectiveness of, each of the agreements listed on Exhibit B, even though Executed as of the Closing Date, is or may be contingent on the receipt of various permits, approvals and consents, as specified in those agreements.

(55) **SDCWA**. The San Diego County Water Authority, a California county water authority incorporated under the California County Water Authority Act, §§ 45-1 et seq. of the Appendix to the California Water Code.

(56) **SDCWA/MWD Exchange Agreement**. The Agreement for the Exchange of Water dated November 10, 1998 between SDCWA and MWD, as amended and restated in its entirety by the Agreement between SDCWA and MWD dated as of the Closing Date.

(57) **Secretary**. The Secretary of the United States Department of the Interior, and duly appointed successors, representatives and others with properly delegated authority.

(58) **Section 5 Contract**. A contract between the Secretary and a California agency for permanent service for the delivery of Colorado River water, established pursuant to Section 5 of the Boulder Canyon Project Act, 43 U.S.C. § 617d.

(59) **SWRCB**. The California State Water Resources Control Board.

(60) **SWRCB Order**. As defined in Recital M.

(61) **Temporary Land Fallowing**. The creation of Conserved Water from the retirement of land from crop production activities for a period starting no earlier than the Effective Date and ending on or prior to the Termination Date.

(62) **Termination Date**. The Termination Date is the earlier of (i) midnight on October 12, 2003, if the Effective Date has not by then occurred; (ii) the Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement; (iii) the end of the twelfth (12th) calendar month following the date of a Transfer Stoppage, unless such Transfer Stoppage has been overturned or modified or remedied to the satisfaction of each affected Party, or unless the Parties, SDCWA and the Secretary have agreed to continue this Agreement and the Related Agreements notwithstanding the continuation of such Transfer Stoppage; or (iv) December 31, 2077.

(63) **Transfer Stoppage**. A transfer or acquisition of Conserved Water pursuant to this Agreement that is ordered to stop by virtue of an injunction or other order issued by a court or administrative agency acting within the scope of its jurisdiction.

(64) **"Year _____" (e.g., Year 25.)**. One in the series of Calendar Years occurring after the Effective Date; provided, however, that Year 1 shall commence on the Effective Date and end on December 31, 2003.

1.2 Rules of Construction and Word Usage. Unless the context clearly requires otherwise:

(1) The Recitals to this Agreement are a part of this Agreement to the same extent as the Articles;

(2) The Exhibits and Attachments attached to this Agreement are incorporated by reference and are to be considered part of the terms of this Agreement;

(3) The plural and singular numbers include the other;

(4) The masculine, feminine, and neuter genders include the others;

(5) "Shall," "will," "must," and "agrees" are each mandatory;

(6) "May" is permissive;

(7) "May not" is prohibitory;

(8) "Or" is not exclusive;

(9) "Includes" and "including" are not limiting;

(10) "Between" includes the ends of the identified range;

(11) "Person" includes any natural person or legal entity; and

(12) "Transfer," when used herein or in the Related Agreements in relation to a transaction involving Conserved Water, does not mean or imply that the Parties agree as to whether any such transaction is properly characterized as a transfer under California law or whether such transaction is subject to SWRCB jurisdiction.

ARTICLE 2 WATER BUDGETS

2.1 IID Water Budget.

(1) **Priority 3a Cap.** IID's Consumptive Use entitlement under its share of Priority 3a is capped by this Agreement at three million one hundred thousand (3,100,000) AFY at Imperial Dam, **less** (i) the Conserved Water made available by IID for use by others hereunder, and (ii) the water made available under Paragraph (2) of this Section 2.1 to the extent charged to Priority 3a, and **plus** any Conserved Water made available to IID from the lining of the All-American and Coachella Canals, as provided under and subject to the terms and conditions of the Allocation Agreement. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Policy. Any Colorado River water permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's.** IID shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Policy, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water, up to a maximum of eleven thousand five hundred (11,500) AFY. IID's obligation to forbear use of water for this purpose may be charged, at IID's option, to its rights under Priorities 6a, 7 or 3a as available. In the event it is not necessary in any Year for IID and CVWD to collectively forbear a total of fourteen thousand five hundred (14,500) AF for this purpose, then a credit equal to the difference between 14,500 AF and the amount of actual necessary forbearance responsibility shall be shared seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(3) **IID Priority 6a Forbearance and Priority 7 Use.** IID agrees to forbear Consumptive Use under Priority 6a sufficient to enable IID, CVWD and MWD to Consumptively Use Priority 6a water as it may be available in accordance with the following order of use subject to any rights that PVID might have, except as may otherwise be required under the Interim Surplus Guidelines: first, thirty-eight thousand (38,000) AFY to MWD; second, sixty-three thousand (63,000) AFY to IID; third, one hundred nineteen thousand (119,000) AFY to CVWD; fourth, any balance of Priority 6a and 7 water available in accordance with the priorities identified in IID, CVWD and MWD Section 5 Contracts, as in effect on October 15, 1999. Should IID, CVWD or MWD not Consumptively Use all or any of the Priority 6a or 7 water available to it as provided above, any unused volume shall be available in the above order to meet the next lower order Consumptive Use needs.

(4) **Acquisition Mechanism and Location.** IID performs its obligations to make Conserved Water available for CVWD and MWD acquisition as contemplated by this

Agreement by reducing its Consumptive Use at Imperial Dam by an amount equal to the Conserved Water to be acquired. When IID acts in that manner, IID has satisfied its obligation to make Conserved Water available for acquisition. CVWD and MWD each accept responsibility for any arrangements and facilities necessary to divert the Conserved Water made available to either of them and for any Conveyance Loss. CVWD and MWD have no duty to divert any or all of the Conserved Water. The payments by CVWD and MWD to IID under their respective Acquisition Agreements are for the conservation and acquisition of the Conserved Water, whether or not CVWD or MWD actually diverts that Conserved Water.

(5) **Conserved Water for CVWD.** IID shall make Conserved Water available to CVWD under and subject to the terms and conditions of the IID/CVWD Acquisition Agreement and the Implementation Agreement.

