

QUANTIFICATION SETTLEMENT AGREEMENT

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS

 1.1 Definitions.....

 1.2 Rules of Construction and Word Usage.....

ARTICLE 2 WATER BUDGETS

 2.1 IID Water Budget.....

 2.2 CVWD Water Budget

 2.3 MWD Water Budget.....

ARTICLE 3 TERM/CLOSING/EFFECTIVE DATE.....

 3.1 Term.....

 3.2 Closing Date.....

 3.3 Effective Date.....

 3.4 Early Termination.....

 3.5 Effect of Termination

ARTICLE 4 ADDITIONAL SETTLEMENT PROVISIONS.....

 4.1 General Settlement Provisions; No Admission of Settlement
 Terms; Reservation of Rights and Claims.....

 4.2 All-American Canal and Coachella Canal Lining Projects
 Conserved Water.....

 4.3 Other Acquisitions of Colorado River Water

 4.4 Salinity Control Act Interim Period

 4.5 CVWD Utilization of Water.....

 4.6 CVWD Groundwater Storage of IID Water.....

 4.7 Public Awareness Program.....

 4.8 Shortage and Sharing of Reduced Water Availability.....

 4.9 Amendments to Acquisition Agreements

 4.10 MWD Mitigation of Certain Effects of Interim Surplus Guidelines

 4.11 SWRCB Proceeding.....

 4.12 MWD Reparations to Arizona and Nevada.....

ARTICLE 5 REPRESENTATIONS AND WARRANTIES.....

 5.1 IID’s Representations and Warranties.....

 5.2 CVWD’s Representations and Warranties.....

 5.3 MWD’s Representations and Warranties

ARTICLE 6 GENERAL CONDITIONS TO IID, MWD AND CVWD OBLIGATIONS

6.1 Performance by IID, CVWD and MWD

6.2 Satisfaction of General Conditions to IID's, MWD's and CVWD's Obligations.....

6.3 Contribution to Satisfaction of Environmental Obligations Conditions

6.4 Written Waiver of Conditions.....

6.5 Determination of Environmental Cost Conditions.....

ARTICLE 7 PARTICULAR CONDITIONS TO IID'S OBLIGATIONS.....

7.1 Conditions to IID's Obligations.....

ARTICLE 8 PARTICULAR CONDITIONS TO CVWD'S OBLIGATIONS.....

8.1 Conditions to CVWD's Obligations.....

ARTICLE 9 PARTICULAR CONDITIONS TO MWD'S OBLIGATIONS.....

9.1 Conditions to MWD's Obligations.....

ARTICLE 10 REMEDIES.....

10.1 Specific Performance.....

10.2 Cumulative Rights and Remedies.....

10.3 Action or Proceeding between the Parties.....

ARTICLE 11 GENERAL PROVISIONS.....

11.1 Notices.....

11.2 Waiver.....

11.3 Post-Closing Notices.....

11.4 Counterparts.....

11.5 No Third-Party Rights.....

11.6 Ambiguities.....

11.7 Alterations in PPI or GDPIPD Inflation Indices.....

11.8 Governing Law.....

11.9 Binding Effect; No Assignment.....

11.10 Joint Defense.....

11.11 Entire Agreement

11.12 Modification

EXHIBITS

Exhibit A	CVWD/MWD Acquisition Agreement
Exhibit B	IID/CVWD Acquisition Agreement
Exhibit C	IID/MWD Acquisition Agreement
Exhibit D	Implementation Agreement
Exhibit E	Protest Dismissal Agreement
Exhibit F	Inadvertent Overrun and Payback Program
Exhibit G	Interim Surplus Guidelines
Exhibit H	Amendment to U.S./CVWD Amendatory Contract
Exhibit I	Environmental Cost Sharing Agreement

ATTACHMENTS

Attachment 1	Example of Inflation Index Calculation
Attachment 2	Example of MWD Mitigation of Certain Interim Surplus Guideline Effects

APPENDICES

Appendix 5.1	IID Pending or Threatened Disputes Schedule
Appendix 5.2	CVWD Pending or Threatened Disputes Schedule
Appendix 5.3	MWD Pending or Threatened Disputes Schedule

QUANTIFICATION SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2001, by and among Imperial Irrigation District ("IID"), a California irrigation district, The Metropolitan Water District of Southern California ("MWD"), a California metropolitan water district, and Coachella Valley Water District ("CVWD"), a California county water district, each of which is at times referred to individually as "Party" and which are at times collectively referred to as "Parties."

RECITALS:

A. IID is an irrigation district organized under the California Irrigation District Law, codified at §§ 20500 et seq. of the California Water Code, and delivers Colorado River water in Imperial County, California for potable and irrigation purposes.

B. MWD is a metropolitan water district organized under the California Metropolitan Water District Act, § 109-1 of the Appendix to the California Water Code, and engaged in developing, storing and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, California.

C. CVWD is a county water district organized under the California County Water District Law, codified at §§ 30000 et seq. of the California Water Code, and delivers Colorado River water in Riverside County, California for potable and irrigation purposes.

D. IID, MWD, PVID and CVWD are each contractors with the United States for delivery of Colorado River water as authorized by the Boulder Canyon Project Act (Act of December 21, 1928: 45 Stat.1057, as amended.)

E. Pursuant to those contracts, PVID, the Yuma Project (Reservation Division), IID and CVWD (collectively "the agricultural agencies") hold California's first three priorities to Colorado River water and are collectively entitled to the beneficial consumptive use as reasonably required of not to exceed 3,850,000 AFY. The fourth and fifth priorities totaling 1,212,000 AFY are held by MWD. The sixth priority of 300,000 AFY is held by IID, CVWD and PVID. The seventh priority of all remaining water available for use within California is reserved for agricultural use in the Colorado River Basin within California, which includes the lands within IID, CVWD and PVID. MWD and CVWD also have surplus water delivery contracts with the Secretary of the Interior.

F. MWD, IID and CVWD recognize that they have differences of opinion over various legal questions including the right to transfer water and the volumes of water to which the various right holders are entitled, but each Party wishes to go forward with this Agreement and associated agreements without regard to certain current or future differences, subject to the provisions of Article 4 hereof.

G. This Agreement and the Related Agreements are intended to consensually settle longstanding disputes regarding the priority, use and transfer of Colorado River water, to establish by agreement the terms for the further distribution of Colorado River water among the Parties for up to seventy-five years based upon the water budgets set forth herein, and to facilitate agreements and actions which will enhance the certainty and reliability of Colorado River water supplies available to the Parties and assist the Parties in meeting their water demands within California's apportionment of Colorado River water by identifying the terms, conditions and incentives for the conservation and distribution of Colorado River water within California.

H. IID seeks to settle disputes with CVWD and MWD and to use proceeds from the acquisition of Conserved Water by those Parties from IID to improve the reliability, efficiency and management of its Colorado River supply.

I. CVWD seeks to settle disputes with IID and MWD and to acquire Conserved Water for agricultural uses to accommodate anticipated reductions in groundwater extraction.

J. MWD seeks to settle disputes with IID and CVWD and to ensure the reliability of its Colorado River supplies.

K. The Parties intend that the Effective Date (defined below) of this Agreement will be contingent upon the completion of review and adequate provision for any required mitigation under and in compliance with the California Environmental Quality Act, California Public Resources Code §§ 2100 et seq. ("CEQA").

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** As used in this Agreement, the following terms have the following meanings:

(1) **Approval Agreement.** The agreement between IID, MWD, CVWD and PVID dated December 19, 1989, and entitled Approval Agreement.

(2) **1998 IID/SDCWA Transfer Agreement.** The Agreement for Transfer of Conserved Water by and between IID and SDCWA dated April 29, 1998, as amended substantively by the Third Amendment dated _____, 2001, with such further changes thereto as IID and SDCWA may from time to time agree subject to the provisions of Section 4.9 hereof.

(3) **Acquisition Agreements.** Collectively, the 1998 IID/SDCWA Transfer Agreement, the CVWD/MWD Acquisition Agreement, the IID/MWD Acquisition Agreement, the IID/CVWD Acquisition Agreement, and the MWD/CVWD Transfer and Exchange Agreement.

