

Agenda Number 4d

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MEETING DATE: March 1, 2018

AGENDA ITEM: Colorado River Basin Weather Modification Agreement

RECOMMENDATION:

Staff recommends that the Board authorize the General Manager to execute an agreement establishing programmatic funding for Colorado River Basin weather modification to allow for long-term funding and participation with other parties.

FINANCIAL IMPLICATIONS:

None

Impact on Reserves: None

Impact on Rates: None – Current Weather Modification funding is incorporated into the current 2018 – 2019 budget approved for by the Board. Future contributions will be incorporated in future budget requests for consideration by the Board.

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

2016 CAWCD Board of Directors Strategic Plan

- Water Supply: Continue to support augmentation of Colorado River water supply

PREVIOUS BOARD ACTION/ACTIVITY:

- November 2, 2017, Update on Colorado River Basin weather modification (snowpack augmentation) agreement

ISSUE SUMMARY/DESCRIPTION:

CAWCD, along with its partners in the Lower Colorado River Basin (Southern Nevada Water Authority (SNWA) and the Six Agency Committee of California (SAC)) have co-funded snow augmentation programs in Colorado, Utah, and Wyoming since 2007. In collaboration with the Colorado Water Conservation Board (CWCB), the Utah Division of Water Resources (UDWRe), and the Wyoming Water Development Office (WWDO), weather modification programs in the Upper Colorado River Basin have successfully enhanced precipitation and consequently snowpack in the Colorado River Basin.

Since early 2017, weather modification partners from the Upper and Lower Colorado River Basin have worked towards shifting the current administration of winter cloud-seeding programs from individual annually funded activities for each of the Upper Basin

programs into a single multi-year funding mechanism that includes all programs and funding participants. In addition, New Mexico expressed interest to participate in this basin-wide collaborative agreement as a funder through the New Mexico Interstate Stream Commission (NMISC).

Currently, the Agreement Establishing Programmatic Funding for Colorado River Basin Weather Modification is in final draft form (see attachment A). The parties to the agreement are in the process of obtaining approval from their respective Boards to execute the agreement. To date, the Colorado Water Conservation Board has approved the agreement. The target date to for completion of the approval process and initiation of the activities described in the agreement is April/May 2018.

In addition, CAWCD requested review and comments from the Arizona Department of Water Resources (ADWR). The relevant comments from ADWR have been incorporated into the final draft.

KEY TERMS OF THE AGREEMENT:

The key terms of the Agreement includes the following:

- The parties to the agreement are CAWCD, SNWA, SAC, CWCB, UDWR, WWDO, and NMISC.
- The length (Term) of the agreement is from Water Year 2018 (execution date) until Water Year 2026 (September 30, 2026).
- CAWCD, SNWA, and SAC will each provide up to \$500,000 annually for all approved Upper Basin Program Activities. NMISC will provide up to \$20,000 annually for all approved Upper Basin program activities. CWCB, UDWR, and WWDO will also provide funds to approximately match the funding provided by CAWCD, SNWA, SAC, and NMISC.
- Provisions for adding new funders, such as power providers and other agencies.
- Approval of proposed program activities are reviewed and approved by a technical committee composed of representatives from each party to the agreement.
- Weather modification programs funded through this agreement will exclusively target areas of the Colorado River Basin within the states of Wyoming, Colorado, and Utah.

SUGGESTED MOTION:

Staff recommends that the Board authorize the General Manager to execute an agreement establishing programmatic funding for Colorado River Basin weather modification consistent with the key terms presented.

Agenda Number 4d Attachment 1

AGREEMENT ESTABLISHING PROGRAMMATIC FUNDING FOR COLORADO RIVER BASIN WEATHER MODIFICATION

This Agreement Establishing a Colorado River Basin Weather Modification Funding Mechanism (“Agreement”) is made and entered into on _____, 2018, by and among California’s Six Agency Committee, Central Arizona Water Conservation District, and Southern Nevada Water Authority (collectively “Funding Parties”), Colorado Water Conservation Board, Utah Division of Water Resources, Wyoming Water Development Office (collectively “Upper Basin Entities”) and the New Mexico Interstate Stream Commission (“NMISC”). The Funding Parties, Upper Basin Entities, and the NMISC are collectively referred to as the “Parties” and each individually as “Party.”

