

**AGREEMENT FOR ADDITIONAL INTERIM SHARING OF INTENTIONALLY
CREATED SURPLUS ACCUMULATION LIMITS**

This Agreement for Additional Interim Sharing of Intentionally Created Surplus Accumulation Limits (“Additional Sharing Agreement”) is entered into by and among the State of Arizona, acting through the Arizona Department of Water Resources (“ADWR”), the Metropolitan Water District of Southern California (“Metropolitan”), the Southern Nevada Water Authority (“SNWA”), and the State of Nevada, acting through the Colorado River Commission of Nevada (“CRCNV”). For convenience, ADWR, Metropolitan, SNWA, and CRCNV may sometimes be referred to as a “Party” or, collectively, as the “Parties.”

RECITALS

WHEREAS, Pursuant to A.R.S. § 45-107, the Director of ADWR is authorized, subject to the limitations in A.R.S. § 45-106, for and on behalf of the State of Arizona, to consult, advise and cooperate with the Secretary of the Interior of the United States (“Secretary”) with respect to the authorized exercise of authority relative to the waters of the Colorado River (including, but not limited to, the Boulder Canyon Project Act of 1928, 43 U.S.C. § 617, and the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1501) and with respect to the development, negotiation and execution of interstate agreements. In addition, A.R.S. § 45-105(A)(9) authorizes the Director to “prosecute and defend all rights, claims and privileges of this state respecting interstate streams.”

WHEREAS, Metropolitan is a municipal water district created under the California Metropolitan Water District Act, codified at Section 109-1 et seq. of the Appendix to the California Water Code, and delivers Colorado River water to portions of its service area in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928.

WHEREAS, CRCNV is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 through 538.251. CRCNV is authorized by N.R.S. §§ 538.161 and 538.186 to enter into this Additional Sharing Agreement. CRCNV, in furtherance of the State of Nevada’s responsibility to promote the health and welfare of its people in Colorado River matters, enters into this Additional Sharing Agreement to augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary.

WHEREAS, SNWA is a joint powers agency and political subdivision of the State of Nevada, created by a cooperative agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996, pursuant to N.R.S. §§ 277.074 and 277.120. SNWA is authorized by N.R.S. § 538.186 to enter into this Additional Sharing Agreement and, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert Intentionally Created Surplus (“ICS”) released by the Secretary for use within the State of Nevada pursuant to the Consolidated Decree.

WHEREAS, the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Interim Guidelines”), and

the related Implementing Agreements, provide criteria as to the operation of Lake Mead during the “Interim Period” (as such term is set forth in Section XI.G.6 of the 2007 Interim Guidelines).

WHEREAS, on or about May 20, 2019, the Parties to this Additional Sharing Agreement were among those signatories to the Lower Basin Drought Contingency Plan Agreement (“LB DCP”), which included the provisions of the Lower Basin Drought Contingency Operations (“LBOps”). Together, the 2007 Guidelines and LBOps govern the operation of Lake Mead, as it relates to the sharing of ICS storage capacity among the Lower Division States during the Interim Period.

WHEREAS, Section IV.C. of LBOps sets the maximum amount of Extraordinary Conservation ICS, Binational ICS, and DCP ICS that may be accumulated for each Lower Division State at 1.7 million acre-feet for California Contractors, 500,000 acre-feet of Arizona Contractors, and 500,000 acre-feet for Nevada Contractors (in each case, the respective state’s “ICS Accumulation Limit”).

WHEREAS, subject to certain conditions, Section IV.C. of the LBOps allows for one or more Lower Division State to make available all or a portion of their ICS Accumulation Limit to another Lower Division State.

WHEREAS, pursuant to the DCP Contributions and ICS Accumulation Limits Sharing Agreement (“2019 Sharing Agreement”), Metropolitan and Nevada have made available to the State of Arizona up to 50,000 acre-feet each (not to exceed 100,000 acre-feet total) of their respective ICS Accumulation Limits.

WHEREAS, the Parties desire more flexibility to share ICS Accumulation Limits during the Interim Period to maximize storage in Lake Mead.

WHEREAS, pursuant to Section IV.C.(ii) of LBOps, the Parties have shared a draft of this Additional Sharing Agreement with the Secretary and the Upper Division States.

NOW, THEREFORE, in exchange for the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

- 1. Definitions.** Terms defined in Section XI.F of the 2007 Interim Guidelines or in the LBOps shall have the same meaning when used in this Additional Sharing Agreement.
- 2. Interim ICS Accumulation Capacity and Sharing.** During the Interim Period, if any Party desires to accumulate ICS that exceeds the ICS Accumulation Limit for that state and, in the case of the State of Arizona, that exceeds the limits identified in the 2019 Sharing Agreement, the other Parties, on behalf of their respective states, agree to make available to the desiring Party any unused quantity of the respective ICS Accumulation Limits of the

other Parties' respective states. This Additional Sharing Agreement is intended to maximize flexibility within, but not exceed, the cumulative accumulation capacity limit of 2.7 maf for all states.

