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MEETING DATE: August 3, 2017

AGENDA ITEM: Report on, Discussion and Consideration of Action for Domestic Agreements Necessary to Implement Minute 323 of the 1944 Mexican Water Treaty

RECOMMENDATION:

Staff recommends that the Board authorize the General Manager to execute the Domestic Agreements necessary to implement Minute 323 of the 1944 Mexican Water Treaty

FINANCIAL IMPLICATIONS:

Impact on Budget: CAWCD contributions to conservation projects in Mexico of \$3.75 million, with \$1.25 million required no later than 12/31/2020, \$1.25 million required no later than 2023, and \$1.25 million required no later than 12/31/2026

Additional spending authority requested: None at this time, contributions to be included in 2020, 2023, and 2026 budget documents.

Impact on Reserves: Not applicable at this time, contributions to be included in 2020, 2023, and 2026 budget documents.

Impact on Rates: Not applicable at this time, contributions to be included in 2020, 2023, and 2026 budget document.

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

2016 CAWCD Board of Director Strategic Plan

- Water Supply: Reliability of the CAP Water Supply
- Water Supply: Reduce risk associated with CAP's junior priority

PREVIOUS BOARD ACTION/ACTIVITY:

June 8, 2017	The Board was briefed on the status Minute 323 domestic agreements and Minute negotiations
April 6, 2017	The Board was briefed on the status of Minute 32x (now 323) domestic agreements and Minute negotiations
January 5, 2017	The Board was briefed on the status of Minute 32x (now 323) domestic agreements and Minute negotiations
December 1, 2016	Executive Session – Consider positions and instruct the District's attorneys regarding negotiation of terms of agreements relating to Minute 32x to the Mexican Water Treaty
November 3, 2016	Update on Minute 32x (now 323) to the Mexican Water Treaty

November 3, 2016

Executive Session – Consider positions and instruct the District’s attorneys regarding negotiation of terms of agreements relating to Minute 32x (now 323) to the Mexican Water Treaty

ISSUE SUMMARY/DESCRIPTION:

CAWCD has participated in the binational process between the United States and Mexico since 2008 to achieve four principal goals:

- Decrease the duration or magnitude shortages by seeking Mexico's voluntary agreement to share in Colorado River shortages with U.S. water users,
- Increase storage in Lake Mead through the development and implementation of water conservation projects in Mexico, including providing Mexico the opportunity to store water from its conservation projects,
- Augment CAP water supplies through implementation of conservation projects in Mexico, as well as explore binational desalination projects to benefit Arizona and Mexico water users,
- Manage salinity compliance operations so that the operational changes, such as storage of Mexico's conserved water in Lake Mead and operation during shortages will not reduce Arizona return flows thereby reducing CAP deliveries.

These goals were incorporated in Minute 319 signed on November 20, 2012, as well as the six related domestic (United States parties) agreements. However, Minute 319 is an interim agreement which operates through December 31, 2017.

Beginning in September, 2015, the United States, Basin States, and key water users, including CAWCD, have been working with counterparts in Mexico to develop a successor agreement to Minute 319, now known as Minute 323. The direct negotiations with Mexico included the Director of the Arizona Department of Water Resources (ADWR), representing the interests of Arizona. CAWCD staff participated in the Projects, Salinity, Hydrology and Basin Conditions work groups supporting the negotiation effort.

The Commissioners of the International Boundary and Water Commission in the United States and the Republic of Mexico report that both countries are reviewing the draft Minute 323, through the appropriate diplomatic processes, and are preparing to sign the Minute as early as mid-September.

While the text of the final draft of Minute 323 is currently unavailable to share publicly, due to an embargo from the United States State Department as part of the diplomatic review process, the key terms are provided in Attachment A. Key components of the draft Minute are further summarized as follows: extends through December 31, 2026, continued shortage sharing consistent with Minute 319, continued surplus sharing consistent with Minute 319, new conservation projects in Mexico and exchanges with U.S. water users, opportunities for conservation of water by Mexico with storage in Lake Mead, conservation and release of water for environmental purposes in Mexico, and salinity management to protect U.S. and Mexico water users. In addition, Minute 323 provides for the continuing role of work groups on salinity management, environmental restoration issues, and conservation projects including studies for binational desalination efforts to benefit U.S. and Mexico water users. Finally, Minute 323 includes additional voluntary reductions by Mexico to protect Lake Mead, in the event a Lower Basin Drought Contingency Plan is implemented. The additional voluntary contributions are referred to as Binational Water Scarcity Contingency Plan (BWSCP). The additional contributions are triggered from Lake Mead elevation 1090' – 1025' and range from 41,000 acre-feet up to 150,000 acre-feet per year.

In order to implement the Minute, a series of domestic agreements (U.S. parties only) must be executed. There are seven domestic agreements necessary to implement Minute 323 in Arizona. CAWCD will be a party to five of the agreements, including a Memorandum of Agreement (MOA) with ADWR. CAWCD is included in the first five agreements listed below. The draft agreements are provided as Attachment B-H. A summary of the seven domestic agreements relevant to Arizona are as follows:

1. **Pilot Program for the Conservation of Mexico's Water Reserve to Binational Intentionally Created Surplus** – Parties include: **CAWCD**, the Metropolitan Water District of Southern California (MWD), Imperial Irrigation District (IID), Southern Nevada Water Authority (SNWA), and Reclamation. The agreement provides funding for conservation projects in Mexico with a portion of the conservation delivered to the non-federal funders as binational intentionally created surplus (BICS). The four non-federal funders will each contribute 25% of the total contribution of \$15 million and each will receive 25% of the total 109,090 acre-feet of BICS. CAWCD's contribution will total \$3.75 million, and CAWCD will receive 27,273 acre-feet of BICS. The funding contributions are due in three payments of \$1.25 million, in 2020, 2023, and 2026. Reclamation and/or other federal agencies will provide will provide \$16.5 million which will create 50,000 acre-feet to benefit the Colorado River system and 70,000 acre-feet for environmental purposes.
2. **Binational Intentionally Created Surplus Delivery Agreement** – Parties include **CAWCD** and the Secretary of the Interior. The agreement guides the delivery of the BICS provided to CAWCD through the Contributed Funding Agreement.
3. **Memorandum of Agreement for Binational Forbearance for Minute 323** – Parties include ADWR and **CAWCD**. The agreement frames how ADWR and CAWCD will manage forbearance of BICS when BICS is released for parties in California and Nevada.
4. **Interim Operating Agreement for the Implementation Of Minute No. 323** – Parties include ADWR, Colorado, Colorado River Commission of Nevada (CRCN), New Mexico, **CAWCD**, Coachella Valley Water District (CVWD), IID, MWD, City of Needles, Palo Verde Irrigation District (PVID), SNWA, Upper Colorado River Commission (UCRC), Utah, Wyoming, and the Secretary of the Interior acting through Reclamation. The agreement guides how the Secretary of the Interior will implement the provisions of the Minute in cooperation with the Basin States and U.S. water users, and consistent with the '07 Guidelines.
5. **Memorandum of Agreement on the Implementation of Minute No. 323** – Parties include ADWR, Colorado, CRCN, New Mexico, **CAWCD**, CVWD, IID, MWD, City of Needles, PVID, SNWA, UCRC, Utah, Wyoming, the Secretary of the Interior acting through Reclamation, and the United States International Boundary and Water Commission (IBWC). The agreement guides how the IBWC, in cooperation with the Secretary of the Interior, will implement the provisions of the Minute in cooperation and consultation with the Basin States and U.S. water users.
6. **Lower Basin Agreement for Binational Intentionally Create Surplus** – Parties include ADWR, CRCN, CVWD, IID, MWD, City of Needles, PVID, SNWA, and the Secretary of the Interior acting through Reclamation. The agreement defines the conditions and management of forbearance of BICS among the Lower Basin States and water users. (CAWCD is not a direct party to the agreement but acts through the MOA with ADWR).

7. **Agreement Regarding Notice from the Secretary of the Interior for the Purpose of Implementing Section IV of Minute 323** – Parties include ADWR, Colorado, CRCN, New Mexico, SNWA, UCRC, Utah, Wyoming, Colorado River Board of California, and the Secretary of the Interior acting through Reclamation, and the United States. The agreement outlines assurances by the Basin States to continue to work cooperatively to complete Drought Contingency Plans in the Upper and Lower Basin, and the outlines the expected conditions that would trigger implementation of BWSCP for Mexico. (CAWCD is not a direct party to the agreement).

While CAWCD, other water users, and the Basin States are not direct parties to Minute 323, they are parties to the domestic agreements necessary to implement the Minute in the United States. Therefore, the seven intersecting domestic agreements will be executed in concert with Minute 323. The goal is for the domestic agreements and Minute 323 to be executed together in mid-September.

In summary, the key provisions of Minute 323 further the shared goals among the United States and Mexico for continued cooperation to protect and sustain the Colorado River system to benefit both nations. It provides for new conservation opportunities to protect Lake Mead, enhance the environment, and exchange with United States funders. The Minute continues shortage and surplus sharing from Minute 319. The Minute continues cooperative efforts for habitat development and protection in Mexico. It also provides for additional contributions by Mexico consistent with Lower Basin Drought Contingency Plan (LBDCP) contributions, if and when the LBDCP is implemented.

In order to implement the Minute in Arizona, seven domestic agreements among parties in the United States are required. The agreements serve to frame and guide operation, management, and accounting in the Colorado River system consistent with the Law of the River, including the '07 Guidelines, as Minute 323 is implemented. CAWCD is a party to five of the domestic agreements including a commitment to provide funding (\$3.75 million) for conservation projects in Mexico in exchange for 27,273 acre-feet of BICS in Lake Mead available for delivery to CAWCD.

SUGGESTED MOTION:

Staff recommends that the Board authorize the General Manager to execute the Domestic Agreements to implement Minute 323 in substantially the same form as presented today.

Attachments A-H.

Attachment A: MINUTE 323 KEY TERMS

MINUTE 323 KEY TERMS

July 21, 2017

This document provides a summary of Minute 323 (Minute) for use by the Colorado River Basin States and U.S. Domestic Agencies in lieu of the actual Minute when presenting information about Minute 323 to their governing boards. The Minute is a document between the United States and Mexican governments for continued cooperative efforts on the Colorado River in furtherance of the “United States-Mexico Treaty on Utilization of Water of the Colorado and Tijuana Rivers and of the Rio Grande” (1944 Water Treaty). The Minute is anticipated to be signed in the fall of 2017.

Term: 2017 – December 31, 2026. Provisions for projects and environment in Minute 319 remain in effect until December 31, 2017. Otherwise, Minute 323 sections supersede those of Minute 319.

Distribution of Flows Under High Elevation Reservoir Conditions

1. Maintains key terms of Minute 319 to provide additional volumes of water to Mexico at certain high elevation reservoir conditions as follows:

Lake Mead Elevation	Mexico Annual Increase
At or above 1,145 feet msl and below 1,170 feet msl	40,000 acre-feet (49 mcm)
At or above 1,170 feet msl and below 1,200 feet msl	55,000 acre-feet (68 mcm)
At or above 1,200 feet msl and flood control releases are not required	80,000 acre-feet (99 mcm)
When flood control releases are required, regardless of elevation	200,000 acre-feet (247 mcm)

2. A new element provides that prior to scheduling delivery of increased flows at high elevation reservoir conditions, the Commission will meet and each Section will consult with its respective stakeholders with regard to the impact to the basin of taking or not taking increased deliveries.
3. This Section differs from Minute 319 in that Minute 323 no longer requires Mexico to create a certain volume of Intentionally Created Mexican Allocation (ICMA) before being able to access additional volumes under high elevation reservoir conditions as Mexico will participate in Water Scarcity Contingency Plan if such a plan is effective in the U.S.
4. The provisions of Minute 323 will not affect the operation of Article 10(b) of the 1944 Water Treaty, which provides that additional waters of the Colorado River system may be delivered to Mexico up to 200,000 acre-feet for a total quantity not to exceed 1,700,000 acre-feet.

Distribution of Flows under Low Elevation Reservoir Conditions

1. Maintains key terms of Minute 319, requiring reductions to Mexico during low elevation reservoir conditions as follows:

Water delivery reductions to Mexico: 50,000 acre-feet (62 mcm) when the January 1 Lake Mead elevation is projected to be at or below 1,075 ft. and at or above 1,050 ft.; 70,000 acre-feet (86 mcm) when the January 1 Lake Mead elevation is projected to be below 1,050 ft. and at or above 1,025 ft.; and 125,000 acre-feet (154 mcm) when the January 1 Lake Mead elevation is projected to be below 1,025 ft.

2. Like Minute 319, allows Mexico to take delivery of its deferred waters to offset shortage, not to exceed a total annual delivery to Mexico of 1,500,000 acre-feet during shortage years. It differs from Minute 319 in that it no longer requires Mexico to create a certain volume of ICMA before being able to use ICMA to offset its shortage as it is assumed that instead Mexico will participate in a Water Scarcity Contingency Plan if such a plan is effective in the United States.
3. At elevation 1,045 feet, the Commission will meet to discuss further measures that could be undertaken, recognizing that reductions in both countries may need to increase.
4. Establishes a Binational Hydrology Work Group with federal and state participation to meet regularly during the course of the Minute to perform technical studies and analysis, and to explore potential future planning activities. This Work Group will review basin conditions and projections; prepare an annual report of activities; study data to enable both countries to engage in planning for the period after 2026; analyze the probability of reaching certain low elevation reservoir conditions; evaluate potential impacts of low reservoir levels on salinity and potential actions within the U.S. and Mexico to reduce the risk of certain low elevation conditions; and, study the impact on the Colorado River system of the U.S. and Mexico foregoing delivery of additional waters under high elevation conditions.

Binational Water Scarcity Contingency Plan (BWSCP)

The United States and Mexico share a common vision on a clear need for continued and additional actions to reduce the risk of reaching critical reservoir elevations at Lake Mead. To that end, Mexico will implement the water savings in the table below when the U.S. implements additional water savings pursuant to additional drought contingency operations:

Mexican Savings:

Projected January 1 Lake Mead Elevation (ft msl)	Mexico's Savings that Contribute to the Binational Water Scarcity Contingency Plan
At or below 1,090 and above 1,075	41,000 acre-feet (51 mcm)
At or below 1,075 and above 1,050	30,000 acre-feet (37 mcm)
At or below 1,050 and above 1,045	34,000 acre-feet (42 mcm)
At or below 1,045 and above 1,040	76,000 acre-feet (94 mcm)
At or below 1,040 and above 1,035	84,000 acre-feet (104 mcm)
At or below 1,035 and above 1,030	92,000 acre-feet (113 mcm)
At or below 1,030 and above 1,025	101,000 acre-feet (125 mcm)
At or below 1,025	150,000 acre-feet (185 mcm)

Mexico's savings under the BWSCP are in addition to the amounts described in the previous section (Distribution of Flows under Low Reservoir Conditions).

Implementing details of Mexico's participation will be identical with the Lower Basin Drought Contingency Plan for evaporation/losses, recovery timing and limitations, and the term for recovery to ensure parity and equivalent implementation; these details will be fully described in Principal Engineers' report within 100 days of the date the U.S. Commissioner notifies the Mexican Commissioner that the Lower Basin Drought Contingency Plan is effective. Implementation of this section does not take effect until the Lower Basin Drought Contingency Plan is effective in the United States.

