

OPERATIONAL AGREEMENT

among

The Metropolitan Water District of Southern California

and

Southern Nevada Water Authority

and the

Colorado River Commission of Nevada

This Operational Agreement is made this 21st day of October, 2004 among The Metropolitan Water District of Southern California (MWD), and the Southern Nevada Water Authority (SNWA), and the Colorado River Commission of Nevada (CRCN) (collectively referred to herein as the "Parties" or individually as "Party").

Recitals

- A. Concurrently with execution of this Agreement, SNWA, CRCN, MWD and the United States have entered into a Storage and Interstate Release Agreement (SIRA) under 43 C.F.R. Part 414. The stated purpose of the SIRA is to establish an enduring cooperative relationship between MWD and SNWA under the Secretary of the Interior's (Secretary) Offstream Storage Regulations that will benefit both MWD and SNWA in the management of their respective water supplies and in the management of the Colorado River apportionments of their respective states during an era of limited water supplies. To this end, the SIRA provides a specific program through 2010 for the storage by MWD of unused Nevada apportionment of Colorado River water in California and the subsequent recovery of such water by MWD and the development of ICUA for SNWA. The SIRA, together with this Agreement, also provides a structure whereby such cooperation and storage program might continue beyond 2010.
- B. This Operational Agreement provides additional terms and conditions, consistent with the SIRA, governing operational and financial matters as among MWD, SNWA, and CRCN relating to the Storage of Colorado River water and the creation of ICUA.

Article 1
Definitions

1.1 **Definitions.** For purposes of this Operational Agreement, terms that are defined in Article I of the Decree in *Arizona v. California*, 376 U.S. 340 (1964) and terms that are defined in 43 C.F.R. Part 414 shall have the meaning there stated. The following terms shall have the meaning defined here, unless the context manifestly requires otherwise. Defined terms are identified by initial letter capitalization.

1.1.1 "Agreement" shall mean this Operational Agreement.

1.1.2 "Decree" shall mean the Decree entered by the United States Supreme Court in the matter of *Arizona v. California*, 376 U.S. 340 (1964), as supplemented or amended.

1.1.3 "ICUA" or "Intentionally Created Unused Apportionment" shall have the same meaning as that term is defined in 43 CFR §414.2.

1.1.4 "SNWA Interstate Account" shall mean the storage account established by MWD under the terms of this Agreement.

1.1.5 "Year" shall mean calendar year.

Article 2
Storage and Creation of ICUA

2.1 Each Year through 2010, MWD shall use its best efforts to divert and store, without harming MWD's own operational needs, the total quantity of Colorado River water specified in SNWA's availability notice under section 3.1 of the SIRA, subject to the release of such quantity to MWD by the Secretary pursuant to the SIRA. If in any Year through 2010 MWD concludes it cannot divert and store the full quantity specified by SNWA, MWD shall, within 30 days of the date of SNWA's availability notice, notify SNWA of the reasons therefore and the quantity that MWD can divert and store. On request of SNWA, the Parties shall promptly confer so that MWD can notify the Secretary of the quantity of water it will store within the time specified in the SIRA.

2.2 Each Year subsequent to 2010, MWD and SNWA shall timely confer over the quantity of Colorado River water that can be made available for storage pursuant to the SIRA, the quantity of such water that MWD will be able to store, and the cost to SNWA of such storage and the subsequent recovery of such water and creation of ICUA. The annual agreement of the Parties on such matters shall be memorialized in writing and shall govern the Parties actions under the SIRA with respect to such water.

2.3 Section 4.3 of the SIRA limits the amount of ICUA that may be developed and released to SNWA in any Year to "the lesser of (i) 30,000 acre-feet, unless MWD agrees to a larger amount in such Year, or (ii) the previous end-of-Year balance in the SNWA Interstate Account." If SNWA desires the creation of more than 30,000 acre-feet of ICUA in any Year as to which there will be sufficient credits in the SNWA Storage Account, by April 15 of the previous Year SNWA shall notify MWD of such fact and of the amount of ICUA that SNWA requests be created. The Parties shall promptly confer on such request, and if MWD agrees to develop ICUA in an amount greater than 30,000 acre-feet for the specified Year, SNWA shall include such increased amount in its request under section 4.4 of the SIRA for the development of ICUA and its request under section 5.1 of the SIRA for the release of ICUA, and MWD shall include such amount in its ICUA Certification under section 4.5 of the SIRA.