- 3. Capacity Not Guaranteed.** The sharing of ICS Accumulation Limits under this Additional Sharing Agreement shall not be guaranteed during any one year or for multiple successive years. If a Party shares its state's ICS Accumulation Limit (the "Sharing Party") with another Party (the "Borrowing Party") and the Sharing Party subsequently needs the shared capacity either to store its own ICS or ICS created by another entity that is entitled to make ICS within the Sharing Party's state, the Sharing Party shall be entitled to reclaim the storage capacity from the Borrowing Party to the extent necessary for the Sharing Party to store the Sharing Party's own ICS, or ICS created by another entity that creates ICS within its state.

 - a. Any of the Borrowing Party's ICS that would have been stored in the Sharing Party's accumulation capacity, but now cannot be stored with the Sharing Party because of the Sharing party's subsequent need for storage capacity, shall become system water, unless the Borrowing Party requests delivery of ICS pursuant to the 2007 Interim Guidelines and the LBOps in that same year or another Party has capacity to store such ICS under its ICS Accumulation Limit.
 - b. If two or more Borrowing Parties have used the ICS Accumulation Limit of a Sharing Party pursuant to this Additional Sharing Agreement, and the Sharing Party reclaims the shared ICS storage space, the ICS of the Borrowing Party that most recently stored its ICS in the shared space will first become system water to the extent necessary to make the space available, unless either Borrowing Party otherwise requests delivery of ICS pursuant to the 2007 Interim Guidelines and the LBOps or another Party has capacity to store such ICS under its ICS Accumulation Limit. For ICS in space shared during the same year, the space will be recovered from each Borrowing Party in the proportion that the amount of space each Borrowing Party borrowed in that year bears to the total amount borrowed in that year, unless the Borrowing Parties agree otherwise.
- 4. Coordination.** The Parties shall coordinate at least twice annually, or more often as needed, and develop projections for future ICS Accumulation through the Interim Period, including projections of capacity available for sharing. At least one consultation shall occur prior to June 1 of each Year, and at least one consultation shall occur in October of each Year. The Parties shall also coordinate and provide a joint report to the United States Bureau of Reclamation no later than December 15 of each Year regarding all projected sharing and evacuation activities during that Year.
- 5. Other ICS Not Subject to this Additional Sharing Agreement.** ICS created by a state within its own ICS Accumulation Limit, or within the shared Accumulation Limits pursuant to the 2019 Sharing Agreement, is not subject to the provisions of this Additional Sharing Agreement.

6. **Additional Excess Storage Options.** The Parties agree to work cooperatively to identify additional means to store ICS in excess of the ICS Accumulation Limits during the Interim Period.
7. **Consultation.** The Parties agree to include the Central Arizona Water Conservation District in all consultations pursuant to this Additional Sharing Agreement, including but not limited to coordination under Section 5 of this Agreement.
8. **No Change to Creation Limits Flexibility Consultation.** Nothing in this Additional Sharing Agreement is intended to alter or modify Section IV.B. of the LBOps.
9. **Term.** Unless all Parties agree in writing to an earlier termination of this Additional Sharing Agreement, the Term of this Additional Sharing Agreement commences on the date signed by all Parties and shall continue for the duration of the Interim Period and through December 31, 2057, for any amounts of ICS remaining to be delivered as of December 31, 2026.

10. General Provisions.

- a. Representations and Warranties; Further Assurances. Each Party warrants and represents to each of the other Parties that the Party has all legal power and authority to enter this Additional Sharing Agreement and perform the obligations hereunder; the individual executing this Additional Sharing Agreement on a Party's behalf has the full power and authority to bind that Party; this Additional Sharing Agreement constitutes a valid and binding agreement of each Party; the Party is authorized by, and has undertaken all prerequisite actions required to perform the obligations and exercise the rights contemplated herein.
- b. Prohibition on Assignments. Unless otherwise agreed to in writing by all impacted Parties, this Additional Sharing Agreement is expressly not assignable by any Party and any attempted or purported assignment shall be void ab initio and of no force or effect. Each Party acknowledges and agrees that the other Parties' respective rights, obligations, and abilities are specific and material reasons for each Party agreeing to enter into this Agreement.
- c. No Third-Party Beneficiaries. Except as provided in Paragraph 8, this Additional Sharing Agreement shall not be deemed to be for the benefit of any entity or person who is not a party to this Additional Sharing Agreement, and this Additional Sharing Agreement does not create any rights, benefits, or causes of action for any other person, entity, or member of the public.
- d. Integration and Amendment. This Additional Sharing Agreement represents the entire understanding of the Parties and can only be amended in a writing duly executed by all Parties and approved with the same formalities as this Additional Sharing Agreement.