Mexico's Water Reserve

1. Mexico's Water Reserve is identified as: 1) water deferred due to emergencies such as earthquakes; 2) water in a Revolving Account to replenish up to a volume of 366,136 acre-feet that was deferred in accordance with Minutes 318 and 319; and 3) ICMA, resulting from conservation and/or new water sources projects.
2. Mexico creates Mexico's Water Reserve by making a downward adjustment in its delivery schedule.
3. Mexico's Water Reserve maintains Minute 319 limitations. For example: 1) Mexico may create an annual maximum volume of Mexico's Water Reserve of 250,000 acre-feet, maximum delivered in any year is 200,000 acre-feet; 2) cumulative deliveries are capped

at 1,700,000 acre-feet annually; 3) no delivery occurs below Lake Mead elevation 1025 ft.; 4) no delivery if doing so would trigger one of the shortage tiers (1075, 1050, 1025); 5) 3% annual evaporation losses are charged in years at 1025 ft. or above; 6) 2% assessment on ICMA are charged for environmental purposes; and 7) a maximum accumulated balance of 1,500,000 acre-feet is permitted.

4. During flood control years, Mexico may not add to Mexico's Water Reserve. If flood control releases are foreseeable, U.S. and Mexico will cooperate so Mexico could potentially make use of the water. A Binational System Operations Work Group will explore options for beneficial use of this water. Parity of Mexico Water Reserve and ICS regarding spilling is required.
5. If volumes in excess of 1,700,000 acre-feet are released into the Colorado River, the two countries will cooperate and communicate regarding management of Mexico's Water Reserve such that Mexico may potentially make use of it.
6. Before delivering the water, the U.S. Commissioner, in consultation with the U.S. Secretary of the Interior, will review the Colorado River system's status and operational issues.
7. After the term of the Minute ends, delivery of Mexico's Water Reserve to occur only when Lake Mead elevation is greater than 1075 ft.

Salinity

1. Calculating salinity during creation and delivery of Mexico's Water Reserve and Water Scarcity Contingency Plan savings will use the formula developed by the binational Salinity Work Group, and documented by the Principal Engineers. This formula is consistent with the temporary emergency Tijuana delivery approach.
2. As in Minute 319, to minimize salinity impacts, Mexico may use the Wellton-Mohawk bypass drain, with this water chargeable to its Treaty allotment.
3. Existing cooperative efforts at the Southerly International Boundary (SIB) to improve the water quality to approximately 1,200 parts per million during four months critical for agriculture in Mexico (September, October, November, December), are documented in Minute 323.
4. U.S. will fund \$300,000 for sediment removal from the Sanchez Mejorada Canal to restore its carrying capacity to 220 cubic feet per second. Mexico to maintain this capacity thereafter. The U.S. delivery under Minute 242 of approximately 140,000 acre-feet at the SIB annually with a salinity substantially the same as waters customarily delivered there, is affirmed in Minute 323.

5. Establishes a Binational Salinity Technical Work group to modernize salinity monitoring equipment to provide for real-time monitoring and to make recommendations. U.S. to fund the monitoring equipment.

Measures Related to Variability of Flows Arriving in Mexico

1. Notes Mexico's ongoing concern about variability of daily flow of water that it receives from the Colorado River with respect to its demand. Maintains the Binational Flow Variability Work Group to consider joint actions to eliminate or reduce the variability.
2. Identifies the following immediate actions: 1) Commission shall analyze Treaty, Minutes, and current conditions with respect to the variability of the daily flow rate; 2) through the Commission, the Work Group will implement a pilot program to utilize existing storage capacity at Morelos Dam to reduce daily flow variability; 3) procedures to be implemented to schedule deliveries at midnight; and 4) U.S. and Mexico will review operating procedures in their countries with the goal of reducing variability in the daily flow rate to a tolerable limit for both countries, and have identified as targets controlling variability in daily flow rate within 3% of Mexico's daily request and limiting changes in Mexico's daily request to no more than 2 cubic meters per second (70.629 cubic feet per second).
3. Identifies the following mid-term actions (by end of 2019): 1) Work Group will consider regulatory storage options in Mexico; 2) U.S. will modernize operational technologies to provide real-time data; and 3) Work Group will analyze operational procedures and make recommendations.
4. Identifies the following long-term actions: 1) Binational Flow Variability Work Group to provide additional recommendations during the Minute; and 2) additional storage in Mexican territory is an important measure that could address the challenges of daily flow variability.

Environment

1. The Minute notes that the Environmental Work Group recommended an average annual volume of 45,000 acre-feet for the environment, and restoration funding of up to \$40 million dollars over the term of the Minute to expand the existing 1,076 acres of restored native habitat to 4,300 acres.
2. The U.S., Mexico and a binational coalition of nongovernmental organizations (NGOs) will share in generating water for the environment, with each anticipated to contribute 1/3 of the total. The three parties have an initial commitment to provide in equal parts a total of 210,000 acre-feet of water, \$9 million in funding for monitoring, and \$9 million in funding for restoration. Funding for restoration projects is expected to be provided within three years of the effective date of the Minute. The parties will seek to identify additional funding and water to meet the targets recommended by the Environmental

Work Group. The U.S. share of water for the environment will be generated by its investment in water conservation projects in Mexico.

3. The Binational Environmental Work Group will convene regularly to identify water sources and funding, develop an annual Water Delivery and Restoration Plan, prepare reports, conduct field verification, etc.
4. Non-federal funding may be provided directly to a Mexican entity carrying out work. U.S. Government funding to be provided to Mexico through the Commission.
5. The commitments of each of the two governments and the NGOs to provide environmental flow will be reduced in proportion to the reductions applicable to Mexico during shortage and during savings under the Water Scarcity Contingency Plan.

Investment and Projects

1. The Minute identifies possible conservation projects activities to include canal lining, on-farm conservation, fallowing, regulating reservoirs, and modernization of irrigation districts.
2. The U.S. will contribute a total of \$31.5 million dollars to Mexico that will generate 70,000 acre-feet of water to satisfy the U.S. commitment to provide water for the environment, 50,000 acre-feet in system water, and 109,100 acre-feet of water for use in the United States. Water for the U.S. environmental commitments will be provided in the first five years of the Minute. NGOs to provide \$1 million dollars to generate water for ongoing delivery into the Rio Hardy system for environmental purposes.
3. A general schedule of investment for water use in the United States (i.e., the referenced 109,000 af) is set as follows: total accumulated amount of not less than \$5 million through December 31, 2020, not less than \$10 million through December 31, 2023, and not less than \$15 million through December 31, 2026. Funding will not be provided until the funding and water transfer of Minute 319 are completed by December 31, 2017.
4. A simultaneous transfer of funds and water is required.
5. Binational Projects Work Group will meet at least twice per year with project funders and the Principal Engineers to review projects and to consider additional projects.
6. Additional projects recommended by the Work Group are permitted by an exchange of letters of the Commissioners.
7. The Projects Work Group is interested in further evaluating several potential new water sources projects: desalination plant at the Pacific Ocean, desalination plant in the New River, desalination plant in the Sea of Cortez, reuse of effluent from the Mexicali Valley wastewater treatment plants in wetlands or riparian restoration of the Colorado River,

reuse of effluent from the South Bay International Wastewater Treatment Plant. A new Minute would be required for the above projects.

8. A Binational Desalination Work Group is established to study potential projects, including the development of a study of water desalination opportunities in the Sea of Cortez, as proposed by the Arizona-Mexico Commission.
9. Mexico's interest in assessing feasibility of providing treated effluent to the United States in exchange for investment in water infrastructure in Mexico in Tijuana or wherever Mexico considers appropriate, is documented.
10. Analysis of discharge of additional Mexican effluent through the South Bay Ocean Outfall would be undertaken.
11. The potential for conserved waters to be provided to U.S. through direct delivery or exchange is noted. While water exchanges are included in this Minute, any direct deliveries would require a separate Minute.

All-American Canal

1. The Minute references the efforts of the Binational All-American Canal Turnout Project Work Group to examine a potential binational connection between the All-American Canal in the United States and Mexico's Colorado River Tijuana Aqueduct Pump Station PB0. The Commissioners observed that a number of matters still need to be resolved. A separate Minute of the Commission would be necessary to address all matters relating to the design, construction, operation, and maintenance of a binational connection.

Attachment B: AGREEMENT AMONG THE UNITED STATES OF AMERICA, THROUGH THE DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, THE COLORADO RIVER COMMISSION OF NEVADA, THE SOUTHERN NEVADA WATER AUTHORITY, THE IMPERIAL IRRIGATION DISTRICT AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, FOR A PILOT PROGRAM FOR THE CONVERSION OF MEXICO'S WATER RESERVE TO BINATIONAL INTENTIONALLY CREATED SURPLUS

**AGREEMENT AMONG
THE UNITED STATES OF AMERICA, THROUGH THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
THE COLORADO RIVER COMMISSION OF NEVADA,
THE SOUTHERN NEVADA WATER AUTHORITY,
THE IMPERIAL IRRIGATION DISTRICT AND
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
FOR A PILOT PROGRAM FOR THE CONVERSION OF MEXICO'S WATER
RESERVE TO BINATIONAL INTENTIONALLY CREATED SURPLUS**

1. **PREAMBLE:** THIS AGREEMENT (hereinafter referred to as the “**2017 Contributed Funds Agreement**” or “**Agreement**”) made this ___ day of _____, 2017, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto; the Act of March 4, 1921 referred to as the Contributed Funds Act (41 Stat. 1404, 43 U.S.C. §395); the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C §397a); the Act of December 21, 1928 (45 Stat.1057), designated the Boulder Canyon Project Act; the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act; the Act of June 24, 1974 (88 Stat. 266), designated the Colorado River Basin Salinity Control Act, as amended, and Section 397 of the Act of December 20, 2006, (120 Stat. 2922), all of which acts are part of the body of law commonly known and referred to as Federal Reclamation law; among the UNITED STATES OF AMERICA (“United States”), represented by the Secretary of the Interior (the “Secretary”) and acting through the officer executing this Agreement; THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“MWD”), a regional public water district duly organized under California law; IMPERIAL IRRIGATION DISTRICT (“IID”), an irrigation district created under the California Irrigation District Law; the COLORADO RIVER COMMISSION OF NEVADA (“CRCN”), an agency of the State of Nevada; the

SOUTHERN NEVADA WATER AUTHORITY (“SNWA”), a political subdivision of the State of Nevada; and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), a multi-county water conservation district duly organized and existing under the laws of the State of Arizona; each of which is at times referred to individually as “Party” or collectively as “Parties.”

WITNESSETH THAT:

2. **EXPLANATORY RECITALS:**

2.1 WHEREAS, for the purposes of controlling floods, improving navigation, regulating the flow of the Colorado River, and providing for storage and the delivery of stored water for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, acting under and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, has constructed and is now operating and maintaining in the mainstream of the Colorado River at Black Canyon that certain structure known as and designated Hoover Dam and incidental facilities, creating thereby a reservoir designated Lake Mead;

2.2 WHEREAS, the Boulder Canyon Project Act provides, among other things, that the Secretary is authorized, under such general regulations as he or she may prescribe, to contract for the storage of water in Lake Mead and for the delivery of such water at such points as may be agreed upon for irrigation and domestic uses;

2.3 WHEREAS, the Boulder Canyon Project Act provides further that no person shall have or be entitled to have the use, for any purpose, of the stored water in Lake Mead, except by contract with the Secretary;

2.4 WHEREAS, the United States Bureau of Reclamation (“Reclamation”) has been working closely and cooperatively with the United States International Boundary and Water Commission (“IBWC”), as described in Minute No. 317, dated June 17, 2010, to the United States-

Mexico Treaty for Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed February 3, 1944 (“1944 Water Treaty”), to “explore opportunities for binational cooperative projects that: minimize the impacts of potential Colorado River shortage conditions, generate additional volumes of water using new water sources by investing in infrastructure such as desalinization facilities, conserve water through investments in a variety of current and potential uses, including agriculture, among others; and envision the possibility of permitting Mexico to use United States infrastructure to store water”;

2.5 WHEREAS, on November 20, 2012, Minute No. 319 to the 1944 Water Treaty was adopted;

2.6 WHEREAS, Minute No. 319 identified cooperative measures that both countries would take through December 31, 2017, including distribution of flows under low and high elevation reservoir conditions, salinity considerations, the ability for Mexico to create Intentionally Created Mexican Allocation (“ICMA”), and a pilot program for water for the environment in Mexico and ICMA/Binational ICS Exchange (“Pilot Program”).

2.7 WHEREAS, the Pilot Program included elements as documented in Section 2.7 of the 2012 Minute No. 319 Contributed Funds Agreement

2.8 WHEREAS, anticipating the expiration of Minute No. 319 on December 31, 2017, Minute No. 323 to the 1944 Water Treaty was adopted on _____, 2017;

2.9 WHEREAS, Minute No. 323 extends through 2026 many of the cooperative measures established in Minute No. 319, including the continuation of the Pilot Program that the United States entities (both federal and non-federal) will fund through a new contribution of \$31.5 million USD.

2.10 WHEREAS, MWD, IID, SNWA, and CAWCD are willing and able, pursuant to

the provisions of the Interim Operating Agreement (defined below), to contribute capital for a modified Pilot Program under Minute No. 323 (“Minute 323 Pilot Program”, as further defined below) in the form of monetary contributions in exchange for Binational ICS (defined below) credits;

2.11 WHEREAS, the Parties desire to set forth their understanding as to the monetary contributions that will be provided by MWD, IID, SNWA, and CAWCD (collectively, the “Local Funding Agencies” as further defined below) with respect to the Minute 323 Pilot Program, the responsibilities of Reclamation with respect to these contributions and services, and the quantity of Binational ICS credits that each Local Funding Agency shall receive in exchange for such capital contributions;

2.12 WHEREAS, CRCN and SNWA have jointly consulted to acquire supplemental Colorado River water and are in compliance with N.R.S. § 538.186;

2.13 WHEREAS, no pilot program beyond 2026 is contemplated or proposed by Reclamation at this time, and

2.14 WHEREAS, any decision to expand the Minute 323 Pilot Program other than as expressly contemplated in Minute No. 323 or to create a new pilot program will be made in the future by the United States, subject to and based upon appropriate compliance with Federal law and after consultation with the Colorado River Basin States.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

3. **DEFINITIONS:** For the purpose of this Agreement, the following definitions shall apply:

3.1 1944 Water Treaty means the United States-Mexico Treaty for Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed February 3, 1944.

3.2 2017 BICS Agreement means the 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus.

3.3 Binational ICS means Binational Intentionally Created Surplus.

3.4 Binational ICS Account means records established by the Secretary regarding Binational ICS.

3.5 Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved in Section 13(a) of the Boulder Canyon Project Act.

3.6 Colorado River System shall have the meaning ascribed to such term in the Colorado River Compact.

3.7 Consolidated Decree means the decree entered by the United States Supreme Court in the matter of Arizona v. California et al. on March 27, 2006.

3.8 Delivery Agreement means an agreement entered into by the Secretary and a Local Funding Agency seeking to create Binational ICS, providing for delivery of Binational ICS according to the terms of the 2017 BICS Agreement and the Interim Operating Agreement (defined below).

3.9 Eligible Project Costs means costs for which Reclamation may expend appropriated or contributed funds or receive in-kind services under the Minute 323 Pilot Program.

3.10 Exhibit A is the Delivery Agreement for CAWCD.

3.11 Exhibit B is the Delivery Agreement for MWD.

3.12 Exhibit C is the Delivery Agreement for SNWA.

3.13 Exhibit D is the Delivery Agreement for IID.

3.14 Interim Guidelines means the guidelines adopted by the Secretary on December 13,

2007, in a Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations of Lake Powell and Lake Mead.

3.15 Interim Operating Agreement for Implementation of Minute No. 323 (“Interim Operating Agreement”) means the Interim Operating Agreement for Implementation of Minute No. 323, entered into simultaneously with the execution of this 2017 Contributed Funds Agreement.

3.16 Local Funding Agencies means MWD, IID, SNWA, and CAWCD, which are entities holding entitlements to Mainstream (defined below) water under a water delivery contract with the United States through the Secretary and providing capital contributions identified in this Agreement.

3.17 Mainstream shall have the meaning ascribed to such term in the Consolidated Decree.

3.18 Mexico’s Water Reserve means any and all water retained in the United States as a result of Mexico’s deferred deliveries of or adjustments to Mexico’s annual water delivery schedule pursuant to the terms of Minute No. 323 as specified in Section V, and any action of the Secretary in accordance with Section IX.A. of Minute No. 323.

