

Mission Creek Water Management Agreement

THIS AGREEMENT ("Mission Creek Water Management Agreement" or "Agreement") is effective this 15th day of July, 2014, between the COACHELLA VALLEY WATER DISTRICT, a public agency, hereinafter called "Coachella", and the DESERT WATER AGENCY, a public agency, hereinafter called "Desert."

RECITALS

A. Coachella is a State Water Project ("SWP") Contractor and entered into its original SWP Water Supply Contract on March 29, 1963 along with subsequent Amendments.

B. Desert is a SWP Contractor and entered into its original SWP Water Supply Contract on October 17, 1962 along with subsequent Amendments.

C. Coachella, Desert and the Metropolitan Water District of Southern California ("Metropolitan") have entered into various agreements ("Water Delivery and Exchange Agreements") and the most current are listed here by reference:

- i. Advanced Delivery Agreement-June 28, 1984
- ii. 2003 Exchange Agreement-October 24, 2003
- iii. Implementation of the 2003 Exchange Agreement-November 9, 2004
- iv. Implementation of the 2003 Exchange Agreement-Establishment of Long Term Operating Criteria-November 19, 2007.

D. Coachella and Desert have executed an agreement dated April 8, 2003 ("Mission Creek Groundwater Replenishment Agreement") for the cooperative management of Colorado River water ("Exchange Water") received from a connection to the Colorado River Aqueduct ("CRA"). This agreement provides for the percolation (recharge) of Exchange Water at the Mission Creek Groundwater Replenishment Facility ("Replenishment Facility"), replenishing the Mission Creek Subbasin and the sharing of costs associated with groundwater replenishment. The Mission Creek Subbasin has been in a state of overdraft.

E. Coachella, Desert and the Mission Springs Water District (“Mission Springs”) have entered into an agreement dated December 7, 2004, including a subsequent addendum (“Settlement Agreement”) for the cooperative management of the Mission Creek Subbasin.

F. Desert has constructed the Replenishment Facility, which includes a connection to the CRA (“Mission Creek Turnout”), conveyance pipeline and Replenishment Facility.

G. The intent of this Agreement is to update and replace in its entirety the Mission Creek Groundwater Replenishment Agreement.

DEFINITIONS

1. “Area of Benefit-Coachella” means that portion of the Mission Creek Subbasin under the responsibility of Coachella as defined in the most recent edition of Engineer’s Report On Water Supply and Replenishment Assessment-Mission Creek Subbasin Area of Benefit as prepared by Coachella.
2. “Area of Benefit-Desert” means that portion of the Mission Creek Subbasin under the responsibility of Desert as defined in the most recent edition of Engineer’s Report-Groundwater Replenishment and Assessment Program for the Mission Creek Subbasin as prepared by Desert.
3. “Article 21 Water” means additional SWP water available on a daily basis after SWP reservoirs have been filled and SWP Contractor deliveries have been met pursuant to Article 21 of the SWP Water Supply Contracts.
4. “Capital Costs” means preliminary design, design, right-of-way acquisition, construction, inspection and other incidental costs to ensure proper design and construction of the Replenishment Facility or associated facilities.
5. “Drought Water Bank Water” means additional water available during dry years pursuant to Article 55 and Article 12 (f) of the SWP Water Supply Contracts.
6. “Eligible Water Costs” means those imported water costs, which are eligible to be recovered from the Replenishment Assessment Charge per Water Code Sections 31630 through 31639

for Coachella and the Desert Water Agency Law for Desert. These costs include the following:

- 6.1. SWP Table A Allocation Water Costs - (1) Variable Operation-Maintenance-Power-Replacement Component, (2) Off Aqueduct Power Component and (3) Delta Water Charge.
- 6.2. Other SWP Water Costs - (1) Article 21 Water, (2) Pool A & B Water, (3) Drought Water Bank Water and (4) Yuba Accord Water; if mutually agreed in writing by Coachella and Desert.
- 6.3. Non-SWP water resulting from transfers, if mutually agreed in writing by Coachella and Desert.
7. "Minimal Pumper" means any entity pumping less than 25 acre-feet of water per year in the Area of Benefit-Coachella and/or any entity pumping less than 10 acre-feet per year in the Area of Benefit-Desert.
8. "Mission Creek Management Area" means the Mission Creek Subbasin.
9. "Mission Creek Subbasin" means that portion of the Coachella Valley Groundwater Basin as described in the most recent edition of Engineer's Report On Water Supply and Replenishment Assessment-Mission Creek Subbasin Area of Benefit as prepared by Coachella and the Engineer's Report-Groundwater Replenishment and Assessment Program for the Mission Creek Subbasin as prepared by Desert. The Mission Creek Subbasin is comprised of the Area of Benefit-Coachella and the Area of Benefit-Desert.
10. "Non-Eligible Costs" means water costs which are not Eligible Water Costs.
11. "Operation and Maintenance Costs" means labor, materials, equipment, utilities and other incidental costs to ensure proper operation and maintenance of the Replenishment Facility.
12. "Pool A & Pool B Water" means additional SWP water available pursuant to the Turn-Back Pool Program pursuant to Article 56 of the SWP Water Supply Contracts.
13. "Table A Allocation" means the current agency SWP water allocation from Table A of its Water Supply Contract in acre-feet per year.