RECITALS

Parties

1. The Six Agency Committee (“SAC”), which was created in 1950 to support the Colorado River Board of California (“CRB”), represents six Southern California public agencies that have interests in Colorado River water and power resources: Coachella Valley Water District, Imperial Irrigation District, Los Angeles Department of Water and Power, Palo Verde Irrigation District, San Diego County Water Authority and The Metropolitan Water District of Southern California. The Six Agency Committee administers funds contributed by the represented agencies to protect and advance the agencies’ rights and interests in the Colorado River System.

2. The Southern Nevada Water Authority (“SNWA”) is a Nevada joint powers agency and political subdivision of the State of Nevada, created by Cooperative Agreement dated July 25, 1991, as amended November 17, 1994, and January 1, 1996. SNWA was formed to address Southern Nevada’s unique water needs on a regional basis. SNWA manages the region’s water resources, including water from the Colorado River, to provide for the Las Vegas Valley’s present and future water needs.

3. The Central Arizona Water Conservation District (“CAWCD”) is a multi-county water conservation district established under Arizona Revised Statutes (“A.R.S.”) §§ 48-3701 *et seq.* that operates and maintains the Central Arizona Project. CAWCD is authorized to, among other things, contract for and deliver Colorado River water for Central Arizona Project and execute contracts and perform all acts necessary for the furtherance of its purposes and authorities. CAWCD has entered into a contract with the Secretary of the Interior for the delivery to CAWCD of all Colorado River water to which Arizona is entitled under *Arizona v. California*, 376 U.S. 340 (1964), that is not needed to satisfy the water orders of those water users in Arizona with an equal or higher priority to Colorado River water. CAWCD and the users of Central Arizona Project water benefit from efforts to improve the reliability of Arizona’s apportionment to Colorado River and CAWCD’s participation and funding of such efforts are in furtherance of its purposes and authorities.

4. The Colorado Water Conservation Board (“CWCB”) is a division of the State of Colorado, Department of Natural Resources, created to aid in the protection and development of the state’s

waters. Pursuant to Colorado Revised Statutes (“C.R.S.”) §§ 36-20-101 *et seq.* (2016), CWCB administers the state’s weather modification program and has regulatory authority over cloud seeding operators. Typically, such operators contract with local program sponsors, such as water districts and water utilities, for cloud seeding services in specific watersheds. The state, through CWCB, has established a weather modification program. C.R.S. §§ 36-20-102. CWCB receives appropriations for the weather modification program from the Colorado Legislature. The appropriations are deposited in the Construction Fund. In addition, CWCB may accept funds from other entities. C.R.S § 37-60-121.

5. The Utah Division of Water Resources (“UDWRe”) is a division of the State of Utah, Department of Natural Resources. UDWRe’s mission is to plan, conserve, develop, and protect Utah’s water resources. In 1973, the Utah Legislature passed the Utah Cloud Seeding Act which allowed for the licensing of operators and permitting of cloud seeding projects by UDWRe. Cloud seeding operators contract with local program sponsors, such as water districts and counties within the state, for cloud seeding activities in specific project areas. The projects are funded by local sponsors with a cost share from the State of Utah of up to fifty percent (50%) of the total cost. The State’s share is currently limited to three hundred thousand dollars (\$300,000). In addition, UDWRe may accept funds from other entities.

6. The Wyoming Water Development Office (“WWDO”) is an agency of the State of Wyoming. WWDO administers the Wyoming Water Development Program (Wyoming Statutes § 41-2-112), which was established in 1975 to promote the optimal development of the State’s human, industrial, mineral, agricultural, water, and recreational resources. This program provides, through the Wyoming Water Development Commission, procedures and policies for planning, selecting, financing, constructing, acquiring, and operating water projects, such as cloud seeding activities. Weather modification programs are partially funded through annual Legislative appropriations passed in the Omnibus Water Bills. In addition, WWDO may acquire funding from other entities.