(4) **AF.** Acre-foot, a measure of volume.

(5) **AFY.** Acre-feet per Calendar Year.

(6) **All-American Canal**. The canal and appurtenant works from Imperial Dam to the Imperial and Coachella Valleys authorized in Section 1 of the Boulder Canyon Project Act.

(7) **Allocation Agreement**. The Agreement dated as of the Closing Date among the Parties, PVID, City of Escondido, Vista Irrigation District, San Luis Rey River Indian Water Authority, the La Jolla, Pala, Pauma, Rincon and San Pasqual Bands of Mission Indians and the Secretary, concerning the allocation of Conserved Water created by the lining of the All-American Canal and the Coachella Canal, with such changes thereto as such parties may from time to time agree in writing.

(8) **Assignment (or Assign)**. Any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights in or arising from this Agreement to any person or entity (excluding such a transfer by operation of law), regardless of the legal form of the transaction in which the attempted transfer occurs.

(9) **BOR**. The United States Bureau of Reclamation.

(10) **Business Day**. A day that is not a Saturday, Sunday, or federal or California state legal holiday.

(11) **Calendar Year**. The 12-month period running from January 1 through December 31.

(12) **Calendar Year Quarter**. Any of the four three-month periods (i) January to March; (ii) April to June; (iii) July to September; or (iv) October to December.

(13) **CEQA**. As defined in Recital K.

(14) **Closing Date**. The date established by the Parties as soon as practicable after each Party determines that the respective conditions set forth in Section 6.2 applicable to all Parties and in Sections 7.1, 8.1 and 9.1 applicable to IID, CVWD and MWD, respectively, have been satisfied or waived, which date shall be no later than December 31, 2002.

(15) **Coachella Canal**. The Coachella branch of the All-American Canal leading from the All-American Canal to the CVWD service area authorized in Section 1 of the Boulder Canyon Project Act.

(16) **Colorado River Aqueduct**. The aqueduct system owned and operated by MWD and extending from Lake Havasu to Lake Mathews in Riverside County.

(17) **Conserved Water**. Water made available for acquisition under this Agreement and the Related Agreements attributable to: (a) Temporary Land Fallowing or crop rotation, if an allowed use is for irrigation, or (b) projects or programs that enable the use of less water to accomplish the same purpose or purposes of allowed use; provided, however, that such term does not include water attributable to:

(i) the activities described in (a) or (b) above not voluntarily undertaken; or

(ii) to the activities described in (a) above voluntarily undertaken in exchange for money payment or other valuable consideration received from a governmental source; and

(iii) the resulting volume of reduced water used from (i) or (ii) above cannot be used anywhere within the IID service area, as described in IID's Section 5 Contract as in effect on October 15, 1999.

(18) **Consumptive Use.** The diversion of water from the main stream of the Colorado River, including water drawn from the main stream by underground pumping, net of measured and unmeasured return flows.

(19) **Conveyance Loss.** The actual loss of water to evaporation, seepage, or other similar cause resulting from any transportation of Conserved Water from Imperial Dam to the CVWD service area or to the MWD service area, as the case may be.

(20) **CVWD.** As defined in Recital C.

(21) **CVWD/MWD Acquisition Agreement.** The agreement between CVWD and MWD dated as of the Closing Date regarding the acquisition of Conserved Water in the form attached hereto as Exhibit A, with such changes thereto as CVWD and MWD may from time to time agree subject to the provisions of Section 4.9 hereof.

(22) **CVWD/MWD Supplemental Agreement.** The agreement between CVWD and MWD dated December 19, 1989 and entitled Agreement to Supplement Approval Agreement.

(23) **Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement.** The date on which the Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement becomes effective.

(24) **Delegation (or Delegate).** Any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the obligations or liabilities in or arising from this Agreement to any person or entity (excluding such a transfer by operation of law), regardless of the legal form of the transaction in which the attempted transfer occurs.

(25) **Decree Accounting Process.** The BOR process described in and contemplated under Section 9.1(1) hereof.

(26) **Effective Date.** The "initial transfer date" as such term is defined in and determined under the 1998 IID/SDCWA Transfer Agreement.

(27) **Environmental Cost Sharing Agreement.** The Agreement among IID, CVWD, SDCWA and MWD dated as of ____, 2001, concerning the sharing and payment of

certain environmental review and mitigation costs pertaining to this Agreement and the Related Agreements, in the form attached hereto as Exhibit I, with such changes thereto as such parties may from time to time agree in writing.

(28) **Environmental Cost Condition Precedent Test Date**. The ninetieth day after the first date on which all environmental review and assessment contemplated under Section 6.2(2)(a) hereof are completed and all resource approvals contemplated under Section 6.2 (2)(b) hereof have been obtained. In the event that any action is filed challenging any such review, assessment or approval and is not finally resolved before such ninetieth day, the "**Second Environmental Cost Condition Precedent Test Date**" shall be the ninetieth day after the first date on which all such actions are finally resolved.

(29) **Environmental Mitigation Insurance**. One or more insurance policies which may be obtained and maintained by and with the consent of each of the Parties and SDCWA insuring IID and SDCWA (and CVWD and MWD to the extent their interests may appear) by indemnity or other means, at coverage levels and upon other terms acceptable to them, in their discretion, against the risk of unanticipated environmental consequences that may result in mitigation costs with respect to the transactions contemplated by the 1998 IID/SDCWA Transfer Agreement in excess of the IID Environmental Cost Ceiling and the Authority Environmental Cost Ceiling, as such terms are defined in the 1998 IID/SDCWA Transfer Agreement.

(30) **Execution Date**. The date on which the Parties have signed this Agreement; provided, however, that, if the Parties sign on different dates, the Execution Date is the date on which the last-to-sign Party has signed this Agreement.

(31) **Flood Control Release**. The release of water from Lake Mead and the operation of Hoover Dam for flood control purposes pursuant to the reservoir operating criteria specified in the February 8, 1984 Field Working Agreement between the U.S. Army Corps of Engineers and the BOR, and the U.S. Army Corps of Engineers regulations contained in Volume 33 of the Code of Federal Regulations, Part 208.11.

(32) **Force Majeure**. An event, not within the control of the Parties, which materially and adversely affects the performance of their respective obligations and duties to properly construct, operate, establish, implement or maintain the means of creating or receiving deliveries of Conserved Water.

(33) **GDPIPD Inflation Index**. For any Calendar Year Quarter after the fourth Calendar Year Quarter of 1998, the ratio of the published value for that quarter of the Gross Domestic Product Implicit Price Deflator published quarterly by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business, divided by the value of the Gross Domestic Product Implicit Price Deflator for the fourth Calendar Year Quarter of 1998. The GDPIPD Inflation Index for future quarter "n" is calculated by the following formula:

GDPIPD Inflation Index Quarter "n"
GDPIPD Inflation Index Fourth Quarter 1998

(34) **IID**. As defined in Recital A.

(35) **IID/CVWD Acquisition Agreement**. The agreement between IID and CVWD dated as of the Closing Date regarding the acquisition of Conserved Water in the form attached hereto as Exhibit B, with such changes thereto as IID and CVWD may from time to time agree subject to the provisions of Section 4.9 hereof.

(36) **IID/MWD 1988 Agreement**. The agreement between IID and MWD dated December 22, 1988, and entitled Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water.

(37) **IID/MWD Acquisition Agreement**. The agreement between IID and MWD dated as of the Closing Date regarding the acquisition of Conserved Water in the form attached hereto as Exhibit C, with such changes thereto as IID and MWD may from time to time agree subject to the provisions of Section 4.9 hereof.

(38) **Implementation Agreement**. The agreement among the Parties, SDCWA, and the Secretary, dated as of the Closing Date, containing the terms of agreement with the Secretary to honor the terms of this Agreement and the Related Agreements in taking actions concerning the Colorado River, in the form attached hereto as Exhibit D, with such changes thereto as the Parties and the Secretary may from time to time approve in writing.

