

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

**IMPLEMENTING AGREEMENT**

**April 4, 2005**

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

**1. PARTIES**

This Lower Colorado River Multi-Species Conservation Program (LCR MSCP) Implementing 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 (NPS); the Bureau of Indian Affairs

(BIA); the Bureau of Land Management (BLM); and 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.

***Other Parties:*** Any person or entity added as a Third Party Authorized to Take pursuant to section 16 of this Agreement.

## **2. RECITALS AND PURPOSES**

A. The Arizona, California, and Nevada Parties, in partnership with the Federal Parties, have developed the Lower Colorado River Multi-Species Conservation Program to provide the basis for compliance with section 10(a)(1)(B) of the Federal Endangered Species Act (ESA) by the State Parties and section 7 of the ESA by the Federal Parties.

B. The planning area for the LCR MSCP, as depicted on Figure 1-1 in the Habitat Conservation Plan (HCP) and the Biological Assessment (BA) and described in section 1.4.1 of the HCP and BA, is defined as areas up to and including the full-pool elevations of Lakes Mead, Mohave, and Havasu and the historical floodplain of the Colorado River from Lake Mead downstream to the Southerly International Boundary with Mexico. The historical floodplain includes all those lands that are or have been affected by the meandering or regulated flows of the Colorado River, which are delineated by significant changes in elevation between the floodplain and the adjacent uplands.

C. The planning area provides habitat for the following Covered Species which are listed as endangered or threatened under the ESA as of the Effective Date:

Bonytail

Humpback chub

Razorback sucker

Desert tortoise

Southwestern willow flycatcher

Yuma clapper rail

D. The planning area also provides habitat for the following Covered Species which are not listed as endangered or threatened under the ESA as of the Effective Date:

Threecorner milkvetch

Sticky buckwheat

MacNeill's sootywing skipper

Flannelmouth sucker

Relict leopard frog

Flat-tailed horned lizard

Western least bittern

California black rail

Yellow-billed cuckoo

Elf owl

Gilded flicker

Gila woodpecker

Vermilion flycatcher

Arizona Bell's vireo

Sonoran yellow warbler

Summer tanager

Western red bat

Western yellow bat

Colorado River cotton rat

Yuma hispid cotton rat

E. The planning area also provides habitat for the following species (LCR MSCP evaluation species) that are not listed as endangered or threatened under the ESA as of the Effective Date, and for which coverage under the section 10(a)(1)(B) permit is not sought at this time:

Desert pocket mouse

Sonoran Desert toad (Colorado River toad)

Lowland leopard frog

California leaf-nosed bat

Pale Townsend's big-eared bat

F. The Conservation Measures described in Chapter 5 of the HCP will fully mitigate the effects of incidental take of Covered Species resulting from the Covered Actions and Covered Activities and will, to the maximum extent practicable, minimize and mitigate the effects of incidental take of Covered Species resulting from the Covered Actions and Covered Activities. In addition, special management considerations for species and Critical Habitat were developed and incorporated in the Conservation Plan which contributes to conservation goals for the Covered Species.

G. The Service has found, following opportunity for public comment, that: 1) any taking of Covered Species within the LCR MSCP planning area as a result of Covered Actions and Covered Activities in accordance with the LCR MSCP as implemented will be incidental to the carrying out of otherwise lawful activities; 2) the LCR MSCP as implemented will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; 3) the Parties identified and provided for in the Funding and Management Agreement (FMA) will ensure that adequate funding for the LCR MSCP will be provided; 4) the requested taking of Covered Species as a result of Covered Actions and Covered Activities will not appreciably reduce the likelihood of survival and recovery of such species in the wild; and 5) the LCR MSCP, as implemented, will satisfy and fulfill all measures agreed upon by the Parties for the purposes of the LCR MSCP (including procedures determined by the Service to be necessary to address Unforeseen Circumstances).

H. This Agreement:

- Ensures implementation of each of the terms of the HCP by the non-federal and Federal Parties;
- Describes remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement;



- Provides assurances to the Permittees; and
- Anticipates that the Federal Parties will fulfill their obligations under the ESA, the FMA, and this Implementing Agreement (IA).

### 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”** means an iterative program designed to review and use the results of information gathered through monitoring and research to adjust Conservation Measures, management strategies, and practices where appropriate in implementing the Conservation Plan.
3. **“Adaptive Management Program” or “AMP”** 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 this Agreement and section 5.12 of the HCP.
4. **“Agreement” or “IA”** means this Implementing Agreement.
5. **“Biological Assessment” or “BA”** means the biological assessment for the specified Covered Actions prepared for the LCR MSCP by the Federal Parties and transmitted to the Service on November 29, 2004, in accordance with section 7 of the ESA.

6. **“Biological Opinion” or “BO”** means the section 7 biological opinion issued by the Service for the LCR MSCP.
7. **“Certificate of Inclusion”** means a certificate issued by a Permittee to a non-federal person, firm, or entity that has agreed to be bound by the terms of the HCP and the Permit pursuant to section 16.1 of this Agreement.
8. **“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.
9. **“Conservation Plan”** means the Habitat Conservation Plan described in section 11 of this Agreement.
10. **“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.
11. **“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.
12. **“Covered Species”** means those twenty-six (26) species listed in sections 2(C) and 2(D) of this Agreement.
13. **“Critical Habitat”** means those areas within the planning area that have been designated by the Secretary of the Interior to be essential for the continued existence of certain of the Covered Species in accordance with the ESA.
14. **“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.
15. **“Effective Date”** means the date on which this Agreement takes effect, as provided in section 6.1 of this Agreement.

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

17. **“Environmental Laws”** means Federal laws and regulations governing or regulating the impact of Covered Actions and Covered Activities on land, water, or biological resources as they relate to Covered Species, including, but not limited to the ESA, the National Environmental Policy Act (NEPA), the Migratory Bird Act (MBTA), the Fish and Wildlife Coordination Act, the Fish and Wildlife Act of 1956, and the Clean Water Act (Title 33, U.S.C. sections 1251 *et seq.*).

