RECORD OF DECISION

COLORADO RIVER WATER DELIVERY AGREEMENT

IMPLEMENTATION AGREEMENT, INADVERTENT OVERRUN AND PAYBACK POLICY, AND RELATED FEDERAL ACTIONS FINAL ENVIRONMENTAL IMPACT STATEMENT

October 2003

Approved:

/s/ *Gale A. Norton* — *Oct. 10, 2003*
Gale A. Norton — Date
Secretary of the Department of the Interior

RECORD OF DECISION

COLORADO RIVER WATER DELIVERY AGREEMENT

IMPLEMENTATION AGREEMENT, INADVERTENT OVERRUN AND PAYBACK POLICY, AND RELATED FEDERAL ACTIONS FINAL ENVIRONMENTAL IMPACT STATEMENT

I. Introduction

On December 21, 1928, Congress conditioned ratification of the Colorado River Compact of 1922, construction of Boulder (now Hoover) Dam, and authorization of the Boulder Canyon Project Act as follows:

> "[T]he State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the [six] States, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use . . . of water of and from the Colorado River for use in the State of California . . . shall not exceed four million four hundred thousand acre feet."[1]

By execution of this Record of Decision, and implementation of the Colorado River Water Delivery Agreement, California will take specific, incremental steps to fulfill this promise.

The Supreme Court has found that the Secretary of the Interior (Secretary) is vested with the responsibility of managing the mainstream waters of the lower Colorado River pursuant to Federal law. This document constitutes the Record of Decision (ROD) of the Department of the Interior regarding the preferred alternative for the Colorado River Water Delivery Agreement (Water Delivery Agreement), Inadvertent Overrun and Payback Policy (IOP) and related Federal actions.

Reclamation, as the agency designated to act on the Secretary's behalf with respect to these matters, is the lead Federal agency for purposes of National Environmental Policy Act (NEPA) compliance. The *Final Environmental Impact Statement – Implementation Agreement, Inadvertent Overrun and Payback Policy, and Related Federal Actions* dated October 2002 (INT-FES-02-35) (Final IA EIS) was prepared pursuant to NEPA, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] Parts 1500 through 1508), Department of Interior Policies, and Reclamation's NEPA procedures implementing these regulations. The Final IA EIS described the potential environmental impacts from execution of an Implementation Agreement (IA),[2] adoption of the IOP, and implementation of biological conservation

---

[1] Boulder Canyon Project Act, § 4(a), 43 U.S.C. § 617c(a).

[2] Subsequent to the filing of the Final IA EIS, the IA described in that document was renamed and redrafted and is now titled the "Colorado River Water Delivery Agreement" (Water Delivery

measures that would offset potential impacts to listed species on the Colorado River from the proposed water transfers. The Final IA EIS was filed with the U.S. Environmental Protection Agency (EPA) on November 1, 2002, and noticed by EPA and Reclamation in the *Federal Register* on November 8, 2002. The Federal actions called for in the Water Delivery Agreement are the same as those contained in the draft IA, and analyzed in the Final IA EIS (see section V below). For the remainder of this document, reference will be made to the Water Delivery Agreement, unless the notation is specific to the draft IA.

II. Decision

This document effects the approval of the following Federal actions:[3]

A. Execution of the proposed Water Delivery Agreement;

B. Adoption of the proposed IOP described in the Final IA EIS and originally noticed in the *Federal Register* as a proposed draft policy on January 18 and March 9, 2001; and

C. Implementation of biological conservation measures identified in the U.S. Fish and Wildlife Service (Service) January 2001 *Biological Opinion for Interim Surplus Criteria, Secretarial Implementation Agreements for California Water Plan Components, and Conservation Measures on the Lower Colorado River*, and the Service's December 2002 *Biological Opinion on Bureau of Reclamation's*

Agreement). The Water Delivery Agreement therefore replaces the IA. As with the IA, the function of the Water Delivery Agreement is to address any contracting requirements applicable to the Boulder Canyon Project Act of 1928, and implements quantification and transfers of Colorado River water. The Water Delivery Agreement also serves as a quantification settlement agreement for purposes of section 5(B) of the Interim Surplus Guidelines. The Water Delivery Agreement is different from, and from a Federal perspective, much improved on the IA in a number of important respects: the Water Delivery Agreement is effective upon execution; it does not contain conditions precedent or subsequent that could terminate its effectiveness; and, it does not provide for early termination. Thus, the Water Delivery Agreement provides certainty regarding water entitlements that are necessary for continued effective implementation of the Secretary's responsibilities as Water Master on the lower Colorado River. Importantly, these agreements are consensual agreements among the parties and therefore are more likely to remain effective as compared with alternative regulatory based approaches.

[3] This recommendation contemplates that Departmental officials will simultaneously execute a number of complementary agreements which will collectively implement the provisions of the Water Delivery Agreement. Included in this suite of agreements are the following: this Record of Decision, the Colorado River Water Delivery Agreement, the Allocation Agreement (regarding conservation of water from the All-American and Coachella canal lining projects); two agreements relating to Supplemental Water and the Conveyance of Water for the San Luis Rey Settlement Parties; two agreements relating to implementation of species conservation actions; and a contract amendment with the Coachella Valley Water District. These related agreements do not cause incremental environmental impacts in addition to those described in the Final IA EIS and the supplemental memorandum referenced in Section 5 of this ROD, but only serve to implement various aspects of the water transfers. Where appropriate, the Final IA EIS and this ROD make commitments for subsequent environmental compliance for Federal actions to be carried out pursuant to the Agreements.

Voluntary Fish and Wildlife Conservation Measures and Associated Conservation Agreements with the California Water Agencies.

III. Background

Under the Boulder Canyon Project Act, and the Decree entered by the U.S. Supreme Court in *Arizona v. California,* in 1964 California has a legal right in normal years to 4.4 million acre-feet (MAF).[4] California has historically been legally diverting more than its normal year apportionment of 4.4 MAF of Colorado River water. Prior to 1996, California's demands in excess of 4.4 million acre-feet per year (MAFY) were met by diverting unused apportionments of other Lower Division States (Arizona and Nevada) that were made available by the Secretary under applicable provisions of the Decree. Since 1996, California also has utilized surplus water pursuant to Art. II(B)(2) of the Decree as made available by Secretarial determinations contained in the Annual Operating Plans for Colorado River Reservoirs. The other Lower Division States have reached full utilization of their apportionments, and declared surpluses of Colorado River water are expected to diminish in future years. California, therefore, needs to reduce its consumptive use of Colorado River water to its 4.4 MAF apportionment in normal years.

In a major step toward achieving this goal, the California water agencies consisting of Coachella Valley Water District (CVWD), Imperial Irrigation District (IID), and The Metropolitan Water District of Southern California (MWD), developed a draft Quantification Settlement Agreement (QSA). The QSA is a proposed agreement among CVWD, IID, and MWD to quantify each entities' portion of California's apportionment of Colorado River water and to transfer Colorado River water among the California agencies. These transfers are for the benefit of IID, CVWD, MWD, and the San Diego County Water Authority (SDCWA). The QSA water transfers would continue for a period of up to 75 years and provide an important mechanism to assist California's efforts to reduce its diversions of Colorado River water in normal years to its 4.4 MAF apportionment, as required by the Boulder Canyon Project Act of 1928 and the California Limitation Act of March 4, 1929.

The QSA water transfers are implemented by the Water Delivery Agreement, an agreement among CVWD, IID, MWD, SDCWA, and the Secretary. The Water Delivery Agreement serves a number of complementary functions. During its term, the Water Delivery Agreement implements a quantification of Priority 3(a) entitlements. As such, this agreement serves as a Federal quantification agreement. As noted above, the Water Delivery Agreement addresses requirements applicable to the Boulder Canyon Project Act of 1928. The Water Delivery Agreement specifies the Federal actions that are necessary to implement the QSA. Execution of the Water Delivery Agreement would effectuate the changes in the amount and/or location of deliveries of approximately 400 thousand acre-feet per year (KAFY) of Colorado River water.

The Water Delivery Agreement also includes provisions that are intended to facilitate California's reduction of its historic overuse of Colorado River supplies and provide greater certainty with regard to future Colorado River operations.[5] The Federal objective in executing the Water Delivery Agreement

---

[4] California's basic apportionment may, on an annual basis, be augmented by access to surplus apportionment or unused apportionment.

[5] The California agencies did not execute the QSA by December 31, 2002 in compliance with the relevant provisions of Section 5(B) of the Interim Surplus Guidelines (ISG). As a result the Secretary automatically suspended application of Sections 2(B)(1) and 2(B)(2) of the ISG as provided in the 2003 Annual Operating Plan. *See, e.g.,* Notice of Assistant Secretary Bennett W. Raley

is to achieve actual implementation of the identified transfers and scheduled reductions in California's agricultural water use. In particular, Paragraph 8 of the Water Delivery Agreement was carefully constructed to address future Boulder Canyon Project Act administration if the Quantification Settlement Agreement and associated transfers proceed as contemplated by all parties, including: adoption of a policy regarding prospective inadvertent overruns of Colorado River diversions (¶ 8.b.1), an extension of the repayment period for past overruns of Colorado River diversions (¶ 8.b.1), and provisions regarding the anticipated annual reviews pursuant to 43 C.F.R. Pt. 417 through December 31, 2037 (¶ 8.b.2).[6]

Paragraph 8 also provides certain consequences in the event that the QSA and the associated transfers are not carried out as anticipated by the parties. These consequences include: suspension of a policy regarding prospective inadvertent overruns of Colorado River diversions (¶ 8.c.1), a reduced period for repayment of past overruns of Colorado River diversions (¶ 8.c.2), mandatory forbearance by The Metropolitan Water District from accessing any surplus Colorado River water otherwise available pursuant to sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines (¶ 8.c.3), and provisions regarding the anticipated annual reviews of water orders pursuant to 43 C.F.R. Pt. 417 through December 31, 2037 (¶ 8.c.4).

In addition, under the Water Delivery Agreement, the Secretary adopts the IOP as set forth in section IX(A) below. The IOP establishes requirements for payback of any inadvertent overuse of Colorado River water by users in the Lower Division States.

The primary objective of the IOP policy is to insure operational compliance with the applicable

---

regarding Section 5 of Interim Surplus Guidelines. 67 Fed. Reg. 41733-35 (June 19, 2002). The Water Delivery Agreement serves as the quantification agreement for purposes of section 5(B) of the ISG and accordingly, section 7 of the Water Delivery Agreement provides for reinstatement of interim surplus determinations under Sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines. This Record of Decision does not modify in any manner the Record of Decision for the Interim Surplus Guidelines, including the Secretary's authority to monitor prospective compliance with Section 5 of the Interim Surplus Guidelines.