(39) **Improvement District No. 1**. That area of land described in Exhibit "B" of the Contract for Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures and for Delivery of Water between the United States and Coachella Valley County Water District dated October 15, 1934, as heretofore or hereafter modified under Section 15 of the Agreement of Compromise between Imperial Irrigation District and Coachella Valley County Water District dated February 14, 1934; provided, however, that any modification that requires IID's consent shall also require MWD's consent for purposes of this definition.

(40) **Inadvertent Overrun and Payback Program**. The BOR program described in and contemplated under Section 6.2(4) hereof.

(41) **Inflation Index**. For any Calendar Year Quarter ending after January 1, 1999, the arithmetic average of the PPI Inflation Index and the GDPIPD Inflation Index. The Inflation Index for any future Calendar Year Quarter "n" is calculated by the following formula:

$$I_n = \frac{(\text{PPI Inflation Index} + \text{GDPIPD Inflation Index})}{2}$$

An example of the calculation of the Inflation Index is provided in Attachment 1.

(42) **Interim Surplus Guidelines**. The federal guidelines described in and contemplated under Section 6.2(5) hereof.

(43) **MWD**. As defined in Recital B.

(44) **MWD/CVWD Transfer and Exchange Agreement**. The agreement between MWD and CVWD dated as of the Closing Date regarding the transfer by MWD to CVWD of thirty-five thousand (35,000) AFY of MWD's State Water Project entitlement and the exchange of such water for Colorado River water, with such changes thereto as MWD and CVWD may from time to time agree subject to the provisions of Section 4.9 hereof.

(45) **"N" Dollars**. That nominal dollar amount in a future Calendar Year Quarter "n" which, when adjusted based on the Inflation Index ("I_n") is equivalent to the specified dollar amount in the Agreement measured as of the Year Z specified in the Agreement. The adjustment is calculated according to the following formula:

$$\text{"N" Dollars} = \text{Nominal Dollar Amount} = \$\text{zzz}(\text{Year Z}) \times \text{Inflation Index}_n$$

(46) **Neutral County**. Any county other than Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego or Ventura.

(47) **Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement**. The termination of the 1998 IID/SDCWA Transfer Agreement after the Effective Date,

(i) other than by the mutual voluntary agreement or consent of IID and SDCWA;

(ii) by reason of the environmental condition subsequent contained in Sections 7.1(b)(iii) and 8.1(b)(iii) of the 1998 IID/SDCWA Transfer Agreement, but only after the later of December 31, 2016 or December 31 of the fifteenth (15th) year after the initial implementation of the Interim Surplus Guidelines, and after taking into account any proceeds of, or the value of other benefits provided by, any Environmental Mitigation Insurance, and without IID or SDCWA exercising rights under Sections 7.3 or 8.3 of the 1998 IID/SDCWA Transfer Agreement; or

(iii) by reason of the expiration of the Initial Term without the commencement of a Renewal Term in Year 46, as defined in the 1998 IID/SDCWA Transfer Agreement, as it existed on April 29, 1998, or as the Initial and Renewal Term may be modified to change Year 46 to Year 31.

(48) **PPI Inflation Index**. For the last month of any Calendar Year Quarter ending after January 1, 1999, the ratio for the published value for that month of the Producer Price Index for the Materials and Components for Construction (ID #WPUSOP2200) published by the United States bureau of Labor Statistics, divided by the published value for December

1998. The PPI Inflation Index for future month "n" is calculated by the following formula for published values:

$$\frac{\text{PPI month "n"}}{\text{PPI December 1998}}$$

(49) **Priority "Z"**. The contractual priority level of the right to Colorado River water by the California agencies with Section 5 Contracts, with "Z" varying between Priority 1 and Priority 7, as set forth in the provisions of Article I, Sections 1-7 of the Seven Party Agreement of 1931, which provisions are included in each Section 5 Contract.

(50) **PVID**. The Palo Verde Irrigation District, an irrigation district organized under the Palo Verde Irrigation District Act, §§ 33-1 et seq. of the Appendix to the California Water Code.

(51) **Related Agreements**. The Acquisition Agreements, the Allocation Agreement, the Implementation Agreement, the IID/MWD 1988 Agreement, the 1989 Approval Agreement, the CVWD/MWD Supplemental Agreement, and any other agreements, amendments and waivers entered into or adopted by or with the written consent of all Parties in connection with this Agreement or made pursuant to Section 4.9 hereof.

(52) **SDCWA**. The San Diego County Water Authority, a California county water authority incorporated under the California County Water Authority Act, §§ 45-1 et seq. of the Appendix to the California Water Code.

(53) **Secretary**. The Secretary of the United States Department of the Interior, and duly appointed successors, representatives and others with properly delegated authority.

(54) **Section 5 Contract**. A contract between the Secretary and a California agency for permanent service for the delivery of Colorado River water, established pursuant to Section 5 of the Boulder Canyon Project Act, 43 U.S.C. § 617d.

(55) **SWRCB**. The California State Water Resources Control Board.

(56) **Temporary Land Fallowing**. The creation of Conserved Water from the retirement of land from crop production activities for a period starting no earlier than the Effective Date and ending on or prior to the Termination Date.

(57) **Termination Date**. If the Closing Date has not occurred by December 31, 2002, the Termination Date is December 31, 2002; if the Closing Date has by then occurred, the Termination Date is the earlier of (i) the Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement, (ii) the date on which the Inadvertent Overrun and Payback Program adopted by BOR in satisfaction of the condition set forth in Section 6.2(4) hereof expires or terminates, or (iii) December 31 of Year 75.

(58) **"Year _____" (e.g., Year 25.)** One in the series of Calendar Years occurring after the Effective Date with Year 1 being the first full Calendar Year after the Effective Date; **provided, however,** that if the Effective Date occurs on or before June 30th of any Calendar Year, Year 1 shall commence on the Effective Date and end on December 31st of that Calendar Year.

1.2 Rules of Construction and Word Usage. Unless the context clearly requires otherwise:

- (1) The Recitals to this Agreement are a part of this Agreement to the same extent as the Articles;
- (2) The Exhibits and Attachments attached to this Agreement are incorporated by reference and are to be considered part of the terms of this Agreement;
- (3) The plural and singular numbers include the other;
- (4) The masculine, feminine, and neuter genders include the others;
- (5) "Shall," "will," "must," and "agrees" are each mandatory;
- (6) "May" is permissive;
- (7) "May not" is prohibitory;
- (8) "Or" is not exclusive;
- (9) "Includes" and "including" are not limiting;
- (10) "Between" includes the ends of the identified range;
- (11) "Person" includes any natural person or legal entity; and
- (12) "Transfer," when used herein or in the Related Agreements in relation to a transaction involving Conserved Water, does not mean or imply that the Parties agree as to whether any such transaction is properly characterized as a transfer under California law or whether such transaction is subject to SWRCB jurisdiction.

ARTICLE 2 WATER BUDGETS

2.1 IID Water Budget.

- (1) **Priority 3a Cap.** IID's Consumptive Use entitlement under its share of Priority 3a is capped by this Agreement at three million one hundred thousand (3,100,000) AFY at Imperial Dam, less (i) the Conserved Water made available by IID for use by others

hereunder, and (ii) the water made available under Paragraph (2) of this Section 2.1 to the extent charged to Priority 3a, and **plus** any Conserved Water made available to IID from the lining of the All-American and Coachella Canals, as provided under and subject to the terms and conditions of the Allocation Agreement. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Program. Any Colorado River water permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's.** IID shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Program, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water, up to a maximum of eleven thousand five hundred (11,500) AFY. IID's obligation to forbear use of water for this purpose may be charged, at IID's option, to its rights under Priorities 6a, 7 or 3a as available. In the event it is not necessary in any Year for IID and CVWD to collectively forbear a total of fourteen thousand five hundred (14,500) AF for this purpose, then a credit equal to the difference between 14,500 AF and the amount of actual necessary forbearance responsibility shall be shared seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(3) **IID Priority 6a Forbearance and Priority 7 Use.** IID agrees to forbear Consumptive Use under Priority 6a sufficient to enable IID, CVWD and MWD to Consumptively Use Priority 6a water as it may be available in accordance with the following order of use, except as may otherwise be required under the Interim Surplus Guidelines: first, thirty-eight thousand (38,000) AFY to MWD; second, sixty-three thousand (63,000) AFY to IID; third, one hundred nineteen thousand (119,000) AFY to CVWD; fourth, any balance of Priority 6a and 7 water available in accordance with the priorities identified in IID, CVWD and MWD Section 5 Contracts, as in effect on October 15, 1999. Should IID, CVWD or MWD not Consumptively Use all or any of the Priority 6a or 7 water available to it as provided above, any unused volume shall be available in the above order to meet the next lower order Consumptive Use needs.