Article 3
Term of Agreement

3.1 This Agreement shall be effective as of _____, 2004 upon its execution by all Parties and shall terminate concurrently with termination of the SIRA.

Article 4
Costs

4.1 MWD shall be responsible for all costs associated with (i) the diversion, conveyance and storage of water pursuant to the SIRA through 2010, and (ii) all costs associated with the recovery of water stored through 2010 pursuant to the SIRA and the development of ICUA with respect to such water.

4.2 Responsibility for the costs associated with (i) the diversion, conveyance and storage of water pursuant to the SIRA subsequent to 2010, and (ii) the recovery of water stored subsequent to 2010 pursuant to the SIRA and the development of ICUA with respect to such water shall be determined annually by the Parties, and the annual agreement of the Parties shall be memorialized in writing.

4.3 SNWA shall be responsible for all costs associated with its diversion of ICUA released by the Secretary pursuant to the SIRA.

4.4 SNWA shall be responsible for all federal charges associated with evaluating, processing, and executing the SIRA.

Article 5
Other Provisions

5.1 **Uncontrollable Forces.** No Party to this Agreement shall be considered in default in the performance of any of its obligations under the Agreement (other than the obligation of SNWA to pay federal charges) when a

failure of performance shall be due to uncontrollable forces. The term "uncontrollable force" shall mean any cause beyond the control of the party unable to perform such obligation, including, but not limited to, failure or threat of failure of facilities, flood, earthquake, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any federal governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require any party to settle any strike or labor dispute in which it is involved.

5.2 In the event that any term or condition on this Agreement is determined to be invalid, illegal or otherwise unenforceable, such determination shall have no effect on the other terms and conditions, which shall continue to be binding upon the Parties hereto. Lack of enforcement of any term or condition of this Agreement shall not be construed as a waiver of any rights conferred by such term or condition. Unless otherwise agreed to in writing, the failure of any Party to require the performance by the other party of any provision hereof shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver of any provision hereof on one occasion be taken or held to be a waiver of the provision itself.

5.3 This Agreement shall be binding on the Parties and their respective successors and assigns.

5.4 Any person signing this Agreement represents that he/she has full power and authority to do so, and, that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.

5.5 This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes any prior understanding between the Parties, except as set forth herein, whether written or oral. This Agreement can be amended only in writing signed by the Parties.

5.6 Time is of the essence of this Agreement.

5.7 Each Party agrees to perform any further acts and to execute and deliver any documents, which may be reasonably necessary to carry out the provisions of this Agreement.

5.8 The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question.

5.9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together,

shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to another counterpart identical thereto, except for having additional signature pages executed by another Party to this Agreement attached thereto.

5.10 This Agreement is made solely for the benefit of the Parties hereto and their respective successors and assigns. No other person or entity may have or acquire any right by virtue of this Agreement.

Article 6

Notices and Requests

6.1 All notices and requests required and allowed under the terms of this Agreement may be given in the following manner:

6.2 Notices and requests shall be in writing and shall be mailed first class postage paid to the parties at the following addresses:

MWD:

The Metropolitan Water District of Southern California
P.O. Box 54153
Los Angeles, California 90054-0153
Attn: Chief Executive Officer

SNWA:

Southern Nevada Water Authority
1001 S. Valley View Boulevard
Las Vegas, Nevada 89153
Attn: General Manager

CRCN:

Colorado River Commission of Nevada
555 E. Washington Avenue, Suite 3100
Las Vegas, Nevada 89101
Attn: Director

6.3 Any party may, at any time, change its mailing address by notice to the other parties.

6.4 Notices and requests may be given by facsimile and shall be deemed complete upon a receipt from sender's facsimile machine indicating that the transmission was satisfactorily completed and after phone communication with administrative offices of the recipient notifying the recipient that a facsimile has been sent.

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 18th day of October 2004.

ATTEST:

COLORADO RIVER COMMISSION

By: [Signature]
Executive Director

By: [Signature]
Chair

Approved as to form:

By: [Signature]

Title: [Signature]

ATTEST:

SOUTHERN NEVADA WATER AUTHORITY

By: [Signature]
General Manager

By: [Signature]
Chair

Approved as to form:

By: [Signature]

Title: Deputy Counsel

ATTEST:

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: [Signature]
Executive Secretary

By: [Signature]
Chief Executive Officer

Approved as to form:

By: [Signature]

Title: GENERAL COUNSEL