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

19. **“Funding and Management Agreement”** or **“FMA”** means that certain Lower Colorado River Multi-Species Conservation Program Funding and Management Agreement between the Federal Parties and the Permittees of the section 10(a)(1)(B) incidental take permit which provides for the administration, financing, and implementation of the LCR MSCP.

20. **“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.

21. **“Incidental Take Authorization”** or **“ITA”** 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.

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

23. **“Listed Species”** means those Covered Species that are listed by the Service as endangered or threatened on the Effective Date as shown in Table 1-2 of the HCP and BA and as listed in section 2(C) of this Agreement.

24. **“Lower Colorado River”** means the Colorado River within the planning area as provided in section 2(B) of this Agreement.

25. **“Minor Modification”** means a clarification or minor change to the LCR MSCP as defined in section 14.1 of this Agreement.

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

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

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

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

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

31. **“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 FMA.

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

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

34. **“Service”** means the United States Fish and Wildlife Service.

35. **“Steering Committee”** means the body established by section 7.3 of the FMA.

36. **“Third Party Authorized to Take”** means any person, firm, or entity that receives an ITA pursuant to section 16 of this Agreement.

37. **“Unlisted Species”** means a species that is not listed as endangered or threatened under the ESA as of the Effective Date.

## **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 HCP, 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 FMA and this Agreement, the terms of the FMA 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 SUPERCEDED**

This Agreement and the FMA 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 superceded by this Agreement and the FMA. Notwithstanding the foregoing, nothing in this Agreement or the other Program Documents shall be deemed to supercede 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.

## **6.3 Extension of the Permit**

The Service may, with the agreement of the Parties, from time to time extend the Permit beyond its current term in compliance with the applicable law and regulations in force on the date of any such extension.

## **6.4 Permit Suspension**

The Service may suspend the Permit if the Permittees are not in compliance with the conditions of the Permit, the IA, the FMA, or any applicable Federal laws and regulations. For the purposes of the LCR MSCP, the procedures applicable to any suspension shall be in accordance with the Federal regulations in effect at the time of the suspension; provided however, that, at a minimum, the Permittee shall be afforded the procedural rights set forth in 50 C.F.R. 13.27 in existence on the Effective Date. The suspension shall remain in effect until the Service determines that the Permittees have corrected the deficiencies. The Permit may be partially suspended with respect to specified Covered Species, or to a portion of the Planning Area or Covered Activities, or in relation to a specific Permittee or specific Permittees. In the event of a partial suspension, the portion of this Permit not subject to suspension shall remain in full force and effect. Permit suspension as a result of changed circumstances shall be in accordance with the applicable terms of this section 6.4 and section 13 of the IA.

## **6.5 Permit Revocation**

The Service shall not revoke the Permit for any reason except those listed in 50 C.F.R. 13.28(a)(1)-(4), or unless the Covered Activities would be inconsistent with the criteria set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and this inconsistency has not been remedied. Notwithstanding the foregoing, the Permit will only be revoked if the Service, the Permittees, and other interested parties have not been successful in remedying any such inconsistency through other means. The Permit may be partially revoked with

respect to specified Covered Species, or to a portion of the Planning Area or Covered Activities, or in relation to a specific Permittee or specific Permittees. In the event of a partial revocation, the portion of this Permit not subject to the revocation shall remain in full force and effect. All Conservation Measures in the HCP that are continued in effect after any Permit revocation shall be taken into account by the Service and credited toward any future efforts by the Permittees and other parties to ensure that any Covered Actions or Covered Activities are in compliance with requirements of the ESA. This provision shall survive any revocation of the Permit and shall remain in full force and effect. Procedures applicable to any revocation shall be in accordance with the Federal regulations in effect at the time of the revocation; provided however, that, at a minimum, the Permittee shall be afforded the procedural rights set forth in 50 C.F.R. 13.28 in existence on the Effective Date.

## **7. INTEGRATION OF BA AND HCP**

### **7.1 Comprehensive Plan**

The LCR MSCP is a comprehensive plan. It addresses the effects of all Federal Covered Actions and non-federal Covered Activities on Covered Species and their habitats. The LCR MSCP is intended to secure ITAs to authorize incidental take of Covered Species, that are now or hereafter listed as endangered or threatened pursuant to the ESA, that may occur as a result of the Covered Actions and Covered Activities.

### **7.2 Legal Uncertainty Regarding Non-Discretionary Federal Actions**

Take that occurs as the incidental result of Covered Actions undertaken by Reclamation, Western, and the other Federal agencies identified in the BA (i.e., NPS, BIA, the Service, and BLM) may only be authorized by the Service pursuant to the provisions of section 7 of the ESA. However, certain Covered Actions that are undertaken by Reclamation and Western are nondiscretionary in nature (e.g., delivery of water to Mexico pursuant to the 1944 Water Treaty, delivery of water to parties holding permanent water delivery contracts with the Secretary). Non-discretionary actions of the Federal Parties are not subject to the consultation and/or conference requirements of section 7 of the ESA. In addition, many of Reclamation's non-discretionary Covered

Actions occur as the result of contracts with non-federal Parties and, arguably, might be included as part of the section 10(a)(1)(B) Permit (e.g., water is delivered by Reclamation as the result of water orders by non-federal entities pursuant to water delivery contracts). In order to make the LCR MSCP as comprehensive as possible, while avoiding arguments and challenges about whether any particular Federal action is discretionary or non-discretionary, and whether incidental take authority should be granted pursuant to section 7 or section 10 of the ESA: (i) the effects of all Covered Actions, both discretionary and non-discretionary, and Covered Activities have been described and analyzed in both the BA and the HCP; (ii) the Permittees are seeking an incidental take permit for their Covered Activities pursuant to section 10 of the ESA; and (iii) Reclamation and the other Federal Parties are seeking Incidental Take Authorization for their Covered Actions pursuant to section 7 of the ESA.

