

**Agenda Number 18.**

**CONTACT:** Dennis Rule Tom McCann  
623-869-2667 623-869-2343  
drule@cap-az.com tmccann@cap-az.com

**MEETING DATE:** September 5, 2013

**AGENDA ITEM:** Discussion and Consideration of Action to Approve on Behalf of the CAGRDR the Yuma Mesa Irrigation and Drainage District and Central Arizona Water Conservation District Pilot Fallowing and Forbearance Program Agreement

**RECOMMENDATION:** Staff recommends that the Board approve the Yuma Mesa Irrigation and Drainage District and Central Arizona Water Conservation District Pilot Fallowing and Forbearance Program Agreement

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**FINANCIAL IMPLICATIONS:**

**Impact on Budget:**

CAGRDR Budget			
Budget Year	Funds Requested	Funds Included in the Budget	(Over) / Under Budget
2013	\$ 0	\$ 0	\$ 0
2014	1,167,040	0	(1,167,040)
2015	1,237,062	0	(1,237,062)
2016	1,311,286	0	(1,311,286)

Additional spending authority requested: \$ 3,715,388

It was originally anticipated that the costs of this program could be capitalized, but, under the terms below will be expensed. Nothing was included in the 2014-2015 expense budget. Additional spending authority will be required for 2014-2015 and the appropriate amount will be included in the 2016 budget when it is prepared.

**Impact on CAGRDR Reserves:** CAGRDR's costs under the Pilot Fallowing Program will be paid from the Water Rights and Infrastructure account reserves. Payment during the initial 3-year enrollment cycle of the agreement (2014-2016) will reduce the CAGRDR Water Rights and Infrastructure account reserve by approximately \$3,715,388 assuming a maximum of 1,500 acres are enrolled each year and a maximum inflation adjustment to the annual payment of 6%. No impact to CAWCD Reserves.

**Impact on CAGRDR Rates:** None. The CAGRDR Water Rights and Infrastructure rate component is set appropriately to accommodate expenses associated with this Pilot Fallowing Program. No impact to CAWCD Rates.

**LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:**

CAWCD Board of Directors 2010 Strategic Plan

- Replenishment: Obtain Sufficient Water Supplies to Meet Replenishment Obligations

**PREVIOUS BOARD ACTION/ACTIVITY:**

August 1, 2013 – The Board was briefed in executive session about the Pilot Fallowing Program Agreement.

**ISSUE SUMMARY/DESCRIPTION:**

The CAGR and Yuma Mesa Irrigation and Drainage District ("YMIDD") have negotiated the terms of a short-term, small-scale, pilot fallowing and forbearance program. The terms of the pilot program are reflected in the YMIDD and CAWCD Pilot Fallowing and Forbearance Program Agreement ("Pilot Fallowing Agreement"), which is attached to this brief.

Landowners in YMIDD that elect to participate in the Pilot Program will commit to fallow qualified land in a specified amount each year during the term of the pilot program. YMIDD will forbear from diverting Colorado River water that otherwise would have been used to irrigate fallowed lands, so that the water conserved through fallowing may be retained as Colorado River system water in Lake Mead, increasing the supply and elevation of Lake Mead and helping to minimize or avoid shortages to water users in Arizona and the Lower Basin.

The CAGR desires to enter into the Pilot Fallowing Agreement to develop data and methodologies to inform decisions about a future, longer-term fallowing program. Specifically, the Pilot Fallowing Agreement will generate valuable experience and information to the CAGR, the United States Bureau of Reclamation and the Arizona Department of Water Resources regarding (i) the implementation and administration of a fallowing program; (ii) the development of inter-agency methodologies and processes to verify and quantify water savings from fallowing and (iii) identification of the necessary elements for a future, longer-term fallowing and forbearance program.

The Pilot Program will be implemented through the Pilot Fallowing Agreement between YMIDD and CAWCD, and through Landowner Agreements between individual participating landowners and YMIDD. (CAWCD will be a third-party beneficiary of the Landowner Agreements.)

The primary terms of the Pilot Fallowing Agreement are as follows:

1. The term of the Pilot Program is up to 6 years, consisting of two, 3-year terms.

Landowners participating in the first term of the Pilot Program will be required to fallow their "Qualified Land" during calendar years 2014, 2015 and 2016.

2. Only "Qualified Land" may be enrolled in the Pilot Program, which means land that: (a) is eligible to and receives Colorado River water for irrigation use pursuant to YMIDD's federal water delivery contract; (b) has produced irrigated crops in four out of the last five years (2009 through 2013), unless the land was previously enrolled in the United States Bureau of Reclamation Demonstration Program for System Conservation, in which case, land that has produced irrigated crops in three out of the last five years; (c) is at least five contiguous acres; and (d) would be irrigated for the production of crops if it weren't enrolled in the fallowing program.

3. Total acres to be fallowed within YMIDD equals approximately 1,500 acres, which is less than 10% of the current irrigated acres within YMIDD.

4. Equitable participation in the program is provided by limiting enrollment to a percentage of a landowner's total holding within YMIDD, and by limiting a landowner's maximum number of enrolled acres.

5. The estimated annual volume of water to be conserved through fallowing is approximately 9,000 acre-feet.

6. The CAGRDR will pay YMIDD an annual enrollment payment for each acre of enrolled land to be fallowed by participating landowners. For 2014, the annual enrollment payment is \$750 per acre of fallowed land. The annual enrollment payment will increase each year during the term of the Pilot Agreement based on the consumer price index, but will not be less than 2% or more than 6%. YMIDD will, in turn, pay participating landowners the annual enrollment payment, minus an administrative fee.

7. The CAGRDR will pay YMIDD \$10,000 each year during the term of the Pilot Fallowing Agreement to be applied towards YMIDD's annual costs of administering the Pilot Program.

8. Participating landowners are responsible for implementing weed and dust control measures at their own cost on land enrolled in the Program. Further, participating landowners must maintain the integrity of their ditch structure(s) for downstream users. Additionally, participating landowners must continue to pay the normal District O&M assessment on all fallowed land. Finally, participating landowners must complete a Land Management Plan form and comply with its terms.

9. The CAGRDR will not divert and use the water conserved through fallowing. Rather, the water conserved pursuant to the Pilot Program will be retained in Lake Mead as Colorado River system water, increasing the supply and elevation of Lake Mead and helping to minimize or avoid shortages to water users in Arizona and the Lower Basin.

10. The CAGRDR and YMIDD will use their best efforts to work with the United States Bureau of Reclamation to establish a methodology that can be used to determine the actual amount of water conserved each year through the pilot fallowing program.

**SUGGESTED MOTION:** I move that the Board approve the Yuma Mesa Irrigation and Drainage District and Central Arizona Water Conservation District Pilot Fallowing and Forbearance Program Agreement and authorize its execution on behalf of CAWCD in substantially the form in which it was presented today, and grant spending authority of up to \$3,715,388 for 2014-2016.

Attachment.

**YUMA MESA IRRIGATION AND DRAINAGE DISTRICT  
AND  
CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

**PILOT FALLOWING AND FORBEARANCE PROGRAM AGREEMENT**

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This Pilot Fallowing and Forbearance Program Agreement (“Pilot Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2013 (the “Effective Date”), by and between the Yuma Mesa Irrigation and Drainage District (“YMIDD”), an Arizona municipal corporation, and the Central Arizona Water Conservation District (“CAWCD”), a multi-county water conservation district organized under existing laws of the State of Arizona.