[6] Like the draft IA, the Water Delivery Agreement addresses the reasonable and beneficial use of Colorado River water. This provision, in particular, required significant discussions and negotiations among the parties to the Water Delivery Agreement. Resolution of this issue was of particular importance in light of the ongoing *Imperial Irrigation District v. United States* litigation involving all parties to the Water Delivery Agreement with the exception of the San Diego County Water Authority (*see also* Water Delivery Agreement at ¶¶ 10.a., 10.b.). Imperial Irrigation District had sought certainty both with respect to future inquiries in this regard and with respect to future approvals of water orders. The Department did not acquiesce to this request, and does not believe that such an approach is compatible with provisions of applicable Federal law. In this regard, the Department concurs with the statement of the California Board of Water Resources (SWRCB) in a similar context, that "we do not intend to bind the SWRCB in any future proceeding, particularly if circumstances change. To do so would be an abdication of the SWRCB's ongoing responsibility to prevent the unreasonable use of water." State of California, State Water Resources Control Board, Order WRO 2002-0013 (Revised), at 81 (Dec. 20, 2002). Similar concerns informed the negotiations by the Department regarding ¶ 8 of the Water Delivery Agreement. *See, e.g.*, 43 U.S.C. 372. Ultimately, clarification and agreements with the parties to the Water Delivery Agreement are incorporated in ¶ 8 with respect to the circumstances and analyses that will be considered during the term of the Agreement.

provisions, and limitations on use of Colorado River water, as set forth in the Decree. Repayment of any overuse of Colorado River water, in accordance with the structured repayment schedule, insures that the system is repaid for inadvertent overuse. Prior to adoption of the IOP, contractors of Colorado River water were required to repay any overuse of water beyond annual approved quantities, *see e.g.*, 1992-1996 Annual Operating Plans for Colorado River Reservoirs, Supplement to 1992 Annual Operating Plan (Nov. 22, 2002). Adoption of the IOP formalizes this requirement and provides for specific payback (or repayment) periods which are linked to hydrological conditions on the Colorado River. *See, e.g.*, IOP at sec. 6, infra. This linkage to hydrologic conditions on the Colorado River, primarily by reference to elevations of Lake Mead, is consistent with efforts by Reclamation to further develop objective operational guidance for lower Colorado River operations. In particular, this approach was the basis for the Secretary's adoption of Interim Surplus Guidelines which determine available surplus quantities pursuant to Art. II of the Decree in *Arizona v. California* based on Lake Mead elevations and projected hydrological conditions on the Colorado River. *See, e.g.*, ISG at Section 2 ("Determination of Lake Mead Operation during the Interim Period.").

These two actions, as well as the implementation of biological conservation measures from two Service Biological Opinions (BO), are the Federal actions described in the Final IA EIS.

IV. Alternatives Considered in the Final IA EIS

In the Final IA EIS, the proposed action was described as the execution of the IA, adoption of the IOP, and implementation of the biological conservation measures. For each element of the proposed Federal action, a No Action alternative was considered, and for the IOP, one action alternative was considered in addition to the proposed IOP. No other action alternatives were considered for the reasons described below. Because of the important benefits to the entire Colorado River Basin of reducing California's over-reliance on the Colorado River,[7] and while avoiding the impacts of a more precipitous reduction in California's Colorado River diversions, the proposed action is considered the environmentally preferred alternative.

A. Implementation Agreement

1. Proposed Action. Under the proposed IA, the Secretary would commit to certain actions required to facilitate implementation of the QSA.[8] Chief among these is the change in location of the delivery point of Colorado River water to the QSA parties. The IA would result in a change in the amount of water the Secretary would deliver to MWD's diversion point at Lake Havasu (above Parker Dam), and CVWD's and IID's diversion point at Imperial Dam. In a "normal" year under Art. II(B)(1) of the Decree, in aggregate, deliveries to Imperial Dam would be reduced by as little as approximately 200 to as much as approximately 400 thousand acre-feet (KAF), and this water would instead be delivered to the MWD facility at Lake Havasu. Therefore, there would be a

[7] For example, the Final EIS for adoption of Colorado River Interim Surplus Criteria stated the findings of the Secretary as follows: "As a result of operating experience over recent years, it is clear that one of the most important issues for Colorado River management is the need to bring use of Colorado River water into alignment with the allocation regime adopted by Congress in section 4 of the Boulder Canyon Project Act of 1928." Interim Surplus Criteria FEIS, Vol. III at p. 2 (citations omitted).

[8] For consistency purposes, this section refers to the IA, the title of the principal Federal agreement at the time the Final IA EIS was published. As noted above, the IA has been renamed and replaced by the Water Delivery Agreement.

reduction in flow in the Colorado River of this same amount of Colorado River water from Parker Dam to Imperial Dam. As part of the QSA, IID would implement agricultural water conservation measures (including land fallowing) to conserve as much as 300 KAFY, and an equal amount of Colorado River water would be transferred to SDCWA, CVWD, and/or MWD.

2. No Action. Because execution of the IA (now styled as the Water Delivery Agreement) is required to enable full implementation of the QSA, under No Action in the Final IA EIS, neither the IA nor the QSA would be implemented. The Secretary would continue to make Colorado River water deliveries subject to the Law of the River, including the existing priority system, Section 5 contracts, and determinations identified in the ISG ROD. Significant unresolved issues would remain regarding how Colorado River water would be delivered to the participating agencies within the California's normal year diversion limit of 4.4 MAF of Colorado River water. This 4.4 MAF limit required by applicable provisions of Federal law, would involve a reduction of approximately 600 KAFY from the 1990 to 1999 average Colorado River diversion for the State of California.[9]

3. Implementation Agreement Alternatives Considered in the EIS. Because the purpose of the proposed action is to provide Federal approval of an agreement negotiated among the California parties, no other action alternatives were considered. Accordingly, any other action alternative would have entailed provisions unacceptable to one or more of the parties, and therefore would not have constituted a reasonable and feasible alternative for NEPA purposes.

B. Inadvertent Overrun Policy

1. Proposed Action. The IOP component of the proposed action includes adoption of a policy that would identify and define inadvertent overruns of approved diversions of Colorado River water by lower Basin Colorado River contractors, establish procedures that account for inadvertent overruns, and define subsequent mandatory payback requirements to allow repayment to system storage for any inadvertent overruns. It is not anticipated that it would be necessary to materially modify the IOP for a 30-year period absent extraordinary circumstances such as significant Colorado River infrastructure failures. The IOP would be applicable to all lower Basin States users with quantified entitlements. The adoption of the IOP does not affect nor is it applicable to the United States' obligations under the 1944 Treaty with the Republic of Mexico.

Under the provisions of the IOP, an inadvertent overrun is defined as Colorado River water that is diverted, pumped, or received by an entitlement holder in excess of the water user's entitlement for that year. Under the IOP, payback would be required to begin in the calendar year that immediately follows the release date of the final Decree Accounting Record[10] that reports inadvertent overruns for a Colorado River water user. Prior to the beginning of the calendar year, the user's water order, along with the payback plan, and the user's existing Reclamation-approved conservation plan, would be submitted to Reclamation for review and approval within the annual 43 C.F.R. Pt. 417 process regarding annual water order approvals.

---

[9] See, e.g., the Colorado River Compact of 1922, the Boulder Canyon Project Act of 1928, *Arizona v. California* 1964 Supreme Court Decree [Decree], and the Long-Range Operating Criteria.

[10] These records are published as: Compilation of Records in Accordance with Article V of the Decree of the Supreme Court of the United States in *Arizona v. California, et. al.*, dated March 9, 1964.

2. No Action. Under the No-Action Alternative, the IOP would not be adopted, and Reclamation would enforce its obligations under the Decree to ensure that no Colorado River water user exceeds its entitlement amount. Currently, diversions of Colorado River water are reported monthly for most water users, and Reclamation releases a monthly cumulative tabulation of the year's diversions and return flows. In enforcing its obligations under the Decree, Reclamation may reduce deliveries for those water users who would overrun based on diversions to date and projected diversions for the remainder of the year, and/or stop deliveries for water users who are at their entitlement amount. However, due to the nature of measurement, reporting, and accounting practices, there would continue to be some level of inadvertent overruns.

3. IOP Alternatives. Many alternative concepts were considered in the development of the proposed IOP. Much interest and many ideas were identified during the scoping process and in response to the draft policy published in the *Federal Register*. As a result of public comments, one additional IOP alternative, No Forgiveness During Flood Releases Alternative, was developed and considered in the EIS. The proposed IOP contains a provision that in a year during which the Secretary makes a flood control release or a space-building release pursuant to the Water Control Manual for Hoover Dam, Lake Mead, any accumulated amount in an overrun account would be forgiven. The No Forgiveness Alternative would eliminate that provision. Under this alternative, during a flood control or space-building release year, the overrun account would be deferred, but not forgiven. Payback would resume in the next year when such flood control or space-building releases is not scheduled. All other provisions in this alternative would be the same as the proposed IOP.

C. Implementation of Biological Conservation Measures

1. Proposed Action. This component of the proposed action involves implementation of biological conservation measures from two Service BOs. The first, dated January 2001 *(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*), addresses potential impacts from the proposed change in point of diversion that could occur to federally-listed fish and wildlife species or their associated critical habitats within the historic floodplain of the Colorado River between Parker Dam and Imperial Dam. The conservation measures related to the water transfers include stocking of listed Razorback suckers in the lower Colorado River, restoration or creation of 44 acres of backwaters along the Colorado River between Parker Dam and Imperial Dam, provision of funding for capture and rearing efforts for listed Bonytail chubs from Lake Mohave, and a two-tiered conservation plan to minimize potential effects to occupied habitat of the listed Southwestern willow flycatcher on the Colorado River between Parker and Imperial Dams.

Based on the concern that IID would not be able to complete work necessary to obtain "take" authorization for effects of its proposed QSA-related water conservation actions through a Section 10 Habitat Conservation Plan (HCP) process by December 31, 2002, Reclamation, in July 2002, voluntarily submitted a Biological Assessment (BA) to the Service on a proposed voluntary species conservation program (*Biological Assessment of Reclamation's Proposed Section 7(a)(1) Conservation Measures for Listed Species in the Imperial Irrigation District/Salton Sea Areas*). This voluntary species conservation program serves as an alternative means for obtaining the necessary "take" authorization for the relevant California agencies under the ESA for IID's water conservation actions. The BA, prepared on a voluntary basis by Reclamation, included voluntary species conservation measures to address listed species in the IID/Salton Sea area that could be affected by water conservation actions taken by IID pursuant to the QSA. The conservation measures included beneficial measures for the Desert pupfish, Yuma clapper rail, Southwestern willow flycatcher, and California brown pelican.

The Final IA EIS addresses the conservation measures from both the 2001 BO and Reclamation's 2002 BA. The Final IA EIS indicates that as detailed plans are developed and specific land-disturbing activities are identified, Reclamation will determine and carry out supplemental NEPA compliance evaluations, for Federal implementation of the conservation measures, as appropriate.

2. No Action. Under the No-Action Alternative in the Final IA EIS, the biological conservation measures identified for the 2001 BO would not be implemented. Reconsultation with the Service would be required prior to any additional required Federal approvals to effectuate any additional changes in point of delivery and diversion from the lower Colorado River.