(4) **Acquisition Mechanism and Location.** IID performs its obligations to make Conserved Water available for CVWD and MWD acquisition as contemplated by this Agreement by reducing its Consumptive Use at Imperial Dam by an amount equal to the Conserved Water to be acquired. When IID acts in that manner, IID has satisfied its obligation to make Conserved Water available for acquisition. CVWD and MWD each accept responsibility for any arrangements and facilities necessary to divert the Conserved Water made available to either of them and for any Conveyance Loss. CVWD and MWD have no duty to divert any or all of the Conserved Water. The payments by CVWD and MWD to IID under their respective Acquisition Agreements are for the conservation and acquisition of the Conserved Water, whether or not CVWD or MWD actually diverts that Conserved Water.

(5) **Conserved Water for CVWD.** IID shall make Conserved Water available to CVWD under and subject to the terms and conditions of the IID/CVWD Acquisition Agreement and the Implementation Agreement.

(6) **Conserved Water for SDCWA**. The terms and conditions applicable to IID's conservation and transfer of Conserved Water to SDCWA contemplated by this Agreement shall be as set forth in the 1998 IID/SDCWA Transfer Agreement.

(7) **Conserved Water for MWD**. IID shall make Conserved Water available to MWD under and subject to the terms and conditions of the IID/MWD Acquisition Agreement.

(8) **Conserved Water from Canal Lining Projects**. Conserved Water resulting from the lining of the All-American Canal and the Coachella Canal shall be made available to MWD (or to IID) and others, as provided under and subject to the terms and conditions of the Allocation Agreement.

2.2 CVWD Water Budget.

(1) **Priority 3a Cap**. CVWD's Consumptive Use entitlement under its share of Priority 3a is capped by this Agreement at three hundred thirty thousand (330,000) AFY at Imperial Dam, less (i) Conserved Water made available from the lining of the Coachella Canal, as provided under and subject to the terms and conditions of the Allocation Agreement, and (ii) the water made available under Paragraph (2) of this Section 2.2 to the extent charged to Priority 3a. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Program and the Decree Accounting Program. Any Colorado River water acquired from any Party pursuant to a transaction contemplated by this Agreement or permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's**. CVWD shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Program, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water, up to a maximum of three thousand (3,000) AFY. CVWD's obligation to forbear use of water for this purpose may be charged, at CVWD's option, to its rights under Priorities 6, 7 or 3 as available. In the event that it is not necessary in any Year for IID and CVWD to collectively forbear a total of fourteen thousand five hundred (14,500) AF for this purpose, then a credit equal to the difference between 14,500 AF and the amount of actual necessary forbearance responsibility shall be shared seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(3) **CVWD Priority 6a Forbearance and Priority 7 Use**. CVWD agrees to forbear Consumptive Use under Priority 6a sufficient to enable IID, CVWD and MWD to Consumptively Use Priority 6a water as it may be available in accordance with the following order of use, except as may otherwise be provided under the Interim Surplus Guidelines: first, thirty-eight thousand (38,000) AFY to MWD; second, sixty-three thousand (63,000) AFY to IID; third, one hundred nineteen thousand (119,000) AFY to CVWD; fourth, any balance of Priority 6a and 7 water available in accordance with the priorities identified in the IID, CVWD and MWD Section 5 Contracts, as in effect on October 15, 1999. Should IID, CVWD or MWD not Consumptively Use all or any of the Priority 6a or 7 water available to it as provided above, any

unused volume shall be available in the above order to meet the next lower order Consumptive Use needs.

(4) **Acquisition From IID.** The terms and conditions applicable to the acquisition of Conserved Water by CVWD from IID, as contemplated by this Agreement, shall be as set forth in the IID/CVWD Acquisition Agreement.

(5) **Acquisition From MWD.** The terms and conditions of the acquisition of water and entitlement to water by CVWD from MWD, as contemplated by this Agreement, shall be as set forth in the CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement.

2.3 MWD Water Budget.

(1) **MWD Priority 4 and 5 Cap.** MWD's Consumptive Use entitlements under Priorities 4 and 5 are capped by this Agreement at five hundred fifty thousand (550,000) AFY, and six hundred sixty-two thousand (662,000) AF, respectively, at Lake Havasu, less the water made available under paragraph (2) of this Section 2.3 to the extent charged to Priority 4 or 5. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Program. Water made available by MWD to CVWD in any Year pursuant to this Agreement shall be charged at MWD's option to any water available to MWD in that Year. Any Colorado River water acquired from any Party pursuant to a transaction contemplated by this Agreement or permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's.** MWD shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Program, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water in excess of fourteen thousand five hundred (14,500) AFY. MWD's obligation to forbear Consumptive Use for this purpose shall be charged at MWD's option to any Priority pursuant to which MWD has water available.

(3) **Priorities 1 & 2 Consumptive Use Over and Under 420,000 AF.** MWD shall be responsible when necessary, in conjunction with the Inadvertent Overrun and Payback Program, for repayment of any overrun as a result of aggregate use by Priorities 1, 2 and 3b in excess of four hundred twenty thousand (420,000) AFY; and to the extent that Priorities 1, 2 and 3b use is less than 420,000 AFY, MWD shall have the exclusive right to Consumptively Use such unused water.

(4) **Acquisitions From IID.** The terms and conditions applicable to the acquisition of Conserved Water by MWD from IID, as contemplated by this Agreement, shall be as set forth in the IID/MWD Acquisition Agreement and the Allocation Agreement.

(5) **Acquisition From CVWD.** The terms and conditions of the acquisition of water by MWD from CVWD, as contemplated by this Agreement, shall be as set forth in the MWD\CVWD Transfer and Exchange Agreement and the Allocation Agreement.

(6) **Acquisition by CVWD.** The terms and conditions of the acquisition of water and entitlement to water by CVWD from MWD, as contemplated by this Agreement, shall be as set forth in the CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement.

ARTICLE 3 TERM/CLOSING/EFFECTIVE DATE

3.1 Term. This Agreement shall commence on the Execution Date and shall terminate on the Termination Date.

3.2 Closing Date. As of the Closing Date, provided that the parties shall each have completed any necessary public or other review process and shall each have received a final determination of approval from its governing board concerning the obligations contemplated by this Agreement, each Party shall execute and deliver the Acquisition Agreements and the Implementation Agreement to which it is a signatory and shall use its reasonable efforts to obtain the execution and delivery of the Implementation Agreement by the Secretary.

3.3 Effective Date. Notwithstanding any other provision of this Agreement, the obligations of the Parties under Articles 2 and 4, and under the related provisions of the Acquisition Agreements and the Implementation Agreement contemplated by this Agreement, shall be contingent upon the occurrence of, and shall not become effective until, the Effective Date.

3.4 Early Termination. In the event of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement:

(1) **Advance Notice.** IID shall, to the extent reasonably possible, give the other Parties, SWRCB, BOR and the Secretary at least 12 months advance written notice of such event together with a written explanation of the underlying factors and calculations;

(2) **Relief or Contribution.** Any termination pursuant to Section 1.1 (47) (ii) shall not be effective and shall be of no further force or effect, if, prior to the Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement, SDCWA or IID, as applicable, shall have exercised its rights under Sections 7.3 or 8.3 of the 1998 IID/SDCWA Transfer Agreement, or funding for or other relief from the environmental excess costs, as reasonably determined pursuant to the 1998 IID/SDCWA Transfer Agreement, shall have been covered by Environmental Mitigation Insurance or authorized by enactment of California or federal legislation, or by final California or federal administrative action, or one or both of the other Parties shall have agreed to fund the excess cost amount; and

(3) **Base Obligation.** In the event that relief or contribution is timely provided or agreed to in accordance with the foregoing, IID shall undertake the additional

measures and pay for the excess environmental costs, subject to its entitlement to such relief or contribution.

