

**AGREEMENT RELATING TO SUPPLEMENTAL WATER  
AMONG  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,  
THE SAN LUIS REY SETTLEMENT PARTIES, AND  
THE UNITED STATES**

This Agreement is entered into as of the 10th day of October, 2003, among The Metropolitan Water District of Southern California, a metropolitan water district organized and incorporated under the Metropolitan Water District Act of the State of California (Stats. 1969, Chapter 209, as amended), hereinafter referred to as "Metropolitan;" the United States of America acting by and through its Secretary of the Interior ("Secretary"), hereinafter referred to as "United States;" the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians, acting through the governing bodies of each respective Band as duly recognized by the Secretary, hereinafter referred to as "Indian Bands;" the San Luis Rey River Indian Water Authority, a permanent intertribal entity established pursuant to duly adopted ordinances of the Indian Bands recognized and approved by Public Law 100-675, hereinafter referred to as "Indian Water Authority;" the City of Escondido, a city organized under the provisions of the general laws of the State of California, hereinafter referred to as "Escondido;" and the Vista Irrigation District, an irrigation district organized and incorporated under the irrigation district law of the State of California (California Water Code, Division 11), hereinafter referred to as "Vista." Each of the above is sometimes referred to individually as "Party," and all of the above are sometimes collectively referred to as "Parties."

**DEFINITIONS**

1. "All American Canal Lining Project" means that portion of the works authorized in Title II of Public Law 100-675 which will result in a lined All American Canal from one mile west of Pilot Knob to Drop 3 – a distance of approximately 23 miles.
2. "Allocation Agreement" means the agreement entered into by the Secretary and others to allocate the water conserved from the All American Canal Lining Project and the Coachella Canal Lining Project.
3. "Average Cost of Supplemental Capacity" means the average daily cost, expressed monthly as \$/kilowatt-month, that Metropolitan incurs to procure Supplemental Capacity.
4. "Average Cost of Supplemental Energy" means the average daily cost, expressed monthly as \$/megawatt-hour (\$/MWh), that Metropolitan incurs to procure Supplemental Energy.

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 2**

5. "Average Unit Cost of Supplemental Power" means the sum of the Average Cost of Supplemental Energy multiplied by the amount of Supplemental Energy and the Average Cost of Supplemental Capacity multiplied by the amount of Supplemental Capacity, expressed in dollars, divided by the total amount of Supplemental Energy procured for that month. It is calculated monthly and expressed as \$/MWh.
6. "Coachella Canal Lining Project" means that portion of the works authorized in Title II of Public Law 100-675 which will result in a lined Coachella Branch of the All American Canal from Siphons 7 to 32 – a distance of approximately 34.6 miles.
7. "CVWD" means the Coachella Valley Water District.
8. "Escondido" means the City of Escondido; a city organized under the provisions of the general laws of the State of California.
9. "Gene Tie" means the 230 kilovolt (kV) transmission point of interchange near Metropolitan's Colorado River Aqueduct Gene Pumping Plant where power is delivered and accounted for by Western Area Power Administration for Metropolitan, as provided for in Metropolitan's Contract No. Ilr-712 with the United States Bureau of Reclamation.
10. "IID" means the Imperial Irrigation District.
11. "Indian Bands" means the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians, acting through the governing bodies of each respective Band as duly recognized by the Secretary.
12. "Indian Water Authority" means the San Luis Rey River Indian Water Authority, a permanent intertribal entity pursuant to duly adopted ordinances recognized and approved by Public Law 100-675.
13. "Local Entities" means the City of Escondido, California and the Vista Irrigation District.
14. "Metropolitan" means The Metropolitan Water District of Southern California, a metropolitan water district organized and incorporated under the Metropolitan Water District Act of the State of California (Stats. 1969, Chapter 209, as amended).
15. "Metropolitan's Treatment Charges" means the average amount charged by Metropolitan to its member public agencies for water treatment.
16. "Packard Amendment" means Section 211 of Public Law 106-377 Appendix B, 114 Stat.1441A-70.

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 3**

17. "Reservations" means the reservations of the La Jolla, Pala, Pauma, Rincon, and San Pasqual Bands of Mission Indians located in San Diego County, California.
18. "Secretary" means the Secretary of the Interior of the United States of America.
19. "Settlement Act" means Title I of Public Law 100-675, enacted on November 17, 1988, 102 Stat. 4000, Title I (as amended by Section 117 of the Act of November 13, 1991, Public Law 102-154, 105 Stat. 990, 1012-1013; section 1017 of the Act of October 14, 1998, Public Law 105-256, 112 Stat. 1896, 1899; and Section 211 of the Act of October 27, 2000, 106 Public Law 377 Appendix B, 114 Stat. 1441A-70) and known more fully as the "San Luis Rey Indian Water Rights Settlement Act."
20. "Settlement Agreement" means the agreement referred to in Section 104 of the Settlement Act among the United States, Escondido, Vista, and the Indian Bands providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings in the United States District Court for the Southern District of California and before the Federal Energy Regulatory Commission.
21. "Settlement Parties" means the Indian Water Authority, the Indian Bands, and the Local Entities.
22. "Supplemental Capacity" means the wholesale capacity, ancillary services, and other associated capacity services that Metropolitan obtains to meet the Colorado River Aqueduct water supply electric loads not met by (i) Contract No. DE-MS65-86WP39583 (Hoover) or its successor, (ii) Contract No. Ilr-712 (Parker) or its successor, or (iii) the District-Edison 1987 Service and Interchange Agreement.
23. "Supplemental Energy" means the wholesale energy, ancillary services, and other associated energy services that Metropolitan obtains to meet the Colorado River Aqueduct water supply electric loads not met by (i) Contract No. DE-MS65-86WP39583 (Hoover) or its successor, (ii) Contract No. Ilr-712 (Parker) or its successor, or (iii) the District-Edison 1987 Service and Interchange Agreement.
24. "Supplemental Water" for the period of time before the requirements of Section 104 of the Settlement Act have been satisfied means water available to MWD under the Allocation Agreement in an amount up to 16,000 acre-feet per year which would have been available to the Settlement Parties had the requirements of Section 104 of the Settlement Act been satisfied. "Supplemental Water" after the requirements of Section 104 of the Settlement Act have been satisfied means water available for the benefit of the Settlement Parties under the Allocation Agreement.
25. "United States" means the United States of America acting by and through its Secretary of the Interior.

**AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 4**

26. "Vista" means the Vista Irrigation District, an irrigation district organized and incorporated under the irrigation district law of the State of California (California Water Code, Division 11).

27. "Year" means calendar year.

28. "Yuma Area Contractors" means the Yuma Arizona Area Aggregate Power Managers as identified in Bureau of Reclamation Contracts numbered 6-CU-30-P1136 and 6-CU-30-P1137. As of the execution of this Agreement, the Yuma Area Contractors are comprised of the Yuma County Water Users' Association and the Wellton-Mohawk Irrigation and Drainage District.

**EXPLANATORY RECITALS**

- A. WHEREAS, the water in the San Luis Rey River, located in San Diego County, California, is insufficient to supply the needs of the Indian Bands and the Local Entities;
- B. WHEREAS, litigation involving the United States, the Indian Bands, and the Local Entities was commenced in Federal District Court to determine the rights of the Indian Bands and the Local Entities to the water of the San Luis Rey River, and a related contested proceeding was commenced among the same parties before the Federal Energy Regulatory Commission;
- C. WHEREAS, Metropolitan is not a party to the pending litigation or the related proceeding before the Federal Energy Regulatory Commission;
- D. WHEREAS, pursuant to Title I of Public Law 100-675, enacted on November 17, 1988, the Congress of the United States passed the San Luis Rey Indian Water Rights Settlement Act to provide for the settlement of the disputes that were the subject of the above-referenced litigation and related proceeding;
- E. WHEREAS, pursuant to the Settlement Act, the United States was authorized to arrange for a supplemental water supply for the Settlement Parties of not more than 16,000 acre-feet per year from the following sources: (1) supplemental water which is developed from public lands within the State of California outside the service area of the Central Valley Project, (2) water conserved through projects to line portions of the All-American Canal and its Coachella Branch, authorized in Title II of said Public Law 100-675, and (3) water obtained through a contract with Metropolitan;
- F. WHEREAS, in a letter agreement dated October 10, 2000, a copy of which is attached hereto as Exhibit A, the Yuma Area Contractors and the Settlement Parties agreed that the Yuma Area Contractors would provide power in an

**AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 5**

amount which would not exceed seven (7) megawatts (MW) of capacity and 32,000 megawatt-hours (MWh) of energy annually, contingent upon enactment of a specified amendment (which later became the Packard Amendment) to the Settlement Act;

- G. WHEREAS, on October 27, 2000, Section 211 of Public Law 106-377 – Appendix B (the “Packard Amendment”) amended the San Luis Rey Indian Water Rights Settlement Act by adding subsection 106(f), which directed the Secretary, in order to fulfill the trust responsibility to the Bands, acting through the Commissioner of Reclamation, to furnish annually to the San Luis Rey Settlement Parties in accordance with the Settlement Agreement: (1) a permanent supply of up to 16,000 acre-feet of the water conserved by lining certain unlined portions of the All-American Canal and its Coachella Branch; and (2) a permanent supply of power capacity and energy through a contract with the Yuma Area Contractors at no cost and at no further expense to the United States and the San Luis Rey Settlement Parties in an amount sufficient to convey the Settlement Parties’ portion of the conserved water from Lake Havasu through the Colorado River Aqueduct and to the places of use on the Bands’ reservations or in the service areas of Escondido and Vista;
- H. WHEREAS, the Parties anticipate that the Supplemental Water will become available incrementally, as certain unlined portions of the All American Canal and its Coachella Branch are lined;
- I. WHEREAS, the All-American Canal Lining Project and the Coachella Canal Lining Project are being constructed for the purpose of conserving water from the Colorado River which is now lost due to seepage, and when said projects have been constructed, Metropolitan and the San Diego County Authority will be able to obtain water as a result of those lining projects for municipal and domestic purposes within their service areas;
- J. WHEREAS, all Parties also recognize that Section 106 of the Settlement Act provides that the Secretary may utilize existing programs and authorities to facilitate the development of water for the Settlement Parties;
- K. WHEREAS, all Parties recognize that arrangements with Metropolitan for exchange of the Supplemental Water offer the most practical means for making the Supplemental Water available for use by the Settlement Parties, and, accordingly, all Parties have an interest in insuring the availability of the physical and economic infrastructure necessary to enable the use of the Supplemental Water developed under the Settlement Act;
- L. WHEREAS, all Parties wish to finalize a set of arrangements that provide Metropolitan with equitable and sustainable consideration for its role in

## AGREEMENT RELATING TO SUPPLEMENTAL WATER

October 10, 2003

Page 6

providing for the timely utilization of the Supplemental Water by the Settlement Parties;

- M. WHEREAS, the Parties are committed to achieving the completion of these efforts which will allow them to commit staff and resources to the remaining critical activities necessary to implement the All American Canal Lining Project, the Coachella Canal Lining Project and the Settlement Act; and
- N. WHEREAS, all Parties recognize that the Settlement Parties have made significant contributions to the lining of the All American Canal and its Coachella Branch, and that the Department of the Interior has utilized and will continue to utilize its existing programs and authorities to promote mutually advantageous relationships among the Settlement Parties, Metropolitan, and the United States.

### TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual covenants contained herein, Metropolitan, the United States, the Indian Water Authority, the Bands, and the Local Entities agree to the delivery and exchange of Supplemental Water and other valuable consideration in accordance with the following terms and conditions:

**1. Quantity of Water Furnished by the United States.**

The United States shall furnish Metropolitan with up to 16,000 acre-feet of Supplemental Water per year. The precise amount of Supplemental Water furnished shall be determined in accordance with the Allocation Agreement.

**2. Term.**

This Agreement shall commence on its effective date as defined in Section 28 and shall remain in effect for so long as Supplemental Water conserved by the All American Canal and Coachella Canal Lining Projects is available for use by the Settlement Parties.

**3. Delivery Points of Supplemental Water to Metropolitan.**

The United States shall furnish all Supplemental Water to be delivered to or exchanged with Metropolitan at the intake to Metropolitan's Colorado River Aqueduct, at a successor or substitute facility, or at such other location as is mutually agreed by the Parties.

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 7**

### **4. Delivery of Electrical Energy to Metropolitan.**

a. Until the requirements of Section 104 of the Settlement Act have been satisfied, electrical energy provided by the Yuma Area Contractors pursuant to their letter agreement with the Settlement Parties dated October 10, 2000, shall be furnished to Metropolitan at the Gene Tie (subject to agreement with the Western Area Power Administration) or other mutually agreed upon location, at no cost and at no further expense to Metropolitan, the United States, or the Settlement Parties, 2,000 kWh of electrical energy for each acre-foot of Supplemental Water delivered each year. To the greatest extent feasible, said electrical energy shall be furnished continuously for delivery of such water.

b. After the requirements of Section 104 of the Settlement Act have been satisfied:

i. Electrical energy provided by the Yuma Area Contractors pursuant to their letter agreement with the Settlement Parties dated October 10, 2000 and/or the Packard Amendment, shall be furnished to Metropolitan at the Gene Tie (subject to agreement with the Western Area Power Administration) or other mutually agreed upon location, at no cost and at no further expense to Metropolitan, the United States, or the Settlement Parties, 2,000 kWh of electrical energy for each acre-foot of water exchanged each year. To the greatest extent feasible, said electrical energy shall be furnished continuously for exchange of water pursuant to this Agreement.

ii. If and to the extent that said electrical energy is not furnished through the Yuma Area Contractors as described in subparagraph i, the United States, pursuant to the Packard Amendment, shall nonetheless furnish said power annually and permanently at the lowest rate assigned to project use power within the jurisdiction of the Bureau of Reclamation in accordance with Exhibit E "Project Use Power" of the Agreement between Water and Power Resources Service, Department of the Interior, and Western Area Power Administration, Department of Energy (March 26, 1980), and the Settlement Parties shall pay the United States at such lowest rate assigned to project use power for all such power furnished. Such energy shall be furnished to Metropolitan at the Gene Tie (subject to agreement with the Western Area Power Administration) or other mutually agreed upon location.

iii. If and to the extent that said electrical energy is not furnished through the Yuma Area Contractors as described in subparagraph i, above, or by the United States as described in subparagraph ii, above, at their option, the Settlement Parties may furnish some or all of the electrical energy needed by Metropolitan to convey the Supplemental Water.

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 8**

iv. In the event and to the extent that neither the Yuma Area Contractors, the United States, nor the Settlement Parties furnish to Metropolitan 2,000 kWh of electrical energy for each acre foot of water to be exchanged, Metropolitan shall obtain said power from sources available to it, and the United States shall pay Metropolitan with funds previously advanced by the Settlement Parties for such power at Metropolitan's Average Unit Cost of Supplemental Power.

c. Subsections a and b are not intended to affect, modify, or negate any obligation that the Yuma Area Contractors or the United States may have to provide power pursuant to the Packard Amendment, the October 10, 2000 letter agreement between the Yuma Area Contractors and the Settlement Parties, or any other law or agreement, nor are they intended to affect any remedy that may be available to enforce those obligations.

d. Nothing in this Section creates any obligation of any kind for the United States to either provide or pay for transmission

### **5. Delivery and/or Exchange of the Supplemental Water.**

a. Prior to the satisfaction of the requirements of Section 104 of the Settlement Act, the United States shall deliver to Metropolitan all or any portion of said Supplemental Water to the extent that such Supplemental Water would not displace any other water allocated to Metropolitan due to the availability of surplus water. Such Supplemental Water shall be delivered to Metropolitan in accordance with a monthly schedule provided by Metropolitan to the United States.

b. After the requirements of Section 104 of the Settlement Act have been satisfied, the United States shall deliver to Metropolitan all available Supplemental Water and Metropolitan shall provide by exchange a quantity of water to the United States for use by the Settlement Parties which is equal to the quantity of Supplemental Water delivered to Metropolitan

### **6. Payments to Metropolitan for Providing Exchange Water.**

a. The Settlement Parties shall advance funds to the United States for the purpose of making payments under this Section 6.

b. Metropolitan shall be paid \$97.19 for each acre-foot of water Metropolitan provides to the United States for use by the Settlement Parties in 2003 in exchange for Supplemental Water furnished to Metropolitan. Thereafter, the amount paid will increase at the rate of one and fifty-five hundredths percent (1.55%) per year for as long as this Agreement is in effect. A table showing the escalation of the payment per acre-foot through 2032 pursuant to this provision is attached as Exhibit B.



## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 9**

c. In addition, Metropolitan shall be paid Metropolitan's Treatment Charges for all treated water provided to the United States for use by the Settlement Parties in exchange for Supplemental Water.

d. No other fees or charges, including but not limited to taxes, in lieu taxes, or annexation fees, shall be assessed or imposed by Metropolitan on the United States or the Settlement Parties in return for providing water in exchange for Supplemental Water.

e. Metropolitan shall invoice the United States and the United States shall make payments to Metropolitan, from funds previously received from the Settlement Parties, for the water provided by exchange in accordance with the provisions in Metropolitan's Administrative Code, sections 4507 and 4508, Billings and Payment for Water Deliveries, Additional Payment and Reporting in the Event of Delinquency in Payment for Water, as amended from time to time by Metropolitan's Board of Directors. It shall be the responsibility of Metropolitan to keep the United States and the Settlement Parties informed of amendments to these sections of its Administrative Code, but Metropolitan's failure to do so shall not relieve the United States of its obligations to make payments in accordance therewith from funds previously received from the Settlement Parties.

f. In the event the United States fails to make the payments required by this Agreement, Metropolitan shall give notice of such failure to the United States and to the Settlement Parties, along with a statement of the amount of the payment necessary to cure, and the United States and Settlement Parties shall have thirty (30) days from the date of such notice within which to cure. Only if the United States or the Settlement Parties do not timely cure may Metropolitan, in its sole discretion, terminate the exchange of Supplemental Water until all delinquent payments, including any applicable additional charges, have been paid.

g. Termination of the exchange of Supplemental Water until delinquent payments have been made, as provided in subsection 6.f, above, and dispute resolution as provided in Sections 16, 17, and 18, below, shall be Metropolitan's sole remedies for the failure of the United States or the Settlement Parties to make payments required by this agreement, provided that if Metropolitan has not been paid all amounts required by an arbitrator's award which has determined the amount owed within six months after a court of competent jurisdiction has entered a judgment or decree enforcing such arbitrator's award and that judgment or decree has become final, this Agreement shall automatically terminate with no further action required by Metropolitan.

### **7. Payments from Metropolitan for Supplemental Water and Related Power Delivered Prior to Satisfaction of Section 104.**

a. As and to the extent that the Supplemental Water becomes available for use by Metropolitan as provided in subsection 5.a, above, Metropolitan shall pay the Indian Water Authority for such water at the rate of the greater of:

## AGREEMENT RELATING TO SUPPLEMENTAL WATER

October 10, 2003

Page 10

- i. \$200.00 per acre-foot commencing on the effective date of this Agreement, or
- ii. \$200.00 per acre-foot indexed to the annual change in the sum of Metropolitan's volumetric rates for water service commencing one year following the effective date of this Agreement.

b. As and to the extent that electrical energy becomes available for use by Metropolitan to pump Supplemental Water as provided in Section 4.a, above, Metropolitan shall compensate the Indian Water Authority for power capacity and energy made available to Metropolitan for said purpose by the Yuma Area Contractors in an amount sufficient to pump the Supplemental Water in an amount per Megawatt-hour (MWh) which shall be determined by calculating the simple monthly average of off-peak energy prices for the month using the average of two widely published sources of energy indices. The index utilized will be that which most closely corresponds to the region in which Metropolitan procures Supplemental Energy; presently this region is designated South-Path 15 (SP-15). The sources of energy prices which shall be used shall be the Platts' Market Report and the Wall Street Journal's DJ Electricity Price Index, or their successors.

c. The Indian Water Authority shall invoice Metropolitan for Supplemental Water and for the power furnished by the Yuma Area Contractors for use in delivering such water in the month following the month in which the Supplemental Water is delivered to Metropolitan by the United States for its use pursuant to this Agreement, and Metropolitan shall pay all such invoices within 30 days of receipt.

d. Until the requirements of Section 104 of the Settlement Act are satisfied, the money paid by Metropolitan pursuant to this Section shall be held in trust by Metropolitan for the Indian Water Authority. It may be commingled with other Metropolitan funds, and shall bear interest at the average rate of interest earned by Metropolitan on its funds. Metropolitan shall provide monthly notices to the Indian Water Authority describing the status of the money held in trust pursuant to this Section 7, including the amount of interest earned on that money.

e. After the requirements of Section 104 of the Settlement Act have been satisfied, the money held by Metropolitan pursuant to this Section, including all accrued interest, shall be paid to the Indian Water Authority.

f. In lieu of the amounts set forth above, Metropolitan may pay for each acre foot of Supplemental Water made available for use by Metropolitan as provided in subsection 5.a, above, (including the 2,000 kilowatt-hours of electrical energy furnished to Metropolitan for pumping of that water) such amount as is mutually agreed by the Indian Water Authority and Metropolitan.

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 11**

### **8. Temporary Disruptions.**

a. After the requirements of Section 104 of the Settlement Act have been satisfied, if and to the extent that Supplemental Water is not provided by the United States to Metropolitan due to a temporary disruption in its availability, Metropolitan, at the request of the Indian Water Authority, shall sell to the United States water needed by the Indian Bands for their use up to the amount of Supplemental Water temporarily disrupted, but only to the extent that providing such water will not result in shortages to Metropolitan's member public agencies. The United States shall pay Metropolitan its then current water rates and charges for this water from funds previously received from the Indian Water Authority in accordance with the procedures set forth in Section 6. Temporary disruptions shall not affect the term of this Agreement.

b. Metropolitan shall invoice the United States and the United States shall make payments to Metropolitan, from funds previously received from the Indian Water Authority, for the water provided pursuant to this Section in accordance with the provisions in Metropolitan's Administrative Code, Sections 4507 and 4508, Billings and Payment for Water Deliveries, Additional Payment and Reporting in the Event of Delinquency in Payment for Water, as amended from time to time by Metropolitan's Board of Directors. It shall be the responsibility of Metropolitan to keep the United States and the Settlement Parties informed of amendments to these sections of its Administrative Code, but Metropolitan's failure to do so shall not relieve the United States of its obligations to make payments in accordance therewith from funds previously received from the Indian Water Authority.

c. In the event the United States fails to make the payments required by this Section, Metropolitan shall give notice of such failure to the United States and the Indian Water Authority, along with a statement of the amount of the payment necessary to cure, and the United States and the Indian Water Authority shall have thirty (30) days from the date of such notice within which to cure. Only if the United States or the Indian Water Authority does not timely cure may Metropolitan, in its sole discretion, terminate the provision of water during a temporary disruption until all delinquent payments, including any applicable additional charges, have been paid.

d. Termination of the provision of water during a temporary disruption of Supplemental Water until delinquent payments have been made, as provided in subsection c, above, and dispute resolution as provided in Sections 16, 17, and 18, below, shall be Metropolitan's sole remedies for the failure of the United States and the Indian Water Authority to make payments required by this Section.

