

# MOHAVE VALLEY IRRIGATION & DRAINAGE DISTRICT

## Arizona Drought Contingency Plan Extraordinary Conservation Intentionally Created Surplus Implementation Program

December 2019

This Arizona Drought Contingency Plan Extraordinary Conservation Intentionally Created Surplus Implementation Program ("EC-ISC Program") is adopted this 10<sup>th</sup> day of December, 2019 by the Board of Directors of the Mohave Valley Irrigation & Drainage District ("District") to provide for the implementation of the District's LBOps ICS Exhibit U, Mohave Valley Irrigation and Drainage District Extraordinary Conservation Intentionally Created Surplus Land Fallowing Program ("Exhibit U").

The fundamental aspects of this program, designed by the District, have been endorsed by the State of Arizona and the United States Bureau of Reclamation for inclusion into the Lower Basin Drought Contingency Plan Agreement, signed by the Secretary of the Interior through the United States Bureau of Reclamation pursuant to the Colorado River Drought Contingency Plan Authorization Act, P.L. 116-14 (April 16, 2019). Copies of the letter from the United States Bureau of Reclamation authorizing the District's Exhibit U included within the Intentionally Created Surplus Exhibits under Section IV.E.2 of the Lower Basin Drought Contingency Operations, and the Exhibit U, are available for review in the District's office.

For each year of the program, commencing with 2020, District must submit a Plan of Creation of EC-ICS to the Arizona Department of Water Resources and the United States Bureau of Reclamation identifying, among other things, participating Farm Units, the specific fields intended to be fallowed during the upcoming year, and the calculated conservation yield of that fallowing based on crop history. That Plan of Creation must then be approved by representatives of the Seven Colorado River Basin States. Once approved, District is committed to participation in the program, and each participating landowner is likewise committed to engage in the program according to the rules and principles stated in this EC-ICS Program document. District has submitted a Plan of Creation for calendar year 2020, a copy of which is available for review in the District's office.

This EC-ICS Program document sets forth the requirements and obligations for participation in the program by agricultural landowners within the District, and provides for the administration of the program by the District.

**Definitions.** The following terms are used in this document as defined here:

1. Agricultural Land shall mean land within the District that has an Agricultural Water Entitlement from the District, or is authorized to use Colorado River Water pursuant

- to a Present Perfected Right within the District, as those Present Perfected Rights are defined in the Consolidated Decree in *Arizona v. California*, 547 U.S. 150 (2006).
2. Agricultural Sub-Contract shall mean a contract entered into between the District and the Agricultural Land Owner for delivery of water for irrigation purposes on the Agricultural Land.
  3. Agricultural Land Owner shall mean the holder of fee title to Agricultural Land within the District, as shown on the official records of the District.
  4. ADWR shall mean the Arizona Department of Water Resources.
  5. Farm Unit shall mean the farm and fields identified in each Agricultural Sub-Contract that is submitted for participation in the EC-ICS Program.
  6. ICS shall mean Intentionally Created Surplus, the credit for which shall accrue to the District in accordance with the provisions of the Lower Basin Drought Contingency Plan Agreement.
  7. Land Fallowing shall mean the intentional, purposeful, temporary retirement of agricultural land within the District for purposes of conserving Colorado River water that would otherwise have been put to beneficial use on that land, all as provided in this EC-ICS Program
  8. Reclamation shall mean the United States Bureau of Reclamation.

#### **Participation Requirements.**

9. All Farm Units qualified to participate in the EC-ICS Program in calendar year 2020 are identified in the 2020 Plan of Creation submitted to Reclamation. These participating Farm Units have met the qualifications listed below. To qualify for future participation in the EC-ICS Program, an Agricultural Land Owner must enroll Agricultural Land into the program by Farm Unit by submitting an Enrollment Application to the District on a form provided by the District for that purpose. The Enrollment Application shall require, at minimum, the following:
  - 9.1 Legal Description of the land base to be enrolled, including Mohave County Assessor parcel numbers
  - 9.2 Reference to the District Agricultural Sub-Contract and any included Present Perfected Rights for identification of the Farm Unit
  - 9.3 Irrigation water history of the proposed enrolled lands for the last 5 calendar years, plus an estimate of irrigation use in the year of the enrollment application. The history shall provide water diverted for use for each field within the farm unit as a whole, and shall be consistent with the water diversion as reported by the District to Reclamation.
  - 9.4 Crop history for each of the preceding 5 years plus estimate of cropping for the year of the enrollment application.
  - 9.5 Election to fallow year round or seasonally. If year round fallowing is selected, identification of the parcels (of equal size) that will be rotated in and out of the fallowing at least every three years. If seasonal fallowing is selected,