3.19 Minute No. 319 means Minute No. 319 to the 1944 Water Treaty, Interim International Cooperative Measures In the Colorado River Basin Through 2017 and Extension of Minute 318 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California, dated November 20, 2012.

3.20 Minute No. 323 means Minute No. 323 to the 1944 Water Treaty, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin dated _____, 2017.

3.21 Minute 323 Pilot Program means the program described in Section IX of Minute No. 323.

4. **GENERAL TERMS AND CONDITIONS:**

4.1 This Agreement shall become effective upon the date set forth in Article 1 and shall remain in effect until fully performed or the expiration of Minute No. 323 on December 31, 2026, whichever first occurs.

5. **CAPITAL CONTRIBUTIONS:**

5.1 Federal Contribution. Reclamation, or another federal agency, will provide \$16,500,000 USD to fund a portion of the total Minute 323 Pilot Program costs.. Federal contributions will result in the creation of 50,000 acre-feet of water for the benefit of the Colorado River System and 70,000 acre-feet of water to discharge the United States' financial commitment to provide water for the environment under Section VIII of Minute No. 323.

5.2 Local Funding Agencies Contribution. The Local Funding Agencies shall make Pilot Program contributions of \$15,000,000 USD in exchange for 109,100 acre-feet of water by transferring funds to Reclamation within 60 days of receiving a request from Reclamation consistent with the provisions of Minute No. 323 (all monetary values are in USD) provided that such transfers in the aggregate shall not be less than \$5.0 million dollars from the inception of Minute No. 323 through December 31, 2020, not less than \$10.0 million dollars from the inception of Minute No. 323 through December 31, 2023, and not less than \$15.0 million dollars from the inception of Minute No. 323 through December 31, 2026, split equally among the Local Funding Agencies. The contributions set forth in this section are subject to: (1) each Local Funding Agency's determination whether to continue to contribute funds contemplated under this Agreement, (2) availability of funding through annual appropriations by necessary governing

boards, and (3) completion of the conversion of 124,000 acre-feet of water as originally contemplated in Section III.6.e.iii. of Minute No. 319 and restated in Section IX. of Minute No. 323. If any Local Funding Agency does not provide funding in accordance with this Section, that Agency's contribution may be assumed in equal proportions by the other Local Funding Agencies, if they so elect to provide additional funding. In the event that a Local Funding Agency does not provide funding in accordance with this Section, the remaining Local Funding Agencies and Reclamation may secure the participation of additional funding entities to replace amounts necessary to meet the \$15.0 million dollar amount identified in Section IX.A. of Minute No. 323.

5.3 Modification. The Parties may, individually or as a group, waive certain contingencies set forth in Section 5.2 for Local Funding Agency funding and may collectively agree upon different funding proportions without requiring amendment of this 2017 Contributed Funds Agreement. Finally, consistent with Section IX of Minute No. 323, the Parties may agree to fund additional projects in Mexico and, in turn, create additional water for transfer and use in the United States or in connection with use for environmental purposes consistent with Section VIII of Minute No. 323.

5.4 Method of Transfer of Monetary Contributions. All transfers of money required by Section 5.2 above shall be made electronically in accordance with instructions from Reclamation.

6. **CREATION AND ACCOUNTING OF BINATIONAL ICS:**

6.1 The Secretary has determined that the creation of Binational ICS from Mexico's Water Reserve provided by Mexico to the United States pursuant to Section V of Minute No. 323 meets the requirements of the Interim Operating Agreement and Exhibit A to the 2017 BICS Agreement.

6.2 Upon transfer of funds to Mexico under Minute No. 323, the Secretary shall cause

Mexico's Water Reserve to be converted to Binational ICS at the rate of \$137.50/acre-foot, and shall credit the Binational ICS accounts of the Local Funding Parties or, in the case of federal funders, account for the water as benefiting the system, in proportion to their respective investments. If there is insufficient Mexico's Water Reserve to satisfy the aforementioned credits required by any funding transfer, the Secretary will take any action necessary, consistent with the provisions of Section IX.A. of Minute No. 323, to create volumes of deferred deliveries sufficient to create Binational ICS or system water in proportion to, and contemporaneous with, such funding transfer, including, without limitation, reducing requested deliveries to Mexico.

6.3 Binational ICS shall be accounted for and reported in the Water Accounting Report described in Section 3.D.3 of the Interim Guidelines consistent with the provisions of the Interim Operating Agreement.

7. **AVAILABILITY OF BINATIONAL ICS TO LOCAL FUNDING AGENCIES:** The delivery conditions for Binational ICS available to the Local Funding Agencies are set forth in the Interim Operating Agreement. All Binational ICS available to a Local Funding Agency pursuant to this Agreement shall be delivered to such Local Funding Agency pursuant to such agency's Delivery Agreement. The Delivery Agreements for the Local Funding Agencies are attached hereto as Exhibits A, B, C, and D.

8. **NON-WAIVER:** No Party to this Agreement shall be considered to have waived any right hereunder except when such waiver of the right is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or a relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

9. **UNCONTROLLABLE FORCES:** No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

10. **REPRESENTATIONS AND WARRANTIES:**

10.1 Each Party has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by each Party and the performance by each Party of its obligations hereunder shall not violate or constitute an event of default under the terms or provisions of any agreement, document, or instrument to which each of the Parties is a Party or by which each Party is bound.

10.2 Each Party warrants and represents that the individual executing this Agreement on behalf of the Party has the full power and authority to bind the Party he or she represents to the terms of this Agreement.

10.3 This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.

10.4 Each Party: (1) warrants and represents that such Party is authorized by, and has undertaken all prerequisite actions required by, applicable Federal and State laws and regulations to perform the obligations and exercise the rights contemplated herein, and (2) acknowledges that

such warranty and representation is a material inducement to, and has been relied upon by, the other Parties in entering into this 2017 Contributed Funds Agreement and performing their respective obligations hereinafter.

11. **GOVERNING LAW**: This Agreement shall be interpreted, governed by, and construed under applicable Federal law. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Agreement shall be in an appropriate Federal court.

12. **MINUTE NO. 323**: Nothing in this Agreement amends or affects the terms of Minute No.323.

13. **BINDING EFFECT AND LIMITED ASSIGNMENT**: The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties upon receipt of written agreement to the terms of this Agreement, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by all Parties. This Agreement is and shall be binding upon and shall inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

14. **AMENDMENT, MODIFICATION, AND/OR SUPPLEMENT**: This Agreement may be amended, modified, or supplemented only by the written agreement of the Parties. No amendment, modification, or supplement shall be binding unless it is in writing and signed by all Parties.

15. **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**: Nothing in this Agreement may be construed to obligate Reclamation, the United States, or the Local Funding Agencies to any current or future expenditure of resources in advance of the availability of appropriations.

16. **DRAFTING CONSIDERATIONS:** Each Party and its counsel have participated fully in the drafting, review, and revision of this Agreement, each of whom is sophisticated in the matters to which this Agreement pertains, and no one Party shall be considered to have drafted this Agreement.

17. **NOTICES:**

17.1 All notices and requests required or allowed under the terms of this 2017 Contributed Funds Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

RECLAMATION:

Regional Director
Lower Colorado Region
Attention: LC-1000
500 Fir Street
Boulder City, NV 89005

CAWCD:

Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, AZ 85024-3801
Attn: General Manager

CRCN:

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

IID:

Imperial Irrigation District
P.O. Box 937
333 East Barioni Boulevard
Imperial, CA 92251
Attn: General Manager

MWD:

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

SNWA:

Southern Nevada Water Authority
1001 South Valley View Boulevard, MS #485
Las Vegas, NV 89153
Attn: General Manager

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

18. **JUDICIAL REMEDIES NOT FORECLOSED**: Nothing herein shall be construed (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have; or (ii) as depriving any Party of any defense thereto which would otherwise be available.

19. **AVAILABILITY OF INFORMATION**: Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party books and records relating to matters covered by this Agreement.

20. **OFFICIALS NOT TO BENEFIT**: No Member of or Delegate to the Congress, or Resident Commissioner, or official of MWD, SNWA, CRCN, CAWCD, or IID or any Elector or Electors shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.

21. **EXHIBITS MADE PART OF THIS AGREEMENT**: Exhibits A, B, C, and D are attached hereto and made a part hereof.

22. **NO THIRD-PARTY BENEFICIARIES**: This Agreement and any agreements made or

actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Agreement intends for this Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise, including but not limited to the country of Mexico and non-governmental organizations.

23. **COUNTERPARTS**: This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement No. 17-XX-30-W0625 on the day and year first written above.

Approved as to legal sufficiency:

THE UNITED STATES OF AMERICA

By: _____

By: _____

Terrance J. Fulp, Ph.D.
Regional Director
Bureau of Reclamation

Review Draft July 26, 2017

Approved as to form:

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: _____
Jay M. Johnson
General Counsel

By: _____
Theodore C. Cooke
General Manager

Review Draft July 26, 2017

Approved as to form:

**COLORADO RIVER COMMISSION
OF NEVADA**

By: _____
Jennifer T. Crandell
Special Counsel Attorney General

By: _____
Jayne Harkins
Executive Director

Review Draft July 26, 2017

Approved as to form:

IMPERIAL IRRIGATION DISTRICT

By: _____

General Counsel

By: _____

Kevin E. Kelley
General Manager

Review Draft July 26, 2017

Approved as to form:

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: _____
Marcia L. Scully
General Counsel

By: _____
Jeffrey Kightlinger
General Manager

Review Draft July 26, 2017

Approved as to form:

**SOUTHERN NEVADA WATER
AUTHORITY**

By: _____
Gregory J. Walch
General Counsel

By: _____
John J. Entsminger
General Manager

Placeholder for Delivery Agreements to be Added

Attachment C: BINATIONAL DELIVERY AGREEMENT

2017 BINATIONAL ICS DELIVERY AGREEMENT

This 2017 Binational ICS Delivery Agreement (“Delivery Agreement”) is entered into this ___th day of _____ 2017 by and between the UNITED STATES OF AMERICA, through the Department of the Interior, Bureau of Reclamation (“Reclamation”), the CENTRAL ARIZONA WATER CONSERVATION DISTRICT (“CAWCD”), (each referred to individually as “Party”, or collectively as “Parties”). The Parties hereby agree as follows:

I. Recitals

- A. The Secretary of the Interior (“Secretary”) issued a Record of Decision (“ROD”) for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead on December 13, 2007, which implements Interim Guidelines for the Operation of Lake Powell and Lake Mead (“Guidelines”).
- B. On November 20, 2012, the Commissioners of the International Boundary and Water Commission (“IBWC”) executed Minute No. 319, Interim International Cooperative Measures In the Colorado River Basin Through 2017 and Extension of Minute 318 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California (“Minute No. 319.”), which allows, among other things, U.S. entities to fund projects in Mexico that will create Intentionally Created Mexican Allocation (“ICMA”), a portion of which could be converted to Binational ICS.
- C. On _____, 2017, the IBWC executed Minute 323, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin (“Minute No. 323”), which allows, among other things, U.S. entities to fund projects in Mexico that will create Mexico’s Water Reserve, a portion of which could be converted to Binational ICS.
- D. The Secretary, by and through the Bureau of Reclamation, and the other relevant parties are simultaneously entering into an Interim Operating Agreement for Implementation of Minute 323 (“Interim Operating Agreement”) that addresses implementation of Minute No. 323, particularly the conversion of Mexico’s Water Reserve to Binational ICS.
- E. CAWCD is a multi-county water conservation district and political subdivision of the State of Arizona organized pursuant to A.R.S.§48-3701 *et seq.* for the purposes, among others, of contracting with the United States for the delivery of Central Arizona Project (CAP) water and the repayment of CAP costs. CAWCD operates and maintains the CAP and has the right to divert Colorado River water released by the Secretary for use within the State of Arizona under the following agreements: Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the

Central Arizona Project, Contract No. 14-06-W-245, dated December 15, 1972, as amended and supplemented by Amendment No. 1, dated December 1, 1988, Supplement No. 1, dated August 14, 2007, and Amendment No. 2, dated November 30, 2007 (Existing CAWCD Delivery Agreements)

- F. The Arizona Department of Water Resources has secured the forbearance of certain Contractors through the simultaneous execution of a 2017 Forbearance Agreement, attached hereto as Exhibit “A,” in which under specific and limited circumstances the Contractors forbear the exercise of certain rights to Colorado River water otherwise available to them under the Consolidated Decree in Arizona v. California and under contracts entered into under section 5 of the Boulder Canyon Project Act of 1928

II. Authority

The Secretary is authorized under the Reclamation Act of 1902 and all acts amendatory thereof and supplementary thereto, including in particular Section 5 of the Boulder Canyon Project Act of 1928, to enter into contracts for the delivery of Colorado River water.

III. Definitions

Defined terms appear in this Delivery Agreement with initial capitalization and shall have the same meaning as in the Guidelines; provided, however:

- A. 2017 Contributed Funds Agreement shall mean the Agreement among the United States of America, through the Department of the Interior, Bureau of Reclamation, the Metropolitan Water District of Southern California, the Imperial Irrigation District, the Colorado River Commission of Nevada, the Southern Nevada Water Authority, and the Central Arizona Water Conservation District for a Pilot Program for the Conversion of Intentionally Created Mexican Allocation to Binational Intentionally Created Surplus;
- B. 2017 Forbearance Agreement shall mean the 2017 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus;
- C. Binational ICS shall mean Binational Intentionally Created Surplus;
- D. Interim Operating Agreement shall mean the Interim Operating Agreement for Implementation of Minute No. 323, entered into simultaneously with the execution of this Delivery Agreement.
- E. Mexico’s Water Reserve shall consist of the following:
- (A) Water that Mexico chose to defer delivery in order to address potential emergencies, such as earthquakes, failures in the conveyance system, unforeseeable circumstances or force majeure;

- (B) Up to 366,136 acre-feet of water stored by Mexico in the United States and accounted for in a revolving account, which would include any remaining balance of volumes deferred in Minutes 318 and 319; and
- (C) Intentionally Created Mexican Allocation, which is water that Mexico chose to defer delivery on through adjustments to its annual delivery schedule resulting from water conservation projects or new water sources projects, which would include any remaining volumes of ICMA created under Minute 319.

IV. Term

This Delivery Agreement shall become effective upon execution by the Parties and shall remain in effect until such time as all deliveries of Binational ICS permissible under the terms of the Interim Operating Agreement and this Delivery Agreement have occurred.

V. Relationship to Interim Operating Agreement

The Parties to this Delivery Agreement expressly acknowledge that this Delivery Agreement will be administered in compliance with the terms of the Interim Operating Agreement. Specific reference in this Delivery Agreement to particular sections of the Interim Operating Agreement shall not render inapplicable to the Parties those sections not specifically referred to herein.

VI. Creation and Accounting of Binational ICS

- A. The Secretary has determined that the creation of Binational ICS from Mexico's Water Reserve pursuant to Section IX.A of Minute No. 323 meets the requirements of the Interim Operating Agreement and Exhibit A to the 2017 Forbearance Agreement.
- B. When Mexico's Water Reserve is converted for use in the United States in accordance with Section IX.A of Minute No. 323, Reclamation shall credit CAWCD's Binational ICS Account, in accordance with Section 7.3.2 of the Interim Operating Agreement and Section 6 of the 2017 Contributed Funds Agreement.
- C. Binational ICS shall be accounted for and reported in the Water Accounting Report described in Section 3.D.3 of the Guidelines consistent with the provisions of the Interim Operating Agreement.