7. The NMISC is an agency of the State of New Mexico. Pursuant to NMSA 1978, § 72-14-3, the NMISC is authorized to investigate water supply; to develop, to conserve, and protect the water supply; and to do any and all other things necessary to protect, conserve, and develop the waters and stream systems of the State of New Mexico, interstate or otherwise. The NMISC also administers and regulates New Mexico’s weather control and cloud modification operations pursuant to the state’s Weather Control Act, NMSA 1978, § 75-3-1 to 75-3-15. The State of New Mexico does not have its own weather modification program. Instead, the NMISC currently provides funds to the CWCB for weather modification programs in Southwestern Colorado.

Background

8. The Upper Basin Entities have a variety of existing operational weather modification programs within the Colorado River Basin. Historically, these weather modification programs were funded, operated, and regulated at the state and local level. Since 2007, the Funding Parties have funded portions of these programs. The NMISC first provided funds for a portion of these programs in 2007.

9. The Parties agree that properly designed and operated winter season orographic weather modification programs may increase winter snowpack in the Colorado River Basin. Increased snowpack may augment the Colorado River Basin's water supply by increasing precipitation and runoff.

10. All seven of the Colorado River Basin States — Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming (the "Basin States") — and their water users benefit from increased water supply in the Colorado River Basin. Any increase in runoff is additional Colorado River System water that benefits the entire Colorado River Basin.

11. The Parties recognize opportunities for augmenting Colorado River System runoff through a cooperative weather modification cost-share funding mechanism. From 2007 through 2017, the Funding Parties and Upper Basin Entities implemented a collaborative effort to enhance Colorado River System water supply conditions through annual amendments to three base agreements to provide supplemental funding for weather modification activities in the Upper Basin. During that period, the Funding Parties contributed funds to the Upper Basin Entities for cloud seeding of appropriate orographic storms in the respective states. The NMISC also provided supplemental funding, through a separate agreement, to operations in southwestern Colorado.

Guiding Principles for the Establishment of the Colorado River Basin Weather Modification Funding Mechanism

12. The Parties intend for this Agreement to allow a continuation of efforts to pursue weather modification activities in a more efficient and long-term programmatic approach. The terms of this Agreement are informed by the Parties' past efforts and are intended to provide greater certainty and efficiency going forward.

13. As with previous collaborative efforts, the Parties understand that the Funding Parties' financial contributions to the Upper Basin Entities are not intended to replace existing weather modification programs, or the cooperative funding provided by Colorado, New Mexico, Utah, and Wyoming. Through this Agreement, rather, the Funding Parties seek to supplement, improve, expand, and extend the Upper Basin Programs, as defined herein.

14. This Agreement is intended to reflect a cost-sharing relationship of generally fifty/fifty percent (50%/50%) between the Funding Parties and the NMISC, and funds contributed by Upper Basin Entities, including local contributions.

15. No minimum annual funding contribution and commitment will be required of the Funding Parties and the NMISC by any Upper Basin Entity.

16. Funding contributions provided by the Funding Parties shall only be matched to funds contributed by Upper Basin Entities, including local contributions, that are to be utilized for weather modification activities that contribute to increased water supply within the Colorado River Basin.

17. Funding contributions provided by the NMISC are to be utilized only for weather modification activities that contribute to increased water supply within the Western and Eastern San Juan Basin.

18. Funds to be provided by the Funding Parties and the NMISC may be subject to annual approval by the respective Boards, committees or agencies.

19. Accordingly, through this Agreement, the Parties will establish a nine-year Colorado River Basin Weather Modification Funding Mechanism (“Funding Mechanism”). This Agreement, undertaken with funding provided by the Funding Parties and the NMISC, will be directed by a Technical Committee (“Technical Committee”) as described below. The purpose of this Agreement is to efficiently supplement, improve, expand, and extend weather modification activities through the Upper Basin Entities by reducing the time and resources devoted to project review and approval, streamlining funding authorization efforts, providing flexibility in implementing weather modification operations, and facilitating the Upper Basin programs’ geographic and temporal expansion of weather modification programs through long-term funding.