3. Alternatives to Biological Conservation Measures. No alternatives to the biological conservation measures identified in the 2001 BO or 2002 BA were considered in the EIS. If Reclamation was unable to implement these measures as proposed, reinitiated consultation with the Service would be required.

V. Analysis of Post-Final IA EIS QSA Revisions

Subsequent to the filing of the Final IA EIS, on December 18, 2002, the Service issued its final BO (*Biological Opinion on the Bureau of Reclamation's Voluntary Fish and Wildlife Conservation Measures and Associated Conservation Agreements with the California Water Agencies for Listed Species in the Imperial Irrigation District/Salton Sea Areas)*. The measures described in the Final BO were refined and improved from those Reclamation described in its July 2002 Biological Assessment and included in its October 2002 Final IA EIS, particularly with respect to the California brown pelican.

In addition, in September 2003, the California water agencies finalized the terms of the QSA, and came to agreement with the Department of the Interior regarding terms of the Water Delivery Agreement, which replaced the draft IA.

The final terms of these documents resulted in minor changes to the water delivery ("ramp-up") schedule for the transfer of water from IID to SDCWA and from IID to CVWD. In general, there would be a decrease in the transfer of water to SDCWA during the first 18 years and a slight increase in years 19 and 20. There is a decrease in the water delivered to CVWD during the first 17 years and a slight increase through year 45. These changes to the QSA water transfers were made in an effort to avoid material impact to the salinity of the Salton Sea for a 15-year period, in order to assist the California agencies to comply with State legislation and California Department of Fish and Game (CDFG) permitting requirements under State law.

In addition, the Water Delivery Agreement: (1) provides for additional water conservation by IID (not to exceed 145 KAF total) if needed to meet ISG agricultural benchmark reduction targets in 2006, 2009, and 2012; (2) reflects transfer of the water conserved by lining the All-American and Coachella Canals to San Diego instead of MWD; and (3) provides a schedule for payback of 2001 and 2002 Colorado River water overruns.

Reclamation evaluated the environmental impacts associated with the final 2002 BO and all of the refinements to the QSA/Water Delivery Agreement in a memorandum dated October 9, 2003. As a result of its evaluation, Reclamation concluded that the minor changes in environmental impact were within the scope of the Final IA EIS, and that no supplemental NEPA compliance documentation was required.

VI. Basis for Decision

Reclamation has selected the proposed Water Delivery Agreement and IOP based on the need to reduce California's consumptive use of Colorado River water to its apportionment of 4.4 MAF in a normal year. In conjunction with the ISG, the proposed Water Delivery Agreement will gradually reduce California's over-reliance on Colorado River water and bring the State's use of Colorado River water into alignment with its allocation under the applicable provisions of the Law of the River, specifically the BCPA.[11]

The QSA is a consensual agreement among the three parties (IID, CVWD, and MWD) that resolves longstanding disputes regarding the priority, use (including quantification), and transferability of Colorado River water. The QSA was developed in response to the Secretary's insistence that California must implement a strategy that enables the State to limit its use of Colorado River water to 4.4 MAF during a normal year, or develop the means to meet its water needs from sources that do not jeopardize the delivery of Colorado River water to other States. The proposed Water Delivery Agreement implements the Federal water delivery components of that consensual agreement.

This historic agreement among the California parties is considered the best approach to achieve a timely and lasting reduction of California's overuse of Colorado River water. In the absence of this consensual agreement, it is clear that alternative approaches would have entailed provisions unacceptable to one or more of the parties. In fact, the differences among the parties have plagued efforts to resolve these issues since 1931. Moreover, a continued failure to adopt a plan in compliance with the structured reductions provided in section 5 of the ISG would require the Secretary to continue to enforce the precipitous reduction in available supplies from the Colorado River that California experienced during this calendar year. These factors were specifically considered by the Secretary as the basis for this decision.

The IOP will provide a mechanism for pay-back to the Colorado River system from inadvertent over-use of Colorado River water by entitlement holders, thus keeping system storage whole in spite of overruns, which are inevitable to some degree.

In making its decision, Reclamation carefully evaluated environmental impacts on the river system that are anticipated to result from the change in point of delivery and diversion from water transfers identified in the Water Delivery Agreement. This evaluation involved review of river stage impacts (change in water surface elevation), reservoir storage impacts (Lake Mead and Lake Powell), change in frequency and magnitude of flood control releases, and any potential transboundary impacts.

Reclamation has elected to implement all of the biological conservation measures included in the 2001 BO. Reclamation and the California water agencies, through execution of a Conservation Agreement, have agreed to implement all the biological conservation measures identified in the 2002 BO.

VII. Environmental Commitments

The Final IA EIS describes the impacts of the Federal action on the Colorado River, such as changes in flow and reservoir storage. The Final IA EIS also summarizes and incorporates by reference analyses of off-river impacts that would result from actions taken by the QSA participating agencies as a result of implementing the QSA. This is because the changes in water deliveries agreed to by the Secretary in the Water Delivery Agreement will enable the QSA to be fully implemented.

It is important to recognize that while the EIS describes the off-river impacts of actions taken by the

[11] *See, e.g.,* Final EIS Interim Surplus Criteria at § 1.3.2.1.

QSA participating agencies, it does not "federalize" those actions, nor does it create a requirement for supplemental NEPA compliance for those actions. The Department recognizes that the non-Federal actions carried out by the participating California agencies pursuant to the QSA will need to comply with the California Environmental Quality Act (CEQA), California Endangered Species Act, and other State and local requirements. Toward that end, the California participating agencies prepared a Programmatic Environmental Impact Report (PEIR) for the QSA (*Implementation of the Colorado River Quantification Settlement Agreement, June 2002*), CVWD prepared a PEIR for the Coachella Valley Water Management Plan (*Coachella Valley Water Management Plan and State Water Project Entitlement Transfer PEIR, October* 2002), and an EIR/EIS was prepared for the *IID Water Conservation and Transfer Project, October 2002*, pursuant to these State and local requirements.[12]

The following environmental commitments are those relating to the proposed Federal action affecting water diversions and reservoir storage. Based on the impact analysis, mitigation measures were determined not to be necessary, and none are proposed, for land use, recreation, agricultural resources, socioeconomics, environmental justice, or transboundary impacts. Implementation of environmental commitments from the CEQA documents relating to actions taken by the QSA parties is the exclusive responsibility of those California parties.

A. Hydrology/Water Quality/Water Supply. The biological conservation measures included as part of the proposed action (from the January 2001 BO) were developed to mitigate impacts in the changes in point of delivery of Colorado River water. The changes in point of delivery result in reduced flows from Parker Dam to Imperial Dam. Implementation of all biological conservation measures would be subject to site-specific NEPA review. Mitigation measures specifically related to implementation of biological conservation measures would be developed as part of such site-specific review. The conservation measures related to river-flow reductions are described in detail in the Service's January 2001 BO, and are summarized below.

1. Reclamation would stock 20,000 Razorback suckers, 25 centimeters (cm) or greater in length, into the Colorado River between Parker and Imperial Dams. This stocking effort would be a continuation of present efforts and would bring the total number of razorbacks of 25 cm or greater in length stocked below Parker Dam to 70,000. These stocking efforts would be completed by 2006.

2. Reclamation would restore or create 44 acres of backwaters along the Colorado River between Parker Dam and Imperial Dam. This effort could include restoring existing decadent backwaters for which no ongoing effort provides funding or responsibility for restoration, or the creation of new backwaters where water availability, access, and other considerations can be met. Maintenance of these backwaters for native fish and wildlife would be ensured for the life of the water transfers. This backwater restoration and/or creation effort would be completed within 5 years of the first water transfers under the QSA (excluding the ongoing water transfer under the IID/MWD 1988 Agreement and subsequent agreements).

3. Reclamation would provide $50,000 in funding for the capture of wild-born or first generation (F1) Bonytail chubs from Lake Mohave to be incorporated into the broodstock for this species and/or to support rearing efforts at Achii Hanyo, a satellite rearing facility of Willow Beach National Fish Hatchery. These efforts would be funded for 5 years.

---

[12] This EIR/EIS included a proposed HCP to address IID's identified actions. Efforts to finalize an HCP have not been completed as of the date of this Record of Decision.

4. A two-tiered conservation plan has been developed to minimize potential effects to occupied Southwestern willow flycatcher habitat that could result from reduced flows on the Colorado River between Parker and Imperial Dams as water transfers and associated changes in point of delivery are implemented. The details of the Plan may be found in the 2001 BO in Appendix E of the Final IA EIS.

B. Biological Resources – Vegetation. Implementation of biological conservation measures described above would mitigate impacts to vegetation along the river.

C. Biological Resources - Fish and Wildlife. Implementation of biological conservation measures described above would mitigate impacts to fish and wildlife along the river.

D. Biological Resources - Sensitive Species. Implementation of biological conservation measures described above would mitigate impacts to special status species.

E. Hydroelectric Power. Under the Law of the River and specific project legislation, power production has a priority subservient to Colorado River water delivery for authorized consumptive uses. Reclamation would continue to work closely with Western Area Power Authority to schedule water releases for satisfaction of water orders and to optimize power production at the various facilities. However, based on the fact that power production is a result of water releases to meet water orders, no mitigation for reduced opportunities to produce hydroelectric power is proposed.

F. Cultural Resources. At this time, Reclamation does not perceive a need to develop mitigation measures specific to historic properties for this action. On August 13, 2002, Reclamation transmitted a report to the Arizona, California and Nevada State Historic Preservation Offiers (SHPOs) entitled *A Class I Overview and Effects Analysis for Execution of an Implementation Agreement, Development and Adoption of an Inadvertent Overrun and Payback Policy, and Associated Biological Conservation Measures on the lower Colorado River Between Lake Mead and Imperial Dam*." In the transmittal letter to the SHPOs, Reclamation requested SHPO concurrence with the following:

1. Because effects of the IOP on reservoir and river elevations are projected to be well within the historic parameters for reservoir and river operations, the potential effects of the IOP on historic properties are indistinguishable from those that might be occurring as a result of ongoing river operations. Thus, consultation concerning development and adoption of an IOP would best be deferred to the broader consultation effort regarding its operation of the lower Colorado River that Reclamation previously committed to conduct with the Advisory Council on Historic Preservation and other interested parties under Section 110 of the National Historic Preservation Act (NHPA) in the ROD for ISG;

2. Section 106 consultation concerning the implementation of the biological conservation measures (associated with the change in diversion of up to 400 KAFY of Colorado River water) can be deferred until the specifics of the projects have been developed to the point where potential effects to historic properties can be better ascertained and assessed; and

3. There will be no adverse effect to historic properties located in Arizona and California as a result of the execution of a Water Delivery Agreement which provides for a change in the point of delivery from Imperial Dam, upstream to Park Dam, of up to 400 KAFY of Colorado River water.

