

PEORIA CAP COMPENSATED CONSERVATION AGREEMENT

AGREEMENT AMONG, THE UNITED STATES, ACTING THROUGH THE DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, CENTRAL ARIZONA WATER CONSERVATION DISTRICT AND CITY OF PEORIA FOR THE CONSERVATION OF CENTRAL ARIZONA PROJECT WATER

1. **PREAMBLE.** THIS AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2022 by and between the United States, acting through the Department of the Interior, Bureau of Reclamation (“United States”), the Central Arizona Water Conservation District (“CAWCD”) and City of Peoria (“Peoria”), each referred to individually as a “Party” and collectively as the “Parties.”

2. **EXPLANATORY RECITALS.**

2.1 WHEREAS, in 2007, the United States Secretary of the Department of the Interior (“Secretary”), adopted a Record of Decision: the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”), to among other things, provide incentives and tools for the storage of water in Lake Mead and for Lake Mead elevation-dependent shortages;

2.2 WHEREAS, in 2019 the Lower Division States entered into a Lower Basin Drought Contingency Plan Agreement that further incentivized conservation and storage in Lake Mead and established elevation-dependent contributions to Lake Mead’s sustainability, including required contributions by each Lower Basin State. Federal legislation, the Colorado River Drought Contingency Plan Act, Pub. L. No. 116-14 (2019) directed the Secretary to implement a number of agreements, including specifically an agreement applicable in the Lower Basin that implemented a Lower Basin Drought Contingency Operations rule set known as the “LBOps;”

2.3 WHEREAS, the LBOPs provide that “If any 24-month Study for the minimum probable inflows projects that Lake Mead elevations will be at or below 1,030 feet anytime within the succeeding two Years, the Secretary and Lower Division States shall consult and determine what additional measures will be taken by the Secretary and Lower Division States to avoid and protect against the potential for Lake Mead to decline below 1,020 feet,” and the Bureau of Reclamation’s August 2021 24-month study using the minimum probable inflow projected Lake Mead would fall below elevation 1,030 feet in July of 2023;

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2.4 WHEREAS, Pursuant to the requirements of the LBOs, the Secretary and representatives of the Lower Division States met and concluded that at least 500,000 acre-feet per year of additional reductions in water use or augmentation of system water would be required starting in 2022 to protect against the potential of Lake Mead declining to levels below elevation 1,020 feet;

2.5 WHEREAS, on December 15, 2021, the United States, ADWR, CAWCD, The Metropolitan Water District of Southern California ("MWD"), Southern Nevada Water Authority ("SNWA"), and the Colorado River Commission of Nevada ("CRCN") entered into a Memorandum of Understanding to facilitate near-term actions necessary to maintain the elevation of water in Lake Mead, including commitments to fund conservation activities designed to conserve 500,000 acre-feet or more of water in Lake Mead, commonly referred to as the 500 + Plan; and

2.6 WHEREAS, the Parties desire to take proactive measures consistent with the 500 + Plan to protect against the potential of Lake Mead dropping to elevation 1,020 feet. Peoria is willing to conserve 10,000 acre-feet of CAP water in calendar year 2022 for this purpose, in exchange for compensation, as provided for in this Agreement.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

3. TERM.

3.1 This Agreement shall be effective upon execution by all Parties and shall terminate on December 31, 2022.

3.2 The Parties may agree to renew this Agreement for calendar year 2023 by entering into a new agreement in writing.

4. COMPENSATED CONSERVATION AGREEMENT.

4.1 Within 30 days of execution of this Agreement, Peoria shall submit to CAWCD an amended CAP water order reducing its existing water order for calendar year 2022 by 10,000 acre-feet ("Conserved Water Amount").

a. Peoria's submission in this Section 4.1 is contingent upon the United States entering into agreements with communities and various entities in Arizona for creating at least an aggregate of 35,000 acre-feet of additional System

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Conservation for incorporation into the United States Bureau of Reclamation's forthcoming August 24-Month Study.

4.2 The Parties agree that the water conserved under this Agreement will reduce releases of water from Lake Mead to benefit Lake Mead water elevations.

4.3 Within 60 days of receipt of Peoria's amended water order, the United States will pay Peoria \$261.60 per acre-foot of conserved water for a total of \$2,616,000.

4.4 The water left in Lake Mead under this Agreement will not be charged against the Peoria's use of Colorado River water or charged to Arizona's Colorado River apportionment. The quantity of Conserved Water Amount noted in this Agreement shall be deemed to have been delivered pursuant to Peoria's CAP water delivery contract when determining the amount of CAP M&I Priority Water available to Peoria during a time of shortage, and participation by Peoria in this Agreement and in providing that a portion of its CAP water entitlement will remain in Lake Mead, shall not constitute nor shall it be construed as a direct or indirect use of a portion of its CAP water entitlement outside the State which is prohibited under subsection 309(b)(2)(E) of the Arizona Water Settlements Act (Public Law 108-451).

