

**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**

This Agreement (“Agreement”) Between The Metropolitan Water District of Southern California (“MWD”) and the San Diego County Water Authority (“SDCWA”) 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, 2002 (“BO”) is made and entered into as of October 10, 2003. MWD and SDCWA are sometimes referred to herein collectively as the “Parties” or each individually as a “Party.”

RECITALS

A. MWD is a public agency of the State of California incorporated under the Metropolitan Water District Act, Stats. 1969, ch. 209, as amended, engaged in transporting, storing and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, within the State of California.

B. SDCWA is a county water authority incorporated under the California County Water Authority Act, Stats. 1943, ch. 545, as amended, for the purpose of providing its member agencies in San Diego County with a safe, reliable and sufficient supply of imported water.

C. This Agreement is one of several agreements executed and delivered as of the date hereof by the Parties and other agencies related to the allocation and use of water from the

Colorado River, including the Quantification Settlement Agreement Among the Imperial Irrigation District (“IID”), MWD and Coachella Valley Water District (“CVWD”).

D. On April 29, 1998, SDCWA and IID entered into an Agreement for Transfer of Conserved Water, as amended by the Revised Fourth Amendment between SDCWA and IID dated as of the date hereof (as thereby amended, the “Transfer Agreement”), which provides for the transfer of up to two hundred thousand (200,000) acre-feet per year of Colorado River water from IID to SDCWA.

E. The Parties and other agencies also executed as of this date the Allocation Agreement Among the United States of America; MWD; CVWD; IID; SDCWA; and the La Jolla, Pala, Pauma, Rincon and San Pasqual Bands of Mission Indians, the San Luis Rey River Indian Water Authority, the City of Escondido and Vista Irrigation District (collectively, the “San Luis Rey Settlement Parties”), pertaining to the allocation and distribution of water to be conserved from the All-American Canal Lining Project and the Coachella Canal Lining Project (as such terms are defined therein), which allocated up to seventy-seven thousand, seven hundred (77,700) acre-feet per year of Colorado River water to SDCWA and up to sixteen thousand (16,000) acre-feet per year of Colorado River water to either MWD or the San Luis Rey Settlement Parties, as provided therein.

F. The United States Fish and Wildlife Service (“FWS”) issued a BO, regarding certain conservation measures, mitigation measures and reasonable and prudent measures (collectively, the “Measures”) required to implement certain proposed actions by the United States Bureau of Reclamation (“Reclamation”), including changes in the point of delivery and diversion of Colorado River water, that were necessary for Reclamation to implement the Colorado River Water Delivery Agreement (“CRWDA”) between the United States by and

through the Secretary of the Interior, IID, CVWD, MWD and SDCWA dated as of the date hereof, and to facilitate the transfers under the Quantification Settlement Agreement, the Transfer Agreement, and the Allocation Agreement.

G. As of the date hereof, the Parties entered into the Funding Agreement Among Reclamation, MWD and SDCWA 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” (“Funding Agreement”), which provided in Section 2 thereof that MWD and SDCWA would allocate the benefits derived from compliance with the Measures of the BO through a separate agreement between SDCWA and MWD.

H. The transfer of up to two hundred thousand (200,000) acre-feet per year of Colorado River water to SDCWA under the Transfer Agreement and the allocation of up to seventy-seven thousand, seven hundred (77,700) acre-feet per year of Colorado River Water to SDCWA under the Allocation Agreement require use of a portion of the benefits derived from compliance with the Measures of the BO.

I. MWD is a party to various agreements resulting in potential transfers of Colorado River water to MWD on schedules yet to be determined, and may become a party to additional transfer agreements in the future, which will require use of a portion of the benefits derived from compliance with the Measures of the BO.

J. This Agreement is intended by the Parties to constitute the separate agreement referenced in Section 2 of the Funding Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, MWD and SDCWA agree to the following terms and conditions of this Agreement:

1. Basic Provision. The Parties agree that the benefits derived from compliance with the Measures set forth in the BO allowing changes in the point of delivery and diversion for 400,000 acre-feet per year of Colorado River water under the Funding Agreement (“Coverage”) shall be apportioned and shared by the Parties as if they are tenants in common for the purpose of effectuating the Colorado River water transfers described in Recitals H and I.