### **9. Provision of Water by Metropolitan.**

a. To the extent that it is operationally feasible, the Settlement Parties shall be permitted, at no expense to Metropolitan, to have one or more direct connections to Metropolitan's water distribution system constructed, either by themselves or in

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 12**

conjunction with others. Any such connection(s) shall be constructed either using the procedures set forth in Sections 4700 et seq. of Metropolitan's Administrative Code for construction of service connections requested by member public agencies, or pursuant to separate agreement with Metropolitan, and shall be subject to applicable environmental compliance.

b. Metropolitan shall provide water in exchange for Supplemental Water and any water provided in the event of temporary disruptions of Supplemental Water at the terminus of Metropolitan's water distribution system in San Diego County and/or at one or more direct connections to Metropolitan's water distribution system.

c. In the event there is a failure or malfunction in any part of Metropolitan's water distribution or conveyance system between the point where the United States furnishes Supplemental Water to Metropolitan and the point in Metropolitan's distribution or conveyance system where Metropolitan is to provide water to the United States for use by the Settlement Parties, including but not limited to a failure or malfunction caused by an Uncontrollable Force, Metropolitan will provide water to the United States for use by the Settlement Parties in the same manner as it provides water to its member public agencies which receive water from the same pipelines.

d. The water provided by Metropolitan pursuant to this Agreement shall be metered at the point or points of transfer from Metropolitan's water distribution system described in paragraph 9(b) above. Metropolitan shall not be responsible for any loss of water after the water leaves its distribution system.

e. All requests for water pursuant to this Agreement shall be made as follows:

i. For water which is to be provided via direct connections to Metropolitan's water distribution system, requests shall be made directly to Metropolitan in accordance with Metropolitan's procedures in effect at the time of the request for similar requests by its member public agencies.

ii. For water that is to be provided via facilities that are owned by other entities, requests shall be made in conjunction with such other entities.

f. Metropolitan shall not be responsible for any costs incurred in delivering the water beyond Metropolitan's existing distribution system.

g. The Settlement Parties shall also provide Metropolitan with an estimate of the schedule for the provision of water before April 1 of each year, in form provided by Metropolitan, with an estimate of the amounts of water to be furnished through any direct connection to Metropolitan's distribution system. Each estimate shall contain, at a minimum, for each direct connection to Metropolitan's distribution system and for each month of the year beginning with the succeeding July 1, and for all service connections

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 13**

collectively for each month of the succeeding four years, the quantity of water to be provided directly by Metropolitan to the United States. The estimate shall constitute the Settlement Parties' initial request for deliveries for the first of the five years covered therein.

### **10. Quality of Water Provided by Metropolitan**

The United States may obtain either treated or untreated water from Metropolitan for use by the Settlement Parties pursuant to this Agreement, and Metropolitan shall only be obligated to provide water of the same quality as is or would be provided to its member public agencies at the same point for treated or untreated water, as the case may be.

### **11. Use of Water Provided.**

a. Subject to any applicable federal approvals, the water provided by Metropolitan in exchange for Supplemental Water furnished to it by the United States shall only be:

- i. used by the Bands on their reservations,
- ii. used by the Local Entities within their service areas,
- iii. exchanged for water from other sources for use on the Bands' reservations or in the Local Entities' service areas, and/or
- iv. leased by the Bands for use by the Local Entities in their service areas.

b. Water provided by Metropolitan through this Agreement shall not be used in any manner that results in such water or water exchanged for such water being used outside of the reservations or outside of the service areas of the Local Entities or in a manner that would permit or result in a displacement of a sale of water by Metropolitan to persons other than the Settlement Parties.

c. Any deliveries of water to the United States for use by the Settlement Parties using facilities owned by persons or entities who are not parties to this Agreement will be the subject of a separate agreement or agreements between the United States and/or the Settlement Parties and such persons or entities.

d. Nothing in this Section shall be construed as consent by Metropolitan to use of water provided by Metropolitan to the United States for use by the Indian Water Authority or any or all of the Indian Bands outside of the boundaries of the reservations or the service areas of the Local Entities.

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 14**

### **12. Reliability of Deliveries.**

Deliveries of available supplies to the United States for the use of the Settlement Parties will be made in the same manner as deliveries to Metropolitan's member public agencies that receive deliveries from the same pipeline(s). Whenever repairs or maintenance of Metropolitan's distribution system shall require suspension of delivery of water, such delivery may be suspended without liability on the part of Metropolitan provided, that except in cases of emergency, as determined by the Chief Executive Officer of Metropolitan, notice of such suspension of service shall be given to the Settlement Parties in advance of such suspension.

### **13. Indemnity and Hold Harmless.**

Except for the United States, which shall be neither benefited nor burdened by this indemnity and hold harmless provision, each Party agrees to defend, indemnify and hold harmless the other Parties, their directors, agents, officers, employees, and authorized volunteers, from all costs, damages, liability, and claims caused by or arising out of or relating to that Party's own negligence. To the extent that more than one Party is determined to have been negligent, the Parties agree that each Party shall bear its own portion or percentage of liability based on principles of comparative fault and to indemnify and hold harmless the other Parties from that share.

### **14. Amendment.**

Except as expressly provided herein, this Agreement contains the entire agreement between the Parties relating to the transactions contemplated hereby, and prior or contemporaneous agreements, understandings, or representations and statements, oral or written, are merged herein. No modification, waiver, amendment, discharge, or change of this agreement shall be valid unless the same is in writing and signed by the Parties against whom enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

### **15. Assignment; Successors in Interest.**

No Party may assign or transfer any of its rights or obligations under this Agreement without the express written consent of all of the other Parties hereto. This Agreement shall be binding on and inure to the benefit of the Parties and their successors in interest.

