

**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"

This Agreement is entered into among the United States Department of the Interior Bureau of Reclamation (Reclamation), The Metropolitan Water District of Southern California (MWD), and the San Diego County Water Authority (SDCWA) (collectively the "Party" or "Parties") in view of the following facts:

- A. The Secretary of the Department of the Interior (Secretary), acting through Reclamation, is responsible for managing the beneficial use of Colorado River water as reasonably required under a legal framework known collectively as "the Law of the River" and, in effect, is the Water Master for the lower Colorado River.
- B. The Colorado River Board of California, together with MWD, SDCWA, Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), and others have formulated the May 2000 draft of California's Colorado River Water Use Plan (4.4 Plan), a major part of which is designed to

reduce California's reliance on surplus Colorado River water in excess of its normal year apportionment of 4.4 million acre- feet. IID, CVWD, MWD, and SDCWA have entered into agreements relating to, among other matters, their respective beneficial consumptive use of Colorado River water and desire that, for the term of this Agreement, Colorado River water be delivered by the Secretary in the manner contemplated in the Colorado River Water Delivery Agreement (hereinafter "CRWDA"). For purposes of clarification, draft documents named in the BA and BO as "Secretarial Implementation Agreements for California Water Use Plan Components and Conservation Measures on the Lower Colorado River" have been replaced by and renamed as the CRWDA. In addition, there are other agreements among these California entities that facilitate the transfers in the CRWDA, including: a water transfer agreement between SDCWA and IID dated April 29, 1998 (SDCWA/IID Water Transfer Agreement) as amended, an amended and restated water exchange agreement between SDCWA and MWD, an Agreement for Acquisition of Conserved Water between IID and MWD, an Agreement for Acquisition of Conserved Water between IID and CVWD, and an Agreement for Acquisition of Water between CVWD and MWD along with the Allocation Agreement.

- C. The 4.4 Plan includes water transfers among California contractors of Colorado River water that result in changes in point of delivery and

diversion of up to 400,000 acre feet of Colorado River water per year to Lake Havasu from Imperial Dam or from a point between Lake Havasu and Imperial Dam. Certain changes in point of delivery and diversion are addressed in the CRWDA.

- D. In order to execute the CRWDA and changes in point of delivery and diversion, Reclamation must comply with all applicable laws and regulations, including the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.* To meet its obligations under the ESA, Reclamation entered into formal consultation with the United States Fish and Wildlife Service (FWS) pursuant to Section 7 of the ESA. Also included in that Section 7 consultation is the Secretary's adoption of Colorado River Interim Surplus Guidelines (ISG). As part of the Section 7 consultation, Reclamation submitted to FWS a Biological Assessment, dated August 30, 2000, for certain proposed actions, including adoption of proposed Interim Surplus Criteria (hereinafter, "Guidelines" or "ISG,") and actions contemplated under the 4.4 Plan, including actions contemplated under the CRWDA. That Biological Assessment has been supplemented by Reclamation memoranda to FWS dated November 30, 2000, and January 9, 2001 (collectively the "BA").
- E. FWS issued a Biological Opinion (BO) dated January 12, 2001, regarding the proposed actions covered in the BA, that include certain conservation

measures, mitigation measures, and Reasonable and Prudent Measures specified as related to the 4.4 Plan (collectively the “Measures”) which are intended to offset potential impacts of the proposed actions. Reclamation has agreed to implement the Measures by letter dated January 11, 2001 and will continue to do so with the cooperation and support of SDCWA and MWD pursuant to the terms of this Agreement. Reclamation, MWD, and SDCWA therefore desire to enter into a binding agreement to describe and determine their mutual responsibilities for the cost and implementation of the Measures.

- F. The CRWDA provides that a total of up to 145,000 acre-feet of water conserved by IID could be transferred to urban agencies in ISG benchmark years. This amount is within the amounts of transferred water considered in the Final Environmental Impact Statement, Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions (Final IA EIS) and January 12, 2001 BO. The Measures that will be implemented under this Agreement are adequate to address this component of the CRWDA.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Upon execution of the CRWDA and initiation of transfers pursuant to the 4.4 Plan, which includes actions contemplated under the CRWDA, Reclamation shall implement the Measures. The Measures shall include

any actions that may be required regarding potential impacts on 5,404 acres of potential willow flycatcher habitat identified in the BA and BO, as a result of reinitiation of consultation on operations and maintenance on the Colorado River if the Lower Colorado River Multi-Species Conservation Plan is not completed and implemented.