3.5 Effect of Termination. As of the Termination Date, neither the terms of this Agreement nor the conduct of the Parties in performance of this Agreement shall be construed to enhance or diminish the rights of any of the Parties as such rights existed at the Execution Date, including any enhancement or diminishment by reason of an alleged application of common law principles of reliance, estoppel, intervening public use, domestic or municipal priority, shortage or emergency, or equitable apportionment. Notwithstanding any provision to the contrary in this Agreement, in the Acquisition Agreements, or in the Implementation Agreement, all water budget components contemplated under Article 2 of this Agreement and all state and federal approvals, permits and water contract amendments issued or adopted in connection therewith, other than environmental related permits with continuing mitigation obligations, shall thereupon terminate by consent of each of the Parties, which consents are hereby given, and which consents shall be reaffirmed in writing at the request of any Party, and the rights of the Parties shall revert to the status quo as though the Parties had never entered into, or intended to enter into, this Agreement, the Acquisition Agreements, or the Implementation Agreement.

ARTICLE 4 ADDITIONAL SETTLEMENT PROVISIONS

4.1 General Settlement Provisions; No Admission of Settlement Terms; Reservation of Rights and Claims.

The Parties do not agree on the nature or scope of their relative rights to the delivery, use or transfer of Colorado River water. This Agreement is a consensual, comprehensive settlement arrangement acceptable to all Parties. It does not reflect any Party's rights or claims singularly or collectively, nor does it reflect the anticipated, predicted or possible outcome to any of the many disputes between the Parties if they were to be resolved without consensus. The Parties acknowledge that this Agreement is, in fact, a settlement and thus may not be used for any purpose in any judicial, legislative or administrative proceeding, and may not be used in any future attempt to reallocate water or water rights or to reorder the priorities of the Parties upon the termination of this Agreement. Subject to the provisions of this Agreement which compromise such matters, the legal rights, duties, obligations, powers and claims of each Party are preserved and may be acted upon by any Party during the term of this Agreement.

4.2 All-American Canal and Coachella Canal Lining Projects Conserved Water.

(1) The Parties agree that sixty seven thousand seven hundred (67,700) AFY and twenty six thousand (26,000) AFY, subject to the provisions of the Allocation Agreement, are to be the amounts of Conserved Water from the completed All-American Canal Lining Project and the Coachella Canal Lining Project, respectively, as defined in the Allocation Agreement.

(2) After the Effective Date, subject to the terms and conditions of the Allocation Agreement, up to sixteen thousand (16,000) AFY of Conserved Water attributable to the lining of the All-American and Coachella Canals will be made available to be utilized by the

Secretary to facilitate implementation of the San Luis Rey Indian Water Rights Settlement Act. The volume of Conserved Water from each canal lining project made available for this purpose shall be in proportion to its percentage of the total water conserved, eleven thousand five hundred (11,500) AFY from the All-American Canal and four thousand five hundred (4,500) AFY from the Coachella Canal. The remaining amount of Conserved Water from such canal lining projects shall be made available to MWD (or to IID) as provided under the Allocation Agreement.

(3) For decree accounting purposes, Consumptive Use of the Conserved Water utilized by the Secretary to facilitate implementation of the San Luis Rey Indian Water Rights Settlement Agreement will be assigned and will not be charged to IID or CVWD, but will be deducted from IID's Consumptive Use cap under Section 2.1(1) and CVWD's Consumptive Use cap under Section 2.2(1) in proportion to the Conserved Water from the All-American Canal and Coachella Canal, respectively. For decree accounting purposes, Consumptive Use of the Conserved Water utilized by MWD will be deducted from IID's Consumptive Use cap under Section 2.1(1) and CVWD's Consumptive Use cap under Section 2.2(1) in proportion to the Conserved Water from the All-American Canal and the Coachella Canal, respectively.

(4) As the Conserved Water to be made available by the lining of the All-American and Coachella Canals is produced, it will be made available 83 percent to MWD (or to IID) and 17 percent to the Secretary for the benefit of the San Luis Rey Settlement Parties, as provided under the Allocation Agreement.

(5) The specific terms and conditions governing the distribution of Conserved Water as contemplated by this Section 4.2 shall be as set forth in the Allocation Agreement.

4.3 Other Acquisitions of Colorado River Water. During the period from the Effective Date to the Termination Date, the Parties may acquire Colorado River water from any person, without objection by any of the Parties, so long as any such acquisition is not inconsistent with any other term of this Agreement or the Related Agreements and does not materially reduce the water available to the Parties.

4.4 Salinity Control Act Interim Period. IID, CVWD and MWD will submit annual estimates of water diversions to the BOR with the modifier "to the extent Colorado River water is available to this requesting agency under its entitlements, the Quantification Settlement Agreement and otherwise."

4.5 CVWD Utilization of Water.

(1) Other than as provided in Section 3.6 of the IID/CVWD Acquisition Agreement, CVWD shall not utilize its water budget to facilitate any water use outside of Improvement District No. 1 other than for direct and in lieu recharge, and shall use its best efforts to utilize its water budget to address the groundwater overdraft problem in Improvement District No. 1 and to implement a program that is designed to achieve a safe yield within Improvement District No. 1 by the end of CVWD's water budget ramp-up in approximately Year 30.

(2) IID and MWD shall not object to the utilization of Colorado River water in the Coachella Valley, but outside Improvement District No. 1, in order to maximize the effectiveness of Improvement District No. 1's water use and recharge programs.

(3) CVWD shall make no claim as a matter of right to any additional Colorado River water in Priorities 3 or 6.

(4) This Agreement does not affect CVWD's rights under its surplus contract with the Secretary dated March 6, 1987, including its right to use water delivered under that contract anywhere within its boundaries.

4.6 CVWD Groundwater Storage of IID Water. Subject to the physical availability of storage in the Coachella Valley after accounting for the storage to be utilized by CVWD for the MWD/CVWD conjunctive use program, if implemented, CVWD will provide groundwater storage for IID's use in accordance with the IID/CVWD Acquisition Agreement.

4.7 Public Awareness Program. The Parties will each implement and maintain a water conservation public awareness program.

4.8 Shortage and Sharing of Reduced Water Availability. If for any reason there is less than 3.85 million (3,850,000) AF available to Priorities 1, 2 and 3 in any Year, there will be no termination of this Agreement. Shortages will be shared pursuant to the particular provisions of the Acquisition Agreements and the Allocation Agreement.

4.9 Amendments to Acquisition Agreements. The Parties to each Acquisition Agreement shall have the right to amend that Agreement from time to time without the consent of any other Party hereto (a "non-signatory Party"); provided, however, that prompt notice and a copy of any such amendment is provided to each non-signatory Party, the Secretary, BOR and, with respect to the transfers to SDCWA contemplated under the 1998 IID/SDCWA Transfer Agreement and acquisitions from IID by CVWD under the IID/CVWD Acquisition Agreement, SWRCB; and provided, further, that no such amendment shall be given any force or effect, or be binding on any Party, if:

(1) such amendment would affect in any respect the rights of any non-signatory Party to Colorado River water; or

(2) such amendment could reasonably have a significant adverse effect on the interests of a non-signatory Party; unless or until

(3) in the circumstances of either (1) or (2), the written consent to such amendment shall have been obtained from each non-signatory Party, which consent shall not be unreasonably withheld and, if determined to have been unreasonably withheld, shall be effective retroactively to the date originally requested.

4.10 MWD Mitigation of Certain Effects of Interim Surplus Guidelines. In the event that Priority 3a Consumptive Use by IID and CVWD, consistent with and as adjusted by this Agreement, is reduced as a direct result of the application and operation of the Interim Surplus Guidelines, MWD will assume responsibility for any required payback of any water use overruns by IID and CVWD resulting from such reduction. MWD's aggregate payback obligation under this Section 4.10 shall be limited to an amount equal to the aggregate amount of surplus water allocated to and Consumptively Used by MWD under Full Domestic Surplus and/or Partial Domestic Surplus conditions, as determined by the Secretary under the Interim Surplus Guidelines. An example of MWD's mitigation obligation with respect to certain Interim Surplus Guidelines effects pursuant to this Section 4.10 is provided in Attachment 2.