(6) **Conserved Water for SDCWA.** The terms and conditions applicable to IID's conservation and transfer of Conserved Water to SDCWA contemplated by this Agreement shall be as set forth in the 1998 IID/SDCWA Transfer Agreement.

(7) **Conserved Water for MWD.** IID shall make Conserved Water available to MWD under and subject to the terms and conditions of the IID/MWD Acquisition Agreement.

(8) **Conserved Water from Canal Lining Projects.** Conserved Water resulting from the lining of the All-American Canal and the Coachella Canal shall be made available as provided under and subject to the terms and conditions of the Allocation Agreement.

(9) **Conservation Methods.** The creation of Conserved Water by IID utilizing efficiency improvements or fallowing for acquisition, transfer or lessening environmental impacts, shall be as described in the Compromise IID/SDCWA and QSA Delivery Schedule attached hereto as Exhibit C.

2.2 **CVWD Water Budget.**

(1) **Priority 3a Cap.** CVWD's Consumptive Use entitlement under its share of Priority 3a is capped by this Agreement at three hundred thirty thousand (330,000) AFY at Imperial Dam, less (i) Conserved Water made available from the lining of the Coachella Canal, as provided under and subject to the terms and conditions of the Allocation Agreement, and (ii) the water made available under paragraph (2) of this Section 2.2 to the extent charged to Priority 3a. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Policy and the Decree Accounting Program. Any Colorado River water acquired from any Party pursuant to a transaction contemplated by this Agreement or permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's.** CVWD shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Policy, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water, up to a maximum of three thousand (3,000) AFY. CVWD's obligation to forbear use of water for this purpose may

be charged, at CVWD's option, to its rights under Priorities 6, 7 or 3 as available. In the event that it is not necessary in any Year for IID and CVWD to collectively forbear a total of fourteen thousand five hundred (14,500) AF for this purpose, then a credit equal to the difference between fourteen thousand five hundred (14,500) AF and the amount of actual necessary forbearance responsibility shall be shared seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(3) **CVWD Priority 6a Forbearance and Priority 7 Use.** CVWD agrees to forbear Consumptive Use under Priority 6a sufficient to enable IID, CVWD and MWD to Consumptively Use Priority 6a water as it may be available in accordance with the following order of use, subject to any rights that PVID might have, except as may otherwise be provided under the Interim Surplus Guidelines: first, thirty-eight thousand (38,000) AFY to MWD; second, sixty-three thousand (63,000) AFY to IID; third, one hundred nineteen thousand (119,000) AFY to CVWD; fourth, any balance of Priority 6a and 7 water available in accordance with the priorities identified in the IID, CVWD and MWD Section 5 Contracts, as in effect on October 15, 1999. Should IID, CVWD or MWD not Consumptively Use all or any of the Priority 6a or 7 water available to it as provided above, any unused volume shall be available in the above order to meet the next lower order Consumptive Use needs.

(4) **Acquisition From IID.** The terms and conditions applicable to the acquisition of Conserved Water by CVWD from IID, as contemplated by this Agreement, shall be as set forth in the IID/CVWD Acquisition Agreement.

(5) **Acquisition From MWD.** The terms and conditions of the acquisition of water and entitlement to water by CVWD from MWD, as contemplated by this Agreement, shall be as set forth in the CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement.

2.3 MWD Water Budget.

(1) **MWD Priority 4 and 5 Cap.** MWD's Consumptive Use entitlements under Priorities 4 and 5 are capped by this Agreement at five hundred fifty thousand (550,000) AFY, and six hundred sixty-two thousand (662,000) AF, respectively, at Lake Havasu, less the water made available under paragraph (2) of this Section 2.3 to the extent charged to Priority 4 or 5. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Policy. Water made available by MWD to CVWD in any Year pursuant to this Agreement shall be charged at MWD's option to any water available to MWD in that Year. Any Colorado River water acquired from any Party pursuant to a transaction contemplated by this Agreement or permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's.** MWD shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Policy, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water in excess of fourteen thousand

five hundred (14,500) AFY. MWD's obligation to forbear Consumptive Use for this purpose shall be charged at MWD's option to any Priority pursuant to which MWD has water available.

(3) **[Intentionally Not Used]**

(4) **Priorities 1 & 2 Consumptive Use Over and Under 420,000 AF.** MWD shall be responsible when necessary, in conjunction with the Inadvertent Overrun and Payback Policy, for repayment of any overrun as a result of aggregate use by Priorities 1, 2 and 3b in excess of four hundred twenty thousand (420,000) AFY; and to the extent that Priorities 1, 2 and 3b use is less than four hundred twenty thousand (420,000) AFY, MWD shall have the exclusive right to Consumptively Use such unused water.

(5) **Acquisitions From IID.** The terms and conditions applicable to the acquisition of Conserved Water by MWD from IID, as contemplated by this Agreement, shall be as set forth in the IID/MWD Acquisition Agreement and the Allocation Agreement.

(6) **Acquisition From CVWD.** The terms and conditions of the acquisition of water by MWD from CVWD, as contemplated by this Agreement, shall be as set forth in the MWD\CVWD Transfer and Exchange Agreement and the Allocation Agreement.

(7) **Acquisition by CVWD.** The terms and conditions of the acquisition of water and entitlement to water by CVWD from MWD, as contemplated by this Agreement, shall be as set forth in the CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement.

(8) **Contractual Commitment to SDCWA.** The terms and conditions of the delivery of certain Conserved Water to SDCWA by MWD shall be as set forth in the SDCWA/MWD Exchange Agreement.

ARTICLE 3 TERM/CLOSING/EFFECTIVE DATE

3.1 **Term.** This Agreement shall commence on the Effective Date and shall terminate on the Termination Date.

3.2 **Closing Date.** The Execution of this Agreement and the Execution of each of the Related Agreements that is dated as of the Closing Date shall be deemed to have been Executed simultaneously at 12:00 PM PST on the Closing Date. No Party shall take a position in any administrative, judicial or legislative forum contrary to or inconsistent with the foregoing.

