

**SPECIAL REGULAR MEETING
MOHAVE VALLEY IRRIGATION AND DRAINAGE DISTRICT**

Request for Board Action
Item Number 2B Of:

Meeting Date: April 15, 2022

 Consent Agenda √ Regular Agenda

PROPOSED ACTION:

***MVIDD Draft Contract for Individual Participating Landowners for 2022 System Conservation.** Discussion and possible action regarding MVIDD's draft landowner master contract.

STAFF RECOMMENDATION:

BOARD ACTION TAKEN:

 Approved as Requested Disapproved No Action Taken
 Tabled to Approved with following changes:

CHANGES:

**LANDOWNER 500+ PLAN AGREEMENT
(CALENDAR YEAR 2022)**

DATE: _____

No. _____

PARTIES:

"MVIDD"

Mohave Valley Irrigation and Drainage District
1460 Commercial Street
Mohave Valley, Arizona 86440

"Water User"

Contact Person: _____
Phone No.: _____

FARM UNIT (AG CONTRACT NO.): _____

Fallowed Acres: _____

Participating Fields: See "MVIDD Plan of Creation"

TOTAL AG WATER ENTITLEMENT: _____ acre feet

Max Diversion: _____ acre feet

Reduced Diversion: _____ acre feet

Conservation Yield: _____ acre feet

EFFECTIVE DATE: January 01, 2022

TERMINATION DATE: December 31, 2022

RECITALS:

WHEREAS, MVIDD entered into a contract entitled "Contract With Mohave Valley Irrigation and Drainage District for Delivery of Water," Contract No. 14-06-W-204 dated November 14, 1968 with the United States of America for storage and delivery of Colorado River water by the United States to District each calendar year for irrigation and domestic use within the District; and

WHEREAS, Public Law 116-14, the Colorado River Drought Contingency Plan Authorization Act (Act), was signed into law on April 16, 2019. This Act directed the Secretary to execute the Drought Contingency Plan (DCP) Agreements, and the DCP Agreements were subsequently executed on May 20, 2019;

WHEREAS, Section 3.b. of the Lower Basin Drought Contingency Plan (LBDCP), among other things, provides that, subject to appropriation, (1) the Secretary will take affirmative actions to implement Lower Basin programs designed to create or conserve 100,000 acre-feet per annum or more of Colorado River System water to contribute to conservation of water supplies in Lake Mead and other Colorado River reservoirs in the Lower Basin; and (2) the other parties to the LBDCP shall not request delivery of, and Secretary shall not deliver to any party or Contractor the volumes of Colorado River System water conserved through such programs;

WHEREAS, additional measure need to be taken to avoid and protect against the potential for Lake Mead to decline below 1,020 feet and a Memorandum of Understanding Among the United State of America Acting Through the Department of the Interior, Bureau of Reclamation, the State of Arizona Acting Through the Arizona Department of Water Resources, the Central Arizona Water Conservation District, the Metropolitan Water District of Southern California, the State of Nevada acting Though the Colorado River Commission of Nevada, and the Southern Nevada Water Authority to Facilitate Near-Term Actions Necessary to Maintain the Elevation of Water in Lake Mead, (2021 MOU Parties) was entered into on December 15, 2021, also referred to as the "500+ Plan", in which the 2021 MOU Parties agreed to target a combined minimum of 1,000,000 acre-feet of additional water in 2022 and 2023, to remain in Lake Mead;

WHEREAS, MVIDD has previously entered into System Conservation Implementation Agreements for calendar years 2020 and 2021, and desires to continue helping mitigate the impacts of the current drought by entering into an agreement making some of its Colorado River water entitlement under its MVIDD Contract available in calendar year 2022 as Colorado River System Conservation water with the intent that Reclamation will apply such water to help meet the

Secretary's commitment under Section 3 b. of the LBDCP and to help meet the water conservation efforts described in the 500+ Plan;

WHEREAS, MVIDD has submitted to Reclamation a Plan of Creation for System Conservation water for the calendar year 2022 to forego irrigation water deliveries and fallow no more than 2,383 irrigated acres located in the state of Arizona that have a history of recent use and make the System Conservation water available to the Colorado River System. The Arizona Department of Water Resources ("ADWR"), the Central Arizona Water Conservation District ("CAWCD"), and the United States, Department of the Interior, Bureau of Reclamation ("Reclamation"), have reviewed that Plan of Creation and MVIDD has implemented the Plan of Creation in calendar year 2022; and

WHEREAS, MVIDD has adopted a System Conservation Program document wherein MVIDD has set forth the rules, obligations and benefits of participation in the MVIDD System Conservation Program, which Program document is incorporated into the Plan of Creation;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. **DEFINITIONS.**