### **7.3 No Obligation to Consult on Non-Discretionary Actions or Actions that Do Not Affect Listed Species**

Notwithstanding the inclusion of Federal non-discretionary actions within the identified Covered Actions, this Agreement shall not be interpreted to require consultation and/or conference pursuant to section 7 of the ESA with respect to Federal non-discretionary actions for the purpose of compliance with the provisions of the ESA on the Lower Colorado River or for any other purpose or in any other case or circumstance. The approach taken in this regard for the LCR MSCP is undertaken for the specific purposes and as identified in sections 7.1 and 7.2 of this Agreement. Nor shall anything in this Agreement be interpreted to require consultation and/or conference pursuant to section 7 of the ESA with respect to Federal actions that do not affect Listed Species.

### **7.4 Compliance with Provisions of Biological Opinion**

The Federal Parties and the Permittees agree that they shall comply with all applicable reasonable and prudent measures and terms and conditions within the Biological Opinion, notwithstanding the fact that such reasonable and prudent measures



and terms and conditions may arise out of, or be connected with, incidental take resulting from Covered Actions that are non-discretionary or do not affect Listed Species.

#### **7.5 No Allocation of Individual Responsibility to Mitigate for Effects of Covered Actions and Covered Activities**

The Parties have quantified the effects of the Covered Actions and Covered Activities for development of a comprehensive conservation plan. The Parties have not identified specific impacts that individual Covered Actions and Covered Activities have had or will have upon the Covered Species and their habitats because the decline of species and habitats along the Lower Colorado River has been caused by many factors, including but not limited to: (i) introduction of non-native species; (ii) permanent facilities constructed prior to enactment of the Environmental Laws; (iii) stochastic events, both within and beyond the planning area, that are beyond the control of any of the Parties; and (iv) development and other activities undertaken within and adjacent to the Lower Colorado River.

### **8. FUTURE SECTION 7 CONSULTATIONS – COVERED ACTIONS AND COVERED ACTIVITIES**

In the event that, despite implementation of the LCR MSCP and cooperative efforts among the Service, the Program Manager, and the Steering Committee, any Federal Party determines that a section 7 consultation or re-initiation of consultation is required pursuant to applicable Federal law for any Covered Action, the Federal Party shall give notice thereof to the Program Manager, the Steering Committee, and the Permittees, and such Permittees shall be treated as applicants in any such section 7 consultation, and be entitled to fully and completely participate in all matters involved in such consultation or re-initiation of consultation. Costs associated with modifications to the Conservation Plan resulting from any such consultation shall be dealt with in accordance with section 9.9 of the FMA.

The Service has evaluated the direct, indirect, and cumulative effects of the Covered Actions and Covered Activities in its Biological Opinion issued in connection with the LCR MSCP and issuance of the Permit. As a result, and to the maximum extent

allowable, in any consultation under section 7 of the ESA subsequent to the Effective Date with regard to the Covered Actions or Covered Activities, including consultations involving the Permittee(s) or entity that is a Third Party Authorized to Take with regard to Covered Species, the Service shall ensure that the biological opinion issued in connection with the proposed action or project that is the subject of the future consultation is consistent with the Biological Opinion.

## **9. FUTURE SECTION 7 CONSULTATIONS – OTHER ACTIONS AND ACTIVITIES**

### **9.1 Notice**

In any section 7 consultation subsequent to the Effective Date involving activities, other than Covered Actions or Covered Activities, undertaken by any person, firm, or entity that could have an effect upon Covered Species and their habitats within the planning area, the Service shall, to the maximum extent allowed by Federal statutes and regulations, give notice thereof to the Program Manager, the Steering Committee, and the Permittees.

### **9.2 Contents of Biological Opinion**

The Service agrees that the terms of any biological opinion issued in connection with projects that are independent of the Covered Actions and the Covered Activities shall not impose or result in any additional obligation, cost, or expense to the LCR MSCP.

## **10. SPECIES**

### **10.1 Covered but Currently Unlisted Species – Section 10 Permit**

Covered Species that are not listed on the Effective Date as endangered or threatened under the ESA have been treated in the LCR MSCP as if they are Listed Species. In the event an unlisted Covered Species becomes a Listed Species in the future, incidental take of that species shall, without any further action on the part of the Permittees, be immediately authorized pursuant to the terms of the Permit.

### **10.1.1 Savings Provision**

If it is judicially determined that the Service was not authorized to cause the Permit to become effective automatically as to Covered Species not listed as of the Effective Date, the Service shall accept the minimization and mitigation measures in the LCR MSCP as the basis for an application for an amendment to the Permit or separate permits, MBTA permits, and/or other Incidental Take Authorizations. The Service shall use reasonable efforts to review and process the application expeditiously so as to ensure, provided the Permit amendment or application meets the requirements of ESA and other applicable Federal laws, that the Incidental Take Authorization is effective concurrently with the listing of the Covered Species under the ESA. In issuing such permits, amendments, and/or Incidental Take Authorizations, and to the extent that such judicial determination creating the circumstances requiring such additional review and processing allows, the Service shall not request, impose, recommend, or require further mitigation, conservation, compensation, enhancement, or other protection for such Covered Species, except as expressly provided in the Permit, this Agreement, and the FMA.

### **10.2 Covered but Currently Unlisted Species – Section 7**

Pursuant to the provisions of section 7 of the ESA and its implementing regulations, incidental take statements contained in biological opinions apply only to species listed as endangered or threatened under the ESA. In the event an unlisted Covered Species becomes listed in the future, the Service shall give due consideration to, and full credit for, those Conservation Measures provided in the Conservation Plan that benefit such species as part of any section 7 consultation regarding the Covered Actions.

