STORAGE AND INTERSTATE RELEASE AGREEMENT

among

The United States of America, acting through the Secretary of the Interior; The Metropolitan Water District of Southern California; the Southern Nevada Water Authority; and the Colorado River Commission of Nevada (collectively referred to herein as the “Parties” or individually as “Party”).

Recitals

A. The Secretary of the Interior (Secretary) is authorized by the Boulder Canyon Project Act (43 U.S.C. § 617d) to contract for the storage and delivery of Colorado River water. The Secretary’s authority over the storage and delivery of Colorado River water to the Lower Division States is further articulated in the Decree issued by the United States Supreme Court in Arizona v. California, 376 U.S. 340 (1964) (Decree).

B. In accordance with the authority granted in 5 U.S.C. § 553, 43 U.S.C. §§ 391, 485, and 617, the Supreme Court’s opinion in Arizona v. California, 373 U.S. 546 (1963), and Article II (B) (6) of the Decree, the Secretary adopted regulations providing for offstream storage of Colorado River water and development and release of Intentionally Created Unused Apportionment in the Lower Division States. (43 CFR Part 414). These regulations authorize the United States Bureau of Reclamation (Reclamation), Lower Colorado Region, acting through the Regional Director, to execute and administer this Storage and Interstate Release Agreement (Agreement) on behalf of the United States. (43 CFR § 414.3(c)) References to the Secretary in this Agreement include the United States Bureau of Reclamation, Lower Colorado Region.

C. The Metropolitan Water District of Southern California (MWD) was incorporated on December 6, 1928 pursuant to the Metropolitan Water District Act of the State of California. In accordance with the provisions of that act, MWD is expressly authorized to exercise such powers as are necessary and proper to carry out the objects and purposes of the district, including the acquisition of water rights within and without the state, and the storage and transport of water. (West’s California Water Code Appendix §§ 109-120 and 109-130) California law authorizes MWD to contract with any public or private corporation for the purpose of carrying out any of its powers. (California Public Contract Code § 21562)

D. In accordance with the authority granted by California law, MWD can enter into Storage and Interstate Release Agreements and develop Intentionally Created
Unused Apportionment (ICUA) pursuant to the federal regulations. MWD has a contract with the Secretary issued under Section 5 of the Boulder Canyon Project Act for the storage and delivery of Colorado River water.

E. By virtue of the authorities specified in Recitals C and D, MWD is an "Authorized Entity" within the meaning of 43 CFR § 414.2(1).

F. The Southern Nevada Water Authority (SNWA) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Agreement and, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act, SNWA has the right to divert ICUA released by the Secretary for use within the State of Nevada pursuant to Article II(B)(6) of the Decree.

G. By virtue of the authorities specified in Recital F, SNWA is an "Authorized Entity" within the meaning of 43 CFR § 414.2(2).

H. The Colorado River Commission of the State of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 through 538.251. CRCN is authorized by N.R.S. § 538.186 to enter into this Agreement. CRCN, in furtherance of the State of Nevada’s responsibility to promote the health and welfare of its people in Colorado River matters, enters into this Agreement to facilitate the storage of Colorado River water, establishment and maintenance of a SNWA Interstate Account for SNWA, and development and release of ICUA for SNWA.

I. This Agreement is entered into to establish an enduring cooperative relationship between MWD and SNWA under the Secretary’s 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, this Agreement provides a specific program 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. This Agreement also provides a structure whereby such cooperation and storage program might continue beyond 2010.

J. Concurrently with execution of this Agreement, CRCN, SNWA and MWD have entered into a separate agreement (Operational Agreement), consistent with this Agreement, governing operational and financial matters as between MWD, SNWA, and CRCN relating to the storage of Colorado River water and the development of ICUA.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the United States, MWD, SNWA, and CRCN hereby agree as follows:
Article 1
Definitions and Term

1.1 Definitions. The following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.

1.1.1 "ICUA" means Intentionally Created Unused Apportionment as that term is defined in 43 CFR Part 414.

1.1.2 "SNWA Interstate Account" means the storage account established by MWD under the terms of this Agreement.

1.1.3 "Year" means calendar year.