- a) "ADWR" shall mean the Arizona Department of Water Resources and its staff and shall include all duly appointed successors and authorized representatives.
- b) "CAWCD" shall mean the Central Arizona Water Conservation District and its staff and shall include all duly appointed successors and authorized representatives.
- c) "500+ Plan Agreement" as used in this Agreement is the Agreement to entered into between MVIDD and Reclamation, ADWR and CAWCD for the creation of Colorado River System water.
- d) "Farm Unit" shall mean the land and amount of water allocated to Water User under a duly executed agricultural water subcontract between the Water User and MVIDD;
- e) "Fallow or Fallowed" shall mean the intentional avoidance of crops, application of water and the accompanying maintenance of fields such that weeds, dust and water use are strictly eliminated during the year in which the fallowing occurs.
- f) "MVIDD System Conservation Program" shall refer to the policy document adopted by MVIDD in December, 2019 as the same may be

amended by the MVIDD Board from time to time and the MVIDD System Conservation Program to be administered thereunder.

g) "MVIDD Plan of Creation" shall mean the plan submitted to ADWR, CAWCD and Reclamation for approval in December, 2021 as finally approved and adopted by the 2021 MOU Parties for implementation in calendar year 2022

h) "Reclamation" as used in this Agreement shall mean the United States Bureau of Reclamation including the Regional Director's staff, Lower Colorado Region, Bureau of Reclamation, and shall include all duly appointed successors and authorized representatives.

i) "2021 MOU Parties" as used in this Agreement shall mean the Bureau of Reclamation, Arizona Department of Water Resources, the Central Arizona Water Conservation District, the Metropolitan Water District of Southern California, the Colorado River Commission of Nevada and the Southern Nevada Water Authority, and shall include all duly appointed successors and authorized representatives.

j) "Water User" shall mean a user of agricultural subcontract water within District's exterior boundaries who diverts water directly from the surface flow of the river or who pumps water from wells within or outside the District for use exclusively within District.

2. **ENROLLMENT OF PARTICIPATING FARM UNITS.** The Farm Units to be enrolled in the MVIDD System Conservation Program and the 500+ Plan Agreement for calendar year 2022 are identified in the MVIDD Plan of Creation.

3. **MVIDD ADMINISTRATION.** MVIDD agrees to administer the MVIDD 500+ Plan Agreement and the MVIDD Plan of Creation in accordance with their terms for the benefit of the Farm Units enrolled.

4. **OBLIGATIONS OF PARTICIPATING FARM UNITS.** By entering into this Landowner 500+ Plan Agreement, Water User agrees that the lands so enrolled within each Farm Unit shall be included within the MVIDD System Conservation Program and shall be subject to the terms of the MVIDD 500+ Plan Agreement during calendar year 2022.

a) Water User agrees that the fields selected for following in the MVIDD Plan of Creation shall be Fallowed, and Water User agrees to adopt all reasonable means to be, and remain, in compliance with the MVIDD System Conservation Program and MVIDD Plan of Creation commencing as of January 1, 2022 and continuing through December 31, 2022.

b) Water User agrees that Water User shall limit the planted acres within the enrolled Farm Unit to the maximum number determined by MVIDD to allow MVIDD to remain within the Acreage Limitation expressed in the MVIDD Plan of Creation.

c) Water User agrees to limit diversion of Colorado River water on the Farm Unit by the amount of identified in the MVIDD Plan of Creation for calendar year 2022 and to not exceed the maximum diversion allowed to that Farm Unit as identified in the MVIDD Plan of Creation.

d) Water User agrees to allow inspection of all enrolled lands by MVIDD, ADWR, CAWCD and Reclamation throughout calendar year 2022 as may be required to assure compliance with the terms of the MVIDD System Conservation Program and MVIDD Plan of Creation, including reference to the Secretary of the Interior's right to inspect and verify compliance as set forth in the MVIDD Plan of Creation.

e) Water User agrees that it shall install new flow meters on all points of diversion for the enrolled Farm Unit in compliance with MVIDD's Resolution 2019-01 (April 2, 2019).

f) Water User agrees that it shall (i) install berms, gate locks and other similar means to insure that water is not diverted onto the Fallowed fields; (ii) use proactive measures to prevent and use diligent measures to control, the growth of any weeds on the Fallowed fields; and (iii) use proactive measures to prevent, and use diligent measures to control any blowing dust arising from the Fallowed fields.

g) Water User agrees that it shall abide by the terms of the 500+ Plan Agreement entered into between MVIDD, ADWR, CAWCD and Reclamation for System Conservation Water.

h) Water User agrees that MVIDD is in no way obligated, liable or responsible for the payment for System Conservation Program water by Reclamation or the 2021 MOU Participants or any other 500+ Plan participant. MVIDD shall use its best efforts to fulfill its obligations under the MVIDD Plan of Creation and shall account for any System Conservation water for the benefit of the participating Farm Unit in accordance with the MVIDD System Conservation Program. In addition, Water User acknowledges that System Conservation water is subject to reduction by Reclamation upon review of MVIDD compliance under the 500+ Plan Agreement and District does not warrant the quantity of System Conservation water actually accrued or compensated for under the 500+ Plan Agreement to any individual Water User. Water User agrees that the water left in Lake Mead pursuant to this Agreement shall accrue to the benefit of the Colorado

River System and shall not accrue to the individual benefit of the Water User, MVIDD or any third party.

