

**LOWER COLORADO RIVER  
MULTI-SPECIES CONSERVATION PROGRAM**

**FUNDING AND MANAGEMENT AGREEMENT**

**April 4, 2005**

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Signature Pages

- Exhibit A-1 Timeline for Lower Colorado River Multi-Species Conservation Program
- Exhibit A-2 Fiscal Year Inflation Calculation
- Exhibit A-3 Funding, Indexing, and Inflation Adjusted Changes in Funding
- Exhibit A-4 Calculation of Non-Federal Shares and Arizona Make-Up Payments for  
Years 1-10

**LOWER COLORADO RIVER  
MULTI-SPECIES CONSERVATION PROGRAM  
FUNDING AND MANAGEMENT AGREEMENT**

**1. PARTIES**

This Lower Colorado River Multi-Species Conservation Program (LCR MSCP) Funding and Management Agreement (Agreement) is made and entered into by and among the following Parties:

***Arizona Parties:*** The Arizona Department of Water Resources; Arizona Electric Power Cooperative, Inc.; Arizona Game and Fish Commission; Arizona Power Authority; Central Arizona Water Conservation District; Cibola Valley Irrigation and Drainage District; City of Bullhead City; City of Lake Havasu City; City of Mesa; City of Somerton; City of Yuma; Electrical District No. 3, Pinal County, Arizona; Golden Shores Water Conservation District; Mohave County Water Authority; Mohave Valley Irrigation and Drainage District; Mohave Water Conservation District; North Gila Valley Irrigation and Drainage District; Salt River Project Agricultural Improvement and Power District; Town of Fredonia; Town of Thatcher; Town of Wickenburg; Unit “B” Irrigation and Drainage District; Wellton-Mohawk Irrigation and Drainage District; Yuma County Water Users’ Association; Yuma Irrigation District; Yuma Mesa Irrigation and Drainage District.

***California Parties:*** The City of Needles; the Coachella Valley Water District; the Colorado River Board of California; the Imperial Irrigation District; the Los Angeles Department of Water and Power; the Palo Verde Irrigation District; the San Diego County Water Authority; the Southern California Edison Company; the Southern California Public Power Authority; the Bard Water District; and The Metropolitan Water District of Southern California.

***Federal Parties:*** The Bureau of Reclamation (Reclamation); the Fish and

Wildlife Service (Service); the National Park Service; the Bureau of Indian Affairs; the Bureau of Land Management; the Western Area Power Administration (Western).

***Nevada Parties:*** The Colorado River Commission of Nevada; the Nevada Department of Wildlife; Basic Water Company; and the Southern Nevada Water Authority.

## **2. RECITALS**

### **A. Purposes**

The Lower Colorado River Multi-Species Conservation Program is a cooperative effort between Federal and non-federal entities whose purposes are to:

- conserve habitat and work toward the recovery of threatened and endangered species, as well as reduce the likelihood of additional species being listed;
- accommodate present water diversions and power production and optimize opportunities for future water and power development, to the extent consistent with the law; and
- provide the basis for incidental take authorizations.

### **B. Memorandum of Understanding**

In November 1994, the United States, through the U.S. Department of the Interior; the Arizona Department of Water Resources and the Arizona Game and Fish Commission; the Colorado River Board of California and the California Department of Fish and Game; and the Colorado River Commission of Nevada and the Division of Wildlife of the Nevada State Department of Conservation and Natural Resources entered into a Memorandum of Understanding to create a forum for the consideration of all matters related to the effects of water and power resources development, management, operations, maintenance and replacement, and activities to offset those effects, to endangered, threatened, and candidate species within the historical floodplain of the mainstream of the Colorado River and from the full pool elevation of affected reservoirs (Lakes Mead, Mohave, and Havasu) downstream to the Southerly International Boundary

with Mexico.

**C. Memorandum of Agreement**

On August 2, 1995, the parties to the Memorandum of Understanding entered into a “Memorandum of Agreement for Development of a Lower Colorado River Multi-Species Conservation Program”, which was clarified in a Memorandum of Clarification, signed in June 1996, to acknowledge Federal activities within the 100-year floodplain of the Lower Colorado River (LCR) which are subject to section 7 consultation under the Endangered Species Act (ESA) and to remove any implication of a guarantee of exemption for the signatories from the requirements of that act.

**D. LCR MSCP Agreement**

On June 26, 1996, the U.S. Department of the Interior and representatives of the three Lower Colorado River basin states of Arizona, California, and Nevada entered into that certain “Lower Colorado River Multi-Species Conservation Program Agreement” by which they agreed, subject to appropriation, to a sharing between Federal Parties and State Parties of the costs of developing the LCR MSCP and implementing certain interim conservation measures during fiscal years 1996 through 1999.

**E. Joint Participation Agreement**

Effective on or about May 1, 1997, representatives of the U.S. Department of the Interior (on behalf of the Bureau of Land Management, the Bureau of Reclamation, the Fish and Wildlife Service, and the National Park Service) and the three Lower Colorado River basin states of Arizona, California, and Nevada entered into that certain “Lower Colorado River Multi-Species Conservation Program Joint Participation Agreement” to jointly develop a Lower Colorado River Multi-Species Conservation Program and to formally establish the Steering Committee and other organizational structures necessary for the development of the LCR MSCP.

**F. Cost Sharing Agreement**

Effective on or about May 1, 1997, representatives of the three Lower Colorado River basin states of Arizona, California, and Nevada entered into that certain “Lower Colorado River Multi-Species Conservation Program Inter-State Cost-Sharing Agreement”

to provide funding commitments and arrangements with respect to the non-federal portion of the costs of the LCR MSCP. That agreement was amended, effective February 15, 2001, to provide additional funding with respect to the non-federal portion of the costs of the LCR MSCP for fiscal years 2000 through 2002. Funding for development of the LCR MSCP has been extended through the Effective Date of this Agreement.

#### **G. Completion and Approval**

The Parties now desire to implement the LCR MSCP over a 50-year period. To that end, the Parties are entering into this Agreement, in order to:

- provide for the management and implementation of the LCR MSCP,
- set forth the Federal and non-federal cost share, and
- provide for Contributions to the LCR MSCP.

### **3. DEFINITIONS**

The capitalized terms used in this Agreement shall have the meaning ascribed to them in this section 3. To the extent that the definitions incorporate covenants and agreements, such covenants and agreements shall bind the Parties. Terms used in this Agreement and specifically defined in the ESA or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

1. **“2001 Biological Opinion”** means that biological opinion issued by the Service on January 12, 2001 entitled “Biological Opinion for Interim Surplus Criteria, Secretarial Implementation Agreements, and Conservation Measures on the Lower Colorado River, Lake Mead to the Southerly International Boundary, Arizona, California, and Nevada.”

2. **“Adaptive Management Program”** means the program of adaptive management that will be undertaken by the Parties as part of the Conservation Plan as described in section 11 of the IA and section 5.12 of the HCP.

3. **“Agreement” or “FMA”** means this Funding and Management Agreement.
4. **“BA”** means the biological assessment for the specified Covered Actions and prepared for the LCR MSCP by Reclamation on behalf of the Federal Parties and transmitted to the Service on November 29, 2004, in accordance with section 7 of the ESA.
5. **“Biological Opinion” or “BO”** means the section 7 biological opinion issued by the Service for the LCR MSCP.
6. **“Budget”** means the program Implementation Budget of the LCR MSCP.
7. **“Chair”** means the elected chairperson of the LCR MSCP Steering Committee.
8. **“Commissioner”** means the Commissioner of the Bureau of Reclamation and/or his/her designee.
9. **“Conservation Measure”** means measures identified in Chapter 5 of the HCP for the benefit of the Covered Species or developed pursuant to the Adaptive Management Program, including specific activities implemented on an annual basis by the Program Manager or, in appropriate circumstances, other Parties to this Agreement.
10. **“Conservation Plan”** means the Habitat Conservation Plan described in section 11 of the IA.
11. **“Contribution”** means In-Kind Goods or Services approved by the Steering Committee and Program Manager or funds provided to Reclamation to be used in implementing the LCR MSCP.
12. **“Contributor”** means a Party to this Agreement that makes a Contribution.
13. **“Covered Actions”** means those actions described in Chapter 2 of the BA, for which Incidental Take Authorization of Covered Species is sought pursuant to the LCR MSCP.

14. **“Covered Activities”** means those activities described in Chapter 2 of the HCP, for which Incidental Take Authorization of Covered Species is sought pursuant to the LCR MSCP.

15. **“Covered Species”** means those twenty-six (26) species listed in sections 2(C) and 2(D) of the IA.

16. **“Days”** means calendar days unless otherwise specified. If the date of performance is on a Saturday, Sunday, or observed state or Federal holiday, the date of performance shall be construed to be the next business day subsequent to the calculated date of performance.

17. **“Dispute”** means a controversy described in section 7.3.14 of this Agreement and which is subject to the process for resolution provided in section 7.3.15 of this Agreement.

18. **“Effective Date”** means the date on which this Agreement takes effect, as provided in section 6.1 of this Agreement.

19. **“EIS/EIR”** means the joint environmental impact statement and environmental impact report issued pursuant to the National Environmental Policy Act and the California Environmental Quality Act, respectively, for the LCR MSCP.

20. **“ESA”** means the Federal Endangered Species Act of 1973, as amended.

21. **“Fiscal Year”** means the Federal fiscal year, beginning October 1 of one calendar year and ending September 30 of the following calendar year.

22. **“Habitat Conservation Plan”** or **“HCP”** means the habitat conservation plan prepared by the State Parties pursuant to section 10(a)(1)(B) of the ESA for purposes of the LCR MSCP.

23. **“Habitat Maintenance Account”** means an interest bearing account established by one or more of the State Parties from which funds will be made available to Reclamation to maintain existing habitats as provided by section 5.4.2 of the HCP.

24. **“Implementing Agreement”** or **“IA”** means that certain Lower Colorado River Multi-Species Conservation Program Implementing Agreement between the

Federal Parties and the Permittees of the section 10(a)(1)(B) incidental take permit issued by the Service in connection with the LCR MSCP.

25. **“Incidental Take Authorization”** means, collectively, (i) the LCR MSCP section 10(a)(1)(B) incidental take permit and (ii) any incidental take statement issued by the Service as part of a Biological Opinion which authorizes take by Federal agencies pursuant to the LCR MSCP.

26. **“In-Kind Goods or Services”** means contributed time and effort, real and personal property, and goods and services, to include but not limited to: land conservation easements, capital improvements, water, and professional technical services.

27. **“LCR MSCP”** means the Lower Colorado River Multi-Species Conservation Program.

28. **“Lower Colorado River” or “LCR”** means the Colorado River within the planning area as provided in section 2(B) of the IA.

29. **“Member”** means a member of the Steering Committee, as described in sections 7.3.1 and 7.3.2 of this Agreement.

30. **“Non-federal Cost Share”** means fifty percent (50%) of the Program Cost as described in section 8.3 of this Agreement.

31. **“Participant Group”** means a group of organizations participating in the Steering Committee as described in section 7.3.1 of this Agreement.

32. **“Party”** means an entity that is a signatory to this Agreement. Such entities may be referred to individually as “Party” or collectively as “Parties.”

33. **“Permit”** means the section 10(a)(1)(B) incidental take permit issued by the Service pursuant to the HCP for the LCR MSCP.

34. **“Permittee”** means a non-federal person, firm, or entity that has been authorized to take Covered Species pursuant to the IA and the Permit.

35. **“Program Account”** means a financial account established by Reclamation to manage funding associated with implementation of the LCR MSCP.

36. **“Program Cost”** means the total cost of implementing the LCR MSCP over its 50-year term, which is Six Hundred Twenty-Six Million, One Hundred Eighty Thousand Dollars (\$626,180,000) in 2003 dollars, as set forth in Table 7-1 of the HCP, which will be adjusted for inflation as provided in section 8.1.1 of this Agreement.

37. **“Program Documents”** means the LCR MSCP HCP, BA, EIS/EIR, FMA, IA, BO, and the Permit.

38. **“Program Manager”** means an employee of Reclamation whose responsibility it is to plan for and take such actions as may be required to implement the LCR MSCP pursuant to the provisions of this Agreement and the IA.

39. **“Reclamation”** means the Bureau of Reclamation.

40. **“Regional Director”** means the Regional Director of the Lower Colorado Region of Reclamation, as described in section 7.2.1 of this Agreement.

41. **“Secretary”** means the Secretary of the Interior and/or his/her designee.

42. **“State Party”** means an entity described as an Arizona Party, a California Party, or a Nevada Party as defined in section 1 of this Agreement.