- identification of crops that will be grown in the off-season irrigation period and the duration of that period.
- 9.6 Identification of points of diversion of water (including Well Registration numbers if applicable) and a diagram depicting the delivery system from the point(s) of diversion to the fields identified for fallowing, if different in any way from the Agricultural Subcontract.
  - 9.7 An annotated diagram, using imagery from GoogleEarth or equivalent, depicting the fields to be enrolled. If the enrolled fields are part of a larger consolidated farming operation, a separate diagram, of smaller scale if necessary, shall be provided showing the entire consolidated farming operation and the annotated location of the enrolled fields, points of diversion and water delivery infrastructure.
  - 9.8 A plan for locking out headgates to the fallowed fields to prevent accidental or intentional diversion of water onto the fallowed fields during the fallowing period.
  - 9.9 A plan for dust control and weed control for all fields fallowed.
  - 9.10 A statement whether the land is leased during the proposed fallowing period, and whether the terms of the lease allow participation in the program (to be supplemented with a copy of the lease if requested by the District).
  - 9.11 Consent to inspection of all enrolled fields and water delivery works supplying those fields by the District, ADWR and Reclamation to verify compliance with Exhibit U.
10. To participate in the EC-ICS Program, enrolled land must total at least 10 irrigated acres. If year round fallowing is selected, the participating Farm Unit must include at least twice the number of acres to be fallowed to comply with rotational fallowing of fields at least every three years. All points of diversion supplying water to the enrolled lands must have District approved water meters allowing reporting of water actually used from that point of diversion.
  11. District shall review all enrollment applications for the EC-ICS Program and shall approve or reject such applications based on compliance with the criteria specified here and the quality of that compliance relative to other applications. District shall confer with the Agricultural Land Owner on any deficiencies found in an application but District shall make the final decision to accept or reject such application in its sole discretion.
  12. Upon approval of an enrollment application, District shall offer to the Agricultural Land Owner an EC-ICS Agreement on a form prepared by the District, authorizing participation in the program for the enrolled lands and committing District and the Agricultural Land Owner to abide by the terms of that agreement and the terms expressed in this EC-ICS Program document.

### **Calculation of Consumptive Use**

13. District shall commence a study to determine the cropping history of the participating Farm Units within the District and the water use associated with that cropping history

for the years 2014 through 2018. Such study shall determine the evapotranspiration consumptive use of the fields computed using operational weather data collected at Arizona Meteorological Network (AZMET) electronic weather stations located in the Mohave Valley area and crop coefficients. District may, if participation interest warrants, update such study each year to keep it current and include new participating Farm Units.

14. District shall cooperate with ADWR and Reclamation to develop a baseline proposal limiting consumptive use within the District. This baseline shall be comprised of a limitation on planted acres within the District in the program year and a maximum diversion limitation limiting the amount of agricultural water diverted within the District. These limitations shall not, unless otherwise agreed, affect the full acreage or diversion entitlement of any non-participating Agricultural Landowner within the District.
15. District shall cooperate with ADWR and Reclamation to develop a technical analysis for each enrolled field to determine the consumptive use of that field to determine the conservation yield of each field proposed for Land Fallowing. District shall review the information with the Agricultural Land Owner and attempt to resolve any anomalies between District and Agricultural Land Owner. Upon such review, District shall determine, in its sole discretion, but in consultation with ADWR and Reclamation, the consumptive use value to be applied to the fields.
16. The maximum diversion calculation for each participating Farm Unit shall be determined by multiplying the acreage of the fields selected for Land Fallowing by 7 acre feet per acre. District shall use the calculated diversion quantity to adjust its water order each year to Reclamation to account for water not diverted in pursuit of the Land Fallowing reduction in consumptive use. Each participating Agricultural Landowner shall implement measures necessary to remain within that individual Farm Unit's maximum diversion limit.
17. The maximum planted acreage for each Farm Unit shall be calculated by determining the highest planted acreage history of the Farm Unit for the last 5 years. Each participating Agricultural Landowner shall not exceed the planted acreage limit for the Farm Unit (including the acres of the Fallowed Fields) in the year of participation.