- e. Severability. Should any part of this Additional Sharing Agreement be rendered void, invalid, or unenforceable by any court of competent jurisdiction for any reason, such determination shall not render void, invalid, or unenforceable, any other part of this Additional Sharing Agreement, and the Parties agree to replace such void, invalid, or unenforceable provision with an enforceable provision that has as nearly as possible the same effect, if possible.
- f. Governing Law. This Additional Sharing Agreement shall be interpreted, governed by, and construed under applicable Federal law. As permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Additional Sharing Agreement shall be in an appropriate Federal court.
- g. Drafting Considerations. Each Party and its counsel have participated fully in the drafting, review, and revision of this Additional Sharing Agreement, each of whom is sophisticated in subject matters to which this Additional Sharing Agreement pertains, and no one Party shall be considered to have drafted this Additional Sharing Agreement.
- h. Waiver. The failure of a Party to enforce a provision of this Additional Sharing Agreement shall not be deemed to constitute a waiver of that provision.
- i. No Precedent. This Additional Sharing Agreement does not establish or serve as precedent for any future agreement or undertaking.
- j. Reservation of Rights. Unless expressly provided otherwise in this Additional Sharing Agreement, nothing in this Additional Sharing Agreement or the LB DCP Agreement or LBOps shall be deemed to diminish or waive the rights of any Party under Federal Reclamation Law, the Law of the River (as defined in what is commonly known as the “Companion Agreement”), or under any other state, Federal, or local law.
- k. Notices. All notices and requests required or allowed under the terms of this Additional Sharing Agreement shall be in writing and shall be sent through electronic mail and mailed first-class postage paid to the following entities at the following addresses:

ADWR:

Arizona Department of Water Resources
Attn: Director
P.O. Box 36020
Phoenix, AZ 85067-6020

With a courtesy copy by email to: tbuschatzke@azwater.gov

METROPOLITAN:

The Metropolitan Water District of Southern California
Attn: General Manager
700 North Alameda Street
Los Angeles, CA 90012

With a courtesy copy by email to: whasencamp@mwdh2o.com

CRCNV:

Colorado River Commission of Nevada
Attn: Executive Director
555 East Washington Avenue, Suite 3100
Las Vegas, NV 89101

With a courtesy copy by email to: sprice@crc.nv.gov

SNWA:

Southern Nevada Water Authority
Attn: General Manager
1001 South Valley View Boulevard
Las Vegas, NV 89153

With a courtesy copy by email to: greg.walch@lvvwd.com

A party may change its contact information by giving the other parties notice of the change in writing.

1. Resolution of Claims or Controversies. The Parties recognize that judicial or administrative proceedings are not preferred alternatives to the resolution of claims or controversies concerning the Law of the River. In furtherance of this Additional Sharing Agreement, the Parties desire to avoid judicial or administrative proceedings, and agree to pursue a consultative approach to the resolution of any claim or controversy. If any Party becomes concerned that there may be a claim or controversy under this Additional Sharing Agreement, such Party shall notify all other Parties in writing, and the Parties shall meet in good faith to resolve such claim or controversy by mutual agreement prior to initiating any judicial or administrative proceeding. No claim hereunder shall be ripe, until such consultation has been completed.
- m. Execution in Counterparts. This Additional Sharing Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Additional Sharing Agreement.
- n. ADWR Notification. The Parties are hereby notified of A.R.S. § 38-511.


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June 4, 2021 Additional ICS Sharing Agreement (Final)

IN WITNESS WHEREOF, the Parties have executed this Agreement on this 7th day of June 2021.

ARIZONA DEPARTMENT OF WATER RESOURCES on behalf of the State of Arizona

By: 
Thomas Buschatzke
Director

Approved as to form:
By: 
Nicole D. Klobas
Deputy Chief Counsel

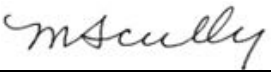
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THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: 
Jeffrey Kightlinger
General Manager

Approved as to form:

By: 
Marcia L. Scully
General Counsel

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COLORADO RIVER COMMISSION OF NEVADA

By: 
Eric P. Witkoski
Executive Director

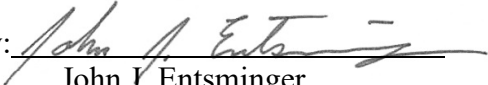
Approved as to form:

By: 
Christine Guerci
Counsel

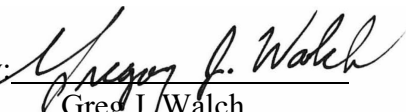
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IN WITNESS WHEREOF, the Parties have executed this Agreement this 7th day of June, 2021.

SOUTHERN NEVADA WATER AUTHORITY

By: 
John J. Entsminger
General Manager

Approved as to form:

By: 
Greg J. Walch
General Counsel