

**AGREEMENT BETWEEN
COLORADO RIVER INDIAN TRIBES
AND
ARIZONA DEPARTMENT OF WATER RESOURCES
REGARDING OFF-RESERVATION USE OF CRIT DECREED ALLOCATION**

This Agreement is entered into by the **COLORADO RIVER INDIAN TRIBES** (the “CRIT”) and the **STATE OF ARIZONA** through the **ARIZONA DEPARTMENT OF WATER RESOURCES** (“ADWR”). In this Agreement, the CRIT and ADWR are sometimes each individually called “Party” and sometimes collectively called “Parties.”

Recitals

- A. The CRIT is seeking, or has obtained, federal legislation to authorize the CRIT to enter leases or options to lease, exchanges or options to exchange, or Storage agreements for the use and Storage of a portion of the CRIT Consumptive Use off the Reservation in the part of the State of Arizona that is in the Lower Basin (collectively referred to in this Agreement as the “CRIT Water Agreements”) and to authorize the Secretary to approve such agreements. (“Federal Legislation”).
- B. The CRIT is a federally recognized Indian tribe, not subject to the jurisdiction of ADWR, for activities conducted on its Reservation. However, the CRIT acknowledge that State law may apply to the recipients of water from the CRIT Decreed Allocation pursuant to CRIT Water Agreements.
- C. According to the laws of the State of Arizona, the Director of the Arizona Department of Water Resources (Director) is generally responsible for formulating plans and programs for the development, management, conservation and use of surface water and groundwater throughout the State of Arizona, including the State’s apportionment of 2.8 million acre-feet of Colorado River water in the Lower Basin. The CRIT Decreed Allocation is accounted for by the Secretary within the total State of Arizona’s Lower Basin apportionment from the Colorado River.
- D. The Parties desire to enter into this Agreement to establish a cooperative process to provide notice, share information, and collaborate in advance of the CRIT executing a CRIT Water Agreement.

The Parties agree as follows:

Section 1. Definitions

The capitalized terms used in this Agreement shall have the meanings as set forth in this Agreement or the same meanings as set forth in the Federal Legislation. The definitions shall conform to the definitions in the Federal Legislation upon enactment. A list of such definitions is attached as Exhibit A.

Section 2. Effective Date

This Agreement shall be effective the later of the date it is signed by both Parties or the enactment of the Federal Legislation.

Section 3. CRIT Water Rights

1. The water rights for the CRIT were confirmed by the United States Supreme Court in the series of cases known as *Arizona v. California* as first-priority present perfected rights as quantified in the Consolidated Decree. The CRIT Decreed Allocation available for use in the State of Arizona is quantified as: (i) diversions of 662,402 acre-feet per year; or (ii) consumptive use required for irrigation of 99,375 acres and satisfaction of related uses, whichever of (i) or (ii) is less.
2. This Agreement does not apply to the CRIT water rights as quantified in the Consolidated Decree for use within the State of California.

Section 4. Information Sharing

1. The CRIT and the Director shall cooperate and confer as to negotiations regarding CRIT Water Agreements.
2. The CRIT shall submit proposed CRIT Water Agreements to the Director for review 60 days prior to the execution of such agreements. The proposed CRIT Water Agreements and supplemental documents may have financial and proprietary information redacted but shall include:
 - a. the parties to the CRIT Water Agreements;
 - b. the method of accounting for the water subject to the CRIT Water Agreement;
 - c. the term of the CRIT Water Agreement;
 - d. the location and purpose for the off-reservation use of the CRIT water, including maps of the location of use;
 - e. technical memoranda documenting the reduction in Consumptive Use in a volume equal to the amount of water in the CRIT Water Agreement;
 - f. the method for transporting the water to the end user; and
 - g. the agreed upon dispute resolution mechanism.
3. The Director shall review the proposed CRIT Water Agreements solely for the purpose of determining that:
 - a. the CRIT Water Agreements comply with the Act, State law applicable to the end user or Storage entity, this Agreement, and the Agreement described in Section 9 of the Act;

- b. the Persons receiving a portion of the CRIT's Consumptive Use off the reservation pursuant to a CRIT Water Agreement will comply with State law in the use of the water received; and
- c. the CRIT Water Agreement includes a requirement that the recipient is the end user or Storage entity and will put the water to beneficial use in the part of the State in the Lower Basin and not hold it for speculative purposes.

Section 5. Term and Termination and Amendment

1. This Agreement shall remain in effect until terminated pursuant to this Section.
2. This Agreement may be terminated by the agreement of the Parties by exchanging written letters of termination.
3. This Agreement may be amended, modified, or supplemented by the agreement of the Parties by exchanging written letters of amendment, modification, or supplement.
4. The amendment, modification, or termination of this Agreement shall not affect the validity of existing CRIT Water Agreements entered in compliance with the Federal Legislation and the terms of this Agreement in effect as of the effective date of the CRIT Water Agreement.