VII. Delivery of Binational ICS

- A. CAWCD shall neither order nor accept delivery of Binational ICS except in accordance with the terms of the Interim Operating Agreement, this Delivery Agreement, and the 2017 Forbearance Agreement.
- B. CAWCD's existing entitlement to Colorado River water shall remain in full force and effect and with this Delivery Agreement shall govern the delivery of Binational ICS to CAWCD.
- C. Binational ICS. The Secretary shall deliver to CAWCD under Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, dated December 15, 1972, as amended and supplemented by Amendment No. 1, dated December 1, 1988, Supplement No. 1, dated August 14, 2007, and Amendment No. 2, dated November 30, 2007, and the Central Arizona Project System Use Agreement Between the United States and the Central Arizona Water Conservation District Agreement No. 17-XX-30-W0622, the Binational ICS created under the terms of this Delivery Agreement and requested by CAWCD, in accordance with Section 7.4 of the Interim Operating Agreement and the 2017 Forbearance Agreement; provided, however:
 - 1. The Binational ICS delivery must be in accordance with 43 C.F.R. Part 417; and
 - 2. Nothing in this Delivery Agreement modifies, or is intended to modify, the rights of any person or entity that is not a party to the 2017 Forbearance Agreement.

VIII. Other Terms

- A. Signatories to the 2017 Forbearance Agreement are intended third-party beneficiaries of this Delivery Agreement solely for the purposes of ensuring compliance with the Interim Operating Agreement and the 2017 Forbearance Agreement and enforcing the provisions of this Delivery Agreement that require compliance and/or consistency with the Interim Operating Agreement and the 2017 Forbearance Agreement. Notwithstanding anything to the contrary contained in this paragraph, no third-party shall accrue any right to Binational ICS as a result of the third-party beneficiary status conferred in this paragraph.
- B. This Delivery Agreement is subject to and controlled by the Colorado River Compact of 1922.
- C. No member of or Delegate to Congress, Resident Commissioner, or official of any Party shall benefit from this Delivery Agreement other than as a water user or landowner in the same manner as other water users or landowners.

- D. This Delivery Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982.
- E. Each Party to this Delivery Agreement represents that the person executing this Delivery Agreement on behalf of such Party has full power and authority to do so, and that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.
- F. The expenditure or advance of any money or the performance of any obligation of the Parties under this Delivery Agreement shall be contingent on appropriation or allotment of funds.
- G. Each Party shall comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

Draft as of 5-3-17

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

Approved as to legal sufficiency:

THE UNITED STATES OF AMERICA

by: _____

by: _____

Terrance J. Fulp, Ph.D.
Lower Colorado Region
Bureau of Reclamation

**CENTRAL ARIZONA WATER CONSERVATION
DISTRICT**

by: _____
Theodore Cooke
General Manager

Attachment D: MEMORANDUM OF AGREEMENT FOR BINATIONAL FORBEARANCE FOR
MINUTE 323

MEMORANDUM OF AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF WATER RESOURCES AND THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT REGARDING FORBEARANCE BY THE STATE OF ARIZONA OF BINATIONAL INTENTIONALLY CREATED SURPLUS

Whereas, the State of Arizona maintains a sovereign interest in the water of the Colorado River, represented by the contract between the United States of America and the State of Arizona that was executed February 24, 1944, and ratified by the Arizona Legislature in Laws 1944, Chapter 4 (1944 Contract); and

Whereas, the State of Arizona's rights in the Colorado River were further confirmed by the decree of the United States Supreme Court in the matter of *Arizona v. California* (Consolidated Decree), including the right to divert 2.8 million acre-feet of Colorado River water for consumptive use within the State of Arizona in normal years, plus forty-six per cent of any surplus water made available by the Secretary of the Interior under the terms of the Consolidated Decree; and

Whereas, the Central Arizona Water Conservation District (CAWCD) has a contract with the United States for the delivery of a portion of Arizona's Colorado River water through the Central Arizona Project and for repayment of allocable costs of the Project (Repayment Contract), as that contract may have been modified or affected by the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay and for Ultimate Judgment Upon Satisfaction of Conditions, filed with the United States District Court for the District of Arizona in Central Arizona Water Conservation District v. United States, et al., No. CIV 95-091720-09PHX-09EHC (Revised Stipulation); and

Whereas, the Secretary of the Interior exercises authorities with respect to the management of the Colorado River dams and reservoirs pursuant to the Boulder Canyon Project Act of 1928, the Colorado River Project Storage Act of 1956 and the Colorado River Basin Project Act of 1968, and other acts amendatory or supplementary thereto; and

Whereas, the Secretary of the Interior has been determined to have the authority to declare surplus conditions within the Colorado River mainstream and to make quantities of surplus water available to Colorado River water contractors under the terms of the Consolidated Decree and the Secretary of the Interior has adopted surplus and shortage guidelines; and

Whereas, in 2012, the United States and Mexico, in consultation with the seven States of the Colorado River Basin (Basin States), executed Minute 319, which was a binational agreement for voluntary surplus and shortage sharing with Mexico, improved operating efficiency, salinity management, and binational projects in Mexico that made additional water available for use in both countries; and

Whereas, the United States and Mexico, in consultation with the Basin States, have drafted a proposed extension of Minute 319 consisting of a ten-year pilot program to

increase cooperation and management of the water resources of the Colorado River, including the adoption of a binational water scarcity contingency plan; and

Whereas, the Basin States and the United States have drafted proposed domestic agreements for implementation within the United States of the proposed binational agreement extension; and

Whereas, the proposed binational agreement extension and proposed domestic agreements provide for a concept known as “binational intentionally created surplus” (Binational ICS), under which a contractor in a Lower Division State can supplement the Lower Colorado River mainstream through binational projects in Mexico and then divert additional Lower Colorado River water as surplus; and

Whereas, diversion of the Binational ICS must be consistent with the Consolidated Decree, necessitating a forbearance of rights to Binational ICS among Lower Division States; and

Whereas, the State of Arizona and CAWCD recognize that benefits to the Colorado River mainstream accrue to Arizona water users from the supplementing of river supplies through Binational ICS and that no Arizona water user will be adversely affected by Arizona’s forbearance of a portion of the Binational ICS added to the Colorado River mainstream by a contractor in another Lower Division State; and

Whereas, the effectiveness of agreements to forbear are dependent on approval by the Arizona Legislature by concurrent resolution under Section 45-106, Arizona Revised Statutes; and

Whereas, the State of Arizona must act both through the Arizona Legislature and the Governor by joint resolution to forbear the exercise of a right accruing to the benefit of the state under the 1944 Contract and the Consolidated Decree; and

Whereas, the Arizona State Legislature authorized the State of Arizona, by and through the Director, to forbear Arizona’ rights to the use of certain quantities of Binational ICS that would otherwise be available for use within the State of Arizona under the 1944 Contract and the Consolidated Decree, through passage by the Legislature of House Joint Resolution (HJR) 2002 in the 2017 Legislative Session; and

Whereas, the agreement of the CAWCD not to order a portion of the Binational ICS added to the Colorado River mainstream by a contractor in another Lower Division State, pursuant to its contract with the United States and the Revised Stipulation, or otherwise, is consistent with the proposed Arizona Legislature’s actions and is appropriate; and

Whereas, it is in the best interest of the State of Arizona for the Director of the Department of Water Resources (Director) to enter into forbearance agreements with Lower Division State entities that further protect Arizona’s interests in the water of the Colorado River in surplus, normal and shortage years, and for CAWCD to agree not to order ICS added to the Colorado River mainstream by a contractor in another Lower

Division State at times when the Forbearance Agreement would provide for Arizona's forbearance; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

1. The above Recitals are hereby incorporated and agreed to by reference.
2. Assuming that (1) the United States and Mexico enter into an agreement generally in conformance with the proposed binational agreement extension, and (2) the Director enters into an agreement to forbear the State of Arizona's rights to Binational ICS that would otherwise be available for use within the State of Arizona under the 1944 Contract and the Consolidated Decree (Forbearance Agreement), as authorized by the Legislature, then CAWCD will not order any of the ICS that has been forborne under the Forbearance Agreement. The Director further agrees to consult with CAWCD regarding potential adverse effects on CAWCD before agreeing to any amendment to the Forbearance Agreement or to any future forbearance agreements substantially in conformance with the Forbearance Agreement.
3. This Agreement is undertaken in response to unique and extraordinary circumstances.
4. This agreement shall become effective upon the date it is executed by all parties, shall continue for the duration of Arizona's obligations under the Forbearance Agreement and shall terminate upon the termination of Arizona's obligations under the Forbearance Agreement.
5. This Agreement shall be subject to the provisions of A.R.S. § 38-511.
6. The parties shall comply with Chapter 9, Title 41, Arizona Revised Statutes, Arizona Executive Orders 75-5 and 2009-09 and any other federal or state laws relating to equal opportunity and non-discrimination, including the Americans with Disabilities Act.

In Witness of this Memorandum of Agreement Between the Arizona Department of Water Resources and the Central Arizona Water Conservation District Regarding Forbearance by the State of Arizona of Binational Intentionally Created Surplus, the Parties affix their official signatures below:

CENTRAL ARIZONA WATER
CONSERVATION DISTRICT

DATE: _____

Attest:

Ted Cooke

Approved as to form:

Counsel

ARIZONA DEPARTMENT OF WATER
RESOURCES

DATE: _____

Attest:

Thomas Buschatzke

Approved as to form:

Chief Counsel

Attachment E: INTERIM OPERATING AGREEMENT FOR IMPLEMENTATION OF MINUTE 319

**Interim Operating Agreement
for Implementation of Minute No. 323**

The State of Arizona, acting through the Arizona Department of Water Resources (“ADWR”), the State of Colorado, the State of Nevada, acting through the Colorado River Commission of Nevada (“Nevada”), the State of New Mexico, the State of Utah, and the State of Wyoming; the Central Arizona Water Conservation District (“CAWCD”); the Coachella Valley Water District (“CVWD”); the Imperial Irrigation District (“IID”); the Metropolitan Water District of Southern California (“MWD”); the City of Needles; the Palo Verde Irrigation District (“PVID”); the Southern Nevada Water Authority, (“SNWA”); the Upper Colorado River Commission (“UCRC”) and the Secretary of the Interior (“Secretary”), acting through the U.S. Department of the Interior, Bureau of Reclamation (“Reclamation”), collectively the “Parties,”

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties herein enter into this Interim Operating Agreement for Implementation of Minute No. 323 (“Interim Operating Agreement”) and hereby agree as follows:

SECTION 1

The Parties to this Interim Operating Agreement and their respective authorities to enter this Interim Operating Agreement are as follows:

- 1.1 ADWR, through its Director, is the successor to the signatory agency of the State for the 1922 Colorado River Compact, and the 1944 Contract for Delivery of Water with the United States, both authorized and ratified by the Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. § 45-107, the Director is authorized and directed, 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 exercise by the Secretary of Congressionally authorized 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. Additionally, under A.R.S. § 45-105(A)(9), the Director is authorized to “prosecute and defend all rights, claims and privileges of this state respecting interstate streams.”
- 1.2 CAWCD is a multi-county water conservation district established pursuant to A.R.S. §§ 48-3701 *et seq.*, that operates and maintains the Central Arizona Project. CAWCD is authorized by A.R.S. §§ 48-3712 and 48-3713 to enter into this Interim Operating Agreement and, pursuant to its contract with the Secretary of the Interior issued under Section 5 of the Boulder Canyon Project Act of 1928, is authorized to divert all Colorado River water to which Arizona is entitled under the Decree in *Arizona v. California*, 376 U.S. 340 (1964), that is not needed to satisfy the water orders of those water users in Arizona with an equal or higher priority to Colorado River water. Accordingly, CAWCD has the right to divert Intentionally Created Surplus (ICS) released by the Secretary for use

within the State of Arizona pursuant to the Consolidated Decree of the U.S. Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006) ("Consolidated Decree").

- 1.3 Colorado. Section 24-1-109, Colorado Revised Statutes (2016) provides that “Interstate compacts authorized by law shall be administered under the direction of the office of the governor.” This includes the Colorado River Compact and the Upper Colorado River Basin Compact. Section 37-60-109 provides that “the governor from time to time, with approval of the board, shall appoint a commissioner, who shall represent the State of Colorado upon joint commissions to be composed of commissioners representing the State of Colorado and another state or other states for the purpose of negotiating and entering into compacts or agreements between said states...” By letter dated February 6, 2015, the Governor notified the Upper Colorado River Commission that he appointed Commissioner L. James Eklund to represent the State of Colorado.
- 1.5 CVWD is a county water district created under the California County Water District Law, codified at Section 30000 et seq. of the California Water Code, and delivers Colorado River water to portions of its service area in Imperial, Riverside, and San Diego Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928 and the California Quantification Settlement Agreement.
- 1.6 IID is an irrigation district created under the California Irrigation District Law, codified at Section 20500 et seq. of the California Water Code, and delivers Colorado River water in Imperial County, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
- 1.7 MWD is a metropolitan 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.
- 1.8 The City of Needles is a charter city duly authorized and existing under and by virtue of the laws of the State of California and delivers Colorado River water, either directly or by exchange, to portions of Imperial, Riverside, and San Bernardino Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928, and the Lower Colorado Water Supply Act of 1986 (100 Stat. 3665) as amended.
- 1.9 Nevada. The Colorado River Commission of Nevada (CRCN) is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is further authorized by the Boulder Canyon Project Act, 43 U.S.C. 617 (1928) and more specifically by N.R.S. § 538.161 (6), (7) to enter into this Interim Operating Agreement. The CRCN, in furtherance of the State of Nevada’s responsibility to promote the health and welfare of its people in Colorado River matters, makes this Interim Operating Agreement to supplement the supply of water in the Colorado River which is available for use in Nevada, augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary.

- 1.10 New Mexico. Pursuant to NMSA 1978, § 72-14-3, the New Mexico Interstate Stream Commission is authorized to investigate water supply, to develop, to conserve, to protect and to do any and all other things necessary to protect, conserve and develop the waters and stream systems of the State of New Mexico, interstate or otherwise. The Interstate Stream Commission also is authorized to institute or cause to be instituted in the name of the State of New Mexico any and all negotiations and/or legal proceedings as in its judgment are necessary.
- 1.11 PVID is a special district created under the Palo Verde Irrigation District Act, codified at Section 33-1 et seq. of the Appendix to the California Water Code, and delivers Colorado River water in Riverside and Imperial Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
- 1.12 Reclamation is responsible for water management throughout the western United States by the limiting provisions of Reclamation law, beginning with the Reclamation Act of 1902, as amended and supplemented. The Secretary also has a broader and unique legal role in the management of the lower Colorado River system in accordance with applicable federal law, including the Boulder Canyon Project Act of 1928, the 1963 Decision of the U.S. Supreme Court in *Arizona v. California*, the Consolidated Decree, the Colorado River Basin Project Act of 1968, and other applicable provisions of federal law.
- 1.13 SNWA is a Nevada joint powers agency and political subdivision of the State of Nevada, created by 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 Interim Operating Agreement and, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICS released by the Secretary for use within the State of Nevada pursuant to the Consolidated Decree.
- 1.14 Upper Colorado River Commission. An interstate water administrative agency composed of one Commissioner representing each of the States of Colorado, New Mexico, Utah and Wyoming and one Commissioner representing the United States as established pursuant to Article VIII of the Upper Colorado River Basin Compact of 1948, 63 Stat. 31. Article VIII empowers the Commission to, among other things, make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such Treaty may be reduced in accordance with the terms of such Treaty; and perform all functions required of it by the Upper Colorado River Basin Compact and do all things necessary, proper or convenient in the performance of its duties thereunder, either independently or in cooperation with any state or federal agency.