In letters dated September 16, 2002, and November 2, 2002, respectively, both the Arizona and California SHPOs concurred with Reclamation's findings. Development and implementation of an IOP is the only one of the three proposed actions that could result in effects to historic properties in Nevada. In a letter dated September 6, 2002, the Nevada SHPO indicated it would concur with Reclamation's request to defer a determination of effect for the IOP to the broader NHPA Section 110 consultation on river operations.

G. Tribal Resources. Specific locations for the construction and maintenance of biological conservation measures along the Colorado River have not yet been determined. Conservation measures would not be located on tribal lands without the express consent of and desire by the tribe(s).

H. Air Quality. One or more of the following measures could be implemented as standard operating practices to minimize combustive particulate matter ($PM_{10}/PM_{2.5}$) and fugitive dust (PM_{10}) emissions from proposed construction activities associated with the implementation of biological conservation measures (this list does not preclude the use of other mitigation measures):

1. Use particulate traps on diesel-powered equipment.

2. Minimize the use of diesel-powered equipment where feasible.

3. Use alternative diesel fuels in construction equipment where feasible.

4. Properly tune and maintain all construction equipment.

5. Apply water to areas where vehicles and equipment are involved in ground-disturbing activities.

6. Pave dirt roads or keep them wet, or apply non-toxic soil stabilizers, such as salts or detergents.

7. Increase water applications or reduce ground-disturbing activities as wind speeds increase.

8. Minimize the amount of disturbed area and vehicle speeds on site.

9. Cover inactive soil stockpiles or treat them with soil binders, such as crusting agents or water them to keep moist.

10. Cover trucks that haul soils or fine aggregate materials.

11. Designate personnel to monitor dust control program activities to ensure that they are effective in minimizing fugitive dust emissions.

12. Clean dirt from construction vehicle tires and undercarriages when leaving the construction site and before entering local roadways.

13. Sweep streets near the construction area at the end of the day if visible soil material is present.

I. Biological Conservation Measures from the December 2002 BO. Reclamation and the California water agencies, through a Conservation Agreement, propose to implement the following

species conservation measures as a result of Reclamation's voluntary Endangered Species Act Section 7(a)(1) consultation regarding listed species in the IID/Salton Sea areas. Following is a summary of the conservation measures. The full text of the conservation measures, Reasonable and Prudent Measures, and Terms and Conditions may be found in the December 2002 BO.

1. Desert Pupfish Conservation Measure 1: Connectivity Impacts. In cooperation with its conservation agreement partners, Reclamation will ensure that an appropriate level of connectivity is maintained between pupfish populations in individual drains (in CVWD's area at the north end of the Salton Sea and in IID's area at the south end of the Sea) connected to the Salton Sea either directly or indirectly and that drain habitat below the first check will be maintained in the event that conditions in the Salton Sea become unsuitable for pupfish.

2. Desert Pupfish Conservation Measure 2: Selenium Impacts. Reclamation and its conservation agreement partners will commit to fund a study program to determine the impacts of selenium on desert pupfish. The objective of the study program will be to identify specific selenium thresholds at which pupfish survival or reproduction is adversely affected. Within 2 years of completion of the study program, Reclamation and its conservation agreement partners will meet with the Service and CDFG to review the results of the study program and the monitoring data. If the available information reviewed in this process indicates that the pupfish inhabiting the Imperial Valley drains that discharge directly to the Salton Sea are at risk from selenium, Reclamation will work in cooperation with IID, the Service and CDFG to identify and implement the best means for managing IID's drain channels to minimize potential selenium impacts on pupfish.

3. Desert Pupfish Conservation Measure 3: Management and Monitoring. In cooperation with its conservation agreement partners, Reclamation will carry out routine monitoring of pupfish presence to confirm continued presence in the drains and to develop information useful in adjusting management actions for this species.

4. Rail Conservation Measure 1: Salinity Impacts. Thirty-one acres of high quality managed marsh will be created to offset potential salinity impacts. In cooperation with its conservation agreement partners, Reclamation will work with the Service and CDFG to determine the design and location of these marshes. Design considerations will include the needs of both the Yuma clapper rail and California black rail.

5. Rail Conservation Measure 2: Selenium Impacts. Forty-two acres of additional high quality managed marsh habitat will be created to offset the potential selenium impacts on rail egg hatchability. The total amount of 73 acres of habitat will be created within 10 years of completion of this consultation.

6. Rail Conservation Measure 3: Management and Monitoring. A long-term adaptive management and monitoring plan will be developed for the mitigation marsh and submitted to the Service and CDFG for review and approval prior to initiation of habitat creation activities. The management plan will consider the requirements of both the Yuma clapper rail and the California black rail.

7. Southwestern Willow Flycatcher Conservation Measure 1: Evaluate Habitat. All potential cottonwood-willow and tamarisk stands will be evaluated for Southwestern willow flycatcher breeding habitat suitability.

8. Southwestern Willow Flycatcher Conservation Measure 2: Suitable Habitat Monitoring. If suitable Southwestern willow flycatcher breeding habitat is identified during

Conservation Measure 1, this habitat will be monitored to quantify changes in the amount and quality of habitat. If suitable breeding habitat is lost or the quality of the habitat declines as a result of IID's water conservation activities so that it is no longer considered suitable breeding habitat, this loss will be offset through the creation and/or acquisition and preservation of higher quality, native riparian replacement habitat at a 1:1 ratio.

9. Southwestern Willow Flycatcher Conservation Measure 3: Management and Monitoring of Habitat. A long-term adaptive management and monitoring plan will be developed for any replacement habitat whether created or acquired.

10. Southwestern Willow Flycatcher Conservation Measure 4 : Take Minimization During Construction. If suitable breeding habitat for Southwestern willow flycatchers is identified in the seepage communities adjacent to the East Highline Canal or in locations to be impacted by lateral interceptor construction, removal of suitable habitat in association with these construction activities will be scheduled to occur outside the breeding season for the Southwestern willow flycatcher. Specifically, removal of habitat would not occur between April 15 and August 15.

11. Brown Pelican Conservation Measure 1 B: Roost Site Creation. Reclamation, in cooperation with its conservation agreement partners, will construct at least two roost sites for California brown pelicans along the Southern California Coast. The objective of this conservation measure is to provide at least two major roost sites that in combination support roosting by at least 1,200 pelicans. The roosts will be sized to accommodate up to 1,000 pelicans each. A major roost site is defined as supporting at least 100 pelicans during June through October based on maximum counts. The roost sites are to be installed and functioning by 2018 and demonstrated to support at least 100 pelicans each and to support at least 1,200 pelicans in combination. They will be maintained through 2048.

VIII. Comments Received on Final EIS

Three comment letters were received on the Final IA EIS. Comment letters from the Southern Nevada Water Authority and Colorado River Commission of Nevada requested a wording change in the final IOP to reflect that introduction of non-system water could be considered as a source of payback, but only after appropriate environmental review and approval by Reclamation. Reclamation has concluded that such a change is within the scope of the environmental analysis in the Final IA EIS, and has made this change in the final IOP language.[13]

The third letter of comment was from the EPA. The EPA stated that the Final IA EIS addressed many of its concerns, but that EPA remained concerned about potential cumulative impacts on drinking water quality and on Indian Trust Assets. EPA suggested an EIS on the HCP would be an appropriate forum to address their remaining concerns, and that Reclamation should commit to extending Cooperating Agency status to the Service in the EIS for the HCP. Reclamation agrees that the NEPA process for the HCP is the appropriate forum to consider EPA's remaining concerns. Reclamation expects that the Service will be the lead agency for such NEPA evaluation, and will consider whether a new EIS is appropriate depending on the magnitude of change in the proposed HCP from that considered in the

[13] Other minor changes in the final IOP Policy language were made for purposes of clarity. In addition, clarifications have been included to more carefully link calculation and repayment of overruns to the annual approvals of water orders by Reclamation pursuant to 43 C.F.R. Pt. 417. These changes and clarifications to the IOP Policy do not result in any new or additional environmental impacts beyond those described in the Final IA EIS.

IID Transfer EIR/EIS.

In addition, two comment letters were received on the IID Water Conservation and Transfer Project EIR/EIS. Although this ROD is not based on that EIR/EIS, the issues raised in the comment letters are related to the IA (now Water Delivery Agreement), and are summarized here. Mr. Les W. Ramirez provided a comment letter on behalf of the Torres Martinez Band of Desert Cahuilla Indians. The letter stated the IID water conservation and transfer project will have direct impacts on the Tribe's fish, wildlife, land, water, and cultural assets. The Tribe is concerned that IID has not committed to implement the Salton Sea Habitat Conservation Strategy identified in the Final IID Transfer EIR/EIS. The Tribe also expressed concerns about potential air quality impacts, water quality (perchlorate) impacts to drinking water, and requested delay of CVWD recharge projects in Martinez Canyon and Dike 4. As noted above, Reclamation has included a description of off-river impacts associated with IID's water conservation actions pursuant to the QSA water transfer, but Reclamation does not have any control over the methods used by IID to conserve water. Since the potential impacts to Torres-Martinez resources result from decisions made by IID, mitigation of impacts is appropriately dealt with by IID and, in the case of CVWD recharge projects, by CVWD.

The second comment letter was from EPA. It raised concerns about substitution of a "15-year" plan for the Salton Sea Habitat Conservation Strategy after the Final IID Transfer EIR/EIS was filed (see Section V above). Based on this concern, and because supplemental NEPA compliance has not been carried out on the differences between the two approaches, EPA reiterated its objections to potential impacts on surface and groundwater quality, air quality, and biological resources.[14] EPA stated that its substantive objections could be addressed by the Habitat Conservation Plan and the Salton Sea Restoration Project. Reclamation notes that the Final IA EIS included the Section 7 approach as an alternative to the Salton Sea Habitat Conservation Strategy, and described the resulting environmental impacts in the absence of the Salton Sea Habitat Conservation Strategy.

Lastly, in an October 2, 2003 letter to Secretary Norton, the Colorado River Indian Tribes (CRIT) expressed concerns regarding the QSA's possible effect on the senior decreed rights of the CRIT. Specifically, the tribes noted that the agreements would allow additional deliveries of water from Lake Havasu into the Colorado River Aqueduct. The CRIT was unsure of any impact but expressed a desire for further information. The tribe's Colorado River rights would not be affected by the changes in points of diversion contemplated under the QSA. The QSA creates no new rights to Colorado River water, but only facilitates the movement of water from one user to another within California. The CRIT's use of Colorado River water will not be compromised by the QSA transfers.