### **16. Dispute Resolution; Mediation.**

a. If a dispute not involving the United States arises out of or relates to this Agreement, or the breach thereof, and it is not resolved informally, the Parties shall attempt to resolve it by using the procedures set forth in this Section before resorting to arbitration or litigation. A Party requesting resolution of a dispute shall send written

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 15**

notice to all other Parties that shall set forth in detail the position of the Party requesting resolution. Within 60 days of the notice being sent, the Secretary, the General Manager of the Indian Water Authority, the chairperson of each of the Indian Bands, the Chief Executive Officer of Metropolitan, the Utilities Director of Escondido, and the General Manager of Vista or the respective authorized representatives of the Parties shall schedule a meeting, meet and attempt to resolve the dispute by a unanimous decision. In the event that all Parties' representatives are not present, a letter with the proposed action, signed by all the attending Parties' representatives, shall be sent to the absent Party's (Parties') representative(s) by certified mail, postage prepaid, return receipt requested. If no written protest from the absent Party's (Parties') representative is received by the other Parties within 60 days of the date of receipt of the letter with the proposed action, the decision shall be deemed unanimous and become final. Any written protest shall be mailed to each other Party's representative, and to each of the Parties by certified mail, postage prepaid, return receipt requested. Each Party shall bear its own expense for the dispute resolution proceedings. Any resolution shall be in writing and be binding on the Parties to this Agreement.

b. If said dispute cannot be settled through negotiation or through the procedure described above within 90 days of the conclusion of the dispute resolution meeting, the Parties agree to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association.

### **17. Dispute Resolution by Arbitration if Mediation Fails.**

a. In the event that any dispute not involving the United States is not resolved using the procedure set forth in Section 16 above, said dispute shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules except as provided herein and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

b. Within thirty days after commencement of arbitration, the Settlement Parties/United States and Metropolitan shall each select one person to act as arbitrator, and the two selected shall select a third arbitrator within thirty days of their appointment. If the arbitrators selected by the Parties are unable to or fail to agree upon a third arbitrator, the American Arbitration Association shall select the third arbitrator. The third arbitrator shall act as chairperson of the arbitration panel and shall be independent from all Parties, having no past, present or pending relationship with any of the parties, unless unanimously consented thereto by the Parties to the dispute.

c. Arbitration shall be limited to the consideration and resolution of the issue(s) submitted. The panel of arbitrators shall not rewrite, change, or amend this Agreement. Any payment adjustments shall accrue interest monthly at the average rate earned by Metropolitan on its funds from the date the adjusted payment should have been paid until paid in full.

## **AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 16**

d. The award of the arbitrators shall be in writing, shall be accompanied by a reasoned opinion, shall be signed by a majority of the arbitrators, and shall be rendered within 120 days after the date of the selection of the third arbitrator. Each Party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. The administrative fees of arbitration and arbitrators' fees shall be borne 50 percent by Metropolitan and 50 percent by the Indian Water Authority, Vista, and Escondido, jointly.

### **18. Disputes Involving the United States.**

Disputes under this Agreement involving the United States shall be presented first to the Regional Director of the Lower Colorado Region of the Bureau of Reclamation. The Regional Director shall be deemed to have denied the other Party's(ies') contention or claim if it is not acted upon within 30 days of its having been presented. The decision of the Regional Director shall be subject to appeal to the Commissioner of Reclamation by a notice of appeal accompanied by a statement of reasons filed with the Commissioner of Reclamation within 30 days after such decision. The Commissioner of Reclamation shall be deemed to have denied the other Party's(ies') contention or claim if it is not acted upon within 30 days of its having been presented. The decision of the Commissioner of Reclamation shall be subject to appeal to the Secretary by a notice of appeal accompanied by a statement of reasons filed with the Secretary within 30 days after such decision. The Secretary shall be deemed to have denied the appeal if it is not acted upon within 30 days of its having been presented. The decision of the Secretary may then be appealed to the federal courts to the extent permitted by and in accordance with federal law.

### **19. Waiver of Sovereign Immunity.**

The Indian Water Authority and the Indian Bands hereby each grant a limited waiver of sovereign immunity from an unconsented suit for the sole purpose of permitting or compelling arbitration as provided in Section 18 and consent to the jurisdiction of, and to be sued in, the United States District Court for the Southern District of California, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court for the purpose of compelling arbitration or enforcing an arbitration award or judgment. If the United States District Court for the Southern District of California lacks jurisdiction, the Indian Water Authority and the Indian Bands consent to be sued in the California state court system, or any other court of competent jurisdiction. The Indian Water Authority and the Indian Bands hereby waive any requirement of exhaustion of tribal remedies. The Indian Water Authority and the Indian Bands do not waive any aspect of their sovereign immunity with respect to actions by persons or entities not parties to this Agreement. This waiver of sovereign immunity from suit is limited to (i) an action to compel arbitration pursuant to Section 18 of this Agreement; and (ii) enforcement of a determination by the arbitrators that the Indian Water Authority or the Indian Bands owe money pursuant to the terms of this Agreement.



**AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 17**

**20. Agreement Not a Precedent.**

This Agreement shall not be regarded as a precedent for future delivery and exchange agreements or other arrangements.

**21. Settlement Act Not Affected.**

Nothing in this Agreement shall be deemed to modify or affect the obligations and responsibilities of the United States and the Settlement Parties under the Settlement Act.

**22. Non-Waiver.**

None of the provisions of this Agreement shall be considered waived by any Party except when such waiver is given in writing. The failure of any Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or their relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

**23. No Third-Party Rights.**

The Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established hereunder.