Agreement

1. Definitions.¹

- a. Accomplishment Summary. A brief annual summary compiled by the Funding Party Technical Committee representatives that summarizes the information presented in the Annual Reports.
- b. Activities. Those weather modification practices, performances, transactions, project feasibility studies, operations, or other actions undertaken pursuant to this Agreement or any amendments thereto.
- c. Activity Exhibit. The Activity Exhibit is a document detailing each Upper Basin Entity’s Activities and budget estimates for an upcoming Water Year. The finalized Activity Exhibit will outline the Upper Basin Entities’ Approved Activities, Funding Party Yearly Contributions, NMISC Annual Funding for an upcoming Water Year, and any additional funding provided by other entities.
- d. Annual Reports. Reports submitted by the Upper Basin Entities that document the Activities completed during the Water Year.
- e. Approved Activities. Activities identified in a Water Year’s finalized Activity Exhibit that has been approved and executed by each Party based on the Notice of Recommendation.
- f. Colorado River Basin States (“Basin States”). The states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

¹ Additional terms are defined throughout the Agreement.

- g. Colorado River System. This term has the meaning set forth in Article II(a) of the Colorado River Compact of 1922.
- h. Funds. Those monies contributed by the Funding Parties and the NMISC to the Upper Basin Entities to be disbursed for Activities and administration pursuant to this Agreement.
- i. Funding Parties. Lower Basin entities (i.e., SAC, SNWA, and CAWCD) providing Funds to the Upper Basin Entities. The NMISC is not considered a Funding Party because New Mexico is an Upper Basin State and is providing funding in lieu of implementing its own weather modification program.
- j. Local Contributions. Funding contributions detailed in the Activity Exhibit that are acquired or accepted by an Upper Basin Entity to be used for Activities that benefit the Colorado River Basin.
- k. Notice of Recommendation. A recommendation from the Technical Committee to approve and execute a final Activity Exhibit.
- l. Party or Parties. Any signatory to this Agreement or collectively all signatories to this Agreement.
- m. Upper Basin Entities. The Upper Colorado River Basin agencies (CWCB, UDWR, and WWDO) responsible for the implementation and management of state specific weather modification programs within the Upper Colorado River Basin.
- n. Upper Basin Programs. The weather modification programs operated and administered by CWCB, UDWR, or WWDO.
- o. Upper Colorado River Basin. This term has the meaning set forth in Article II(f) of the Colorado River Compact of 1922.
- p. Water Year. The twelve (12) month period for which Funds are provided, from October 1 of any year through September 30 of the next year.

2. Term of Agreement.

- a. This Agreement shall have a duration of up to eight (8) years (“Term”).
- b. The Term shall commence on October 1, 2018 (“Commencement Date”), and continue for up to eight (8) years, through September 30, 2026 (“Termination Date”).
- c. The Agreement may be terminated prior to the Termination Date and during the Term of the Agreement according to the conditions set forth in Section 8.

3. Funding Contributions.

- a. The Funding Parties agree to contribute up to five hundred thousand dollars (\$500,000) each, and up to one million five hundred thousand dollars (\$1,500,000) collectively, in funding for Approved Activities in a single Water Year (“Yearly Contribution”).
- b. The NMISC agrees to contribute up to twenty thousand dollars (\$20,000) in annual funding for Approved Activities in a single Water Year (“Annual Funding”). The NMISC and any funds contributed by the NMISC are considered separate and distinct from the Funding Parties and the Yearly Contribution because New Mexico is an Upper Basin State that is providing funding to other Upper Basin States in lieu of implementing its own weather modification program.
- c. The Yearly Contribution, Total Contribution, and Annual Funding amounts are subject to the availability of funds and the terms and conditions otherwise set forth in this Agreement.

4. Technical Committee. The Parties authorize the creation of a Technical Committee to direct and administer the provisions of this Agreement. The Technical Committee is responsible for the coordination of Activities and the allocation of Funds established as part of the Funding Mechanism, and will serve as a forum for the Parties to work collaboratively in fulfilling those responsibilities.

