

SYSTEM CONSERVATION IMPLEMENTATION AGREEMENT (SCIA)  
BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND THE  
GILA RIVER INDIAN COMMUNITY

1. PREAMBLE This SCIA is entered into this 18<sup>th</sup> day of January, 2017, by and between the United States, Department of the Interior, Bureau of Reclamation (“Reclamation”) acting through the officials executing this SCIA, and the Gila River Indian Community (“Community”), located on the Gila River Indian Reservation, Arizona, hereinafter referred to singularly as “Party” or collectively as “Parties” and pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto, the Act of December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act, and the Act of June 24, 1974 (88 Stat. 266), designated the Colorado River Basin Salinity Control Act, as amended, and consistent with the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235 §206 (128 Stat. 2312) (2014).

2. EXPLANATORY RECITALS

2.1 WHEREAS, the Colorado River Basin is experiencing the worst 17-year drought in the historical record, and Lake Mead’s elevation has dropped to levels where the Secretary of the Interior may determine a shortage condition for Lake Mead as early as 2018;

2.2 WHEREAS, on December 10, 2014, Reclamation, the Central Arizona Water Conservation District (“CAWCD”), The Metropolitan Water District of Southern California, the Southern Nevada Water Authority (“Municipal Water Agencies”), the Arizona Department of Water Resources, the Colorado River Board of California, and the Colorado River Commission of Nevada entered into a Memorandum of Understanding for Pilot Drought Response Actions (“MOU”) that will remain in effect until December 31, 2019;

2.3 WHEREAS, under the MOU, Reclamation and the Municipal Water Agencies

desire to take initial steps between 2014 and 2017 towards generating additional water to be retained in Lake Mead to reduce the risk of reaching critical reservoir elevations in a manner consistent with the Law of the River including, but not limited to, the Consolidated Decree in *Arizona v. California*, 547 U.S. 150 (2006) and the 2007 Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (“2007 Guidelines”);

2.4 WHEREAS, a fundamental component of Lower Basin drought contingency planning is voluntary development of additional quantities of water to be retained in Lake Mead in order to reduce the risk of Lake Mead reaching critical reservoir elevations (“Protection Volume(s)”);

2.5 WHEREAS, Protection Volumes can be generated, for example, through new or expanded programs to create Intentionally Created Surplus (as such term is defined in the 2007 Guidelines), reductions in water use, reductions in off-stream storage of Colorado River water, or other actions that result in increased Lake Mead elevations;

2.6 WHEREAS, the MOU, among other things, provides that Reclamation will use its best efforts to create 50,000 acre-feet of Protection Volume between 2014 and 2017 that will be dedicated as Colorado River System water, thereby increasing the volume of water remaining in Lake Mead, (Reclamation is anticipated to use a combination of the following to create Protection Volumes: efficiency improvements, operational improvements, and creation of system water);

2.7 WHEREAS, the MOU also provides that Reclamation will work to plan and implement actions to replace, recover and reduce system losses from the Colorado River System;

2.8 WHEREAS, recognizing the severity of the ongoing historic drought, the Community desires to help mitigate the impacts of the current drought by entering into an agreement with the United States through Reclamation making some of its Central Arizona Project (“CAP”) water entitlement under its Contract No. 3-07-30-W0284 dated October 22, 1992, as amended, (“Community CAP Contract”) available in calendar year 2017 as Colorado River System water with the intent to help Reclamation meet its commitments under the MOU;

2.9 WHEREAS, in calendar year 2017 the Community is willing to make available to Reclamation 40,000 acre-feet of the Community's CAP water entitlement, which water has a recent history of use, for the purpose of leaving such water in Lake Mead in exchange for a payment of \$150.00 per acre-foot totaling \$6,000,000.00 which is referred to herein as ("Confirmed Water");

2.10 WHEREAS, the Community is also willing to make available to Reclamation an option for an additional amount of the Community's CAP water entitlement for calendar year 2017, not to exceed 40,000 acre-feet, which is hereinafter referred to as ("Additional Water"), in the event Reclamation exercises the option provided for in Section 5 herein; and

2.11 WHEREAS, Reclamation desires to enter into a pilot project with the Community and accept the Community's offer to modify its operations for calendar year 2017 by reducing its delivery of its CAP water entitlement and allowing such volume of Colorado River System water to remain in Lake Mead.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, Reclamation and the Community agree as follows:

### 3. DEFINITIONS

3.1 Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved in Section 13(a) of the Boulder Canyon Project Act of 1968 (88 Stat. 266).