The CRIT also expressed concern about how changes in points of diversion might affect hydropower production at the Headgate Rock Dam, the tribe's diversion point for Colorado River water. As described in the Draft and Final IA EIS, the QSA water transfers will result in less flow of water through the dam and will cause an associated reduction in hydropower generation. However, hydropower generation under the Boulder Canyon Project Act of 1928 is a secondary function and is available only to the extent that releases of water are required for downstream water use. The Boulder Canyon Act and the Supreme Court Decree in *Arizona v. California* make it clear that no right to

[14] On October 9, 2003, as this ROD was being finalized, the United States Court of Appeals for the Ninth Circuit issued an opinion directing the EPA to classify the Imperial Valley as a serious non-attainment area because of PM-10 concentrations exceeding standards established pursuant to the Clean Air Act. *Sierra Club v. EPA*, No. 01-71902. While the implications of this ruling are unclear at this time, the Department of the Interior will monitor developments and undertake additional review under NEPA, as appropriate.

water is created by hydropower generation and, therefore, the change in points of diversion will not impact the CRIT's senior water right. As described in the Final IA EIS, the QSA water transfers are estimated to reduce the opportunity to produce power at Headgate Rock Dam by an average of about 5 percent. The variation in Colorado River flow is within the range that occurs as a normal course of river operation.

IX. Implementing the Decision

A. INADVERTENT OVERRUN AND PAYBACK POLICY

Reclamation is adopting a policy that will identify inadvertent overruns, will establish procedures that account for inadvertent overruns and will define subsequent payback requirements for users of Colorado River mainstream water in the Lower Division States. The Inadvertent Overrun and Payback Policy is effective beginning on January 1, 2004. The language of the policy has been modified from the language published in Appendix I of the Final IA EIS. The comments from Southern Nevada Water Authority and Colorado River Commission of Nevada were accommodated. Edits were made for grammar and consistency, and to eliminate duplication. None of the changes would result in environmental impacts different from those described in the Final IA EIS. The policy as finalized follows.

1. Background

In its June 3, 1963 opinion in the case of *Arizona v. California* (373 U.S. 546), the Supreme Court of the United States held that Congress has directed the Secretary of the Interior (Secretary) to administer a network of useful projects constructed by the Federal Government on the lower Colorado River, and has entrusted the Secretary with sufficient power to direct, manage, and coordinate their operation. The Court held that this power must be construed to permit the Secretary to allocate and distribute the waters of the mainstream of the Colorado River within the boundaries set down by the Boulder Canyon Project Act (45 Stat. 1057, 43 U.S.C. 617) (BCPA). The Secretary has entered into contracts for the delivery of Colorado River water with entities in Arizona, California, and Nevada in accordance with section 5 of the BCPA. The Secretary has the responsibility of operating Federal facilities on the Colorado River and delivering mainstream Colorado River water to users in Arizona, California, and Nevada that hold entitlements, including present perfected rights, to such water.

Article V of the Decree of the Supreme Court of the United States in *Arizona v. California* dated March 9, 1964 (376 U.S. 340) requires the Secretary to compile and maintain records of diversions of water from the mainstream, of return flow of such water to the mainstream as is available for consumptive use in the United States or in satisfaction of the Mexican Treaty obligation, and of consumptive use of such water. Reclamation reports this data each year in the Decree Accounting Record.[15]

Pursuant to the Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs developed as a result of the Colorado River Basin Project Act of September 30, 1968, the Secretary annually consults with representatives of the governors of the Colorado River Basin States, general public and others and issues an Annual Operating Plan (AOP) for the coordinated operation of the Colorado River reservoirs. Reclamation also requires each Colorado River water user in the Lower

[15] These records are published as: Compilation of Records in Accordance with Article V of the Decree of the Supreme Court of the United States in *Arizona v. California, et. al.*, dated March 9, 1964.

Basin to schedule water deliveries in advance for the following calendar year (calendar year is the annual basis for decree accounting of consumptive use in the lower Colorado basin) and to later report its actual water diversions and returns to the mainstream.

Pursuant to 43 CFR part 417, prior to the beginning of each calendar year, Reclamation consults with entities holding BCPA section 5 contracts (Contractor) for the delivery of water. Under these consultations, Reclamation makes recommendations relating to water conservation measures and operating practices in the diversion, delivery, distribution, and use of Colorado River water. Reclamation also makes a determination of the Contractor's estimated water requirements for the ensuing calendar year to ensure that deliveries of Colorado River water to each Contractor will not exceed those reasonably required for beneficial use under the respective BCPA contract or other authorization for use of Colorado River water. Reclamation sends a letter approving the Contractor's water order for the ensuing year in the amount determined to be appropriate by Reclamation. Reclamation then monitors the actual water orders, receives reports of measured diversions and return flows from major Contractors and Federal establishments, estimates unmeasured diversions and return flows, calculates consumptive use from preliminary diversions and measured and unmeasured return flows, and reports these records on an individual and aggregate monthly basis. Later, when final records are available, Reclamation prepares and publishes the final Decree Accounting Record on a calendar year basis.

For various reasons, a user may inadvertently consumptively use Colorado River water in an amount that exceeds the amount available under its entitlements as provided in annual approved water orders (inadvertent overrun). Further, the final Decree Accounting Record may show that an entitlement holder inadvertently diverted water in excess of the quantity of the entitlement that may not have been evident from the preliminary records. Reclamation is therefore adopting an administrative policy that defines inadvertent overruns, establishes procedures that account for the inadvertent overruns and defines the subsequent requirements for payback to the Colorado River mainstream.

2. Inadvertent Overruns

Effective January 1, 2004, Reclamation adopts the following Inadvertent Overrun and Payback Policy for the Lower Colorado River Basin:

1. Inadvertent overruns are those which the Secretary deems to be beyond the control of the entitlement holder; for example, overruns due to the discrepancy between preliminary and final stream flow and diversion records.

2. An inadvertent overrun is Colorado River water diverted, pumped or received by an entitlement holder of the Lower Division States that is in excess of the water user's entitlement for that year. This IOP policy provides a structure to payback the amount of water diverted, pumped or received in excess of entitlement for that year. This IOP policy does not create any right or entitlement to this water, nor does it expand the underlying entitlement in any way. An entitlement holder has no right to order, divert, pump or receive an inadvertent overrun. If, however, water is diverted, pumped or received inadvertently in excess of annual approved orders, and sources of unused Colorado River water are not available to accommodate adjustment of water orders by Reclamation, the inadvertent overrun policy will govern the payback. This IOP Policy will not be applied in any manner to the deliveries made under the United States Mexico Water Treaty of 1944.

3. Payback will be required to commence in the calendar year that immediately follows the release date of a final Decree Accounting Record that reports uses that are in excess of an individual's

entitlement.

4. Payback must be made only from measures that are above and beyond the normal reasonable and beneficial consumptive use of water (extraordinary conservation measures). Extraordinary conservation measures mean actions taken to conserve water that otherwise would not return to the mainstream of the Colorado River and be available for beneficial consumptive use in the United States or to satisfy the Mexican treaty obligation. Any entitlement holder with a payback obligation must submit to Reclamation, along with its water order, a plan which will show how it will intentionally forbear use of Colorado River water by extraordinary conservation measures, including fallowing, sufficient to meet its payback obligation and which demonstrates that the measures being proposed are in addition to those being implemented to meet any existing transfer or conservation agreement, and are in addition to the measures found in its Reclamation approved conservation plan. Plans for payback could also include supplementing Colorado River system water supplies with non-system water supplies through exchange or forbearance or other acceptable arrangements, provided that non-system water is not physically introduced into the system without appropriate environmental review and approval by Reclamation. Water banked off-stream or groundwater from areas not hydrologically connected to the Colorado River or its tributaries are examples of such supplemental supplies. Water ordered but subsequently not diverted is not included in this policy in any manner.

5. Maximum cumulative inadvertent overrun accounts will be specified for individual entitlement holders as 10 percent of an entitlement holder's normal year consumptive use entitlement. (Normal year means a year for which the Secretary has determined that sufficient mainstream Colorado River water is available for release to satisfy 7.5 maf of annual consumptive use in the States of California, Arizona and Nevada.)

6. The number of years within which an overrun, calculated from consumptive uses reported in final Decree Accounting Records, must be paid back, and the minimum payback required for each year shall be as follows:

    a. In a year in which the Secretary makes a flood control release or a space building release pursuant to the applicable Water Control Manual for Hoover Dam, Lake Mead, any accumulated amount in the overrun account will be forgiven.

    b. If the Secretary has declared a 70R surplus in an AOP applicable to the calendar year of payback, any payback obligation for that calendar year will be deferred at the entitlement holder's option.

    c. In a year when Lake Mead elevation is between the elevation for a 70R surplus determination and elevation 1,125 feet above mean sea level on January 1, the payback obligation incurred in that year must be paid back in full within 3 years of the reporting of the obligation, with a minimum payback each year being the greater of 20 percent of the individual entitlement holder's maximum allowable cumulative overrun account amount or 33.3 percent of the total account balance.

    d. In a year when Lake Mead elevation is at or below elevation 1,125 feet above mean sea level on January 1, the total account balance must be paid back in full in that calendar year.

    e. For any year in which the Secretary declares a shortage under the Decree, the total

account must be paid back in full that calendar year, and further accumulation of inadvertent overruns will be suspended as long as shortage conditions prevail.

7. A separate inadvertent overrun account may be established in those limited cases in which a lower priority user is contractually responsible for payback of other senior entitlement holders. The separate inadvertent overrun account will be limited to a maximum cumulative amount of 10 percent of the senior entitlement holder's average consumptive use. Such inadvertent overrun accounts will be the assigned responsibility of the lower priority user in addition to its own entitlement-based inadvertent overrun account. If, however, senior entitlement holder's approved aggregate calendar year water orders are in excess of the specified amount for which the lower priority user will be responsible, such excess will not be deemed inadvertent and the lower priority user's water order for that year will be reduced accordingly by Reclamation.

8. Each month, Reclamation will monitor the actual water orders, receive reports of measured diversions and return flows from Contractors and Federal establishments, estimate unmeasured diversions and return flows, and project individual and aggregate consumptive uses for the year. Should preliminary determinations indicate that monthly consumptive uses by individual users, or aggregate uses, when added to the approved schedule of uses for the remainder of that year, exceed entitlements pursuant to annual approved water orders but are not exceeding the maximum inadvertent overrun account amount, Reclamation will notify in writing the appropriate entities that the preliminary determinations are forecasting annual uses in excess of their entitlements.

9. During years in which an entitlement holder is forbearing use to meet its payback obligation, Reclamation will monitor the implementation of the extraordinary conservation measures, and require that the entitlement holder's consumptive use be at or below its approved water order for that year. Should the entitlement holder's actual monthly deliveries for the first 5 months of the year exceed their forecasted orders, and projections indicate the entitlement holder's end of year use is likely to be 5 percent or more above their adjusted entitlement, Reclamation will notify the entitlement holder in writing. At the end of 7 months, if it continues to appear that the entitlement holder is likely to be above its adjusted entitlement Reclamation will notify the entitlement holder that they are at risk of exceeding their adjusted entitlement, and having their next year's orders placed under enforcement proceedings. Reclamation will monitor the implementation of the extraordinary conservation measures and monitor the forbearance of consumptive use of Colorado River water. Should preliminary determinations of the implementation of extraordinary conservation or of monthly Colorado River consumptive uses indicate that sufficient extraordinary conservation or sufficient forbearance of Colorado River consumptive use is not projected to occur, Reclamation will notify the appropriate entitlement holders in writing that the preliminary determinations are forecasting that their annual payback obligations are not on target or being met. If this condition occurs for two consecutive years, in the second year Reclamation will begin enforcement proceedings, and will so advise the entitlement holder in writing by July 31 of the second year. Reclamation will consult with the entitlement holder on a modified release schedule and will limit releases to the entitlement holder for the remainder of the year such that by the end of the year the individual entitlement holder has met its payback obligation.