### **10.3 Additions to the Covered Species List**

In the event the Permittees desire to add additional species to the list of Covered Species, the Permittees shall propose an amendment of the HCP and request an amendment to the Permit. Such request shall be supported by sufficient evidence to meet the requirements of the ESA. The Service shall give due consideration to, and full credit for, Conservation Measures previously implemented as part of the Conservation Plan that benefit such species.

#### **10.4 Future Listings of Other Species**

To the extent allowed by applicable law, in evaluating whether to list a species that is not a Covered Species, but which may, from time to time, be present in the planning area, the Service shall: (i) provide advance notice to the Program Manager who shall then inform the Steering Committee and Permittees of the potential listing, (ii) consider the conservation benefits already provided to the species by the LCR MSCP; and (iii) coordinate with the Program Manager and the Steering Committee to identify what changes to the Conservation Plan, if any, would be sufficient to avoid listing within the planning area. In the event that any such species is listed within the planning area, the Service shall give due consideration to, and full credit for, Conservation Measures previously implemented as part of the Conservation Plan that benefit such species in any proposed amendment to the HCP and the Permit or in any section 7 consultation regarding the Covered Actions.

### **11. THE CONSERVATION PLAN AND ADAPTIVE MANAGEMENT**

#### **11.1 The LCR MSCP Conservation Plan**

##### **11.1.1 Content**

The Conservation Plan consists of: (i) those measures described in section 1.3.4 of the HCP that are required to be performed by Reclamation pursuant to the 2001 Biological Opinion; (ii) those measures described in section 1.3.3 of the HCP that are required to be performed by Reclamation pursuant to the April 30, 1997 and April 30, 2002 Biological Opinions (Lower Colorado River Operations and Maintenance); (iii) those Conservation Measures described in Chapter 5 of the HCP; and (iv) those Conservation Measures that are developed after the Effective Date pursuant to the AMP. Implementation of the Conservation Plan will occur pursuant to the Program Documents.

#### **11.2 Goals of the Conservation Plan**

As more particularly described in section 5.2.1 of the HCP, the goals of the Conservation Plan with respect to Covered Species are:

- To avoid, minimize, and fully mitigate adverse effects of Covered Actions and Covered Activities and LCR MSCP implementation on Covered Species and their habitat;
- To contribute to the recovery of Listed Species; and
- To reduce the likelihood of future Federal listing of Unlisted Species.

### **11.3 Measurement of Biological Goals and Objectives-Importance of Habitat**

The Covered Species could be affected by actions, both natural and man-made, within and outside the planning area, which are beyond the control of the Parties and unrelated to the Covered Actions and Covered Activities. Therefore, the effectiveness of the Conservation Plan in minimizing and mitigating the effects of the Covered Actions and Covered Activities on the Covered Species will be considered on the basis of the implementation of the Conservation Measures set forth in the HCP or as modified through the AMP.

### **11.4 Importance of Adaptive Management**

The initial Conservation Measures proposed to be funded by the Parties are sufficient to meet the incidental take requirements of the ESA. However, the number of Covered Species, the paucity of data and information regarding some species, the variety of habitats found within the planning area, the likelihood of new environmental challenges, and the budget of the LCR MSCP, make implementation of a science-based AMP that relies on the best available scientific information and knowledge an essential component of the LCR MSCP. The AMP will provide guidance to all Parties regarding monitoring, research, and management practices to benefit the Covered Species. Each Party shall, to the maximum extent practicable, fully cooperate with the AMP.

#### **11.4.1 Adaptive Management Program**

As more particularly illustrated in Figure 5-4 and described in section 5.12 of the HCP, Reclamation shall implement an iterative Adaptive Management Program (AMP) for the LCR MSCP that utilizes the best available scientific information and knowledge,

together with the results of monitoring and research, to evaluate the successes and failures of the Conservation Plan. Because changes over time and adaptive responses are contemplated by the LCR MSCP, changes proposed as the result of the AMP or as a result of changed circumstances will not require an amendment to the LCR MSCP, the Permit, or this Agreement. If unforeseen circumstances occur as provided in section 13 of this Agreement, they will be resolved through internal changes in the Conservation Plan through Adaptive Management. Changes proposed as a result of unforeseen circumstances should not require an amendment to the LCR MSCP, the Permit, or this Agreement.

#### **11.4.2 Changes Resulting From Adaptive Management Program**

All proposed changes as a result of the Adaptive Management Program (AMP) shall be identified in the annual implementation report, work plan, and budget submitted to the Steering Committee and thereafter communicated to the Service for review, comment, and approval as provided in section 7.4 of the FMA.

### **12. FUNDING AND MANAGEMENT AGREEMENT**

The Parties have entered into a FMA that provides for the sharing of the costs of the LCR MSCP. A Party's share of the annual LCR MSCP costs shall be determined and paid in accordance with section 8 of the FMA. In addition, the FMA provides the terms and conditions agreed upon between the Permittees and the Federal Parties regarding the financing, implementation, and administration of the LCR MSCP. Execution of this Agreement and the FMA constitutes each Party's commitment to the Service to meet their funding obligations in accordance with the FMA and to implement those applicable conservation, avoidance, minimization, and mitigation measures set forth in the Conservation Plan.

### **13. CHANGED CIRCUMSTANCES AND UNFORESEEN CIRCUMSTANCES**

#### **13.1 Changed Circumstances In General**

Section 5.12.3 and Table 5-13 of the HCP identify certain changed circumstances affecting Covered Species or their habitats that have been reasonably anticipated and

planned for in the LCR MSCP and describes the remedial measures that will be implemented in the event that such changed circumstances occur.

### **13.1.1 Remedial Measures**

If any Party discovers that a changed circumstance has occurred, it will give notice to the Program Manager who will then give notice to the other Parties as soon as practicable after learning of the changed circumstance. In the event any changed circumstance occurs, the Program Manager shall implement the remedial measures, or cause those measures to be implemented, as specified in Table 5-13 of the HCP.