4.11 SWRCB Proceeding. The terms and conditions applicable to the Parties in connection with the matters referenced in Section 6.2(11) hereof shall be as set forth in the Protest Dismissal Agreement attached hereto as Exhibit E.

4.12 MWD Reparations to Arizona and Nevada. In connection with the implementation of the Interim Surplus Guidelines, MWD, the Secretary and the State of Arizona have entered into Interim Surplus Guidelines Agreements dated as of May 23, 2001 and _____, 2001; and MWD, the Secretary and the State of Nevada have entered into Interim Surplus Guidelines Agreements dated as of _____, 2001 and _____, 2001. Pursuant to such agreements MWD may be required to forbear delivery of a determinable quantity of Colorado River water in certain circumstances involving the Secretary's determination of a shortage condition in accordance with such Guidelines. IID and CVWD hereby agree to forbear exercise of any right or claim under Priorities 6 and 7, including any right or claim under this Agreement or a Related Agreement, to such water to the extent of any such required forbearance by MWD.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 IID's Representations and Warranties.

(1) Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) IID 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 (ii) the execution and delivery hereof by IID and the performance by IID of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which IID is a party or by which IID is bound.

(2) **Signatories.** The persons executing this Agreement on behalf of IID have the full power and authority to bind IID to the terms of this Agreement. In addition, the persons signing this Agreement on IID's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on IID's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Sections 6.2 and 7.1 of this Agreement, this Agreement constitutes a valid and binding agreement of IID, enforceable against IID in accordance with its terms.

(4) **No Pending or Threatened Disputes**. Except as disclosed in Appendix 5.1, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to IID's knowledge, threatened against or affecting IID relating to the performance contemplated by this Agreement.

(5) **Notice of Developments**. IID agrees to give prompt notice to the Parties if IID discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Closing Date.

5.2 CVWD's Representations and Warranties.

(1) Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) CVWD 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 (ii) the execution and delivery hereof by CVWD and the performance by CVWD of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which CVWD is a party or by which CVWD is bound.

(2) **Signatories**. The persons executing this Agreement on behalf of CVWD have the full power and authority to bind CVWD to the terms of this Agreement. In addition, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability**. Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Sections 6.2 and 8.1 of this Agreement, this Agreement constitutes a valid and binding agreement of CVWD, enforceable against CVWD in accordance with its terms.

(4) **No Pending or Threatened Disputes**. Except as disclosed in Appendix 5.2, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to CVWD's knowledge, threatened against or affecting CVWD relating to the performance contemplated by this Agreement.

(5) **Notice of Developments.** CVWD agrees to give prompt notice to the Parties if CVWD discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Closing Date.

5.3 MWD's Representations and Warranties.

(1) Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) MWD 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 (ii) the execution and delivery hereof by MWD and the performance by MWD of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which MWD is a party or by which MWD is bound.

(2) **Signatories.** The persons executing this Agreement on behalf of MWD have the full power and authority to bind MWD to the terms of this Agreement. In addition, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability.** Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Sections 6.2 and 9.1 of this Agreement, this Agreement constitutes a valid and binding agreement of MWD, enforceable against MWD in accordance with its terms.

(4) **No Pending or Threatened Disputes.** Except as disclosed in Appendix 5.3, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to MWD's knowledge, threatened against or affecting MWD relating to the performance contemplated by this Agreement.

(5) **Notice of Developments.** MWD agrees to give prompt notice to the Parties if MWD discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Closing Date.

ARTICLE 6 GENERAL CONDITIONS TO IID, MWD AND CVWD OBLIGATIONS

6.1 Performance by IID, CVWD and MWD. IID's, MWD's and CVWD's obligations under Articles 2 and 4 of this Agreement are subject to the satisfaction or waiver of the general conditions set forth in Section 6.2 and the particular conditions set forth in Articles 7, 8 and 9, in each case on or before December 31, 2002. IID, MWD and CVWD shall each proceed in good faith with reasonable diligence and use reasonable efforts to satisfy the

conditions for which it has responsibility, including the conditions set forth in the Related Agreements and in the Implementation Agreement.

6.2 Satisfaction of General Conditions to IID's, MWD's and CVWD's Obligations.

(1) **Representations and Warranties.** The representations and warranties of each of the Parties shall be true as of the date each such Party signs this Agreement, and as of the Closing Date.

(2) **Environmental Obligations.**

(a) **Environmental Review.** All environmental review and assessment required under CEQA, NEPA and applicable federal, state and agency regulations implementing the same have been completed, to the extent required to authorize implementation of the activities contemplated by this Agreement. An environmental review process will be deemed "completed" only when all required Notices of Determination pursuant to CEQA have been duly filed; all required Records of Decision pursuant to NEPA have been duly issued; all administrative appeal periods have expired; all statutes of limitation for filing an action challenging any environmental process pursuant to CEQA have expired; as of the deadline for satisfying these conditions, no action challenging any environmental process has been filed, or, if filed, has been resolved by a final judgment which upholds or sustains the environmental review process and allows implementation of the covered activities and all judicial appeal periods have expired. The environmental review processes described above shall include, but are not limited to:

(1) The federal EIS in connection with the Implementation Agreement, the Inadvertent Overrun and Payback Program and this Agreement, to be prepared by BOR as the lead agency;

(2) The EIS relating to the Interim Surplus Guidelines, prepared by BOR as the lead agency;

(3) The program EIR relating to this Agreement, to be prepared by IID, MWD, CVWD and SDCWA as co-lead agencies;

(4) The joint EIR/EIS relating to the conservation and transfer by IID of up to three hundred thousand (300,000) AFY and IID's Priority 3 cap, to be prepared by IID as the lead agency under CEQA and BOR as the lead agency under NEPA;

(5) The joint EIR/EIS relating to the lining of the Coachella Canal, to be prepared by CVWD as the lead agency under CEQA, and by BOR as the lead agency under NEPA.

(6) Final approval by all necessary federal and state agencies of a mitigation plan, a cultural resources plan and any other documents required to allow

implementation of the All-American Canal Lining project pursuant to a certified EIR/EIS for that project;

(7) Final approval by all necessary federal and state agencies of a mitigation plan, a cultural resource plan and any other documents required to allow implementation of the Coachella Canal Lining project pursuant to a certified EIR/EIS for that project; and

(8) The program EIR for the CVWD Groundwater Recharge project, to be prepared by CVWD as the lead agency.

(b) **Resource Approvals.** All permits, approvals, authorizations, opinions, assessments and agreements pursuant to the federal Endangered Species Act ("ESA"), the California Endangered Species Act ("CESA") and any other federal or state environmental resource protection laws, and applicable federal or state regulations implementing the same (collectively "Resource Approvals"), have been finalized, to the extent required by such statutes or regulations or deemed necessary or appropriate by the U.S. Fish and Wildlife Service ("USFWS"), the California Department of Fish and Game ("CDFG"), BOR or IID to document compliance therewith and to authorize implementation of the 1998 IID/SDCWA Transfer Agreement, the conservation by IID of up to three hundred thousand (300,000) AFY and IID's Priority 3a cap. A Resource Approval shall be deemed "final" only when all required environmental review has been completed as described in Section 6.2(2)(a) above; final action has been taken and all required documents have been approved and executed by the resource agencies and the applicant; all required biological assessments and biological opinions have been issued; all administrative appeal periods have expired; as of the deadline for satisfying these conditions, no action challenging any Resource Approval has been filed, or, if filed, has been resolved by a final judgment which upholds or sustains the Resource Approval in a manner acceptable to the resource agencies and the applicant and all judicial appeal periods have expired. The Resource Approvals described above shall include, but are not limited to, all required approvals by federal and state agencies of:

(1) The change in the point of diversion on the Colorado River and transfer of up to three hundred thousand (300,000) AFY of water to be conserved by IID;

(2) Incidental take authorization pursuant to ESA and CESA, to the extent required to implement the change in the point of diversion on the Colorado River, the water transfer described above, the Interim Surplus Criteria, the Inadvertent Overrun and Payback Program, the All-American Canal Lining project, and the Coachella Canal Lining project; and

(3) A habitat conservation plan and an incidental take permit and execution of an implementation agreement by and among USFWS, CDFG and IID, permitting implementation of conservation and water use activities within the IID service area consistent with this Agreement, including impacts on the Salton Sea and areas outside of IID's service area, and including "No Surprises" assurances pursuant to ESA Section 10(a), all of the foregoing acceptable in form, substance, scope and coverage to IID.