10. Procedures will be established for accounting for inadvertent overruns on an annual basis and for supplementing the final Decree Accounting Record. The procedures and measures for administering the IOP will be reviewed every 5 years. Final determinations under this IOP policy shall be made by Reclamation's Lower Colorado Regional Director.

B. COLORADO RIVER WATER DELIVERY AGREEMENT

Effective upon signature, under the authority of the Secretary, the Department proposes to execute the following Colorado River Water Delivery Agreement.

Colorado River Water Delivery Agreement:

Federal Quantification Settlement Agreement

for purposes of Section 5(B) of

Interim Surplus Guidelines

Approved:

_____

_____

Gale A. Norton *Date*
Secretary of the Interior

COLORADO RIVER WATER DELIVERY AGREEMENT

The United States by and through the Secretary of the Interior (Secretary) hereby enters into this Colorado River Water Delivery Agreement (Agreement) with the Imperial Irrigation District (IID), the Coachella Valley Water District (CVWD), The Metropolitan Water District of Southern California (MWD) (these three districts are collectively referred to herein as the Districts), and the San Diego County Water Authority (SDCWA). The Secretary, IID, CVWD, MWD and SDCWA hereby agree as follows:

RECITALS

A. By regulations dated September 28, 1931, the Secretary incorporated the schedule of priorities provided in the Seven Party Agreement dated August 18, 1931, and established priorities One through Seven for use of the waters of the Colorado River within the State of California. The regulations were promulgated pursuant to the Boulder Canyon Project Act (BCPA) and required that contracts be entered into for the delivery of water within those priorities.

B. The Secretary has entered into contracts with, among others, the Palo Verde Irrigation District (PVID), IID, CVWD, and MWD, for the delivery of Colorado River water pursuant to Section 5 of the BCPA (Section 5 Contracts). Under those Section 5 Contracts, PVID, IID, CVWD and MWD have certain rights to the delivery of Colorado River water, which for PVID and IID include the satisfaction of present perfected rights in accordance with Section 6 of the BCPA. MWD and CVWD also have surplus water delivery contracts with the Secretary.

C. IID, CVWD, MWD and SDCWA have entered into agreements relating to, among other matters, their respective beneficial consumptive use of Colorado River water and desire that, for the term of this Agreement, Colorado River water be delivered by the Secretary in the manner contemplated in this Agreement.

D. The Secretary has the authority to enter into this Agreement on behalf of the United States pursuant to the BCPA, the 1964 Decree in Arizona v. California, and other applicable authorities.

OPERATIVE TERMS

1. WATER DELIVERY CONTRACTS

a. Priorities 1, 2, 3(b), 6(b), and 7 of current Section 5 Contracts for the delivery of Colorado River water in the State of California and Indian and miscellaneous Present Perfected Rights (PPRs) within the State of California and other existing surplus water contracts are not affected by this Agreement.

b. The Secretary agrees to deliver Colorado River water in the manner set forth in this Agreement during the term of this Agreement. The Secretary shall cease delivering water pursuant to this Agreement at the end of the term of this Agreement; provided, however, that the Secretary's delivery commitment to the San Luis Rey Indian Water Rights Settlement Parties (SLR) shall not terminate at the end of the term but shall instead continue, pursuant to Section 106 of Public Law 100-675, 102 Stat. 4000 et seq., as amended, subject to the terms and conditions of any applicable agreement to which the Secretary is a party concerning the allocation of water to be conserved from the lining of the All-American and Coachella Canals.

c. The Districts' respective Section 5 Contracts shall remain in full force and effect and, with this Agreement, shall govern the delivery of Colorado River water.

2. QUANTIFICATION OF PRIORITY 3(a)

a. Except as otherwise determined under the Inadvertent Overrun and Payback Policy identified in Section 9 of this Agreement, the Secretary shall deliver Priority 3(a) Colorado River water to IID in an amount up to but not more than a consumptive use amount of 3.1 million acre-feet per year (AFY) less the amount of water equal to that to be delivered by the Secretary for the benefit of CVWD, MWD, SDCWA, SLR, and Indian and miscellaneous PPRs as set forth in Exhibits A and B hereto. Colorado River water acquired by IID after the date of this Agreement, and where necessary approved by the Secretary, shall not count against this cap.

b. Except as otherwise determined under the Inadvertent Overrun and Payback Policy, the Secretary shall deliver Priority 3(a) Colorado River water to CVWD in an amount up to but not more than a consumptive use amount of 330,000 AFY less the amount of water equal to that to be delivered by the Secretary for the benefit of IID, MWD, SDCWA, SLR, and Indian and miscellaneous PPRs as set forth in Exhibits A and B hereto. Colorado River water acquired by CVWD in any transaction to the extent agreed upon prior to or concurrent with the execution of this Agreement by IID and MWD and, where necessary approved by the Secretary, shall not count against this cap.

3. QUANTIFICATION OF PRIORITY 6(a)

a. Subject to any rights that PVID may have, and except as otherwise provided under the Interim Surplus Guidelines, or under the agreements contemplated by those guidelines, the Secretary shall deliver Priority 6(a) water to MWD, IID and CVWD in the following order and consumptive use volumes: (i) 38,000 AFY to MWD; (ii) 63,000 AFY to IID; and (iii) 119,000 AFY to CVWD, or as those parties may agree to occasionally forbear.

b. Any water not used by MWD, IID or CVWD as set forth above will be available to satisfy the next listed amount in Section 3.a. above. Any additional water available for Priority 6(a) shall be delivered by the Secretary in accordance with IID and CVWD's entitlements under their respective Section 5 Contracts in effect as of the date of this Agreement.

4. TRANSFERS AND OTHER WATER DELIVERY COMMITMENTS

a. The Secretary shall deliver IID's Priority 3(a) entitlement for the benefit of IID and others as specified in Exhibits A and B hereto and in the amounts and to the points of delivery set forth therein.

b. The Secretary shall deliver CVWD's Priority 3(a) entitlement for the benefit of the CVWD and others as specified in Exhibits A and B hereto and in the amounts and to the points of delivery set forth therein.

c. At SDCWA's election, the Secretary shall deliver water made available for SDCWA's benefit as set forth in Exhibits A and B hereto to the intake facilities for the Colorado River Aqueduct and SDCWA may then exchange up to 277,700 AFY of Colorado River water with MWD at Lake Havasu.

d. If in any given calendar year that the use of Colorado River water in accordance with Priorities 1 and 2, together with the use of Colorado River water on PVID Mesa lands in accordance with Priority 3(b), exceeds the consumptive use amount of 420,000 AFY, the Secretary will reduce the amount of water otherwise available to MWD in Priorities 4, 5 or 6(a) by the amount that such use exceeds 420,000 AFY. To the extent that the amount of water used in accordance with Priorities 1, 2 and 3(b) is less than 420,000 AFY, the Secretary shall deliver to MWD the difference.

e. 1. The Secretary shall deliver to CVWD at Imperial Dam the consumptive use amount of 20,000 AFY or such lesser consumptive use amount as may be requested by CVWD of Priority 3(a) Colorado River water made available to MWD under the Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water between IID and MWD dated December 22, 1988, as amended.

2. Beginning in 2048 and in each year thereafter, the Secretary shall deliver to CVWD at Imperial Dam the consumptive use amount of 50,000 AFY or such lesser consumptive use amount as may be requested by CVWD from the Colorado River water available to MWD.

3. When requested by MWD for the purpose of satisfying an exchange obligation to CVWD under an agreement between CVWD and MWD for exchange of CVWD's State Water Project water, the Secretary shall deliver to CVWD at Imperial Dam the consumptive use amount of 135,000 AFY or such lesser amount as may be requested by MWD.

f. CVWD may decline to take a portion of the water to be conserved by IID for CVWD. In this event, the Secretary shall instead deliver such portion of the water to IID or MWD, or to other unspecified water users provided, further, that any such delivery to an unspecified user is, where necessary, subject to Secretarial approval.

g. Colorado River water will be made available to MWD through forbearance under the existing priority system as a result of a proposed land management program between PVID landowners and MWD. Neither IID nor CVWD will make any claim to or object to delivery to MWD of

PVID program water to the extent agreed upon prior to or concurrent with the execution of this Agreement by IID and CVWD. If the transfer of PVID program water is not implemented, then IID has agreed to transfer for the benefit of MWD/SDCWA amounts necessary to meet the minimum Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines, not to exceed 145,000 AF in the aggregate.

h. CVWD may utilize Colorado River water outside of Improvement District No. 1 to the extent consented to and agreed upon prior to or concurrent with the execution of this Agreement by IID and MWD.

i. Notwithstanding the transfers set forth in this section and Exhibit B, IID, CVWD, MWD and SDCWA recognize and agree that at the conclusion of the effective period of the Interim Surplus Guidelines, they shall have implemented sufficient measures to be able to limit total uses of Colorado River water within California to 4.4 million AFY, unless the Secretary determines a surplus under a 70R strategy.

5. SHORTAGES

a. The Secretary's authority under II.B.3 of the 1964 Decree in Arizona v. California is not limited in any way by this Agreement.

b. If for any reason there is less than 3.85 million AFY available under Priorities 1, 2 and 3 during the term of this Agreement, any water which is made available by the Secretary to IID and CVWD shall be delivered to IID, CVWD, MWD, and SDCWA in accordance with the shortage sharing provisions agreed upon prior to or concurrent with the execution of this Agreement by IID, CVWD, MWD and SDCWA.

6. TERM

a. This Agreement will become effective upon execution of this Agreement by all Parties.

b. This Agreement will terminate on December 31, 2037, if the 1998 IID/SDCWA transfer program terminates in that year.

c. If this Agreement does not terminate on December 31, 2037, then this Agreement will terminate on December 31, 2047 unless extended by agreement of all parties until December 31, 2077, in which case this Agreement will terminate on December 31, 2077.

d. The Secretary's delivery commitment to the SLR and the Districts' recognition and acceptance of that delivery commitment, shall not terminate but shall instead continue, pursuant to Section 106 of Public Law 100-675, 102 Stat. 4000 et seq., as amended.

7. INTERIM SURPLUS GUIDELINES

The Secretary finds that execution of this Agreement constitutes "all required actions" that the relevant California Colorado River water contractors are required to undertake pursuant to Section 5(B) of the Interim Surplus Guidelines. Accordingly, upon execution of this Agreement by all parties, the interim surplus determinations under Sections 2(B)(1) and 2(B)(2) of the Interim Surplus Guidelines are reinstated.