**RECITALS**

- A. This Pilot Agreement is entered into by CAWCD exercising its replenishment authority, commonly known as the Central Arizona Groundwater Replenishment District.
- B. The Parties have determined to establish and implement through this Pilot Agreement a verifiable YMIDD/CAWCD fallowing and forbearance program (“Pilot Program”), as generally described in this Recital.
  - 1. Owners of YMIDD Lands that elect to participate in the Pilot Program (“Participating Landowners”) will commit to Fallow owned Program Qualified Land in a specified amount each Year during the term of this Pilot Agreement. YMIDD will forbear from diverting Colorado River water that otherwise would have been used to irrigate Fallowed Lands, so that the Saved Water may be retained in Lake Mead as Colorado River system water, increasing the supply and elevation of Lake Mead and helping to minimize or avoid shortages to water users in Arizona and the Lower Basin.
  - 2. The maximum amount of YMIDD Land that may be Fallowed under the Pilot Program in any Year is limited to approximately 1,500 acres.
  - 3. The Pilot Program will be open to all qualified owners of YMIDD Land, as prescribed by YMIDD Board policy. Participation in the Pilot Program will be through Landowner Agreements (“Landowner Agreements”) between each Participating Landowner and YMIDD.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS**

As used in this Pilot Agreement, the following terms, when capitalized, shall mean:

- 1.1 “Annual Payment” means the payment to be made by CAWCD to YMIDD pursuant to subarticle 6.1.
- 1.2 “CAWCD” means the Central Arizona Water Conservation District.
- 1.3 “Contract Year” means the 12-month period from January 1 through the following December 31, the first full Contract Year commencing January 1, 2014.
- 1.4 “Effective Date” is the date set forth in the introductory paragraph of this Pilot Agreement on which this Pilot Agreement becomes effective.
- 1.5 “Enrolled Land” means Program Qualified Land of a Participating Landowner to be Fallowed as identified in, and pursuant to the terms of the Landowner Agreement.
- 1.6 "Fallow" or "Fallowing" means the activities described in subarticle 3.2.8 (Requirements for Fallowing)
- 1.7 “Fallowed Land” means Enrolled Land owned by a Participating Landowner that is Fallowed pursuant to a Landowner Agreement.
- 1.8 "Land Management Plan" means the land management plan to be developed in accordance with Section 4 of the Landowner Agreement.
- 1.9 “Landowner Agreement” means the agreement between YMIDD and Participating Landowners through which a Participating Landowner participates in the Pilot Program and commits to Fallow Program Qualified Land. A copy of the standard form Landowner Agreement is attached hereto as Exhibit A.
- 1.10 “Participating Landowner” means a landowner that is participating in the Pilot Program through a Landowner Agreement.
- 1.11 “Party” means CAWCD or YMIDD, when used in the plural, it means both CAWCD and YMIDD.

- 1.12 “Pilot Agreement” means this agreement entered into between YMIDD and CAWCD.
- 1.13 “Pilot Program” means the Pilot YMIDD/CAWCD Fallowing and Forbearance Program that is the subject of this Pilot Agreement.
- 1.14 “Program Qualified Land” means land that: (1) is eligible to and receives delivery of Colorado River water for irrigation use pursuant to YMIDD’s Federal Water Delivery Contract; (2) has produced irrigated crops in four out of the last five years immediately prior to 2014, unless the land was previously enrolled in the United States Bureau of Reclamation Demonstration Program for System Conservation of Colorado River Water, in which case, land that has produced irrigated crops in three out of the last five years immediately prior to 2014; and (3) is a minimum of five contiguous acres measured from the center of the irrigation ditch to the containment at the opposite end of the field.
- 1.15 “Saved Water” means water that is conserved by Fallowing pursuant to the Pilot Program, this Pilot Agreement and Landowner Agreements.
- 1.16 “USBR” means the United States Bureau of Reclamation.
- 1.17 “YMIDD” means the Yuma Mesa Irrigation and Drainage District.
- 1.18 “YMIDD Federal Water Delivery Contract” means the contract for the delivery of Colorado River water between the United States and YMIDD, Contract No. 14-06-W-102, as amended.
- 1.19 “YMIDD Lands” means those lands described in the YMIDD Federal Water Delivery Contract as amended.

## **ARTICLE 2 TERM OF PILOT AGREEMENT**

2.1 **Term:** This Pilot Agreement shall be effective as of the Effective Date and shall terminate on December 31, 2019, unless either or both Parties terminate the Pilot Agreement as provided in subarticle 2.3 or subarticle 2.4, then the Pilot Agreement shall terminate on December 31, 2016.

2.2 **Two Three-Year Enrollment Cycles:** The Pilot Program consists of a maximum of two three-year enrollment cycles. The first three-year enrollment cycle commences on January 1, 2014 and terminates on December 31, 2016. If neither Party terminates the Pilot Agreement pursuant to subarticle 2.3 or subarticle 2.4, the second three-year enrollment cycle commences on January 1, 2017 and terminates on December

31, 2019. The purpose of the two three-year enrollment cycles is to allow for enrollment of additional Participating Landowners in the Pilot Program after the first enrollment cycle and to provide greater flexibility to accommodate farm management practices.

2.3 Early Termination: Either Party may terminate this Pilot Agreement as of December 31, 2016, by providing written notice of termination to the other Party no later than September 1, 2016.

2.4 Request to Amend Pilot Agreement: Either Party may request to amend the terms of the Pilot Agreement for the second enrollment cycle because of changed circumstances, by providing notice to the other Party of the proposed amendment no later than September 1, 2016. If such a request to amend is timely provided, the Parties agree to negotiate in good faith to attempt to amend the Pilot Agreement. All amendments shall be mutually agreed to and in writing. If the Parties are unable to execute an amended Pilot Agreement by December 15, 2016, either Party may terminate this Pilot Agreement as of December 31, 2016, by providing written notice of termination to the other Party no later than December 16, 2016.

### **ARTICLE 3 PILOT FALLOWING AND FORBEARANCE PROGRAM**

3.1 Pilot Program Established: This Pilot Agreement establishes the Pilot YMIDD/CAWCD Fallowing and Forbearance Program.

3.2 Landowner Participation in Pilot Program:

3.2.1 YMIDD Solicitation of Landowner Participation for First Three-Year Enrollment Cycle: YMIDD shall provide notice to all qualified landowners within YMIDD Lands of the Pilot Program and solicit participation in the first three-year enrollment cycle of the Pilot Program through the Fallowing of Program Qualified Land pursuant to Landowner Agreements.

3.2.2 Review and Verification of Landowner Qualification: YMIDD shall review and verify that all land proposed to be Fallowed during the first three-year enrollment cycle is Program Qualified Land and is rightfully owned by qualified YMIDD landowners. YMIDD shall prepare a list of proposed Participating Landowners including a description of the parcels to be Fallowed by each Participating Landowner during the first three-year enrollment cycle.

3.2.3 Enrollment of Qualified Landowners; Delivery and Execution of Landowner Agreements: As soon as practicable after the solicitation and verification of Program Qualified Lands pursuant to subarticle 3.2.2, YMIDD shall provide notice to all proposed Participating Landowners of their acceptance into the first three-year enrollment cycle of the Pilot Program. Such notice shall include a legal description of those parcels of the landowner's Program Qualified Land that have been enrolled in the Pilot Program ("Enrolled Lands"). Such notice shall also be accompanied by a

Landowner Agreement for execution by the landowner, substantially in the form attached to this Program Agreement as Exhibit A. The notice shall also be accompanied by the Land Management Plan Questionnaire form.