- a. Composition. The Technical Committee shall be comprised of one representative from each of the Parties. Unless a party objects, representatives from third-party organizations (e.g. consultants and researchers) may be asked to participate on the Technical Committee periodically. Parties’ decision-making authority will not be granted to any third-party representative regarding the allocation of Funds or coordination of Activities.
- b. Chairperson. A Chairperson shall coordinate and preside over the Technical Committee’s affairs including, but not limited to, organizing and hosting conference calls and meetings, disseminating information, and/or other Committee business. The Chairperson shall provide a meeting summary and list of action items after each meeting to all Technical Committee representatives. The Chairperson position shall be fulfilled by a Funding Party Technical Committee representative. Upon execution of this Agreement, a Funding Party Technical Committee representative from SNWA shall be appointed the position of Chairperson. The length of the Chairperson’s term of service and the selection of a subsequent Chairperson is at the discretion of the Technical Committee.
- c. Meetings. An annual Committee Meeting (“Committee Meeting”) shall occur prior to June 30 of each year. The objective of the Committee Meeting is to coordinate and

evaluate the Upper Basin Entities' Activity Exhibits; determine the Funding Parties' Yearly Contribution and NMISC's Annual Funding for the upcoming Water Year; and discuss Activities completed during the current Water Year.

- i. All Technical Committee representatives are expected to participate in each annual Committee Meeting by teleconference or attend in person, as is reasonable and appropriate.
 - ii. Activity Exhibits. The Upper Basin Entities' proposed Activity Exhibits for the upcoming Water Year are due to the Technical Committee for review by May 15 of each year.
 1. The Funding Party and NMISC Technical Committee representatives will review each Activity Exhibit in advance of the Committee Meeting, and provide preliminary approval of the proposed Activity Exhibits or recommend modification thereto to each Upper Basin Entity as appropriate, during the Committee Meeting.
 2. Each Upper Basin Entity shall inform the Chairperson of their respective agency's concurrence with, or proposed modifications to, the Activity Exhibit, Yearly Contribution, and Annual Funding amounts for the upcoming Water Year, no later than July 31 of each year.
- d. Approval. The Chairperson will provide a Notice of Recommendation and a final Activities Exhibit for the upcoming Water Year to the Parties no later than August 31 of each year.
- i. The final Activity Exhibit will serve as a Technical Committee recommended Addendum to the Agreement, and as such be submitted to each Party for execution.
 - ii. The final Activity Exhibit will identify the Yearly Contribution and Annual Funding each Funding Party and the NMISC will respectively contribute to each Upper Basin Entity for the implementation and management of the Activities described therein.
- e. Focus. The Parties will direct their efforts primarily at the implementation of Activities in Colorado, Utah, and Wyoming, utilizing a long-term, programmatic funding approach. The scientific study and research of weather modification and its effectiveness are not a primary purpose of this Agreement.
- f. Considerations. The Technical Committee shall consider the following Activities in relation to the allocation of Funds for any Water Year.
- i. WWDO Activities: Supplementation of weather modification operations in the Colorado River Basin portion of Wyoming.

- ii. CWCB Activities: Extension and/or expansion of weather modification operations in the Colorado River Basin portions of Colorado.
- iii. UDWRe Activities: Extension and/or expansion of weather modification operations in the Colorado River Basin portions of Utah.
- iv. The Funding Parties may reduce the funding of Activities when Lake Powell and Lake Mead are projected to collectively exceed eighty percent (80%) of live storage capacity in the upcoming Water Year. Notice of the decision of whether to fund Activities based on the results of the United States (“U.S.”) Bureau of Reclamation’s August Twenty Four (24) Month Study Report projections of collective inflow and storage at Lake Powell and Lake Mead shall be provided to the Upper Basin Entities no later than August 31 of each year, and is not subject to change for the Water Year following that determination.
- v. The funding and operations of the Upper Basin Programs are anticipated to be expanded gradually throughout the Term of this Agreement. The Funding Parties will only provide funding to the extent that the Upper Basin Entities are providing funds in an amount equal to or greater than that funded in the previous Water Year. Approval of Funding Parties’ Yearly Contributions in excess of fifty percent (50%) of the total cost for Activities will be evaluated by the Technical Committee on an as-needed basis.
- vi. The Funding Parties’ primary goal is to maximize weather modification operations. However, funding for scientific research related to the effectiveness or quantification of weather modification may be considered at the discretion of the Technical Committee.
- g. Purchased Equipment. The appropriate Upper Basin Entity, upon receipt of the equipment or instrumentation, will be responsible for costs associated with storage, shipping, maintenance and disposal of such equipment or instrumentation.
- h. Disbursement of Funds. Yearly Contributions and Annual Funding will be provided to Upper Basin Entities by the Funding Parties and the NMISC within forty-five (45) days from the execution of the final Activity Exhibit, or within forty-five (days) of invoicing, at the discretion of each Upper Basin Entity.
- i. Invoices. The Technical Committee is responsible for establishing an invoicing procedure consistent with Section 4.h of this Agreement, and considering the accounting requirements of the Upper Basin Entities, to be followed by the Upper Basin Entities in submitting invoices to the Funding Parties and the NMISC, as appropriate.