3.3 **Effective Date.** Notwithstanding any other provision of this Agreement, the obligations of the Parties under Articles 2 and 4, and under the related provisions of the Acquisition Agreements and the Implementation Agreement contemplated by this Agreement, shall be contingent upon the occurrence of, and shall not become effective until, the Effective Date.

3.4 Early Termination.

(1) In the event of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement:

(i) **Advance Notice.** IID shall, to the extent reasonably possible, give the other Parties, SWRCB, BOR and the Secretary at least twelve (12) months advance written notice of such event together with a written explanation of the underlying factors and calculations;

(ii) **[Intentionally Not Used]**

(iii) **[Intentionally Not Used]**

(2) In the event of a Transfer Stoppage, the Parties shall proceed in the manner required under Section 6.1 hereof and shall seek to overturn, modify or otherwise remedy such Transfer Stoppage to the satisfaction of each Party materially affected thereby. If the Parties are unable to do so, they shall in good faith negotiate among themselves and with the SDCWA and the Secretary to determine whether to continue this Agreement and the Related Agreements that are coterminous with this Agreement notwithstanding the Transfer Stoppage and, if so, with what modifications if any.

(3) **[Intentionally Not Used]**

(4) **Effect of Termination.** As of the Termination Date, neither the terms of this Agreement nor the conduct of the Parties in performance of this Agreement shall be construed to enhance or diminish the rights of any of the Parties as such rights existed at the Closing Date, including any enhancement or diminishment by reason of an alleged application of common law principles of reliance, estoppel, intervening public use, domestic or municipal priority, shortage or emergency, or equitable apportionment. Notwithstanding any provision to the contrary in this Agreement, or in the Implementation Agreement, all water budget components contemplated under Article 2 of this Agreement and all state and federal approvals, permits and water contract amendments issued or adopted in connection therewith, other than environmental related permits with continuing mitigation obligations, shall thereupon terminate by consent of each of the Parties, which consents are hereby given, and which consents shall be reaffirmed in writing at the request of any Party, and the rights of the Parties shall revert to the status quo as though the Parties had never entered into, or intended to enter into, this Agreement, the Acquisition Agreements, or the Implementation Agreement. Notwithstanding anything to the contrary in this Agreement, the parties stipulate and agree that the provisions of Section 4.1 of this Agreement, the provisions of Section 16.2 of the IID/MWD Acquisition Agreement, the provisions of Section 14.3(2) of the IID/CVWD Acquisition Agreement, and the provisions of Sections 14.3 and 14.4 of the 1998 IID/SDCWA Transfer Agreement will remain in force and effect.

**ARTICLE 4
ADDITIONAL SETTLEMENT PROVISIONS**

4.1 General Settlement Provisions; No Admission of Settlement Terms; Reservation of Rights and Claims.

The Parties do not agree on the nature or scope of their relative rights to the delivery, use or transfer of Colorado River water. This Agreement is a consensual, comprehensive settlement arrangement acceptable to all Parties. It does not reflect any Party's rights or claims singularly or collectively, nor does it reflect the anticipated, predicted or possible outcome to any of the many disputes between the Parties if they were to be resolved without consensus. The Parties acknowledge that this Agreement is, in fact, a settlement and thus may not be used for any purpose in any judicial, legislative or administrative proceeding, and may not be used in any future attempt to reallocate water or water rights or to reorder the priorities of the Parties upon the termination of this Agreement. Subject to the provisions of this Agreement which compromise such matters, the legal rights, duties, obligations, powers and claims of each Party are preserved and may be acted upon by any Party during the term of this Agreement.

4.2 All-American Canal and Coachella Canal Lining Projects Conserved Water.

(1) The Parties agree that sixty seven thousand seven hundred (67,700) AFY and twenty six thousand (26,000) AFY of Conserved Water from the completed All-American Canal Lining Project and the Coachella Canal Lining Project, respectively, shall be distributed subject to the terms of the Allocation Agreement.

(2) [Intentionally Not Used]

(3) [Intentionally Not Used]

(4) [Intentionally Not Used]

(5) [Intentionally Not Used]

4.3 Other Acquisitions of Colorado River Water. During the period from the Effective Date to the Termination Date, the Parties may acquire Colorado River water from any person, without objection by any of the Parties, so long as any such acquisition is not inconsistent with any other term of this Agreement or the Related Agreements and does not materially reduce the water available to the Parties.

4.4 [Intentionally Not Used]

4.5 CVWD Utilization of Water.

(1) Other than as provided in Section 3.6 of the IID/CVWD Acquisition Agreement, CVWD shall not utilize its water budget to facilitate any water use outside of Improvement District No. 1 other than for direct and in lieu groundwater recharge, and shall use its best efforts to utilize its water budget to address the groundwater overdraft problem in Improvement District No. 1 and to implement a program that is designed to achieve a safe yield

within Improvement District No. 1 by the end of CVWD's water budget ramp-up in approximately Year 30.

(2) IID and MWD shall not object to the utilization of Colorado River water in the Coachella Valley, but outside Improvement District No. 1, in order to maximize the effectiveness of Improvement District No. 1's water use and recharge programs.

(3) CVWD shall make no claim as a matter of right to any additional Colorado River water in Priorities 3 or 6.

(4) This Agreement does not affect CVWD's rights under its surplus contract with the Secretary dated March 6, 1987, including its right to use water delivered under that contract anywhere within its boundaries.

4.6 CVWD Groundwater Storage of IID Water. Subject to the physical availability of storage in the Coachella Valley after accounting for the storage to be utilized by CVWD for the MWD/CVWD conjunctive use program, if implemented, CVWD will provide groundwater storage for IID's use in accordance with the IID/CVWD Acquisition Agreement.

4.7 Shortage and Sharing of Reduced Water Availability. If for any reason there is less than 3.85 million (3,850,000) AF available to Priorities 1, 2 and 3 in any Year, there will be no termination of this Agreement. Shortages will be shared pursuant to the particular provisions of the Acquisition Agreements and the Allocation Agreement.