3.2.4 Each proposed Participating Landowner shall develop a Land Management Plan covering the first three-year enrollment cycle in consultation with YMIDD and CAWCD. The Land Management Plan shall include the information required in Section 4 of the Landowner Agreement and is subject to approval by YMIDD and CAWCD.

3.2.5 Execution of the Landowner Agreement: As soon as practicable after each proposed Participating Landowner has duly executed and delivered to YMIDD the Landowner Agreement covering the first three-year enrollment cycle, including a Land Management Plan that is acceptable to YMIDD and CAWCD, YMIDD and CAWCD shall approve the Land Management Plan and YMIDD shall execute the Landowner Agreement. All Landowner Agreements covering the first three-year enrollment cycle shall be fully executed no later than December 15, 2013.

3.2.6 Solicitation, Verification, Enrollment and Execution of Landowner Agreements for the Second Three-Year Enrollment Cycle: If this Pilot Agreement has not been terminated or amended pursuant to subarticles 2.3 or 2.4 above, then YMIDD shall follow the provisions of subarticles 3.2.1, 3.2.2, 3.2.3, and 3.2.4, in soliciting, verifying, enrolling and executing Landowner Agreements for the second three-year enrollment cycle. All Landowner Agreements covering the second three-year enrollment cycle shall be fully executed no later than December 15, 2016.

3.2.7 Land Identified for Fallowing: All land identified for fallowing on Exhibit A to the Landowner Agreement shall be (1) Program Qualified Land that otherwise would be irrigated during the term of the Pilot Program, and (2) in parcels that are at least five (5) contiguous acres measured from the center of the irrigation ditch to the containment at the opposite end of the field.

3.2.8 Requirements for Fallowing: Participating Landowners shall Fallow, or cause to be Fallowed, Enrolled Land for the full three-year enrollment cycle covered in their Landowner Agreements. Participating Landowners shall comply with their Fallowing obligations by not undertaking or permitting the following activities on Fallowed Land: (i) the growing of agricultural crops; (ii) application of irrigation water; (iii) extraction of or application of groundwater; and (iv) use or collection of surface water. Provided, however, water may be applied for the removal of citrus trees, and/or utilized for dust control or for early irrigation as permitted under the applicable Landowner Agreement. Participating Landowners shall also comply with the provisions of the Land Management Plan. The Annual Enrollment Payment to YMIDD pursuant to Section 6 below shall be reduced by \$30 per acre for each acre of Enrolled Land receiving delivery of water for dust control purposes and by \$30 per acre for each acre of Enrolled Land receiving special delivery of water for citrus removal.



3.2.9 Special Delivery of Water for Removal and Clearing of Citrus:

Participating Landowners may request a special delivery of water to enable the removal and clearing of citrus trees from Program Qualified Land. Such request shall be included in the Land Management Plan, and will be jointly reviewed and approved by YMIDD and CAWCD. Approval of the request for special delivery of water shall be pursuant to the provisions of subsection 3.6 of the Landowner Agreement. The Annual Enrollment Payment to YMIDD pursuant to Section 6 below shall be reduced by \$30 per acre for each acre of Enrolled Land receiving special delivery of water.

3.2.10 Limitation on Fallowing:

Enrolled Land cannot be permanently taken out of agricultural use during the term of this Pilot Agreement. Further, no Enrolled Land shall be Fallowed for purposes of this Pilot Agreement for more than three (3) consecutive Years.

3.2.11 Forbearance by YMIDD:

YMIDD shall not divert, take delivery of, or authorize the diversion or use of, or transfer to third parties of any Saved Water.

3.2.12 USBR Determination of Saved Water:

It is the expectation of the Parties that USBR will determine the amount of Saved Water developed under the Pilot Program each Contact Year. CAWCD and YMIDD shall cooperate in gathering and furnishing to USBR information pertinent to this determination. The Parties will use their best efforts to work with USBR to establish a methodology, acceptable to the Parties, that can be used both to estimate, prior to the beginning of each Contract Year, the amount of Saved Water to be developed during the upcoming Contract Year, and to determine after the end of the Contract year the actual amount of Saved Water.

## **ARTICLE 4**

### **ADMINISTRATION OF PILOT PROGRAM**

4.1 YMIDD's Maintenance of Records:

YMIDD shall maintain current records of: (i) Landowner Agreements; (ii) Parcels of Enrolled Lands; (iii) Land Management Plans; (iii) water orders by owners of YMIDD Lands; and (iv) delivery of water pursuant to such water orders.

4.2 Notice of Violations:

YMIDD shall promptly notify CAWCD of any apparent violations of Landowner Agreements such as irrigation of Enrolled Lands or any other violation of a Land Management Plan or an amended Land Management Plan.

4.3 Enforcement of Landowner Agreements:

YMIDD will consult with CAWCD regarding any default under a Landowner Agreement and the remedy to be pursued by YMIDD or CAWCD for such default.

4.4 Provision of Data:

YMIDD shall provide CAWCD with related Pilot Program data including, but not limited to, water applied to Enrolled Land and other lands within YMIDD, and the historic data from YMIDD's crop census.

4.5 Water Delivery: YMIDD shall terminate deliveries of water to Fallowed Land, other than for dust control in the quantities and at the time(s) specified in the Land Management Plan, or amended Land Management Plan, and other than for special water deliveries for citrus removal pursuant to subarticle 3.2.9 above as specified in the Land Management Plan.

4.6 Inspection: YMIDD shall conduct periodic field inspections to verify that Enrolled Land is in fact being Fallowed and not receiving water. CAWCD may accompany YMIDD on such periodic field inspections, or may conduct its own periodic field inspections to verify Enrolled Land is in fact being Fallowed and not receiving water. CAWCD shall coordinate all field inspections with YMIDD. In addition, CAWCD may use satellite imagery and other techniques to verify land Fallowing. CAWCD agrees to share all such findings with YMIDD.

4.7 Agreement Administrators: CAWCD shall, at its own cost, retain a CAWCD Administrator to: (1) coordinate its activities under this Pilot Agreement and the Landowner Agreements with YMIDD; (2) coordinate with Participating Landowners and YMIDD in the preparation of Land Management Plans; and (3) monitor, enforce, audit and prepare reports regarding implementation of the Pilot Program as provided in this Pilot Agreement and the Landowner Agreements. YMIDD shall appoint a YMIDD Administrator: (1) to coordinate its activities under this Pilot Agreement and the Landowner Agreements with CAWCD; (2) coordinate with Participating Landowners and CAWCD in the preparation of Land Management Plans; and (3) monitor, enforce, audit, and prepare reports regarding implementation of the Pilot Program as provided in this Pilot Agreement and the Landowner Agreements. YMIDD and CAWCD agree to fully cooperate with each other and to meet regularly for purposes of sharing information and coordination of the Pilot Program administration.

## **ARTICLE 5 ADMINISTRATIVE COSTS**

Except as provided in subarticle 6.2.2, all costs incurred by YMIDD in: (i) developing the Pilot Program, this Program Agreement, and the Landowner Agreement; and (ii) performing its obligations with respect to administration of the Pilot Program, this Program Agreement and the Landowner Agreements shall be borne by YMIDD.