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

### 4. PURPOSE

4.1 The purpose of this SCIA is for Reclamation to compensate the Community \$6,000,000.00 for agreeing to modify its operations for calendar year 2017 by reducing its delivery of its CAP water entitlement by a volume of 40,000 acre-feet ("Confirmed Water"), and in the event the option is exercised by Reclamation as provided in Section 5 herein, to reduce its

delivery of additional CAP water not to exceed 40,000 acre-feet (“Additional Water”), and allow such volume to remain in Lake Mead as Colorado River System water with the intent of creating Protection Volume(s) and replacing system losses from the Colorado River System.

4.2 The Confirmed Water was initially ordered by the Community for delivery to the Gila River Indian Irrigation and Drainage District to irrigate Community lands, and the Community intended to amend its delivery schedule to have this 40,000 acre-feet of water delivered to groundwater savings facilities for the accrual of underground storage credits. The Community is foregoing storage of such water. Following such actions by the Community, CAWCD will reduce its calendar year 2017 Colorado River water order with Reclamation to ensure that the 40,000 acre-feet remains in Lake Mead in accordance with this SCIA and the letter referred to in Section 8.1 herein.

## 5. IMPLEMENTATION

5.1 Implementation begins upon execution of this SCIA and continues through December 31, 2017.

5.2 The Community agrees to modify its operations and reduce its delivery of CAP water entitlement under the Community CAP Contract by a Confirmed Water amount of 40,000 acre-feet for calendar year 2017, and if Reclamation exercises the option in Section 5 herein on or before May 15, 2017, by an Additional Water amount of not to exceed 40,000 acre-feet, in accordance with this SCIA.

5.3 Upon the SCIA becoming effective as provided in Section 11 herein, the Community will provide Reclamation with a copy of an amended CAP water order placed with CAWCD for calendar year 2017 to reflect implementation of this SCIA.

5.4 Option for Additional Water: If the contemplated “Drought Contingency Plan Plus” Agreement (“DCP + Agreement”) is executed by the necessary parties in Arizona, including the Arizona Department of Water Resources and CAWCD, among others, by March 31, 2017, the Community is willing to provide Reclamation with Additional Water in calendar year 2017, not to exceed 40,000 acre-feet.

5.4.1 Reclamation will notify the Community in writing on or before May 15, 2017, to exercise the option for the Community to provide Additional Water.

5.4.2 Once the Community is notified by Reclamation, the Community will provide Reclamation with a copy of an amended CAP water order placed with CAWCD for calendar year 2017 to reflect the amount of Additional Water.

5.4.3 CAWCD will provide Reclamation an amended calendar year 2017 CAP water order to reflect this Additional Water, in accordance with the letter referred to in Section 8.1 herein.

5.4.4 The compensation amount for the Additional Water is \$150.00 per acre-foot.

5.4.5 The terms and conditions of this SCIA shall apply to the Community for providing Additional Water in the same manner as they do for the Community providing the Confirmed Water, except as otherwise provided herein.

5.4.6 If a DCP + Agreement is not executed by March 31, 2017, and if Reclamation does not exercise the option and notify the Community on or before May 15, 2017, the Community will have no obligation to make Additional Water available under this SCIA in excess of the Confirmed Water amount of 40,000 acre-feet.

5.4.7 Reclamation and the Community shall meet prior to May 15, 2017, in the event that Reclamation desires to request the Community commit more than the Confirmed Water (40,000 acre-feet) and the Additional Water (not to exceed 40,000 acre-feet). If it is agreed by the Parties to commit more than the Confirmed Water and the Additional Water, the Parties agree that this SCIA does not need to be amended and the terms and conditions for the additional water above the amounts provided herein will apply to such additional amounts of water.