4.8 Amendments to Acquisition Agreements. The Parties to each Acquisition Agreement shall have the right to amend that Agreement from time to time without the consent of any other Party hereto (a "non-signatory Party"); provided, however, that prompt notice and a copy of any such amendment is provided to each non-signatory Party, the Secretary, BOR and, with respect to the transfers to SDCWA contemplated under the 1998 IID/SDCWA Transfer Agreement and acquisitions from IID by CVWD under the IID/CVWD Acquisition Agreement, SWRCB; and provided, further, that no such amendment shall be given any force or effect, or be binding on any Party, if:

(1) such amendment would affect in any respect the rights of any non-signatory Party to Colorado River water; or

(2) such amendment could reasonably have a significant adverse effect on the interests of a non-signatory Party; unless or until

(3) in the circumstances of either (1) or (2), the written consent to such amendment shall have been obtained from each non-signatory Party, which consent shall not be unreasonably withheld and, if determined to have been unreasonably withheld, shall be effective retroactively to the date originally requested.

4.9 MWD Mitigation of Certain Effects of Interim Surplus Guidelines. In the event that Priority 3a Consumptive Use by IID and CVWD, consistent with and as adjusted by this Agreement, is reduced as a direct result of the application and operation of the Interim Surplus Guidelines, MWD will assume responsibility for any required payback of any water use

overruns by IID and CVWD resulting from such reduction. MWD's aggregate payback obligation under this Section 4.9 shall be limited to an amount equal to the aggregate amount of surplus water allocated to and Consumptively Used by MWD under Full Domestic Surplus and/or Partial Domestic Surplus conditions, as determined by the Secretary under the Interim Surplus Guidelines.

4.10 [Intentionally Not Used]

4.11 MWD Interim Surplus Guidelines Agreements With Arizona and Southern Nevada Water Authority. In connection with the implementation of the Interim Surplus Guidelines, MWD and the State of Arizona may enter into an Interim Surplus Guidelines Agreement and MWD and the Southern Nevada Water Authority have entered into an Interim Surplus Guidelines Agreement. Pursuant to such agreements MWD may be required to forbear delivery of a determinable quantity of Colorado River water in certain circumstances involving the Secretary's determination of a shortage condition in accordance with such Guidelines. IID and CVWD hereby agree to forbear exercise of any right or claim under Priorities 6 and 7, including any right or claim under this Agreement or a Related Agreement, to such water to the extent of any such required forbearance by MWD.

4.12 [Intentionally Not Used]

4.13 [Intentionally Not Used]

4.14 [Intentionally Not Used]

4.15 [Intentionally Not Used]

4.16 Public Awareness Program. The Parties will each implement and maintain a water conservation public awareness program.

**ARTICLE 5
REPRESENTATIONS AND WARRANTIES**

5.1 IID's Representations and Warranties.

(1) **Authority.** Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) IID 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 (ii) the execution and delivery hereof by IID and the performance by IID of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which IID is a party or by which IID is bound.

(2) **Signatories.** The persons executing this Agreement on behalf of IID have the full power and authority to bind IID to the terms of this Agreement. In addition, the persons signing this Agreement on IID's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on IID's behalf

personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Section 6.2 of this Agreement, this Agreement constitutes a valid and binding agreement of IID, enforceable against IID in accordance with its terms.

(4) **No Pending or Threatened Disputes**. Except as disclosed in Appendix 5.1, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to IID's knowledge, threatened against or affecting IID relating to the performance contemplated by this Agreement.

(5) **Notice of Developments**. IID agrees to give prompt notice to the Parties if IID discovers that any of its own representations and warranties were untrue when made.

5.2 CVWD's Representations and Warranties.

(1) **Authority**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) CVWD 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 (ii) the execution and delivery hereof by CVWD and the performance by CVWD of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which CVWD is a party or by which CVWD is bound.

(2) **Signatories**. The persons executing this Agreement on behalf of CVWD have the full power and authority to bind CVWD to the terms of this Agreement. In addition, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Section 6.2 of this Agreement, this Agreement constitutes a valid and binding agreement of CVWD, enforceable against CVWD in accordance with its terms.

(4) **No Pending or Threatened Disputes**. Except as disclosed in Appendix 5.2, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to CVWD's knowledge, threatened against or affecting CVWD relating to the performance contemplated by this Agreement.

(5) **Notice of Developments.** CVWD agrees to give prompt notice to the Parties if CVWD discovers that any of its own representations and warranties were untrue when made.

5.3 MWD's Representations and Warranties.

(1) **Authority.** Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) MWD 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 (ii) the execution and delivery hereof by MWD and the performance by MWD of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which MWD is a party or by which MWD is bound.

(2) **Signatories.** The persons executing this Agreement on behalf of MWD have the full power and authority to bind MWD to the terms of this Agreement. In addition, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability.** Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Section 6.2 of this Agreement, this Agreement constitutes a valid and binding agreement of MWD, enforceable against MWD in accordance with its terms.

(4) **No Pending or Threatened Disputes.** Except as disclosed in Appendix 5.3, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to MWD's knowledge, threatened against or affecting MWD relating to the performance contemplated by this Agreement.

(5) **Notice of Developments.** MWD agrees to give prompt notice to the Parties if MWD discovers that any of its own representations and warranties were untrue when made.

ARTICLE 6 SPECIAL CONSIDERATIONS

6.1 QSA Premises. This Agreement and the Related Agreements that are Executed on the Closing Date are premised on, among other things, the special considerations set forth in Section 6.2. IID, MWD and CVWD shall each proceed cooperatively, in good faith, and with reasonable diligence and effort to secure, protect and defend each of such special considerations for which and to the extent it has responsibility under this Agreement or a Related Agreement.

6.2 Special Considerations.

(1) [Intentionally Not Used]

(2) Environmental Matters.