- 1.15 Utah. The Division of Water Resources (DWR) is the water resource authority for the State of Utah. Utah Code Ann. § 73-10-18. The Utah Department of Natural Resources Executive Director (Department), with the concurrence of the Utah Board of Water Resources (Board), appoints the DWR Director (Director). §79-2-204(1)(a). The Board makes DWR policy. § 73-10-1.5. The Board develops, conserves, protects, and controls Utah waters, § 73-10-4(4), (5), and, in cooperation with the Department and Governor, supervises administration of interstate compacts, § 73-10-4, such as the Colorado River Compact, §§ 73-12a-1 through 3, and the Upper Colorado River Basin Compact, § 73-13-10. The Board, with Department and Gubernatorial approval, appoints a Utah Interstate Stream Commissioner, § 73-10-3, currently the DWR Director, to represent Utah in interstate conferences to administer interstate compacts. §§ 73-10-3 and 73-10-4. These delegations of authority authorize the Utah Interstate Stream Commissioner/DWR Director to sign this document.
- 1.16 Wyoming. Water in Wyoming belongs to the state. Wyo. Const. Art. 8 § 1. The Wyoming State Engineer is a constitutionally created office and is Wyoming’s chief water official with general supervisory authority over the waters of the state. Wyo. Const. Art. 8 § 5. The Wyoming legislature conferred upon Wyoming officers the authority to cooperate with and assist like authorities and entities of other states in the performance of any lawful power, duty, or authority. Wyo. Stat. § 16-1-101. Wyoming and its State Engineer represent the rights and interests of all Wyoming appropriators with respect to other states. Wyoming v. Colorado, 286 U.S. 494 (1922). See Hinderlider v. La Plata River & Cherry Creek Ditch Co., 304 U.S. 92 (1938). In signing this Interim Operating Agreement, the State Engineer intends that this Interim Operating Agreement be mutually and equally binding between the Parties.

SECTION 2

- 2.1 The definitions in the Interim Surplus Guidelines described in the Record of Decision dated January 16, 2001, and modified by the 2007 Interim Guidelines are hereby incorporated in this Interim Operating Agreement. In addition, each of the following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.
- 2.1.1 “2007 Interim Guidelines” shall mean Section XI of the Record of Decision issued by the Secretary for the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead.
- 2.1.2 “2017 BICS Agreement” shall mean the 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus executed contemporaneously with this Agreement.
- 2.1.3 “Binational ICS” or “BICS” shall mean Binational Intentionally Created Surplus.
- 2.1.4 “Binational ICS Account” shall mean records established by the Secretary regarding Binational ICS.

- 2.1.5 “Minute 323 Delivery Agreement” shall mean an agreement entered into by the Secretary and one or more Contractors seeking to create Binational ICS through a binational project pursuant to Minute No. 323, providing for delivery of Binational ICS.
- 2.1.6 “ICMA” shall mean either water accounted for under Section III.1 of Minute No. 319 or Intentionally Created Mexican Allocation as referred to in Section III.4 of Minute No. 319.
- 2.1.7 “Mexico’s Water Reserve” shall mean water described and accounted for under Section V of Minute No. 323
- 2.1.8 “Minute No. 319” shall mean Minute No. 319, Interim International Cooperative Measures In the Colorado River Basin Through 2017 and Extension of Minute 318 Cooperative Measures To Address the Continued Effects of the April 2010 Earthquake in the Mexicali Valley, Baja California
- 2.1.9 “Minute No. 323” shall mean Minute No. 323, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin.
- 2.1.10 “Treaty” or “1944 Water Treaty” shall mean the Treaty between the United States of America and Mexico Respecting the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande (Feb. 3, 1944, U.S.-Mex., 59 Stat. 1219, T.S. 994).

SECTION 3

- 3.1 On August 13, 2007, a Joint Statement by officials from the governments of the United States and Mexico was issued expressing the interest of both countries in identifying cooperative opportunities to help ensure that the Colorado River system is able to continue to meet the needs of both nations. See also the Joint Declaration by the United States Secretary of the Interior and Mexico’s Ambassador on January 15, 2009.
- 3.2 On December 13, 2007, the Secretary adopted the 2007 Interim Guidelines, which provide among other things provisions for coordinated operations of Lake Powell and Lake Mead, implementing shortages and providing for surpluses in the Lower Colorado River Basin, and the creation and delivery of ICS. See 2007 Interim Guidelines, 73 Fed. Reg. 19873-19892.
- 3.3 On June 17, 2010, the Commissioners of the International Boundary and Water Commission (“IBWC”) executed Minute No. 317 which stipulates that the IBWC “shall in particular explore opportunities for binational cooperative projects that: minimize the impacts of potential Colorado River shortage conditions; generate additional volumes of water using new water sources by investing in infrastructure such as desalinization facilities; conserve water through investments in a variety of current and potential uses,

- including agriculture, among others; and envision the possibility of permitting Mexico to use United States infrastructure to store water.”
- 3.4 On December 17, 2010, the IBWC Commissioners executed Minute No. 318 permitting adjustment of the delivery of schedules for water allotted to Mexico under the 1944 Water Treaty to address Mexico’s needs as a result of infrastructure damage in Irrigation District 014 caused by the April 2010 earthquake in Mexicali Valley, Baja California, Mexico.
- 3.5 Pursuant to Minute No. 317, the Commissioners agreed to establish a binational Consultative Council, composed of representatives of the Commission, the respective federal governments and the Seven Colorado River Basin States (Basin States), to facilitate consideration of the legal, administrative and policy matters associated with Section 3.3 and 3.4 above.
- 3.6 On November 20, 2012, the IBWC Commissioners executed Minute No. 319 which would allow for both countries to assess, through December 31, 2017, the long-term opportunities for water conservation, management and development.
- 3.7 Minute No. 319 addressed cooperative measures with regard to the management of the Colorado River system identified by the IBWC and the Parties. These measures included: salinity; variable water supplies within the Colorado River basin; opportunities to establish ICMA when Mexico chooses to adjust its delivery schedule; sharing in the benefits of water that may be available temporarily through high reservoir conditions; engaging with the United States in cooperative measures to reduce the likelihood of substantial and unprecedented reductions in water deliveries to water users in both countries; exchange of water; and the arrangement of water for the environment. At the same time, several specific binational projects were identified that could be jointly implemented to the benefit of both countries.
- 3.8 Consistent with the stated intention memorialized in Minute No. 319, the United States and Mexico agree in Minute No. 323 to extend binational, cooperative efforts through 2026, and establish a pilot program of temporary measures and increased cooperation and management of the water resources of the Colorado River.
- 3.9 The countries have identified these measures to be undertaken during an interim period from the date Minute No. 323 enters into force through December 31, 2026.
- 3.10 On _____, _____, 2017, certain parties to this Interim Operating Agreement executed the _____ 2017 BICS Agreement and related Minute 323 Delivery Agreements, which allowed Contractors to participate in and take delivery of Binational ICS.

SECTION 4

- 4.1 This Interim Operating Agreement establishes operational procedures which are in addition to and consistent with the 2007 Interim Guidelines and that are necessary to implement

- Minute No. 323. This Interim Operating Agreement does not in any way amend or affect the terms of Minute No. 323.
- 4.2 This Interim Operating Agreement does not establish or act as precedent for any future agreement or undertaking.
- 4.3 The purposes of this Interim Operating Agreement are to:
- 4.3.1 Facilitate implementation of the assurances and accounting provided for in the 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus;
 - 4.3.2 Facilitate implementation and accounting of high elevation reservoir operations referenced in Section II and Resolution 1 of Minute No. 323;
 - 4.3.3 Ensure that implementation of Minute No. 323 is consistent with the 2007 Interim Guidelines; and
 - 4.3.4 Facilitate consultation among the Parties regarding implementation and operations contemplated under Minute No. 323.
- 4.4 This Interim Operating Agreement applies to the implementation of Minute No. 323 within the United States.
- 4.5 Upon the effectiveness of Section IV of Minute No. 323, the Parties to this Agreement shall amend this Agreement in writing for the limited purpose of conforming this Agreement to any changes to applicable law.
- 4.6 By separate agreement with the Secretary dated this day, IID has agreed to the terms and conditions of the 2012 Lower Colorado River Basin Forbearance Agreement for Binational Intentionally Created Surplus and the 2012 Contributed Funds Agreement (Agreement No. 12-XX-30-WO565) (the 2012 Agreements). Accordingly, the parties to the 2012 Agreements hereby agree to strike in its entirety the 2nd sentence of Exhibit A under the heading "Delivery" that appears in the 2012 Agreements.

SECTION 5

- 5.1 Term of the Interim Operating Agreement. This Interim Operating Agreement shall commence on the later of: (1) the date of execution by all Parties or (2) the date that Minute No. 323 enters into force, and shall terminate December 31, 2026; provided, however, that any Binational ICS remaining in a Binational ICS Account on December 31, 2026, may be released as provided herein until December 31, 2036.

SECTION 6

- 6.1 When Section II of Minute No. 323 is operative (Distribution of Flows Under High Elevation Reservoir Conditions), Reclamation will operate the system consistent with the following provisions:
- 6.1.1 For any year in which a Domestic Surplus Condition under Section 2.B.2.b of the 2007 Interim Guidelines is determined the following provisions shall apply:
- 6.1.1.1 The amount that would otherwise be available to CAWCD under Section 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-third of the quantity of high elevation reservoir flows delivered to Mexico. For example, if Mexico requested delivery of 30,000 acre-feet, the maximum amount available to Arizona would be 90,000 acre-feet.
- 6.1.1.2 The amount that would otherwise be available to SNWA under Section 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-third of the quantity of high elevation reservoir flows delivered to Mexico. For example, if Mexico requested delivery of 30,000 acre-feet, the maximum amount available to SNWA would be 90,000 acre-feet.
- 6.1.1.3 The amount that would otherwise be available to MWD under Section 2.B.2.b of the 2007 Interim Guidelines will be reduced by one-third of the quantity of high elevation reservoir flows delivered to Mexico. For example, if Mexico requested delivery of 30,000 acre-feet, the maximum amount available to MWD would be 240,000 acre-feet, except as provided in Section 6.1.1.4 below.
- 6.1.1.4 In the event SNWA and/or Arizona do not request or take delivery of the maximum amount to which they are entitled under Section 2.B.2.b of the 2007 Interim Guidelines, MWD will have the right to request such water up to an amount equal to one-third of the quantity of high elevation reservoir flows delivered to Mexico. Under no circumstances shall uses under Section 2.B.2.b of the 2007 Interim Guidelines exceed 250,000 acre-feet by MWD and 450,000 acre-feet by MWD, SNWA, Arizona, and Mexico combined.
- 6.1.2 For any year in which a Quantified Surplus Condition (Section 2.B.3 of the 2007 Interim Guidelines) is determined, the Secretary shall allocate water to Mexico pursuant to Section II of Minute No. 323 prior to establishing the volume of Quantified Surplus under Section 2.B.3.a of the 2007 Interim Guidelines. For the purpose of determining the existence, and establishing the volume, of Quantified Surplus, the Secretary shall not consider any volume of Binational ICS and Mexico's Water Reserve.
- 6.1.3 The allocations of Quantified Surplus to any Contractors that do not have an agreement to create Binational ICS pursuant to Minute No. 323 shall not be reduced as a result of the quantification referenced in the preceding Section 6.1.2.

SECTION 7

- 7.1 Certain Parties have entered into the 2017 BICS Agreement to enable implementation of the operations contemplated by this Interim Operating Agreement and Minute No. 323. The 2017 BICS Agreement provides the appropriate legal mechanisms to achieve successful conversion of Mexico's Water Reserve to Binational ICS and delivery of Binational ICS. The 2017 BICS Agreement parties have indicated that among the conditions of their waiver, they will waive only with respect to Binational ICS described in exhibits to the 2017 BICS Agreement.
- 7.1.1 The Secretary agrees to administer Binational ICS, including accounting for and delivery of Binational ICS, in a manner that is fully consistent with the terms and conditions of the 2017 BICS Agreement, and Section XI.A of the 2007 Interim Guidelines.
- 7.1.2 The Secretary acknowledges that waiver is a condition for converting Mexico's Water Reserve to Binational ICS.
- 7.2 Pursuant to procedures set forth in this Interim Operating Agreement, a Contractor may make contributions of capital to participate in a binational project in Mexico that will create Mexico's Water Reserve. A portion of Mexico's Water Reserve created by the binational project may be converted to Binational ICS for use by the contributing Contractors.
- 7.3 Mexico's Water Reserve may be converted to Binational ICS subject to the following conditions:
- 7.3.1 The amount of Mexico's Water Reserve created shall not exceed the volume of water actually retained in the United States through reduced deliveries to Mexico.
- 7.3.2 In accounting for Mexico's Water Reserve and Mexico's Water Reserve converted to Binational ICS, the IBWC and the Secretary, through Reclamation, shall determine the amount of Mexico's Water Reserve created as provided in Section V of Minute No. 323. Reclamation shall determine the amount of Binational ICS that will be added to each Contractor's Binational ICS Account in consultation with the Lower Division States, with notification to the Upper Division States, and provide a final written decision to the Parties. Any Party to the 2017 BICS Agreement may appeal the Secretary's determinations through administrative and judicial processes.
- 7.3.3 Unless otherwise provided in an exhibit to the 2017 BICS Agreement, there shall be a one-time deduction of two percent (2%) from the amount of Binational ICS in the Year of its conversion from Mexico's Water Reserve. This deduction results in additional water storage in Lake Mead for future use in accordance with the Consolidated Decree and the 2007 Interim Guidelines.
- 7.3.4 Unless otherwise provided in an exhibit to the 2017 BICS Agreement, the quantity of Binational ICS remaining at the end of each Year shall be diminished by annual evaporation losses of three percent (3%). Losses shall be applied annually to the end-

of-the-Year balance of Binational ICS beginning in the Year after the Binational ICS is converted and continuing until no Binational ICS remains in Lake Mead. However, no evaporation losses shall be assessed during a Year in which the Secretary has determined a shortage.

- 7.3.5 The Parties hereby agree to the terms of Exhibit A to the 2017 BICS Agreement. The Parties must agree, prior to execution, to any subsequent exhibit to the 2017 BICS Agreement that does not provide for the deductions described in Sections 7.3.3 and 7.3.4 of this Interim Operating Agreement.
- 7.3.6 Binational ICS may not be transferred to a Contractor in another State.
- 7.4 Binational ICS may be released subject to the following conditions:
 - 7.4.1 If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any Binational ICS. The Contractor may request that the amount of Binational ICS in the Contractor's account be reduced by the amount of the overrun payback obligation in order to pay the overrun payback obligation.
 - 7.4.2 Binational ICS shall only be released pursuant to a determination of an ICS Surplus Condition.
 - 7.4.3. The total amount of Binational ICS and Extraordinary Conservation ICS that may be released in any Year is limited to the following:
 - 7.4.3.1 400,000 acre-feet for California Contractors;
 - 7.4.3.2 300,000 acre-feet for Nevada Contractors; and
 - 7.4.3.3 300,000 acre-feet for Arizona Contractors.
 - 7.4.4 If the May 24-month Study for that Year indicates that a Shortage Condition would be determined in the succeeding Year if the requested amounts for the current Year were released, the Secretary, through the Bureau of Reclamation, may release less than the amounts of Binational ICS requested to be released.
 - 7.4.5 During Flood Control releases, the Secretary shall take actions as described in Section V.E.10 of Minute No. 323.
 - 7.4.6 Binational ICS is not available for delivery in a year for which a shortage condition has been determined.
 - 7.4.7 Contractors shall request delivery of its Binational ICS in the same manner as required for ICS under the 2007 Interim Guidelines.

- 7.4.8 Delivery of Binational ICS will be made pursuant to a Binational ICS Minute 323 Delivery Agreement.
- 7.5 Binational ICS shall be accounted for and reported in the Water Accounting Report described in Section 3.D.3 of the 2007 Interim Guidelines consistent with the provisions of this Interim Operating Agreement.