This procedure will be documented in written format, and may be modified or amended at the discretion of the Technical Committee.

- j. Approved Activity Funding. Yearly Contributions and Annual Funding may only be used to fund Approved Activities specifically described in the final Activity Exhibit for that Water Year.
- k. Unused Funds. Yearly Contributions and Annual Funding provided to the Upper Basin Entities that are unused and uncommitted by the end of the Water Year may be credited towards future Approved Activities or reimbursed to the Funding Parties and the NMISC, at the discretion of the respective Funding Party and the NMISC. At no time will the sum of any current and subsequent Yearly Contribution provided by any single Funding Party exceed five hundred thousand dollars (\$500,000) in a given Water Year.

5. Reporting

- a. Annual Reports. Each Upper Basin Entity will submit four (4) hard-copy Annual Reports and one (1) electronic version to the Chairperson no later than September 30 of each year. At a minimum, each Annual Report should include the following information:
 - i. Maps showing the locations of any weather modification equipment (for example: generators, icing rate meters, radiometers and aircraft flight paths) funded through this Agreement.
 - ii. Maps showing the target areas of the Activities funded through this Agreement.
 - iii. A list of any equipment purchased using funds from this Agreement.
 - iv. A monthly timescale accounting of the number of seeding events, amount of silver iodide or seeding agent used, and the number of generator hours or flight hours where applicable.
 - v. As available, an expense report comparing the budgeted versus actual costs for the Water Year.
- b. Accomplishment Summary. The Funding Party Technical Committee representatives will complete an annual Accomplishment Summary synthesizing the information contained in the Annual Reports referenced above.
- c. If any Upper Basin Entity fails to provide their Annual Report under Section 5.a, the Funding Parties and the NMISC are released from any obligation to continue funding Activities to that Upper Basin Entity until the past due reports have been provided.

6. Timeline.

- a. April/May
 - i. The Chairperson of the Technical Committee schedules the annual Committee Meeting to be held prior to June 30 of each year.
 - ii. The Upper Basin Entities' proposed Activity Exhibits will be submitted to the Chairperson for review by the Technical Committee Funding Party representatives by May 15 of each year.
- b. June
 - i. The Technical Committee shall meet annually prior to June 30 of each year to coordinate and evaluate the Upper Basin Programs' Activity Exhibits, the Funding Parties' Yearly Contribution, and the NMISC's Annual Funding for the upcoming Water Year.
 - ii. The proposed Activity Exhibits shall contain maps of proposed generator locations and weather modification equipment. Generators and equipment that are proposed for operations using funds provided by the Funding Parties and the NMISC shall be clearly identified. The Funding Parties and the NMISC shall have an opportunity to review and approve existing or proposed locations for generators and equipment prior to the start of annual cloud seeding operations.
 - iii. The Funding Party and the NMISC Technical Committee representatives will review and provide preliminary approval of all Upper Basin Entity Activity Exhibits or recommend any modifications thereto to the respective Upper Basin Entity, as appropriate, during the Committee Meeting.
- c. July
 - i. Upper Basin Entities shall inform the Chairperson of their respective agency's concurrence with, or proposed modifications to, their Activity Exhibit, Yearly Contribution, and Annual Funding amounts for the upcoming Water Year no later than July 31 of each year.
 - ii. Upper Basin Entity draft Annual Reports from the previous operational season (current Water Year) are due to the Chairperson no later than July 31 of each year.
- d. August
 - i. The Funding Parties will provide notice to the Upper Basin Entities and the NMISC regarding the decision of whether or not to fund future Activities based on the results of the U.S. Bureau of Reclamation's Twenty Four (24) Month

Study Report, Operation Plan for Colorado River System Reservoirs, no later than August 31 of each year.