2. Paragraph 4 of the CRWDA identifies transfers and changes in point of delivery and diversion for the benefit of SDCWA and MWD, which are within the scope of actions contemplated under the 4.4 Plan. Allocation of the changes in point of delivery and diversion of up to 400,000 acre feet per year covered in the BO for purposes of compliance with the ESA, including the benefits derived from compliance with the Measures, shall be as determined by separate agreement between SDCWA and MWD.
3. In order to assist Reclamation with the implementation of the Measures, and generally to cooperate in the protection of wildlife and their habitat, SDCWA and MWD shall provide a total of SIX MILLION, TWO HUNDRED THIRTY SIX THOUSAND DOLLARS (\$6,236,000) to Reclamation to be used to implement the Measures, under the following conditions:
 - a. SDCWA shall provide funds (Funds) to Reclamation in the amount of \$4,329,343, in the manner provided herein.

- b. MWD shall provide funds (Funds) to Reclamation in the amount of \$1,906,657, in the manner provided herein.
- c. Within 30 days of execution of this Agreement, SDCWA and MWD shall each cause their respective Funds to be placed in separate interest bearing accounts (“Accounts”). SDCWA and MWD shall each maintain their respective Accounts until such time as the transfers pursuant to the CRWDA are initiated. Interest earned shall remain in these accounts and shall not be withdrawn by either SDCWA or MWD without Reclamation’s agreement. SDCWA and MWD shall provide Reclamation a copy of the bank statements for these accounts monthly. SDCWA may in its discretion maintain its Account through or shift its account to a joint powers authority formed under the laws of the State of California for the purpose of funding certain environmental mitigation costs related to the 4.4 Plan. When such transfers are initiated, SDCWA and MWD shall each give Reclamation written withdrawal authority to debit the Accounts utilizing the Department of Treasury Preauthorized Payment Program. Annually, Reclamation will provide a schedule of estimated monthly costs to be withdrawn from each Account. The monthly costs may be updated quarterly as necessary. The first working day of each month, Reclamation will withdraw funds from the Accounts based on the monthly estimate.

Reclamation shall debit each Account in the same proportion as the Funds provided by SDCWA and MWD in accordance with Sections 3a and 3b, above. In the event that funds in either Account become exhausted, any remaining funds in the other Account shall then be debited without regard to any proportionate share.

d. All funds, including interest earned, in the Accounts shall be made available to Reclamation to be used solely for actions to implement the Measures. Before committing funds in the Accounts to a particular action to implement the Measures, Reclamation shall notify SDCWA and MWD of the proposed action and provide them each a reasonable opportunity to review and comment on such action.

e. The parties recognize that SDCWA and MWD must comply with applicable provisions of California law in order to undertake certain actions identified in the CRWDA. Reclamation, in consultation with SDCWA and MWD, shall, to the extent permitted under applicable law, regulation, and the terms of the BO, ensure that all actions taken to implement the Measures are compatible with and in furtherance of measures that may be required of SDCWA and MWD under California law applicable to SDCWA and MWD including the California Endangered Species Act. To that end, Reclamation, SDCWA, and MWD intend to execute a memorandum of understanding with the

California Department of Fish and Game to carry out the purposes of this Section 3e. Reclamation's implementation of this Agreement is not, and shall not, be interpreted to be an admission of the applicability of California law to the actions of Reclamation under this or any other Agreement.

f. Within 30 days of completion of all Measures, Reclamation shall so notify SDCWA and MWD who may then close their respective Accounts and utilize any remaining funds as they see fit with no further obligation under this Agreement.

g. Reclamation shall retain detailed records of costs and expenditures from the Accounts for a period beginning with its first withdrawals from the account and ending three years from the date such account is terminated due to completion of all Measures or exhaustion of the Accounts. Such records shall be available for inspection by SDCWA and/or MWD. If SDCWA or MWD determines an audit is necessary, such audit shall be conducted at the expense of the Party or Parties desiring the audit and only as authorized by federal law. Should such audit result in funds being returned to the Accounts, the Party or Parties desiring the audit shall be reimbursed for their costs of the audit from funds returned to the Accounts as a result of the audit.