43. **“Steering Committee”** means the body established by section 7.3 of this Agreement.

44. **“Trust Funds, Escrow Accounts, or State Treasury Accounts”** means one or more interest bearing accounts established by one or more of the State Parties from which funds will be made available to Reclamation to administer and implement the LCR MSCP.

45. **“Voting Representative”** means the representative of a Member, designated pursuant to section 7.3.6 of this Agreement, who is authorized to vote and otherwise act in the Member’s behalf on matters before the Steering Committee.

#### **4. PRIORITY OF PROGRAM DOCUMENTS**

##### **4.1 Program Documents**

The terms of this Agreement and the terms of the other Program Documents are

intended by the Parties, and shall be interpreted, to be complementary. In the event of any conflict between the terms of this Agreement and the Habitat Conservation Plan (HCP), Biological Assessment (BA), or Environmental Impact Statement/Environmental Impact Report (EIS/EIR), the terms of this Agreement will control. In the event of a conflict between the Implementing Agreement (IA) and this Agreement, the terms of this Agreement will control.

#### **4.2 Permit Controls**

The terms of the Permit and the terms of the other Program Documents are intended by the Parties, and shall be interpreted, to be complementary. In the event of any conflict among the terms of the Permit and other Program Documents, the terms of the Permit will control.

### **5. PREVIOUS AGREEMENTS SUPERSEDED**

This Agreement and the IA are intended to be final and binding agreements among the Parties regarding the LCR MSCP. All other agreements and understandings, written or oral, which have previously been entered into or agreed to by and among the Parties prior hereto regarding the LCR MSCP are superseded by this Agreement and the IA. Notwithstanding the foregoing, nothing in this Agreement or the other Program Documents shall be deemed to supersede any agreement related to the 2001 Biological Opinion and the implementation of the reasonable and prudent measures set forth in the 2001 Biological Opinion.

### **6. EFFECTIVE DATE AND TERM**

#### **6.1 Effective Date**

This Agreement shall become effective as of the date the Permit is issued by the Service.

#### **6.2 Term of Agreement**

This Agreement shall remain in effect for a term of fifty (50) years from the Effective Date, unless terminated or extended prior to that date.

## **7. MANAGEMENT AND IMPLEMENTATION**

### **7.1 Management—In General**

Management of the LCR MSCP and implementation of its terms and the terms of the Permit and the Biological Opinion shall be the responsibility of Reclamation, which, in consultation with the Steering Committee, will employ a person who shall be designated the Program Manager of the LCR MSCP. Reclamation shall cooperate with and coordinate its management and implementation activities for the LCR MSCP with the Service and the other Members of the Steering Committee.

### **7.2 Management by Reclamation**

#### **7.2.1 Program Manager**

The Regional Director of the Lower Colorado Region of Reclamation, in consultation with the Steering Committee, shall appoint a Program Manager, who shall be responsible for operation, management, and implementation of the provisions, terms, and conditions of the Conservation Measures. The Program Manager shall be under the supervision of the Regional Director and shall have an office located within Arizona, California, or Nevada.

#### **7.2.2 Duties of Program Manager**

The Program Manager shall take appropriate action to implement the Conservation Plan and Conservation Measures and obligations set forth in this Agreement, consistent with the provisions of the Program Documents, including, but not limited to the following:

- A. Administer and implement the LCR MSCP in a manner that complies with the requirements of the ESA, other applicable Federal and state laws, and the Program Documents.
- B. Direct the preparation of LCR MSCP implementation schedules and cost estimates, an annual program Implementation Work Plan and Budget, and periodic Contribution payment schedules, and, as necessary, direct the preparation of any changes to these documents.

C. Establish one or more Program Accounts, as deemed necessary and appropriate, for the administration of funds from any Contributor or other participant in the LCR MSCP.

D. Review and discuss with, and attempt to seek a consensus among, Members of the Steering Committee and its subcommittees and work groups, including, without limitation, those matters described in section 7.3.12 of this Agreement, and attempt to resolve any Dispute in accordance with sections 7.3.14 and 7.3.15 of this Agreement.

### **7.3 Steering Committee**

#### **7.3.1 Established**

The Parties hereby establish the Lower Colorado River Multi-Species Conservation Program Steering Committee whose initial Members have been divided in to seven Participant Groups and are identified as:

1. *The Federal Participant Group:*
  - Bureau of Reclamation
  - Fish and Wildlife Service
  - National Park Service
  - Bureau of Land Management
  - Bureau of Indian Affairs
  - Western Area Power Administration
  
2. *The Arizona Participant Group:*
  - Arizona Department of Water Resources
  - Arizona Electric Power Cooperative, Inc.
  - Arizona Game and Fish Department (implementing entity for Arizona Game and Fish Commission)
  - Arizona Power Authority
  - Central Arizona Water Conservation District
  - Cibola Valley Irrigation and Drainage District

- City of Bullhead City
- City of Lake Havasu City
- City of Mesa
- City of Somerton
- City of Yuma
- Electrical District No. 3, Pinal County, Arizona
- Golden Shores Water Conservation District
- Mohave County Water Authority
- Mohave Valley Irrigation and Drainage District
- Mohave Water Conservation District
- North Gila Valley Irrigation and Drainage District
- Town of Fredonia
- Town of Thatcher
- Town of Wickenburg
- Salt River Project Agricultural Improvement and Power District
- Unit “B” Irrigation and Drainage District
- Wellton-Mohawk Irrigation and Drainage District
- Yuma County Water Users’ Association
- Yuma Irrigation District
- Yuma Mesa Irrigation and Drainage District

3. *The California Participant Group:*

- City of Needles
- Coachella Valley Water District
- Colorado River Board of California
- Bard Water District
- Imperial Irrigation District
- Los Angeles Department of Water and Power
- Palo Verde Irrigation District

- San Diego County Water Authority
- Southern California Edison Company
- Southern California Public Power Authority
- The Metropolitan Water District of Southern California

4. *The Nevada Participant Group:*

- Colorado River Commission of Nevada
- Nevada Department of Wildlife
- Southern Nevada Water Authority
- Colorado River Commission Power Users
- Basic Water Company

5. *The Native American Participant Group:* (Note: Participant Group will be contacted to determine interest in being a Member.)

6. *The Conservation Participant Group:* (Note: Participant Group will be contacted to determine interest in being a Member.)

7. *The Other Interested Parties Participant Group:* (Note: Participant Group will be contacted to determine interest in being a Member.)

Each Member shall be responsible for any costs incurred by its Members in attending meetings and functions of the Steering Committee, any of its subcommittees, or its work groups.

### **7.3.2 Additional Members**

The Steering Committee may consist of any number of participating organizations within the seven Participant Groups. The Steering Committee may provide in its by-laws, consistent with the provisions of section 7.3.3 of this Agreement, if, when, and how, additional Members may be added to the Steering Committee subject to the following conditions:

A. Members within the Federal Participant Group must be agencies of the Federal government or entities created pursuant to Federal law.

B. Members within the Arizona Participant Group must be Permittees that undertake or implement Covered Activities within the state of Arizona.

C. Members within the California Participant Group must be Permittees that undertake or implement Covered Activities within the state of California or the California Department of Fish and Game.

D. Members within the Nevada Participant Group must be Permittees that undertake or implement Covered Activities within the state of Nevada.

E. Members within the Native American Participant Group must be Native American tribes whose lands are located adjacent to, or who divert water from, the LCR.

F. Members within the Conservation Participant Group must be conservation or environmental organizations having an interest in the LCR.

G. Members within the Other Interested Parties Participant Group must be public or private organizations not described in these sections 7.3.2(A) through (F) inclusive, that have an interest in the LCR, and wish to participate in the implementation of the LCR MSCP.

### **7.3.3 Application for Membership**

Any interested public or private entity may apply for membership on the Steering Committee within the appropriate Participant Group, set forth in section 7.3.2 of this Agreement, by submitting a letter of interest to the Chair. The letter must:

A. Describe the nature of the organization and its interest in the affairs of the LCR MSCP.

B. Identify the Participant Group within which it wishes to participate.

C. Identify a contact for the organization or entity.

D. State that it will abide by the terms of this Agreement and the by-laws of the Steering Committee and regularly attend Steering Committee meetings.

At its next meeting the Steering Committee shall review the application. If the application complies with this section 7.3.3 and the by-laws, the Steering Committee shall notify the entity and the Program Manager in writing that the entity may participate in the LCR MSCP as a Member of the Steering Committee within the Participant Group specified in the Steering Committee's notice. Members shall not be required to be Permittees. Acceptance of a new Member to the Steering Committee shall not constitute that entity's designation as a Permittee.

#### **7.3.4 Suspension or Termination**

The Steering Committee may suspend or terminate the membership of any Member if the Steering Committee determines that the Member no longer meets the conditions of eligibility for its Participant Group, or has dissolved, or has violated any provision of this Agreement or the by-laws of the Steering Committee.

#### **7.3.5 Reinstatement**

The Steering Committee may reinstate a suspended or terminated membership upon the application of the suspended or terminated Member and satisfaction of the provisions of section 7.3.3 of this Agreement.

#### **7.3.6 Voting Representative**

Within thirty (30) Days after the Effective Date of this Agreement or within thirty (30) Days of admission to membership and from time to time thereafter as necessary, each Member shall, by written notice to the Program Manager, designate a Voting Representative who is authorized to vote and otherwise act in its behalf on matters before the Steering Committee. Each Member may appoint one or more alternates to act as its Voting Representative in the absence of its regular representative.

#### **7.3.7 First Meeting of the Steering Committee and Adoption of By-Laws**

The Steering Committee shall convene within sixty (60) Days after the issuance of the Permit. The Program Manager or another representative of Reclamation shall preside over the first meeting of the Steering Committee. At such meeting: 1) the

Steering Committee shall elect officers as described in section 7.3.8 of this Agreement and 2) Reclamation shall propose a set of by-laws and/or operating procedures to facilitate execution of this Agreement. Such by-laws and/or operating procedures may only be adopted by a majority vote of the Voting Representatives. Modifications to the by-laws shall be made by majority vote.

### **7.3.8 Chair and Vice-Chair**

At the first meeting of the Steering Committee following the Effective Date of this Agreement, and at its first meeting in each calendar year thereafter, the Steering Committee shall elect from among the Voting Representatives a Chair and a vice-chair who will serve until their successors have been elected and qualified as provided in this section 7.3.8. Any Voting Representative may serve as Chair or vice-chair, but the Chair and the vice-chair must represent Members in different Participant Groups.

### **7.3.9 Meetings of the Steering Committee**

A. The Steering Committee shall meet at least once in each calendar year and at such other times as called by the Chair or the Program Manager or as otherwise provided in the by-laws.

B. Each meeting of the Steering Committee must be open to the public, and any person attending a Steering Committee meeting may file a written statement, or provide reasonable and timely oral input regarding topics on the meeting agenda. The Steering Committee shall develop appropriate procedures to provide public notice of Steering Committee or subcommittee meetings. Nothing in this Agreement modifies the ability of the Parties to this Agreement to conduct confidential discussions subject to applicable provisions of state and Federal law.

C. The Program Manager shall cause minutes of each meeting of the Steering Committee to be prepared and clearly record each decision of the Steering Committee.

### **7.3.10 Quorum**

A quorum shall be established by the Steering Committee in accordance with the by-laws, but must include Reclamation and at least one Party from the Arizona Participant Group, one Party from the California Participant Group, and one Party from the Nevada Participant Group.

### **7.3.11 Role of Steering Committee**

In addition to those powers and authorities conferred or described elsewhere in this Agreement:

A. The Steering Committee shall work with the Program Manager to coordinate implementation of the LCR MSCP.

B. The Steering Committee may create standing or ad hoc subcommittees or work groups as it deems necessary to carry out its responsibilities under the Program Documents.

C. Except with respect to designating subcommittees and work groups, and except as otherwise provided in this Agreement, the Steering Committee shall have no decision-making authority with respect to the management and administration of the LCR MSCP.

D. As described in section 7.3.12 of this Agreement, the Steering Committee shall review certain matters presented by the Program Manager.

E. The Steering Committee shall appoint one Voting Representative from each of the Arizona, California, and Nevada Participant Groups to represent the interests of Permittees in any relevant consultation, conference, or re-initiation of consultation pursuant to section 7 of the ESA, as provided in sections 8, 9, 15.5, and 15.6 of the IA.

### **7.3.12 Review by Steering Committee**

Prior to taking any action with respect to the following types of matters, the Program Manager shall first present the proposed action to the Steering Committee for its consideration:

A. Annual Implementation Report, Work Plan, and Budget and

Contribution payment schedules related to the LCR MSCP.