## **13.2 Unforeseen Circumstances in General**

Any change in circumstances not identified as a changed circumstance in section 5.12.3 and Table 5-13 of the HCP shall be considered an unforeseen circumstance. The obligations of the Service in regard to unforeseen circumstances are set forth in 50 C.F.R. 17.22 and 50 C.F.R. 17.32.

### **13.2.1 Response to Unforeseen Circumstances**

Upon a determination that an unforeseen circumstance has occurred and that additional Conservation Measures are required to address the unforeseen circumstance that were neither identified in the Conservation Plan nor capable of implementation within the budget set forth in Chapter 7 of the HCP, and provided that the Permittees are in compliance with any applicable terms of the LCR MSCP, the cost of any additional Conservation Measures will be borne by the Federal government, other governmental agencies, private conservation organizations, or other private entities who are not part of the LCR MSCP. Costs associated with modifications to the Conservation Plan resulting from any such Conservation Measures shall be dealt with in accordance with section 9.9 of the FMA.

### **13.2.2 Avoidance of Effect on Permittees**

If additional actions are required for the benefit of Covered Species as the result of an unforeseen circumstance, the Federal Parties shall adopt measures that address the effect of the unforeseen circumstance on the relevant species and its habitat. The Federal

Parties shall endeavor to adopt those actions or measures that will have the least effect upon the Permittees and the respective constituents served by the Permittees. Prior to undertaking or attempting to impose any such additional action, including limitations on the use of land or water for the benefit of Covered Species, the Federal Parties shall consider all practical alternatives, including but not limited to land purchase and exchange programs, additional public education, translocation programs, propagation programs, and acquisition of conservation easements.

### **13.2.3 Cooperation of Permittees**

If an unforeseen circumstance should occur, the Permittees shall cooperate with and assist the Federal Parties, to address the unforeseen circumstance.

## **14. MODIFICATIONS TO THE LCR MSCP AND AMENDMENTS TO THE PERMIT**

### **14.1 Minor Modifications**

Minor Modifications are changes to the LCR MSCP of a minor or technical nature where the effect on Covered Species, levels of take, and the Permittees' ability to implement the LCR MSCP, are either beneficial or are not significantly different than those described in the LCR MSCP as originally adopted. Minor Modifications to the LCR MSCP shall not require amendments to this Agreement or the Permit. Minor Modifications may include changes to the Conservation Measures pursuant to the AMP.

Any Party may propose a Minor Modification to the Conservation Plan by providing notice including a statement of the reason for the proposed modification and an analysis of its environmental effects, if any, to the Project Manager. The Project Manager shall present the Minor Modification to the Steering Committee for its approval and, if it is approved by the Steering Committee, the Project Manager shall forward the proposal, along with the analysis, to the Service for its approval. A Minor Modification shall become effective on a date set by the Project Manager after he/she has received written notice from the Service of its approval of the Minor Modification. If the Service rejects the Minor Modification, the Service shall notify the Project Manager in writing of



the reason for its rejection. In either event, the Project Manager shall inform the Steering Committee of the Service's action in the matter.

#### **14.2 Amendment of the Permit**

The Permit may be amended only with the agreement of all the Parties. Any amendment must be in accordance with the ESA, the Service's permit regulations, and any other applicable law. Any Party proposing an amendment to the Permit shall provide a statement of the reason for the amendment and an analysis of the environmental effects including its effects on the Parties, the Conservation Plan, and on Covered Species.

#### **14.3 Annual Report**

The Program Manager shall include the adoption of any Minor Modification or amendment as part of the annual report required pursuant to section 7.4.1(J) of the FMA.

### **15. ASSURANCES AND COMMITMENTS**

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

#### **15.1 Implementation Assistance**

Each Permittee shall, to the maximum 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.

#### **15.2 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.

### **15.3 Assurances Regarding LCR MSCP**

After opportunity for public review and comment, based on the best available current scientific and commercial data, the Service has found that the LCR MSCP, as implemented by this Agreement: (i) is consistent with and will complement other applicable conservation planning and regulatory programs and efforts addressing fish and wildlife within the region; (ii) minimizes and mitigates, to the maximum extent practicable, the effects of the Covered Actions and Covered Activities on the Covered Species; (iii) will ensure that the measures agreed upon by the Permittees and the Service will be met; and (iv) will be implemented. The Service shall not take a position inconsistent with the acknowledgments set forth in this section 15.3, including, without limitation, in the form of comments offered by the Service in the context of any process associated with approvals for Covered Actions and Covered Activities with regard to effects on Covered Species.

### **15.4 Future Recovery Plans**

Each group of state Parties identified in section 1 of this Agreement shall be entitled to have a representative included on any recovery team designated to prepare a recovery plan for any Covered Species.

### **15.5 Future Designations of Critical Habitat**

To the maximum extent allowed by applicable law, the Service shall give the Parties written notice of its intention to propose the designation of any Critical Habitat within the planning area. Any such notice shall be given to the Parties as early as possible in any Critical Habitat designation proceeding. The Federal Parties, as well as any group of state Parties, may designate a representative to represent it and may actively participate in discussions regarding the proposed designation. In its implementation of this section 15.6, the Service shall: (i) confer with the Program Manager and the Steering Committee to identify what changes to the Conservation Plan, if any, would be sufficient to avoid such designation and (ii) shall consider the conservation benefits to that species already provided by the LCR MSCP.

### **15.6 Revision of Critical Habitat Designation for Covered Species**

The Service agrees, to the maximum extent allowable by law and regulation and Federal appropriations, and after public review and comment, to reassess, and, if appropriate, revise the boundaries of existing designated critical habitat of Covered Species taking into consideration the impacts of Critical Habitat designation on the Parties.

