

DELIVERY AGREEMENT BETWEEN THE UNITED STATES AND  
THE MOHAVE VALLEY IRRIGATION AND DRAINAGE DISTRICT

This Delivery Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, between the UNITED STATES OF AMERICA (United States), represented by and acting through the Regional Director, Lower Colorado Basin Region, Bureau of Reclamation, and the MOHAVE VALLEY IRRIGATION AND DRAINAGE DISTRICT (MVIDD), (each referred to as “Party” or, collectively, as “Parties”). The Parties hereby agree as follows:

I. Recitals

- A. MVIDD is an irrigation district formed under Arizona Revised Statute, Title 48, Chapter 19. MVIDD is an existing Contractor and holds an entitlement to the delivery of Colorado River water under Contract No. 14-06-W-204 dated November 14, 1968, as amended. Additionally, MVIDD is entitled to the delivery of Colorado River water under a subcontract with the Mohave County Water Authority.
- B. The Secretary of the Interior (Secretary) issued a Record of Decision for the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead on December 13, 2007, which implements Interim Guidelines for the Operation of Lake Powell and Lake Mead (2007 Interim Guidelines).
- C. The 2007 Interim Guidelines establish criteria for the creation and delivery of Intentionally Created Surplus (ICS). For each Lower Division State, the 2007 Interim Guidelines specify the annual amount of ICS that may be created or delivered and the maximum amount of ICS that may be accumulated in all ICS accounts at any time. The 2007 Interim Guidelines also require that the entity proposing to create ICS must have an ICS Delivery Agreement with the Secretary.
- D. Due to the Colorado River Basin experiencing its worst drought in recorded history, the United States and the Colorado River Basin States developed the Agreement Concerning the Colorado River Drought Contingency Management and Operations (Companion Agreement). Attachment B to the Companion Agreement is the Lower Basin Drought Contingency Plan Agreement (LBDCP), which, among other things, is designed to create new flexibility to incentivize additional voluntary conservation of water to be stored in Lake Mead as ICS and contains actions in addition to those authorized or required by the 2007 Interim Guidelines.
- E. Among other things, the Companion Agreement provides for: (1) several interstate agreements to be implemented that include a Lower Basin Drought Contingency Plan Agreement with Attachment Exhibit 1 – Lower Basin Drought Contingency Operations (LBOPs); (collectively DCP Agreements), and contemplates (2)

Secretarial approval of additional LBOps ICS exhibits defining new water conservation projects for the creation of ICS.

- F. The LBOps increase the maximum total amount of ICS that may be accumulated by each Lower Division State and provide that additional ICS annual creation volume and accumulated ICS space may be made available from one or more Lower Division States pursuant to Secretarial authorization or separate agreements, respectively.
- G. Public Law 116-14, the Colorado River Drought Contingency Plan Authorization Act, was signed into law on April 16, 2019. This Act directed the Secretary to execute the DCP Agreements, and the DCP Agreements were subsequently executed on May 20, 2019. Public Law 116-14, along with the executed LBOps, approved several pending ICS exhibits from 2015-2017 and approved two additional exhibits for EC ICS Creation in 2018. On May 20, 2019, on behalf of the Secretary, the Regional Director of Reclamation's Lower Colorado Region approved MVIDD's ICS exhibit, labeled "LBOps ICS Exhibit U." LBOps ICS Exhibit U is attached hereto as "Attachment 1."
- H. On May 20, 2019, the United States, the State of Arizona, and the Central Arizona Water Conservation District (CAWCD) executed the "Framework Agreement Among the United States, the State of Arizona, and the Central Arizona Water Conservation District for an Arizona ICS Program" which creates a program for creation, accumulation, and delivery of ICS by Arizona ICS creators, including MVIDD.
- I. MVIDD and the United States desire to enter into this Delivery Agreement which provides for MVIDD to create and receive delivery of ICS under the 2007 Interim Guidelines and the LBOps consistent with the Framework Agreement.