SECTION 8

- 8.1 Except as provided herein, nothing in this Interim Operating Agreement shall be deemed to diminish or waive the rights of any Party. The failure of any Party to enforce a provision of this Interim Operating Agreement shall not be deemed to constitute a waiver of that provision.
- 8.2 No Party to this Interim Operating Agreement shall be considered to be in default in the performance of any obligations under this Interim Operating Agreement when a failure of performance shall be due to uncontrollable forces. The term “uncontrollable force” shall mean any cause beyond the control of the party unable to perform such obligation, including but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, a federal governmental agency or authority, which by exercise of due diligence and foresight such party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.
- 8.3 All activities undertaken pursuant to this Interim Operating Agreement shall be subject to the availability of funds, resources, and corresponding personnel, as well as to applicable laws and regulations.
- 8.4 The Parties to this Interim Operating Agreement are hereby notified of A.R.S. § 38-511.
- 8.5 The Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.
- 8.6 The Colorado River Board of California (“CRB”) is created by, and operates under, California Water Code sections 12500 et seq. The California Water Code charges the CRB and its officers with the duty to confer with representatives of other States in the Colorado River Basin, representatives of the United States, and others concerning problems and measures relating to the development of the Colorado River Basin, the use of the water of the Colorado River System, and the protection of the interests therein of the State, and to negotiate and to make recommendations respecting such problems and measures. Through its Chairman acting as the Colorado River Commissioner pursuant to the California Water Code section 12525, the Colorado River Board of California has the authority to exercise on behalf of California every right and power granted to California by the Boulder Canyon Project Act of 1928, and to

perform all other things necessary or expedient to carry out the purpose of the Colorado River Board. Under this authority, the CRB through its officers has participated in the negotiation of, and has made recommendations concerning, this Interim Operating Agreement and its exhibits. Although the CRB and the State of California are not Parties to this Interim Operating Agreement, the Parties agree to include the CRB and its officers in any consultations under this Interim Operating Agreement and in any negotiations related to amendment of this Interim Operating Agreement and its exhibits.

- 8.7 Minute No. 323 serves to implement the Treaty through a series of temporary, cooperative measures. Minute No. 323 requires the mutual acceptance, cooperation, and coordination of the Parties for its implementation in the United States. The Parties agree that this Interim Operating Agreement is one of a number of implementing agreements, in the absence of which, Minute No. 323 cannot be implemented.

SECTION 9

- 9.1 **NOTICES AND REQUESTS.** All notices and requests required or allowed under the terms of this Interim Operating Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

ADWR:

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

Bureau of Reclamation:

P.O. Box 61470
Boulder City, NV 89006-1470
Attn: Regional Director

CAWCD:

Central Arizona Water Conservation District
23636 North Seventh Street
Phoenix, AZ 85024
Attn: General Manager

State of Colorado:

Colorado Commissioner to the Upper Colorado River Commission
c/o Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, CO 80203
Attn: Director

CVWD:

Coachella Valley Water District
P. O. Box 1058
Coachella, CA 92236
Attn: General Manager

IID:

Imperial Irrigation District
P.O. Box 937
333 East Barioni Boulevard
Imperial, CA 92251
Attn: General Manager

MWD:

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

City of Needles:

City of Needles
817 Third Street
Needles, CA 92363-2933
Attn: City Manager

State of New Mexico:

New Mexico Interstate Stream Commission
P.O. Box 25102
Santa Fe, NM 87504-5102
Attn: Secretary

Nevada:

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

PVID:

Palo Verde Irrigation District
180 West 14th Avenue
Blythe, CA 92225
Attn: General Manager

SNWA:

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

Upper Colorado River Commission

355 S 400 E
Salt Lake City, UT 84111-2904
Attn: Executive Director

State of Utah:

Utah Division of Water Resources
1594 West North Temple, Suite 310
P.O. Box 146201
Salt Lake City, UT 84114-6201
Attn: Director

State of Wyoming:

Wyoming State Engineer's Office
122 West 25th Street
Herschler Building, 1st Floor West
Cheyenne, WY 82002
Attn: Wyoming State Engineer

9.2 Any Party may, at any time, change its mailing address by notice to the other Parties.

In Witness of this Interim Operating Agreement, the Parties affix their official signatures below, acknowledging execution of this document on this ___th day of _____, 2017.

[Signatures start next page]

Review Draft July 27, 2017

THE UNITED STATES OF AMERICA

By: _____

Terrance J. Fulp, Ph.D.
Regional Director
Bureau of Reclamation

Review Draft July 27, 2017

**THE STATE OF ARIZONA ACTING THROUGH THE ARIZONA DEPARTMENT OF
WATER RESOURCES**

By: _____
Thomas Buschatzke
Director

Review Draft July 27, 2017

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Theodore C. Cooke
General Manager

Review Draft July 27, 2017

COACHELLA VALLEY WATER DISTRICT

By: _____

J. M. Barrett
General Manager

THE STATE OF COLORADO

By: _____

L. James Eklund
Colorado Commissioner, Upper
Colorado River Commission
Governor's Representative

Review Draft July 27, 2017

**THE STATE OF NEVADA ACTING THROUGH THE COLORADO RIVER
COMMISSION OF NEVADA**

By: _____
Jayne Harkins
Executive Director

Review Draft July 27, 2017

IMPERIAL IRRIGATION DISTRICT

By: _____
Kevin E. Kelley
General Manager

Review Draft July 27, 2017

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____
Jeffrey Kightlinger
General Manager

Review Draft July 27, 2017

THE CITY OF NEEDLES

By: _____

City Manager

Review Draft July 27, 2017

THE STATE OF NEW MEXICO

By: _____

Tom Blaine
Secretary, New Mexico Interstate
Stream Commission

Review Draft July 27, 2017

PALO VERDE IRRIGATION DISTRICT

By: _____

Dana B. Fisher, Jr.
President, Board of Trustees

Review Draft July 27, 2017

SOUTHERN NEVADA WATER AUTHORITY

By: _____

John J. Entsminger
General Manager

Review Draft July 27, 2017

UPPER COLORADO RIVER COMMISSION

By: _____

Don Ostler
Executive Director

Review Draft July 27, 2017

THE STATE OF UTAH

By: _____

Eric Millis
Director, Utah Department of Water Resources
Utah Interstate Stream Commission

Review Draft July 27, 2017

THE STATE OF WYOMING

By: _____

Patrick T. Tyrrell
Wyoming State Engineer

Attachment F: MEMORANDUM OF AGREEMENT ON THE IMPLEMENTATION OF MINUTE 323

**MEMORANDUM OF AGREEMENT
ON THE IMPLEMENTATION OF MINUTE NO. 323**

The Secretary of the Interior ("Secretary"); the Commissioner of the Bureau of Reclamation ("Reclamation"); the Commissioner of the United States Section of the International Boundary and Water Commission ("USIBWC"); the State of Arizona, acting through the Arizona Department of Water Resources, the State of Colorado, the State of Nevada, acting through the Colorado River Commission of Nevada, the State of New Mexico, the State of Utah, the State of Wyoming; the Upper Colorado River Commission; the Central Arizona Water Conservation District; the Coachella Valley Water District; the Colorado River Board of California; the Imperial Irrigation District; the Metropolitan Water District of Southern California; and the Southern Nevada Water Authority; collectively the "Parties,"

Recognizing and appreciating the historic opportunity presented to cooperate together with Mexico in the international management of the waters of the Colorado River to ensure the effective use and enjoyment of these waters; and

Desiring to gain experience through a series of temporary measures, including a pilot project to improve infrastructure and conservation in Mexico and share additional flows in Mexico and the United States;

Hereby affirm the following understandings and agreements:

1. The Colorado River is a vital resource to vast areas of the southwestern United States and northwestern Mexico, where it serves as the primary water supply to support agriculture, municipalities, energy, and natural resources.
2. Distribution and use of Colorado River water in the United States is governed by a complex framework of state and federal law, including for the operation of Colorado River infrastructure in the United States by Reclamation. Delivery of specific annual quantities of water from the Colorado River to Mexico is provided for in the 1944 Treaty Concerning the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande (Feb. 3, 1944, U.S.-Mex., 59 Stat. 1219, T.S. 994) ("1944 Water Treaty"), which is administered for the United States by the USIBWC.
3. Since 2007, the United States and Mexico have been voluntarily seeking to identify cooperative opportunities to help ensure that the Colorado River system is able to continue to meet the needs of the people of both countries, particularly through innovative and proactive measures for water conservation, storage, supply augmentation, and environmental protection that both countries could implement consistent with the 1944 Water Treaty.
4. On June 17, 2010, the United States and Mexican Commissioners of the International Boundary and Water Commission ("IBWC") agreed to establish a binational Consultative Council composed of representatives of the IBWC, the respective federal governments and the seven United States Colorado River Basin States, to facilitate consideration of the legal, administrative and policy matters associated with developing opportunities for binational cooperative projects with benefits to both countries.

5. On December 17, 2010, the United States and Mexican IBWC Commissioners executed Minute No. 318 under the 1944 Treaty, providing for the temporary adjustment of delivery schedules for water allotted to Mexico under the 1944 Water Treaty to address Mexico's urgent needs as a result of infrastructure damage in Irrigation District 014 caused by the April 2010 earthquake in the Mexicali Valley, Baja California, Mexico.

6. The most recent binational, cooperative effort between the United States and Mexico, including participation by representatives of the seven United States Colorado River Basin States, was memorialized in Minute No. 319, signed on November 20, 2012. Minute No. 319 provided for a five-year pilot program of temporary measures and increased cooperation and management of the water resources of the Colorado River, including:

- a. Extension of the provisions of Minute No. 318 to address Mexico's continuing need to recover from severe earthquake damage to water infrastructure in the Mexicali Valley, Baja California;
- b. Acceptance by Mexico of voluntary reductions of water deliveries under certain low elevation reservoir conditions;
- c. Provision by the United States for increases of water deliveries to Mexico under certain high elevation reservoir conditions;
- d. Provision for the creation and later delivery of Intentionally Created Mexican Allocation ("ICMA") and the minimization by Mexico of increased salinity impacts; and
- e. Provision by the United States for investment in water conservation and infrastructure projects in Mexico that will generate water for environmental flows in Mexico, as well as for allocation and use of waters within the United States, and to create long-term benefits for water use within Mexico.

7. Consistent with the stated intention of the United States and Mexico as memorialized in Minute No. 319, the United States and Mexico have memorialized a further binational, cooperative effort in Minute No. 323 consisting of a ten-year pilot program of temporary measures and increased cooperation and management of the water resources of the Colorado River, including:

- a. Acceptance by Mexico of voluntary reductions of water deliveries under certain low elevation reservoir conditions;
- b. Acceptance by Mexico of a scarcity plan of required savings of water under certain low elevation reservoir conditions on the specified condition that a U.S. Lower Basin Drought Contingency Plan is effective as authorized by U.S. Federal law.
- c. Provision by the United States for increases of water deliveries to Mexico under certain high elevation reservoir conditions;
- d. Provision for the creation and later delivery of Mexico's Water Reserve and the minimization by Mexico of increased salinity impacts; and,

- e. Provision by the United States for investment in water conservation and infrastructure projects in Mexico that will generate water for environmental flows in Mexico, as well as for allocation and use of waters within the United States, and to create long-term benefits for water use within Mexico.

8. Because of the vested legal rights to water allocations in the United States of certain governmental, agricultural, and municipal entities represented by the Parties, as well as the desire of some of the non-federal Parties to invest in Mexican conservation projects and generate additional water for use by those entities, Minute No. 323 requires the mutual acceptance, cooperation, and coordination of the Parties for its implementation in the United States. The Parties hereby confirm their mutual acceptance, cooperation and coordination to carry out the terms of Minute No. 323, which is memorialized through the agreement and execution on this day of a number of implementing arrangements, in the absence of which Minute No. 323 cannot be implemented. These include:

- a. The Interim Operating Agreement for Implementation of Minute No. 323;
- b. The 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus;
- c. The 2017 Contributed Funds Agreement; and
- d. Agreement Regarding Notice from the Secretary of the Interior for the Purpose of Implementing Section IV of Minute No. 323.

9. Sections III and IV of Minute No. 323 provide that Mexico will decrease its order of Colorado River water when Lake Mead is at or below specific elevations and under specified conditions. Reclamation and the USIBWC hereby confirm that they will implement such decreased deliveries strictly according to the terms of Minute No. 323. Any impacts to salinity resulting from these decreases will be minimized through measures other than through the release of additional water to Mexico.

10. Section II of Minute No. 323 provides that Mexico may order specific limited amounts of additional deliveries under certain high reservoir conditions. Reclamation and the USIBWC recognize and acknowledge that these additional deliveries may only be made available with the agreement of the non-federal Parties. The non-federal Parties hereby confirm that they have agreed to make arrangements to make this quantity of water available to Mexico, consistent with the agreements executed this day.

11. Section IX of Minute No. 323 requires Mexico to provide to the United States 159,100 acre-feet of Mexico's Water Reserve or water from any other source in consideration for funding provided by the United States for infrastructure and conservation improvements in Mexico to generate and conserve water. Sections VIII and IX of Minute No. 323 also require Mexico to provide 70,000 acre-feet of Mexico's Water Reserve or water from any other source for environmental purposes in Mexico on behalf of the United States. Subject to Paragraph 5.2 of the Contributed Funds Agreement, the non-federal Parties to the Contributed Funds Agreement have approved the provision of \$15 million to the United States for transfer to Mexico, and the USIBWC

and Reclamation confirm that they have secured approvals for the provision of \$16.5 million to Mexico for this purpose. The USIBWC hereby confirms that it will implement Minute No. 323 to assure that 159,100 acre-feet of water are available in Mexico's account or its allotment of Colorado River water and are transferred to the United States according to the terms of the Minute. Reclamation confirms that it will transfer the necessary amounts of water to contractors as provided in the implementing agreements executed this day.

12. Because Minute No. 323 can only be implemented with the support, cooperation, and agreement of the non-federal Parties, the USIBWC and Reclamation confirm that they will implement activities under Minute No. 323 strictly according to the terms of Minute No. 323, and will consult and reach consensus with the non-federal Parties before finalizing the Joint Report of the Principal Engineers referenced in Section IV of Minute No. 323, or before extending the terms and cooperative programs of Minute No. 323 or negotiating a new arrangement involving similar or different terms and cooperative programs. The USIBWC and Reclamation further confirm that they will consult with, and seek the continued support, cooperation, and, agreement of the non-Federal parties regarding efforts of the work groups identified in Minute No. 323.

13. Section IV of Minute No. 323 addresses a Binational Water Scarcity Contingency Plan that will become effective when a U.S. Lower Basin Drought Contingency Plan is effective as authorized by U.S. Federal law. The Secretary, or his designee, will notify the U.S. Commissioner of the IBWC that a U.S. Lower Basin Drought Contingency Plan is effective as authorized by U.S. Federal law, as provided in the Agreement Regarding Notice from the Secretary of the Interior for the Purpose of Implementing Section IV of Minute No. 323.

14. Consistent with the assurances and commitments set forth in the February 16, 2012, letter from the Commissioners of Reclamation and the USIBWC, the assurances and commitments set out in this Memorandum of Agreement, and the implementing agreements executed this day, the Parties hereby mutually confirm their agreement to support execution and implementation of Minute No. 323, and to avoid circumstances that could in any way lead to disputes or controversies over interpretation or application of Minute No. 323, the 1944 Treaty, or other applicable provisions of law that govern the Colorado River. If an international or domestic dispute does arise, the USIBWC and Reclamation confirm their intention to consult and work with the non-Federal Parties to resolve any such dispute arising during implementation of Minute No. 323.

15. The Parties confirm their mutual intention that nothing in Minute No. 323 or in its implementation, including the contingent provisions of Section IV regarding the Binational Water Scarcity Contingency Plan, is inconsistent with the express terms of the 1944 Treaty, alters or in any way affects the provisions of the Department of the Interior's 2007 Interim Guidelines for the Operation of Lake Powell and Lake Mead, the authority of the Secretary of the Interior regarding the operation of Colorado River infrastructure in the United States, or their respective rights and obligations thereunder. Nor have they waived any rights, claims, or defenses now or in the future under any applicable federal or state law or administrative rule, regulation or guideline.