1.2 Term of the Agreement. This Agreement shall be effective as of October 27, 2004, upon its execution by all Parties, and shall continue in effect until terminated by 90 days' written notice from either SNWA or MWD given after Colorado River water has been stored for SNWA and credited to the SNWA Interstate Account and thereafter the SNWA Interstate Account balance has been reduced to zero.

Article 2
Water Available for Storage; Facilities

2.1 Water stored pursuant to this Agreement shall be from within the State of Nevada's unused basic or surplus apportionment under Articles II(B)(1) or II(B)(2) of the Decree and may be made available from Nevada by the Secretary to California only in accordance with Article II(B)(6) of the Decree. If the Secretary determines unused apportionment from Nevada is available, the Secretary will make unused Nevada apportionment available to MWD to be stored under the Agreement in accordance with the terms of this Agreement and will not make that water available to other entitlement holders. Water stored pursuant to this Agreement shall not include the State of California's unused basic or surplus apportionment.

2.2 The facilities which may be utilized by MWD to store water pursuant to this Agreement are those facilities described in MWD's Integrated Resources Plan, 2003 Update, dated May 2004, and located within the State of California. With respect to water stored pursuant to this Agreement, all facilities to be used to divert, convey to storage, store, withdraw from storage, and subsequently convey and distribute such water, are facilities that have been constructed and financed by MWD or facilities to which the title has been transferred to MWD by the United States.

2.3 The quantity of Colorado River water to be stored pursuant to this Agreement shall be as agreed by MWD and SNWA, subject to the limitations specified in Article 7.
Article 3
Storage

3.1 As early as practicable in each Year in which there will be unused Nevada basic or surplus apportionment available for storage pursuant to this Agreement, SNWA shall notify the Secretary and MWD of the total quantity of such water and the quantity within each of Nevada's basic apportionment and Nevada's surplus apportionment.

3.2 Within 60 days of receipt of SNWA's notice under Section 3.1, MWD shall notify the Secretary and SNWA of (i) the total quantity of unused Nevada apportionment, which MWD can store, and (ii) confirm that MWD will store such water.

3.3 As soon as practicable after receipt of MWD's notice under Section 3.2, the Secretary will confirm the existence of such unused Nevada apportionment, decide whether such unused Nevada apportionment shall be released for consumptive use in California under Article II(B)(6) of the Decree, and release the specified quantity of Colorado River water to MWD pursuant to Article II(B)(6) of the Decree in accordance with the Secretary's decision. MWD shall divert and store the released water.

Article 4
Development of Intentionally Created Unused Apportionment

4.1 ICUA shall be developed under this Agreement only after 2006.

4.2 MWD shall develop ICUA for the benefit of SNWA in accordance with the provisions of this Agreement and the Operational Agreement and consistent with the laws of the State of California and the United States and MWD's Colorado River water storage and delivery contract with the Secretary. MWD shall develop ICUA by withdrawing water that has been previously stored for SNWA and delivering such water for consumptive use within California in lieu of Colorado River water that MWD otherwise would divert. Any other potential means of developing ICUA must first be approved by the Secretary. MWD will withdraw stored water from the facilities identified in Section 2.2 above which are under MWD's control such that the development of ICUA is enforceable by MWD. Because MWD will recover stored water from facilities under the control of MWD, notice will not be given to other entitlement holders of Colorado River water to participate in development of this ICUA. In the event MWD elects, subject to the approval of the Secretary, to use a means other than the recovery and use of stored water, MWD shall give such notice to other entitlement holders to participate in development of the ICUA as the Secretary deems appropriate in light of the means.

4.3 The amount of ICUA to be developed and released to SNWA in any Year shall not exceed 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.

4.4 For any Year in which ICUA is to be developed for SNWA by MWD and released by the Secretary, SNWA shall, by June 1 of the previous Year, make a written
request to MWD for the development of ICUA in accordance with the terms of this Agreement, specifying the quantity of ICUA to be developed.

4.5 By December 1 of each Year in which SNWA has made a request for development of ICUA in the following Year, MWD shall prepare and deliver to the Secretary an ICUA Certification. The ICUA Certification shall:

4.5.1 certify: (i) whether the SNWA Interstate Account balance is sufficient to support the development of the requested ICUA; (ii) that ICUA will be developed in the upcoming Year in an amount equal to the amount requested by SNWA; and (iii) that such ICUA otherwise would not exist.