### **15.7 No Further Mitigation**

Consistent with 50 C.F.R. § 424.12, the LCR MSCP incorporates special management considerations necessary to conservation of Covered Species. If, notwithstanding the foregoing, Critical Habitat is designated or revised within the LCR MSCP planning area, no mitigation, compensation, conservation enhancement, or other protective measures other than those set forth in the Program Documents will be required of any Permittee in connection with Covered Activities.

### **15.8 Notification**

If the Service is of the opinion that the LCR MSCP may not be fulfilling the conservation goals and objectives for any Covered Species it shall immediately report its concerns to the Program Manager and the Steering Committee, and work with the Program Manager and the Steering Committee to develop modified Conservation Measures, within the framework of the Conservation Plan and this Agreement, that are more likely to fulfill the conservation goals and objectives of the LCR MSCP.

### **15.9 Authority to Issue Permit**

The Service, is fully authorized to, and concurrent with the execution of this Agreement and the FMA, shall issue the Permit pursuant to section 10(a)(1)(B) of the ESA as requested in the HCP filed by the Permittees to allow the incidental take of Covered Species as a result of Covered Activities occurring within the planning area during the term of this Agreement and the Permit.

## **15.10 General Obligations of Parties**

Each Party shall fully and faithfully perform all obligations undertaken or assigned to them pursuant to the Program Documents, including the payment of amounts due as provided in section 8 of the FMA and compliance with those avoidance and minimization measures described in section 5.6.1 of the HCP.

## **15.11 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.

## **16. THIRD PARTY TAKE AUTHORIZATION**

### **16.1 Authorization**

Landowners, water rights owners, developers, farmers, and other private and public entities undertaking Covered Activities who are: (i) under the direct control of a Permittee, in conformance with any approval granted by that Permittee, and in compliance with the Permit and any applicable independent funding agreement entered into to provide funds to implement the HCP or (ii) subject to a Certificate of Inclusion authorized by the Participant Group for the state within which the activity is to occur, shall be authorized to incidentally take Covered Species pursuant to the Permit. A Certificate of Inclusion, the form of which has been approved by the Service, shall authorize the person, firm, or entity to take Covered Species as an incidental result of Covered Activities within the planning area pursuant to the terms of the Permit. A Certificate of Inclusion for California Covered Activities may not be issued without the written consent of The Metropolitan Water District of Southern California. A Certificate of Inclusion for Arizona Covered Activities may not be issued without the written consent of the Central Arizona Water Conservation District. A Certificate of Inclusion for Nevada Covered Activities may not be issued without the written consent of the

Colorado River Commission of Nevada and the Southern Nevada Water Authority. Any such landowner, water rights owner, developer, farmer, or other private or public entity shall be a Third Party Authorized to Take. Permittees shall include as a part of any Certificate of Inclusion, among other provisions: 1) a condition requiring compliance with the Permit, the HCP, this Agreement, the FMA, and any applicable independent funding agreement entered into to ensure funding for the HCP; and 2) a description of the Covered Activity for which the Incidental Take Authorization was granted. The Participant Group issuing the Certificate of Inclusion shall report the identity of the entity to whom such Certificate was issued to the Service, in writing. Incidental take by any Third Party Authorized to Take shall be authorized only if it is in full compliance with all requirements of the Permit, any issued entitlements, and all other applicable legal requirements. Any Third Party Authorized to Take shall have the same rights and obligations under the Permit as a Permittee and shall thereafter be a Permittee.

## **17. REMEDIES AND ENFORCEMENT**

### **17.1 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.

### **17.2 Alleged Default**

In the event any Party fails or refuses to undertake or complete any obligation required by the Program Documents, the entity alleging such default shall notify the Party alleged to be in default, the Service, the Program Manager, and the chairperson of the Steering Committee, who shall promptly notify all Members of the Steering Committee of the alleged default. The Party alleged to be in default shall be given reasonable opportunity to cure the alleged default.

### **17.3 Loss of ITA Benefits**

Any Party who believes that a Permittee has failed or refused to undertake or complete any obligation required by the Program Documents or by any funding

agreement entered into by such Permittee to provide for funding for the LCR MSCP, may request that the Service suspend or revoke that defaulting Permittee's ITA coverage unless and until the alleged default is cured or until it has been determined by the Service that the Permittee is not in default. The Service shall review any alleged default of any such Permittee pursuant to sections 6.4 and 6.5 of this Agreement.

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

Except as provided in section 17.5 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.*).

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

##### **17.5.1 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 FMA, 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.

##### **17.5.2 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.

##### **17.5.3 Landowner Liability**

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

#### **17.5.4 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.

#### **17.6 Effect of Federal Default**

Failure to comply with the applicable requirements of the Program Documents on the part of a Federal Party shall not result in the suspension or revocation of the Permit as to any Permittee that is complying with the requirements of the Permit.

### **18. MISCELLANEOUS PROVISIONS**

#### **18.1 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.

#### **18.2 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.

#### **18.3 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.

## **18.4 Notices**

### **18.4.1 Notice of Default, Suspension, or Revocation**

Notices of default, suspension, or revocation shall be in writing, and either delivered personally, or by United States mail, certified and postage prepaid, return receipt requested to the addresses on file with the Program Manager. Notwithstanding the foregoing, notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by overnight or certified mail. Notices shall be transmitted so that they are received within the specified deadlines. Notice delivered via certified mail, return receipt requested, shall be deemed received five (5) business days after deposit in the United States mail. Notices delivered personally shall be deemed received on the date they are delivered. Notices delivered via overnight delivery shall be deemed received on the next business day after deposit with the overnight mail delivery service.

### **18.4.2 Other Notices**

All other notices 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.

## **18.5 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 the Parties had prepared the Agreement.

## **18.6 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. Assignment or other transfer of the Permit or any rights or authorities granted thereunder shall be governed by ESA permit regulations.