## **ARTICLE 6 PAYMENTS**

6.1 Annual Enrollment Payment by CAWCD to YMIDD:

6.1.1 Annual Enrollment Payment Formula: CAWCD shall pay YMIDD an annual enrollment payment (“Annual Enrollment Payment”) for each acre of Enrolled Land to be Fallowed by Participating Landowners at the annual per Fallowed

acre rate (“Annual Rate”) specified for the applicable Contract Year as provided in subarticle 6.1.2. The Annual Enrollment Payment shall be calculated by multiplying the number of acres of Enrolled Land to be Fallowed by Participating Landowners in the applicable Contract Year (not to exceed approximately 1,500 acres of Fallowed Land in any Contract Year) times the applicable Annual Rate.

6.1.2 Initial Payment and Escalation: The Annual Rate for the first Contract Year shall be at the rate of seven hundred fifty dollars (\$750.00) per Fallowed acre. Commencing the Contract Year beginning January 1, 2015, and continuing through the term of this Pilot Agreement, YMIDD shall receive an adjustment in the Annual Rate, which shall be a minimum increase of two percent (2%) and a maximum increase of six percent (6%) compounded annually. Subject to this minimum and maximum increase provision, the annual adjustment shall be equal to the percentage change in the Consumer Price Index for All Urban Consumers (“CPI-U”) published by the Bureau of Labor Statistics of the United States Department of Labor for West Region All Items (“Index”) from the immediately prior adjustment date. The applicable adjustment date in each instance shall be January 1 of the applicable Contract Year.

6.1.3 Annual Enrollment Payment Schedule: CAWCD shall make the Annual Enrollment Payment to YMIDD in two installments. The first installment shall be equal to 50% of the Annual Enrollment Payment for the applicable Contract Year. CAWCD shall pay YMIDD the first installment within fifteen (15) days following the first field inspection performed by YMIDD and CAWCD to verify Fallowing for the Contract Year. The first field inspection shall be made no later than March 1<sup>st</sup> of each Year. The second installment shall be equal to 50% of the Annual Enrollment Payment for the applicable Contract Year. CAWCD shall pay YMIDD the second installment within fifteen (15) days following the second field inspection performed by YMIDD and CAWCD to verify Fallowing for the Contract Year. The second field inspection shall be made no later than October 15<sup>th</sup> of each Contract Year.

6.2 Annual Reimbursement Payments by CAWCD to YMIDD:

6.2.1 Reimbursement for Lost Revenues: Each Contract Year, CAWCD shall pay YMIDD twenty-one dollars and thirty-six cents (\$21.36) for each acre of Enrolled Land to be Fallowed by Participating Landowners during the applicable Contract Year, as reimbursement for lost revenues resulting from the non-use of excess water. Such payment shall be due August 1<sup>st</sup> of each Contract Year during the term of this Pilot Agreement. The reimbursement amount may be adjusted if YMIDD Excess Rates change.

6.2.2 Annual Administrative Payment: Each Contract Year during the term of this Pilot Agreement, CAWCD shall pay YMIDD ten thousand dollars (\$10,000.00) to be applied towards YMIDD’s annual costs of administering the Pilot Program. Such payment shall be due October 1<sup>st</sup> of each Contract Year during the term of this Pilot Agreement.

**ARTICLE 7  
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties of YMIDD: YMIDD represents and warrants as follows: (1) YMIDD is a municipal corporation duly organized and validly existing under the laws of the State of Arizona. To the best of YMIDD's knowledge, the execution and delivery hereof to CAWCD and the performance by YMIDD of its obligation under this Agreement will not violate the terms or provisions of any agreement, document or instrument to which YMIDD is a party or by which YMIDD is bound; (2) All proceedings required to be taken by or on behalf of YMIDD to authorize it to make, deliver and carry out the terms of this Pilot Agreement have been duly and properly taken.

7.2 Representations and Warranties of CAWCD: CAWCD represents and warrants as follows: (1) CAWCD is a multi-county water conservation district duly organized and validly existing under the laws of the State of Arizona. To the best of CAWCD's knowledge, the execution and delivery hereof to YMIDD and the performance by CAWCD of its obligation under this Agreement will not violate the terms or provisions of any agreement, document or instrument to which CAWCD is a party or by which CAWCD is bound; (2) All proceedings required to be taken by or on behalf of CAWCD to authorize it to make, deliver and carry out the terms of this Pilot Agreement have been duly and properly taken.

**ARTICLE 8  
REMEDIES AND DISPUTE RESOLUTION**

8.1 Remedies of CAWCD: In the event YMIDD fails to perform any of the obligations of YMIDD under this Pilot Agreement, CAWCD shall have the following remedies: (1) recovery and/or offset of amounts advanced, or to be advanced, under Article 6 above; or (2) to compel YMIDD to specifically perform its obligations under this Pilot Agreement.

8.2 Remedies of YMIDD: In the event CAWCD fails to perform any of its obligations, or fails to make any payment due to YMIDD, under this Pilot Agreement, YMIDD shall have the following remedies: (1) for a failure to pay monies due to YMIDD, suspending all performance hereunder until payment is made and/or terminating all Landowner Agreements; (2) compelling CAWCD to specifically perform its obligations under this Pilot Agreement; or (3) pursuing a monetary award for amounts determined to be owing to YMIDD pursuant to this Pilot Agreement.

8.3 Limitation on Remedies: No Party shall be entitled to seek any remedy for a breach of, or default under, this Pilot Agreement by the other Party unless (1) such Party has first given written notice specifically stating the alleged breach or default, (2) the Party claimed to be in default fails to cure the default within ten (10) days of receipt of such written notice as to alleged breaches of the obligation to pay money and thirty (30) days of receipt of such written notice as to all other alleged breaches, and (3) the

Parties have attempted to resolve their dispute respecting such asserted breach or default as provided in subsection 8.4.

8.4 Negotiation: If a Party gives notice of breach or default under subarticle 8.3 and the other Party disputes any aspect of such notice, representatives of the Parties shall meet within thirty (30) days of such notice and attempt to negotiate a resolution of the issues in dispute.

8.5 Alternative Dispute Resolution: The Parties agree that any controversy or claim arising out of or relating to this Pilot Agreement that cannot be resolved through negotiation shall be submitted first to mediation, to be administered under the applicable procedures of the American Arbitration Association. If within 30 days after service of a written demand for mediation, the mediation does not result in settlement of the dispute, then any unresolved controversy or claim shall be settled by arbitration administered by the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## **ARTICLE 9 GENERAL PROVISIONS**

9.1 Interpretation: This Agreement is governed by and must be construed and interpreted in accordance with and in reference to the laws of the State of Arizona and any applicable federal laws, without regard to its conflicts of laws provisions. Any action to resolve any dispute regarding this Pilot Agreement shall be taken in a state court of competent jurisdiction located in Yuma County, Arizona.

9.2 Third Party Rights: The Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Pilot Agreement or of any duty, covenant, obligation or undertaking established thereunder.

9.3 Assignment: No Party may assign, delegate, or otherwise transfer this Pilot Agreement, in interest therein, or the Party's rights or obligations under this Pilot Agreement without the prior written consent of the other Party.

9.4 Entire Agreement. This Pilot Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Pilot Agreement are binding upon the parties.

9.5 Amendments. This Pilot Agreement may be modified, amended or revoked only by the express written agreement of the Parties hereto.

9.6 Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving Party. The waiver by either Party of a breach of any term, covenant, or condition in this Pilot Agreement shall not be deemed a waiver of any other term, covenant, or condition of this Pilot Agreement.