4.5.2 request that the Secretary release the ICUA in the requested amount for use in Nevada pursuant to Article II (B) (6) of the Decree and this Agreement.

4.5.3 set forth the means by which MWD intends to develop ICUA utilizing stored water in the SNWA Interstate Account and the quantity of ICUA which MWD intends to develop.

4.6 In each Year as to which MWD has certified under Section 4.5 that it will develop ICUA, MWD shall take all actions necessary to ensure that ICUA is developed in accordance with such certification. If MWD does not develop ICUA as required under this Article, MWD shall develop ICUA in another Year to repay to Lake Mead storage the amount of ICUA consumptively used by SNWA but not developed by MWD. The Secretary, in addition to any other remedy available, may seek a court order requiring MWD to do so. The Year of repayment shall be at the discretion of the Secretary, but shall not be more than three years after the year in which the shortfall occurred.

Article 5

Release of Intentionally Created Unused Apportionment

5.1 For any Year as to which SNWA has made a request under Section 4.4 for the development of ICUA, SNWA shall also make a written request of the Secretary for the release of ICUA for consumptive use in the State of Nevada. Such request shall be made by September 15 of the previous Year, or such earlier date as reasonably required in writing by the Secretary, for a release of ICUA in the following Year, and shall be consistent with SNWA's request for the development of ICUA. The request shall specify the quantity of ICUA to be released by the Secretary and shall certify that SNWA has mailed, first class postage paid, a copy of the request to the States of Nevada, Arizona, and California by providing copies to CRCN, the Arizona Department of Water Resources and the Colorado River Board of California and MWD.

5.2 The request for the development of ICUA by SNWA shall be incorporated into the Secretary's Annual Operating Plan for the Colorado River System Reservoirs. The Annual Operating Plan shall state that, upon proper certification, the Secretary intends to release that quantity of ICUA to SNWA under Article II (B) (6) of the Decree in accordance with the terms of this Agreement.
5.3 Release of ICUA under this Agreement for diversion by SNWA shall operate under 43 CFR § 414.3(f), Anticipatory Release of ICUA, as provided in this article.

5.4 By December 20 of each Year in which the Secretary has received a proper and timely request for release of ICUA, the Secretary shall determine whether there is water stored under this Agreement in quantities sufficient to support the development of the requested ICUA, whether MWD’s certification under Section 4.5 meets the requirements of 43 CFR Part 414, and whether all necessary actions required by 43 CFR Part 414 have been taken. Such request may be modified with the consent of SNWA, MWD, and the Secretary. For purposes of this Agreement, all necessary actions are those actions expressly enumerated in 43 CFR Part 414, as amplified by this Agreement.

5.5 The Secretary shall, as he or she deems appropriate, review books and records in accordance with Section 6.3 and take such other measures as appropriate to verify the quantity of water stored and the quantity of ICUA developed under this Agreement. In the event of a discrepancy in which there is a shortfall of ICUA developed, the Secretary shall require MWD to repay to Lake Mead storage as set forth in Section 4.6.

5.6 Pursuant to the provisions of 43 CFR §413.3(f) and only after determining that MWD’s certification under section 4 meets the requirements of 43 CFR Part 414, the Secretary shall release ICUA to SNWA in the Year as to which, and to the extent that, MWD has certified, pursuant to Section 4.5 of this Agreement, that ICUA will be developed.

5.7 Once the Secretary has determined that ICUA will be released to SNWA, such ICUA shall not be available for release to any entitlement holder in the States of Arizona or California or any other entitlement holder in Nevada in that Year.

5.8 In any Year in which the Secretary has released ICUA to SNWA, MWD shall debit the SNWA Interstate Account beginning-of-Year balance in an amount equal to the amount of ICUA released by the Secretary to SNWA under this Agreement.

5.9 The amount of ICUA released for consumptive use in Nevada effective January 1 of any Year shall not be subject to reduction unless:

5.9.1 SNWA requests that MWD cease development of ICUA, and

5.9.2 MWD certifies to the Secretary that a specific quantity of ICUA will not be developed pursuant to the SNWA request.