(c) **Party Approvals of Environmental Requirements.** Each Party, by action of its governing board, has approved and accepted the terms, conditions and mitigation measures of the environmental review processes described in Section 6.2(2)(a) above and the Resource Approvals described in Section 6.2(2)(b) above (collectively, "Environmental Requirements"), to the extent such Party is responsible, in whole or in part, for compliance, performance or payment of the costs of such Environmental Requirements.

(d) **Assurances.** "No Surprises" assurances pursuant to ESA Section 10 (a) shall have been obtained by IID and CVWD for 50 years for the first fifty thousand (50,000) AFY acquisition by CVWD and through Year 50 or, if appropriate, Year 45 for the second fifty thousand (50,000) AFY acquisition by CVWD, as contemplated under Sections 2.1(5) and 2.2(4) hereof and the IID/CVWD Acquisition Agreement.

(3) **Yuma Island.** The Secretary shall have appointed an independent panel to conduct a public review and, based thereon, to provide recommendations to the Secretary regarding the determination of the amount of Consumptive Use of water on the Yuma Island and whether such use is charged to Priority 2.

(4) **Inadvertent Overrun and Payback Program.** The BOR shall have adopted on or before the Closing Date standards and procedures for an Inadvertent Overrun and Payback Program to be implemented without material modification over a period commencing on or before the Effective Date and ending no sooner than Year 31 that is in all material respects in conformity with the proposal set forth in Exhibit F hereto, or is otherwise acceptable to IID, MWD and CVWD.

(5) **Interim Surplus Guidelines.** The Interim Surplus Guidelines implemented pursuant to the Secretary's Record of Decision dated January 16, 2001, a copy of which is provided as Exhibit G hereto, shall be in full force and effect.

(6) **PVID Waiver.** PVID shall have agreed for the period commencing on or before the Effective Date and ending on the Termination Date: (a) to waive any call rights on Conserved Water from the lining of the All-American Canal and the Coachella Canal, as contemplated by this Agreement, (b) to limit use on the PVID Mesa, (c) to forego any rights to Priority 6b water, and (d) to the amendment to the 1989 Approval Agreement contemplated under the CVWD/MWD Acquisition Agreement.

(7) **The IID/CVWD Acquisition Agreement** shall have been executed by the Parties signatory thereto for delivery as of the Closing Date.

(8) **The IID/MWD Acquisition Agreement** shall have been executed by the Parties signatory thereto for delivery as of the Closing Date.

(9) **The CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement** shall have been executed by the Parties signatory thereto for delivery as of the Closing Date.

(10) **The Implementation Agreement** shall have been executed by the Parties, SDCWA, and the Secretary for delivery as of the Closing Date.

(11) **SWRCB Approval.** The SWRCB shall have entered a final order of approval of the Petition for Change relating to the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement in conformity with the Protest Dismissal Agreement attached hereto as Exhibit E, which order in effect establishes that:

(a) IID has presented substantial evidence to support the transfers to SDCWA and the acquisitions by CVWD contemplated hereunder;

(b) As of the effective date of such final order, such substantial evidence, which includes the provisions of the Protest Dismissal Agreement, satisfies any existing SWRCB concerns with respect to IID reasonable and beneficial use and with respect to injury to junior right holders;

(c) Pursuant to the request of IID, CVWD, MWD and SDCWA, such final order shall have no binding precedential effect on the applicability of California or any other law to any other water transfer transaction;

(d) In light of the substantial evidence, and based upon the continuing effectiveness of this Agreement and the continuing fulfillment of IID's contractual commitments to undertake major conservation activities, the SWRCB does not anticipate a need to reassess the reasonable and beneficial use of water by IID until the end of the Year 20, absent any substantial material adverse change in IID's irrigation practices or advances in economically feasible technology associated with irrigation efficiency.

(e) The order by its terms shall lapse and be of no force or effect if this Agreement terminates.

(12) **Effectiveness of 1998 IID/SDCWA Transfer Agreement.** IID's obligations to undertake "water conservation" efforts and to transfer "conserved water," as defined in and determined under the 1998 IID/SDCWA Transfer Agreement, shall have become effective as of the Closing Date, subject only to the execution and delivery of the other Acquisition Agreements and the Implementation Agreement contemplated by Section 3.2 hereof.

(13) **Environmental Cost Sharing Agreement.** The Environmental Cost Sharing Agreement shall be in full force and effect, and each party thereto shall be in full compliance with the provisions thereof applicable to it.

(14) **Litigation.** Any pending or threatened litigation, including disputes disclosed in Appendices 5.1, 5.2 or 5.3 hereof, that would, if finally determined in favor of any complaining person or person, materially and adversely affect (a) the ability of any Party to perform under this Agreement, the Environmental Cost Sharing Agreement, or any Acquisition Agreement, (b) the continuing efficacy of the Inadvertent Overrun and Payback Program, the

Interim Surplus Guidelines, or the SWRCB's final order of approval contemplated under Section 6.2 (11) hereof (including its ongoing conformity to the requirements of the Protest Dismissal Agreement), or (c) the ability of the Secretary (or the Secretary's delegate) to perform under the Implementation Agreement, shall have become the subject of one or more joint defense agreements among the Parties allocating responsibilities to a Party or Parties for the defense of (or intervention in) such litigation and, where appropriate, for the potential consequences of any materially adverse final determination of such litigation or otherwise specifying the consequences of any such determination.

6.3 Contribution to Satisfaction of Environmental Obligations Conditions. With respect to any required environmental mitigation contemplated under Section 6.2(2), and except as otherwise expressly provided under an Acquisition Agreement, a Party may, but shall not be in any way compelled to, contribute the additional cost, in excess of a specified cap, such that the net economic effect to the responsible Party is the same as if the condition had been satisfied directly. In that event, the condition shall be deemed satisfied with respect to that Party, and such Party may not terminate this Agreement on the basis that the condition has not been satisfied.

6.4 Written Waiver of Conditions. The Parties agree that a Party may waive in writing any one or more of the conditions to its obligations under Articles 2 and 4; provided, however, that no Party shall waive compliance with CEQA, NEPA or other requirements under applicable laws. A written waiver of a condition must be delivered in accordance with the notice provisions of Section 11.1 hereof. As to any condition to the obligations of all Parties, a waiver of that condition will be effective only if made by all Parties.

6.5 Determination of Environmental Cost Conditions. The Parties shall cooperate in their determinations of costs applicable to their respective environmental cost ceilings for purposes of Articles 7 and 9 hereof. Each Party shall use reasonable assumptions and methods in making such determinations, and, at the request of any other Party, shall promptly provide a written explanation of such assumptions and methods. In the event of any disagreement between or among Parties as to the reasonableness of any such method or assumption, the Parties shall in good faith try to resolve such disagreement through negotiation before proceeding under Section 10.3.

ARTICLE 7 PARTICULAR CONDITIONS TO IID'S OBLIGATIONS

7.1 Conditions to IID's Obligations.

(1) **IID Environmental Costs.** IID shall have determined that the environmental process and mitigation costs for which it is responsible under the terms and conditions of the Environmental Cost Sharing Agreement will not exceed in total present value as of the Environmental Cost Condition Precedent Test Date (and, if applicable, the Second Environmental Cost Condition Precedent Test Date) \$15,000,000 (in 1998 Dollars) after taking into account any contribution to such costs by any other person.