9.7 Severability. Any determination by any court of competent jurisdiction that any provision of this Pilot Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Pilot Agreement.

9.9 Captions. All captions, titles, or headings in this Pilot Agreement are used for the purpose of reference and convenience only and do not limit, modify, or otherwise affect any of the provisions of this Pilot Agreement.

9.10 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate Party at the following address (or at any other address as a Party may hereafter designate by written notice given as required by this paragraph):

**YMIDD:**

For delivery use and  
For U.S. Mail use:

14329 South 4<sup>th</sup> Avenue Ext.  
Yuma, Arizona 85365

**CAWCD:**

For delivery use:

c/o General Manager  
23636 N. 7<sup>th</sup> Street  
Phoenix, AZ 85024

For U.S. Mail use:

c/o General Manager  
P.O Box 43020  
Phoenix, AZ 85080-3020

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

9.11 Exhibits: Exhibit A (Landowner Agreement) attached to this Pilot Agreement is a part of this Pilot Agreement and incorporated herein by this reference.

9.12 Additional Acts and Documentation: Each Party, upon the request of the other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Pilot Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Pilot Agreement on the day and year first above written.

CAWCD:           **CENTRAL ARIZONA WATER CONSERVATION DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

YMIDD:           **YUMA MESA IRRIGATION AND DRAINAGE DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

**EXHIBIT A**  
**LANDOWNER AGREEMENT**



**LANDOWNER AGREEMENT  
FOR PARTICIPATION IN  
YMIDD/CAWCD PILOT FALLOWING PROGRAM**

This Landowner Agreement related to the YMIDD/CAWCD Pilot Fallowing Program (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2013 (the “Effective Date”), by and between the Yuma Mesa Irrigation and Drainage District (“YMIDD”), a \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ (“Landowner”).

**RECITALS**

A. YMIDD and the Central Arizona Water Conservation District, exercising its replenishment authority, commonly known as the Central Arizona Groundwater Replenishment District have determined to establish and implement a verifiable YMIDD/CAWCD pilot fallowing and forbearance program (“Pilot Program”), as generally described in this Recital.

1. Owners of YMIDD Lands that elect to participate in the Pilot Program through Landowner Agreements will commit to Fallow owned Program Qualified Land in a specified amount each Year during the term of the Landowner Agreement. YMIDD will forbear from diverting Colorado River water that otherwise would have been used to irrigate Fallowed Lands, so that the Saved Water may be retained in Lake Mead as Colorado River system water, increasing the supply and elevation of Lake Mead and helping to minimize or avoid shortages to water users in Arizona and the Lower Basin.

2. The Pilot Program will be open to all qualified owners of YMIDD Land, as prescribed by YMIDD Board policy. Participation in the Pilot Program will be through Landowner Agreements between each participating landowner and YMIDD.

B. Landowner desires to participate in the Pilot Program through this Landowner Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the Parties agree as follows:

**SECTION 1  
DEFINITIONS**

As used in this Landowner Agreement, the following terms, when capitalized, shall mean:

1.1 “Annual Payment” means the payment to be made by YMIDD to Landowner pursuant to subsection 5.1 of this Agreement.

1.2 “CAWCD” means the Central Arizona Water Conservation District.

1.3 "Enrolled Land" means Program Qualified Land owned by the Landowner to be Fallowed pursuant to the terms of this Agreement and is more particularly described on Exhibit A hereto, ("Land Management Plan").

1.4 "Fallow" or "Fallowing" means the activities described in subsection 3.5 of this Agreement.

1.5 "Fallowed Land" means Enrolled Land owned by Landowner that is Fallowed pursuant to this Landowner Agreement.

1.6 "Land Management Plan" means the land management plan to be developed in accordance with the Section 4 of this Agreement, and which is attached hereto at Exhibit A.

1.7 "Party" means YMIDD or Landowner, when used in the plural, it means both YMIDD and Landowner.

1.8 "Pilot Agreement" means the Pilot Fallowing and Forbearance Program Agreement between YMIDD and CAWCD executed on \_\_\_\_, 2013.

1.9 "Pilot Program" means the Pilot YMIDD/CAWCD Fallowing and Forbearance Program that is the subject of the Pilot Agreement between YMIDD and CAWCD.

1.10 "Program Qualified Land" means land that: (1) is eligible to and receives delivery of Colorado River water for irrigation use pursuant to the YMIDD Federal Water Delivery Contract for the delivery of Colorado River water, Contract No. 14-06-W-102, as amended; (2) has produced irrigated crops in four out of the last five years immediately prior to 2014, unless the land was previously enrolled in the United States Bureau of Reclamation Demonstration Program for System Conservation of Colorado River Water, in which case, land that has produced irrigated crops in three out of the last five years immediately prior to 2014; and (3) is a minimum of five contiguous acres measured from the center of the irrigation ditch to the containment at the opposite end of the field.

1.11 "Saved Water" means water that is conserved by Fallowing pursuant to this Agreement.

1.12 "Substitute Enrolled Land" means Program Qualified Land owned by Landowner that is substituted for Enrolled Land pursuant to the process outlined in subsection 3.4 of this Agreement.

1.13 "Year" means the 12-month period from January 1 through the following December 31.

## **SECTION 2 TERM OF LANDOWNER AGREEMENT**

This Agreement shall be effective as of the Effective Date and shall expire on December 31, 2016, unless sooner terminated by YMIDD as provided in subsection 7.1.3 of this Agreement.

**SECTION 3**  
**LANDOWNER'S FALLOWING OBLIGATION**

3.1 Identification of Enrolled Land: Landowner shall fallow the Enrolled Land more particularly described on Exhibit A hereto, in accordance with the terms of this Agreement. Exhibit A is a part of this Agreement and incorporated by this reference.

3.2 Landowner's Representation: Landowner represents and warrants: (1) the land described on Exhibit A is Program Qualified Land as defined in subsection 1.10 above; (2) but for this Agreement, the Enrolled Land would be irrigated for the production of crops; (3) Landowner has the right to Fallow Enrolled Land as required under this Agreement; and (4) Landowner has the right to grant YMIDD and CAWCD the right of entry for inspection without prior notice as outlined in subsection 3.10 below and authorizes YMIDD and CAWCD to enter the Enrolled Land for purposes of ascertaining whether such land is being Fallowed in accordance with this Agreement.

3.3 Obligation to Fallow: Landowner shall Fallow all Enrolled Land identified on Exhibit A, as it may be amended pursuant to subsection 3.4 below. The Landowner's obligation to fallow land pursuant to this Agreement shall begin on January 1, 2014.

3.4 Substitute Enrolled Land: Landowner may, subject to YMIDD's and CAWCD's approval, substitute other Program Qualified Land for Enrolled Land by giving written notice to YMIDD of Landowner's intent to do so. Such notice shall specify by parcel number the land proposed to be removed as Enrolled Land and the Program Qualified Land proposed to be substituted for it. Provided, however, the fallowing of substitute land pursuant to this subsection 3.4 must be for a full Year and shall commence on the first day of the Year, except as provided in subsection 3.7. Landowner's written notice of intent to substitute other Program Qualified Land for Enrolled Land shall be provided to YMIDD no later than the August 1<sup>st</sup> immediately preceding the Year during which the substitute land is to be Fallowed. After YMIDD has confirmed that the land proposed to be substituted for Enrolled Land is Program Qualified Land and has obtained CAWCD's approval regarding such proposed substitution, YMIDD shall provide an amended Exhibit A (an amended Land Management Plan) to Landowner for execution on behalf of Landowner. The substitution shall be effective and substitute land shall qualify as Substitute Enrolled Land upon Landowner's execution and delivery of an amended Exhibit A to YMIDD.