(i) **Environmental Review.** All environmental review and assessment required under CEQA, NEPA and applicable federal, state and agency regulations implementing the same have been completed, to the extent required to authorize implementation of the activities contemplated by this Agreement. An environmental review process will be deemed "completed" only when all required Notices of Determination pursuant to CEQA have been duly filed; all required Records of Decision pursuant to NEPA have been duly issued; all administrative appeal periods have expired; all statutes of limitation for filing an action challenging any environmental process pursuant to CEQA have expired; as of the deadline for satisfying these conditions, no action challenging any environmental process has been filed, or, if filed, has been resolved by a final judgment which upholds or sustains the environmental review process and allows implementation of the covered activities and all judicial appeal periods have expired. The environmental review processes described above shall include, but are not limited to:

(a) The federal EIS in connection with the Implementation Agreement, the Inadvertent Overrun and Payback Policy and this Agreement, to be prepared by BOR as the lead agency;

(b) The EIS relating to the Interim Surplus Guidelines, prepared by BOR as the lead agency;

(c) The program EIR relating to this Agreement, to be prepared by IID, MWD, CVWD and SDCWA as co-lead agencies;

(d) The joint EIR/EIS relating to the conservation and transfer by IID of up to three hundred thousand (300,000) AFY and IID's Priority 3 cap, to be prepared by IID as the lead agency under CEQA and BOR as the lead agency under NEPA;

(e) The joint EIR/EIS relating to the lining of the Coachella Canal, to be prepared by CVWD as the lead agency under CEQA, and by BOR as the lead agency under NEPA.

(f) Final approval by all necessary federal and state agencies of a mitigation plan, a cultural resources plan and any other documents required to allow implementation of the All-American Canal Lining project pursuant to a certified EIR/EIS for that project;

(g) Final approval by all necessary federal and state agencies of a mitigation plan, a cultural resource plan and any other documents required to allow implementation of the Coachella Canal Lining project pursuant to a certified EIR/EIS for that project; and

(h) The program EIR for the CVWD Groundwater Recharge project, to be prepared by CVWD as the lead agency.

(ii) **Resource Approvals**. All permits, approvals, authorizations, opinions, assessments and agreements pursuant to the federal Endangered Species Act ("ESA"), the California Endangered Species Act ("CESA") and any other federal or state environmental resource protection laws, and applicable federal or state regulations implementing the same (collectively "Resource Approvals"), have been finalized, to the extent required by such statutes or regulations or deemed necessary or appropriate by the U.S. Fish and Wildlife Service ("USFWS"), the California Department of Fish and Game ("CDFG"), BOR or IID to document compliance therewith and to authorize implementation of the 1998 IID/SDCWA Transfer Agreement, the conservation by IID of up to three hundred three thousand (303,000) AFY and IID's Priority 3a cap. A Resource Approval shall be deemed "final" only when all required environmental review has been completed as described in Section 6.2(2)(a) above; final action has been taken and all required documents have been approved and executed by the resource agencies and the applicant; all required biological assessments and biological opinions have been issued; all administrative appeal periods have expired; as of the deadline for satisfying these conditions, and no action challenging any Resource Approval has resulted in a Transfer Stoppage. The Resource Approvals described above shall include, but are not limited to, all required approvals by federal and state agencies of:

(a) The change in the point of diversion on the Colorado River and transfer of up to three hundred three thousand (303,000) AFY of water to be conserved by IID.

(b) Incidental take authorization pursuant to ESA and CESA, to the extent required to implement the change in the point of diversion on the Colorado River, the water transfers and acquisitions described above, the Interim Surplus Criteria, the Inadvertent Overrun and Payback Policy, the All-American Canal Lining project, and the Coachella Canal Lining project. The effective date for the CESA permit shall be January 1, 2004, provided however that the CDFG acknowledges in writing by the Closing Date that activities to occur in Year 1 pursuant to this Agreement and the Related Agreements will not result in any take of any species requiring a "take permit."

(iii) **Party Approvals of Environmental Requirements**. Each Party, by action of its governing board, has approved and accepted the terms, conditions and mitigation measures of the environmental review processes described in Section 6.2(2)(i) above and the Resource Approvals described in Section 6.2(2)(ii) above (collectively, "Environmental Requirements"), to the extent such Party is responsible, in whole or in part, for compliance, performance or payment of the costs of such Environmental Requirements.

(3) **Transfer Stoppage**. The absence of any Transfer Stoppage during the term of this Agreement.

(4) **Inadvertent Overrun and Payback Policy**. The adoption and continuation by BOR of standards and procedures for an Inadvertent Overrun and Payback

Policy that is in all material respects in conformity with the current Program, subject to modification only as and to the extent contemplated under the Implementation Agreement.

(5) **Reinstatement of Interim Surplus Guidelines.** The reinstatement and continuation of the terms of the Interim Surplus Guidelines, originally implemented pursuant to the Secretary's Record of Decision dated January 16, 2001, by the Closing Date.

(6) **Intentionally Not Used**

(7) **Intentionally Not Used**

(8) **Intentionally Not Used**

(9) **Intentionally Not Used**

(10) **Intentionally Not Used**

(11) **SWRCB Approval.** The adoption and continuation in full force and effect of the SWRCB Order, as the same may be amended from time to time in a manner and to the extent acceptable to the Parties.

(12) **Intentionally Not Used**

(13) **QSA Legislation.** The continuation of the QSA Legislation in full force and effect without material modification.

(14) **Intentionally Not Used**

(15) **Litigation.** Any pending or threatened litigation, including disputes disclosed in Appendices 5.1, 5.2 or 5.3 hereof, that would, if finally determined in favor of any complaining person or person, materially and adversely affect (a) the ability of any Party to perform under this Agreement or the Related Agreements (b) the continuing efficacy of the Inadvertent Overrun and Payback Policy, the Interim Surplus Guidelines, or the SWRCB's final order of approval referenced in Section 6.2 (11) hereof, or (c) the ability of the Secretary (or the Secretary's delegate) to perform under the Implementation Agreement, shall become the subject of one or more joint defense agreements among two or more of the Parties and, where applicable SDCWA, reasonably allocating responsibilities to a Party or Parties or SDCWA for the defense of (or intervention in) such litigation and, where appropriate, for the potential consequences of any materially adverse final determination of such litigation or otherwise specifying the consequences of any such determination.

(16) **Failure of Consideration.** The Parties hereby stipulate and agree that a material failure of any special considerations set forth in Section 6.2 shall constitute an irreparable injury to each Party and shall also constitute irreparable harm to the public interest, whether or not there has been a related breach of Section 6.1 by any Party.