4. In the event that Funds provided to Reclamation by SDCWA and MWD in accordance with Section 3, above, are insufficient to fund all Measures for which Reclamation is responsible, Reclamation shall nevertheless perform all such Measures, and shall implement the other actions described above in Section 1, at no additional cost or expense of any kind to SDCWA and MWD unless agreed to in writing by SDCWA or MWD.
5. MWD and SDCWA each indemnify and hold each other harmless from all claims, demands, losses, and liability to the extent that the same are the result of an error, omission, or negligent or wrongful act of its own officers, employees, agents, or any other person acting pursuant to its control in performing under this Agreement.
6. This Agreement shall be legally binding on all Parties and may be modified only by a subsequent written amendment executed by all of the Parties.
7. This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof, and supercedes all prior negotiations, understandings, or agreements.
8. This Agreement shall be effective as of the date that it has been executed by all parties, and shall remain effective until completion of all

terms and conditions herein, except as otherwise provided in this Agreement.

9. To provide for effective communication among all of the parties, each Party shall designate a representative to serve as the point of contact on all matters relating to this Agreement. Initial representatives are designated in section 13 below. Each Party shall advise the other Parties of the name, mailing address, e-mail address, and telephone number of the new representative in accordance with section 13 below.
10. All information and data obtained or developed by any of the Parties in connection with performance of work under this Agreement shall be available for review upon request of any Party's representative without charge.
11. As described above, Federal and California law governs this Agreement. In case of conflict between Federal and California law, Federal law shall control.
12. Nothing herein shall be construed (a) as prohibiting any Party from pursuing and prosecuting any remedy in any appropriate court of the United States or State of California which would otherwise be available to such Party, or (b) as depriving any Party of any defense thereto which would otherwise be available.

13. Notices that are necessary to carry out the provisions of this Agreement must be in writing and delivered personally to the Party's representative, or mailed to the representative, postage prepaid, at his/her address. The representatives and their addresses are as follows:

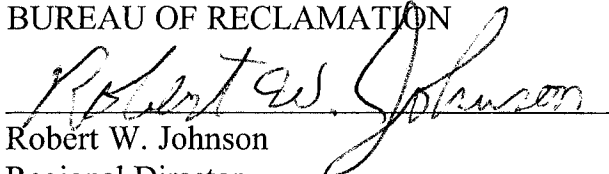
If to MWD: Attention: Ms. Laura Simonek
 The Metropolitan Water District
 of Southern California
 700 North Alameda St.
 Los Angeles, California 90012-2944
 or
 P.O. Box 54153
 Los Angeles, California 90054-0153

If to SDCWA: Attention: Mr. Larry Purcell
 San Diego County Water Authority
 4677 Overland Avenue
 San Diego, California 92123

If to Reclamation:
 Area Manager, Boulder Canyon Operations Office
 Attention: Ms. Jayne Harkins
 U. S. Bureau of Reclamation
 P.O. Box 61470
 Boulder City, Nevada 89006-1470

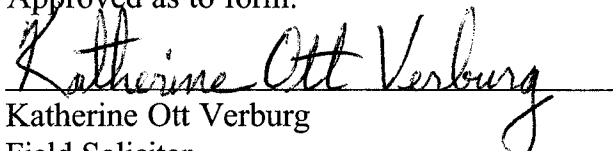
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION


Robert W. Johnson
Regional Director
Lower Colorado Region
U. S. Bureau of Reclamation

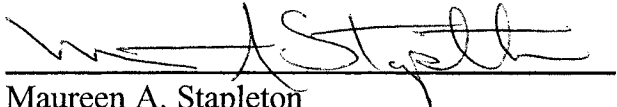
Date: 10/10/03

Approved as to form:


Katherine Ott Verburg
Field Solicitor
Office of the Solicitor
Department of the Interior


Date: 10-10-03

SAN DIEGO COUNTY WATER AUTHORITY


Maureen A. Stapleton
General Manager

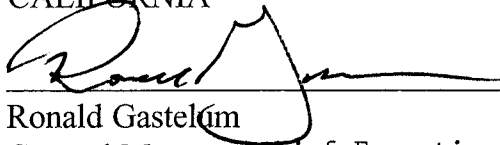
Date: 10-10-03

Approved as to form:


Daniel S. Hentschke
General Counsel

Date: 10/10/03

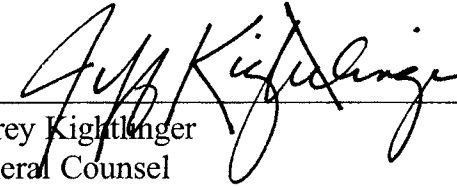
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA



Ronald Gastelum
~~General Manager~~ Chief Executive Officer

Date: 12/10/07

Approved as to form:



Jeffrey Kightlinger
General Counsel

Date: 10/10/03