**24. Uncontrollable Force.**

None of the Parties shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" shall mean an action of the elements, excluding severe and/or prolonged low-flow conditions on the Colorado River; the act or threat of any public enemy; Acts of God; court order; war and war defense conditions; and strikes or other labor disputes; or other causes beyond its control. Each Party shall use reasonable diligence to avoid any such delay or default and to resume performance under this Agreement as promptly as possible after any such delay or default. However, nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force shall give prompt written notice of such fact to the other Parties and shall exercise due diligence to remove such inability to the fullest extent practicable with all reasonable dispatch.

**AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 18**

**25. Governing Law.**

This Agreement shall be interpreted, governed by and construed under applicable federal law and the laws of the State of California to the extent such state laws are not inconsistent with any applicable federal law.

**26. Notices.**

Any notice given under this Agreement shall be effective when deposited postage prepaid with the United States Postal Service, addressed to the respective parties as follows:

Secretary of the Interior  
U.S. Department of the Interior  
18<sup>th</sup> and C Streets, Northwest  
Washington, D. C. 20240

Chief Executive Officer  
The Metropolitan Water District  
of Southern California

By personal service or overnight delivery:  
700 North Alameda Street  
Los Angeles, California 90012-2944

By U.S. mail:  
Post Office Box 54153  
Los Angeles, California 90054-0153

General Manager  
San Luis Rey River Indian Water Authority  
1010 Pauma Reservation Road  
P.O. Box 428  
Pauma Valley, California 92061

City Manager  
(With additional copy to City Attorney)  
City of Escondido  
201 North Broadway  
Escondido, California 92025

General Manager  
Vista Irrigation District  
1391 Engineer Street  
Vista, California 92081-8836

**AGREEMENT RELATING TO SUPPLEMENTAL WATER**

**October 10, 2003**

**Page 19**

La Jolla Band of Mission Indians  
Attn: Chairperson  
22000 Hwy. 76 Pauma Valley, California 92061

Pala Band of Mission Indians  
Attn: Chairperson  
35955 Pala Temecula Road  
P.O. Box 50  
Pala, California 92059-0043

Pauma Band of Mission Indians  
Attn: Chairperson  
1010 Pauma Reservation Road  
P.O. Box 369  
Pauma Valley, California 92061

Rincon Band of Mission Indians  
Attn: Chairperson  
33750 Valley Center Road  
P.O. Box 68  
Valley Center, California 92082

San Pasqual Band of Mission Indians  
Attn: Chairman  
27458 N. Lake Wohlford Road  
P.O. Box 365  
Valley Center, California 92082

**27. Change of Address.**

Any Party may change the addressee or address to which notices are to be sent by giving notice of such change of addressee or address in conformity with the provisions of Section 26 for the giving of notice.

**28. Effective Date and Approval.**

The effective date of this Agreement shall be the last date on which all of the following events shall have occurred:

a. Approval by the governing bodies of Metropolitan, Escondido, Vista, the Indian Water Authority, and each of the Indian Bands, and due execution of this Agreement by all Parties.

b. Execution of this Agreement by the Secretary.

**AGREEMENT RELATING TO SUPPLEMENTAL WATER**

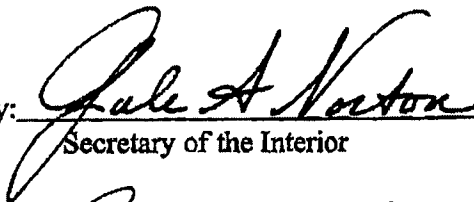
**October 10, 2003**

**Page 20**

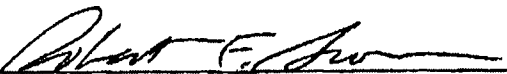
c. The Allocation Agreement has become effective.

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

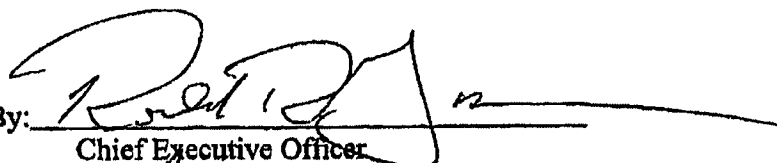
UNITED STATES OF AMERICA

By:   
Secretary of the Interior

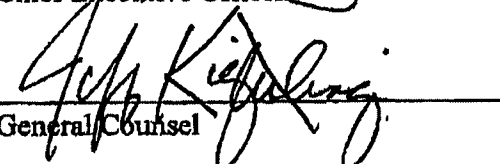
Approved as to form:

By: 

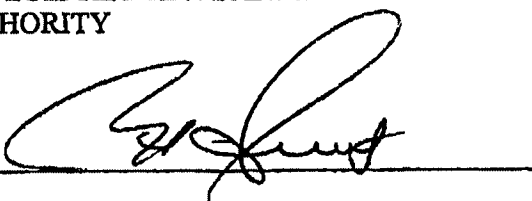
THE METROPOLITAN WATER DISTRICT OF  
SOUTHERN CALIFORNIA

By:   
Chief Executive Officer

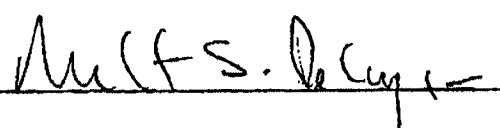
Approved as to form:

By:   
General Counsel

SAN LUIS REY RIVER INDIAN WATER  
AUTHORITY

By: 

Approved as to form:

By: 

**AGREEMENT RELATING TO SUPPLEMENTAL WATER**  
**October 10, 2003**  
**Page 21**

**LA JOLLA BAND OF MISSION INDIANS**

By: *[Signature]* *Chairman*

Approved as to form:

By: *[Signature]*

**RINCON BAND OF MISSION INDIANS**

By: *[Signature]*

Approved as to form:

By: *[Signature]*

**SAN PASQUAL BAND OF MISSION INDIANS**

By: *[Signature]*

Approved as to form:

By: *[Signature]*

**PAUMA BAND OF MISSION INDIANS**

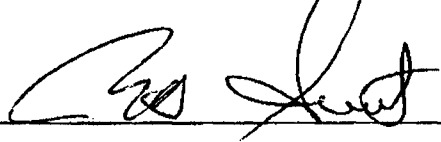
By: *[Signature]*

Approved as to form:

By: *[Signature]*

**AGREEMENT RELATING TO SUPPLEMENTAL WATER**  
**October 10, 2003**  
**Page 22**

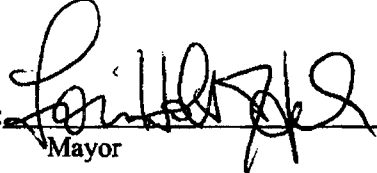
**PALA BAND OF MISSION INDIANS**

By: 

Approved as to form:

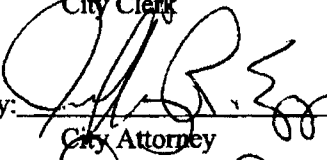
By: Barbara Kershner


**CITY OF ESCONDIDO**

By:   
Mayor

By:   
City Clerk

Approved as to form:


By:   
City Attorney

By:   
Special Counsel


**AGREEMENT RELATING TO SUPPLEMENTAL WATER**  
**October 10, 2003**  
**Page 23**

VISTA IRRIGATION DISTRICT

By:   
President, Board of Directors

By:   
General Manager

Approved as to form:

By:   
General Counsel

**YUMA AREA AGGREGATE POWER MANAGERS**

Wellton-Mohawk Irrigation & Drainage District  
30570 Wellton-Mohawk Drive  
Wellton, Arizona 85356  
(520) 785-3351  
(520) 785-3389 fax

Yuma County Water Users' Association  
Post Office Box 5775  
Yuma, Arizona 85366-5775  
(520) 627-8824  
(520) 627-3065 fax

October 10, 2000

Ben Magante, President  
San Luis Rey River Indian Water Authority  
P.O. Box 428  
Pauma Valley, California 92061

Jeffrey R. Epp, City Attorney  
City of Escondido  
Civic Center Plaza  
201 North Broadway  
Escondido, California 92025

John A. Amodeo, General Manager and Chief Engineer  
Vista Irrigation District  
202 West Connecticut Avenue  
Vista, California 92083-3696

**Re: Provision of power capacity and energy for the benefit of the San Luis Rey Indian Water Rights Settlement**

Gentlemen:

Pending legislation would give the Indian Bands represented by the San Luis Rey River Indian Water Authority, the City of Escondido, and Vista Irrigation District ("Settlement Parties") the right to power capacity and energy at Parker-Davis project use rates sufficient to convey up to 16,000 acre-feet of water from Lake Havasu through the Colorado River Aqueduct and to the places of use on the Bands' reservations or in the local entities' service areas in San Diego County. Such a right could be incompatible with the interests of the Yuma County Water Users' Association and the Wellton-Mohawk Irrigation and Drainage District which together comprise the Yuma Area Aggregate Power Managers ("Yuma Area Contractors") as identified in Bureau of Reclamation Contracts numbered 6-CU-30-P1136, 6-CU-30-P1137, and 6-CU-30-P1138 ("Yuma Area Contracts").

The Yuma Area Contractors seek the assistance of the Settlement Parties to avoid such a result, to provide at no expense power capacity and energy sufficient to convey 16,000 acre-feet of water annually as described below, and further to obtain authorization from the Secretary of the Interior for the Yuma Area Contractors to use permanently federal project use power for the full range of purposes as identified in the Yuma Area Contracts. In consideration for the assistance of the Settlement Parties in obtaining that authority, and for other good and valuable consideration, the Yuma Area Contractors, their successors and assigns, hereby agree to provide



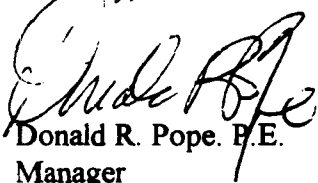
Messrs. Magante, Epp and Amodeo  
October , 2000  
Page 2

annually and permanently, at no cost to the United States, the Bands as defined in section 102(1) of Public Law 100-675, the Indian Water Authority as defined in Section 102(3) of Public Law 100-675, and the local entities as defined in section 102(4) of Public Law 100-675, not to exceed seven (7) megawatts capacity and 32,000 megawatt hours energy annually to convey 16,000 acre-feet of water (estimated at 2000 kilowatt hours per acre-foot) from Lake Havasu through the Colorado River Aqueduct and to the places of use on the Bands' reservations or in the local entities' service areas. Provision of such power capacity and energy shall be contingent upon enactment into law of the amendment to Section 106 of the of the San Luis Rey Indian Water Rights Settlement Act (Public Law 100-675, 102 Stat. 4000) attached hereto and commence on the date when conserved water from the works authorized by Title II of Public Law 100-675 first becomes available.

The undersigned represent that they are fully authorized to make this agreement on behalf of the Yuma Area Contractors.

Please indicate your agreement and acceptance at the foot of this letter. This may be executed in counterparts. Time is of the essence.

Sincerely,




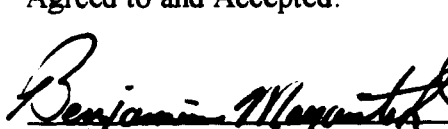
Donald R. Pope, P.E.  
Manager  
Yuma County Water Users' Association  
Yuma, Arizona 85364



C. L. Clyde Gould  
General Manager  
Wellton-Mohawk Irrigation and Drainage District  
Wellton, Arizona 85356

Attachment

Agreed to and Accepted:



Ben Magante, President  
San Luis Rey River  
Indian Water Authority

Jeffrey R. Epp, City Attorney  
City of Escondido



John A. Amodeo  
General Manager and  
Chief Engineer  
Vista Irrigation District

Date 10-14-00

Date 10/19/00

Date 10/23/00