8. BENCHMARKS FOR THE STATE OF CALIFORNIA'S AGRICULTURAL USE

a. The parties to this Agreement agree to carry out the transfers identified in Section 4 above and in Exhibit A hereto in accordance with the schedule set forth in Exhibit B hereto. Nothing in this Agreement authorizes or precludes carrying out the transfers on a timetable sooner than provided in the schedule set forth in Exhibit B hereto. The transfers in the schedule set forth in Exhibit B hereto are undertaken to allow California agricultural usage (by PVID, Yuma Project Reservation Division, IID, and CVWD) plus 14,500 af of PPR use to be at or below the Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines. Nothing in this Agreement authorizes or precludes additional transfers of Colorado River water as agreed upon prior to or concurrent with the execution of this Agreement by the Districts to meet the Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines. All determinations by the Secretary with respect to this section shall be based upon Decree Accounting. Repayment of overrun amounts shall not count toward compliance with the transfers in the schedule set forth in Exhibit B hereto or toward compliance with the Benchmark Quantities set forth in Section 5(C) of the Interim Surplus Guidelines.

b. In the event that i) the transfers are carried out as set forth in the schedule in Exhibit B hereto or additional Colorado River transfers as agreed upon prior to or concurrent with the execution of this Agreement by the Districts are carried out and ii) California's Agricultural usage plus 14,500 af of PPR use is at or below the Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines, the provisions of this subparagraph shall apply.

1. Notwithstanding the provisions of the November 22, 2002 Supplement to the 2002 Annual Operating Plan, any existing overruns in calendar years 2001 and 2002 by parties to this Agreement must be repaid within an eight-year period beginning in calendar year 2004 in accordance with the schedule attached in Exhibit C hereto, except that in the event that any Annual Operating Plan 24-Month Study indicates that a shortage will occur within months 13 through 24, any remaining balance of the 2001 and 2002 overruns shall be fully repaid during the next calendar year. Repayment of any overruns other than from calendar years 2001 and 2002 shall be pursuant to the Inadvertent Overrun and Payback Policy identified in Section 9 below.

2. The Secretary has considered the quantification of Priority 3(a) as set forth in Section 2 of this Agreement and the water transfers set forth in the schedule in Exhibit B hereto. These water transfers were developed to assist the Districts and SDCWA to meet the provisions of Section 4(i) of this Agreement and to reduce the occurrence of future reasonable and beneficial use reviews under 43 C.F.R. Pt. 417 to unique circumstances. These water transfers are based upon water conservation activities to be implemented over the term of this Agreement. For these reasons, the Secretary does not anticipate any further review of the reasonable and beneficial use of Colorado River water by IID pursuant to the annual 43 C.F.R. Pt. 417 reviews that are conducted during the initial term of this Agreement as set forth in Section 6.b. (December 31, 2037). Should the Secretary engage in any further review of the reasonable and beneficial use of Colorado River water by IID pursuant to 43 C.F.R. Pt. 417 under this Section, the Secretary will base her decision on (i) the purpose of the quantification of Priority 3(a) and the reductions and transfers set forth on Exhibit B hereto, and (ii) the implementation of the water transfers by IID as set forth in the schedule in Exhibit B, in addition to the consideration of the factors in 43 C.F.R. § 417.3

c. Notwithstanding any other provision of this Agreement, and in addition to any applicable provisions of the Interim Surplus Guidelines, in the event that either i) the transfers are not carried out as set forth in Exhibit B hereto or additional Colorado River transfers as agreed upon prior to or concurrent with the execution of this Agreement by the Districts are not carried out, or ii) California's Agricultural usage plus 14,500 af of PPR use is above the Benchmark Quantities as set forth in Section 5(C) of the Interim Surplus Guidelines, the provisions of this subparagraph shall apply.

1. For each District that has not implemented the water transfers to which it is a party upon the agreed upon schedule as set forth in Exhibit B hereto, the Inadvertent Overrun and Payback Policy identified in Section 9 below will be immediately suspended. During suspension of the Inadvertent Overrun and Payback Policy, for previously incurred overruns, the payback period shall be as provided in the existing Inadvertent Overrun and Payback Policy were such Policy not suspended. The Inadvertent Overrun and Payback Policy will be reinstated at such time as a District has implemented the water transfers to which it is a party upon the agreed upon schedule as set forth in Exhibit B hereto.

2. Any remaining existing overruns from calendar years 2001 and 2002 by parties to this Agreement must be repaid within a three-year period.

3. In addition to any applicable provisions of the Interim Surplus Guidelines, in the event that the transfers are not implemented in accordance with Column 23 in Exhibit B hereto, MWD shall not place any order to the Secretary for any Colorado River water otherwise available pursuant to sections 2(B)(1) and 2(B)(2) as set forth in the Interim Surplus Guidelines.

4. The Secretary anticipates that a further review of the reasonable and beneficial use of Colorado River water by the Districts will be required pursuant to the annual 43 C.F.R. Pt. 417 reviews that are conducted during the initial term of this Agreement as set forth in Section 6.b. (December 31, 2037). In any such review, the Secretary will base her decision on the factors set forth in Section 8.b.2 above as well as the basis for any District's non-implementation of the transfers set forth in Exhibit B hereto, in addition to the consideration of the factors in 43 C.F.R. § 417.3

9. INADVERTENT OVERRUN AND PAYBACK POLICY

For so long as the provisions of Section 8.b of this Agreement are applied, the Secretary will not materially modify the Inadvertent Overrun and Payback Policy for a 30-year period, absent extraordinary circumstances such as significant Colorado River infrastructure failures, and subject to the provisions of Section 5 of this Agreement. In the event that extraordinary circumstances arise, the Secretary will consult with the Districts and other interested parties before initiating any material change.

10. ADDITIONAL PROVISIONS

a. Imperial Irrigation District v. United States of America, et al., CV 0069W (JFS) (D. Cal. filed January 10, 2003) (JFS), is dismissed pursuant to Stipulation under Fed. R. Civ. P. 41(a)(1). Nothing in this Agreement shall affect the preclusive and non-preclusive effects of the Stipulation during the term of this Agreement and thereafter.

b. Upon dismissal of Imperial Irrigation District v. United States, et al., as provided in subsection 10(a) above, the Secretary will irrevocably terminate the *de novo* "Recommendations and Determinations Authorized by 43 C.F.R. Pt. 417, Imperial Irrigation District" for 2003, and IID's water order for 2003 is approved subject to the terms of this Agreement.

c. 1. IID, CVWD, MWD, and SDCWA do not agree on the nature or scope of rights to the delivery, use or transfer of Colorado River water within the State of California. Furthermore, the Districts and SDCWA agree not to use this Agreement or any provision hereof, as precedence for purposes of evidence, negotiation or agreement on any issue of California or federal law in any administrative, judicial or legislative proceeding, including without limitation, any attempt by IID and SDCWA to obtain further approval of any water transaction.

2. The terms of this Agreement do not control or apply to the nature or scope of rights to the delivery, use or transfer of Colorado River water within the State of California, except as those rights are defined and addressed in this Agreement during the term hereof.

3. By executing this Agreement, the Districts and SDCWA are not estopped from asserting in any administrative, judicial or legislative proceeding, including those involving the United States, that neither this Agreement nor any of its terms was necessary or required to effectuate the transactions contemplated herein.

4. Nothing herein waives the ability of any party to challenge the exercise of particular miscellaneous and Indian PPRs.

d. This Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97-293, 93 Stat. 1263).

e. This Agreement does not (i) guarantee or assure any water user a firm supply for any specified period, (ii) change or expand existing authorities under applicable federal law, except as specifically provided herein with respect to the Districts, (iii) address interstate distribution of water; (iv) change the apportionments made for use within individual States, (v) affect any right under the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess.), or any other provision of applicable federal law.

f. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights to enforce the terms of this Agreement in any person or entity that is not a party.

g. Each party to this Agreement represents that the person executing this Agreement on behalf of such party has full power and authority to do so, and that his/her signature is legally sufficient to bind the party on whose behalf he/she is signing.

h. This Agreement shall remain in full force and effect according to its terms regardless of whether the Interim Surplus Guidelines are in effect or terminated.

i. This Agreement with the United States is subject to and controlled by the Colorado River Compact of 1922.

UNITED STATES SECRETARY OF THE INTERIOR

_____ _____
Gale A. Norton *Date*

COACHELLA VALLEY WATER DISTRICT
By

_____ _____
General Manager/Chief Engineer *Date*

IMPERIAL IRRIGATION DISTRICT
By

_____ _____
Date

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
By

_____ _____
Date

SAN DIEGO COUNTY WATER AUTHORITY
By

_____ _____
Date

Exhibit A: Delivery of Priority 3(a) consumptive use entitlement to the Imperial Irrigation District and the Coachella Valley Water District

Imperial Irrigation District

The Secretary of the Interior shall deliver Imperial Irrigation District's Priority 3(a) consumptive use entitlement under this Colorado River Water Delivery Agreement, pursuant to this Exhibit A and Exhibit B hereto as follows:

Delivered to (entity):	At (point of diversion):	Amount not to exceed (af):	Notes
CVWD	Imperial Dam	103,000	---
MWD	Lake Havasu	110,000	1
SDCWA	Lake Havasu	56,200	2
SDCWA	Lake Havasu	200,000	3
SLR	*see note 4*	*see note 4*	4
Misc. & Indian PPRs	Current points of delivery	11,500	5
For benefit of MWD/SDCWA	Lake Havasu	145,000	6
IID	Imperial Dam	Remainder	---
IID's Priority 3(a) Total		3,100,000	---

Notes to Imperial Irrigation District:

1. Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water, dated December 22, 1988; Approval Agreement, dated December 19, 1989. Of amount identified: up to 90,000 af to MWD and 20,000 af to CVWD.
2. Water conserved from the construction of a new lined canal parallel to the All-American Canal from Pilot Knob to Drop 3.
3. Agreement for Transfer of Conserved Water, dated April 29, 1998, as amended. As set forth in Exhibit B, delivery amounts shall be 205,000 AF in calendar year 2021 and 202,500 AF in calendar year 2022.
4. Water conserved from All-American Canal lining project and made available for benefit of San Luis Rey Settlement Parties under applicable provisions of Pub. L. No. 100-675, as amended. Quantity may vary, not to exceed 16,000 afy, as may the point of diversion, subject to the terms of the Allocation Agreement.
5. Water to be delivered to miscellaneous and Indian PPRs identified in the Decree in Arizona v. California, as supplemented. The delivery of water will be to current points of delivery unless modified in accordance with applicable law.
6. As provided in subsection 4(g) of this Agreement.