Signed, on the ____ day of _____, 2017, in _____, _____.

THE UNITED STATES OF AMERICA

By: _____

Department of the Interior

By: _____

Commissioner
Bureau of Reclamation

By: _____

Edward Drusina
Commissioner
United States Section, International
Boundary and Water Commission

Review Draft July 26, 2017

**THE STATE OF ARIZONA ACTING THROUGH THE ARIZONA DEPARTMENT OF
WATER RESOURCES**

By: _____
Thomas Buschatzke
Director

Review Draft July 26, 2017

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____

Theodore C. Cooke
General Manager

Review Draft July 26, 2017

COACHELLA VALLEY WATER DISTRICT

By: _____

J. M. Barrett
General Manager

Review Draft July 26, 2017

THE STATE OF COLORADO

By: _____

L. James Eklund
Colorado Commissioner, Upper
Colorado River Commission
Governor's Representative

Review Draft July 26, 2017

COLORADO RIVER BOARD OF CALIFORNIA

By: _____

Dana B. Fisher, Jr.
Chairman

Review Draft July 26, 2017

**THE STATE OF NEVADA ACTING THROUGH THE
COLORADO RIVER COMMISSION OF NEVADA**

By: _____
Jayne Harkins
Executive Director

Review Draft July 26, 2017

IMPERIAL IRRIGATION DISTRICT

By: _____
Kevin E. Kelley
General Manager

Review Draft July 26, 2017

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____
Jeffrey Kightlinger
General Manager

Review Draft July 26, 2017

THE STATE OF NEW MEXICO

By: _____

Tom Blaine
Secretary, New Mexico Interstate
Stream Commission

Review Draft July 26, 2017

SOUTHERN NEVADA WATER AUTHORITY

By: _____

John J. Entsminger
General Manager

Review Draft July 26, 2017

UPPER COLORADO RIVER COMMISSION

By: _____
Don Ostler
Executive Director
Upper Colorado River Commission

Review Draft July 26, 2017

THE STATE OF UTAH

By: _____

Eric Millis
Director, Utah Division of Water Resources
Commissioner, Utah Interstate Stream Commission

Review Draft July 26, 2017

THE STATE OF WYOMING

By: _____
Patrick T. Tyrrell
Wyoming State Engineer

Attachment G: 2017 LOWER COLORADO RIVER BASIN AGREEMENT FOR BINATIONAL
INTENTIONALLY CREATED SURPLUS

**2017 Lower Colorado River Basin Agreement for
Binational Intentionally Created Surplus**

The State of Arizona, acting through the Arizona Department of Water Resources (“ADWR”); the Coachella Valley Water District (“CVWD”); the Imperial Irrigation District (“IID”); the Metropolitan Water District of Southern California (“MWD”); the City of Needles; the Southern Nevada Water Authority (“SNWA”); the State of Nevada, acting through the Colorado River Commission of Nevada (“CRCN”); and the Palo Verde Irrigation District (“PVID”); enter into this 2017 Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus (“2017 BICS Agreement”) as follows:

Recitals

- A. The purposes of this 2017 BICS Agreement are to:
1. Allow Contractors to invest in projects in Mexico that will make additional water available for use in the United States, through the creation, release, and use of Binational Intentionally Created Surplus (“Binational ICS”);
 2. Help reduce the probability and severity of shortages to the Lower Basin;
 3. Benefit both Lake Mead and Lake Powell by avoiding reaching critical elevations;
 4. Increase the surface elevations of both Lakes Powell and Mead to higher levels than would have otherwise occurred; and
 5. Assure any Contractor that invests in projects in Mexico to create Binational ICS under this 2017 BICS Agreement that no Contractor within another state will claim the Binational ICS created by the Contractor.
- B. The Parties to the 2017 BICS Agreement and their respective authority to forbear are as follows:
1. ADWR, through its Director, is the successor to the signatory agency of the State for the 1922 Colorado River Compact, and the 1944 Contract for Delivery of Water with the United States, both authorized and ratified by the Arizona Legislature, A.R.S. §§ 45-1301 and 1311. Pursuant to A.R.S. § 45-107, the Director is authorized and directed, 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 exercise by the Secretary of Congressionally authorized 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. Additionally, under A.R.S. § 45-105(A)(9), the Director is authorized to “prosecute and defend all rights, claims and privileges of this state respecting interstate streams.”

2. SNWA is a Nevada joint powers agency and political subdivision of the State of Nevada, created by 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 this 2017 BICS Agreement and, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928, SNWA has the right to divert ICS released by the Secretary for use within the State of Nevada pursuant to the Consolidated Decree.
3. CRCN is an agency of the State of Nevada, authorized generally by N.R.S. §§ 538.041 and 538.251. CRCN is authorized by N.R.S. § 538.161 (6), (7) to enter this 2017 BICS Agreement. The CRCN, in furtherance of the State of Nevada's responsibility to promote the health and welfare of its people in Colorado River matters, makes this 2017 BICS Agreement to supplement the supply of water in the Colorado River which is available for use in Nevada, augment the waters of the Colorado River, and facilitate the more flexible operation of dams and facilities by the Secretary.
4. PVID is an irrigation district created under the Palo Verde Irrigation District Act, codified at Section 33-1 *et seq.* of the Appendix to the California Water Code, and delivers Colorado River water in Riverside and Imperial Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
5. CVWD is a county water district created under the California County Water District Law, codified at Section 30000 *et seq.* of the California Water Code, and delivers Colorado River water to portions of its service area in Imperial, Riverside, and San Diego Counties, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928 and the California Quantification Settlement Agreement.
6. IID is an irrigation district created under the California Irrigation District Law, codified at Section 20500 *et seq.* of the California Water Code, and delivers Colorado River water in Imperial County, California, pursuant to its contract issued under Section 5 of the Boulder Canyon Project Act of 1928.
7. MWD is a metropolitan 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.
8. The City of Needles is a charter city duly authorized and existing under and by the laws of the State of California and delivers Colorado River water, either directly or by exchange, to portions of Imperial, Riverside, and San Bernardino Counties, California, pursuant to its contracts issued under Section 5 of the Boulder Canyon Project Act of 1928.

- C. On December 13, 2007, the Parties to this 2017 BICS Agreement executed the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement (“2007 Forbearance Agreement”), which allowed Contractors to develop and take delivery of ICS through conservation and augmentation projects in the United States.
- D. On December 13, 2007, the Secretary adopted the Record of Decision for Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Interim Guidelines”), which includes provisions for the creation and delivery of ICS that are consistent with the provisions of the 2007 Forbearance Agreement. *See* 2007 Interim Guidelines, 73 Fed. Reg. 19873-19892.
- E. On _____, the Commissioners of the International Boundary and Water Commission (“IBWC”) executed Minute No. 323, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin (“Minute No. 323”), which allows, among other things, U.S. entities to fund projects in Mexico that will create Mexico’s Water Reserve, a portion of which could be converted to Binational ICS.
- F. The Secretary, by and through the U.S. Department of the Interior, Bureau of Reclamation, the Parties to this 2017 BICS Agreement, and the other relevant parties are simultaneously entering an Interim Operating Agreement that addresses implementation of Minute No. 323, particularly the conversion of Mexico’s Water Reserve to Binational ICS. Nothing in the Interim Operating Agreement is intended to amend or affect the terms of Minute No. 323.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

Article 1 Definitions and Term

1.1 Definitions.

The definitions in the Interim Surplus Guidelines described in the Record of Decision dated January 16, 2001, and modified by the 2007 Interim Guidelines are hereby incorporated in this 2017 BICS Agreement. In addition, each of the following terms shall have the meaning defined here. All defined terms shall be identified by initial letter capitalization.

- A. “2007 Forbearance Agreement” shall mean the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement executed on December 13, 2007.
- B. “2017 BICS Agreement” shall mean this Lower Colorado River Basin Agreement for Binational Intentionally Created Surplus.

- C. “2007 Interim Guidelines” shall mean Section XI of the Record of Decision issued by the Secretary for the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead.
- D. “Binational ICS” shall mean Binational Intentionally Created Surplus.
- E. “Binational ICS Account” shall mean records established by the Secretary regarding Binational ICS.
- F. “Interim Operating Agreement” shall mean the Interim Operating Agreement for Implementation of Minute No. 323, entered simultaneously with the execution of this 2017 BICS Agreement.
- G. “Mexico’s Water Reserve” shall mean water described in Section V of Minute No. 323.
- H. “Minute No. 323” shall mean Minute No. 323, Extension of Cooperative Measures and Adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin.
- I. “Parties” shall mean all of the signatories to this 2017 BICS Agreement.
- J. “Waiver” shall mean an agreement, as described in Part XI.A.1 of the 2007 Interim Guidelines, to refrain from exercising the right to surplus Colorado River water under the specified terms and conditions of this 2017 BICS Agreement.

1.2 Term of the 2017 BICS Agreement.

This 2017 BICS Agreement shall commence on the latter of the date Minute No. 323 enters force or the date of execution by all Parties and shall terminate December 31, 2026; provided, however, that any Binational ICS remaining on December 31, 2026, may be released as provided herein until December 31, 2036.

1.3 Seven Colorado River Basin States’ Agreement.

Notwithstanding Article 1.2 above, if one or more states withdraw from the agreement dated April 23, 2007, executed by the seven Colorado River Basin states, the Parties to this 2017 BICS Agreement shall consult to determine whether to continue this 2017 BICS Agreement in effect or to amend or terminate this 2017 BICS Agreement. In such event, the terms of this 2017 BICS Agreement shall continue in effect until the Parties have consulted and agreed to continue, amend, or terminate this 2017 BICS Agreement. In the event of termination, all Parties shall be relieved from the terms hereof and this 2017 BICS Agreement shall be of no further force or effect.

Article 2
Conversion of Mexico's Water Reserve to Binational ICS and
Release of Binational ICS

2.1 Binational ICS

Pursuant to procedures set forth in the Interim Operating Agreement, a Contractor may make contributions of capital to participate in a binational project in Mexico that will create Mexico's Water Reserve. A portion of Mexico's Water Reserve created by the binational project may be converted to Binational ICS for use by the contributing Contractors.

2.2 Creation of Binational ICS

Mexico's Water Reserve may be converted to Binational ICS subject to the following conditions:

- A. The amount of Mexico's Water Reserve shall be determined per the terms of Minute No. 323, and will be calculated based on reduced delivery volumes to Mexico.
- B. In accordance with Section 7.3 of the Interim Operating Agreement, the Secretary, through the Bureau of Reclamation, shall determine the portion of Mexico's Water Reserve that will be converted to Binational ICS and added to each Contractor's Binational ICS Account in consultation with the Lower Division States, with notification to the Upper Division states, and provide a final written decision to the Parties. Any Party may appeal Reclamation's determination of the amount of Binational ICS through administrative and judicial processes.
- C. Unless otherwise provided in an exhibit to this 2017 BICS Agreement, there shall be a one-time deduction of two percent (2%) from the amount of Binational ICS in the Year of its creation. This deduction results in additional water storage in Lake Mead for future use in accordance with the Consolidated Decree and the 2007 Interim Guidelines.
- D. Unless otherwise provided in an exhibit to this 2017 BICS Agreement, the quantity of Binational ICS remaining at the end of each Year shall be diminished by annual evaporation losses of three percent (3%). Losses shall be applied annually to the end-of-the-Year balance of Binational ICS beginning in the Year after the Binational ICS is created and continuing until no Binational ICS remains in Lake Mead. However, no evaporation losses shall be assessed during a Year in which the Secretary has determined a shortage.
- E. Binational ICS may not be transferred to a Contractor in another State.

2.3 Request for Release of Binational ICS

Binational ICS may be released subject to the following conditions:

- A. If a Contractor has an overrun payback obligation, as described in the October 10, 2003 Inadvertent Overrun and Payback Policy, the Contractor must pay the overrun payback obligation in full before requesting or receiving a release of any Binational ICS. The Contractor may request that the amount of Binational ICS in the Contractor's account be reduced by the amount of the overrun payback obligation to pay the overrun payback obligation.
- B. Binational ICS shall only be released pursuant to a determination of an ICS Surplus Condition.
- C. The total amount of Binational ICS and Extraordinary Conservation ICS that may be released in any Year is limited to the following:
 - 1. 400,000 acre-feet for California Contractors;
 - 2. 300,000 acre-feet for Nevada Contractors; and
 - 3. 300,000 acre-feet for Arizona Contractors.
- D. If the May 24-month Study for that Year indicates that a Shortage Condition would be determined in the succeeding Year if the requested amounts for the current Year were released, the Secretary, through the Bureau of Reclamation, may release less than the amounts of Binational ICS requested to be released.
- E. During Flood Control releases, the Secretary shall take actions as described in Paragraph V.E.10 of Minute No. 323.
- F. Binational ICS is not available for delivery in a year for which a shortage condition has been determined.

**Article 3
WAIVER**

3.1 In the absence of Waiver, surplus water is apportioned for use per the percentages provided in Article II(B)(2) of the Consolidated Decree. The Parties respectively agree as follows:

- A. ADWR hereby agrees not to exercise any right the State of Arizona may have to delivery of any Binational ICS released in accordance with the terms and conditions set forth in this 2017 BICS Agreement and any applicable Delivery Agreement for use within the State of California or the State of Nevada.
- B. PVID, CVWD, the City of Needles, IID and MWD hereby agree not to exercise any right they may have to delivery of any Binational ICS released in accordance with the terms and conditions set forth in this 2017 BICS Agreement and any applicable Delivery Agreement for use within the State of Arizona or the State of Nevada.

- C. SNWA and CRCN hereby agree not to exercise any right SNWA or the State of Nevada may have to delivery of any Binational ICS released in accordance with the terms and conditions set forth in this 2017 BICS Agreement and any applicable Delivery Agreement for use within the State of Arizona or the State of California.

3.2 Notwithstanding the foregoing Waiver of Binational ICS, the Parties only forbear with respect to Binational ICS that is created pursuant to exhibits attached to and incorporated within this 2017 BICS Agreement. This 2017 BICS Agreement incorporates Exhibit A as of the date of execution. Additional exhibits may be added to this 2017 BICS Agreement after written approval of all the Parties. Such approval shall not be unreasonably withheld.

3.3 In this 2017 BICS Agreement, the Parties do not forbear any right to the release or delivery of any water that is not described herein.

3.4 Waiver of all Parties is conditioned on the following:

- A. The execution, by the Secretary and any Contractor seeking to create Binational ICS, of a Delivery Agreement if the Parties to this 2017 BICS Agreement are third-party beneficiaries of such Delivery Agreement.
- B. The implementation by the Secretary, through the Bureau of Reclamation, of the Interim Operating Agreement, which includes Binational ICS procedures in substantial conformance with the provisions of this 2017 BICS Agreement and any Delivery Agreement.
- C. The continued implementation of an ICS program that is in substantial conformance with this 2017 BICS Agreement and any Delivery Agreement, including:
 - 1. The availability of the decision and appeal process described in Article 2.2(B);
 - 2. The establishment and use of Mexico's Water Reserve and Binational ICS accounting procedure by the Secretary, through the Bureau of Reclamation, in the 2017 Interim Operating Agreement; and
 - 3. The Secretary's annual determination of Normal, Surplus (other than Quantified Surplus), or Shortage conditions based on conditions in Lake Mead with consideration of the amount of Binational ICS accumulated by the Parties and the amount of Mexico's Water Reserve accumulated by Mexico. For the purpose of determining the existence, and establishing the volume, of Quantified Surplus, the Secretary shall not consider any volume of Binational ICS and Mexico's Water Reserve.

Article 4
General Provisions

4.1 The records of any Party to this 2017 BICS Agreement that relate to the creation of Binational ICS shall be open to inspection by any other Party.