14. “Water Production” means water pumped or diverted from a Management Area and from sources tributary to the Management Area excluding minimal pumpers and pumpers or diverters exercising adjudicated water rights.
15. “West Portion of the Whitewater River Subbasin” means that portion of the Coachella Valley Groundwater Basin as described in the most recent edition of Engineer’s Report On Water Supply and Replenishment Assessment-West Whitewater River Subbasin Area of Benefit as prepared by Coachella and the Engineer’s Report-Groundwater Replenishment and Assessment Program for the Whitewater River Subbasin as prepared by Desert.
16. “Whitewater Management Area” means the West Portion of the Whitewater River Subbasin.
17. “Yuba Accord Water” means additional water available from the Yuba Accord pursuant to Article 55 and Article 12 (f) of the Water Supply Contracts.

AGREEMENT

ARTICLE 1

1. WATER DELIVERY AND COST

- 1.1.1. Continuation of the Imported Water Program. As long as a current overdraft exists within the Mission Creek Management Area or the Whitewater Management Area, and subject to Section 1.5.3 and the remaining provisions of the Agreement, Coachella and Desert shall each order their full Table A Amounts under their respective SWP Water Supply Contracts. Such amounts of water shall be delivered to Metropolitan, and equivalent amounts shall be delivered by Metropolitan to Coachella and Desert, pursuant to the Water Delivery and Exchange Agreements. Exchange Water delivered to the Mission Creek Management Area will be percolated underground at the Replenishment Facility.
- 1.2. Water Accounting. Within 60 days after the end of the calendar year, Coachella and Desert shall determine the total combined water production for the previous calendar

year for both the Mission Creek Management Area and the Whitewater Management Area and calculate the following:

1.2.1. Proportion-Whitewater/Mission Creek. The proportionate share of water production between the Mission Creek Management Area and the Whitewater Management Area.

1.2.2. Proportion-Mission Creek-Coachella/Desert. The proportionate share of water production in the Mission Creek Management Area between Coachella and Desert.

1.2.3. Total Proportion-Coachella/Desert. The proportionate share of the total water production in the Mission Creek Management Area and the Whitewater Management Area between Coachella and Desert.

1.3. Water Delivery. Exchange Water available for delivery by Metropolitan shall be delivered to the Mission Creek Management Area and the Whitewater Management Area in proportion to water production as described in Section 1.2.1 and as required in the Settlement Agreement, i.e. production and delivery balanced over a 20 year period beginning December 7, 2004.

1.4. Water Order. On or before September 1, Coachella and Desert shall confer with Metropolitan and prepare a schedule of deliveries to the Mission Creek Management Area and Whitewater Management Area in accordance with Section 1.3. Coachella, Desert and Metropolitan will then submit coordinated SWP water orders to the Department of Water Resources on or before October 1. Deliveries under the Water Delivery and Exchange Agreements shall be credited to Coachella and Desert according to the Table A Amounts set forth in their respective SWP Water Supply Contracts, and no changes in such Table A Amounts shall be made which affect the joint groundwater replenishment operations without the written consent of both parties. Article 21 Water, other SWP water not allocated among SWP Water Supply Contractors according to Table A Amounts, Drought Water Bank Water, Non-SWP water resulting from water transfers, Pool A and B water and Yuba Accord Water shall not be taken under this Agreement without the prior approval of both Coachella and Desert.

1.5. Water Costs.

1.5.1. Eligible Water Costs. Coachella and Desert shall share the Eligible Water Costs in proportion to water production calculated pursuant to Section 1.2.3.