II. Authority

The Secretary is authorized under the Reclamation Act of 1902 and all acts amendatory thereof and supplementary thereto, including in particular Section 5 of the Boulder Canyon Project Act of 1928, to enter into contracts for the delivery of Colorado River water.

III. Definitions

Defined terms appear in this Delivery Agreement with initial capitalization and shall have the same meaning as in the 2007 Interim Guidelines; Provided, however:

- A. "DCP ICS" shall mean Intentionally Created Surplus converted from Extraordinary Conservation ICS, System Efficiency ICS, or Binational ICS, as set forth in the LBOps.
- B. "Framework Agreement" shall mean the "Framework Agreement Among the United States, the State of Arizona, and the Central Arizona Water Conservation District for an Arizona ICS Program" executed on May 20, 2019.

C. “2007 Interim Guidelines” shall mean the Interim Guidelines for Operation of Lake Powell and Lake Mead in the Record of Decision issued by the Secretary on December 13, 2007.

IV. Term

This Delivery Agreement shall become effective upon execution by the Parties and shall remain in effect until such time as all deliveries of MVIDD’s EC ICS or DCP ICS created under the 2007 Interim Guidelines and the LBOps have occurred.

V. Relationship to 2007 Interim Guidelines and LBOps

The Parties to this Delivery Agreement expressly acknowledge that this Delivery Agreement will be administered in compliance with the terms of the 2007 Interim Guidelines and the LBOps.

VI. Approval of Plan

A. If MVIDD desires to create EC ICS in any year, MVIDD shall submit an annual plan to create EC ICS, or a modification to a previously approved plan to create EC ICS, to the Secretary in accordance with Section 3.B.1 of the 2007 Interim Guidelines.

1. For EC ICS to be created as provided in the Extraordinary Conservation ICS Project – Land Fallowing Program, LBOps ICS Exhibit U, the Secretary shall approve a plan or modification which meets the requirements of Sections 3.A.1 and 3.B.1 of the 2007 Interim Guidelines and LBOps ICS Exhibit U.
2. If the Secretary determines that a plan or modification submitted by MVIDD in accordance with this Section VI does not meet the requirements of the 2007 Interim Guidelines or LBOps ICS Exhibit U, the Secretary shall inform MVIDD as to which matters were determined not to meet the requirements of Sections 3.A.1 and 3.B.1 of the 2007 Interim Guidelines or LBOps ICS Exhibit U and permit MVIDD to resubmit the plan or modification.

VII. Certification and Verification of EC ICS

- A. MVIDD shall submit a Certification Report to the Secretary for the EC ICS created, in accordance with Section 3.D.1 of the 2007 Interim Guidelines.
- B. The Secretary shall verify the information in the Certification Reports submitted by MVIDD for EC ICS, in accordance with Section 3.D.2 of the 2007 Interim Guidelines. If the Secretary determines that insufficient information has been provided in the Certification Report to verify the quantity of ICS created or to verify that the creation was consistent with this Delivery Agreement and consistent with LBOps ICS Exhibit U, the Secretary shall request additional information from MVIDD. MVIDD agrees to provide such additional information in a timely manner.

- C. After review of a Certification Report submitted by MVIDD for EC ICS, including the review of such additional information as has been requested by the Secretary and provided by MVIDD, the Secretary shall provide a final written decision to MVIDD, as provided in Section 3.D.2 of the 2007 Interim Guidelines, which may be appealed by MVIDD or any party, as provided in Section 3.D.2 of the 2007 Interim Guidelines.

VIII. Conversion of EC ICS to DCP ICS

Pursuant to and consistent with the LBOPs and subject to the Framework Agreement, MVIDD shall have the right to convert EC ICS to DCP ICS, to store DCP ICS in Lake Mead, and to take delivery of DCP ICS within the timeframe specified in the LBOPs.