5.5 The Community will forego delivery of the Confirmed Water and the Additional Water (if agreed to by the parties) for calendar year 2017, thereby increasing the volume of water remaining in Lake Mead. Reclamation intends to apply this volume of water toward its commitment to create Protection Volume(s) under the MOU and to replace Colorado River system losses.

## 6. MONITORING

6.1 Reclamation will use its existing water order approval process and other authorities to ensure that the Community's CAP water under this SCIA is not ordered or used by other Colorado River water entitlement holders during calendar year 2017.

## 7. IDENTIFICATION AND TRACKING OF PROTECTION VOLUMES

7.1 Under the MOU, Reclamation will work with the Municipal Water Agencies to identify and track achievement of Protection Volume goals.

7.2 Reclamation and the Community agree that the water left in Lake Mead pursuant to this SCIA shall accrue to the benefit of the Colorado River System and shall not accrue to the individual benefit of the Community or any third party.

## 8. COMPENSATION

8.1 A payment in the amount of \$6,000,000.00 for the Confirmed Water will be made by Reclamation to the Community no later than 30 days following receipt of (1) the Community's written water order modification request referred to in Section 5.3 herein; Provided, however, that no such payment shall be made unless and until CAWCD agrees in writing to amend its 2017 Colorado River water order with Reclamation to reduce CAWCD's diversion by 40,000 acre-feet to ensure that the conserved water remains in Lake Mead and (2) receipt of a letter submitted to CAWCD and Reclamation by the Community in which the Community certifies that ground water savings facilities were physically capable of accepting delivery of the 40,000 acre-feet of CAP water that the Community is forgoing storage of in calendar year 2017 and the Community intended, absent the system conservation, to utilize the available capacity for storage in 2017, whichever of (1) or (2) last occurs.

8.2 If the option is exercised by Reclamation as provided for in Section 5.4 herein, a payment in the amount of \$150.00 per acre-foot times the amount of Additional Water the Community is providing will be made by Reclamation to the Community no later than 30 days following receipt of the Community's amended written water order modification request referred to in Section 5.4.2 herein and upon CAWCD making a similar amendment to its water order as provided for in Section 8.1.

9. REIMBURSEMENT FOR OVERPAYMENT

9.1 In the unanticipated and unforeseen event the Community takes action that interferes with the objective of foregoing the amount of water in Lake Mead as was paid for by Reclamation, in accordance with this SCIA, the Community agrees to reimburse for the overpayment within 30 days of receipt of a bill for collection from Reclamation.

10. GENERAL TERMS

10.1 The Community agrees to remain in compliance with applicable Federal, State, and local environmental, cultural, and paleontological resource protection laws and regulations throughout the term of this SCIA.

10.2 Reclamation shall be responsible to obtain any consents or forbearances required to ensure that the water left in Lake Mead by the Community remains in the Colorado River System and does not inure to the benefit of any individual Entitlement Holder.

10.3 The water left in Lake Mead under this SCIA will not be charged against the Community's use of Colorado River water or charged to Arizona's Colorado River apportionment. The quantity of water created by the Community under this SCIA shall be deemed to have been delivered pursuant to the Community's CAP water delivery contract when determining the amount of CAP Indian Priority Water available to the Community during a time of shortage, and participation by the Community in this SCIA 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).

10.4 None of the provisions of this SCIA shall be considered waived, except when such waiver is given in writing. The failure of a party to this SCIA to insist in any one or more instances upon strict performance of any of the provisions, or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or that party's relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

10.5 This SCIA is not intended nor shall it be construed to create any third-party beneficiary rights to enforce the terms of this SCIA on any person or entity that is not a party.

10.6 The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this SCIA be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this SCIA 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 SCIA or otherwise.

10.7 Each Party to this SCIA represents that the person executing on behalf of such Party has full power and authority to do so, and that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.

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

10.9 This SCIA 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 the Parties.



10.10 Any notice, demand, or request shall be deemed properly served, given, or made if delivered in person; sent by registered or certified mail, postage prepaid; or overnight delivery, charges prepaid or charged to the sender's account to the persons in the positions executing this SCIA.

10.11 All information and data obtained or developed with the performance of duties mentioned in this SCIA shall be available upon request to a Party, subject to the provisions of the Freedom of Information Act, as amended, if applicable, or other applicable law. However, use of said reports, data and information shall appropriately reference the source for the respective documents.