1.5.1.1. Monthly Eligible Water Cost Adjustment. Within 60 days after the end of the month, Coachella and Desert shall add their respective monthly Eligible Water Costs and multiply the sum by their respective Total Proportion-Coachella/Desert calculated pursuant to Section 1.2.3, to determine the amount of money that either agency must pay to the other in order to correctly apportion that month's Eligible Water Costs between the two (the 'Monthly Eligible Cost Adjustment'). Within 75 days after the end of the month Coachella or Desert shall make the Monthly Eligible Cost Adjustment payment to the overcharged agency.

1.5.1.2. Yearly Eligible Water Cost Adjustment. Within 60 days after the end of the calendar year, Coachella and Desert shall add their respective yearly Eligible Water Costs and multiply the sum by their respective Total Proportion-Coachella/Desert calculated pursuant to Section 1.2.3, to determine the amount of money that either agency must pay to the other in order to correctly apportion that year's Eligible Water Costs between the two (the "Yearly Eligible Water Cost Adjustment"), taking into account the Monthly Eligible Water Cost Adjustments that already had been made for that year. Within 75 days after the end of the calendar year Coachella or Desert shall make the Yearly Eligible Cost Adjustment payment to the overcharged agency.

1.5.2. Non-Eligible Water Costs. Coachella and Desert shall each be responsible for their own Non-Eligible Water Costs.

1.5.3. Review of Replenishment Facility Operations. The amounts of water Coachella and Desert shall continue to percolate for replenishment at the Replenishment Facility shall be subject to mutual review and redetermination annually. Percolation of Exchange Water, and the financial provisions of the Agreement

relating thereto shall cease upon termination of the Water Delivery and Exchange Agreements.

ARTICLE 2

2. CAPITAL IMPROVEMENTS AND COSTS

2.1. Original Capital Improvements The construction of the Replenishment Facility was completed in 2002. The original construction is deemed complete and there will be no further original capital costs. Any costs related to improvements constructed after 2002 shall be subject to Section 2.2.

2.2. Post-2002 Capital Improvements

2.2.1. Planning, Design and Construction. Desert will be responsible for the planning, design and construction of any new required capital improvements for the Replenishment Facility.

2.2.2. Capital Improvement Approval. Coachella shall have the opportunity to review and approve the plans and specifications for new required capital improvements prior to construction. Such approval shall be made in writing.

2.2.3. Capital Cost Sharing. Coachella and Desert shall share the capital costs for any new capital improvement project according to the Proportion-Mission Creek-Coachella/Desert described in Section 1.2.2, calculated for the period beginning with completion of the original construction and ending with completion of the new construction.

2.2.4. Capital Cost Payments. Coachella shall pay Desert its share of the capital costs for new capital improvement projects using one of the following payment options.

2.2.4.1. Upfront Payment. Desert shall provide Coachella with the total estimated cost of the new capital improvement project based on advertised bids and shall invoice Coachella for its proportionate share of the estimated cost. Coachella will remit its total estimated share within

30 days of receiving the invoice. Within 90 days after completion of the project, Desert shall provide Coachella with an itemized statement of final costs incurred. The final costs will be reconciled with the upfront payment. Desert shall reimburse Coachella for any overpayment, or invoice Coachella for any additional payment due, and Coachella will remit to Desert its total share of actual costs incurred within 30 days of receiving the invoice.

2.2.4.2. Monthly Project Payment. Desert shall provide Coachella with the total estimated cost of the new capital improvement project based on advertised bids. Within 30 days after the end of the month, Desert shall invoice Coachella for its proportional share of the monthly costs incurred on the project, until project completion. Coachella will remit its monthly share to Desert within 30 days of receiving the invoice.

2.2.4.3. Change Orders. In the event of a change order, Desert shall provide Coachella with a copy of the change order within five (5) days of receiving the change order for Coachella's review. Desert and Coachella shall discuss and determine if the change order is valid and the following shall occur: (1) if it is determined by the parties that a change order is a result of a General Change in the contract as defined in Subsection 2.2.4.3.1 below, then the parties shall each pay for the percentage of the Work established according to the Proportion-Mission Creek-Coachella/Desert described in Section 1.2.2; (2) if it is determined by the parties that a change order is a direct result of Desert's Oversight as defined in Subsection 2.2.4.3.1 below, then Desert shall be solely responsible for the cost increase or decrease of the change order; and (3) if the parties are in disagreement with a change order, then in order to not delay the Project, the parties shall each pay for the percentage of the Work as established according to the Proportion-Mission Creek-Coachella/Desert described in Section 1.2.2 with the agreement that further negotiations will occur as defined in Subsection 2.2.4.3.2 below. Desert may issue change orders without reviewing the change order with

Coachella; however, Coachella will not be obligated to pay for a change order that is not provided to Coachella for review.