3.4.1 For example: Landowner owns Parcel A, which consists of 10 acres. Landowner enrolls and fallows Parcel A starting January 1, 2014. Landowner also owns Parcel B, which is the same size or larger than Parcel A, and which qualifies as Program Qualified Land but has not been fallowed in 2014. Landowner desires to replant Parcel A in 2015. Landowner may substitute Parcel B into the fallowing program in place of Parcel A by requesting an amendment to the Land Management Plan no later than August 1<sup>st</sup> of 2014. Subject to YMIDD's and CAWCD's approval, Parcel B will be substituted for and replace Parcel A and will be Fallowed beginning on January 1, 2015. Parcel B will remain obligated as Enrolled Land until the expiration of this Agreement (December 31, 2016), unless Landowner substitutes another parcel for Parcel B for 2016 according to the requirements of this subsection 3.4.

3.5 Actions Required for Fallowing: Landowner shall, at Landowner's sole cost and expense, comply with its Fallowing obligations under this Agreement in any Year by not undertaking or permitting the following activities on Enrolled Land: (1) the growing of agricultural crops; (2) application of irrigation water; (3) extraction of or application of groundwater; and (4) use or

collection of surface water. Provided, however, water may be applied for the removal of citrus trees as specified in subsection 3.6 and/or utilized for dust control as specified in subsection 3.12 below.

3.6 Single Irrigation for Tree Removal: In order to provide extra time for harvesting of citrus from groves to be fallowed under this Agreement, Landowner may request a special delivery of water to enable the removal and clearing of citrus trees from Program Qualified Land. Such request shall be included in the Land Management Plan. Approval of the request for special delivery of water pursuant to this subsection 3.6 will not be unreasonably withheld. The special delivery of water pursuant to this subsection 3.6 must occur before March 1<sup>st</sup> of each Year during the term of this Agreement. The Annual Enrollment Payment to Landowner pursuant to Section 5 below shall be reduced by \$30 per acre for each acre of Enrolled Land receiving special delivery of water.

3.7 Early Irrigation for Fall Planting in 2015 and 2016: Landowner may, subject to YMIDD's and CAWCD's approval, irrigate Enrolled Land that is Fallowed during 2015 after October 1, 2015, so long as YMIDD and CAWCD have approved the substitution of other Program Qualified Land pursuant to subsection 4.3 above, and so long as such Substitute Enrolled Land is Fallowed on October 1, 2015 and is Fallowed for a minimum of twelve months. Landowner may, subject to YMIDD's and CAWCD's approval, irrigate Enrolled Land that is Fallowed during 2016 after October 1, 2016, so long as such early irrigation has been requested and approved in the Land Management Plan, and so long as such Substitute Enrolled Land is Fallowed on October 1, 2016 and is Fallowed for a minimum of twelve months or until the Program is terminated, whichever comes first.

3.7.1 For example: Landowner owns Parcel A, which consists of 10 acres. Landowner enrolls and fallows Parcel A starting January 1, 2015. Landowner also owns Parcel B, which is the same size or larger than Parcel A, and which qualifies as Program Qualified Land but has not been fallowed in 2015. Landowner desires to replant Parcel A to produce crops in 2016. Landowner may substitute Parcel B into the fallowing program in place of Parcel A by requesting an amendment to the Land Management Plan no later than August 1<sup>st</sup> of 2015. Subject to YMIDD's and CAWCD's approval, Landowner may irrigate Parcel A after October 1, 2015, and Parcel B will be substituted for and replace Parcel A and will be Fallowed beginning on October 1, 2015. Parcel B will remain obligated as Enrolled Land until the expiration of this Agreement (December 31, 2016).

3.8 Limitation on Fallowing: Enrolled Land cannot be permanently taken out of agricultural use during the term of this Agreement. Further, no Enrolled Land shall be Fallowed for purposes of this Agreement for more than three (3) consecutive Years.

3.9 Saved Water: During the term of this Agreement, Landowner agrees that the Saved Water from Fallowing pursuant to this Agreement will be retained in Lake Mead as Colorado River system water, increasing the supply and elevation of Lake Mead and helping to minimize or avoid shortages to water users in Arizona and the Lower Basin, and will not be utilized by the Landowner to grow agricultural crops on other District lands.

3.10 Payment of YMIDD O&M Assessment: Landowner agrees to pay the normal YMIDD O&M assessment on Fallowed Land and other expenses as outlined in subsection 3.11 of this Agreement.

3.11 Entry for Inspection: Landowner shall allow YMIDD and CAWCD to enter onto and inspect Landowner's Program Qualified Land, without advance notice, to confirm Landowner's performance of its Fallowing obligation under this Agreement.

3.12 Weed and Dust Control Measures and Ditch Maintenance: Landowner shall, at Landowner's expense, implement the weed and dust control measures described in the Land Management Plan. Landowner may request a special delivery of water for dust control measures on Fallowed Land. Such request shall be included in the Land Management Plan. Approval of the request for special delivery of water pursuant to this subsection 3.12 will not be unreasonably withheld. The special delivery of water pursuant to this subsection 3.12 shall not exceed .33 acre-feet per acre annually. The Annual Enrollment Payment to Landowner pursuant to Section 5 below shall be reduced by \$30 per acre for each acre of Enrolled Land receiving special delivery of water for dust control purposes. Also, Landowner shall, at Landowner's expense, maintain the integrity of its ditch structure(s) within the privately owned irrigation system for downstream users.

3.13 Landowner shall take reasonable measures to block access to water on Enrolled Lands within the privately owned irrigation system.

3.14 YMIDD shall reduce Landowner's allocation of water by nine acre feet per acre of Enrolled Land. The reduction will be taken from the serial number which the Enrolled Land had been using prior to enrollment.

#### **SECTION 4 LAND MANAGEMENT PLAN**

4.1 On or before December 15, 2013, Landowner shall submit to YMIDD a Land Management Plan for 2014, 2015 and 2016, using the Land Management Plan Questionnaire form attached hereto as Exhibit B. The Land Management Plan shall be developed in consultation with YMIDD and CAWCD and is subject to approval by YMIDD and CAWCD. This Agreement shall not be effective until YMIDD and CAWCD have approved Landowner's Land Management Plan. Landowner shall comply with the provisions of the Land Management Plan. Landowner shall include the following information in its Land Management Plan:

4.1.1 A rotation schedule that identifies: (a) the acreage and fields of Enrolled Land that will be Fallowed during 2014, 2015 and 2016, and the planned cropping pattern for Enrolled Lands absent the Landowner's enrollment in this Pilot Program; (b) the acreage and fields of Program Qualified Land proposed to be substituted for Enrolled Land pursuant to subsection 3.4 above during 2015 and 2016; and (c) the acreage and fields of Enrolled Land that will receive early irrigation for Fall planting pursuant to subsection 3.7 above.

4.1.2 A detailed map and legal description identifying the Enrolled Land that will be Fallowed each Year of this Agreement. And, a description of all Landowner's land within YMIDD boundaries that Landowner has actively farmed during the Years 2009 through and including 2013.