IX. Delivery of EC ICS or DCP ICS

- A. MVIDD shall neither order nor accept delivery of EC ICS or DCP ICS created and credited to the MVIDD's account except in accordance with the terms of the 2007 Interim Guidelines, this Delivery Agreement, the Framework Agreement, and the LBOPs. MVIDD shall include the delivery of EC ICS or DCP ICS in its annual water order to Reclamation submitted, in accordance with 43 C.F.R. Part 417, on or around September 1 for water to be delivered in the following calendar year. In the event that MVIDD cannot schedule delivery of EC ICS or DCP ICS in the year preceding the year of delivery and elects to take delivery of EC ICS or DCP ICS in the current operating year, MVIDD agrees to use its best efforts to schedule delivery of such EC ICS or DCP ICS in a manner consistent with Secretarial administration of the 2007 Interim Guidelines.
- B. MVIDD's existing entitlement to Colorado River water shall remain in full force and effect and with this Delivery Agreement shall govern the delivery to MVIDD of EC ICS or DCP ICS. In the event that delivery of such ICS results in more water being delivered to MVIDD than the quantities covered by MVIDD's entitlement, this Delivery Agreement shall cover any such exceedance.
- C. Except as provided in Section 3.B.8 of the 2007 Interim Guidelines, the Secretary shall deliver to MVIDD for use in MVIDD's service area as such service area is shown in Contract No. 14-06-W-204 dated November 14, 1968, as amended, the EC ICS or DCP ICS in MVIDD's EC ICS or DCP ICS accounts; Provided, however:
  - 1. The Secretary must have determined an ICS Surplus Condition applicable to the Year of the delivery, in accordance with Sections 2.B.5 and 3.C.2 of the 2007 Interim Guidelines; or, that such delivery is authorized under the terms of the LBOPs.
  - 2. The Secretary must have verified the creation of the requested EC ICS in accordance with Section 3.D.2 of the 2007 Interim Guidelines; and

3. The EC ICS or DCP ICS delivery must be in accordance with 43 C.F.R. Part 417.

X. Accounting for EC ICS and/or DCP ICS

The Secretary shall incorporate into the Water Accounting Report a separate EC ICS account and/or DCP ICS account for MVIDD. The accounts shall separately identify and report the EC ICS created by MVIDD under LBOs ICS Exhibit U and this Delivery Agreement in a manner provided in Section 3.D.3 of the 2007 Interim Guidelines or Section IV of the LBOs. The accounts shall also identify and report any EC ICS converted to DCP ICS by MVIDD. The accounts shall further reflect any reductions for deliveries and payback obligations, in accordance with Section 3.C.7 of the 2007 Interim Guidelines and shall reflect excess deliveries of EC ICS or DCP ICS as an inadvertent overrun until repaid, in accordance with Section 3.C.8 of the 2007 Interim Guidelines.

XI. Other Terms

- A. No third-party beneficiary status shall be provided to any party that is not a signatory to this Delivery Agreement.
- B. In accordance with Section 3.C.10 of the 2007 Interim Guidelines, the books and records of MVIDD relating to the creation of ICS shall be open to inspection by the Secretary and any Contractor, or Basin State.
- C. MVIDD acknowledges that under Section 7 of the 2007 Interim Guidelines the Secretary shall consult with the Basin States regarding administration of the ICS program.
- D. No member of or Delegate to Congress, Resident Commissioner, or official of any Party shall benefit from this Delivery Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- E. This Delivery Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982.
- F. Each Party to this Delivery Agreement represents that the person executing it on behalf of such Party has full power and authority to do so, and that his or her signature is legally sufficient to bind the Party on whose behalf he or she is signing.
- G. The expenditure or advance of any money or the performance of any obligation of the United States under this Delivery Agreement shall be contingent on appropriation or allotment of funds.

*Draft Dated February 14, 2020*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement No. 19-XX-30-W0654 the day and year first written above.

**THE UNITED STATES OF AMERICA**

By: \_\_\_\_\_  
Terrance J. Fulp, Ph.D.  
Regional Director  
Lower Colorado Basin Region  
Bureau of Reclamation

Approved as to form:

**MOHAVE VALLEY IRRIGATION AND  
DRAINAGE DISTRICT**

By: \_\_\_\_\_  
Michael J. Pearce  
District Counsel

By: \_\_\_\_\_  
Charles B. Sherrill Jr.  
Chairman