4.2 The Parties to this 2017 BICS Agreement are hereby notified of A.R.S. § 38-511.

4.3 The Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

4.4 Except as provided in Article 3, nothing in this 2017 BICS Agreement shall be deemed to diminish or waive the rights of any Party. The failure of any Party to enforce a provision of this 2017 BICS Agreement shall not be deemed to constitute a waiver of that provision. The execution of, and BICS in compliance with, this 2017 BICS Agreement shall not be admissible against any Party in any action except for an action to enforce the terms of this 2017 BICS Agreement or a Delivery Agreement.

4.5 No Party to this 2017 BICS Agreement shall be in default in the performance of any obligations under this 2017 BICS Agreement when a failure of performance shall be due to uncontrollable forces. The term “uncontrollable force” shall mean any cause beyond the control of the Party unable to perform such obligation, including but not limited to failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, and other natural catastrophes, epidemic, war, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, restraint by order of a court or regulatory agency of competent jurisdiction, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, a federal governmental agency or authority, which by exercise of due diligence and foresight such Party could not reasonably have been expected to overcome. Nothing contained herein shall be construed to require any Party to settle any strike or labor dispute in which it is involved.

4.6 The Colorado River Board of California (“CRB”) is created by, and operates under, California Water Code sections 12500 et seq. The California Water Code charges the CRB and its officers with the duty to confer with representatives of other States in the Colorado River Basin, representatives of the United States, and others concerning problems and measures relating to the development of the Colorado River Basin, the use of the water of the Colorado River System, and the protection of the interests therein of the State, and to negotiate and to make recommendations respecting such problems and measures. Through its Chairman acting as the Colorado River Commissioner pursuant to the California Water Code section 12525, the Colorado River Board of California has the authority to exercise on behalf of California every right and power granted to California by the Boulder Canyon Project Act of 1928, and to perform all other things necessary or expedient to carry out the purpose of the Colorado River Board. Under this authority, the CRB through its officers has participated in the negotiation of, and has made recommendations concerning, this 2017 BICS Agreement and its exhibits. Although the CRB and the State of California are not Parties to this 2017 BICS Agreement, the Parties agree to include the CRB and its officers in any consultations under this 2017 BICS Agreement and in any negotiations related to amendment of this 2017 BICS Agreement and its exhibits.

Article 5
Notices

5.1 Notices and Requests

- A. All notices and requests required or allowed under the terms of this 2017 BICS Agreement shall be in writing and shall be mailed first class postage paid to the following entities at the following addresses:

State of Arizona:

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

State of California:

Colorado River Board of California
770 Fairmont Avenue, Suite 100
Glendale, CA 91203-1068
Attn: Executive Director

CRCN:

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

CVWD:

Coachella Valley Water District
P. O. Box 1058
Coachella, CA 92236
Attn: General Manager

IID:

Imperial Irrigation District
P.O. Box 937
333 East Barioni Boulevard
Imperial, CA 92251
Attn: General Manager

MWD:

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

City of Needles:

City of Needles
817 Third Street
Needles, CA 92363-2933
Attention: City Manager

PVID:

Palo Verde Irrigation District
180 West 14th Avenue
Blythe, CA 92225
Attn: General Manager

SNWA:

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

- B. Any Party may, at any time, change its mailing address by notice to the other Parties.

In Witness of this 2017 BICS Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the ___th day of ___, 2017.

[Signatures start next page]

Review Draft July 26, 2017

THE STATE OF ARIZONA ACTING THROUGH THE ARIZONA DEPARTMENT OF
WATER RESOURCES

By: _____
Thomas Buschatzke
Director

Approved as to form:

By: _____
Nicole D. Klobas
Deputy Counsel

Review Draft July 26, 2017

COACHELLA VALLEY WATER DISTRICT

By: _____
J. M. Barrett
General Manager

Approved as to form:

By: _____
Steven B. Abbott
Special Counsel

Review Draft July 26, 2017

THE STATE OF NEVADA ACTING THROUGH THE COLORADO RIVER COMMISSION
OF NEVADA

By: _____
Jayne Harkins
Executive Director

Approved as to form:

By: _____
Jennifer T. Crandell
Special Counsel Attorney General

Review Draft July 26, 2017

IMPERIAL IRRIGATION DISTRICT

By: _____
Kevin E. Kelley
General Manager

Approved as to form:

By: _____
General Counsel

Review Draft July 26, 2017

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____
Jeffrey Kightlinger
General Manager

Approved as to form:

By: _____
Marcia L. Scully
General Counsel

Review Draft July 26, 2017

THE CITY OF NEEDLES

By: _____

City Manager

Approved as to form:

By: _____

Special Counsel

Review Draft July 26, 2017

PALO VERDE IRRIGATION DISTRICT

By: _____
Dana B. Fisher, Jr.
President, Board of Trustees

Review Draft July 26, 2017

SOUTHERN NEVADA WATER AUTHORITY

By: _____
John J. Entsminger
General Manager

Approved as to form:

By: _____
Gregory J. Walch
General Counsel

Exhibit A

Minute No. 323 Pilot Program

Pursuant to procedures set forth in Minute No. 323 and the 2017 BICS Agreement, Contractors and Reclamation will make contributions of capital to create 159,100 acre-feet of Mexico's Water Reserve. Of that volume, 109,100 acre-feet will be converted to Binational ICS and distributed to the contributing Contractors in proportion to each Contractor's contribution. The remaining 50,000 acre-feet, created based on Reclamation's capital contribution, will be debited from Mexico's account for the benefit of the Colorado River System.

The contributing Contractors will contribute a total of \$15,000,000 during the term of Minute No. 323. The 109,100 acre-feet of Binational ICS will be distributed to the contributing Contractors in proportion to each Contractor's capital contribution.

Pursuant to the procedures set forth in Minute No. 323 and the 2017 BICS Agreement, an additional 109,100 acre-feet of Mexico's Water Reserve may be converted to Binational ICS under this Exhibit.

The contributing Contractors will not request delivery of the Binational ICS created pursuant to Minute No. 323 until its conversion from Mexico's Water Reserve and its credit to the Contractor's Binational ICS account.

There will be no deduction from the amount of Binational ICS created under this Exhibit A pursuant to Article 2.2(C) or Article 2.2(D) of the 2017 BICS Agreement and Article 7.3.3 and 7.3.4 of the Interim Operating Agreement because the 50,000 acre-feet will exceed the sum of the 2% assessment pursuant to Article 2.2(C) and evaporation assessments pursuant to Article 2.2(D).

In Witness of this Exhibit A to the 2017 BICS Agreement, the Parties affix their official signatures below, acknowledging execution of this document on the ___th day of _____, 2017.

[Signatures start next page]

Review Draft July 26, 2017

THE STATE OF ARIZONA ACTING THROUGH THE ARIZONA DEPARTMENT OF
WATER RESOURCES

By: _____
Thomas Buschatzke
Director

Approved as to form:

By: _____
Nicole D. Klobas
Deputy Counsel

Review Draft July 26, 2017

COACHELLA VALLEY WATER DISTRICT

By: _____
J. M. Barrett
General Manager

Approved as to form:

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Steven B. Abbott
Special Counsel

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Special Counsel Attorney General

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IMPERIAL IRRIGATION DISTRICT

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Kevin E. Kelley
General Manager

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By: _____
General Counsel

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THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

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Jeffrey Kightlinger
General Manager

Approved as to form:

By: _____
Marcia L. Scully
General Counsel

Review Draft July 26, 2017

THE CITY OF NEEDLES

By: _____

City Manager

Approved as to form:

By: _____

Special Counsel

Review Draft July 26, 2017

PALO VERDE IRRIGATION DISTRICT

By: _____
Dana B. Fisher, Jr.
President, Board of Trustees

Review Draft July 26, 2017

SOUTHERN NEVADA WATER AUTHORITY

By: _____
John J. Entsminger
General Manager

Approved as to form:

By: _____
Gregory J. Walch
General Counsel

Attachment H: AGREEMENT REGARDING NOTICE FROM THE SECRETARY OF THE INTERIOR FOR THE PURPOSES OF IMPLEMENTING SECTION IV OF MINUTE 323

**AGREEMENT REGARDING NOTICE FROM THE SECRETARY OF THE INTERIOR
FOR THE PURPOSE OF IMPLEMENTING SECTION IV OF MINUTE NO. 323**

The State of Arizona, acting through the Arizona Department of Water Resources, the Colorado River Board of California, the State of Colorado, the State of Nevada, acting through the Colorado River Commission of Nevada and the Southern Nevada Water Authority, the State of New Mexico, the State of Utah, the State of Wyoming; the Upper Colorado River Commission; together the “non-federal Parties,” and the Secretary of the Interior (“Secretary”), collectively the “Parties,” hereby enter into this Agreement to clearly define the process for implementing Section IV of Minute No. 323 in a manner that recognizes and respects the rights and obligations of each Party concerning the Colorado River and encourages cooperative efforts in drought contingency planning and operations throughout the Colorado River Basin.

Representations and Acknowledgements

1. The Parties agree that it is in their interests that Minute No. 323, the successor to Minute No. 319, be executed before Minute No. 319 expires on December 31, 2017.
2. The Parties support the need for and broad goals of drought contingency planning in the United States with participation by Mexico through implementation of the Binational Water Scarcity Contingency Plan described in Section IV of Minute No. 323.
3. Each of the Parties has participated in the development of Minute No. 323 and the drought contingency plans within the United States, and further has interests related to initiation and implementation of the Binational Water Scarcity Contingency Plan.
4. The Parties acknowledge that the Colorado River Basin States are engaged in ongoing work and consultation regarding both the Lower Basin Drought Contingency Plan (LBDCP) and the Upper Basin Drought Contingency Plan (UBDCP).
5. The Parties acknowledge that drought contingency planning in the United States will not be finalized or fully executed prior to the expiration of Minute No. 319, or the execution of Minute No. 323.
6. The Parties acknowledge that certain provisions of the current working version of the LBDCP are inconsistent with some Parties’ interpretations of certain provisions of the Law of the River.¹
7. The Parties acknowledge that the implementation of Section IV of Minute No. 323 is contingent upon an LBDCP, consistent with the water savings described in Section IV of Minute No. 323, being finalized and made effective as authorized by U.S. federal law.

¹ The "Law of the River" as mentioned in this Agreement refers to the body of law existing on the date of this Agreement and affecting the interstate and international use, management, and allocation of water in the Colorado River System, including the 1922 Colorado River Compact, the Mexican Water Treaty of 1944, the 1948 Upper Colorado River Basin Compact, several United States Supreme Court decisions, the Consolidated Decree in *Arizona v. California*, and a host of federal laws and administrative regulations.

Agreement

In light of the contingent nature of the Binational Water Scarcity Contingency Plan, the Parties agree that the Secretary will notify the U.S. Commissioner of the IBWC that an LBDCP is effective as authorized by U.S. federal law and thereby initiate implementation of Section IV of Minute No. 323 only after full execution of an LBDCP and satisfaction of the following commitments and agreements:

A. Drought Contingency Plan Finalization

Because the Binational Water Scarcity Contingency Plan is contingent upon an effective LBDCP, and because both an LBDCP and a UBDCP relate to interests, rights and obligations regarding the Colorado River, the Parties agree to work together to seek consensus in finalizing both an LBDCP and a UBDCP.

B. Legislative Efforts

1. LBDCP

As acknowledged above, certain provisions of the current working version of the LBDCP are inconsistent with some Parties' interpretations of the Law of the River. The non-federal Parties, therefore, agree to work together in a consensus-based effort to develop and seek federal legislation that directs the Secretary to execute and implement the final LBDCP.

If such federal legislation is enacted and upon full execution of the LBDCP, then the Secretary will give notice as provided in Section IV of Minute No. 323 to the U.S. Commissioner of the IBWC subject to Paragraph C of this Agreement.

If any Party considers the federal legislation enacted for the LBDCP to be inconsistent with the LBDCP as developed pursuant to Paragraph A, or if federal legislation has not been enacted, then any Party may request that all Parties meet to seek consensus on a path forward, or may invoke the dispute resolution process in Paragraph D.

2. UBDCP

Nothing in this Section B precludes or interferes with any effort by the non-federal parties to seek federal legislation regarding all or a part of the UBDCP. If such legislation is sought, the non-federal parties agree to apply the same consensus-based approach as is applicable to the LBDCP per this Agreement to develop and seek federal legislation.

C. Secretarial Notice of Effectiveness of LBDCP

The Secretary will provide the Parties with at least 14 days advance notice of his or her intention to notify the U.S. Commissioner of the IBWC that an LBDCP is effective as authorized by U.S. federal law. Provision of such notice does not constitute an interpretation of or affect the application or requirements of the Law of the River in the United States.

D. Dispute Resolution Process

In the event that any Party becomes concerned that there may be a claim or controversy under this Agreement, or related to finalization or implementation of the LBDCP, such Party shall notify all other Parties in writing, and the Parties shall meet in good faith in order to resolve such claim or

controversy by mutual agreement before initiating any judicial or administrative proceeding against any other Party, and no claim thereunder shall be ripe until such dispute resolution process set forth in this Paragraph D has been completed.

In the event a Party has an objection to the Secretary providing notice to the U.S. Commissioner of the IBWC as described in Paragraph C of this Agreement, such Party shall notify all other Parties in writing via email, and all Parties agree to meet in good faith to attempt to resolve such claim or controversy by mutual agreement within the timeframe provided in Paragraph C. No claim regarding such objection shall be ripe until such meeting has occurred.

E. Reservation of Rights

The Parties agree and acknowledge that in the event consensus cannot be reached on any matter after the processes set forth in Paragraphs A through D above have been satisfied, each Party reserves its right to proceed with any activities as may be authorized under its authorities and applicable law, or pursue any claim it may have under applicable law.

F. Term of this Agreement

This Agreement shall become effective upon execution by all of the Parties and shall remain in effect until the earliest of: (1) the date the Secretary gives notice as provided in Section IV of Minute No. 323 to the U.S. Commissioner of the IBWC in accordance with the terms of this Agreement; (2) the expiration or termination of Minute No. 323; or (3) December 31, 2026.

G. Authority

The persons and entities executing this Agreement on behalf of the Parties are recognized by the Parties as those persons and entities authorized to bind the respective parties to the terms hereof. Each person executing this Agreement has the full power and authority to bind their respective Party to the terms of this Agreement.

Signed, on the _____th day of _____, 2017, in _____.

THE UNITED STATES OF AMERICA

By: _____

Department of the Interior

Review Draft July 26, 2017

**THE STATE OF ARIZONA ACTING THROUGH THE ARIZONA DEPARTMENT OF
WATER RESOURCES**

By: _____
Thomas Buschatzke
Director

Review Draft July 26, 2017

THE STATE OF COLORADO

By: _____

L. James Eklund
Colorado Commissioner, Upper
Colorado River Commission
Governor's Representative

Review Draft July 26, 2017

COLORADO RIVER BOARD OF CALIFORNIA

By: _____

Dana B. Fisher, Jr.
Chairman

Review Draft July 26, 2017

**THE STATE OF NEVADA ACTING THROUGH THE COLORADO RIVER
COMMISSION OF NEVADA**

By: _____
Jayne Harkins
Executive Director

Review Draft July 26, 2017

THE STATE OF NEW MEXICO

By: _____

Tom Blaine
Secretary, New Mexico Interstate
Stream Commission

Review Draft July 26, 2017

SOUTHERN NEVADA WATER AUTHORITY

By: _____

John J. Entsminger
General Manager

Review Draft July 26, 2017

UPPER COLORADO RIVER COMMISSION

By: _____

Don Ostler
Executive Director
Upper Colorado River Commission

Review Draft July 26, 2017

THE STATE OF UTAH

By: _____
Eric Millis
Director, Utah Division of Water Resources
Commissioner, Utah Interstate Stream Commission

Review Draft July 26, 2017

THE STATE OF WYOMING

By: _____
Patrick T. Tyrrell
Wyoming State Engineer