10.12 The expenditure or advance of any money or the performance of any obligation by the United States under this SCIA shall be contingent upon the appropriation or allotment of funds. No monetary liability shall accrue to the United States in case funds are not appropriated or allocated.

10.13 No member of or Delegate to Congress, Resident Commissioner, or official of the Community shall benefit from this SCIA other than as a water user or landowner in the same manner as other water users or landowners.

10.14 Nothing in this SCIA diminishes or abrogates the authority of the Secretary of the Interior under applicable Federal law, regulations, or the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California, et al.*, entered March 27, 2006, (547 U.S. 150 (2006)), or as it may be further modified.

10.15 In the event that any dispute arises regarding this SCIA, Reclamation and the Community agree to meet and attempt to resolve the dispute before seeking any remedy.

10.16 Nothing in this SCIA shall be construed as an express or implied waiver of the sovereign immunity of either Party.

## 11. EFFECTIVE DATE

11.1 This SCIA shall become effective upon its execution and remain in effect through December 31, 2017.


11.2 This SCIA may be executed in counterparts, each of which shall be an original and both of which, together, shall constitute only one SCIA.


11.3 The Parties hereto have executed this SCIA on the day and year first written above.

IN WITNESS WHEREOF, the Parties hereto have executed this SCIA No. 17-XX-30-W0620 on the day and year first mentioned above.

Approved as to form:

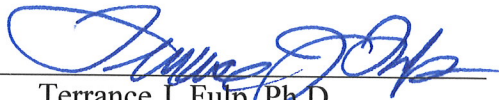
**GILA RIVER INDIAN COMMUNITY**

By:   
Linus Everling  
General Counsel

By:   
Stephen R. Lewis  
Governor

IN WITNESS WHEREOF, the Parties hereto have executed this SCIA No. 17-XX-30-W0620 on the day and year first mentioned above.

**UNITED STATES OF AMERICA**

By:   
Terrance J. Fulp, Ph.D.  
Regional Director  
Lower Colorado Region  
Bureau of Reclamation



# United States Department of the Interior

BUREAU OF RECLAMATION  
Lower Colorado Regional Office  
P.O. Box 61470  
Boulder City, NV 89006-1470

IN REPLY REFER TO:

LC-4405  
WTR-4.03

VIA OVERNIGHT MAIL

ORIGINAL

Letter Agreement No. 17-XX-30-W0621

Mr. Theodore C. Cooke  
General Manager  
Central Arizona Water Conservation District  
23636 North 7<sup>th</sup> Street  
Phoenix, AZ 85024

Subject: System Conservation Implementation Agreement No. 17-XX-30-W0620 Between the United States Bureau of Reclamation and the Gila River Indian Community (Community) (SCIA) Pursuant to the Memorandum of Understanding for Pilot Drought Response Actions, Dated December 10, 2014 (MOU)

Dear Mr. Cooke:

The Colorado River Basin is experiencing the worst 17-year drought in the historical record, and Lake Mead's elevation has dropped to levels where the Secretary of the Interior may determine a shortage condition for Lake Mead as early as 2018. As you know, on December 10, 2014, Reclamation, the Central Arizona Water Conservation District (CAWCD), the Metropolitan Water District of Southern California, the Southern Nevada Water Authority, the Arizona Department of Water Resources (ADWR), the Colorado River Board of California, and the Colorado River Commission of Nevada entered into the MOU. The MOU provides for Reclamation to, among other things, use its best efforts to create 50,000 acre-feet of Protection Volume between 2014 and 2017 that will be dedicated as Colorado River System water, thereby increasing the volume of water remaining in Lake Mead. Reclamation will apply the water conserved under the SCIA toward its protection volume under the MOU.

Recognizing the severity of the ongoing historic drought, the Community desired to help mitigate the impacts of the current drought by entering into the SCIA, thereby making some of its Central Arizona Project (CAP) water entitlement under its Contract No. 3-07-30-W0284 dated October 22, 1992, as amended, available in 2017 as Colorado River System water to help Reclamation meet its commitments under the MOU. In 2017 the Community is willing to make available to Reclamation 40,000 acre-feet of the Community's CAP water entitlement that has a recent history of use (Confirmed Water). The SCIA also contains an option that may be exercised by Reclamation and the Community by which the Community is willing to provide Reclamation with an additional amount of water for system conservation in 2017, not to exceed 40,000 acre-feet (Additional Water).