#### **District Accounting of ICS.**

18. In July of each year, District shall request interest in participation in the EC-ICS Program for the following year. Participation must be determined in timely fashion to meet any required deadline set by Reclamation for submission of an ICS Plan, but in any event no later than August 1<sup>st</sup> of that year. District shall total the value of all the calculated diversion quantities associated with participating fields and reduce the District's otherwise proposed water order to Reclamation for the following year, noting on same that the quantity of diversion requested reflects the calculated reduction for participation in the EC-ICS Program.

19. Once the water order is placed by District to Reclamation, District shall enforce the reduced diversion quantity against the Agricultural Land Owner and shall not allow overrun of diversion by that Agricultural Land Owner.
20. After the end of the year, District shall cooperate with Reclamation to verify and determine the amount of ICS created within the District during the preceding year. District shall insure that the quantity of ICS meets the reduction of consumptive use actually achieved, and that such ICS is properly credited to the District in Reclamation's annual Accounting and Water Use Report is issued.
21. After the Accounting and Water Report is issued, District shall review the total quantity of ICS created and compare it to the expected quantity of ICS for each enrolled and fallowed field. District shall investigate any discrepancy between the expected ICS and the actual ICS reported by Reclamation. If any reduction in ICS is attributable to actions or inactions of any participating Agricultural Land Owner, District shall note the specific reduction attributable to that Agricultural Land Owner.
22. District shall create an internal accounting system to plan, track and report the expected creation of ICS by each individual enrolled and participating field. If no reduction in ICS is confirmed by Reclamation from the planned ICS, District shall credit the value of that quantity of ICS to the individual Agricultural Land Owner's account. Any reduction in ICS attributable to that individual Agricultural Land Owner shall be deducted. In the event that total ICS as reported and confirmed by Reclamation is less than the planned ICS, but no particular event, action or inaction by any individual Agricultural Land Owner can be isolated as the cause of such reduction, or if the reduction is based on District-wide practices, actions or inactions, then each participating Agricultural Land Owner shall bear a pro-rata share of the overall reduction and each individual Agricultural Land Owner's District ICS account shall be reduced accordingly. District shall recognize, and deduct, any amount of ICS attributable to evaporation or system losses imposed by Reclamation.

#### **Administration of Fallowing by District**

23. District shall administer the EC-ICS Program at the local level, being responsible for verification of fallowing in accordance with the program. This administrative role shall include:
  - 23.1 Actual Fallowing. District shall inspect at regular intervals, or on an as-needed basis during the course of the calendar year, all enrolled and fallowed fields for compliance. No crops may be grown on the Land Fallowing fields, or if seasonally fallowed, during the seasonal fallowing period. District shall keep records, including photographs or satellite imagery as applicable, of the fallowing process for each fallowed field and shall be prepared to demonstrate, as necessary, the actual absence of crops on the land during the fallowing period.
  - 23.2 Dust and Weed Control. It shall be the responsibility of each individual Agricultural Land Owner to take all reasonably prudent steps to mitigate the

possibility of blowing dust on the fallowed fields, and to prevent and eradicate the growth of weeds on the fallowed fields, throughout the entire fallowing period. District shall inspect regularly, or on an as-needed basis during the course of the calendar year, all enrolled and fallowed fields for compliance with the dust and weed control responsibilities. Any defalcation in preventing or eliminating dust or weeds shall be promptly addressed by District under its statutory authority to abate any such nuisance.