- ii. Funding Party Technical Committee representatives will complete an Accomplishment Summary for the previous operational season (current Water Year) no later than August 31 of each year.
 - iii. The Chairperson will provide Notice of Recommendation and the final Activities Exhibit for the upcoming Water Year to the Parties no later than August 31 of each year. The final Activity Exhibit will serve as a Technical Committee recommended Addendum to the Agreement, and as such be submitted for execution by each Party.
- e. September
- i. Each Party's Technical Committee representative will submit the recommended Addendum for entity-specific legal, and managerial review and execution.
 - ii. Upper Basin Entity final Annual Reports are due to the Chairperson no later than September 30 of each year.
- f. October
- i. Operational weather modification contracts are negotiated and executed as needed by the appropriate Consultant(s) and Upper Basin Entity for the current Water Year.
- g. November
- i. Water Year Activities start.
 - ii. Funding Party Yearly Contributions and NMISC Annual Funding are disbursed to Upper Basin Entities as appropriate.
- h. December/January
- i. Funds provided to the Upper Basin Entities that are unused and uncommitted by the end of the previous Water Year may be credited towards future Approved Activities or reimbursed to the Funding Parties and the NMISC, at the discretion of the Funding Parties and the NMISC.
- i. March/April
- i. Water Year Activities end.

Any dates are subject to review and amendment by the Technical Committee during the Term.

7. **Insurance.** The Upper Basin Entities shall ensure that, in contracting with third-party weather modification vendors, the third-party contractors procure general liability insurance coverage for at least one million dollars (\$1,000,000) and maintain such policy for the duration of the Activities that are funded in part through this Agreement. Such insurance policies shall name the Funding Parties and the NMISC, as appropriate, as additional insureds. If the third-party contractor is a governmental entity, then it may demonstrate that it is self-insured for up to at least one million dollars (\$1,000,000) in lieu of the general liability insurance requirements in this paragraph.
8. **Termination.** A Party may terminate its rights and obligations under this Agreement and participation in the Funding Mechanism by providing written notice to each of the other Parties.
- a. If a Funding Party, and/or the NMISC, provides notice of termination, that Funding Party's and/or the NMISC's participation in the Agreement shall terminate at the conclusion of the Water Year in which the notice is given. A terminating party shall remain responsible for funding Approved Activities for the Water Year in which notice of termination is given.
 - b. If CWCB, UDWRe, or WWDO provide notice of termination, the respective Party shall withdraw from participating in the Agreement upon its completion of all Approved Activities that the Party was responsible for completing in that Water Year. If CWCB, UDWRe, or WWDO is unable to complete all Approved Activities that the Party was responsible for in that Water Year, the respective Party will inform the other Parties of this in the notice of termination. Any unused funds shall be delivered by hand, electronic transfer, or certified mail to the respective Funding Parties and the NMISC.
 - c. A Party's withdrawal from this Agreement will not terminate the Agreement among the remaining Parties. The Funding Parties' Yearly Contribution, the NMISC's Annual Funding, and Upper Basin Entities' Activities will be re-negotiated between the remaining Parties and agreed upon in writing. If a revised Yearly Contribution, Annual Funding, and Activity arrangement cannot be reached, the Agreement shall terminate when all the remaining Parties' responsibilities for that current Water Year are complete.
 - d. No penalty shall accrue to any Party that provides notice of termination and no Party shall be obligated to implement Activities or contribute Funds for Activities not already authorized.
9. **Existing Law.**
- a. **Reaffirmation of Existing Law.** Nothing in this Agreement is intended to, nor shall this Agreement be construed to, diminish or modify the right of any Party under existing

federal and/or state law, including, but not limited to, the 1922 Colorado River Compact, the 1948 Upper Colorado River Basin Compact, and the U.S. Supreme Court's 2006 Consolidated Decree in *Arizona v. California* (547 U.S. 150). The Parties hereby affirm the entitlement and right of each State under such existing law to use and develop Colorado River System water.