B. Additional or modified Conservation Measures proposed pursuant to the Adaptive Management Program.

C. Land and water acquisitions.

D. Reports and responses to Congress and Federal and state regulatory agencies concerning the LCR MSCP, where practicable.

E. Financial reports and accountings.

### **7.3.13 Consensus**

With respect to those matters that must be presented to the Steering Committee, the Parties intend that every effort should be made to have each such matter approved by a consensus of the Members. Consensus is reached when it becomes evident through deliberation that every Member, at the very least, does not oppose a decision. In its deliberations, the Steering Committee shall use appropriate tools for developing consensus, and shall seek to exhaust every reasonable and practicable effort to reach consensus.

A. In the absence of a consensus, the Chair shall determine, pursuant to section 7.3.14 of this Agreement, whether there is sufficient opposition to the proposed action to constitute a Dispute. If the Chair determines there is a Dispute, until the dispute resolution process as herein described is completed, or the Dispute is otherwise resolved, the Program Manager shall not implement any action or decision which is the subject of the Dispute.

B. In the absence of a Dispute, the decision of the Program Manager shall be final.

### **7.3.14 Existence of Dispute**

A. A Dispute exists where either: (i) any one of the three state Participant Groups or (ii) an aggregate of at least six (6) votes, oppose a proposed action of the Program Manager as described in section 7.3.12 of this Agreement. In the event of a Dispute between any of the Federal Parties, representatives of the Federal Parties shall meet to resolve any such difference, as a supplementary approach to the provisions of this

Agreement.

B. Each Voting Representative shall have a vote equal to the quotient of a fraction, the denominator of which is the number of Voting Representatives of that Participant Group who are present or participate by telephone and the numerator of which is five (5); provided, however, that no Voting Representative shall have more than one vote. Voting by proxy is not permitted.

C. A state Participant Group shall be deemed to have opposed a proposed action of the Program Manager as described in section 7.3.12 of this Agreement where a majority of the Voting Representatives within that state Participant Group, present at the meeting, votes against the motion. In addition to the provisions of the preceding sentence, for each such state Participant Group, this method of calculating the dissent of the state Participant Group may be replaced by some other method described in a writing signed by the Voting Representative of each Member within the state Participant Group and submitted to the Chair and the Program Manager at any time before the vote is taken.

### **7.3.15 Resolution of Dispute**

#### **A. Informal Dispute Process**

After a vote of the Steering Committee, the Chair will determine whether a Dispute exists pursuant to the provisions of section 7.3.14 of this Agreement. In the event that a Dispute exists, the informal Dispute process shall be initiated pursuant to this section 7.3.15. The dissenting Members, singly or jointly, shall furnish to the Program Manager and each other Member, a written request to initiate the informal Dispute process. This request must, with reasonable specificity, identify the issue(s) in Dispute and the relief sought. If such a request is not received by the Program Manager within ten (10) Days after the initial vote that determined the existence of a Dispute, the Dispute shall be deemed to be abandoned.

Any other Member may submit written comments to the Program Manager regarding the Dispute. Once the informal Dispute process is initiated, the Program Manager and the Chair will schedule a Steering Committee meeting to be held no later than thirty (30) Days, after the initial vote, specifically to discuss the issue(s) which are in

Dispute. The Program Manager shall work with the Members of the Steering Committee to attempt to resolve the informal Dispute prior to the Steering Committee meeting. In the event that such efforts are not successful, the goal of the Steering Committee meeting is to: (i) resolve the Dispute or (ii) narrow the issue(s) in Dispute so that consensus, as defined in section 7.3.13 of this Agreement, to move forward can be achieved on as many parts as possible of the proposed action under consideration. At this Steering Committee meeting, after an opportunity for full discussion and consideration, the Chair will call for a vote, pursuant to section 7.3.14 of this Agreement, to determine if a Dispute still exists. Any continuing Dispute shall be considered a formal Dispute and shall follow procedures of section 7.3.15(B).

### **B. Formal Dispute Process**

Members representing: (i) any one of the three state Participant Groups or (ii) an aggregate of at least six (6) votes, may appeal the informal Dispute by signing and furnishing to the Regional Director, the Program Manager, and each other Member, a written request to initiate a formal Dispute. This request must, with reasonable specificity, identify the issue(s) in Dispute, the relief sought, and any supporting documentation. If such a request is not received by the Regional Director within ten (10) Days after the vote that determined the existence of a formal Dispute, the formal Dispute shall be deemed to be abandoned.

Within thirty (30) Days after receiving the request, the Regional Director shall issue a written decision on the Dispute. This decision shall be promptly provided to all Members.

### **C. Appeal Process**

Members representing: (i) any one of the three state Participant Groups or (ii) an aggregate of at least fifteen (15) votes, may appeal the Regional Director's decision, by signing and furnishing to the Secretary, the Regional Director, the Program Manager, and each other Member, a written request. This request must, with reasonable specificity, identify the issue(s) in Dispute, the relief sought, and any supporting documentation. If such a request is not received by the Secretary within fifteen (15) Days after receiving the Regional Director's decision, the Regional Director's decision is final.

The Secretary shall, after appropriate consultation, issue a written determination regarding the Dispute on appeal from the Regional Director. The decision of the Secretary shall be final, subject to consultation with the Administrator of the Western Area Power Administration with respect to a Dispute involving Western.

#### **7.3.16 Reasonable Access**

Each Member of the Steering Committee is entitled to monitor the progress and performance of the LCR MSCP, and shall be allowed reasonable access to data, records, and documents relating to the LCR MSCP.

### **7.4 LCR MSCP Implementation Report, Work Plan, and Budget**

#### **7.4.1 Implementation Report, Work Plan, and Budget**

Annually, during the term of this Agreement, the Program Manager shall develop and present to the Steering Committee a LCR MSCP Implementation Report, Work Plan, and Budget consistent with the Program Documents. The Implementation Report, Work Plan, and Budget shall include:

- A. A current financial report as described in section 7.5.4 of this Agreement.
- B. A description of all Conservation Measures initiated, continued, or completed during the previous year.
- C. A description of all Conservation Measures intended to be initiated or continued during the next three year period.
- D. The purpose for, and the cost estimate of, all Conservation Measures intended to be initiated or continued during the next three year period.
- E. A running tabulation and description of all Conservation Measures which have been completed from the commencement of the LCR MSCP to the date of the report.
- F. A description of any take known to have occurred during the previous budget period.
- G. A running tabulation of habitat created or restored by the LCR MSCP.

H. A description of all findings, conclusions, and results of monitoring, research, or Conservation Measures previously undertaken.

I. Any recommendation made by the Service or any state wildlife agency regarding the LCR MSCP.

J. Approval or rejection of any minor modification described in section 14.1 of the IA.

#### **7.4.2 Service Review**

After presentation to the Steering Committee, the Program Manager shall submit the Implementation Report, Work Plan, and Budget to the Service for its review and determination regarding the consistency of the past, current, and future implementation plans with the terms of the Conservation Plan and the Permit. The submittal shall note any matters in Dispute.

#### **7.4.3 Report by Service**

Within sixty (60) Days after receipt of the Implementation Report, Work Plan, and Budget, the Service shall submit its written evaluation to the Program Manager. The evaluation shall include the opinion of the Service regarding the consistency of the Implementation Report, Work Plan, and Budget with the requirements of the Conservation Plan and the Permit. In the event the opinion of the Service is that the Implementation Report, Work Plan, and Budget demonstrates that Conservation Measures undertaken or proposed do not comply with the LCR MSCP and the Permit, it shall specify, in detail, in what regard the Implementation Report, Work Plan, and Budget is deficient and shall suggest what alternative measures might be undertaken.

#### **7.4.4 Response by Program Manager**

In the event the Service is of the opinion that the Implementation Report, Work Plan, and Budget are not consistent with the requirements of the Conservation Plan or the Permit, the Program Manager shall report the response of the Service to the Steering Committee. Implementation of the Work Plan, other than those aspects that the Service believes do not comply with the Conservation Plan or the Permit, shall proceed. The Program Manager shall attempt to promptly resolve concerns raised by the Service.

## **7.5 Management of Funds**

### **7.5.1 Accounts**

#### **A. Establishment of Trust Funds, Escrow Accounts, or State Treasury Accounts**

The Program Manager will cooperate with the State Parties who will establish one or more interest bearing Trust Funds, Escrow Accounts, or State Treasury Accounts for the deposit of funds contributed by the State Parties that shall be available to Reclamation for administration and implementation of the LCR MSCP. Funds will be made available to Reclamation from the Trust Funds, Escrow Accounts, or State Treasury Accounts in accordance with the applicable agreements. Withdrawal of funds from the Trust Funds, Escrow Accounts, or State Treasury Accounts will be limited to the amounts outlined in the annual Implementation Report, Work Plan, and Budget.

#### **B. Program Accounts**

The Program Manager shall establish one or more Program Accounts for the deposit of funds appropriated or contributed for the implementation of the LCR MSCP.

#### **C. Habitat Maintenance Account**

The Program Manager shall cooperate with the State Parties who will establish an interest bearing Habitat Maintenance Account(s) for the deposit of funds contributed by the State Parties for habitat maintenance pursuant to section 5.4.2 of the HCP and section 8.4.2 of this Agreement. Interest earned on the Habitat Maintenance Accounts shall be added to the account for the purpose of implementation of the LCR MSCP and shall be available to Reclamation, as outlined in the Conservation Plan. Any such interest shall not be credited towards the Contribution of any Party. The custodian of each account shall provide Reclamation a monthly accounting of the account's status and earnings.

### **7.5.2 Rights in Program Account**

No Contributor shall have any right to any funds in the Program Account, other than provided in sections 7.5.6 and 7.5.7 of this Agreement.

### **7.5.3 The Share of a Permittee**

For the purpose of accounting for each of the Permittees, any amount expended from the Program Account(s) shall be deemed to be comprised of each Permittee's respective proportionate share, except where a Permittee has requested that its Contribution is not to be used to fund a specified undertaking. Notwithstanding this accounting practice, each Permittee shall contribute the full amount of its specified share, and the Program Manager may expend money from the Program Accounts for all costs specified in the Implementation Report, Work Plan, and Budget. Funds in the Program Accounts must be disbursed only in accordance with the Implementation Report, Work Plan, and Budget. Contributions credited pursuant to section 8.6 of this Agreement shall be accounted as expended for undertakings that are in furtherance of measures required under the 2001 BO.

### **7.5.4 Reports to Steering Committee**

As identified in section 7.4.1(A) of this Agreement, the Program Manager shall furnish to the Steering Committee an annual financial report. Financial reports shall include financial Contributions by each state, the approved value of In-Kind Goods or Services Contributions received and the state credited, if any, as well as funding obligations and commitments made and expenditures paid out of the Program Accounts and Program Account balances during the period covered by the report. Financial Contributions provided by individual Permittees will be accounted for at the state level.

### **7.5.5 Right to Inspect and Audit**

The Program Manager is responsible for ensuring the accuracy and reasonableness of all LCR MSCP finances and expenditures. Reclamation shall maintain financial records and accounts for the LCR MSCP in accordance with Federal accounting standards. With reasonable notice, any Contributor is entitled to review or audit, during normal business hours, Reclamation's records and books of any Program Account(s) for the LCR MSCP. Reclamation shall cooperate with any audit pursuant to this Agreement, and shall permit access to the books, records, and accounts as may be reasonably necessary to conduct the audit. Any such audit or review shall be at the sole expense of

the Contributor requesting the audit or doing the review. If any audit reveals an exception in the LCR MSCP financial records, and unless there is an unresolved exception, an appropriate adjustment shall be made. If an exception, identified in an audit or review, cannot be resolved by discussions between the Program Manager and the Contributor, the Contributor may request a decision by the Regional Director. The Regional Director shall render a decision on the exception within thirty (30) Days after receipt of the request. The Contributor may appeal the Regional Director's decision to the Commissioner. The Commissioner will render a decision on the appeal within thirty (30) Days of receipt of the appeal. The Commissioner's decision shall be final.

#### **7.5.6 Final Accounting**

As soon as possible following the termination of this Agreement, the Program Manager shall promptly make an accurate final accounting to the Parties of Contributions received, all costs incurred by the LCR MSCP, and expenditures paid out of the Program Accounts pursuant to this Agreement.

#### **7.5.7 Return of Funds**

Unless required to fund the continued maintenance of any conservation areas which have been restored or created pursuant to the LCR MSCP, unexpended funds contributed by a Permittee or other Contributor, if any, and any interest earned thereon, remaining after the termination of this Agreement and the payment of all outstanding obligations shall be promptly returned to the Permittee, person, or entity which contributed the funds, in proportion to the amount provided by each of them.