- 23.3 Headgate Lockout. District shall inspect, at the commencement of the fallowing period and at regular intervals, or on an as-needed basis during the course of the calendar year, all fallowed field to verify that the headgates serving those fields are effectively locked so as to prevent accidental or intentional flow of water through those headgates.
  - 23.4 Total Water Use. Each enrolled Agricultural Land Owner shall abide by the reduced diversion quantity associated with the enrolled Agricultural Land Farm Unit, or portion thereof, determined by District in District's placement of the water order for that year to Reclamation. No overrun of the Agricultural Land Owner's reduced diversion quantity shall be allowed during the fallowing period. If such overrun appears eminent, and corrective action has not been or is not being taken by the Agricultural Land Owner, District may enter upon the Agricultural Land and lock headgates or wells as necessary to prevent the overrun.
24. District shall keep records of its inspections, notices to or conferences with any Agricultural Land Owner, and its overall monitoring of the EC-ICS Program so to create a defensible record of compliance.

#### **Annual Enrollment of Agricultural Land**

25. Agricultural land Farm Units shall be enrolled in the EC-ICS Program on an annual basis. Farm Unit may be de-enrolled at the request of the Agricultural Land Owner at the end of each calendar year, subject to the following conditions.
26. Written notice of requested de-enrollment shall be provided to the District no later than June 1<sup>st</sup> of any calendar year for de-enrollment to become effective at the commencement of the following calendar year. If, prior to December 1<sup>st</sup>, the lands proposed for de-enrollment have not been included in the EC-ICS Program for the following year, the lands may be de-enrolled as of the commencement of that following year upon written request by the Agricultural Land Owner and adequate proof to the District that such de-enrollment will not adversely affect the District's water order to Reclamation for that upcoming calendar year.
27. Partial de-enrollment of lands shall not be allowed if such de-enrollment would adversely affect the Agricultural Land Owner's obligation to rotate fields as provided in this EC-ICS Program.

### **Agricultural Land Owner's Obligations**

28. By enrolling in the EC-ICS Program, each individual Agricultural Land Owner shall consent to the terms of the program for the Agricultural Land Farm Units so enrolled, and shall promise to abide by the terms of this EC-ICS Program document in good faith. Each Agricultural Land Owner acknowledges that participation in this EC-ICS Program will mean a greater level of inspection, observation and compliance with District, Reclamation and ADWR to insure that the program is functioning as intended.
29. Each individual Agricultural Land Owner shall consent to the entry upon enrolled Agricultural Land Farm Unit and shall waive any claim of trespass or similar claim of infringement of rights against District, Reclamation or ADWR for any such entity performing its obligations or duties under the Lower Basin Drought Contingency Plan Agreement or related agreements or policies adopted in furtherance thereof.

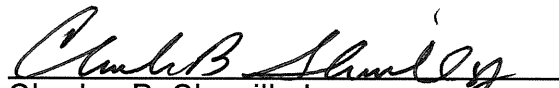
### **Delivery of ICS.**

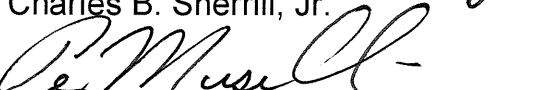
30. District shall cooperate with Reclamation and ADWR to secure any necessary ICS Delivery Agreement to allow District, for the benefit of each individual Agricultural Land Owner within the District that has ICS credit in the District's account, to seek release of that ICS by Reclamation in accordance with the terms of the Lower Basin Drought Contingency Plan Agreement and related authorities.
31. Each Agricultural Land Owner agrees to abide by the terms of the ICS Delivery Agreement once it is approved and adopted by the District.

DATED: December 10, 2019


**MOHAVE VALLEY IRRIGATION AND  
DRAINAGE DISTRICT  
Mohave County, Arizona**


Directors Voting IN FAVOR thereof:

  
Charles B. Sherrill, Jr.

  
Perry Muscelli

Absent  
John Kai, Jr.

  
Clay Vanderslice

  
Vince Vasquez

Directors voting AGAINST thereof:

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Charles B. Sherrill, Jr.

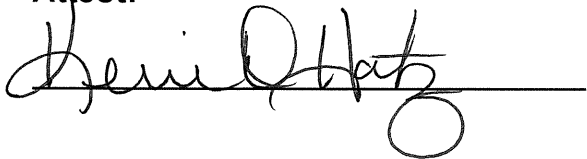
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Perry Muscelli

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John Kai, Jr.

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Clay Vanderslice

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Vince Vasquez

**Attest:**



Date: 12-10-19