

RESOLUTION NO. R2017-020

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AUTHORIZING AMENDMENTS TO THE TRUST AND INDENTURE AND JOINT PAYMENT AGREEMENT FOR THE LOWER COLORADO RIVER MULTI-SPECIES CONSERVATION PROGRAM

WHEREAS, the Federal Endangered Species Act (the “Act”) prohibits actions by the federal government, state agencies and private entities that would result in any “take” act that actually kills or injures protected wildlife, including interference with a species’ essential feeding, breeding or sheltering pattern; and,

WHEREAS, a violation of the Act could result in the assessment of criminal and civil penalties by the enforcement divisions of the United States Fish and Wildlife Service (“FWS”); and,

WHEREAS, the FWS is authorized to grant federal, state and private entities permission to “take” listed species, where “take” results from the carrying out of an otherwise lawful activity, and certain other statutory criteria are met; and,

WHEREAS, the City of Yuma, Arizona (the “City”) conducts authorized activities within critical habitat of protected species related to river flow and non-river flow activities that could result in a “take” act; and,

WHEREAS, by way of Resolution No. R2005-21, the City began participation in the Lower Colorado River Multi-Species Conservation Program (“MSCP”), which was developed by various federal, state and private entities (the “Parties”) to provide for certain “take” protections for accidental or incidental violations under the Act and to prevent penalties from any accidental or incidental harm to protected species and their habitat; and,

WHEREAS, the costs for the MSCP are shared by the Parties, which costs may be adjusted based upon certain factors, including the addition of new Parties to the MSCP; and,

WHEREAS, the Parties to the MSCP established and executed an Implementing Agreement and a Funding and Management Agreement for the funding and management of the Program; and,

WHEREAS, the Arizona Parties to the MSCP established a Trust Indenture and Joint Payment Agreement (the “Trust”) to ensure that adequate funding for the Arizona portion of the MSCP would be provided; and,

WHEREAS, the MSCP requires each Party to authorize changes to the original agreement; and,

WHEREAS, on October 1, 2013, the Parties executed the First Supplement to Trust Indenture and Joint Payment Agreement, which First Supplement created a new Remedial Measures Fund within the existing funding framework that authorized and directed a portion of the quarterly transfers from the existing Reclamation Disbursement Fund to the new Remedial Measures Fund, with no impact on the Parties’ funding obligations; and,

WHEREAS, the City approved the First Supplement by way of Motion on March 20, 2013 and given that the MSCP was entered into by way of Resolution, the City now desires to ratify such Motion by way of this Resolution; and,

WHEREAS, a Second Supplement to the Trust is required as a result of United States’ Western Area Power Administration’s (“WAPA”) reallocation of a portion of the Hoover power to certain Indian Tribes and the requirement that those Indian Tribes contribute a proportionate share of the costs

attributable to those Hoover power users that are part of the MSCP; and,

WHEREAS, the Second Supplement to the Trust Indenture and Joint Payment Agreement provides for an adjustment in the Hoover power portion of the MSCP costs as a result of the Indian Tribe contributions, and will only have a financial impact on those Arizona MSCP Parties that receive Hoover power; and,

WHEREAS, the Second Supplement to the Trust will not have a financial impact on those non-Hoover power Parties to the MSCP.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma as follows:

SECTION 1: The First Supplement to the Trust Indenture and Joint Payment Agreement for the Lower Colorado River Multi-Species Conservation Program Agreement ("First Supplement") attached as Exhibit 1 and approved by City Council Motion on March 20, 2013, is ratified in accordance with the terms of the First Supplement.

SECTION 2: The Second Supplement to the Trust Indenture and Joint Payment Agreement for the Lower Colorado River Multi-Species Conservation Program Agreement ("Second Supplement") attached as Exhibit 2, is approved in accordance with the terms of the Second Supplement.

SECTION 3: The City Administrator is authorized to execute the Second Supplement on behalf of the City of Yuma.

SECTION 4: Exhibits 1 and 2 are made a part of this Resolution by reference.

Adopted this ____ day of _____, 2017.

APPROVED:

Douglas J. Nicholls
Mayor

ATTESTED:

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

Richard W. Files
City Attorney