2. Joint Use. Acting as if they are tenants in common, the Parties may each make use of any and all Coverage provided by the BO for the purposes of implementing the water transfers described in Recitals H and I. However, SDCWA’s use and enjoyment of the Coverage shall be expressly limited to the water made available under the Transfer Agreement and the Allocation Agreement. MWD may elect, in its complete discretion, to use the Coverage for any water transfer.

3. Priority of Use of Coverage. To the extent there is insufficient Coverage within the BO for all proposed transfers of water in any given year, first priority shall be given to the water transferred to SDCWA under the Transfer Agreement and the water allocated to SDCWA and MWD or the San Luis Rey Settlement Parties under the Allocation Agreement, and second priority shall be given to any other transfers of water that MWD may elect, so long as the total amount of water having first and second priorities under this Section 3 does not exceed 400,000 acre-feet in any calendar year.

4. Additional Coverage. If after ten (10) years from the effective date of this Agreement, as set forth in Section 6 hereof, the proposed transfers or allocations of Colorado River water to SDCWA and MWD requiring coverage under the BO are projected to exceed four hundred thousand (400,000) acre-feet in any given calendar year, then SDCWA and MWD agree to cooperate with each other to obtain additional coverage to the extent their combined transfers are projected to exceed four hundred thousand (400,000) acre-feet per year, up to a maximum of an additional seventy-five thousand (75,000) acre-feet per year.

5. Reimbursement of Costs for Additional Coverage. Reimbursement of costs attributable to obtaining the additional coverage will be borne by the Party that uses the additional coverage. Use of additional coverage will be determined over time based on the provisional allocation of 277,700 acre-feet per year to SDCWA and 122,300 acre-feet per year to MWD.

6. Effective Date and Term. This Agreement shall be effective as of the Effective Date of the Quantification Settlement Agreement, as that term is defined therein, and shall remain in effect so long as the BO is in effect.

7. Liability and Indemnity. Neither Party to this Agreement nor any of its directors, officers, agents, employees or authorized volunteers shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by any other Party to this Agreement in connection with any work, obligation, authority, or any criteria arising out of this Agreement. Each Party to this Agreement shall defend, indemnify, and hold each other Party to this Agreement, its directors, officers, agents, employees and authorized volunteers, harmless against all liability, claims, or other loss, and whether direct, or indirect or consequential, which may occur as a result of activities conducted by it under this Agreement, together with

reasonable attorney's fees and costs and expenses incurred by a Party in negotiating, settling, defending, or otherwise protecting against such liability, claims, and loss.

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

9. Binding Effect. 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.

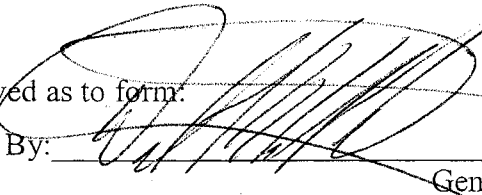
10. Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

IN WITNESS THEREOF, the Parties have hereunto set their hands on the date first above written.

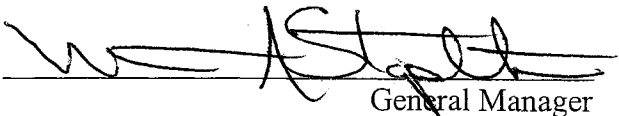
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: 
Chief Executive Officer

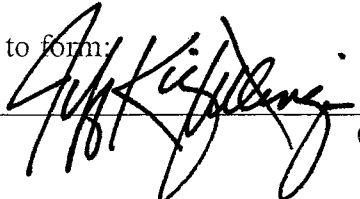
Approved as to form:

By: 
General Counsel

SAN DIEGO COUNTY WATER AUTHORITY

By: 
General Manager

Approved as to form:

By: 
General Counsel