2.2.4.3.1. A General Change is defined as a change to the Work associated with a reasonable increase or decrease in a contract's quantities or unit prices or a mutually agreed change in the scope of the work. Desert Oversight Change is defined as a change that occurs that is not a General Change.

2.2.4.3.2. In the event of any disagreement between Desert and Coachella with respect to responsibility for costs incurred in connection with change orders approved by Desert, the matter shall expeditiously be submitted to binding arbitration to be held in the Coachella Valley and conducted by an arbitrator agreed to by the parties, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Each party shall initially pay one-half (½) of all costs incurred in connection with such arbitration; however, the arbitrator shall have the power and discretion to order that the non-prevailing party reimburse reasonable legal fees and costs incurred by the prevailing party.

2.2.4.3.3. Subject to the foregoing, Coachella shall have no obligation to pay any cost increases for changes unless Coachella has approved the same in writing.

2.3. Revenue-Producing Improvements-Desert. After the effective date of this Agreement, if Desert constructs or installs a revenue-producing improvement at the Replenishment Facility site, such as a wind power generating facility, the annual revenue derived from the operation of the revenue-producing improvement shall be applied to compensate Desert for its costs, in the following order: (1) Desert's annual Operation and Maintenance (O&M) costs to operate and maintain the revenue producing facility, then

(2) Desert's annualized capital costs for the revenue producing facility until such capital costs have been recovered in full. The remaining net annual revenue, if any, shall be divided evenly between Desert and Coachella, with payment of Coachella's share of the net revenue to be paid by Desert to Coachella within 30 days after the end of the month in which Desert receives the net revenue.

2.4. Revenue-Producing Improvements-Third Party. After the effective date of this Agreement, if Desert enters into a lease or other agreement with a Third Party to construct, operate and maintain a revenue-producing improvement on the Replenishment Facility site in exchange for rental or royalty or other payments, one-half (1/2) of such payments shall be remitted to Coachella within thirty (30) days after receipt by Desert.

2.5. Legal Defense or Representation Costs. In the event of any legal actions affecting capital cost payments that are shared between Desert and Coachella according to the Proportion-Mission Creek-Coachella/Desert described in Section 1.2., Desert and Coachella will share in these legal representation costs in the same proportion as their percentage capital cost contribution obligations. Desert and Coachella agree to cooperate in their joint representation.

ARTICLE 3

3. OPERATION AND MAINTENANCE (O&M) AND COSTS

3.1. Original O&M Costs. All O&M costs incurred prior to the effective date of this Agreement shall be deemed to be the responsibility of Desert.

3.2. New O&M Costs.

3.2.1. O&M Planning, Budgeting and Implementation. Desert shall be responsible for planning, budgeting and implementing programs to ensure proper operation and maintenance of the Replenishment Facility.

- 3.2.2. O&M Approval. Coachella shall have the opportunity to review and approve the O&M planning and budgets in the year prior to the proposed O&M expenditures. Such approval shall be made in writing.
- 3.2.3. O&M Cost Sharing. Coachella and Desert shall share the O&M costs each year according to the Proportion-Mission Creek-Coachella/Desert calculated for that year pursuant to Section 1.2.2; provided however, that if extraordinary O&M repair or replacement costs are incurred due to the negligence or willful act of either party as determined by a court or by concurrence between Desert and Coachella, all of such extraordinary costs shall be borne exclusively by the party whose negligence or willful act resulted in such costs, and upon invoice shall be paid at the same time that other O&M costs are paid.
- 3.2.4. O&M Cost Payments. Coachella shall pay Desert its share of the O&M costs on a monthly basis. Within 30 days after the end of each month, Desert shall invoice Coachella for the actual O&M costs incurred during that month. Coachella shall have 30 days after receipt of the invoice to remit its share of the monthly O&M costs.
- 3.2.5. Yearly O&M Cost Adjustment. Within 60 days after the end of the calendar year, Coachella and Desert shall add their respective yearly O&M Costs and multiply the sum by their respective Proportion-Mission Creek-Coachella/Desert calculated for that year pursuant to Section 1.2.2, to determine the amount of money that either agency must pay to the other in order to correctly apportion that year's O&M costs between the two (the "Yearly O&M Cost Adjustment"), taking into account the monthly O&M cost payments that had been made for that year. Within 75 days after the end of the calendar year Coachella or Desert shall make the Yearly O&M Cost Adjustment payment to the overcharged agency.
- 3.2.6. Future Regulatory Costs. The costs of any future permit or other regulatory expense that may be required by any governmental authority having jurisdiction over groundwater replenishment operations shall be the joint responsibility of Coachella and Desert according to the Proportion-Mission Creek-Coachella/Desert calculated for that year pursuant to Section 1.2.2.