Coachella Valley Water District

The Secretary of the Interior shall deliver Coachella Valley Water District's Priority 3(a) consumptive use entitlement under this Colorado River Water Delivery Agreement pursuant to this Exhibit A and Exhibit B hereto as follows:

Delivered to (entity):	At (point of diversion):	Amount not to exceed (af):	Notes
SLR	*see note 1*	*see note 1*	1
SDCWA	Lake Havasu	21,500	2
Misc. & Indian PPR	Current points of delivery	3,000	3
CVWD	Imperial Dam	Remainder	---
Coachella Valley Water District's Priority 3(a) Total		330,000	---

Notes:

1. Water conserved from Coachella Canal lining project and made available for benefit of San Luis Rey Settlement Parties under applicable provisions of Pub. L. No. 100-675, as amended. Quantity may vary, not to exceed 16,000 afy, as may the point of diversion, subject to the terms of the Allocation Agreement.
2. Water conserved from lining the unlined portion of the Coachella Canal.
3. Water to be delivered to miscellaneous and Indian PPRs identified in the Decree in Arizona v. California, as supplemented. The delivery of water will be to current points of delivery unless modified in accordance with applicable law.

EXHIBIT B

QUANTIFICATION AND TRANSFERS[1]

In Thousands of Acre-feet

Column:	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
			IID Priority 3a											CVWD Priority 3a									
				Reductions											Reductions			Additions					
	Calendar Year	[2]Priority 1, 2 and 3b	IID Priority 3a Quantified Amount	[3]IID Reduction: MWD 1988 Agreement Transfer	IID Reduction: SDCWA Transfer	[4]IID Reduction: AAC Lining IID, SDCWA & SLR	[5,6]IID Reduction: SDCWA Mitigation Transfer	[7]Intra-Priority 3 Transfer IID/CVWD	[6]IID Reduction: MWD Transfer with Salton Sea Restoration	[8]IID Reduction: Conditional ISG Backfill	[9]IID Reduction: Misc. PPRs	IID Reductions: Total Amount *(sum of columns 4 through 11)*	[10]IID Net Consumptive Use Amount *(difference between column 3 and column 12)*	CVWD Priority 3a Quantified Amount	[4]CVWD Reduction: CC Lining, SDCWA & SLR	[9]CVWD Reduction: Misc. PPRs	[11]CVWD Reductions: Total Amount *(sum of columns 15 + 16)*	[7]Intra-Priority 3 Transfer IID/CVWD	[3]Intra-Priority 3 Transfer MWD/CVWD	CVWD Net Consumptive Use Amount *(columns 14 - 17 plus columns 18 + 19)*	Total Priority 1-3 Use Plus PPR Consumptive Use *(sum of columns 2+13+20 plus 11+16)*	[12]ISG Benchmarks	[12]Annual Targets
1	2003	420	3,100	110	10	0	5	0	0	0	11.5	136.5	2,963.5	330	0	3	3	0	20	347	3,745.0	3,740	3,740
2	2004	420	3,100	110	20	0	10	0	0	0	11.5	151.5	2,948.5	330	0	3	3	0	20	347	3,730.0		3,707
3	2005	420	3,100	110	30	0	15	0	0	0	11.5	166.5	2,933.5	330	0	3	3	0	20	347	3,715.0		3,674
4	2006	420	3,100	110	40	0	20	0	0	9	11.5	190.5	2,909.5	330	26	3	29	0	20	321	3,665.0	3,640	3,640
5	2007	420	3,100	110	50	0	25	0	0	0	11.5	196.5	2,903.5	330	26	3	29	0	20	321	3,659.0		3,603
6	2008	420	3,100	110	50	67.7	25	4	20	0	11.5	288.2	2,811.8	330	26	3	29	4	20	325	3,571.3		3,566
7	2009	420	3,100	110	60	67.7	30	8	40	0	11.5	327.2	2,772.8	330	26	3	29	8	20	329	3,536.3	3,530	3,530
8	2010	420	3,100	110	70	67.7	35	12	60	0	11.5	366.2	2,733.8	330	26	3	29	12	20	333	3,501.3		3,510
9	2011	420	3,100	110	80	67.7	40	16	80	0	11.5	405.2	2,694.8	330	26	3	29	16	20	337	3,466.3		3,490
10	2012	420	3,100	110	90	67.7	45	21	100	0	11.5	445.2	2,654.8	330	26	3	29	21	20	342	3,431.3	3,470	3,470
11	2013	420	3,100	110	100	67.7	70	26	100	0	11.5	485.2	2,614.8	330	26	3	29	26	20	347	3,396.3		3,462
12	2014	420	3,100	110	100	67.7	90	31	100	0	11.5	510.2	2,589.8	330	26	3	29	31	20	352	3,376.3		3,455
13	2015	420	3,100	110	100	67.7	110	36	100	0	11.5	535.2	2,564.8	330	26	3	29	36	20	357	3,356.3		3,448
14	2016	420	3,100	110	100	67.7	130	41	100	0	11.5	560.2	2,539.8	330	26	3	29	41	20	362	3,336.3		3,440
15	2017	420	3,100	110	100	67.7	150	45	91	0	11.5	575.2	2,524.8	330	26	3	29	45	20	366	3,325.3		
16	2018	420	3,100	110	130	67.7	0	63	0	0	11.5	382.2	2,717.8	330	26	3	29	63	20	384	3,536.3		
17	2019	420	3,100	110	160	67.7	0	68	0	0	11.5	417.2	2,682.8	330	26	3	29	68	20	389	3,506.3		
18	2020	420	3,100	110	193	67.7	0	73	0	0	11.5	454.7	2,645.3	330	26	3	29	73	20	394	3,473.8		
19	2021	420	3,100	110	205	67.7	0	78	0	0	11.5	472.2	2,627.8	330	26	3	29	78	20	399	3,461.3		
20	2022	420	3,100	110	203	67.7	0	83	0	0	11.5	474.7	2,625.3	330	26	3	29	83	20	404	3,463.8		
21	2023	420	3,100	110	200	67.7	0	88	0	0	11.5	477.2	2,622.8	330	26	3	29	88	20	409	3,466.3		
22	2024	420	3,100	110	200	67.7	0	93	0	0	11.5	482.2	2,617.8	330	26	3	29	93	20	414	3,466.3		
23	2025	420	3,100	110	200	67.7	0	98	0	0	11.5	487.2	2,612.8	330	26	3	29	98	20	419	3,466.3		
24	2026	420	3,100	110	200	67.7	0	103	0	0	11.5	492.2	2,607.8	330	26	3	29	103	20	424	3,466.3		
25	2027	420	3,100	110	200	67.7	0	103	0	0	11.5	492.2	2,607.8	330	26	3	29	103	20	424	3,466.3		
26	2028	420	3,100	110	200	67.7	0	103	0	0	11.5	492.2	2,607.8	330	26	3	29	103	20	424	3,466.3		
	2029-2037	420	3,100	110	200	67.7	0	103	0	0	11.5	492.2	2,607.8	330	26	3	29	103	20	424	3,466.3		
	2038-2047[13]	420	3,100	110	200	67.7	0	103	0	0	11.5	492.2	2,607.8	330	26	3	29	103	20	424	3,466.3		
	2048-2077[14]	420	3,100	110	200	67.7	0	100	0	0	11.5	489.2	2,610.8	330	26	3	29	100	20	421	3,466.3		

[1] Exhibit B is independent of increases and reductions as allowed under the Inadvertent Overrun and Payback Policy.

[2] Any higher use covered by MWD, any lesser use will produce water for MWD and help satisfy ISG Benchmarks and Annual Targets.

[3] IID/MWD 1988 Conservation Program conserves up to 110,000 AFY and the amount is based upon periodic verification. Of amount conserved, up to 20,000 AFY to CVWD (column 19), which does not count toward ISG Benchmarks and Annual Targets, and remainder to MWD.

[4] Ramp-up amounts may vary based upon construction progress, and final amounts will be determined by the Secretary pursuant to the Allocation Agreement.

[5] Any amount identified in Exhibit B for mitigation purposes will only be from non-Colorado River sources and these amounts may be provided by exchange for Colorado River water.

[6] Water would be transferred to MWD subject to satisfaction of certain conditions and to appropriate federal approvals. For informational purposes only, these transfers may also be subject to state approvals. Schedules are subject to adjustments with mutual consent. After 2006, these quantities will count toward the ISG Benchmarks (column 22) and Annual Targets (column 23) only if and to the extent that water is transferred into the Colorado River Aqueduct for use by MWD and/or SDCWA.

[7] MWD can acquire if CVWD declines the water. Any water obtained by MWD will be counted as additional agricultural reduction to help satisfy the ISG Benchmarks and Annual Targets. MWD will provide CVWD 50,000 AFY of the 100,000 AFY starting in year 46.

[8] IID has agreed to provide transfer amounts to meet the minimum ISG benchmarks, not to exceed a cumulative total of 145,000 AF. Maximum transfer amounts are 25,000 AF in 2006, 50,000 AF plus the unused amount from 2006 in 2009, and 70,000 AF plus the unused amounts from 2006 and 2009 in 2012. In addition to the maximum transfer amounts IID has also committed that no more than 72,500 AF of reduced inflow to the Salton Sea would result from these additional transfers.

[9] Up to the amount shown, as agreed upon reduction to IID or CVWD to cover collectively the sum of individual Miscellaneous PPRs, federal reserved rights and decreed rights. This is a reduction that counts towards ISG Benchmarks and Annual Targets.

[10] For purposes of Subparagraph 8(b)(2)(i) and (ii) and 8(c)(1) and (4) the Secretary will take into account: (i) the satisfaction of necessary conditions to certain transfers (columns 7 and 9) not within IID's control: (ii) the amounts of conserved water as determined, where such amounts may vary (columns 4, 6, 9 and 10); and (iii) with respect to column 7, reductions by IID will be considered in determining IID's compliance regardless of whether the conserved water is diverted into the Colorado River Aqueduct.

[11] For purposes of Subparagraph 8(c)(1) and (4) the Secretary will take into account: (i) the satisfaction of necessary conditions to certain transfers (columns 15 and 16) not within CVWD's control; and (ii) the amounts of conserved water as determined, where such amounts may vary (column 15).

[12] All-consumptive use of priorities 1 through 3 plus 14,500 AF of PPRs must be within 25,000 AF of the amount stated.

[13] Assumes SDCWA does not elect termination in year 35.

[14] Assumes SDCWA and IID mutually consent to renewal term of 30 years.

Notes:

Substitute transfers can be made provided the total volume of water to be transferred remains equal or greater than amounts shown consistent with applicable federal approvals.

The shaded columns represent amounts of water that may vary.

Exhibit C: Payback Schedule of Overruns for Calendar Years 2001 and 2002

Year	*IID*	*CVWD*	*MWD*	*Total*
2004	18,900	9,100	11,000	39,000
2005	18,900	9,100	11,000	39,000
2006	18,900	9,100	11,100	39,100
2007	18,900	9,100	11,100	39,100
2008	18,900	9,200	11,100	39,200
2009	18,900	9,200	11,100	39,200
2010	19,000	9,200	11,100	39,300
2011	19,000	9,200	11,100	39,300
Cumulative	151,400	73,200	88,600	313,200

Note: Each district may, at its own discretion, elect to accelerate paybacks to retire its payback obligation before the end of the eight-year period ending in calendar year 2011. Each district's payback obligation is subject to acceleration in anticipation of a shortage in the Lower Colorado River Basin as provided for in section 8(b).