5.10 The Secretary shall release ICUA in accordance with the request of SNWA, the terms of this Agreement, in particular the determination of the Secretary, the Boulder Canyon Project Act, Article II (B) (6) of the Decree and all other applicable Federal laws and executive orders.
5.11 With respect to ICUA released for diversion by SNWA pursuant to this Agreement, the only facilities that will be used to divert, store, convey, or distribute such water that were constructed by the United States are certain facilities of the Southern Nevada Water System that were constructed and financed by the United States, the ownership of which was subsequently transferred to SNWA.

Article 6
Accounting

6.1 MWD shall establish and maintain a storage account entitled the "SNWA Interstate Account" for accounting purposes, which account shall accurately reflect the quantities of all water stored and all water debited from the account for purposes of developing ICUA pursuant to this Agreement.

6.2 MWD shall report on the SNWA Interstate Account as follows:

6.2.1 MWD shall provide its final annual accounting to the Secretary by March 1 of the Year following the Year in which MWD stored water or developed ICUA for SNWA.

6.2.2 MWD shall prepare and submit to the Secretary and the States of Arizona, California, and Nevada by March 1 of each Year a final verified accounting for the prior Year of: (i) the beginning balance of the SNWA Interstate Account; (ii) the amount of Colorado River water diverted and stored for the benefit of SNWA in that Year; (iii) any debits from the SNWA Interstate Account during that Year on account of water withdrawn for purposes of developing ICUA; (iv) the net balance in the SNWA Interstate Account at the end of the Year; and (v) the cumulative amount properly credited to the SNWA Interstate Account.

6.3 All records of MWD concerning this Agreement, including all records used by MWD to prepare the final verified accounting, shall be available for inspection by the Secretary and SNWA, such inspection to be during normal business hours and on reasonable advance notice.

Article 7
Environmental Compliance Limitation

7.1 SNWA agrees with, and for the benefit of, the United States only that SNWA will not request the storage of Colorado River water or the development of ICUA in any Year in excess of the limitations specified in Sections 7.1.1 and 7.1.2 unless the Secretary has first taken such actions as may be necessary to comply with the requirements of the National Environmental Policy Act, the Endangered Species Act, and any other applicable environmental law with respect to such excess storage or development of excess ICUA.

7.1.1 With respect to storage of Colorado River water, SNWA will request storage under this Agreement only to the extent that Colorado River water stored by the Arizona Water Banking Authority for SNWA under the Agreement for Interstate Water
Banking among the Arizona Water Banking Authority, SNWA, and CRCN during such Year is less than 200,000 acre-feet.

7.1.2 With respect to the development of ICUA, SNWA will not request that more than an aggregate of 100,000 acre-feet of ICUA be developed pursuant to this Agreement and the Storage and Interstate Release Agreement among the United States, the Arizona Water Banking Authority, SNWA, and CRCN dated December 18, 2002.

Article 8
General Provisions

8.1 Upon execution of this Agreement and annually thereafter, SNWA shall pay an annual administration fee of two thousand dollars ($2,000.00) to cover the United States’ costs to perform the routine tasks necessary to administer this Agreement. The initial annual administration fee shall be pro-rated on the basis of one hundred sixty six dollars and sixty-seven cents ($166.67) per month for the first Year, payable upon execution of this Agreement. Thereafter, the fee for each subsequent year shall be due on January 1.

8.2 The Secretary reserves the right at intervals of five (5) years, beginning five (5) years after the date of execution of this Agreement, to reexamine the annual administration fee and to revise the fee after three (3) months’ advance written notice and after consultation with SNWA if the Secretary determines that a different charge is necessary to cover the United States’ costs to perform the tasks described in this Agreement. Upon SNWA’s written request, the Secretary shall provide SNWA with a detailed cost analysis supporting the adjustment to the annual administration fee.

8.3 No agreement to which the Secretary is not a Party shall be construed as altering the rights and obligations as between the Secretary and the other Parties to this Agreement.

8.4 The records of any Party to this Agreement that relate to the SNWA Interstate Account, including the development and verification of the account balance, and the development, release and use of ICUA shall be open to inspection by any other Party.