### **8. COST SHARES AND FINANCING**

#### **8.1 Program Cost**

The Program Cost of the LCR MSCP over its 50-year term is Six Hundred Twenty-Six Million One Hundred Eighty Thousand Dollars (\$626,180,000) in 2003 dollars, which will be adjusted for inflation as provided in section 8.1.1 of this Agreement. Table 7-1 of the HCP describes in detail the Program Cost over the 50-year term of the LCR MSCP. Exhibit A-1 provides a timeline for various activities required by

section 8 of this Agreement.

### **8.1.1 Inflation Adjustments**

For each Fiscal Year of the LCR MSCP, the funding obligations shall be adjusted in accordance with the Inflation Index, which is the arithmetic average of the PPI Inflation Index and the GDPIP Inflation Index, each of which is defined as follows. The PPI Inflation Index for each Fiscal Year of the LCR MSCP is the ratio determined by dividing the final value of the Producer Price Index for the Materials and Components for Construction published by the United States Bureau of Labor Statistics for September 30 of the year that is two years prior to the Fiscal Year for which the adjustment is being calculated, by 152.1, which is the final published value of the PPI Inflation Index for September 30, 2002. The GDPIP Inflation Index for each Fiscal Year of the LCR MSCP is the ratio determined by dividing the final value of the Gross Domestic Product Implicit Price Deflator published by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business for September 30 of the year that is two years prior to the Fiscal Year for which the adjustment is being calculated, by 104.243, which is the final published value of the GDPIP Inflation Index for September 30, 2002. Exhibit A-2 hereto provides an example of the calculation. If the base year of either index is changed, the published numbers will be adjusted to match the base year upon which the values for September 30, 2002 are based. If either the Producer Price Index for Materials and Components for Construction or the Gross Domestic Product Implicit Price Deflator are no longer used, the Program Manager and the Steering Committee will determine a substitute measure for the affected measure.

### **8.1.2 Credits and Deficits**

Funds provided by either a Federal Party or a state Permittee that are in excess of their funding obligations for a specific year shall be treated as a credit against future funding obligations. Any shortage of the funds provided by either a Federal Party or a state Permittee will be treated as a deficit to future funding obligations. These credits and deficits will be adjusted to 2003 dollars using the inverse of the Inflation Index. Any credits may be applied against future funding obligations until they are exhausted when

converted to 2003 dollars. Any deficits shall be repaid in future funding obligations until full repayment occurs when converted to 2003 dollars. All credits must be used prior to the completion of the LCR MSCP. All deficits shall be repaid prior to the completion of the LCR MSCP. Exhibit A-3 hereto provides examples of the calculation.

## **8.2 Federal Cost Share**

The Federal Parties shall bear fifty percent (50%) of the Program Cost, plus one hundred percent (100%) of any costs of the LCR MSCP in excess of the Program Cost, with the exception of costs otherwise specifically excluded herein including those costs associated with an amendment of the LCR MSCP as described in sections 8.5 and 9.9 of this Agreement.

### **8.2.1 Interior Cost Share**

The Interior agencies participating in the LCR MSCP may develop subsequent agreements to allocate the Federal cost share among the Interior agencies.

### **8.2.2 Contributions by Western**

Western is required by law to market federal hydropower and to recover specified costs through power rates, unless otherwise specifically provided by act of Congress. Western will only make Contributions to the Program Cost, or any costs in excess of the Program Cost, associated with implementing the LCR MSCP to the extent that such Contributions are appropriated and are designated as non-reimbursable by Congress, pursuant to applicable Federal law.

## **8.3 Non-federal Cost Share**

The Permittees shall bear fifty percent (50%) of the Program Cost (Non-federal Cost Share). Except as provided in sections 8.3.1 through 8.3.7 of this Agreement, in each year of the LCR MSCP the California Permittees shall bear fifty percent (50%) of the Non-federal Cost Share, the Nevada Permittees shall bear twenty-five percent (25%) of the Non-federal Cost Share, and the Arizona Permittees shall bear twenty-five percent (25%) of the Non-federal Cost Share.

### **8.3.1 Reduced Arizona Funding in First 10 Years**

The Arizona Permittees shall bear ten percent (10%) of the Non-federal Cost Share during years 1 through 3 of the LCR MSCP, and fifteen percent (15%) of the Non-federal Cost Share during years 4 through 10 of the LCR MSCP.

### **8.3.2 Increased California and Nevada Funding in First 10 Years**

To make up the difference between the Arizona Permittees' reduced funding obligations under section 8.3.1 of this Agreement and Arizona Permittees' full funding obligation for twenty-five percent (25%) of the Non-federal Cost Share, the Southern Nevada Water Authority and The Metropolitan Water District of Southern California shall fund, in equal share, fifteen percent (15%) of the Non-federal Cost Share during years 1 through 3 of the LCR MSCP and ten percent (10%) of the Non-federal Cost Share during years 4 through 10 of the LCR MSCP.

### **8.3.3 Increased Arizona Funding After First 10 Years**

Commencing no later than year 11 of the LCR MSCP, the Arizona Permittees shall fund, in addition to the twenty-five percent (25%) of the Non-federal Cost Share pursuant to section 8.3 of this Agreement, the portion of the Non-federal Cost Share by which the Arizona funding was reduced below twenty-five percent (25%) pursuant to section 8.3.1, adjusted for inflation pursuant to section 8.1.1 to the Fiscal Year in which the Arizona Permittees commence full payment of twenty-five percent (25%) of the Non-federal Cost Share (Additional Arizona Amount). The Additional Arizona Amount shall be paid in quarterly payments over 20 years equal to the total Additional Arizona Amount divided by 80 (Quarterly Additional Arizona Amount). The Quarterly Additional Arizona Amounts due in each year will be further adjusted for inflation in each Fiscal Year pursuant to section 8.1.1 until the year paid.

### **8.3.4 Reduced California and Nevada Funding After First 10 Years**

Commencing no later than year 11 of the Program, the Southern Nevada Water Authority and The Metropolitan Water District of Southern California shall each have credited against their funding obligation for each quarterly payment over 20 years an

amount equal to one-half of the Quarterly Additional Arizona Amount for that quarter calculated pursuant to section 8.3.3 of this Agreement.

### **8.3.5 Early Termination of Reduced Arizona Funding**

At the election of the Central Arizona Water Conservation District (CAWCD), the Arizona Permittees' share of the annual Non-federal Cost Share may be raised to twenty-five percent (25%) prior to year 11 of the LCR MSCP, and if so raised, the obligation of The Metropolitan Water District of Southern California and the Southern Nevada Water Authority to pay the increased amount specified in section 8.3.2 of this Agreement shall cease and payment of the additional amounts by the Arizona Permittees pursuant to section 8.3.3 and the reduced amounts by The Metropolitan Water District of Southern California and the Southern Nevada Water Authority pursuant to section 8.3.4 shall commence.

### **8.3.6 Acceleration of Additional Arizona Payments**

By agreement between the Southern Nevada Water Authority, The Metropolitan Water District of Southern California, and CAWCD, the Arizona Permittees may make additional quarterly payments in excess of the Quarterly Additional Arizona Amounts, but not more than the combined quarterly payment amounts then due from the Southern Nevada Water Authority and The Metropolitan Water District of Southern California pursuant to section 8.3 of this Agreement. In the event the Arizona Permittees make such additional payments, the Southern Nevada Water Authority and The Metropolitan Water District of Southern California shall each have credited against their funding obligation for any quarter one-half of any additional payment by the Arizona Permittees pursuant to this section 8.3.6. Any additional payment pursuant to this section 8.3.6, adjusted for inflation pursuant to section 8.1.1, shall be applied against the remaining Quarterly Additional Arizona Amounts in the order that the affected parties may agree.

### **8.3.7 Calculation and Payment of the Non-federal Cost Share**

The provisions of sections 8.3.1 through 8.3.6 of this Agreement shall be applied so that the Permittees of each state, by year 31 of the LCR MSCP, will have funded in 2003 dollars the portion of the Non-federal Cost Share allocated to the Permittees of that

state in section 8.3. An example of the calculation of the Non-federal Cost Share and the amounts to be paid with respect thereto, based on certain assumptions, is attached hereto as Exhibit A-4.

#### **8.4 Payment Mechanisms and Terms**

During the term of the LCR MSCP, the Permittees of each state shall provide funding for each state's share of the total cost of the LCR MSCP in accordance with Table 7-1 of the HCP and section 8.3 of this Agreement through quarterly deposits with, or for the benefit of, Reclamation. The amount of the quarterly deposit shall be based on the allocable share, pursuant to section 8.3 of this Agreement, of the multi-year time segments shown in Table 7-1 of the HCP, divided by the total number of quarters in each multi-year time segment and adjusted annually for inflation pursuant to section 8.1.1 of this Agreement. Such funding will be available no later than the first day of each calendar quarter, commencing not later than October 1, 2005.

##### **8.4.1 Trust Funds, Escrow Accounts, or State Treasury Accounts**

Quarterly payments from the Permittees of each state may be made, and are effective when made, by deposits to a Trust Fund, Escrow Account, or State Treasury Account held by a trustee, escrow agent, or state treasurer and available for withdrawal by or payment to Reclamation pursuant to a trust or escrow agreement or other similar agreement among the Permittees of that state. Except as provided in section 7.5.1(C) of this Agreement, investment earnings on such amounts until withdrawn are not the property of Reclamation and shall be for the benefit of the Permittees of that state as they may agree.

A. No later than September 1, 2005, the Permittees will provide the Program Manager with sufficient information about the Trust Funds, Escrow Accounts, or State Treasury Accounts, to allow the Program Manager to carry out the provisions of this Agreement.

B. Annually, by September 1 of each year, the Permittees in each State will provide the Program Manager with a report detailing the annual contributions to be provided by each Permittee for the succeeding fiscal year.

#### **8.4.2 Habitat Maintenance Account**

In each of the first ten years of the LCR MSCP, a share of each quarterly payment from the Permittees of each state shall be set aside in an interest bearing account in an amount equal to the proportionate amount that the annual “Existing habitat maintenance” line item in Table 7-1 of the HCP bears to the total annual cost for such year. The investment earnings on any Habitat Maintenance Accounts shall be credited as provided in section 7.5.1(C) of this Agreement.

#### **8.5 Cost Share Assurances**

Except as provided in this section 8.5 and in section 9.9 of this Agreement with respect to an amendment of the LCR MSCP, the Non-federal Cost Share for the LCR MSCP shall not exceed \$313,090,000 in 2003 dollars, payable on a quarterly basis, no earlier than, and in amounts no greater than, determined for quarterly payments in accordance with the dates and fifty percent (50%) of the amounts set forth in Table 7-1 of the HCP, provided that the Non-federal Cost Share shall be adjusted annually for inflation as provided in section 8.1.1 of this Agreement. The obligation of the Permittees of any state shall not exceed the Non-federal Cost Share, as limited herein, as allocated to such state Permittees pursuant to section 8.3 of this Agreement. Nothing in this Agreement shall prohibit any non-federal Party from agreeing to contribute amounts in excess of Table 7-1 of the HCP on an annual basis subject to the concurrence of the Program Manager. If additional costs are incurred as a result of an agreement of the Parties to amend the LCR MSCP to add additional species to the list of Covered Species or to add additional Covered Actions or Covered Activities, such additional costs shall be shared as provided in such amendment. Federal actions that are not Covered Actions, as described in the Program Documents, are excluded from the LCR MSCP unless the LCR MSCP is amended.

#### **8.6 2001 Biological Opinion**

Reclamation, with support of funding from California agencies, will implement the conservation and mitigation measures identified in the 2001 Biological Opinion for

implementing 400,000 acre-feet annually in changes of point of diversion for California's Colorado River Water Use Plan. The LCR MSCP includes the potential extension of the Interim Surplus Guidelines beyond 2016 and the 400,000 acre-feet change in point of diversion as Covered Actions. The implementation of the 2001 Biological Opinion conservation and mitigation measures shall be credited against the requirements of the LCR MSCP in accordance with the HCP, and the budgeted cost of those measures shall be credited to the California Permittees in the amount that each has paid for the cost of implementing these conservation and mitigation measures.

## **8.7 Additional Cost Sharing Issues**

### **8.7.1 Budget Requests**

Each local, state, or Federal entity that has undertaken a responsibility hereunder shall include in its annual budget request adequate funding to allow it to fulfill its obligations hereunder.