4.1.3 A history of crop production and irrigation on the Enrolled Land for the Years 2009 through and including 2013 to verify and demonstrate active farming on the Enrolled Land. This history shall include cropping history, production trends and water delivery for each field that will be Fallowed during 2014, 2015 and 2016. The history shall also include a historic water

usage report for the Years 2009 through and including 2013, including Years in which Landowner participated in the United States Bureau of Reclamation Demonstration Program for System Conservation of Colorado River Water.

4.1.4 A description of the Fallowing practices that Landowner plans to undertake to ensure water consuming crops are removed from Fallowed Land.

4.1.5 A description of the dust and weed control measures that Landowner will implement during the term of this Agreement, including the quantification of any dust control water application that will diminish the total water conserved.

4.2 Landowner may, subject to YMIDD's approval, amend the Land Management Plan for purposes of substituting Program Qualified Land for Enrolled Land pursuant to the process outlined in subsection 3.4 above.

## **SECTION 5 PAYMENTS BY YMIDD TO LANDOWNER**

5.1 Annual Enrollment Payment Formula: YMIDD shall pay Landowner an annual enrollment payment ("Annual Enrollment Payment") for each acre of Enrolled Land to be Fallowed by Landowner at the annual per fallowed acre rate ("Annual Rate") specified for the applicable Year as provided in subsection 5.2. The Annual Enrollment Payment shall be calculated by multiplying the number of acres of Enrolled Land to be Fallowed by Landowner in the applicable Year times the applicable Annual Rate

5.2 Annual Rate and Escalation: The Annual Rate for 2014 shall be at the rate of seven hundred and fifty dollars (\$750.00) per Fallowed acre, minus an administrative fee retained by YMIDD. Commencing the Year beginning January 1, 2015, and continuing through the term of this Agreement, Landowner shall receive an adjustment in the Annual Rate, which shall be a minimum increase of two percent (2%) and a maximum increase of six percent (6%) compounded annually, minus an administrative fee retained by YMIDD. Subject to this minimum and maximum increase provision, the annual adjustment shall be equal to the percentage change in the Consumer Price Index for All Urban Consumers ("CPI-U") published by the Bureau of Labor Statistics of the United States Department of Labor for West Region All Items ("Index") applicable on the adjustment date from that applicable on the immediately prior adjustment date. The applicable adjustment date in each instance shall be January 1 of the applicable Year.

5.3 Payment Schedule: Commencing in 2014, each year during the term of this Agreement, YMIDD shall make the Annual Enrollment Payment to Landowner in two installments. The first installment shall be equal to 50% of the Annual Enrollment Payment for the applicable Year. YMIDD shall pay Landowner the first installment within thirty (30) days following the first field inspection performed by YMIDD and CAWCD to verify fallowing for the Year. The first field inspection shall be made no later than March 1<sup>st</sup> of each Year. The second installment shall be equal to 50% of the Annual Enrollment Payment for the applicable Year. YMIDD shall pay Landowner the second installment within thirty (30) days following the second field inspection performed by YMIDD and CAWCD to verify fallowing for the Year. The second field inspection shall be made no later than October 15<sup>th</sup> of each Year.

## **SECTION 6 DEFAULT**

6.1 The occurrence of any one or more of the following events shall constitute an "Event of Default" and a material breach under this Landowner Agreement by the nonperforming party ("Defaulting Party"):

6.1.1 Failure of YMIDD to Pay When Due: The failure of YMIDD to make any payment to Landowner as required by Section 5 of this Landowner Agreement, where such failure is not cured within ten (10) business days following receipt of written notice of a Default by YMIDD from Landowner; or

6.1.2 Failure of Landowner to Reimburse: The failure of Landowner to reimburse YMIDD as required by subsection 7.1.2 of this Agreement, where such failure is not cured within ten (10) business days following receipt of written notice of a Default by the Landowner from YMIDD; or

6.1.3 Failure to Perform Non-Monetary Obligations: The failure by a Party to observe or perform any of the covenants, conditions or obligations applicable to that Party under this Landowner Agreement other than as described in subsection 6.1.1 or 6.1.2 above, where such failure is not cured within thirty (30) days following receipt of written notice thereof by the Defaulting Party from the Non-Defaulting Party specifically stating the alleged default.

## **SECTION 7 REMEDIES**

7.1 YMIDD's Remedies: On the occurrence of an Event of Default by Landowner with regards to Landowner's obligations under Section 3, Section 4 or Section 7.1.2 below, or any other default under this Agreement, YMIDD shall have the right to pursue any one or more of the following remedies, and none other.

7.1.1. Suspension of Payments: YMIDD may elect to suspend any payment obligations it may have under this Agreement until Landowner complies with the terms of this Agreement and cures such default. Monies temporarily withheld due to Landowner's default shall not accrue interest and may be subject to a penalty to offset any YMIDD administrative costs to enforce such default. Notwithstanding such suspension of YMIDD's payment obligations, this Agreement shall remain in effect unless and until YMIDD elects to terminate this Agreement under subsection 7.1.3.

7.1.2 Reimbursement for Irrigation of Fallowed Land: If by accident, or intentional act, Landowner has irrigated Fallowed Land, except as provided for in subsections 3.6 or 3.7 above, YMIDD may elect to seek reimbursement from Landowner for previous Annual Enrollment Payments to Landowner pursuant to this Agreement. Landowner shall reimburse YMIDD such amounts, if any, as requested by YMIDD, within thirty days of Landowner's receipt of a request for reimbursement from YMIDD.

7.1.3 Termination: YMIDD may elect to terminate this Agreement by giving notice of such termination to Landowner effective thirty (30) days after receipt by Landowner, unless within the thirty (30) day period, Landowner shall have cured the Event of Default. Once the termination notice is effective, the Parties shall be released from all further obligations or liabilities under this Agreement. However, YMIDD's right to recover payments made to

Landowner in the event of an uncured default shall expressly survive such termination. Also, if CAWCD defaults under the Pilot Agreement, then YMIDD may elect to terminate this Agreement by giving notice of such termination to Landowner effective thirty (30) days after receipt by Landowner.

7.2 Landowner's Remedies: Landowner shall be entitled to reimbursement from YMIDD for any and all payments required to be made by YMIDD under Section 5, except to the extent that YMIDD has given written notice of default for any Landowner obligations for which the payments are required to be made.

## **SECTION 8 GENERAL PROVISIONS**

8.1 CAWCD as Third Party Beneficiary: CAWCD is an express third party beneficiary of the rights of YMIDD under this Agreement. Specifically, CAWCD shall have the right, but not the obligation, to enforce Landowner's obligations as set forth in this Agreement. Except for CAWCD's rights as a third party beneficiary of this Agreement, the Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Agreement.

8.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the parties.

8.3 Assignment: No Party may assign, delegate, or otherwise transfer this Agreement, in interest therein, or the Party's rights or obligations under this Agreement without the prior written consent of the other Party.

8.4 Waiver. No delay in exercising any right or remedy shall constitute a waiver unless such right or remedy is waived in writing signed by the waiving Party. The waiver by either Party of a breach of any term, covenant, or condition in this Agreement shall not be deemed a waiver of any other term, covenant, or condition of this Agreement.

8.5 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate Party at the following address (or at any other address as a Party may hereafter designate by written notice given as required by this paragraph):

**YMIDD:** 14329 South 4<sup>th</sup> Avenue Ext.  
Yuma, Arizona 85365

**Landowner:**

8.6 Successors and Assigns. This Agreement shall be binding on all successors and assigns of Landowner, including subsequent owners of Landowner's Program Qualified Land, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by YMIDD and CAWCD.