- b. Consistency with Existing Law. This Agreement is consistent with, and shall be interpreted to be consistent with, existing federal and/or state law, including, but not limited to, Article III(a)-(e) inclusive of the 1922 Colorado River Compact, Sections 601 and 602(a) of the Colorado River Basin Project Act of 1968 (43 United States Code §§ 1551 and 1552(a)), and all applicable rules and regulations promulgated thereunder.

10. Authority. Each person executing this Agreement on behalf of a Party, has the full power and authority to bind that respective Party to the terms of this Agreement.

11. Sovereign Immunity and Limitations. By executing this Agreement the Parties expressly reserve sovereign immunity and specifically retain all immunities available to them as sovereigns, governmental entities, or political subdivisions under the law of their respective states. The Parties further acknowledge that there are constitutional and statutory limitations on the authority of the Parties and their agencies or instrumentalities to enter into certain terms and conditions, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; governing law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorney's fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Agreement, or in any attachments or documents incorporated into this agreement by reference, will be binding on the Parties only to the extent authorized by the laws and Constitutions of their respective states. Designations of venue, choice of law, governing law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The Parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for any Party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

12. Availability of Funds and Legislative Authorization. Each payment obligation of the Parties is conditioned upon authorization and the availability of funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If authorization and/or funds are not allocated and available for continued performance of the Agreement, the Agreement may be terminated by the Parties at the end of the period for which the funds are available. No penalty shall accrue to the Parties in the event this provision is exercised, and the Parties shall not be obligated or liable for any future payments due or for any damages as a result of termination under this

Section. Nothing in this Agreement may be construed to obligate the Funding Parties or the NMISC to any current or future expenditure of resources in advance of the availability of appropriations.

13. Severability. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and the Parties may renegotiate the terms affected by the severance.

14. Third-Party Beneficiary Rights. The Parties do not intend to create in any other individual or entity the status of third-party beneficiary. This Agreement shall not be construed to create such status. The rights, duties, and obligations contained in this Agreement shall operate only among the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The provisions of this Agreement are intended only to assist the Parties in determining and performing their obligations under this Agreement.

15. Waiver. The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

16. Indemnification. Each Party to this Agreement shall assume the risk of any liability arising from its own conduct. The Parties do not agree to insure, defend, or indemnify each other.

17. Miscellaneous.

- a. Modification/Amendments. The Parties may mutually agree in writing to modify or amend the terms of this Agreement. Modifications and/or amendments to this Agreement will be valid only if they are in a written document signed by all the Parties hereto.
- b. Notices. All notices required to be given hereunder shall be in writing and hand delivered, or sent by certified U.S. mail, to such Party's representative or designee at the addresses set forth below. E-mail notices will be accepted, but not as the singular form of notice. Any Party from time to time may by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

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- c. Entirety of Agreement. This Agreement, comprised of 19 pages, and any associated attachments constitute the entire understanding of the Parties hereto.
- d. Assignment. The Upper Basin Entities and the NMISC shall not assign or transfer their interest in this Agreement without the prior written consent of the Funding Parties and/or the NMISC, as appropriate.

SOUTHERN NEVADA WATER AUTHORITY

John J. Entsminger
General Manager

Date

APPROVED AS TO FORM:

[]
Director of Legal Services

Date

SIX AGENCY COMMITTEE

By _____

Date

APPROVED AS TO FORM:

By _____

Date

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Theodore C. Cooke
General Manager

Date

APPROVED AS TO FORM:

By _____

Date

WYOMING WATER DEVELOPMENT OFFICE

Harry C. LaBonde, Jr.
Director

Date

APPROVED AS TO FORM:

Tyler M. Renner
Assistant Attorney General
State of Wyoming

Date

UTAH DIVISION OF WATER RESOURCES

By _____

Date

APPROVED AS TO FORM:

By _____

Date

COLORADO WATER CONSERVATION BOARD

By _____

Date

APPROVED AS TO FORM:

By _____

Date

NEW MEXICO INTERSTATE STREAM COMMISSION

By _____

Date

APPROVED AS TO FORM:

By _____

Date