The Confirmed Water was initially ordered by the Community for delivery to the Gila River Indian Irrigation and Drainage District to irrigate Community lands, and the Community intended to amend its delivery schedule to have this 40,000 acre-feet of water delivered to groundwater savings facilities for the accrual of underground storage credits. Pursuant to the SCIA, the Community is foregoing storage of such water. Following such actions by the Community, Reclamation requests that CAWCD reduce its calendar year 2017 Colorado River water order with Reclamation to ensure that the 40,000 acre-feet remains in Lake Mead.

This Letter Agreement No. 17-XX-30-W0621 (Letter Agreement) serves as documentation of agreement by Reclamation and CAWCD, as the junior Colorado River water entitlement holder in the state of Arizona and pursuant to CAWCD's authorities under the Repayment Stipulation, to the following:

1. Consistent with other system conservation programs under the MOU and other authorities, only programs that reduce actual and quantifiable consumptive use, and not unused entitlement, are eligible for system conservation.
2. Under the SCIA, the Community has agreed to submit a letter to Reclamation and CAWCD (Certification Letter) in which (1) the Community certifies that, absent the system conservation, the Community intended to utilize the available capacity for storage in 2017 and (2) the groundwater savings facilities identified in the Community's 2017 water order certify that the facilities were physically capable of accepting delivery of the volume of CAP water for which the Community is foregoing storage in calendar year 2017.
3. Upon receipt of the Community's 2017 amended water order reducing the Community's water order by the quantity of Confirmed Water to reflect the Community's implementation of the SCIA and receipt of the Certification Letter, CAWCD agrees to forbear from remarketing the Confirmed Water within the CAP service area for delivery in 2017.
4. Within 2 weeks receipt of the Community's amended water order and the Certification Letter, whichever occurs last, CAWCD agrees to amend its approved 2017 Colorado River water order with Reclamation and not request delivery of the Confirmed Water.
5. Should Reclamation and the Community exercise the option in the SCIA for the Additional Water, CAWCD will be notified in writing by Reclamation. In that event, Reclamation and CAWCD will amend this Letter Agreement to incorporate the Additional Water and CAWCD will amend its 2017 water order to incorporate the Additional Water into system conservation, provided that execution of the option is consistent with the above conditions.

In the event the pre-requisite conditions have been met and CAWCD fails to submit the water order amendment referred to in paragraph 4 above, CAWCD understands that Reclamation would, for purposes of water accounting and administration of the Inadvertent Overrun and Payback Policy, deduct the amount of the Confirmed Water from the amount of water available to CAWCD in 2017 thereby ensuring that the conserved water remains in Lake Mead.

This Letter Agreement is effective upon execution by CAWCD and continues through December 31, 2017. If CAWCD agrees to the terms of this Letter Agreement, please sign below as indicated and return an original Letter Agreement to Reclamation. The duplicate original of the Letter Agreement is for CAWCD's files.

We appreciate CAWCD's cooperation with drought response activities. If you have questions about this Letter Agreement, please call Mr. Steven C. Hvinden, Chief, Boulder Canyon Operations Office, at 702-293-8414.

Sincerely,




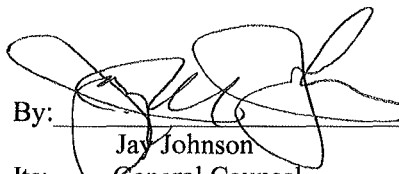
Terrance J. Fulp, Ph.D.  
Regional Director

In Duplicate

Accepted and agreed to by CAWCD this 2nd day of February 2017.

Approved as to form:

By:   
Theodore C. Cooke  
Its: General Manager

By:   
Jay Johnson  
Its: General Counsel

cc: Mr. Thomas Buschatzke  
Director  
Arizona Department of Water Resources  
1110 West Washington Street, Suite 310  
Phoenix, AZ 85007