5. **ADMINISTRATIVE FEES.** Water User agrees to pay MVIDD an administrative fee of \$ 1.00 per acre-foot of the amount of water identified for that Farm Unit's "conservation yield" as calculated in the MVIDD Plan of Creation. The administrative fee shall be due in full on July 30, 2022 and shall be delinquent on August 1, 2022. Any delinquent amount shall accrue interest at the rate of 0.5% per month, or partial month, of delinquency. Failure to pay the administrative fee shall result in a hold on the System Conservation payments otherwise attributable to that Farm Unit.

6. **MAINTENANCE AND REPAIR OF DELIVERY SYSTEM.** Water User shall be responsible for the installation and maintenance of its delivery system consistent with District's policies. Water User shall have an affirmative duty to keep said system in good repair and to prevent waste through leakage and breakage.

7. **POINT OF DIVERSION.** Water User has an affirmative duty to accurately and timely inform District of any change in any point of diversion within thirty (30) days of the change, and shall obtain in advance such approvals from the MVIDD required by Resolution 93-02 and comply with the metering obligations required by Resolution 2019-01. Water User shall obtain from ADWR and file with MVIDD evidence of authorization to drill wells for any new agricultural well constructed within the District.

8. **EVENT OF DEFAULT.**

a) **Right of Direct Action Against Defaulting Farm Unit.** In the event that MVIDD identifies a default by a Farm Unit under the terms of this 500+ Plan Agreement or the MVIDD System Conservation Program or MVIDD Plan of Creation, MVIDD shall provide written notice of such default to Water User. Water User shall have 20 calendar days to cure such default. If not cured, MVIDD may withhold any System Conservation payment as provided above, or take any action, administrative or judicial, to enforce a cure of such default, including without limitation an action for specific performance of this Landowner 500 + Plan Agreement.

b) **Costs.** In the event that any judicial action is initiated to compel performance under the terms of this Landowner 500+ Plan Agreement, the prevailing party in such action shall be entitled to recover its costs (including expert witness fees) and attorneys' fees incurred. Water User shall be liable for any cost of administrative action by MVIDD for dust or weed control as allowed by statute.

9. **RIGHT OF INSPECTION.** MVIDD representatives shall have at all

times the right of ingress and egress to and from all fields within a participating Farm Unit and all works utilized by Water User or by any other person, firm or corporation for the diversion, processing, storage and distribution of water delivered to a participating Farm Unit for the purpose of inspection to determine compliance with this Landowner 500+ Plan Agreement.

10. **RULES AND REGULATIONS.** MVIDD reserves the right to prescribe and enforce additional rules and regulations for the 500+ Plan Program that are consistent with the intent of this Agreement and with requirements imposed by ADWR, CAWCD or Reclamation in their roles of governing the creation of System conservation water. Such rules and regulations shall be promulgated, modified, revised or extended from time to time as may be deemed proper, necessary or desirable by MVIDD to carry out the true intent and meaning of the MVIDD 500+ Plan Agreement, the MVIDD System Conservation Program and the MVIDD Plan of Creation and/or to protect the interest of MVIDD. Water User hereby agrees that in the implementation of the MVIDD System Conservation Program and in the maintenance of the Farm Unit and the works for the diversion of water by Water User, and all works appurtenant thereto or otherwise associated therewith, all such rules and regulations will be fully adhered to by Water User.

11. **WAIVER OF CLAIMS.** Water User hereby expressly releases the MVIDD, its officers, agents, employees and respective successors and assigns from every claim for economic loss and damages to persons or property, direct or indirect, and of whatever nature, arising by reason of the implementation of the 500+ Plan Program.

12. **RIGHT OF TERMINATION.** MVIDD may terminate this Agreement upon written notice from Reclamation, ADWR, or CAWCD that the MVIDD 500+ Plan Agreement has been suspended or terminated. Water User may terminate this Agreement only upon the written approval of MVIDD, Reclamation, ADWR and CAWCD.

13. **TERM.** This Landowner 500+ Plan Agreement shall be effective as of January 1, 2022 upon execution by MVIDD after execution by Water User. It shall terminate December 31, 2022, subject to MVIDD's continuing obligations to Water User for System Conservation under the MVIDD 500+ Plan Agreement.

[Signatures on Following Page]

T_____R_____S_____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

MOHAVE VALLEY
IRRIGATION AND
DRAINAGE DISTRICT

By: _____
By: _____
Its: _____

ATTEST: _____

WATER USER:

_____ (printed name)

or

_____, a/an _____

By: _____
By: _____
Its: _____