8.7 This Agreement may be renewed for a second three-year enrollment cycle upon mutual consent of the Parties. YMIDD shall notify the Landowner no later than September 1 of 2016, of its willingness to renew this Agreement and the terms for such renewal. If Landowner consents to the terms of renewal, then the Parties shall document in writing the renewal of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

**EXHIBIT A**  
**LAND MANAGEMENT PLAN**

**EXHIBIT B**

**LAND MANAGEMENT PLAN QUESTIONNAIRE**

## **Landowner Management Plan Questionnaire**

The purpose of this questionnaire is to collect information for the development of the Land Management Plan. The Land Management Plans will provide important information supporting evaluation and quantification of the conserved water created from the Fallowing Program. The Management Plans will also be used to identify lands that will be enrolled and fallowed during the first term of the Fallowing Program (January 1, 2014 through December 31, 2016).

The YMIDD and CAWCD and staff ("Program Staff") will use the information provided in this questionnaire to develop a Land Management Plan that you will have an opportunity to review and verify.

This questionnaire is intended to gather initial data and information required to develop the Land Management Plans. The Program Staff will be available during the enrollment period at YMIDD's offices through November to help you with any questions you might have regarding your responses to this questionnaire. Please contact us to schedule an appointment at your convenience.

Your detailed responses will help the Program Staff develop an accurate Land Management Plan. We appreciate you taking the time to provide accurate and detailed responses based on the best and most current information available.

The questionnaire is divided into 8 major sections.

Section 1: Identification of Enrolled Fields

Section 2: Map of Enrolled Fields

Section 3: Field Rotation Schedule

Section 4: Crop History

Section 5: Planned Cropping for Enrolled Fields

Section 6: Water Delivery Records

Section 7: Description of Fallowing Practices

Section 8: Dust and Weed Control Measures

## Section 1: Identification of Enrolled Fields

The purpose of this section is to identify the fields that will be enrolled in the Following Program. Please identify the Parcels by County Tax ID number where the enrolled fields are located. You will need to indicate fields that are located in multiple parcels. Please provide an estimate of the acreage within each Parcel that will be fallowed.

Fields that were fallowed during the US Bureau of Reclamation fallowing program (2008 to 2010) are eligible to participate in this Fallowing Program. Indicate if any of the fields were previously enrolled in the US Bureau of Reclamation fallowing program and the years the field was enrolled to ensure that they are accurately accounted for in determining eligibility.

Parcel Number	Parcel Acres	Field Acres to Be Fallowed	Enrolled in USBR Fallowing Program <sup>1</sup>
---------------	--------------	----------------------------	---

# \_\_\_\_ - \_\_\_\_ - \_\_\_\_

# \_\_\_\_ - \_\_\_\_ - \_\_\_\_

# \_\_\_\_ - \_\_\_\_ - \_\_\_\_

# \_\_\_\_ - \_\_\_\_ - \_\_\_\_

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<sup>1</sup> If field was enrolled indicate the years of participation.

## **Section 2: Map of Enrolled Fields**

Please provide a map for each field that you are proposing to enroll in the Following Program. You may draw or shade in the fields or portion of the parcel that will be fallowed during the program year. CAWCD Staff will be available to assist you in developing the maps needed for the management plan if you do not currently have maps available.

### Section 3: Rotation Schedule

The purpose of this section is to identify fields that will be fallowed during each year of the program.

Please mark this question Not Applicable if you do not intend to substitute and rotate fields during the Following Program Term and proceed to Section 4 of the questionnaire.

Complete the following section if you do intend to rotate and substitute fields during the program term. You will need to identify parcels and fields proposed to be fallowed in each year of the program and confirm that the total acreage to be fallowed in each year of the program is equal.

#### Year 2014

Parcel Number	Fallowed Acreage
# ___ - ___ - ____	
# ___ - ___ - ____	
# ___ - ___ - ____	
# ___ - ___ - ____	_____
Total Acres	_____

#### Year 2015

Parcel Number	Fallowed Acreage
# ___ - ___ - ____	
# ___ - ___ - ____	
# ___ - ___ - ____	
# ___ - ___ - ____	_____
Total Acres	_____

**Year 2016**

<u>Parcel Number</u>	<u>Fallowed Acreage</u>
# ___ - ___ - ____	
# ___ - ___ - ____	
# ___ - ___ - ____	
# ___ - ___ - ____	_____
Total Acres	_____



## Section 4: Crop History

The purpose of this section is to obtain historical information on the type of crops and general farming activity for the parcels, and specifically, the fields that you are planning to fallow each year of the Fallowing Program. Please identify the type of crop grown from 2009 to 2013 for each field you plan to enroll in the Fallowing Program. If you plan to rotate new fields in for fallowing in 2015 and 2016, you will need to provide updated crop history information for the preceding years. This information will need to be provided to YMIDD by no later than August 1 immediately preceding the year during which the substitute land is to be Fallowed. The information will be used to amend and update the Landowner Management Plan.

Parcel Number	Crop Type History				
	2009	2010	2011	2012	2013
# ____ - ____ - ____					
# ____ - ____ - ____					
# ____ - ____ - ____					
# ____ - ____ - ____					

## Section 5: Planned Cropping for Enrolled Fields

Please identify the crops that you would have grown in each field if the acreage would not have been enrolled in the Fallowing Program. We understand that this will be an estimate, but please identify the crops you would have likely grown on each field.

### Year 2014

Parcel Number	Fallowed Acreage	Crop that would have been grown
# ___ - ___ - ____		
# ___ - ___ - ____		
# ___ - ___ - ____		
# ___ - ___ - ____		
Total Acres		

### Year 2015

Parcel Number	Fallowed Acreage	Crop that would have been grown
# ___ - ___ - ____		
# ___ - ___ - ____		
# ___ - ___ - ____		
# ___ - ___ - ____		
Total Acres		

**Year 2016**

Parcel Number	Fallowed Acreage	Crop that would have been grown
# ___ - ___ - ___		
# ___ - ___ - ___		
# ___ - ___ - ___		
# ___ - ___ - ___		
Total Acres		

## **Section 6: Historical Water Delivery Records**

The water delivery records maintained by YMIDD will be utilized by the Following Program staff to estimate historical irrigation for the Years 2009 through 2013 on the fields proposed for fallowing. The Following Program staff will obtain the water delivery records directly from YMIDD to estimate the water deliveries for each field. You will have an opportunity to review those estimates in the Land Management Plan. At this time, no additional information or action is required by you for this section. Copies of the water delivery records will be attached to the Land Management Plan. You may also request copies for your own records.

## Section 7: Description of Fallowing Practices

Please provide a description of the fallowing practices you plan to undertake for each enrolled field to ensure water consuming crops are removed from the fallowed land.

Parcel Number	Fallowed Acreage	Proposed Fallowing Practice
# ___ - ___ - ___		
# ___ - ___ - ___		
# ___ - ___ - ___		
# ___ - ___ - ___		

## Section 8: Dust and Weed Control Measures

Dust and weed control is the responsibility of the landowner. Please describe the dust and weed control measures you will be implementing for each of the fields enrolled in the Following Program.

Parcel Number	Fallowed Acreage	Dust and Weed Control Measures
# ____ - ____ - ____		
# ____ - ____ - ____		
# ____ - ____ - ____		
# ____ - ____ - ____		

Identify any water use that you anticipate for dust control in the description.