### **8.7.2 Contributions to the Non-federal Cost Share**

The Parties recognize that other persons or entities may make Contributions to the LCR MSCP on behalf of a Permittee or Permittees. Such Contributions on behalf of a Permittee are subject to the provisions of sections 8.1.2 and 8.5 of this Agreement and will be deposited in a Trust Fund, Escrow Account, or State Treasury Account, as appropriate, and subject to the applicable trust or escrow agreement, or paid directly to Reclamation. Such Contributions shall be credited to the share of the relevant Permittee(s) for the purposes of the Non-federal Cost Share pursuant to the provisions of section 8.4.1 of this Agreement.

### **8.7.3 Other Contributions**

The Parties recognize that other persons or entities may make Contributions to the LCR MSCP. Such Contributions shall be accounted for separately from the Permittee Contributions, and shall not be credited to the share of any Party pursuant to sections 8.2 and 8.3 of this Agreement. The acceptance of any such Contribution is subject to the approval of the Program Manager. Any such Contribution may be designated for a

specific purpose, and shall be used or expended only for that purpose.

#### **8.7.4 In-Kind Goods or Services**

The Contribution of In-Kind Goods or Services shall be credited to a Party only to the extent agreed by the Program Manager and the Steering Committee. The value of the In-Kind Goods or Services is subject to audit by the Program Manager or the Program Manager's designated auditor. A schedule determining when credit for In-Kind Goods or Services will be applied to a Party's funding obligations shall be part of the agreement by the Program Manager and the Steering Committee.

### **9. ASSURANCES AND COMMITMENTS**

#### **9.1 In General**

Each of the Parties affirms, acknowledges, and confirms each of its covenants, representations, agreements, undertakings, commitments, or assurances contained herein, in the IA, and the Permit and, in addition, makes the following commitments and assurances.

#### **9.2 Implementation Assistance**

Each Permittee shall, to the greatest extent practicable, cooperate with Reclamation to ensure that actions required for Conservation Measures are accomplished including, but not limited to, the purchase, acquisition, or lease of land and water. Permittees shall not unreasonably withhold any necessary approvals to accomplish the above listed actions.

#### **9.3 Participation on LCR MSCP Committees**

Each of the Parties shall provide staff to serve on LCR MSCP committees, as appropriate, and shall ensure, to the extent possible, staff participation in discussions and meetings with the other Parties to ensure that the implementation of the LCR MSCP is consistent with any findings upon which the Permit is based.

#### **9.4 Each Party Responsible**

The financial and other obligations undertaken by each of the Parties shall be severable and the breach or failure to perform of one Party shall not be attributable to any other Party.

#### **9.5 Authority**

Each Party represents and warrants for the benefit of every other Party hereto that: (i) the execution of this Agreement has been duly authorized; (ii) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable that Party to enter into and comply with the terms of this Agreement; and (iii) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

#### **9.6 Proper Implementation**

Each Permittee shall be deemed to be properly implementing the terms of the Permit and this Agreement if it has made its Contributions in accordance with section 8 of this Agreement and is performing those avoidance and minimization measures identified in Chapter 5 of the HCP that are applicable to Covered Activities undertaken by the Permittee.

#### **9.7 Coordination Requirements for Potential Changes in Operations**

In the unlikely event that Reclamation or the Service believe that modifications in anticipated water deliveries or modified operating criteria may be necessary to comply with the provisions of the ESA, Reclamation shall as early as practicable, and absent extraordinary conditions, prior to undertaking such modification, notify the Steering Committee in writing of such potential modifications. The Steering Committee shall have the opportunity to consider any such potential modifications and provide input to Reclamation and the Service on the proposed modifications.

#### **9.8 No Federal Costs Passed Through**

This Agreement establishes the share of the Program Cost of implementation of the LCR MSCP to be paid by the Permittees. No Federal Party may pass through any

Federal portion of the cost of the LCR MSCP to the Permittees in any form. This prohibition includes, but is not limited to treating such Federal costs as a "reimbursable expense" and passing them through to the Permittees as a water or power charge. Further, Reclamation shall not designate any portion of the Program Cost, or cost in excess of the Program Cost, to implement the LCR MSCP as a reimbursable expense to be recovered by Western from the non-federal Parties to this Agreement, in the form of a power charge or in any other form.

### **9.9 Potential Increased Cost of Implementation of the LCR MSCP**

Except as provided in section 8.5 and in this section 9.9 of this Agreement with respect to an amendment of the LCR MSCP, to the extent that the cost of implementing the LCR MSCP exceeds the Program Cost, or, on an annual basis, exceeds the amounts provided in Table 7-1 of the HCP, adjusted annually for inflation as provided in section 8.1.1 of this Agreement, such additional cost shall be the responsibility of the Federal Parties and shall not be borne by the Permittees. If additional costs are incurred as a result of an agreement of the Parties to amend the LCR MSCP to add additional species to the list of Covered Species or to add additional Covered Actions or Covered Activities, such additional costs shall be shared as provided in such amendment. Nothing in this Agreement shall prohibit any non-federal Party from agreeing to contribute amounts in excess of Table 7-1 of the HCP on an annual basis subject to the concurrence of the Program Manager. Federal actions that are not Covered Actions, as described in the Program Documents, are excluded from the LCR MSCP unless the LCR MSCP is amended.

## **10. REMEDIES AND ENFORCEMENT**

### **10.1 In General**

The Parties agree to work together in good faith to resolve disagreements using informal meetings and conferences to reach mutually satisfactory conclusions to matters in Dispute.

## **10.2 Enforcement of Agreement and Remedies for Breach**

Except as provided in section 10.3 of this Agreement, each Party shall be entitled to pursue legal action, including the filing of a suit for specific performance, declaratory relief, or injunctive relief to enforce and seek remedies for any breach of applicable provisions of the Program Documents, including access to Federal courts under the Administrative Procedure Act (5 U.S.C. § 702 *et seq.*).

## **10.3 No Monetary Damages, Effect of Agreement on Pre-Existing Liabilities, and Enforcement Authority of the Service**

### **10.3.1 No Monetary Damages**

No Party shall be liable in monetary damages to any other Party or other person for any breach of this Agreement or the IA, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising under this Agreement.

### **10.3.2 Retention of Liability**

Each Party shall retain whatever liability it would otherwise possess for its present or future acts or failure to act in the absence of this Agreement.

### **10.3.3 Landowner Liability**

All Parties shall retain whatever liability they would possess as an owner of interests in land in the absence of this Agreement.

### **10.3.4 Enforcement Authority of the Service**

Nothing contained in this Agreement is intended to limit the authority of the Service to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA and other applicable laws. However, as long as the HCP is being properly implemented in accordance with the Program Documents, the Service shall not seek civil or criminal penalties or otherwise enforce the take prohibitions of the ESA and other applicable laws for incidental take of Covered Species that is in accordance with the terms of the Incidental Take Authorization.

## **11. MISCELLANEOUS PROVISIONS**

### **11.1 Response Times**

The Parties agree that time is of the essence in performance of the obligations of this Agreement. Except as otherwise set forth herein or as required by applicable laws or regulations, the Parties shall use reasonable efforts to respond to written requests within forty-five (45) Days.

### **11.2 No Partnership**

Except as otherwise expressly set forth herein, neither this Agreement, nor any other Program Document shall make, or be deemed to make, any Party to this Agreement the agent for, or the partner or joint venture of, any other Party.

### **11.3 Nullification of Agreement**

In the event that the Permit is revoked in its entirety, or substantially modified without the consent of the Parties, this Agreement shall be null and void and, in such event, no Party shall be bound by its terms.

### **11.4 Notices**

Any notice required by this Agreement shall be in writing, and either delivered personally, or by United States mail, postage prepaid, or by facsimile or other electronic means to the addresses on file with the Program Manager.

### **11.5 Preparation By All Parties**

This Agreement shall not be construed as if it had been prepared by any one Party, but rather as if all Parties had prepared the Agreement.

### **11.6 Applicable Law**

With respect to the ESA, other environmental laws, and other applicable Federal laws, the laws of the United States shall govern the construction and interpretation of this Agreement. With respect to state laws pertaining to the State Parties, the laws of their respective states shall govern the construction and interpretation of this Agreement.

Further, nothing in this Agreement shall require any Party to: 1) violate any Federal statute or regulation, 2) exceed its legal authority, as defined by applicable statute, regulation, rule, or order lawfully promulgated, or 3) prevent any Federal Party from accomplishing non-discretionary functions pursuant to applicable Federal law.

#### **11.7 Assignment or Transfer**

This Agreement shall be binding on and inure to the benefit of the Parties, the Permittees and their respective successors and assigns, including Third Parties Authorized to Take as defined in section 16.1 of the IA. Assignment or other transfer of the Permit or any rights or authorities granted thereunder shall be governed by ESA permit regulations.

#### **11.8 Attorneys' Fees**

If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs, provided that attorneys' fees and costs recoverable by or against the United States shall be governed by applicable Federal law.

#### **11.9 Elected Officials Not to Benefit**

No member of, or delegate to, the United States Congress or the governing body of any of the Permittees shall be entitled to any share or part of this Agreement or to any benefit that may arise from it, except as a holder of an Incidental Take Authorization.

#### **11.10 Availability of Funds**

Implementation of this Agreement and the LCR MSCP by the Parties is subject to the requirements of the Anti-Deficiency Act, the laws of the states of Arizona, California, and Nevada, respectively, and the availability of appropriated funds.

### **11.11 Duplicate Originals**

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

### **11.12 No Third Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to the ESA or other applicable law, and except as specifically provided in section 16.1 of the IA with respect to Third Parties Authorized to Take, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries shall remain as imposed under applicable provisions of state and Federal law.

### **11.13 Severability**

If any part or provision of this Agreement shall be held invalid or unenforceable by a court having jurisdiction under applicable law, and after exhaustion of all available appeals, said part or provision shall be ineffective only to the extent of such invalidity without in any way affecting the remaining parts of said part or provision or the remaining provisions of the Agreement. Notwithstanding the foregoing, in the event such invalidity or any rescission pursuant to this section 11.13 alters the relative balance of benefits of the Parties to the significant disadvantage of a Party, the Parties shall attempt to negotiate a modification of the terms of the Agreement in order to reestablish the original balance of benefits, and if such agreement is not reached, the disadvantaged Party may rescind the Agreement.

### **11.14 Headings**

The section headings used in this Agreement are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

### **11.15 Further Instruments**

Each of the Parties shall, promptly upon the request of another Party, execute, acknowledge, and deliver to the other Party any and all further instruments as are reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

### **11.16 Force Majeure**

If the Permittees are wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Permittees (Force Majeure), including, but not limited to, acts of God, labor disputes, sudden actions of the elements, or actions of non-participating Federal or state agencies or local jurisdictions, the Permittees shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section 11.16 shall be deemed to authorize any Party to violate the ESA and provided further that: (i) the suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure; (ii) within fifteen (15) Days after the occurrence of the Force Majeure, affected Permittees shall give the Service written notice describing the particulars of the occurrence; and (iii) Permittees use their best efforts to remedy their inability to perform (however, this section 11.16 shall not require the settlement of any strike, walk-out, lock-out, or other labor dispute on terms which in the sole judgment of the Permittees are contrary to their interest).

### **11.17 No Waiver**

Neither approval of the LCR MSCP nor execution of this Agreement by a Party shall be construed, considered, or deemed to be a waiver of the right to any action, claim, cause of action, or defense available to that Party prior to the execution hereof.

### **11.18 No Admission**

Neither the application for the Permit nor the execution of this Agreement or any other Program Document by the Permittees shall be construed, considered, or deemed to

be an admission by the Permittees that any take of any listed species has occurred or will occur.

#### **11.19 Faxed Signatures**

Any Party may deliver its signed duplicate of this Agreement to any other Party by facsimile transmission, and such delivery shall be deemed made and completed upon receipt of such facsimile transmission by the other Party. Any Party delivering a signed duplicate by facsimile transmission shall promptly send the duplicate original bearing its original signature to the other Party, provided that a delay or failure to do so shall not negate the effectiveness of the delivery made by the facsimile transmission.

#### **11.20 Amendment to Funding and Management Agreement**

This Agreement may be amended only by a writing executed by each of the Parties.

This Funding and Management Agreement has been executed as of April 4, 2005, and shall become effective on the Effective Date as defined herein.

IN WITNESS THEREOF, the Parties hereto have caused this Lower Colorado River Multi-Species Conservation Program Funding and Management Agreement to be executed.