ARTICLE 4

4. WATER RIGHTS

- 4.1. Intent To Recapture. The Exchange Water that will be percolated at the Replenishment Facility and replenishing the Mission Creek Management Area shall not be considered part of the native safe yield of the Mission Creek Subbasin. The parties hereby declare their intent to recapture such Exchange Water, and to maintain their prior rights to recapture quantities by which the groundwater supply has been augmented through their replenishment operations. Such recapture rights shall be owned by the parties in the same proportions as the total Eligible Water Costs apportioned between the two for the delivery of water to the Replenishment Facility during the term of this Agreement. Coachella and Desert shall each own the right to recapture the return flows from its share of such Exchange Water to the maximum extent permitted by law.
- 4.2. No Transfer of Permanent Entitlement. Nothing in this Agreement shall be construed as effecting or resulting in any assignment, conveyance or other transfer of permanent entitlement or of any other rights under the SWP Water Supply Contract and Amendments by neither party, nor the acquisition of any right, title or interest in the SWP Water Supply Contract and Amendments of the other party. Coachella and Desert shall each reserve the right, upon 180 days written notice to the other, to withdraw from the joint replenishment of the Mission Creek Subbasin and to fully utilize their own entitlements under their respective SWP Water Supply Contracts and Amendments whenever their own needs, as determined by each such party, may require. In such event, each party shall thereafter be required to pay in full all sums due under its own SWP Contract and Amendments without contribution from the other.
- 4.3. Effect of SWP Contracts and Others. This Agreement is subject to the provisions of the SWP Water Supply Contracts and Amendments, the Delivery and Exchange Agreements, Settlement Agreement and Addendum, all provisions of law, and the rules and regulations of any governmental agency having lawful jurisdiction over the performance of this Agreement.

- 4.4. Other Water. Nothing herein shall be construed to prevent either Coachella or Desert from importing other water for use within their respective boundaries, provided that any alteration of the rights, responsibilities, charges, or procedures set forth in this Agreement shall require an amendment.

ARTICLE 5

5. DATA COLLECTION PROGRAM

- 5.1. Data Collection Program. A joint program of data collection and analysis within the Mission Creek Management Area shall be established by Coachella and Desert in order to provide the information required for sound management of the water resources of the area. Such program shall include, but not be limited to: (1) an annual determination of the water production, excluding minimal pumpers, within the Mission Creek Management Area of each of the parties, including continued metering of their own wells, and efforts to meter the wells of other pumpers in the Mission Creek Management Area; (2) monitoring the effect of groundwater replenishment operations, including cooperative efforts with the Regional Water Quality Control Board and the USGS; (3) monitoring inflow and outflow from the Mission Creek Management Area; (4) regular measurement of groundwater levels; and (5) regular analysis of ground water quality. Coachella and Desert shall each be responsible for carrying out and paying the cost of those portions of the program attributable to the portions of the Mission Creek Management Area located within their own boundaries. Additional data or work which may be required shall be subject to mutual agreement, and the costs thereof shall be borne according to the proportion-Mission Creek-Coachella/Desert described in Section 1.2.2. All data thereby collected, and all the results thereof, shall be available to both parties, and shall be exchanged at the end of each year.

5.2. STATE PROJECT WATER

5.2.1. State Project Water. It is the intention of Coachella and Desert to utilize State Water Project Water for replenishment when that supply becomes available. At the present time, it is not known when or where such water may be delivered.

ARTICLE 6

6. OTHER

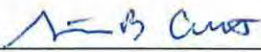
6.1. Disagreements. In the event of any legal action to construe or enforce the provisions of this Agreement, or for damages due to alleged breach thereof, the prevailing party shall be entitled to reimbursement of costs and reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

SIGNATURE PAGE

Approved as to form:

COACHELLA VALLEY WATER DISTRICT

By: 
Steven B. Abbott
Special Counsel

By: 
J.M. Barrett
General Manager

Approved as to form:

DESERT WATER AGENCY

By: 
Michael T. Riddell
Attorney for Desert Water Agency

By: 
David K. Luker
General Manager-Chief Engineer