6.3 Waiver of Compliance. No Party shall waive compliance with CEQA, NEPA or other requirements under applicable laws.

ARTICLE 7
[INTENTIONALLY NOT USED]

7.1 [Intentionally Not Used]

(1) [Intentionally Not Used]

ARTICLE 8
[INTENTIONALLY NOT USED]

8.1 [Intentionally Not Used]

(1) [Intentionally Not Used]

(2) [Intentionally Not Used]

ARTICLE 9
[INTENTIONALLY NOT USED]

9.1 [Intentionally Not Used]

(1) [Intentionally Not Used]

(2) [Intentionally Not Used]

(3) [Intentionally Not Used]

ARTICLE 10
REMEDIES

10.1 Specific Performance. Each Party recognizes that the rights and obligations of the Parties under this Agreement are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one Party does not perform in accordance with this Agreement, the other Parties will likely suffer harm curable only by the imposition of an injunction requiring specific performance. Thus, each of the Parties agrees that any breach of this Agreement by any Party shall entitle the non-breaching Parties, or any one of them, to injunctive relief, including but not limited to a decree of specific performance, in addition to any other remedies at law or in equity that may be available in the circumstances.

10.2 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege

precludes any other or further exercise of a right, power or privilege granted by this Agreement or otherwise.

10.3 Action or Proceeding between the Parties. Each Party acknowledges that it is a "local agency" within the meaning of § 394(c) of the California Code of Civil Procedure ("CCP"). Each Party further acknowledges that any action or proceeding commenced by one Party against another Party would, under § 394(a) of the CCP, as a matter of law be subject to:

- (1) being transferred to a Neutral County, or instead
- (2) having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding.
- (3) In the event an action is filed by any Party against another Party or Parties to enforce this Agreement and to obtain damages for its alleged breach, each Party hereby:
- (4) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action;
 - (i) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;
 - (ii) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and
 - (iii) Acknowledges that this Agreement, and in particular this Section 10.3, may be submitted to the court as part of the moving papers.
- (5) Nothing in this Section 10.3, however, shall impair or limit the ability of a Party to contest the suitability of any particular county to serve as a Neutral County, or shall operate to waive any other rights.

ARTICLE 11 GENERAL PROVISIONS

11.1 Notices. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to the addresses of each Party set forth below. Notice will be sufficiently given for all purposes as follows:

Personal Delivery. When personally delivered to the recipient. Notice is effective on delivery.

Certified Mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.

Overnight Delivery. When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile Transmission. Notice is effective on receipt, provided that the facsimile machine provides the sender a notice that indicates the transmission was successful, and that a copy is mailed by first-class mail on the facsimile transmission date.

Addresses for purpose of giving notice are as follows:

To IID:	Imperial Irrigation District Attn.: General Manager
<i>Address for U.S. Mail</i>	P.O. Box 937 Imperial, CA 92251
<i>Address for Personal or Overnight Delivery:</i>	333 E. Barioni Boulevard Imperial, CA 92251
	Telephone: 760-339-9477 Facsimile: 760-339-9392

With a copy delivered by the same means to:

Horton, Knox, Carter & Foote
895 Broadway
El Centro, CA 92243
Attention: John P. Carter, Esq.

Telephone: 760-352-2821
Facsimile: 760-352-8540

To MWD:	The Metropolitan Water District of Southern California Attn.: Chief Executive Officer
<i>Address for U.S. Mail</i>	P.O. Box 54153 Los Angeles, CA 90054
<i>Address for Personal or Overnight Delivery:</i>	700 North Alameda Street Los Angeles, CA 90012-2944
	Telephone: 213-217-6000 Facsimile: 213-217-6950

With a copy delivered by the same means and at the same address to:

The Metropolitan Water District of Southern
California
Attn: General Counsel

To CVWD: Coachella Valley Water District
Attn.: General Manager-Chief Engineer

Address for U.S. Mail P.O. Box 1058
Coachella, CA 92236

*Address for Personal or
Overnight Delivery:* Highway 111 and Avenue 52
Coachella, CA 92236

Telephone: 760-398-2651
Facsimile: 760-398-3711

With a copy delivered by the same means to:

Redwine & Sherrill
1950 Market Street
Riverside, CA 92501

Telephone: 909-684-2520
Facsimile: 909-684-9583

(1) A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

(2) A Party may change its address by giving the other Parties notice of the change in any manner permitted by this Agreement.

11.2 Waiver. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of a breach, failure of condition or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

11.3 Post-Closing Notices. Each Party will give the other Parties prompt notice from time to time after the Closing Date and prior to the Termination Date of any actions, suits, legal or administrative proceedings, or governmental investigations pending or, to such Party's knowledge, threatened against or affecting any Party relating to the performance contemplated by this Agreement and the Related Agreements.

11.4 Counterparts. This Agreement may be executed in three or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

11.5 No Third-Party Rights. This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns (if any). Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Agreement.

11.6 Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

11.7 Alterations in PPI or GDPIPD Inflation Indices. If the publication of the Producer Price Index for the Materials and Components for Construction (ID #WPUSOP2200) or if the publication of the Gross Domestic Product Implicit Price Deflator is altered in some manner, including changing the name of the index, the geographic area covered, or the base year, the Parties will use their reasonable best efforts to agree on a substitute index or procedure that reasonably reflects the change in the level of producer prices for the materials and components for construction, or the change in the level of prices for goods and services included in the calculation of the United States Gross Domestic Product, as applicable.

11.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of law provisions; provided, however, that federal law shall be applied as appropriate to the extent it bears on the resolution of any claim or issue relating to the permissibility of the acquisitions of Colorado River water contemplated herein.

11.9 Binding Effect; No Assignment. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. No Party may Assign any of its rights or Delegate any of its duties under this Agreement or the Related Agreements, and any such Assignment or Delegation made in violation of this Section 11.9 shall be void and of no force or effect.

11.10 Joint Defense. The Parties agree to cooperate, to proceed with reasonable diligence, and to use reasonable best efforts to defend any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement. Except as otherwise provided in the ECSA, or under an agreement referenced in Section 6.2(15), each Party shall bear its own costs of participation and representation in any such defense.