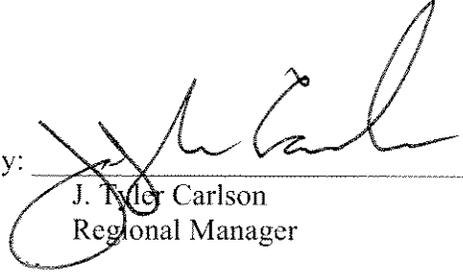
UNITED STATES OF AMERICA

By:   
Gale A. Norton  
Secretary of the Interior

Date: APR 02 2005  
\_\_\_\_\_

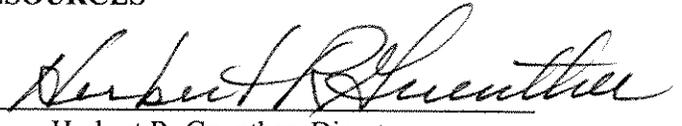
**DEPARTMENT OF ENERGY  
WESTERN AREA POWER  
ADMINISTRATION**

By:

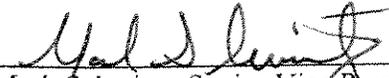
A handwritten signature in black ink, appearing to read "J. Tyler Carlson", written over a horizontal line.

J. Tyler Carlson  
Regional Manager

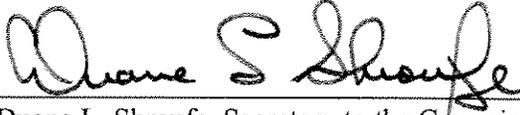
**ARIZONA DEPARTMENT OF WATER  
RESOURCES**

By   
Herbert R. Guenther, Director

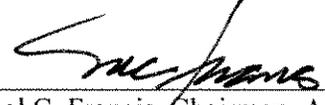
**ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.**, an Arizona cooperative  
corporation

By   
Mark Schwartz, Senior Vice President and  
Chief Operating Officer

**STATE OF ARIZONA GAME AND FISH  
COMMISSION**

By   
Duane L. Shroufe, Secretary to the Commission and Director, Arizona Game & Fish  
Department

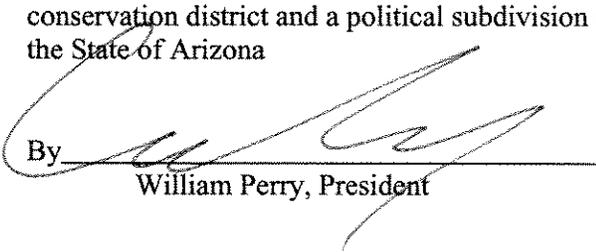
**ARIZONA POWER AUTHORITY**, a body  
corporate and politic of the State of Arizona

By   
Michael C. Francis, Chairman, Arizona Power  
Authority Commission

**ATTEST:**

  
Rita Gallant, Secretary

**CENTRAL ARIZONA WATER CONSERVA-  
TION DISTRICT**, a multi-county water  
conservation district and a political subdivision of  
the State of Arizona

By 

William Perry, President

**ATTEST:**

  
Daniel Donahoe, Secretary

**APPROVED AS TO FORM:**

  
Douglas K. Miller, General Counsel

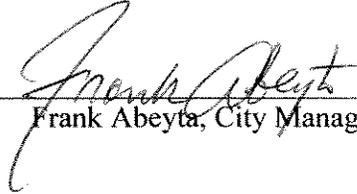
**CIBOLA VALLEY IRRIGATION AND  
DRAINAGE DISTRICT**, a municipal  
corporation of the State of Arizona

By   
Robert Mullion, President

**ATTEST:**

  
Richard Watkins, Secretary

**THE CITY OF BULLHEAD CITY,  
ARIZONA**, a municipal corporation of the State  
of Arizona

By   
Frank Abeyta, City Manager

**ATTEST:**

  
Diane Heilmann, City Clerk

**APPROVED AS TO FORM:**

  
Kent Foree, City Attorney

**THE CITY OF LAKE HAVASU CITY,  
ARIZONA**, a municipal corporation of the State  
of Arizona

By Bob Whelan  
Robert Whelan, Mayor

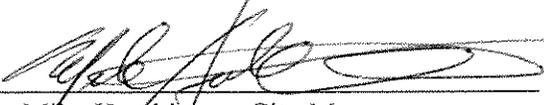
**ATTEST:**

Carla Simendich  
Carla Simendich, City Clerk

**APPROVED AS TO FORM:**

Matthew Podracky  
Matthew Podracky, Interim City Attorney

CITY OF MESA, ARIZONA, a municipal  
corporation of the State of Arizona

By   
Mike Hutchinson, City Manager

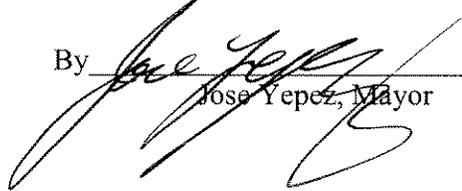
ATTEST:

  
Barbara Jones, City Clerk



**CITY OF SOMERTON, ARIZONA**, a  
municipal corporation of the State of Arizona

By



---

Jose Yopez, Mayor

**ATTEST:**



---

Cliff O'Neill, City Clerk

**CITY OF YUMA, ARIZONA**, a municipal  
corporation of the State of Arizona

By Mark S. Watson  
Mark S. Watson, City Administrator

**ATTEST:**

Brigitta M. Kuiper  
Brigitta M. Kuiper, City Clerk

**APPROVED AS TO FORM:**

Steven W. Moore  
Steven W. Moore, City Attorney

**ELECTRICAL DISTRICT NO. 3, PINAL COUNTY, ARIZONA**, an electrical district and a political subdivision of the State of Arizona

By W.A. Dunn  
W.A. Dunn, Chairman

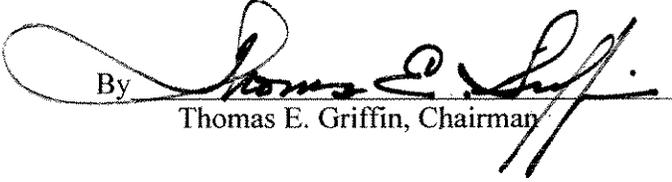
**ATTEST:**

Matt Smith  
Secretary

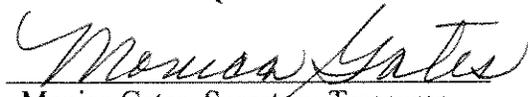
**GOLDEN SHORES WATER CONSERVA-  
TION DISTRICT**, a water conservation district  
and a political subdivision of the State of Arizona

By   
Bob Ericson, President

**MOHAVE COUNTY WATER AUTHORITY,**  
a political subdivision of the State of Arizona

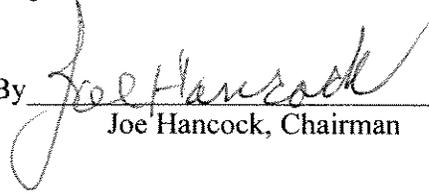
By   
Thomas E. Griffin, Chairman

**ATTEST:**

  
Monica Gates, Secretary-Treasurer

**MOHAVE VALLEY IRRIGATION AND  
DRAINAGE DISTRICT**, a municipal  
corporation of the State of Arizona

By



\_\_\_\_\_

Joe Hancock, Chairman

**MOHAVE WATER CONSERVATION  
DISTRICT**, a water conservation district and a  
political subdivision of the State of Arizona

By Tom Sockwell  
Tom Sockwell, Chairman

**NORTH GILA VALLEY IRRIGATION AND  
DRAINAGE DISTRICT**, a municipal  
corporation of the State of Arizona

By Frank M. Ferguson III  
Frank M. Ferguson III, President - Board of  
Directors

**SALT RIVER PROJECT AGRICULTURAL  
IMPROVEMENT AND POWER DISTRICT,**  
a political subdivision of the State of Arizona

By William P. Schrader  
William P. Schrader, President

**ATTEST AND COUNTERSIGN:**

Terri A. Konon  
Secretary

Reviewed by SRP Legal

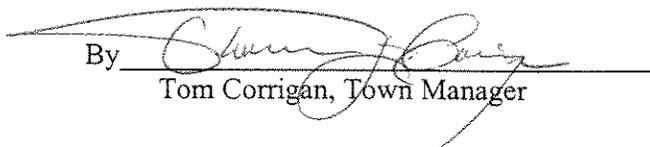
[Signature]  
(Signed Name)

STEVE WINCASTER  
(Printed Name)

Date: 3/24/05

**TOWN OF FREDONIA, ARIZONA, a**  
municipal corporation of the State of Arizona

By

  
Tom Corrigan, Town Manager

**ATTEST:**

  
Marilyn Johnson, Town Clerk

**APPROVED AS TO FORM:**

**MANGUM, WALL, STOOPS & WARDEN,  
P.L.L.C.**

By

  
Steven B. Horton  
For the Firm

**TOWN OF THATCHER, ARIZONA**, a  
municipal corporation of the State of Arizona

By Terrel H. Hinton  
Terrel H. Hinton, Town Manager

**ATTEST:**

Lona Duncan  
Lona Duncan, Town Clerk

**TOWN OF WICKENBURG, ARIZONA**, a  
municipal corporation of the State of Arizona

By   
Shane Dille, Town Manager

**ATTEST:**

  
Donna Riffel, Town Clerk

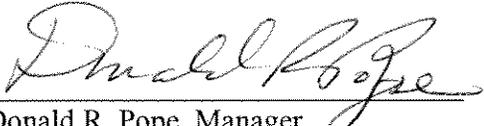
**UNIT "B" IRRIGATION AND DRAINAGE  
DISTRICT**, a political subdivision of the State of  
Arizona

By   
Patrick Morgan, Manager

**WELLTON-MOHAWK IRRIGATION AND  
DRAINAGE DISTRICT**, a municipal  
corporation of the State of Arizona

By   
Charles W. Slocum, General Manager

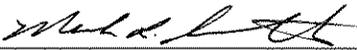
**YUMA COUNTY WATER USERS'  
ASSOCIATION**, an Arizona non-profit  
corporation

By   
Donald R. Pope, Manager

**ATTEST:**

  
Tamara R. Stover, Secretary

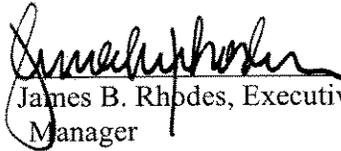
**YUMA IRRIGATION DISTRICT**, a municipal corporation of the State of Arizona

By   
Mark Smith, President - Board of Directors

**YUMA MESA IRRIGATION AND  
DRAINAGE DISTRICT**, a municipal  
corporation of the State of Arizona

By   
Eldon Paulsen, President - Board of Directors

**ATTEST:**

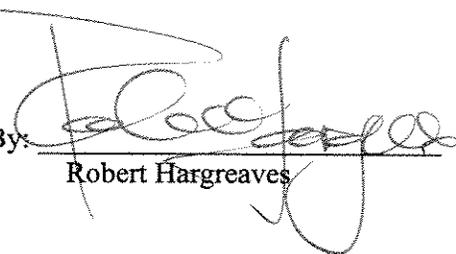
  
James B. Rhodes, Executive Secretary-  
Manager

**CITY OF NEEDLES**

By:   
Richard D. Rowe  
City Manager

Approved as to form:

**BEST, BEST & KRIEGER**

By:   
Robert Hargreaves

**COACHELLA VALLEY WATER  
DISTRICT**

By:   
Steven B. Robbins  
General Manager – Chief  
Engineer

Approved as to form:

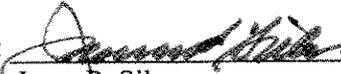
REDWINE & SHERRILL

By:   
Steven B. Abbott

**COLORADO RIVER BOARD OF  
CALIFORNIA**

By:   
Gerald Zimmerman  
Executive Director

**IMPERIAL IRRIGATION DISTRICT**

By:   
\_\_\_\_\_  
Jesse P. Silva  
General Manager

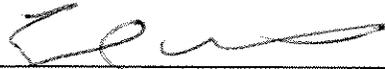
Approved as to form:

By:   
\_\_\_\_\_  
John Penn Carter

**DEPARTMENT OF WATER AND POWER OF  
THE CITY OF LOS ANGELES**

By:   
Ronald F. Deaton  
General Manager

**PALO VERDE IRRIGATION  
DISTRICT**

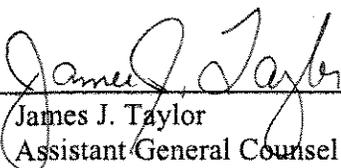
By:   
\_\_\_\_\_  
Edward W. Smith  
General Manager

**SAN DIEGO COUNTY WATER  
AUTHORITY**

By:   
Maureen A. Stapleton  
General Manager

Approved as to form:

Daniel S. Hentschke  
General Counsel

By:   
James J. Taylor  
Assistant General Counsel

**SOUTHERN CALIFORNIA EDISON  
COMPANY**

By:   
John R. Fielder  
Senior Vice President, Regulatory  
Policy & Affairs

Approved

By:   
Nino J. Mascolo  
Senior Attorney

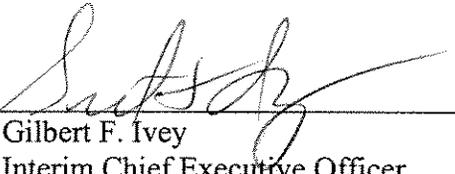
**SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY**

By:   
\_\_\_\_\_  
William D. Carnahan  
Executive Director

**BARD WATER DISTRICT**

By: Ron Derma  
Ron Derma  
General Manager

**THE METROPOLITAN WATER  
DISTRICT OF SOUTHERN  
CALIFORNIA**

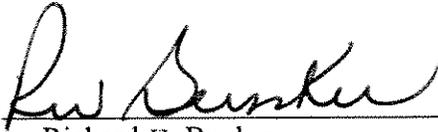
By:   
Gilbert F. Ivey  
Interim Chief Executive Officer

Approved as to form:

Jeffrey Kightlinger  
General Counsel

By:   
Joseph Vanderhorst  
Senior Deputy General Counsel

**COLORADO RIVER COMMISSION  
OF NEVADA**

By:   
Richard W. Bunker  
Chairman

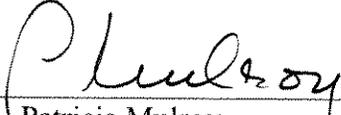
**NEVADA DEPARTMENT OF  
WILDLIFE**

By:   
Terry R. Crawforth  
Director

**BASIC WATER COMPANY**

By: Mark Paris  
Mark Paris  
President / CEO

**SOUTHERN NEVADA WATER  
AUTHORITY**

By:   
Patricia Mulroy  
General Manager

**LOWER COLORADO RIVER  
MULTI-SPECIES CONSERVATION PROGRAM**

**FUNDING AND MANAGEMENT AGREEMENT**

**EXHIBIT A-1  
See Section 8.1**

**Exhibit A-1**  
**FMA Section 8.1 Example**  
**Timeline for Lower Colorado River Multi-Species Conservation Program**

Oct FYCY	Feb FYCY	Mar FYCY	Jul FYCY	Sep FYCY	Oct FYBY	Dec FYBY	Jan FYBY	Mar FYBY	Apr FYBY	Jun FYBY	Jul FYBY	Sep FYBY
Oct-08	Feb-09	Mar-09	Jul-09	Sep-09	Oct-09	Dec-09	Jan-10	Mar-10	Apr-10	Jun-10	Jul-10	Sep-10
Preliminary Sep 2008 indexes available	Final Sep 2008 indexes available by 2/28/2009	Calculate FY 2010 Funding Requirements based on Escalated 2003 \$ by 3/30/2009	FY 2010 Workplans Reviewed	Non-Federal Entities Finalize Any Internal Fund Requirements for FY 2010	Non-Federal Deposits for First Quarter FY 2010 Due	Final First Quarter Draw of Non-Federal Payment for FY 2010	Non-Federal Deposits for Second Quarter FY 2010 Due	Second Quarter Draw of Non-Federal Payment for FY 2010	Non-Federal Deposits for Third Quarter FY 2010 Due	Last Third Quarter Draw of Non-Federal Payment for FY 2010	Non-Federal Deposits for Fourth Quarter FY 2010 Due	Last draw of Non-Federal Payment for FY 2010
Federal FY 2009 Begins				Federal FY 2009 Ends	Federal FY 2010 Begins							Federal FY 2010 Ends

FYCY = Fiscal Year Current Year  
FYBY = Fiscal Year Budget Year

This exhibit shows a timeline when activities should occur which are described in Section 8 of the Funding and Management Agreement. Nothing in this exhibit shall be interpreted to expressly or implicitly create additional requirements or modify any requirements contained in the Funding and Management Agreement.

**LOWER COLORADO RIVER  
MULTI-SPECIES CONSERVATION PROGRAM**

**FUNDING AND MANAGEMENT AGREEMENT**

**EXHIBIT A-2  
See Section 8.1.1**

**Exhibit A-2**  
**FMA Section 8.1.1 Example**  
**Lower Colorado River Multi-Species Conservation Program**  
**Fiscal Year Inflation Calculation**

Item		Description / Formula		Values		Result
FY	=	Federal Fiscal Year Being Adjusted for Inflation		2006		2006
FY-2	=	2 years prior to Federal Fiscal Year Being Adjusted for Inflation		2004		2004
PPI Inflation Index for FY	=	$\frac{\text{Producer Price Index for Materials and Components for Const Sept FY-2}}{\text{Producer Price Index for Materials and Components for Const Sept 2002}}$	=	171.1 / 152.1	=	1.125
GDPIP Inflation Index for FY	=	$\frac{\text{Gross Domestic Product Implicit Price Deflator September 30, FY-2}}{\text{Gross Domestic Product Implicit Price Deflator September 30, 2002}}$		108.454 / 104.243	=	1.040
Inflation Index for FY	=	$(\text{PPI Inflation Index for FY} + \text{GDPIP inflation Index for FY})/2$		$(1.125+1.040)/2$	=	1.083
Non-Federal Funding Obligation for FY	=	$(5 - \text{ year Amount from Table 7-1 of HCP adjusted to yearly amount})/2$	=	11,214 / 2	=	5,607
Federal Funding Obligation for FY	=	$(5 - \text{ year Amount from Table 7-1 of HCP adjusted to yearly amount})/2$	=	11,214 / 2	=	5,607
Non-Federal Indexed Funding Obligation for FY	=	$(\text{Non-Federal Funding Obligation for FY}) \times (\text{Inflation Index for FY})$		5,607 X 1.083	=	6,070
Federal Indexed Funding Obligation for FY	=	$(\text{Federal Funding Obligation for FY}) \times (\text{Inflation Index for FY})$		5,607 X 1.083	=	6,070

This exhibit shows the annual calculation required by Section 8.1 of the Funding and Management Agreement. Nothing in this exhibit shall be interpreted to expressly or implicitly create additional requirements or modify any requirements contained in the Funding and Management Agreement.

**LOWER COLORADO RIVER  
MULTI-SPECIES CONSERVATION PROGRAM**

**FUNDING AND MANAGEMENT AGREEMENT**

**EXHIBIT A-3  
See Section 8.1.2**

**Exhibit A-3**  
**FMA Section 8.1.2 Example**  
**Lower Colorado River Multi-Species Conservation Program**  
**Funding, Indexing, and Inflation Adjusted Changes in Funding**

row	Sept/FY	Estimated Annual Inflation GDP	Estimated Annual Inflation PPI	Gross Domestic Product Index	GDP Inflation Index	Producer Price Index	PPI Inflation Index	Composite Inflation Index	Program in 9/2002 \$ (Table 7-1 of HCP)			Program in Indexed \$		
									Total	Federal	Non-Federal	Indexed Total	Indexed Federal	Indexed Non-Federal
col (a)	col (b)	col (c)	col (d)	col (e)	col (f)	col (g)	col (h)	col (i)	col (j)	col (k)	col (l)	col (m)	col (n)	
1					d3/d2 =e3		f3/f2 =g3	(e3+g3)/2 =h3					j6*h4 =m6	k6*h4 =n6
2	2002	Actual	Actual	104.243	1.000	152.100	1.000	1.000						
3	2003	Actual	Actual	106.150	1.018	155.000	1.019	1.019						
4	2004	Preliminary	Preliminary	108.454	1.040	171.100	1.125	1.083						
5	2005	1.5%	3.5%	110.081	1.056	177.089	1.164	1.110						
6	2006	2.5%	3.5%	112.833	1.082	183.287	1.205	1.144	11,214	5,607	5,607	12,139	6,070	6,070
7	2007	3.0%	3.5%	116.218	1.115	189.702	1.247	1.181	11,214	5,607	5,607	12,448	6,224	6,224
8	2008	3.0%	3.5%	119.704	1.148	196.341	1.291	1.220	11,214	5,607	5,607	12,823	6,412	6,412
9	2009	3.0%	3.5%	123.295	1.183	203.213	1.336	1.260	11,214	5,607	5,607	13,244	6,622	6,622
10	2010	3.0%	3.5%	126.994	1.218	210.326	1.383	1.301	11,214	5,607	5,607	13,675	6,838	6,838
11	2011	3.0%	3.5%	130.804	1.255	217.687	1.431	1.343	27,540	13,770	13,770	34,687	17,343	17,343
12	2012	3.0%	3.5%	134.728	1.292	225.306	1.481	1.387	27,540	13,770	13,770	35,816	17,908	17,908
13	2013	3.0%	3.5%	138.770	1.331	233.192	1.533	1.432	27,540	13,770	13,770	36,986	18,493	18,493
14	2014	3.0%	3.5%	142.933	1.371	241.353	1.587	1.479	27,540	13,770	13,770	38,184	19,092	19,092
15	2015	3.0%	3.5%	147.221	1.412	249.801	1.642	1.527	27,540	13,770	13,770	39,437	19,719	19,719
16	2016	3.0%	3.5%	151.638	1.455	258.544	1.700	1.578	22,164	11,082	11,082	32,781	16,390	16,390
17	2017	3.0%	3.5%	156.187	1.498	267.593	1.759	1.629	22,164	11,082	11,082	33,844	16,922	16,922
18	2018	3.0%	3.5%	160.873	1.543	276.959	1.821	1.682	22,164	11,082	11,082	34,964	17,482	17,482
19	2019	3.0%	3.5%	165.699	1.590	286.652	1.885	1.738	22,164	11,082	11,082	36,094	18,047	18,047
20	2020	3.0%	3.5%	170.670	1.637	296.685	1.951	1.794	22,164	11,082	11,082	37,280	18,640	18,640
21	2021	3.0%	3.5%	175.790	1.686	307.069	2.019	1.853	19,982	9,991	9,991	34,719	17,359	17,359
22	2022	3.0%	3.5%	181.064	1.737	317.816	2.090	1.914	19,982	9,991	9,991	35,848	17,924	17,924
23	2023	3.0%	3.5%	186.495	1.789	328.940	2.163	1.976	19,982	9,991	9,991	37,017	18,508	18,508
24	2024	3.0%	3.5%	192.090	1.843	340.453	2.238	2.041	19,982	9,991	9,991	38,236	19,118	19,118
25	2025	3.0%	3.5%	197.853	1.898	352.369	2.317	2.108	19,982	9,991	9,991	39,484	19,742	19,742
26	2026	3.0%	3.5%	203.789	1.955	364.702	2.398	2.177	8,144	4,072	4,072	16,618	8,309	8,309
27	2027	3.0%	3.5%	209.902	2.014	377.466	2.482	2.248	8,144	4,072	4,072	17,163	8,582	8,582
28	2028	3.0%	3.5%	216.199	2.074	390.678	2.569	2.322	8,144	4,072	4,072	17,725	8,863	8,863
29	2029	3.0%	3.5%	222.685	2.136	404.351	2.658	2.397	8,144	4,072	4,072	18,308	9,154	9,154