8.5 The provisions of this section shall govern enforcement of this Agreement.

8.5.1 Time is of the essence in the performance of this Agreement.

8.5.2 The Parties recognize and acknowledge that the availability of ICUA as provided in this Agreement is a critical alternative municipal water supply for SNWA while other longer-term sources of supply are being developed; that in planning to meet the needs of the area it serves, SNWA will rely on ICUA being available to it as provided in this Agreement; that accordingly the release of ICUA as provided in Section 5.6 is critical to the economy, health and safety of the area served by SNWA; that the release of ICUA as provided in this Agreement presents a unique opportunity for SNWA
to obtain additional Colorado River water under the Decree; and that, for these reasons, among others, the water resources to be released as ICUA for use in Nevada are unique and not susceptible of replacement by SNWA.

8.6 The Parties to this Agreement shall indemnify the United States, its employees, agents, subcontractors, successors, or assignees from loss or claims for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of actions taken by non-Federal Parties to this Agreement.

8.7 The Parties to this Agreement recognize and acknowledge that this Agreement is a contract executed pursuant to Federal Reclamation law, including the provisions of 43 U.S.C. § 390uu.

8.8 This Agreement shall not constitute approval by the Secretary of any other agreement or water delivery program.

8.9 Nothing in this Agreement is intended or shall be construed to affect the rights of any other Colorado River entitlement holder.

8.10 No Party to this Agreement shall be considered to be in default in the performance of any obligations under this Agreement 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, storm, fire, lightning, and other natural catastrophes, epidemic, war, 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, a Federal governmental agency or authority, which by exercise of due diligence and foresight such Party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

8.11 Non-Federal Parties to this Agreement may assign their interest in this Agreement, in whole or in part, to other authorized entities, as defined in 43 CFR Part 414, subject to the approval of all other Parties to this Agreement.

8.12 The Secretary does not warrant the quality of water released or delivered under this Agreement. The United States is not liable for damages of any kind resulting from water quality problems and the United States has no obligation to construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

8.13 The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent on appropriation or allotment of funds. No liability shall accrue to the United States in case
funds are not appropriated or allotted. Absence of appropriation or allotment of funds shall not relieve MWD, SNWA, or CRCN from any obligation under this Agreement.

8.14 No member of or Delegate to Congress, Resident Commissioner, or official of MWD, SNWA, or CRCN shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

Article 9
Notices

9.1 Notices and Requests.

9.1.1 All notices, requests, and other communications required or provided by this Agreement shall be in writing and addressed to the affected Party, with a copy sent to all other Parties to this Agreement and, unless sent by facsimile pursuant to Section 9.2, shall be mailed first class postage paid addressed as follows:

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

Secretary:
U.S. Department of the Interior
Bureau of Reclamation
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, Nevada 89006
Attn: Regional Director

The State of Arizona:
Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004
Attn: Director
The State of California:
Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, California 91203-1035
Attn: Executive Director

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

9.1.2 Any Party may, at any time, change its mailing address by notice to the other Parties.

9.2 Notices and Requests by Facsimile.

9.2.1 Notices and requests may be given by facsimile among MWD, SNWA, CRCN and the Secretary in lieu of first class mail as provided in sub-article 9.1. Such facsimiles 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.

MWD Facsimile Number 213-217-5704
SNWA Facsimile Number 702-258-3951
CRCN Facsimile Number 702-486-2695
Secretary Facsimile Number 702-293-8042

9.2.2 Any Party may, at any time, change its facsimile number by notice to the other Parties.

In Witness of this Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the 27 day of October, 2004.

Legal Review and Approval: THE UNITED STATES OF AMERICA

By: Katherine Ott Berg Assistant Secretary
Field Solicitor for Water and Science
Phoenix, Arizona Department of the Interior
STATE OF NEVADA, acting through its
COLORADO RIVER COMMISSION

By: [Signature]
   Executive Director

Attest:

By: [Signature]
   Chair

Approved as to form:

By: [Signature]
   Title: [Title]

SOUTHERN NEVADA WATER AUTHORITY

By: [Signature]
   Chair

Attest:

By: [Signature]
   Title: [Title]

Approved as to form:

By: [Signature]

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: [Signature]
   Chief Executive Officer

Attest:

By: [Signature]
   Title: [Title]

Approved as to form:

By: [Signature]

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