Section 6. Notices

1. Any notice, demand, or request authorized or required by this Agreement shall be in writing and shall be deemed to have been duly given if mailed, first class postage prepaid, or hand-delivered at the following address:

If to ADWR:

Director
1110 W. Washington St.
#310
Phoenix, AZ 85007
Copy to: Chief Counsel

If to CRIT:

Chairman
26600 Mohave Rd.
Parker, AZ 85344
Copy to Attorney General

2. A Party may change its address by giving the other Party notice in writing of the change in address.

Section 7. Limited Waiver of Sovereign Immunity, Governing Law and Venue

1. The CRIT hereby agrees to a limited waiver of its sovereign immunity from suit by ADWR solely for the purpose of interpretation or enforcement of this Agreement.
2. Federal law controls the interpretation and enforcement of CRIT water rights in the Lower Basin and is the basis for all functions and responsibilities the Secretary performs as Water Master of the Lower Colorado River Basin. This Agreement shall be interpreted, governed by, and construed under Arizona State law. Any action between the State of Arizona and the CRIT to interpret or enforce the terms of this Agreement shall be in Arizona state court and the CRIT shall waive its right to remove it to federal court.

Section 8. Miscellaneous

1. This Agreement is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party unless expressly provided herein. No third party may enforce the terms and conditions of this Agreement.
2. The waiver by either Party of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition of this Agreement.
3. The terms, covenants and conditions of this Agreement constitute the entire agreement between the Parties, and no understanding or obligation not expressly set forth in this Agreement shall be binding on them. This Agreement may not be modified or amended in any manner unless in writing signed by the Parties.
4. Pursuant to A.R.S. § 38-511, the State may terminate this Agreement upon finding that a State employee that was significantly involved in the creation of this Agreement is, at the time the Agreement is in effect, but no later than three years after its termination, an employee or consultant to any other party to the Agreement.
5. This Agreement may be signed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. All signatures need not be on the same counterpart.
6. The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for which they sign and that no further action or approvals are necessary before execution of this Agreement.

Section 9. Legal Authorities

1. This Agreement between the Arizona Department of Water Resources and the Colorado River Indian Tribes has been reviewed by the undersigned attorneys, who have determined that said Agreement is in proper form and is within the powers and authority of those parties represented by the undersigned.

Dated this _____ day of _____, 20

Signature Blocks

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EXHIBIT A
Definitions

- (a) ALLOTTEE.—The term “Allottee” means a person who holds a beneficial real property interest in an allotment of Indian land that is:
- i. located within the exterior boundaries of the Colorado River Indian Reservation; and
 - ii. held in trust by the United States.
- (b) COLORADO RIVER INDIAN RESERVATION.—The term “Colorado River Indian Reservation” or “Reservation” means, for purposes of this legislation, only that part of the reservation established for the Colorado River Indian Tribes that is located in the State of Arizona and not the part of the reservation that is located in the State of California.
- (c) CONSOLIDATED DECREE.—The term “Consolidated Decree” means the Consolidated Decree entered by the United States Supreme Court in Arizona v. California, 547 U.S. 150 (2006).
- (d) CONSUMPTIVE USE. – The term “Consumptive Use” means a portion of the Decreed Allocation that has been consumptively used by the CRIT within the exterior boundary of the Reservation for a minimum of four of the five years immediately preceding the year of delivery of a portion of the Decreed Allocation according to a lease, exchange or Storage agreement. Any verified reduction in Consumptive Use pursuant to a system conservation agreement, a lease, an exchange, or Storage agreement, or from the creation of intentionally created surplus shall be deemed to be a Consumptive Use in the year in which the reduction occurred, if the reduction is reflected in the Water Accounting Report.
- (e) CRIT.—The term “CRIT” means the Colorado River Indian Tribes, a federally recognized Indian tribe.
- (f) DECREED ALLOCATION.—The term “Decreed Allocation” means the volume of water of the mainstream of the Colorado River allocated to the CRIT that is accounted for as part of the apportionment for the State of Arizona as decreed by the United States Supreme Court in Part I-A of the Appendix to the Consolidated Decree.
- (g) LOWER BASIN.—The term “Lower Basin” has the meaning given the term in Article II(g) of the Colorado River Compact, 1922, as approved by Congress in the Act of December 21, 1928 (45 Stat. 1057) and by Presidential Proclamation of June 25, 1929 (46 Stat. 3000).
- (h) PERSON.—The term “Person” means an individual, a public or private corporation, a company, a partnership, a joint venture, a firm, an association, a society, an estate or trust, a private organization or enterprise, the United States, any Indian tribe, a

- governmental entity; and a political subdivision or municipal corporation organized under or subject to the constitution and laws of the State of Arizona.
- (i) SECRETARY.—The term “Secretary” means the United States Secretary of the Interior.
 - (j) STATE.—The term “State” means the State of Arizona.
 - (k) STORAGE. – The term “Storage” means the storage underground of a portion of the CRIT Consumptive Use off the Reservation within the part of the State in the Lower Basin and in accordance with State law.
 - (l) WATER ACCOUNTING REPORT.—The term “Water Accounting Report” means the annual “Colorado River Accounting and Water Use Report – Arizona, California, and Nevada” prepared by the Bureau of Reclamation that includes, but is not limited to, the compilation of records in accordance with Article V of the Consolidated Decree.

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