**Exhibit A-3**  
**FMA Section 8.1.2 Example**  
**Lower Colorado River Multi-Species Conservation Program**  
**Funding, Indexing, and Inflation Adjusted Changes in Funding**

row	Sept/FY col (a)	Estimated Annual Inflation GDP col (b)	Estimated Annual Inflation PPI col (c)	Gross Domestic Product Index col (d)	GDP Inflation Index col (e)	Producer Price Index col (f)	PPI Inflation Index col (g)	Composite Inflation Index col (h)	Program in 9/2002 \$ (Table 7-1 of HCP)			Program in Indexed \$		
									Total col (i)	Federal col (j)	Non-Federal col (k)	Indexed Total col (l)	Indexed Federal col (m)	Indexed Non-Federal col (n)
1					d3/d2 =e3		f3/f2 =g3	(e3+g3)/2 =h3					j6*h4 =m6	k6*h4 =n6
30	2030	3.0%	3.5%	229.366	2.200	418.504	2.752	2.476	8,144	4,072	4,072	18,906	9,453	9,453
31	2031	3.0%	3.5%	236.247	2.266	433.151	2.848	2.557	7,500	3,750	3,750	17,978	8,989	8,989
32	2032	3.0%	3.5%	243.334	2.334	448.311	2.947	2.641	7,500	3,750	3,750	18,570	9,285	9,285
33	2033	3.0%	3.5%	250.634	2.404	464.002	3.051	2.728	7,500	3,750	3,750	19,178	9,589	9,589
34	2034	3.0%	3.5%	258.153	2.476	480.242	3.157	2.817	7,500	3,750	3,750	19,804	9,902	9,902
35	2035	3.0%	3.5%	265.898	2.551	497.051	3.268	2.910	7,500	3,750	3,750	20,456	10,228	10,228
36	2036	3.0%	3.5%	273.875	2.627	514.448	3.382	3.005	7,173	3,587	3,587	20,203	10,101	10,101
37	2037	3.0%	3.5%	282.091	2.706	532.453	3.501	3.104	7,173	3,587	3,587	20,870	10,435	10,435
38	2038	3.0%	3.5%	290.554	2.787	551.089	3.623	3.205	7,173	3,587	3,587	21,551	10,776	10,776
39	2039	3.0%	3.5%	299.270	2.871	570.377	3.750	3.311	7,173	3,587	3,587	22,261	11,131	11,131
40	2040	3.0%	3.5%	308.249	2.957	590.341	3.881	3.419	7,173	3,587	3,587	22,989	11,495	11,495
41	2041	3.0%	3.5%	317.496	3.046	611.002	4.017	3.532	7,173	3,587	3,587	23,746	11,873	11,873
42	2042	3.0%	3.5%	327.021	3.137	632.388	4.158	3.648	7,173	3,587	3,587	24,524	12,262	12,262
43	2043	3.0%	3.5%	336.832	3.231	654.521	4.303	3.767	7,173	3,587	3,587	25,331	12,666	12,666
44	2044	3.0%	3.5%	346.937	3.328	677.429	4.454	3.891	7,173	3,587	3,587	26,164	13,082	13,082
45	2045	3.0%	3.5%	357.345	3.428	701.139	4.610	4.019	7,173	3,587	3,587	27,021	13,510	13,510
46	2046	3.0%	3.5%	368.065	3.531	725.679	4.771	4.151	7,173	3,587	3,587	27,910	13,955	13,955
47	2047	3.0%	3.5%	379.107	3.637	751.078	4.938	4.288	7,173	3,587	3,587	28,828	14,414	14,414
48	2048	3.0%	3.5%	390.480	3.746	777.366	5.111	4.429	7,173	3,587	3,587	29,775	14,888	14,888
49	2049	3.0%	3.5%	402.195	3.858	804.574	5.290	4.574	7,173	3,587	3,587	30,754	15,377	15,377
50	2050	3.0%	3.5%	414.260	3.974	832.734	5.475	4.725	7,173	3,587	3,587	31,766	15,883	15,883
51	2051	3.0%	3.5%	426.688	4.093	861.879	5.667	4.880	7,173	3,587	3,587	32,809	16,405	16,405
52	2052	3.0%	3.5%	439.489	4.216	892.045	5.865	5.041	7,173	3,587	3,587	33,889	16,944	16,944
53	2053	3.0%	3.5%	452.673	4.342	923.267	6.070	5.206	7,173	3,587	3,587	35,004	17,502	17,502
54	2054	3.0%	3.5%	466.254	4.473	955.581	6.283	5.378	7,173	3,587	3,587	36,156	18,078	18,078
55	2055	3.0%	3.5%	480.241	4.607	989.026	6.502	5.555	7,173	3,587	3,587	37,343	18,671	18,671
									<b>626,180</b>	<b>313,090</b>	<b>313,090</b>	<b>1,353,306</b>	<b>676,653</b>	<b>676,653</b>

**Exhibit A-3**  
**FMA Section 8.1.2 Example**  
**Lower Colorado River Multi-Species Conservation Program**  
**Funding, Indexing, and Inflation Adjusted Changes in Funding**

FY	Original Program Indexed			Credits / Deficits			Revised Program			Credits / Deficits Converted to September 2002 \$		
	Indexed Proposed Program	Indexed Proposed Federal	Indexed Proposed Non-Federal	Total Credits / Deficits	Federal Credits / Deficits	Non-Federal Credits / Deficits	Alternative Program	Federal Funding	Non-Federal Funding	Total Change in 9/2002 \$	Federal Change in 9/2002\$	Non-Federal Change in 9/2002\$
2003												
2004												
2005	0	0	0	10,600	5,000	5,600	10,600	5,000	5,600	10,403	4,907	5,496
2006	12,139	6,070	6,070	449	2,000	-1,551	12,588	8,070	4,519	415	1,848	-1,433
2007	12,448	6,224	6,224	450	2,000	-1,550	12,898	8,224	4,674	406	1,802	-1,396
2008	12,823	6,412	6,412	450	2,000	-1,550	13,273	8,412	4,862	394	1,749	-1,355
2009	13,244	6,622	6,622	950	2,500	-1,550	14,194	9,122	5,072	805	2,117	-1,312
2010	13,675	6,838	6,838	2,500	2,500		16,175	9,338	6,838	2,050	2,050	0
2011	34,687	17,343	17,343	-5,000	-5,000		29,687	12,343	17,343	-3,970	-3,970	0
2012	35,816	17,908	17,908	-4,500	-4,500		31,316	13,408	17,908	-3,460	-3,460	0
2013	36,986	18,493	18,493	-4,000	-4,000		32,986	14,493	18,493	-2,978	-2,978	0
2014	38,184	19,092	19,092	-3,000	-3,000		35,184	16,092	19,092	-2,164	-2,164	0
2015	39,437	19,719	19,719	-2,722	-2,722		36,715	16,997	19,719	-1,901	-1,901	0
2016	32,781	16,390	16,390	0			32,781	16,390	16,390	0	0	0
2017	33,844	16,922	16,922	0			33,844	16,922	16,922	0	0	0
2018	34,964	17,482	17,482	0			34,964	17,482	17,482	0	0	0
2019	36,094	18,047	18,047	0			36,094	18,047	18,047	0	0	0
2020	37,280	18,640	18,640	0			37,280	18,640	18,640	0	0	0
2021	34,719	17,359	17,359	0			34,719	17,359	17,359	0	0	0
2022	35,848	17,924	17,924	0			35,848	17,924	17,924	0	0	0
2023	37,017	18,508	18,508	0			37,017	18,508	18,508	0	0	0
2024	38,236	19,118	19,118	0			38,236	19,118	19,118	0	0	0
2025	39,484	19,742	19,742	0			39,484	19,742	19,742	0	0	0
2026	16,618	8,309	8,309	0			16,618	8,309	8,309	0	0	0
2027	17,163	8,582	8,582	0			17,163	8,582	8,582	0	0	0
2028	17,725	8,863	8,863	0			17,725	8,863	8,863	0	0	0
2029	18,308	9,154	9,154	0			18,308	9,154	9,154	0	0	0
2030	18,906	9,453	9,453	0			18,906	9,453	9,453	0	0	0
2031	17,978	8,989	8,989	0			17,978	8,989	8,989	0	0	0
2032	18,570	9,285	9,285	0			18,570	9,285	9,285	0	0	0
2033	19,178	9,589	9,589	0			19,178	9,589	9,589	0	0	0
2034	19,804	9,902	9,902	0			19,804	9,902	9,902	0	0	0

**Exhibit A-3**  
**FMA Section 8.1.2 Example**  
**Lower Colorado River Multi-Species Conservation Program**  
**Funding, Indexing, and Inflation Adjusted Changes in Funding**

FY	Original Program Indexed			Credits / Deficits			Revised Program			Credits / Deficits Converted to September 2002 \$		
	Indexed Proposed Program	Indexed Proposed Federal	Indexed Proposed Non-Federal	Total Credits / Deficits	Federal Credits / Deficits	Non-Federal Credits / Deficits	Alternative Program	Federal Funding	Non-Federal Funding	Total Change in 9/2002 \$	Federal Change in 9/2002\$	Non-Federal Change in 9/2002\$
2035	20,456	10,228	10,228	0			20,456	10,228	10,228	0	0	0
2036	20,203	10,101	10,101	0			20,203	10,101	10,101	0	0	0
2037	20,870	10,435	10,435	0			20,870	10,435	10,435	0	0	0
2038	21,551	10,776	10,776	0			21,551	10,776	10,776	0	0	0
2039	22,261	11,131	11,131	0			22,261	11,131	11,131	0	0	0
2040	22,989	11,495	11,495	0			22,989	11,495	11,495	0	0	0
2041	23,746	11,873	11,873	0			23,746	11,873	11,873	0	0	0
2042	24,524	12,262	12,262	0			24,524	12,262	12,262	0	0	0
2043	25,331	12,666	12,666	0			25,331	12,666	12,666	0	0	0
2044	26,164	13,082	13,082	0			26,164	13,082	13,082	0	0	0
2045	27,021	13,510	13,510	0			27,021	13,510	13,510	0	0	0
2046	27,910	13,955	13,955	0			27,910	13,955	13,955	0	0	0
2047	28,828	14,414	14,414	0			28,828	14,414	14,414	0	0	0
2048	29,775	14,888	14,888	0			29,775	14,888	14,888	0	0	0
2049	30,754	15,377	15,377	0			30,754	15,377	15,377	0	0	0
2050	31,766	15,883	15,883	0			31,766	15,883	15,883	0	0	0
2051	32,809	16,405	16,405	0			32,809	16,405	16,405	0	0	0
2052	33,889	16,944	16,944	0			33,889	16,944	16,944	0	0	0
2053	35,004	17,502	17,502	0			35,004	17,502	17,502	0	0	0
2054	36,156	18,078	18,078	0			36,156	18,078	18,078	0	0	0
2055	37,343	18,671	18,671	0			37,343	18,671	18,671	0	0	0
<b>Total</b>	<b>1,353,306</b>	<b>676,653</b>	<b>676,653</b>				<b>1,349,483</b>	<b>673,431</b>	<b>676,052</b>	<b>0</b>	<b>0</b>	<b>0</b>

This exhibit shows how inflation could impact future funding years and how credits due to early funding by either the Federal and non-Federal parties could impact the annual funding requirements in future fiscal years. Nothing in this exhibit shall be interpreted to expressly or implicitly create additional requirements or modify any requirements contained in the Funding and Management Agreement.

**LOWER COLORADO RIVER  
MULTI-SPECIES CONSERVATION PROGRAM**

**FUNDING AND MANAGEMENT AGREEMENT**

**EXHIBIT A-4  
See Section 8.3.7**

**Exhibit A-4**  
**FMA Section 8.3.7 Example**  
**Lower Colorado River Multi-Species Conservation Program**  
**Calculation of Non-Federal Shares and Arizona Make-up Payments for Years 1-10**  
**2016 (Year 11 of LCR MSCP) - AZ Make-up Payments Begin (\$000)**

	Q1	Q2	Q3	Q4	2016 Total
Non-Federal Share (2003 \$)	1,385.2500	1,385.2500	1,385.2500	1,385.2500	5,541.0000
California Share (50% 2003 \$)	692.6250	692.6250	692.6250	692.6250	2,770.5000
Nevada Share (25% 2003 \$)	346.3125	346.3125	346.3125	346.3125	1,385.2500
Arizona Share (25% 2003 \$)	346.3125	346.3125	346.3125	346.3125	1,385.2500
September 2002 Inflation Index					1.0000
September 2014 Inflation Index (for FY 2016)					1.4873
Non-Federal Share (escalated \$)	2,060.2823	2,060.2823	2,060.2823	2,060.2823	8,241.1293
California Share (50% escalated \$)	1,030.1412	1,030.1412	1,030.1412	1,030.1412	4,120.5647
Nevada Share (25% escalated \$)	515.0706	515.0706	515.0706	515.0706	2,060.2823
Arizona Share (25% escalated \$)	515.0706	515.0706	515.0706	515.0706	2,060.2823
15% AZ make-up payment years 1-3 (2003 \$)					2,523.1500
10% AZ make-up payment years 4-10 (2003 \$)					8,006.4000
					<u>10,529.5500</u>
15% AZ make-up payment years 1-3 (escalated \$)					3,752.6810
10% AZ make-up payment years 4-10 (escalated \$)					11,907.9187
					<u>15,660.5997</u>
AZ make-up payment in 2016 (1/80 total AZ make-up payment escalated for inflation)	195.7575	195.7575	195.7575	195.7575	783.0300
Non-Federal Share (escalated \$)	2,060.2823	2,060.2823	2,060.2823	2,060.2823	8,241.1293
Adjusted California Share (50% less 1/2 AZ make-up)	932.2625	932.2625	932.2625	932.2625	3,729.0497
Adjusted Nevada Share (25% less 1/2 AZ make-up)	417.1919	417.1919	417.1919	417.1919	1,668.7673
Adjusted Arizona Share (25% plus AZ make-up)	710.8281	710.8281	710.8281	710.8281	2,843.3123

*Numbers may not add exactly due to rounding*

Nothing in this exhibit shall be interpreted to expressly or implicitly create additional requirements or modify any requirements contained in the Funding and Management Agreement.