### **18.7 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.

### **18.8 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.

### **18.9 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.

### **18.10 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.

### **18.11 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 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.

### **18.12 References to Regulations**

Except as specifically provided in section 6.4 and section 6.5 of this Agreement, any reference in this Agreement, the HCP, the BA, or the Permit to any regulation or rule of the Service shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

### **18.13 Changes in the Environmental Laws**

It is acknowledged and agreed by the Service that the Permittees are agreeing to perform substantial avoidance, minimization, mitigation, Conservation Measures, and management measures as set forth in the HCP, the Permit, and this Agreement. If a change in, or an addition to, any Federal law governing or regulating the impacts of Covered Actions or Covered Activities occurs as they relate to Covered Species, including, but not limited to, ESA and NEPA, the Service shall give due consideration to the measures required under the LCR MSCP in applying the new laws and regulations to the Permittees.

### **18.14 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 18.14 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.

### **18.15 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.

### **18.16 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.

### **18.17 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.

### **18.18 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 18.18 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 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).

### **18.19 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 the 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.

### **18.20 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.

### **18.21 Amendment to Implementing Agreement**

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

### **18.22 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.

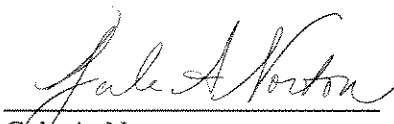
### **18.23 Compliance with Regulations**

Nothing in this Agreement modifies, in any manner, any applicable obligation to seek the approval of the appropriate Federal land manager prior to taking any action associated with implementation of the Conservation Plan on Federal lands.

This Implementing 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 Implementing Agreement to be executed.

UNITED STATES OF AMERICA

By:   
Gale A. Norton  
Secretary of the Interior

APR 02 2005

Date: \_\_\_\_\_

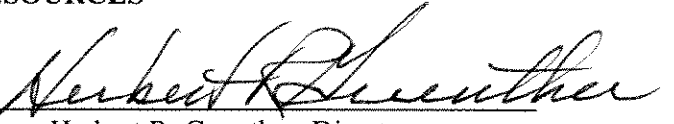
**DEPARTMENT OF ENERGY  
WESTERN AREA POWER  
ADMINISTRATION**

By:

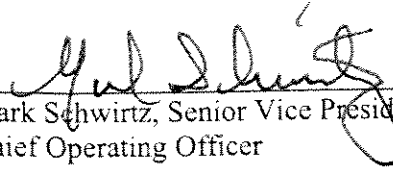


J. Tyler Carlson  
Regional Manager

**ARIZONA DEPARTMENT OF WATER  
RESOURCES**

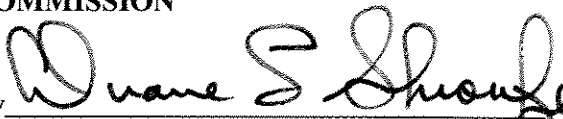
By   
Herbert R. Guenther, Director

**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

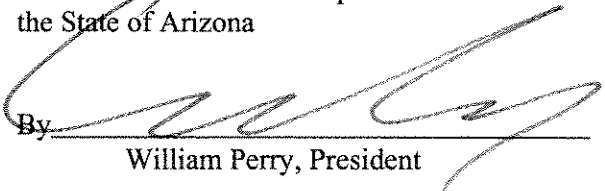
By   
Michael C. Francis, Chairman, Arizona Power  
Authority Commission

**ATTEST:**

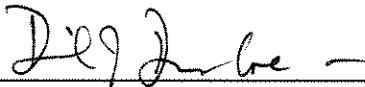
  
Rita Gallant, Secretary

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

By

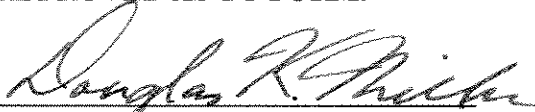
  
William Perry, President

**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:**

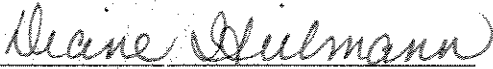
  
Richard Watkins, Secretary

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

By

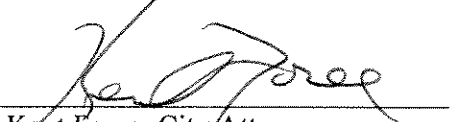
  
Frank Abeyta, City Manager

**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:**

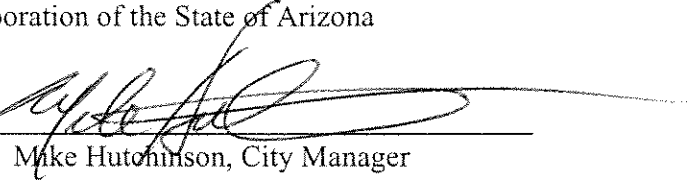
Carla Simendich  
Carla Simendich, City Clerk

**APPROVED AS TO FORM:**

Matthew Podracky  
Matthew Podracky, Interim City Attorney

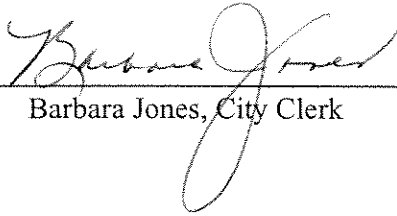
**CITY OF MESA, ARIZONA**, a municipal corporation of the State of Arizona

By



Mike Hutchinson, City Manager

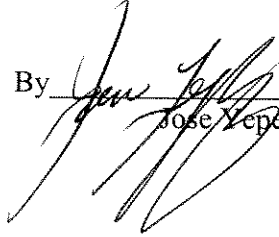
**ATTEST:**



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



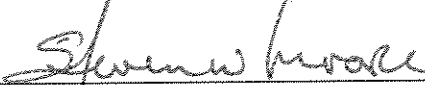
**CITY OF YUMA, ARIZONA**, a municipal corporation of the State of Arizona