11.11 Entire Agreement. This Agreement (including the exhibits and other agreements attached to and referenced in this agreement) constitutes the final, complete, and exclusive statement of the terms of the Agreement among the Parties pertaining to its subject matter and supersedes all prior and contemporaneous understandings or agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

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

IN WITNESS WHEREOF, IID, CVWD AND MWD have executed this Agreement as of the day and year first written above.

Approved as to form:

By: *[Signature]*

Its: Chief Counsel

IMPERIAL IRRIGATION DISTRICT

By: *[Signature]*

Its: President

By: *[Signature]*

Its: Secretary

By: *[Signature]*

Its: General Counsel

COACHELLA VALLEY WATER DISTRICT

By: *[Signature]*

Its: General Manager-Chief Engineer

By: *[Signature]*

Its: GENERAL COUNSEL

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: *[Signature]*

RONALD R. GASTELUM
Chief Executive Officer

EXHIBIT A

EXHIBIT A

QSA-RELATED AGREEMENTS¹

Quantification Settlement Agreement dated October 10, 2003

Colorado River Water Delivery Agreement dated October 10, 2003

Allocation Agreement Among the United States of America; The Metropolitan Water District of Southern California; Coachella Valley Water District; Imperial Irrigation District; San Diego County Water Authority; The La Jolla, Pala, Pauma, Rincon and San Pasqual Bands of Mission Indians; the San Luis Rey Indian Water Authority; The City of Escondido and Vista Irrigation District dated October 10, 2003

Agreement for Transfer of Conserved Water by and between Imperial Irrigation District and San Diego County Water Authority dated April 29, 1998

Revised Fourth Amendment to Agreement Between Imperial Irrigation District and San Diego County Water Authority for Transfer of Conserved Water dated October 10, 2003

Delivery and Exchange Agreement Between Metropolitan and Coachella for 35,000 Acre-Feet dated October 10, 2003

Agreement For Acquisition of Water Between Coachella Valley Water District and The Metropolitan Water District of Southern California dated October 10, 2003

Agreement for Acquisition of Conserved Water by and between Imperial Irrigation District and The Metropolitan Water District of Southern California dated October 10, 2003

Agreement for Acquisition of Conserved Water by and between Imperial Irrigation District and Coachella Valley Water District dated October 10, 2003

Quantification Settlement Agreement Joint Powers Authority Creation and Funding Agreement dated October 10, 2003

¹ Exhibits to such Agreements are included even without express reference.

Environmental Cost Sharing, Funding and Habitat Conservation Plan Development Agreement dated October 10, 2003

Conservation Agreement Among the Bureau of Reclamation, Imperial Irrigation District, Coachella Valley Water District and San Diego County Water Authority dated October 10, 2003

Funding Agreement Among the Bureau of Reclamation, the Metropolitan Water District of Southern California and the San Diego County Water Authority Regarding Implementation of Conservation and Mitigation Measures Identified in United States Fish and Wildlife Service Biological Opinion dated January 12, 2001, "For Interim Surplus Criteria (Hereinafter "Guidelines"), Secretarial Implementation Agreements, and Conservation Measures on the Lower Colorado River, Lake Mead to the Southerly International Boundary Arizona, California, and Nevada" dated October 10, 2003

Agreement Between The Metropolitan Water District of Southern California and the San Diego County Water Authority Regarding Allocation of the Benefits of the Biological Opinion for Interim Surplus Criteria, Secretarial Implementation Agreements, and Conservation Measures on the Lower Colorado River, Lake Mead to the Southerly International Boundary, Arizona, California, and Nevada, dated January 12, 2001

Agreement for the Conveyance of Water Among the San Diego County Water Authority, the San Luis Rey Settlement Parties, and the United States

Amendment to the Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water between the Imperial Irrigation District and the Metropolitan Water District of Southern California dated October 10, 2003

Amendment to the Approval Agreement Among the Imperial Irrigation District, the Metropolitan Water District of Southern California, Palo Verde Irrigation District, and Coachella Valley Water District dated October 10, 2003

Amendment to the Agreement to Supplement Approval Agreement Between the Metropolitan Water District of Southern California and Coachella Valley Water District dated October 10, 2003

IID and CVWD Consent Letter to MWD/PVID Water Transfer Program dated October 10, 2003

Amended and Restated Agreement Between The Metropolitan Water District of Southern California and the San Diego County Water Authority for the Exchange of Water, dated October 10, 2003

MWD/DFG Special Surplus Payment Agreement

DWR letter re Delivery and Exchange Agreement between Metropolitan and Coachella for 35,000 Acre-Feet, dated October 10, 2003

EXHIBIT B

EXHIBIT B²

**AGREEMENTS EXECUTED BUT CONTINGENT ON PERMITS, APPROVALS OR
CONSENTS, OR TO BE SIGNED AFTER THE QSA EXECUTION**

Stipulation for Dismissal and Order Thereon, IID v. USA, et al., Case No. 03cv0069 W(JFS),
United States District Court, Southern District of California

The 2003 Exchange Agreement by and between Coachella Valley Water District and the
Metropolitan Water District of Southern California dated _____

Agreement Between the Imperial Irrigation District and the Department of Water Resources for
the Transfer of Colorado River Water dated October 10, 2003

Agreement Between the Metropolitan Water District of Southern California and the Department
of Water Resources for the Transfer of Colorado River Water dated October 10, 2003

DFG Take Permits

USFWS Take Permits

SWRCB consent to modification of IID/SDCWA transfer mitigation for first 15 years

Amendments No. 27 and No. 28 to the Water Supply Contract Between the State of California
Department of Water Resources and Metropolitan Water District of Southern California

Amendment No. 18 to the Water Supply Contract Between the State of California Department of
Water Resources and Coachella Valley Water District

Amendment No. 18 to the Water Supply Contract Between the State of California Department of
Water Resources and Desert Water Agency

² Exhibits to such Agreements are included even without express reference.