**ARTICLE 8
PARTICULAR CONDITIONS TO CVWD'S OBLIGATIONS**

8.1 Conditions to CVWD's Obligations.

(1) **Salinity Control Act.** The Amendment to Amendatory Contract between the United States of America and Coachella Valley Water District for Replacing a Portion of the Coachella Canal in the form attached as Exhibit H shall have been executed by the United States.

**ARTICLE 9
PARTICULAR CONDITIONS TO MWD'S OBLIGATIONS**

9.1 Conditions to MWD's Obligations.

(1) **Decree Accounting Process.** BOR shall have agreed with the Parties to develop a process for establishing a statistically significant trend test for increases in use by Priorities 1, 2 and 3b.

(2) **Waiver.** SDCWA shall have waived any and all rights under the 1998 IID/SDCWA Transfer Agreement with respect to Conserved Water that may be acquired by MWD pursuant to the IID/MWD Acquisition Agreement, in conjunction with MWD's agreement that, should IID transfer less than the full two hundred thousand (200,000) AFY to SDCWA as part of the stabilized primary quantity under the 1998 IID/SDCWA Transfer Agreement, but later make available additional Conserved Water for transfer to SDCWA, MWD will exchange such additional amounts up to a total of two hundred thousand (200,000) AFY under the terms of the 1998 Agreement between MWD and SDCWA for the Exchange of Water.

(3) **MWD Environmental Costs.** MWD shall have determined that the environmental process and mitigation costs for which it is responsible under the terms and conditions of the Environmental Cost Sharing Agreement (without regard to the payments with respect to environmental mitigation costs for which MWD will be responsible upon exercise of its options or right of first refusal under the IID/MWD Acquisition Agreement) will not exceed in total present value as of the Environmental Cost Condition Precedent Test Date (and, if applicable, the Second Environmental Cost Condition Precedent Test Date) \$5,000,000 (in 2001 Dollars) after taking into account any contribution to such costs by any other person.

**ARTICLE 10
REMEDIES**

10.1 Specific Performance. Each Party recognizes that the rights and obligations of the Parties under this Agreement are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one Party does not perform in accordance with this Agreement, the other Parties will likely suffer harm curable only by the imposition of an

injunction requiring specific performance. Thus, each of the Parties agrees that any breach of this Agreement by any Party shall entitle the non-breaching Parties, or any one of them, to injunctive relief, including but not limited to a decree of specific performance, in addition to any other remedies at law or in equity that may be available in the circumstances.

10.2 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this Agreement or otherwise.

10.3 Action or Proceeding between the Parties. Each Party acknowledges that it is a "local agency" within the meaning of § 394(c) of the California Code of Civil Procedure ("CCP"). Each Party further acknowledges that any action or proceeding commenced by one Party against another Party would, under § 394(a) of the CCP, as a matter of law be subject to:

(1) being transferred to a Neutral County, or instead

(2) having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding.

(3) In the event an action is filed by any Party against another Party or Parties to enforce this Agreement and to obtain damages for its alleged breach, each Party hereby:

(i) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action;

(ii) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;

(iii) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and

(iv) Acknowledges that this Agreement, and in particular this Section 10.3, may be submitted to the court as part of the moving papers.

(4) Nothing in this Section 10.3, however, shall impair or limit the ability of a Party to contest the suitability of any particular county to serve as a Neutral County, or shall operate to waive any other rights.

ARTICLE 11 GENERAL PROVISIONS

11.1 Notices. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to the addresses of each Party set forth below. Notice will be sufficiently given for all purposes as follows:

Personal Delivery. When personally delivered to the recipient. Notice is effective on delivery.

Certified Mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.

Overnight Delivery. When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile Transmission. Notice is effective on receipt, provided that the facsimile machine provides the sender a notice that indicates the transmission was successful, and that a copy is mailed by first-class mail on the facsimile transmission date.

Addresses for purpose of giving notice are as follows:

To IID: Imperial Irrigation District
Attn.: General Manager

Address for U.S. Mail P.O. Box 937
Imperial, CA 92251

*Address for Personal or
Overnight Delivery:* 333 E. Barioni Boulevard
Imperial, CA 92251

Telephone: 760-398-9477

Facsimile: 760-398-5893

With a copy delivered by the same means to:

Horton, Knox, Carter & Foote
895 Broadway
El Centro, CA 92243
Attention: John P. Carter, Esq.

Telephone: 760-352-2821

Facsimile: 760-352-8540

To MWD:

The Metropolitan Water District of
Southern California
Attn.: General Manager

Address for U.S. Mail

P.O. Box 54153
Los Angeles, CA 90054

*Address for Personal or
Overnight Delivery:*

700 North Alameda Street
Los Angeles, CA 90012-2944

Telephone: 213-217-6000
Facsimile: 213-217-6950

With a copy delivered by the same means and at the same address to:

The Metropolitan Water District of Southern
California
Attn: General Counsel

To CVWD:

Coachella Valley Water District
Attn.: General Manager-Chief Engineer

Address for U.S. Mail

P.O. Box 1058
Coachella, CA 92236

*Address for Personal or
Overnight Delivery:*

Highway 111 and Avenue 52
Coachella, CA 92236

Telephone: 760-398-2651
Facsimile: 760-398-3711

With a copy delivered by the same means to:

Redwine & Sherrill
1950 Market Street
Riverside, CA 92501
Telephone: 909-684-2520
Facsimile: 909-684-9583

(1) A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first

date that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

(2) A Party may change its address by giving the other Parties notice of the change in any manner permitted by this Agreement.

11.2 Waiver. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of a breach, failure of condition or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

11.3 Post-Closing Notices. Each Party will give the other Parties prompt notice from time to time after the Closing Date and prior to the Termination Date of any actions, suits, legal or administrative proceedings, or governmental investigations pending or, to such Party's knowledge, threatened against or affecting any Party relating to the performance contemplated by this Agreement and the Related Agreements.

11.4 Counterparts. This Agreement may be executed in three or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

11.5 No Third-Party Rights. This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns (if any). Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Agreement.

11.6 Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

11.7 Alterations in PPI or GDPIPD Inflation Indices. If the publication of the Producer Price Index for the Materials and Components for Construction (ID #WPUSOP2200) or if the publication of the Gross Domestic Product Implicit Price Deflator is altered in some manner, including changing the name of the index, the geographic area covered, or the base year, the Parties will use their reasonable best efforts to agree on a substitute index or procedure that reasonably reflects the change in the level of producer prices for the materials and components for construction, or the change in the level of prices for goods and services included in the calculation of the United States Gross Domestic Product, as applicable.

11.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of law provisions; provided, however, that federal law shall be applied as appropriate to the extent it bears on the resolution of any claim or issue relating to the permissibility of the acquisitions of Colorado River water contemplated herein.

11.9 Binding Effect; No Assignment. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. No Party may Assign any of its rights or Delegate any of its duties under this Agreement or the Related Agreements, and any such Assignment or Delegation made in violation of this Section 11.8 shall be void and of no force or effect.

11.10 Joint Defense. The Parties agree to cooperate, to proceed with reasonable diligence, and to use reasonable best efforts to defend any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement. Except as otherwise provided in the Environmental Cost Sharing Agreement, or under an agreement referenced in Section 6.2 (14), each Party shall bear its own costs of participation and representation in any such defense.

11.11 Entire Agreement. This Agreement (including the exhibits and other agreements attached to and referenced in this agreement) constitutes the final, complete, and exclusive statement of the terms of the Agreement among the Parties pertaining to its subject matter and supersedes all prior and contemporaneous understandings or agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

11.12 Modification. This Agreement may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by all Parties.

IN WITNESS WHEREOF, IID, CVWD AND MWD have executed this Agreement as of the day and year first written above.

Approved as to form:

IMPERIAL IRRIGATION DISTRICT

By: _____

By: _____

Its: _____

JESSE SILVA
GENERAL MANAGER

COACHELLA VALLEY WATER DISTRICT

By: _____

By: _____

Its: _____

TOM LEVY

GENERAL MANAGER-CHIEF
ENGINEER

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: _____

By: _____

Its: _____

RONALD R. GASTELUM
GENERAL MANAGER