By   
Mark S. Watson, City Administrator

**ATTEST:**

  
Brighta M. Kuiper, City Clerk

**APPROVED AS TO FORM:**

  
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, Chairman

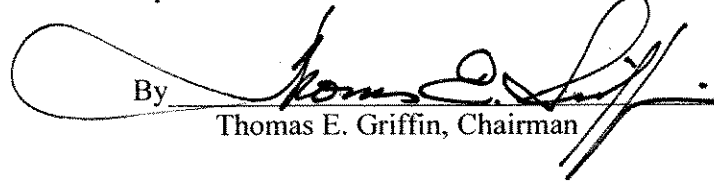
**ATTEST:**

  
Secretary

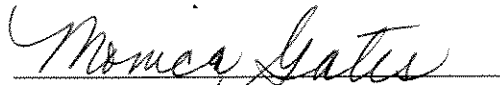
**GOLDEN SHORES WATER CONSERVA-  
TION DISTRICT**, a water conservation district  
and a political subdivision of the State of Arizona

By   
Bob Ericson, President

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

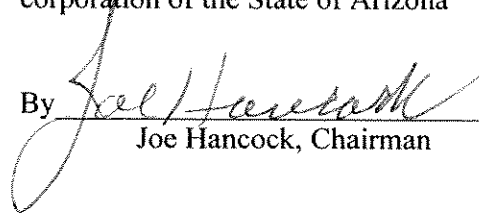
By   
Thomas E. Griffin, Chairman

**ATTEST:**

  
Monica Gates, Secretary-Treasurer

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

By

A handwritten signature in black ink, appearing to read "Joe Hancock", written over a horizontal line.

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:**

Jennie A. Gordon  
Secretary

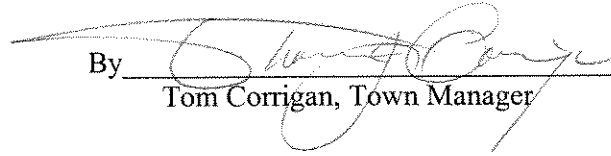
Reviewed by ~~SRP Legal Services Dept.~~

[Signature]  
(Signed Name)  
STEVE DONCASTER  
(Printed Name)

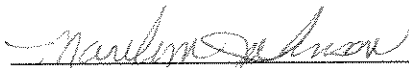
Date: 3/24/05



**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

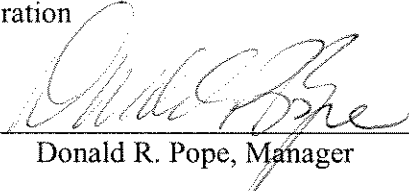
**UNIT "B" IRRIGATION AND DRAINAGE  
DISTRICT**, a political subdivision of the State of  
Arizona

By   
Patrick Morgan, Manager


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

By                     CWSlocum                      
Charles W. Slocum, General Manager

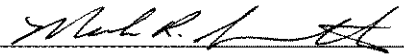
**YUMA COUNTY WATER USERS'  
ASSOCIATION**, an Arizona non-profit  
corporation

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

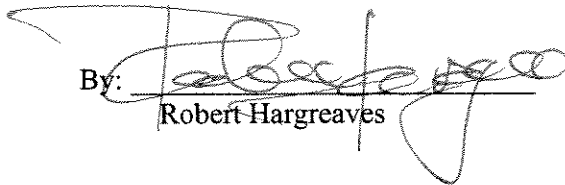


**CITY OF NEEDLES**


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  
Ronald F. Deaton  
General Manager

**PALO VERDE IRRIGATION  
DISTRICT**

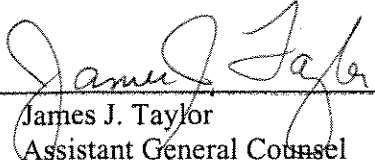
By:   
Edward W. Smith  
General Manager

**SAN DIEGO COUNTY WATER  
AUTHORITY**


By:   
Maureen A. Stapleton  
General Manager

Approved as to form:

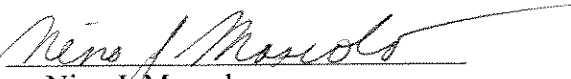
Daniel S. Hentschke  
General Counsel

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



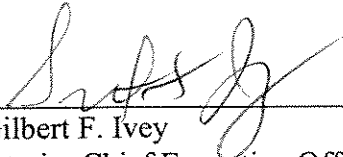
**SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY**

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

**BARD WATER DISTRICT**

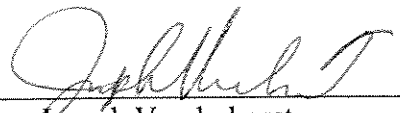
By: Ron Derma  
Ron Derma  
General Manager

**THE METROPOLITAN WATER  
DISTRICT OF SOUTHERN  
CALIFORNIA**


By:   
\_\_\_\_\_  
Gilbert F. Ivey  
Interim Chief Executive Officer

Approved as to form:

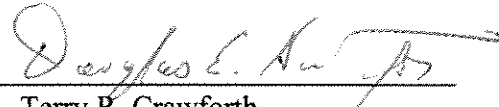
Jeffrey Kightlinger  
General Counsel

By:   
\_\_\_\_\_  
Joseph Vanderhorst  
Senior Deputy General Counsel

**COLORADO RIVER COMMISSION  
OF NEVADA**

By:   
Richard W. Bunker  
Chairman

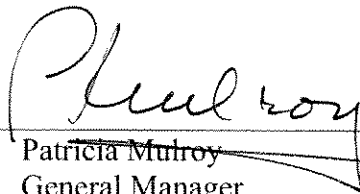
**NEVADA DEPARTMENT OF  
WILDLIFE**

By:   
Terry R. Crawford  
Director

**BASIC WATER COMPANY**

By: Mark Paris  
Mark Paris  
President / CEO

**SOUTHERN NEVADA WATER  
AUTHORITY**

By:   
Patricia Mulroy  
General Manager