4.5 CAWCD shall not bill Peoria, and Peoria shall be relieved of its obligation to pay for CAP Fixed OM&R and Pumping Energy charges for the total Conserved Water Amount identified in Section 4.1 herein.

4.6 In the unanticipated and unforeseen event Peoria takes action that interferes with the objective of foregoing the amount of water that was paid for by the Parties, in accordance with this Agreement, Peoria agrees to reimburse for the overpayment within 30 days of receipt of a bill for collection from the United States.

4.7 The United States will use its existing water order approval process and other authorities to ensure that the Conserved Water under this Agreement is not ordered or used by other Colorado River water entitlement holders during calendar year 2022.

4.8 The Parties agree that the water left in Lake Mead pursuant to this Agreement shall accrue to the benefit of the Colorado River System and shall not accrue to the individual benefit of the Parties or any third party.

5. **GENERAL TERMS.**

5.1 Amendment, Modifications, and/or Supplement. This Agreement may be amended, modified, or supplemented only by the written, signed agreement of all Parties.

5.2 Notices. Any notice, demand, or request authorized or required by this Agreement shall be in writing and shall be deemed to be duly given if emailed, delivered, or mailed first class the following addresses:

If to CAWCD:

Central Arizona Water Conservation District
Attn: General Manager

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P.O. Box 43020
Phoenix, AZ 85080-3020

With copy to:

Jay Johnson
General Counsel
Central Arizona Water Conservation District
Attn: General Manager
P.O. Box 43020
Phoenix, AZ 85080-3020
Email: jjohnson@cap-az.com

If to Reclamation:

Bureau of Reclamation
Interior Region 8: Lower Colorado Basin
Attn: Regional Director
P.O. Box 61470
Boulder City, NV 89006-1470
Email: slwade@usbr.gov

With a copy to:

Bureau of Reclamation
Phoenix Area Office
Attn: Area Manager
6150 West Thunderbird Road
Glendale, AZ 85306
Email: lmeyers@usbr.gov

If to Peoria:

City of Peoria
Attn: Water Service Director
9875 N. 85th Avenue
Peoria, AZ 85345
cape.powers@peoriaaz.gov

With a copy to:

City Attorney
City of Peoria
8401 W. Monroe Street
Peoria, AZ 85345
ted.mariscal@peoriaaz.gov

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The Parties agree that for purposes of complying with this Section that electronic mail is acceptable. A Party may update its contact information in this Section without need to amend this Agreement by providing Notice to the Parties consistent with this Section.

5.3 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together constitute only one Agreement.

5.4 Binding Effect and Limited Assignment. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and excludes and supersedes any other oral or written agreements, undertakings or commitments of the Parties relating to the subject matter of this Agreement. The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties. No assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by all Parties.

5.5 Governing Law and Venue. This Agreement shall be interpreted, governed by, and construed under applicable Federal law and any relevant provisions of Arizona state law. In case of conflict between Federal law and Arizona state law, Federal law controls. 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 appropriate Federal Court.

5.6 Contingent on Appropriations or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.

5.7 Dispute Resolution.

i. The Parties shall meet and confer in good faith to resolve any dispute that may arise under this Agreement.

ii. Should the Parties be unable to resolve such dispute after meeting to try to resolve the dispute, any Party may file an action in any court of competent jurisdiction to seek specific performance of any obligation, provision, or term of condition set forth in this Agreement.

iii. Monetary damages, other than through specific performance of any obligation under this Agreement, shall not be available as a remedy for any dispute under this Agreement.

5.8 Recitals. The Explanatory Recitals are incorporated and made a part hereof as if fully set forth herein.

5.9 Severability. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect.

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5.10 Records Retention. Peoria agrees to retain all data, books, and other records (“records”) relating to this Agreement for a period of five years after the termination of this Agreement. All records shall be subject to inspection and audit by the Parties at reasonable times. Upon request, Peoria shall provide the Parties with any or all such records.

5.11 Equal Opportunity/Non-Discrimination. The Parties agree to comply with all applicable federal or state laws relating to equal opportunity and non-discrimination.

5.12 Conflict of Interest. This Agreement is subject to cancellation by CITY pursuant to the provisions of Arizona Revised Statutes § 38-511.

SIGNATURES BEGIN ON NEXT PAGE

THE UNITED STATES OF AMERICA

By: _____
Jacklynn L. Gould, P.E.
Regional Director
Interior Region 8: Lower Colorado Basin
Bureau of Reclamation

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Approved as to form:

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: _____
Jay M. Johnson
General Counsel

By: _____
Theodore C. Cooke
General Manager

DRAFT

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Approved as to form:

THE CITY OF PEORIA

By: _____

By: _____

Name: _Vanessa Hickman_____

Jeff Tyne, City Manager

Title: __City Attorney_____

Attest:

By: _____

Lori Dyckman, City Clerk