EXHIBIT C

EXHIBIT C
COMPROMISE IID/SDCWA AND QSA DELIVERY SCHEDULE

Agmt Yr	Cal Yr	IID/SD (KAF)	IID/CVWD (KAF) ¹	IID/MWD (KAF)	Total Delivery (KAF)	Total Efficiency (KAF)	Fallowing for Delivery (KAF)	Mitigation Fallowing (KAF)	Total Fallowing (KAF)
1	2003	10	0	0	10	0	10	5	15
2	2004	20	0	0	20	0	20	10	30
3	2005	30	0	0	30	0	30	15	45
4	2006	40	0	0	40	0	40	20	60
5	2007	50	0	0	50	0	50	25	75
6	2008	50	4	0	54	4	50	25	75
7	2009	60	8	0	68	8	60	30	90
8	2010	70	12	0	82	12	70	35	105
9	2011	80	16	0	96	16	80	40	120
10	2012	90	21	0	111	21	90	45	135
11	2013	100	26	0	126	46	80	70	150
12	2014	100	31	0	131	71	60	90	150
13	2015	100	36	0	136	96	40	110	150
14	2016	100	41	0	141	121	20	130	150
15	2017	100	45	0	145	145	0	150	150
16	2018	130	63	0	193	193	0	0	0
17	2019	160	68	0	228	228	0	0	0
18	2020	192.5	73	2.5	268	268	0	0	0
19	2021	205	78	5.0	288	288	0	0	0
20	2022	202.5	83	2.5	288	288	0	0	0
21	2023	200	88	0	288	288	0	0	0
22	2024	200	93	0	293	293	0	0	0
23	2025	200	98	0	298	298	0	0	0
24	2026	200	103	0	303	303	0	0	0
25	2027	200	103	0	303	303	0	0	0
26	2028	200	103	0	303	303	0	0	0
27-45	2029-2047	200	103	0	303	303	0	0	0
46-75	2048-2077	200	50	0	250	250	0	0	0

¹ or MWD if CVWD declines to acquire.

EXHIBIT 5

Appendix 5.1

IID's Pending and Threatened Litigation Disclosure

The following actions, suits, legal or administrative proceedings, or governmental investigations are pending, or (to IID's knowledge) have been threatened relating to the performance of this Agreement. By listing the items here, IID does not imply that any of these matters have merit and, in fact, IID disputes the legitimacy of all the below matters. They are provided here simply as a disclosure of their existence or threat, per the Agreement.

1. United States Part 417 Proceeding (2003) -- IID is currently engaged in a dispute with the United States over IID's 2003 water order, with an appeal to the Secretary of the Interior from the Regional Director's Final Determination due to be filed later this month. The 2003 Part 417 review of IID will be terminated by the United States and IID's order approved as part of the QSA settlement.
2. United States Part 417 Proceeding (Future Years) -- Though IID disputes the legal ability of the United States to review IID's water use under Part 417, the United States contends that it has the right to review IID's water use under that regulation on a yearly basis. In future years such review is required to be in compliance with obligations of the United States in the QSA package of documents, and IID and the United States have reserved their litigation rights.
3. IID v. United States, et al. (Case No. 03 CV 0069W (JFS), Southern District California) This case pertains to IID's 2003 water order. It is currently stayed and will be dismissed as part of the overall QSA settlement.
4. Reasonable Beneficial Use Lawsuits/Actions By Junior Appropriators and Others -- Junior appropriators MWD and CVWD have threatened to sue IID over its reasonable beneficial use of water. The QSA settlement controls MWD's and CVWD's rights to commence such proceedings during the QSA. Other entities not constrained by the QSA may sue IID.
5. Morgan, et al. v. Imperial Irrigation District (Case No. L-01510, Superior Court of California, Imperial County)-- This is a lawsuit against IID and "All Persons Interested" brought by certain landowners in IID. This "Morgan Group" of plaintiffs consists of disgruntled landowners in the Imperial Valley who have asserted in this case, and/or in other places at other times, the following general issues: (a) they have "revoked" their status as beneficiaries and thus IID has no authority over Colorado River water; (b) IID has mismanaged its water right; (c) the landowners have the right to make their own deals with third parties to transfer water outside the IID service area; (d) IID cannot agree to the QSA without landowner consent; (e) methods being discussed by IID to implement the conservation programs required under the QSA documents are unfair and improper; (f) other similar complaints about IID and its management.
6. Imperial Valley Actions -- Many residents, landowners, farmers, and groups in the Imperial Valley are not in agreement with IID over the terms of the QSA, and have threatened to take action. The exact nature and extent of such possible action is unknown to IID.

7. Environmental Lawsuits/Actions -- Though the QSA and transfers were subject to extensive environmental review and provide for extensive environmental mitigation, various environmental groups and citizens have asserted that mitigation is inadequate or that the environmental documentation is inadequate. The exact nature and extent of such possible action is unknown to IID.

8. Lining Of All American Canal -- Many persons, both in the United States and in Mexico, appear to use groundwater that is being supplied by seepage from the All-American Canal. Lining will reduce access to seepage groundwater once the canal is lined. Persons have complained about this situation, and it is possible that such persons (and perhaps Mexico) will attempt to stop such lining.

9. Indian Tribes -- Certain Indian tribes border the Colorado River and have complained in the past to IID that any reductions in IID water orders so that more water can be taken by MWD or SDCWA at Parker Dam will adversely affect their power generation and their on-river wildlife habitat.

APPENDIX 5.2

NO PENDING OR THREATENED DISPUTES

There are no actions, suits, legal or administrative proceedings, or governmental investigations pending or threatened against or affecting CVWD which would adversely impact CVWD's ability to undertake the performance contemplated by this Agreement other than the following:

1. A general threat by the Center for Biological Diversity to sue challenging QSA transfers and environmental mitigation.
2. The Navajo Nation vs. United States Department of the Interior, et al., USDC for the District of Arizona, Case No. CIV 03 0507 PCTPG.
3. The Morgan Group lawsuit against IID.
4. The County of Imperial suit under CEQA challenging the State Water Resources Control Board Order Conditionally Approving the IID - SDCWA transfer and the CVWD/MWD acquisition.